

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

► Focus on

FEMA

Foreign Exchange
Management Act



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**THE INSTITUTE OF
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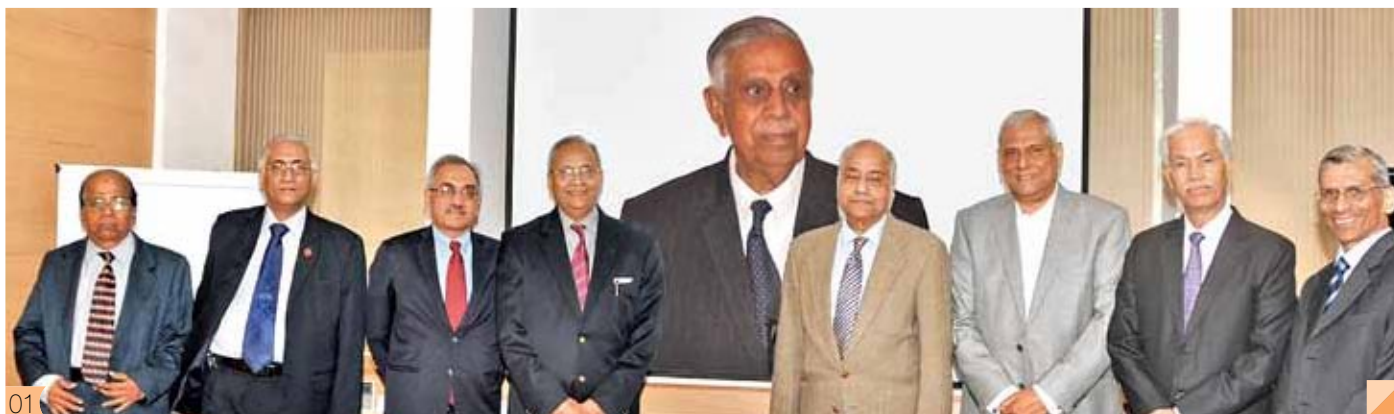
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01 >> 13th ICSI National Awards for Excellence in Corporate Governance, 2013- Jury Meeting –Group photo: From Left: K.R. Ramamoorthy (Former CMD, Corporation Bank & ING Vyasa), S.N. Ananthasubramanian, Ravi Narain (Vice Chairman, NSEIL), Dr. Anil K. Khandelwal (Former CMD, Bank of Baroda), Jus. M.N. Venkatachaliah (Former Chief Justice of India and Chairman of the Jury, on Screen), Jus. B.N. Srikrishna (Former Judge, Supreme Court of India), Arun Balakrishnan (Former C&MD, HPCL), R. S. Butola (Chairman, IOCL) and Y.M. Deosthalee (CMD, L&T Finance Holdings Ltd.).

02 >> NFCG Conference on Corporate Governance - Sachin Pilot (Hon'ble Minister of Corporate Affairs) being welcomed by Sutanu Sinha (CE, the ICSI) while other dignitaries look on.

03 >> A view of the invitees, dignitaries and delegates at the NFCG Conference on Corporate Governance.

04 >> MoF-ICSI-IGIDR Round Table Conference on Indian Financial Code – Seen in the picture Dr. C.S. Mohapatra (Adviser, FSDC, Ministry of Finance, Govt. of India), M.S. Sahoo, Nagendra Parakh (Member, Forward Markets Commission, GOI), S.N. Ananthasubramanian, P.K. Malhotra (Secy, Legislative Deptt.), Dr.K.P. Krishnan (DG & Addl. Secretary, Deptt. of Economic Affairs, Ministry of Finance, Govt. of India), Somasekhar Sundaresan (Partner, JSA) and S. Ramann (FRG, IGIDR).

05 >> NISM - ICSI Conference on Ethics and Corporate Governance – Sitting from Left: Anand Sinha (Dy. Governor, RBI), Ashish Chauhan (MD&CEO, BSE), B. P. Dhanuka, Prashant Saran (WTM, SEBI), Sandip Ghose (Director, NISM) and Prof. Dipankar Gupta.



06



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06 >> EIRC - Inauguration of renovated building of EIRC-ICSI – Group photo of the dignitaries present during inauguration – Standing from Left: Sutanu Sinha, M.S. Sahoo, Anil Murarka, D. Bandopadhyay (RoC,MCA) Anjan Roy, Harish K. Vaid, Ashok Pareek, S.N. Ananthasubramanian, Arun Khandelia, Deepak Kr. Khaitan, Ranjit Kr. Kanodia, B.P. Dhanuka and Sanjay Gupta.

