<table>
<thead>
<tr>
<th>S. No.</th>
<th>Particulars</th>
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<tbody>
<tr>
<td>1.</td>
<td>Forthcoming Programmes</td>
</tr>
<tr>
<td></td>
<td>• ICSI-INSOL Training Programme on Insolvency and Restructuring</td>
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<td>• 8th National Conference of Practising Company Secretaries</td>
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<td>2.</td>
<td>MCA Updates</td>
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<tr>
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<td>• Two more institutions to be public financial institutions</td>
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<td>• Amendment to the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993</td>
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<tr>
<td>3.</td>
<td>Capital Market Updates</td>
</tr>
<tr>
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<td>• SEBI Board Meeting</td>
</tr>
<tr>
<td></td>
<td>• Circular on Parking of Funds in Short Term Deposits of Scheduled Commercial Banks by Mutual Funds – Pending deployment</td>
</tr>
<tr>
<td>4.</td>
<td>Tax Law Updates</td>
</tr>
<tr>
<td></td>
<td>• Service Tax Notification No. 41/2007</td>
</tr>
<tr>
<td></td>
<td>• Refund of service tax paid on specified services used for export of the goods</td>
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Disclaimer: - CS Update contains government notifications, case laws and contributions received from the members. Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.
FORTHCOMING PROGRAMMES

- ICSI-INSOL Training Programme on Insolvency and Restructuring
- 8th National Conference of Practising Company Secretaries
An efficient insolvency system is vital to stability in commercial relationships, and financial systems as it helps in creating sound climate for investment; enables market participants to more accurately price, manage and control default risks and corporate failures. It also encourages sound credit practice; ensures that human and economic resources of a country are continuously rationalized to efficient use thereby enhancing the overall productivity of the economy and rationalizes creditor rights.

The Indian system has hitherto been lacking in providing an opportunity for speedy and effective rehabilitation or efficient exit. Both, the Companies Act, 1956 under which winding up of companies is carried out and Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) which deals with revival of companies fail to capture the true relevance of the insolvency law besides failing to meet the dynamics of the modern economic system. These two laws enacted to cater to meet the expectations of industries thriving in a protectionist environment do not provide for engagement of professionals and utilization of their skills in the insolvency system, which deals with winding up, rehabilitation or restructuring of companies.

The success of a sound legislative framework is dependent upon predictable and effective processes coupled with efficacious enforcement mechanisms. The need is, therefore, felt for more creative and commercial approach to corporate entities in financial distress and attempt to revive or restructure them rather than applying the more traditional approach of liquidation or bankruptcy. It is thus imperative in the present day corporate paradigm that attempts are made towards corporate rescue and rehabilitation of financially distressed companies than resorting to liquidation or bankruptcy.

The Companies Amendment Act, 2002 recognizes the enhanced role of professionals in the insolvency process. Dr. J J Irani Expert Committee on New Company Law also recommended a larger role for professionals in the insolvency process such as liquidators, administrators, valuers, turnaround advisors, and supervisors besides performing the services such as representing and advising creditor committees, individual creditors and other stakeholders, investigators, inspectors, auctioneers, trustees, security advisors, etc. Hence, the professionals like Company Secretaries will be called upon to play a significant role in the insolvency and restructuring process. It is in these underpinnings and with a view to enable professionals, particularly the Company Secretaries to acquire knowledge and skill sets to effectively play the role of Insolvency practitioners, the Institute in collaboration with INSOL International has decided to organise Training Programme on Insolvency and Restructuring on November 29, 2007 and December 1, 2007 at Mumbai and New Delhi, respectively.
INSOL International

INSOL International is a worldwide federation of national associations of accountants and lawyers who specialise in turnaround and insolvency. There are currently over 35 Member Associations with over 9,000 professionals participating as members of INSOL International. INSOL India is one of its Member Associations. INSOL’s mission statement is to take, with its Member Associations the leadership role in international turnaround, insolvency and related credit issues; facilitate the exchange of information and ideas; encourage greater international co-operation and communication amongst the insolvency profession, credit community and related constituencies. One of the key goals of INSOL is to provide a leadership role in international educational matters relating to turnaround and insolvency.

Technical Sessions

- Managing Expectations of Stakeholders and Parties in a Restructuring/Liquidation
- The “Twilight Zone”
- Challenges in Managing the Liquidation/Restructuring Estate
- Best Practices from Overseas – to consider in India
- Global Approach to Insolvency and Restructuring

Key Takeaways

- How to assess the financial position of a company in financial difficulty; corporate governance issues; achieving expectations of different parties in best possible ways; issues that the parties in a restructuring to forego/forfeit.
- Actions giving rise to liability of directors; directors and conflicting loyalties; third party liabilities, obligation to assist with getting in the company property/obligation to provide information/right to privacy.
- Financing insolvency proceedings; enforcing security/practical difficulties; priorities in asset distribution; funding of litigation/security for cost; outsourcing responsibilities to professionals/service providers.
- Qualification and skill required to act as insolvency practitioner; appointment issues, on fees and remuneration; ethical issues
- Dealing with cross border problems; UNCITRAL Model Law; European Community Regulation on insolvency.