07 >> EIRC - A view of the renovated building of EIRC of the ICSI.

08 >> ICSI – WIRC - Grahapravesh of Renovated Premises of ICSI-WIRC by S N Ananthasubramanian. Standing from Left: Nesar Ahmad, B Narasimhan, Harish K Vaid, Amit Jain and Ashish Garg. Standing from Right: Atul Mehta, M S Sahoo, Makarand Lele, S N Ananthasubramanian and Hitesh Buch.

09 >> SIRC - Hyderabad Chapter – Bhoomi Poojan at ICSI-Uppal Project at Hyderabad - S.N. Ananthasubramanian performing the bhoomi poojan. Others standing from Left: A. V. Rao, C. Sudhir Babu, N. Krishnamurthy (RoC, MCA), M.S. Sahoo, V.S. Raju, P.K. Grover, R. Ramakrishna Gupta and S.S. Marthi.

10 >> NIRC - Meeting with Member of Parliament and President, BJP in connection with Professional Development Programme of NIRC - Standing from Left: Y. P. Singh, Vineet K. Chaudhary, T. R. Mehta, Ashu Gupta, Rajnath Singh (Member of Parliament and President, BJP), Deepak Kukreja and A. K. Kuchhal.



At a Glance

» Articles (A 01 - 43)

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The Impact of Foreign Direct Investment in India

» P-12

Joseph C. F. Sequeira

From the view of professional growth, the Company Secretaries need to extend considerable advisory and consultancy services to non-resident companies/entities bringing Foreign Direct Investment into India with regard to the various conditions/restrictions and sectorial laws that need to be complied with under the FDI Policy, approval letters from SIA/FIPB/RBI and the Foreign Exchange Management Act, 1999 as these have serious implications on a Company's operations, including business policy, capital resources, employment, tax implications which are areas in which a Company Secretary is well versed.

Remittance and Reporting Requirements under FDI - A Potential Area for Practising Company Secretaries

P-20

Dr. V. Balachandran and Sudheendhra Putty

Aside of corporate laws, foreign exchange related laws and procedures offer immense potential to the practising company secretary. Specifically under the realm of foreign direct investments, the law provides for various periodic and mandatory reporting requirements. This article analyses the requirements under FEMA and the extant FDI policy and outlines some of the lacunae or discrepancies therein. It also highlights some of the possible opportunities that emerge for practising company secretaries therefrom. Several practical aspects that need to be discerned by the members in this context are also highlighted in the article. The article also submits that the ICSI initiates required endeavours with the RBI and carve out more areas of practice for the members under the foreign exchange laws as outlined herein.

Foreign Direct Investment Arena for Company Secretaries to take Lead Role

P-24

Narendra Singh and Arpita Banerjee

FDI is an instrument which is essentially required to supplement the domestic capital, technology and skill for accelerated economic growth. Nevertheless, various policies, processes and compliances, issued by the Government of India ('GoI') from time to time, are required to be observed to bring FDI in India. Company Secretaries ('CS') are placed at an advantageous position to take lead in observing these compliances. Further, with the enactment of the Companies Act, 2013, CS has to confirm compliance of all laws applicable on the Company. This article spells out the fact that the stage has been set for CS to assume the lead role in ensuring compliance of matters pertaining to FDI also and augment the immense trust reposed by GoI on CS.

Facilities available to Non-Resident Indians

P-28

Amit Chopra

The "Non Resident Indian (NRI)" is a much debated but often misunderstood entity. The manner of determination of residential status and of NRI status of a person is different under the Income Tax Act, 1961 and Foreign Exchange Management Act, 1999. Whichever way the status may be determined, the "NRI" is entitled to many benefits and

exemptions. He can make various types of investments in India and open, hold and maintain different types of accounts in India. NRIs can freely acquire immoveable properties abroad out of earnings abroad. He can invest anywhere in the world and start any business abroad. Even acquisition and transfer of immovable properties in India has been made transparent and simplified for NRIs. The Indian Government further introduced the Person of Indian Origin (PIO) card and the Overseas Citizenship of India (OCI) scheme to allow a limited form of dual citizenship to Indians.

External Commercial Borrowing-An Effective Way of Cross Border Funding

» P-34

Om Prakash Choudhary

Dealing with External Commercial Borrowing requires more and more caution. One has to be extremely careful about the routes available for availment of foreign source of fund as well as comparative advantage and disadvantage, restriction and compliance related with the foreign money with domestic source of fund. The article aims to provide a brief snapshot on the various aspects of External Commercial Borrowing. The article tries to put some of the recent amendments in External Commercial Borrowing Guidelines.

Currency Derivatives – Recent Changes

» P-38

S.K Dutta

The development of a vibrant forex derivatives market in the country would critically depend on the growth in the underlying spot/ forward markets, growth in the rupee derivative markets along with the evolution of a supporting regulatory structure. Factors such as market liquidity, investor behaviour, regulatory structure and tax laws will have a heavy bearing on the behaviour of market variables. Introduction of derivative products tailored to specific corporate requirements would enable corporate to completely focus on their core businesses and de-risk the currency and interest rate risks while allowing them to gain despite any upheaval in the financial markets. If we can address some issues (as highlighted in the article), these forex derivative instruments can truly achieve their intended purpose acting as insurance for hedging purposes by the Indian corporate world.

Case Study on Compounding of Contraventions under FEMA, 1999 with Specific Reference to Foreign Direct Investment

» P-43

D. K. Sharma

While Foreign Direct Investment is a great impetus for the growth of Indian economy, there might be certain defects/defaults in reporting formalities with the RBI under Foreign Exchange Management Act, 1999 leading to contraventions/ breaches under the Act. This article seeks to highlight various practical aspects having bearing on Compounding process and amount of penalty levied, if any by the Compounding authority.

Foreigen Exchange Volatility: Effect on Corporate Expansion Plans

» P-45

Ashish Pandey

Now a days Indian Corporates are attracting Huge Foreign Capital in the form of either portfolio or Direct Investments. At the same time they are making outward investments too. The situation has benefited them in various ways. But by this they are simultaneously carrying the



plenty of hidden currency risk in their portfolios. This volatility can affect them in various ways i.e. valuation, Credit Risk, Legal battle and other ways too. The effect of currency fluctuation is not only limited to the corporate planning and/or have International Expansions but also to the smaller and mediocre firms which have no forex exposure. Only a long term collective efforts with pre-determined objectives can mitigate the risk.

FDI: Issue of Shares for consideration other than Cash



P-49

Chenthamarai V.

The write up provides an overview of “FDI: Issue of Shares for Consideration Other Than Cash” and elaborates the meaning of “cash consideration”, “non-cash consideration”, “capital” and “debt” as envisaged by the Companies Act 1956/2013 and FEMA/FDI. It briefly highlights the applicable law and procedure relating to the issue of shares to non-residents under the automatic route and permission route. Issue of shares under FDI for non-cash consideration, falling under the permission route and situations under which issue of shares for non-cash consideration arise have been detailed. The implications of other laws such as Income Tax Act; the steps involved in making an application to the FIPB, the present perspective and approach of the Regulatory Authorities in granting approvals have also been outlined. The article expresses the need for striking a balance between the conflicting needs of the corporates, the professionals and the government in liberalising and streamlining the process of issue of shares for consideration other than cash.

Legal World (LW 01 - 11)

P-56

► **LW: 01:01:2014** In view of the impasse created by the Company and the facts and circumstances under which the EOGM of the Company has not yet been called, held and conducted to consider the said resolution mentioned in the requisition by the Petitioners under Section 169(1) it is necessary that the powers under Section 186(1) read with Section 402 and 403 of the Companies Act 1956 are exercised.[CLB] ► **LW: 002:01:2014** An act technically legal and correct may nevertheless be demonstrated to be sufficient to justify the application of just and equitable jurisdiction of the CLB and be demonstrated to be oppressive to the shareholders under sections 397 and 398 of the Companies Act, 1956. Thus the jurisdictions under which SEBI/SAT and CLB operate are distinct and separate and not overlapping.[CLB] ► **LW: 03:01:2014** If Non-Applicant/R2 is allowed to do so in an arbitrary manner which he has done on the previous occasion, this may lead to indiscipline, dissatisfaction and grievances among the officials of the R1 Company resulting into hampering its smooth administration. [CLB] ► **LW: 04:01:2014** Pendency of a civil suit in High Court does not take away the jurisdiction of the Commission to proceed under the Competition Act. In view of above discussion, the Commission is of the opinion that it was a fit case for through investigation by the DG into the allegations made by the Informant, and violations, if any, of the provisions of the Competition Act.[CCI] ► **LW: 05:01:2014** This is yet another indicator that the report of the Director General is to be confined to the allegations made in the information or the reference received by the Commission and he is not competent to travel outside the said information or reference.[Del] ► **LW: 06:01:2014** The designated Judge, as perceived from the impugned order, while dealing with an application under Section 11(6) of the Act, on an issue raised with regard to the excepted matters, was not justified in addressing the same on merits whether it is a dispute relating to excepted matters under the agreement in question or not. [SC] ► **LW: 07:01:2014** Even assuming that the finding regarding the commission of misconduct is left undisturbed, the circumstances in which the workmen are alleged to