Guest Speakers

Eminent faculty comprising of International experts from USA, UK and Australia facilitated by INSOL and experts from India will address the participants of the training programme, namely

- Mr. Justice A K Sikri, Judge, Delhi High Court
- Mr. Justice Dhananjay Chandrachud, Judge, Mumbai High Court
- Mr. Sumant Batra, Senior Partner, Kesar Dass B & Associates
- Mr. Robert Owen Sanderson, KPMG LLP Canada
- Mr. B N Bahadur, BBK Ltd., USA
Mr. Robert Hertzberg, Pepper Hamilton LLP, USA
Mr. Ashwani Puri, PricewaterhouseCoopers
Mr. Gordon Stewart, Allen & Overy LLP, UK
Mr. U K Chaudhary, Senior Advocate, New Delhi
Mr. Bob Jacobs, Ferrier Hodgson, Mumbai
Mr. M Umarji, Indian Bank Association
Mr. Alok Dhir, Advocate, New Delhi
Mr. Kirtee Kapoor, Davis Polk & Wardwell, USA
Dr. K S Ravichandran, Practising Company Secretary, Coimbatore
Mr. Dominic McCahill, Weil, Gotshal & Manges LLP, UK
Dr. S D Israni, Practising Company Secretary, Mumbai
Mr. Robert Lemons, Weil, Gotshal & Manges LLP, USA.

Delegate Fee
Hotel Taj Palace, Mumbai - Rs. 3,500
Hotel Le Meridien, New Delhi - Rs. 3,000
per participant to cover the cost of background material, conference kit, lunch and other organisational expenses.

Place, Day & Date
Mumbai, Thursday, November 29, 2007
New Delhi, Saturday, December 1, 2007

Who should attend
The programme will provide the participants insight into international practices and standards in insolvency and restructuring process with an overview of legal framework in European Communities and UNCITRAL Model Law. The programme will, therefore, be of immense practical benefit to professionals like Company Secretaries, Chartered Accountants, Cost Accountants, Advocates, Corporate Executives, Bankers, Financial Institutions, Asset Reconstruction Companies, Turnaround Advisors and Asset Management Companies.

Programme Credit Hours
Members of the Institute will be entitled to Four Programme Credit Hours.

Registration
Request for registration alongwith fee by way of cheque/demand draft drawn in favour of “The Institute of Company Secretaries of India may please be sent to Mr. T R Mehta, Assistant Director, The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110 003, Phone 41504444, 24617372-24, fax 24645045, 2626727, e-mail trmehta@icsi.edu or Mr. Gopal Chalam, Dean, ICSI-CCRT, Plot No. 101, Sector 15 Institutional Area, CBD Belapur, Navi Mumbai 400 614, Ph. 022 – 27577814, fax 27574384 e-mail ccrt@vsnl.com.
The Institute of Company Secretaries of India
In Pursuit of Professional Excellence
Statutory body under an Act of Parliament

8TH NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

Hosted by Bangalore Chapter of The ICSI

DATES: December 14-15, 2007 (Friday & Saturday) • VENUE: Hotel Atria, Palace Road, Bangalore
TIMINGS: December 14, 2007 - 09.00 a.m. to 05.00 p.m. • December 15, 2007 - 09.00 a.m. to 03.00 p.m.

Theme
EMBRACING WINNING STRATEGIES

Sub Themes
• Interactive session on MCA 21 • Communication Skills & Service Deliverables
• Challenges, Risks & Opportunities for PCS • Public Offers and Role of PCS
• Emerging Scenario - Limited Liability Partnership & Competition Law

SPEAKERS
Eminent faculty with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

PARTICIPANTS
Company Secretaries in Practice. Members who are intending to take up practice and other Professionals in Secretarial, Legal and Management disciplines would benefit by participating in the Conference.

FEES

<table>
<thead>
<tr>
<th>Practising Company Secretaries</th>
<th>Rs.</th>
</tr>
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<tbody>
<tr>
<td>Members of ICSI/ICAI/ICWAI</td>
<td>1800</td>
</tr>
<tr>
<td>Non-Members</td>
<td>2200</td>
</tr>
<tr>
<td>Students of ICSI</td>
<td>2500</td>
</tr>
<tr>
<td>Accompanying Spouse</td>
<td>1500</td>
</tr>
<tr>
<td>Licentiates, ICSI</td>
<td>1500</td>
</tr>
</tbody>
</table>

[Registration Fee will cover the cost of background material, lunch, tea (both days) and dinner (Friday, December 14, 2007) excluding hotel accommodation]

Accommodation on ‘first come first serve’ basis is being arranged at select Hotels for out station delegates. The Hotel Tariffs are being provided in the Conference Brochure.