have disobeyed the instructions issued to them did not justify the extreme penalty of their dismissal.[SC] ► **LW: 08:01:2014** Delhi High Court permits Nokia India to sell its assets and properties to Microsoft under certain conditions. ► **LW: 09:01:2014** Wherever the assessee, as per the terms of the contract and on account of delay in delivery of manufactured goods is liable to pay a lesser amount than the generically agreed price as a result of a clause in the agreement), such value shall be liable to levy of excise duty, at the applicable rate.[CESTAT-LB] ► **LW: 10:01:2014** In the circumstances, and since it is the submission of the counsel and representatives of the respective parties that the core of the dispute stands settled by higher authority of the Supreme Court and the Delhi High Court, we do not consider necessary to answer the issues referred for our consideration.

From the Government (GN 01 - 16)

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► Clarification with regard to applicability of section 182(3) of the Companies Act, 2013 ► Rationalization of Periodic Call Auction for Illiquid Scrips ► Declaration and Undertaking regarding PCC, MCV or equivalent structure by FIIs ► Deposit Requirements for members of the Debt Segment ► Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement ► Exchange Traded Cash Settled Interest Rate Futures (IRF) on 10-Year Government of India Security ► Simplification of demat account opening process ► Illustrative format of Statement of Assets & Liabilities in SEBI (ICDR) Regulations, 2009 ► SEBI Circulars No. CIR/CFD/DIL/3/2013 dated January 17, 2013 and - CIR/CFD/DIL/7/2013 dated May 13, 2013 - Extension of time line for alignment ► Circular on Infrastructure Debt Fund (IDF) Foreign Institutional Investors (FIIs) which are long term investors ► Investments by FIIs/QFIs in Credit Enhanced Bonds ► Amendment of the existing policy on issue of shares by unlisted Indian Companies under FCCB/ADR/GDR, pursuant to the Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013 ► Investment in Credit Information Companies ► Interest Rates on FCNR (B) Deposits ► Interest Rates on FCNR (B) Deposits ► Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits ► Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits ► Financing of Infrastructure - Definition of ‘Infrastructure Lending’ ► Participation of NBFCs in Insurance sector ► Foreign Direct Investment in Financial Sector – Transfer of Shares ► Foreign investment in India - participation by SEBI registered FIIs, QFIs and SEBI registered long term investors in credit enhanced bonds ► Amendment to the “Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993” ► Foreign Direct Investment (FDI) in India – definition of ‘group company’ ► External Commercial Borrowings (ECB) by Special Companies / Core Investment Companies for the project use in Special Purpose Vehicles (SPVs)

Other Highlights

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- Invitation of Articles for Special Issue of Chartered Secretary
- Prize Query



From the President



"As you sow so shall you reap."

- Psalm (From the Bible, Galatians VI (King James Version))



Dear Professional Colleagues,

As the year 2013 winds itself to an inevitable close, so will my tenure as President eighteen days later. This being my last communication through this dedicated Page, it is incumbent on me to look over the time spent in my office and express my sense of how it began and where does it leave. The theme 'Challenging the Status Quo' was central to whatever initiatives are made in ICSI; our profession is on the threshold of a big turnaround in both positioning and perception and all things considered, one could have not have wished for the script to have been any better.

Many of the key things accomplished till date are chronicled for posterity and form part in this Page but one is tempted to choose certain game-changing occurrences which could alter the way we treat ourselves. ICSI is well and truly on its way to becoming a modern, technology driven educational institution providing seamless service delivery to its stakeholders; we may have some way to go before we could say we have arrived but we are surely on our well chosen track. The Online Service Delivery Model will, over time, refine and redefine our structures, systems and processes rendering many of them redundant and may be even irrelevant. The Committee formed to review the Company Secretaries Act, 1980 has concluded its assigned task. The study of organisational structure of ICSI is being assigned to a professional agency. The outcome of these would help us lay the road-map for our future endeavours as a responsible premier professional body. The new and additional roles enjoined upon us in the Companies Act, 2013, a watershed event, will provide

us with the opportunity to become and to be seen as responsible members of our profession.

The association with the Indian Financial Code, the draft law recommended by the Financial Sector Legislative Reforms Commission (FSLRC), amply supported by the premier stock exchanges NSE and BSE, have placed ICSI as a veritable thought leader in the space of financial sector legislation and would certainly, one hopes, pave the way for a meaningful and critical role for us in the implementation of this epoch-making Code. The series of seminars followed by series of focussed workshops organised in collaboration with Ministry of Finance certainly adds a new dimension to our growth and development as a progressive professional body.

The series of collaborative seminars held in association with National Institute of Securities Markets (NISM) on Ethics and Corporate Governance, again supported by the premier Stock Exchanges, NSE and BSE, have evoked the presence, participation, acclaim and approbation of the cognoscenti and the literati as also from some of the most discerning and enlightened minds and the proposed outcome of Directors' Toolkit and commencement of Directors' Development Programmes after the conclusion of the seminar series would be a much expected happening in the near future.

The launch of Certification courses in Banking and Insurance in association with Indian Institute of Banking and Finance (IIBF) and Insurance Institute of India (III) coupled with the introduction of electives, namely, Banking-Law and Practice, and Insurance-



Law and Practice, is intended to create a cadre of competent compliance and governance professionals out of our members and will hopefully lead to making these two vast and vital segments of economic growth, a happy hunting grounds for us in the long run.

Student related activities continued to occupy the mind-space of the Council and the Committees across ICSI with the thrust to more Online Services Delivery. With enrolment in examinations already going online from 1st October, 2013, the Registration scheduled to go completely online with direct delivery of study materials to students across the country from 1st January, 2014, the narrative of student services is expected to alter significantly. The launch of Corporate Compliance Executive Course is intended to make students who have passed any module of Executive Programme and undergone prescribed training requirements employable by companies requiring their services and to bridge the gap recorded between those who seek and those who are sought. While the launch of e-library was meant to enable students get the latest updates on relevant issues, the abolition of submission of coaching completion certificates would make things much easier for students in the days to come. The introduction of new syllabi for Executive and Professional examinations and the successful completion of the Executive Programme under the new syllabus in December, 2013 deserve attention. The transition to OMR mode for examinations under Foundation Programme has been smooth and so it would, hopefully, be to the conduct of Online Examinations for Foundation and OMR for Executive Programme initially to cover three papers from June 2014. The training structure has been again revamped in keeping with emerging expectations of users and students and is awaiting regulatory approval. Online training methods would form the main thrust in keeping with expectations of uniform content and preference to any-time anywhere learning and convenience training modes. Registration de novo has been streamlined and so has been the modification of criteria for paper-wise exemptions to students on the basis of their higher qualifications. The Second Annual Convocation for students enrolled as members were held in all the Regional Councils with their customary pomp and pageantry. As of 31st December, 2013, we have a student strength of 411385.

For the first time ever, ICSI held interactive seminars with Examiners and Moderators on Enhancing Standards of Assessments and Performance in Delhi, Kolkata and Chennai. These point-to-point contact programmes facilitated dialogue and also discovery of best practices and provided a potent platform for understanding and appreciation of each other's standpoints. I compliment the Examination Department to have successfully led this initiative and acknowledge with gratitude the tremendous roles played by my colleagues CS B. Narasimhan and CS R. Sridharan in making this maiden attempt at bringing together ICSI and the Examiners and Moderators viable and also effective.