Six Programme Credit Hours for Members of ICSI

<table>
<thead>
<tr>
<th>PROGRAMME DIRECTOR</th>
<th>PROGRAMME CO-ORDINATOR</th>
<th>PROGRAMME FACILITATOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Sudhir Babu C</td>
<td>Mr. S Diraviam</td>
<td>Mr. G.V. Srinivasa Murthy</td>
</tr>
<tr>
<td>Council Member, The ICSI</td>
<td>Chairman-SIRC of the ICSI</td>
<td>Chairman, The Bangalore Chapter of the ICSI</td>
</tr>
<tr>
<td>Phone nos. (O) 040-27620315/27621059 Mobile: 9885523338 E-mail: <a href="mailto:sudhirinc@yahoo.com">sudhirinc@yahoo.com</a></td>
<td>Mobile : 9840340002 E-mail: <a href="mailto:mal2adiraviam@yahoo.co.in">mal2adiraviam@yahoo.co.in</a></td>
<td>Phone nos. (O) 080-26608874 Mobile : 9845214298 E-mail : <a href="mailto:nivasjan2000@gmail.com">nivasjan2000@gmail.com</a></td>
</tr>
</tbody>
</table>
DELEGATE REGISTRATION PROCEDURE

The delegate registration fee is payable in advance and is not refundable for accepted nominations. The registration form duly completed along with a crossed demand draft may be sent in favour of ‘The Institute of Company Secretaries of India’ payable at Delhi or at Bangalore at the addresses given below:

<table>
<thead>
<tr>
<th>T. R. Mehta</th>
<th>Sangeeta Flora</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant Director</td>
<td>Executive Officer</td>
</tr>
<tr>
<td>The Institute of Company Secretaries of India</td>
<td>The Institute of Company Secretaries of India</td>
</tr>
<tr>
<td>‘ICS House’</td>
<td>Bangalore Chapter</td>
</tr>
<tr>
<td>22, Lodi Road, New Delhi-110 003</td>
<td>‘Sheriff Chambers’, 14, Cunningham Road,</td>
</tr>
<tr>
<td>Telex: 011-24617321-24 Extn.421</td>
<td>Bangalore 560 052.</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:trmehta@icsi.edu">trmehta@icsi.edu</a></td>
<td>Tel. Nos.: 22286574, 22287158 ; Telefax: 22261861</td>
</tr>
<tr>
<td></td>
<td>E-mail: <a href="mailto:bangalore@icsi.edu">bangalore@icsi.edu</a></td>
</tr>
</tbody>
</table>

PAPERS FOR PUBLICATION IN BACKGROUND-CUM-SOUVENIR

Members who wish to contribute papers for publication in the Souvenir to be brought out at the Conference are requested to submit the same preferably through e-mail (srmitha@icsi.edu), with one hard copy or those sending hard copy may send the same in quadruplicate so as to reach the Headquarters of the ICSI on or before November 23, 2007. The paper should not normally exceed 15 typed pages. The Articles Screening Committee will consider these and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects.

BACKGROUND-CUM-SOUVENIR

It is proposed to bring out a Background-cum-Souvenir containing theme articles/technical papers. The Background-cum-Souvenir would be widely circulated. Advertisement released in the Background-cum-Souvenir would receive wide publicity for Products, Services and Corporate Announcements. Members/Organizations are requested to release advertisements. The Advertisement material along with cheque/Demand Draft may please be sent to The Bangalore Chapter of ICSI, ‘Sheriff Chambers’, 14, Cunningham Road, Bangalore-560052 or The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110 003 latest by November 23, 2007.

ADVERTISEMENT TARIFF

<table>
<thead>
<tr>
<th>Colour Advertisements</th>
<th>Size</th>
<th>Black &amp; White Advertisement</th>
<th>Size</th>
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<tbody>
<tr>
<td>Back Cover</td>
<td>Rs. 15,000</td>
<td>Full Page</td>
<td>Rs. 6,000</td>
</tr>
<tr>
<td>Inside Cover (Front/Back)</td>
<td>Rs. 10,000</td>
<td>Half Page</td>
<td>Rs. 4,000</td>
</tr>
<tr>
<td>Special Page</td>
<td>Rs. 8,000</td>
<td>18 cm × 24 cm</td>
<td>18 cm × 12 cm</td>
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</table>

Companies and organizations are welcome to display their Banners at the venue of the Conference, which will provide adequate publicity for their products/services. The Charges for display of banners are as under:

<table>
<thead>
<tr>
<th>Banner near the stage</th>
<th>Rs. 20,000 (Limited to only two banners)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banner (L) 10’× (B) 4’</td>
<td>Rs. 10,000</td>
</tr>
<tr>
<td>Banner (L) 6’× (B) 3’</td>
<td>Rs. 5,000</td>
</tr>
</tbody>
</table>

*Sponsorship for Lunch, Dinner, tea/Coffee and Conference Kit

<table>
<thead>
<tr>
<th>Lunch per day</th>
<th>Rs. 1,50,000</th>
</tr>
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<tbody>
<tr>
<td>Dinner for one day*</td>
<td>Rs. 1,50,000</td>
</tr>
<tr>
<td>Coffee/Tea per session</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>Conference Kit</td>
<td>Rs. 2,00,000</td>
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</tbody>
</table>