During the year, ICSI added 2952 members into its fold and as of 30th December, 2013, we have a membership strength of 29520 of which 5815 are registered for pursuing practice. Members' services too witnessed a turnaround with most going online including registration for Conferences/Seminars and even National Convention. The big news, however, during the year has been the Companies Act, 2013 with its myriad recognitions and multifold expectations from the society at large. Our inclusion as KMP and introduction of Secretarial Audit have been the high-points and I am confident that we will uphold the confidence and trust reposed on us with competence, courage and conviction. The change in nomenclature reflecting the paradigm shift in our roles may have triggered debates but one can't deny the compelling demands on us to revamp our attitudes and approach to realise our true potential as Governance Professionals. The 41st National Convention in Chennai was indeed an event to remember not only for the participation but as I am informed even for its eventual surplus. The release of ICSI Primer on Companies Act, 2013 in digital format through YouTube and in DVDs marks a significant step in disseminating knowledge across the professional spectrum and the favourable views and the critical reviews would only make them a viable and cost-effective medium in the days to come. The importance of Companies Act, 2013 was also disseminated through Conferences, Seminars, Study Circles, Workshops held across the country by the Regional Councils and Chapters. The development of Rules for various provisions of the Companies Act, 2013 is currently under progress; ICSI was assigned the arduous task in preparation of the ground rules for the same and completed the same to satisfaction; the role of many of our members, past and present deserve recall and recognition in the accomplishment of this mammoth exercise. I also compliment my colleague CS Sanjay Grover and other members of the Corporate Laws Committee in facilitating the formulation of ICSI's views and supporting the effective representation to the powers that be of our stand and in vigorously pursuing the cause of ICSI and its members. In addition, during the year a Placement Portal was launched providing a digital platform for our members and prospective employers to interact and fulfil their mutual needs.

The 14th National Conference of Practising Company Secretaries held in Kolkata in July, 2013 was a landmark event as the Conference brought in its fold, practitioners of different disciplines debating on the theme "Integrating Growth, Governance and Challenges Beyond" leading to many desirable attitudes we need to imbibe as also many we need to eschew. PCS Induction Programme (PIP) a long-felt need was introduced with a view to prepare members in practice for the exciting days ahead, the rising expectations from the society, code of conduct, disciplinary mechanism in ICSI, etc. The response to these Programmes has been quite overwhelming and I am sure many young and budding members will avail of this opportunity coming to their doorsteps. By the same token, Peer Review Trainings continued to be organised in different locations.



From the President

Two Workshops on Business Responsibility Reporting were organised in association with NSE to delve into the nuances and niceties of this compliance requirement for listed companies. The development of a Compliance Certificate relating to SME listing, to be issued by a PCS and also a Guidance Note for the same signals our strategic presence in this space and hopefully many more such initiatives would strengthen our commitment to the SME sector. The inclusion of PCS amongst those who can appear before Tribunals under the Maharashtra VAT Act, marks the culmination of efforts of several years to get recognition and it is hoped that our members in practice would do everything they can for the profession to now gain recognition. In keeping with the relevance and importance of Valuation in the current scheme of things and the recognition for PCS to act as Valuers, a Certificate Course on valuation has begun at CCGRT and NIRC. It is expected that our practising members, many of whom have beaten the trodden path and chosen the road less travelled and become icons for others to follow, would strive to achieve the high levels of objectivity, independent mind and the integrity needed to accomplish effectively the higher levels of responsibility enjoined on them under the Companies Act, 2013 and many more legislative/regulatory mandates to follow. It is worth noting that capability building is a continuous process for any professional and to enable our practising members to sharpen their knowledge and hone their skill-sets to emerge as competent Secretarial Auditors, Two-Day Focussed Chain Workshops across the country is proposed to be held, coinciding with the completion of the Guidance Note on Secretarial Audit and Annual Return Certification being undertaken by the Secretarial Standards Board. Practising members were also extended the facility to avail Professional Indemnity Insurance and other policies at concessional premium rates through a tie-up with the New India Assurance Company Limited.

In tune with the adopted theme and the conclusions arrived at the Meetings of the Regional Councils and Chapters and in tune with the Vision 2020 and the Top Ten Goals, the Council approved the Strategic Action Plan (SAP) covering the entire gamut of operations of the Institute, broken into actionable delivery targets with defined responsibilities and concurrent timelines. These 206 action points were reviewed at regular intervals and also were integrated into the various decisions made by functional committees. Further the two-day Strategy Meeting in October, 2013 took stock of the progress, deliberated at length on some major policy issues and many major takeaways emerged. This, coupled with a major augmentation/ rationalisation of the workforce this year and continuous leveraging of technology would hopefully transform ICSI to be a more modern, responsive and sensitive Institution in future.