* Co-sponsor may be considered

Note: Main Sponsors/Co-sponsors providing more than Rs. 1,00,000 will be given adequate publicity and their contributions duly acknowledged. Further they shall also be eligible for two free delegates (non-residential) per Rs. 1,00,000 at the conference. Stalls for display of products Rs. 15,000 per stall of maximum size 6’×6’.
- Two more institutions to be public financial institutions
- Amendment to the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993
Central Government has specified two more institutions to be public financial institutions under powers conferred by sub-section (2) of Section 4A of the Companies Act, 1956, as per Notification No. S.O. 1583(E) dated 20th September, 2007 issued by Ministry of Corporate Affairs (MCA). The said Notification is given below:

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, the 20th September, 2007

S.O. 1583(E).—In exercise of the powers conferred by sub-section (2) of Section 4A of the Companies Act, 1956 (1 of 1956), the Central Government hereby specifies the following institutions to be public financial institutions and for that purpose makes the following further amendment in the Notification of the Government of India, published in the Gazette of India dated the 13th May, 1978 in Part II, Section 3, sub-section (ii), in the erstwhile Ministry of Law, Justice and Company Affairs (Department of Company Affairs) vide number S.O. 1329 dated the 8th May, 1978, namely:—

In the said notification, after serial number 49, the following serial numbers and entries relating thereto shall be added, namely:

“50. Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited.
51. Kerala Power Finance Corporation Limited.”

[F. No. 3/3/2004/CL. V]
HITESH KHOSLA, Jr. Secy.

Rule 8 of The Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993 provides, 'Except as provided in rule 6 or 7, the Chairman shall hold office till he attains the age of sixty five years; the Vice Chairman shall hold office till he attains the age of sixty two years and any other Member shall hold office till he attains the age of sixty years.' This rule has now been amended so as to increase the retirement ages of Chairman, Vice-Chairman and other members. The said notification issued is as below:
CAPITAL MARKET UPDATES

- SEBI Board Meeting
- Circular on Parking of Funds in Short Term Deposits of Scheduled Commercial Banks by Mutual Funds – Pending deployment
PRESS RELEASE

SEBI Board Meeting

The SEBI Board today discussed the various issues relating to registration of FIIs viz issuance of P-Note/ODIs by some FIIs/Sub-accounts, the linkages (or absence thereof) between quantum of P-Notes/ODIs issued v/s the capital flows into the Indian markets.

The Board also discussed the nature of measures that need to be implemented immediately vis-à-vis the long term direction of the policy aspects relating to participation of foreign entities in the Indian Securities Market. It was felt that in the long term, SEBI may consider introduction of a regime of KYC/AML/CFT certification on foreign entities seeking to invest in the Indian markets, as is currently applicable on domestic entities, compliance with which will enable such entity to invest directly.

Having regard to the need to contain the export of the Indian capital markets, the Board felt that in the long term the approach should be to enable access to Indian markets by quality investors, by introducing a range of innovative products, including OTC derivatives, as are available in other markets, at competitive costs.

The Board discussed the policy measures on Offshore Derivative Instruments (Participatory Notes) hosted by SEBI on its website on October 16, 2007. Having considered the comments and suggestions in response to the proposals, the Board has taken the following decisions:

1. It was proposed that “FIIs and their sub-accounts shall not issue/renew ODIs with underlying as derivatives with immediate effect. They are required to wind up the current position over 18 months, during which period SEBI will review the position from time to time.”

It is has already been clarified by SEBI that there is no proposed bar on ODI contracts, expiring this month or in the following months, being renewed, provided the renewal does not go beyond 18 months. It was further made clear that this proposal did not in any manner seek to restrict renewal or rollover of Indian Exchange Traded Derivative Contracts by the FIIs.

FIIs/sub-accounts are free to invest in derivatives traded on recognized stock exchanges.

The Board decided that starting from the date of implementation of this proposal, they can not issue P-Notes that are based on such derivatives.
2. It was proposed that “further issuance of ODIs by the sub-accounts of FIIs will be discontinued with immediate effect. They will be required to wind up the current position over 18 months, during which period SEBI will review the position from time to time.”

The Board decided that from the date of implementation of the proposal, no sub-account can issue fresh ODIs. Existing ODI issuing sub-accounts have to ensure that they wind up all their ODIs within 18 months of implementation of the proposal.

SEBI had received several requests from existing P-Note issuing sub-accounts on the above proposal. Taking note of the transition being made by the sub-accounts currently issuing participatory notes, into FIIs, and in order to ensure implementation of the proposals in a non-disruptive manner, the Board has decided that these applicants be treated as if they were FIIs as on the date decided for calculation of the AUC for the above proposals.

3. It was proposed that “The FIIs who are currently issuing ODIs with notional value of PNs outstanding (excluding derivatives) as a percentage of their AUC in India of less than 40% shall be allowed to issue further ODIs only at the incremental rate of 5% of their AUC in India.”

The Board confirmed the proposal with the understanding that 5% incremental issuance allowed to such FIIs would be applicable on an annual basis, till such time that the percentage reaches 40%, after which the entity will abide by the proposal applicable to entities above the 40% limit.

4. It was proposed that “Those FIIs with notional value of PNs outstanding (excluding derivatives) as a percentage of their AUC in India of more than 40% shall issue PNs only against cancellation / redemption / closing out of the existing PNs of at least equivalent amount.” The Board confirmed the proposal.