There were other notable events such as attending three meetings of the Coordination Committee with Presidents of The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India with agreements on many, if not on most of

the issues on hand, as also the signing of the MOU for acquisition and development of land for setting up of Centre of Excellence for Quality and Ethics in Ajmer; two Investor Education/ Awareness and Protection Seminars in Bhubaneswar; attending two Meetings of National Foundation for Corporate Governance (NFCG) Council chaired by the Minister of Corporate Affairs; speaking opportunity at the International Conference organised by the Institute of Chartered Accountants of India in Kolkata; the hosting of the 2nd CSIA International Conference on the theme 'Corporate Governance for Sustaining Prosperity and Posterity'; Presentation of 12th ICSI National Award for Excellence in Corporate Governance; Seminar on Risk Management; Seminars in association with SCOPE for PSEs; signing of MOU with ASSOCHAM and MSSE&T, West Bengal to offer wide ranging services more particularly on providing support in Corporate Governance in the growth and development of MSME sector in West Bengal; attending Meeting of NACAS; giving testimony on behalf of ICSI before the Parliamentary Standing Committee on Finance on Securities Laws; attending and participating in the Meetings of the Jury to decide the awardees of the 13th ICSI National Awards for Excellence in Corporate Governance; participating in the Annual Council Meeting of CSIA and the Round Table at Kuala Lumpur; presence and participation of many of our members at the inauguration of the Third Court Room in the premises of Company Law Board, Principal Bench, New Delhi and our contribution in the form of well stacked library to the premises of the Company Law Board, Eastern Bench in Kolkata.

The year gone by has seen additions, renovations, sale of many of our Regional Council/Chapter premises; the land for ICSI Centre of Excellence in Hyderabad was acquired after considerable efforts and Bhoomi Pooja performed; the existing building acquired in 1999-2000 by EIRC was renovated beyond recognition and for better use; the additional premises acquired in 2009 by WIRC was taken up for renovation; premises of Patna Chapter was renovated; the land on which the Coimbatore Chapter Building existed after demolition was sold and the process for acquisition of land for development of own premises is now on; Thane and Kochi Chapters acquired new premises of their own. Many buildings are nearing completion and many others are in various stages of approvals from authorities as also construction. The Infrastructure Policy is in place, streamlined and well geared to facilitate smoother augmentation of space for ICSI in the years to come.

Our Regional Councils and Chapters have been playing a significant role in the growth and development of the profession and this year has been no exception. I compliment the Chairmen of the respective Regional Councils for their continued support and cooperation towards propagation, performance and accomplishment of targets and goals fixed for their respective Regional Councils and Chapters falling in their jurisdiction. With several far-reaching and structural changes expected and



envisaged in the near future, the role and responsibilities of the Regional Councils would require to be revisited and dispensations to follow have their jobs cut out for their sustenance and growth. With Chapters re-graded based on members' and students' strength, many have graduated to upper grades and many more have emerged from different cities to become future centres of growth. The makeover of these front offices of ICSI post Online Services Delivery is waiting to happen and it is expected that many of them would transit towards becoming effective capacity building centres, providing the much needed support and guidance to the stakeholders. The interaction with members and students during my visits to Hyderabad, Goa, Thane, Nagpur, Patna, Bhubaneshwar, Pune, Ahmedabad, Bhayender, Kochi, Thirissor, Palakkad, Madurai were worthwhile and instructive and provided several insights into various issues concerning our stakeholders. The Chapter Managing Committees have a huge leadership role to play in laying out the road-map of Chapters they manage and it is to be seen as to how many of them morph into the changed roles visiting them soon.