5. The Board discussed several possible dates for implementation of the above proposals. Taking into account the fact that reporting of P-Notes/ODIs by FIIs is on a monthly basis and the last available data with SEBI was in respect of September 2007, the Board decided that the effective date for calculation of the AUC for the purpose of determining the notional value of PNs issued as a percentage of AUC, for the above proposals shall be September 30, 2007. The proposal will however take effect after close of trading hours on October 25, 2007.

In view of the submissions of some PN-holders that they would like to register with SEBI directly, instead of participating through the P-Note route but are
are unable to adhere to the eligibility criteria prescribed under the FII Regulations, the SEBI board has agreed to the following changes to the registration criteria

1. **Broad-based criteria**

   The “broad-based” criteria shall now be modified to include entities having at least 20 investors, no single investor holding more than 49% (instead of 10% at present).

2. **Track record of the applicant**

   Track record of individual fund managers will be considered for the purpose of ascertaining the track record of a newly set up fund, subject to such fund manager providing its disciplinary track record details.

3. Issuance of ODIs/PNs would be limited to only “regulated” entities and not “registered” entities.

4. FII and sub-account registrations will be perpetual, subject to payment of fees.

5. The Board further discussed the issue of registration of Pension Funds, Foundations, Endowments, University Funds and Charitable trusts or societies, which are not regulated with any regulatory authority and having regard to the nature of these entities, advised that these entities may be registered as FIIs without imposing the requirement of their being “regulated”.

Mumbai
October 25, 2007
All Mutual Funds Registered with SEBI
Association of Mutual Funds in India (AMFI)

Dear Sirs,

Re: Parking of Funds in Short Term Deposits of Scheduled Commercial Banks by Mutual Funds – Pending deployment

Please refer to SEBI circular no. SEBI/IMD/CIR No. 1/91171/07 dated April 16, 2007 on guidelines for Parking of Funds in Short Term Deposits of Scheduled Commercial Banks – Pending deployment.

With regard to clause 1 of the aforesaid circular it is clarified that the tenure of the term deposits placed as margin for trading in derivatives shall not exceed 182 days.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

Ruchi Chojer
EXECUTIVE DIRECTOR
INVESTMENT MANAGEMENT DEPARTMENT
SEBI/IMD/CIR No. 1/91171/07
April 16, 2007

All Mutual Funds Registered with SEBI
Association of Mutual Funds in India (AMFI)

Dear Sirs,

Sub: Parking of Funds in Short Term Deposits of Scheduled Commercial Banks by Mutual Funds – Pending deployment

Please refer to clause 8 of Schedule VII of SEBI (Mutual Funds) Regulations 1996 pertaining to investment in short term deposits of scheduled commercial banks, pending deployment.

In order to ensure that the funds collected in a scheme are invested as per the investment objective stated in the offer document, following guidelines are issued for parking of funds in short term deposits of scheduled commercial banks – pending deployment:

1. “Short Term” for such parking of funds by mutual funds shall be treated as a period not exceeding 91 days.
2. Such short term deposits shall be held in the name of the concerned scheme.
3. No mutual fund scheme shall park more than 15% of the net assets in Short term deposit(s) of all the scheduled commercial banks put together. However, it may be raised to 20% with prior approval of the trustees. Also, parking of funds in short term deposits of associate and sponsor scheduled commercial banks together shall not exceed 20% of total deployment by the mutual fund in short term deposits.
4. No mutual fund scheme shall park more than 10% of the net assets in short term deposit(s), with any one scheduled commercial bank including its subsidiaries.
5. Trustees shall ensure that no funds of a scheme may be parked in short term deposit of a bank which has invested in that scheme.
6. Asset Management Company (AMC) shall not be permitted to charge any investment management and advisory fees for parking of funds in short term deposits of scheduled commercial banks in case of liquid and debt oriented schemes.
7. All funds parked in short term deposit(s) shall be disclosed in half yearly portfolio statements under a separate heading. Details such as name of the bank, amount of funds parked, percentage of NAV may be disclosed.
8. Trustees shall certify in the half-yearly reports that the provision of the Regulation pertaining to parking of funds in short term deposits - pending deployment is
being complied with **at all points of time**. Further the AMC shall also certify the same in its bi-monthly compliance test report.

**Applicability**

1. The above conditions shall be applicable to all fresh investments whether in a new scheme or an existing scheme.

2. In case of an existing scheme where the scheme has already parked funds in short term deposits, the AMC shall ensure that such mutual fund schemes conform with the above conditions within a period of 3 months, from the date of the issue of these guidelines.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

R K Nair
TAX LAW UPDATES

- Service Tax Notification No. 41/2007
- Refund of service tax paid on specified services used for export of the goods
NOTIFICATION No
41/2007-Service Tax, Dated : October 6, 2007

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.40/2007-Service Tax, dated the 17th September, 2007 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 601(E) dated the 17th September, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in column (3) of the Schedule (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A of the said Finance Act, subject to the conditions specified in the corresponding entry in column (4) of the Schedule:

Provided that-

(a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;

(b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;

(c) the exporter claiming the exemption has actually paid the service tax on the specified services;

(d) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;

(e) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;

(f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

2. The exemption contained in this notification shall be given effect to in the following manner, namely:-

(a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the exporter and used for export of the said goods, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the exporter of the said goods and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;
(b) the exporter shall claim the exemption by filing a claim for refund of service tax paid on specified services:

Provided that-

(i) the manufacturer-exporter of the said goods shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture or warehouse, and

(ii) the exporter, other than a manufacturer-exporter, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(c) the exporter who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(d) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form;

(e) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which the said goods have been exported:

Provided that the said goods shall be deemed to have been exported on the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

(f) the refund claim shall be accompanied by documents evidencing,-

(i) export of the said goods;

(ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;

(iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods;

(h) where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of
1999), including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

### Schedule

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Classification under Finance Act, 1994</th>
<th>Taxable Services</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Section 65(105)(d)</td>
<td>Services provided to an exporter by an insurer, including a re-insurer carrying on general insurance business in relation to insurance of said goods</td>
<td>(i) document issued by the insurer, including re-insurer, for payment of insurance premium shall be specific to export goods and shall be in the name of the exporter.</td>
</tr>
<tr>
<td>2.</td>
<td>Section 65(105)(zn)</td>
<td>Services provided for export of said goods</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Section 65(105)(zzh)</td>
<td>Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods</td>
<td>(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.</td>
</tr>
<tr>
<td>4.</td>
<td>Section 65(105)(zzi)</td>
<td>Services provided by an inspection and certification agency in relation to inspection and certification of export goods where such technical inspection and certification is required to be undertaken as per</td>
<td>(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring inspection and certification of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.</td>
</tr>
<tr>
<td>S. No.</td>
<td>Description of goods</td>
<td>Classification in case of excisable goods</td>
<td></td>
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<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
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</tbody>
</table>

8. Description of taxable services received by the exporter for use in export goods

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of taxable service</th>
<th>Classification under the Finance Act, 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
</tbody>
</table>

9. Name, designation and address of the authorized signatory / signatories:

10. I / We hereby declare that-
(i) the information given in this application form is true, correct and complete in every respect and that I am authorized to sign on behalf of the exporter;
(ii) no CENVAT credit of service tax paid on the specified services used for export of said goods shall be taken under the CENVAT Credit Rules, 2004;
(iii) the said goods shall be exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
(iv) I / we shall maintain records pertaining to export goods and the taxable services used for export of the said goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

(Signature of the applicant / authorized person with stamp)

Date:
Place:
[F.No.341/15/2007-TRU]

(G.G. Pai)
Under Secretary to the Government of India

**Circular for all the clients**

Refund of service tax paid on specified services used for export of the goods.

The Government had earlier vide notification no 40/2007 –ST dt 17-09-2007 notified certain services on which the exemption is being granted when the said services are received by an exporter. The said exemption was granted by way of a refund of service tax paid on the specified services by the exporter to the service providers.

Recent amendments have been made to allow refund of service tax paid on insurance services, Technical Testing and Analysis services and Technical Testing and analysis services. The revised guidelines and procedure is as follows:

1. The service tax paid on the following specified services is eligible for refund:

<table>
<thead>
<tr>
<th>Sr. No.</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 65(105)(d)</td>
<td>Services provided by an insurer including a re-insurer.</td>
</tr>
<tr>
<td>2</td>
<td>Section 65(105)(zzh)</td>
<td>Services provided by a technical testing and analysis agency.</td>
</tr>
<tr>
<td>3</td>
<td>Section 65(105)(zzi)</td>
<td>Services provided by an Technical inspection and certification agency.</td>
</tr>
<tr>
<td>4</td>
<td>Section 65 (105)(zn)</td>
<td>Services provided by ports or persons authorised by ports.</td>
</tr>
<tr>
<td>5</td>
<td>Section 65 (105)( zzl)</td>
<td>Services provided by other ports or persons authorized by other ports</td>
</tr>
<tr>
<td>6</td>
<td>Section 65 (105)(zzp)</td>
<td>Services provided by goods transport agency for the transport of goods by road for transportation of goods from the inland container depot to port of exports</td>
</tr>
<tr>
<td>7</td>
<td>Section 65 (105)(zzzp)</td>
<td>Services provided by any person for transport of goods by rail from Inland Container Depot (ICD) to the port through transportation by rail.</td>
</tr>
</tbody>
</table>

The refund of service tax is eligible only for the above specified services and not for any other services. Therefore, the refund of service tax paid on transportation services for goods dispatched directly from the factory gate to the port is not available.

Major beneficiaries of this refund mechanism will be large exporters, Exporters of exempted goods, EOU units with no local sales, etc.

2. **Eligibility of the refund claim:**

a) Services of General insurance, Technical Testing and technical inspection.
The refund will be eligible only for those specified services, which are used for exports made with effect from 6th October 2007 onwards.

b) Services of ports, other ports, transportation from ICD to port by road or rail.

The refund will be eligible only for specified services, which are used for exports made with effect from 17th September 2007 onwards.

3. Conditions to be satisfied for refund.

a) Refund for service tax paid on Technical Testing and Analysis services and technical inspection and certification services will be eligible only when such testing or certification is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods.

b) CENVAT credit of service tax paid on the services for which refund is claimed should not be availed.

c) Drawback of service tax paid on the services for which refund is claimed is not availed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

4. Exemption from payment of service tax will be available in case of exporter and the person liable to pay service tax to the government is the same.

In cases where the exporter is liable to pay service tax on the amount paid on such specified services for which he is eligible to claim refund under the said notification, then such exporter is exempt form payment of service tax on such specified services. For e.g. if the technical inspection in respect of the export goods is done by a non-resident, then the liability to pay service tax is on the exporter. However since the exporter will be eligible for refund of such service tax, provision have been made to allow such exporter to claim exemption from service tax itself.

5. Manner of grant of the refund –

A. Application whom to be submitted.

The application for refund of service tax paid to input service provider shall be filled by exporter –

(i) in case of Manufacturer-Exporter – with the Assistant/Deputy Commissioner of Central Excise, having jurisdiction over the factory where goods are manufactured;

(ii) in case of Merchant-Exporter – with Assistant/Deputy Commissioner who has jurisdiction over the registered office of the Merchant-Exporter.

B. Merchant Exporter / Manufacturers – Exporter of exempted goods / EOU are required to file declaration and obtain STC before filing of refund claim.
a) Merchant Exporter who is not registered under Central Excise Act is required to file a declaration in the specified form attached as Annexure 1 with the respective jurisdictional Assistant Commissioner / Deputy Commissioner of Central Excise prior to filing a claim for refund of service tax under this notification.

b) A service tax code (STC) number will be granted to the exporter within seven days from the date of receipt of the said Form;

C. Periodicity of the refund claim

The refund claim is required to be filed on quarterly basis. The refund claim is required to be filed within a period of 60 days from the end of the relevant quarter during which the said goods have been exported. The date of export will be the date of Let Export Order given by the customs authority.

The word ‘quarter’ is not defined in the notification. But as per the definition contained in Service Tax Rules, 1994 the said term refers to the period April to June, July to September etc. Therefore, the claim for the goods exported between 17th September 07 to 30th September 07 should be filed by 29th November 2007.

Care to be taken – Date of let export order means the date on which the order is given by the Dock appraising officer and not the actual export date or date of sailing of the vessel.

The refund claim is required to be made within 60 days of the end of the quarter during which the said goods have been exported. The date of export to be considered for the refund claim is the date of let export order given by the customs authorities at the various ports and not the date of sailing of the ship or loading of the goods onto the vessel.

For e.g if let export order is given on 28th September 2007, however due to certain reasons the ship starts sailing on 2nd October 2007, then the refund claim for the same is required to be submitted within 60 days from 30th September 2007 i.e. by 29th November 2007 and not by 1st March as the same will not be treated as exports made in October 2007. In short the refund claim will be considered for the quarter July – September and not October – December.

Especially in cases where the goods have been exported through ICD the let export order is usually given by the dock appraising officer at the ICD and thereafter the goods are sent for export. In such cases there is a considerable time gap between the let export order and the date of actual export.

It is highly advised that the let export order date given by customs authorities should be tracked by the company and the refund claim should be submitted within time by considering the said let export order date.
It is observed that the certain documents / information may not be received by the excise department from its export / commercial department for the purposes of filling the refund claim. In such cases it is advised that the refund claim should be submitted with all the documents currently with the company. The remaining documents can be submitted after receipt of the same.

C. Documents to be submitted along with the refund claim

The following documents / proofs are to be submitted along with the refund claim.

(i) Documents substantiating the export of the said goods

The proof of export of the said goods is required to be submitted along with the refund claim. It is observed that in many cases, the proof of exports is not received by the factory from its export department within the time limit i.e. within 60 days of the refund. In such cases, it is advised that an additional copy of ARE-1 should be self certified or certified from the range and submitted along with the refund claim till the time ARE-1 duly endorsed by Customs is received. As soon as the proof of export is received the same should be submitted to the department. This documents viz. EP Copy of shipping bill, non-negotiable copy of bill of lading, photo copy of ARE-1 (both original and duplicate) duly endorsed by the customs, invoice of input service provider.

(ii) Services received are one of the specified services.

It is essential that the services should be one of the specified services. Therefore it is essential that the category of service is mentioned on the invoices of the services provider. Additionally a self attested copy of the registration certificate and a certificate substantiating the payment under the specified category can be obtained.

(iii) Proof of payment of service tax to the input service provider is required to be submitted

The invoice copy along with the proof of payment of the amount of invoice to the service provider such as receipt of service provider or other documents like bank statement is required to be submitted. In case of payment to the service providers through agents, CHA and subsequent reimbursement to him a certificate (for format see attached annexure 2) should be obtained from such agent/CHA certifying that the amount has been paid to the service provider. In such case it is advisable to instruct CHA to ensure that name of exporter and shipping bill number appears on the invoice issued by service provider. The company shall attach statement in following format to substantiate the payment of service tax.

iv) Copy of agreement is required to be submitted in cases where the refund is admissible only on the condition that the services are required to be undertaken as per the specific requirement of the written agreement.
v) Copies of invoices for receipt of such services should be submitted. It is advised to obtain a specific invoice for the services received for the export goods. The invoice should be in the name of the exporter. In case of refund of service tax paid on insurance services the policy copy along with the copy of premium receipt will have to be submitted.

6. **Important points.**

a) **All the documents to establish the linkage between the goods exported and the services received by bearing the shipping bill no., export invoice no. etc.**

For the purpose of grant of refund, the Assistant Commissioner is required to be satisfied that the said services had actually been used for export of the said goods. Therefore in order to be eligible for the refund, it is essential that all the documents for which the service tax is being paid should bear the shipping bill number/export invoice number, etc for establishing proper linkage and substantiating that the services have been used for export of goods.

The same should be done on the documents for the specified services as mentioned below:

<table>
<thead>
<tr>
<th>Sr. no.</th>
<th>Services</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Port or other port services</td>
<td>All the invoices for amounts charged by the port authorities or for any service received in the port should at least have the shipping bill number along with other details. The CHA should be directed to ensure that the said details are there on the documents.</td>
</tr>
</tbody>
</table>
| 2       | Services of transport of goods from ICD to port of customs by road or by rail. | (a) The transportation charges are usually paid by the shipping company or the agents in the ICD terminal and the same are recovered from the exporters along with service tax. The shipping company or the agent shall be required to prepare separate bill for such service along with service tax and also to indicate shipping bill number.  
(b) In cases where the liability to pay services tax is on the manufacturer it is advised that a detailed statement should be prepared for service tax paid on such transportation charges and the same should be paid by separate GAR Challan. The invoice of transporter shall containing shipping bill number. |
| 3       | Services of transport from ICD to port through rail                      | Similar to above in point no. 2, the documents prepared by ICD should specifically mention the shipping bill number. |
| 4       | Insurance services                                                       | The shipping bill no., batch no and other details should be mentioned on the invoice as far as possible. |
| 5       | Technical Testing                                                        | The batch no and other details should be mentioned on the |
and technical inspection services. invoice as far as possible. In case the service is provided after filling of shipping bill, the relevant details should also be provided on the invoice.

b) Insurance policy should be specific for the export goods.

Usually the insurance policy is taken for a fixed amount based on the value of the goods. However it is advised that system should be developed so that individual policies can be taken out for dispatch of each export consignment. In case of various export consignments being covered under a single policy of export goods, it is suggested that a separate letter or certificate should be obtained from insurance company.

d) Agreement should specifically require the exporter to conduct testing, analysis and inspection of the goods.

The agreement with the buyer of the goods should specifically contain a condition for the testing and the inspection of the goods. In case testing and certification are carried out without any written agreement then the refund of the same will not be available.

e) Proof of Realisation (FIRC) should be submitted at the earliest to avoid unnecessary notices.

In case of refunds granted earlier for which foreign exchange is not realised the said refund will be recoverable as if service tax has been refunded erroneously alongwith interest. Therefore the proof of realisation of foreign currency should be submitted at the earliest or else the department may issue demand notice.

In case of any assistance, contact Mr. Narayanan / Mr. Prakhakar Jha from our office.

Regards

S. S. Gupta
Chartered Accountant.
Form

1. Name of the exporter:
2. Address of the registered office or head office of the exporter:
3. Permanent Account Number (PAN) of the exporter:
4. Import Export Code (IEC) of the exporter:
5. Details of Bank Account of the exporter:
   (a) Name of the Bank:
   (b) Name of the Branch:
   (c) Account Number:
6. (a) Constitution of exporter [Proprietorship /Partnership /Registered Private Limited Company /Registered Public Limited Company /Others (specify)]
   (b) Name, address and telephone number of proprietor /partner /director
7. Description of export goods:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of goods</th>
<th>Classification in case of excisable goods</th>
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</thead>
<tbody>
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8. Description of taxable services received by the exporter for use in export goods

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<thead>
<tr>
<th>S. No.</th>
<th>Description of taxable service</th>
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<tbody>
<tr>
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<td>(2)</td>
<td>(3)</td>
</tr>
</tbody>
</table>

9. Name, designation and address of the authorized signatory / signatories:

10. I / We hereby declare that-
   (i) the information given in this application form is true, correct and complete in every respect and that I am authorized to sign on behalf of the exporter;
   (ii) no CENVAT credit of service tax paid on the specified services used for export of said goods shall be taken under the CENVAT Credit Rules, 2004;
   (iii) the said goods shall be exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
   (iv) I / we shall maintain records pertaining to export goods and the taxable services used for export of the said goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

(Signature of the applicant / authorized person with stamp)

Date:
Place:
FORMAT OF DETAILS OF PAYMENT OF SERVICE TAX TO INPUT SERVICE PROVIDER

Shipping Bill No. ____________

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the input service provider</th>
<th>Registration No. of service provider</th>
<th>Nature of service</th>
<th>Invoice No. &amp; Date</th>
<th>Amount of ST</th>
<th>Details of payment</th>
<th>Remarks*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Cheque No</td>
<td>Name of bank</td>
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</tbody>
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* In case the amount is paid through agent, the same may be stated.

Note - In case the amount has not been paid to any service provider within 60 days, yet the same should be included in the statement. The details about payment can be provided subsequently before passing the claim.