Like a man is known by the company he keeps, an institution is perhaps known by the personalities who visit its platform. This year has been singularly different with the visits of many of the venerated – Mr. P. Chidambaram, Hon'ble Finance Minister, twice as Chief Guest in two of five Seminars on the Indian Financial Code, Mr. Sachin Pilot, Hon'ble Minister, Corporate Affairs (Independent Charge) as Chief Guest in 2nd CSIA International Conference and 41st National Convention of Company Secretaries, Mr. Naveen Patnaik, Hon'ble Chief Minister, State of Odisha, Mr. Manohar Parrikar, Hon'ble Chief Minister, State of Goa, Mr. U. K. Sinha, Chairman, Securities and Exchange Board of India (SEBI), Mr. T. S. Vijayan, Chairman, Insurance Regulatory and Development Authority (IRDA), Mr. Ashok Chawla, Chairman, Competition Commission of India (CCI), Mr. Ramesh Abhishek, Chairman, Forward Markets Commission (FMC), Mr. Naved Masood, Secretary, Ministry of Corporate Affairs, Mr. M. A. Joseph, Additional Secretary, Ministry of Corporate Affairs, Mr. P. K. Malhotra, Secretary, Legislative Department, Government of India. Hon. Justice Mr. Dilip Raosaheb Deshmukh, Chairman, Company Law Board, Dr. K. P. Krishnan, Additional Secretary, Department of Economic Affairs, Ministry of Finance, Dr. CKG Nair, Advisor, Capital Markets, Department of Economic Affairs, Dr. C. S. Mohapatra, Advisor, Financial Sector Development Council, Dr. K. C. Chakraborty, Deputy Governor, Reserve Bank of India, Mr. Anand Sinha, Deputy Governor, Reserve Bank of India, Mr. Prashant Saran, Whole-time Member, SEBI, Mr. Vijay Bhaskar, Executive Director, Reserve Bank of India, Ms. Deepali Pant Joshi, Executive Director, Reserve Bank of India, Mr. Anup Wadhawan, Joint Secretary, Department of Banking Services, Mr. R. K. Nair, Whole-time Member, IRDA, Mr. Ravi Narain, Vice-Chairman, National Stock Exchange, Ms. Chitra Ramakrishna, Managing Director & CEO, National Stock Exchange, Mr. Justice M. N. Venkatachalaiah, Former Chief Justice of Supreme Court

of India, Mr. Justice B. N. Srikrishna, Former Judge Supreme Court of India, Mr. Ashish Chauhan, Managing Director & CEO, BSE Limited, Mr. Arun Nanda, Chairman, Mahindra Holidays Limited, Mr. Y. M. Deosthalee, Chairman, L&T Finance Holdings Limited, Dr. Anil Khandelwal, Former Chairman & Managing Director, Bank of Baroda, Mr. Devdutt Pattanaik, Chief Belief Officer, Future Holdings Limited, Mr. Peter Turnbull, President, Corporate Secretaries International Association (CSIA), Mr. Somnath Chatterjee, Former Speaker, Lok Sabha, Mr. M. Damodaran, Former Chairman, SEBI, Mr. Nagendra Prasad, SP, CBI, Mr. G. Srinivasan, Chairman and Managing Director, the New India Assurance Company Limited, Mr. A. P. Singh, Past International Director, Lions Club International, Dr. Suman K Mukerjee, Principal and Dean, Bhartiya Vidya Bhawan Institute of Management Sciences, Mr. Anindya Mitra, Barrister-at-Law, Kolkata, Mr. Utpal Chatterjee, Former Hon'ble Sheriff of Kolkata, Mr. R. Bandyopadhyay, IAS (Retd.) and Member, Central Administrative Tribunal, Kolkata Branch, Dr. Navrang Saini, Regional Director, Ministry of Corporate Affairs, Dr. Ajay Shah, Professor, NIPFP, Mr. T. V. Mohandas Pai, Chairman, Manipal Global Education Services Pvt. Ltd., Mr. Vijay N. Poddar, Director, SAFIM, Pondicherry, Mr. Somasekhar Sundaresan, Partner J. Sagar Associates, Mr. Prithvi Haldea, MD, Prime Database, Mr. Sandip Ghose, Director, NISM, Mr. Arvind P. Datar, Sr. Advocate, Chennai, Dr. Kunal Sarkar, Senior Vice Chairman, Medica Super Speciality Hospitals and Mr. S. S. Gopalarathnam, Managing Director, Cholamandalam MS General Insurance Co. Ltd., Mr. Shiv Siddhant Narayan Kaul, Director of Nicco Corporation and Managing Director of Nicco Engineering Services, Professor R. Thandavan, Vice-Chancellor, University of Madras, Dr. N. Ravichandran, Former Director, Indian Institute of Management, Indore and many distinctly distinguished persons of repute and recognition.

Secretarial Standards Board (SSB) has brought immense laurels to ICSI through its outcomes in the form of Standards and Guidance Notes on many issues which confront us in our chosen endeavours. The Companies Act, 2013 has made adherence to Secretarial Standards on Board and General Meetings mandatory and also mandated the CS in employment to ensure their compliance. The onerous task of formulation of Standards has been entrusted to the SSB whose composition has been well-defined and includes representations from Ministry of Corporate Affairs, sister Institutions, Regulatory Bodies, Industry Associations and many from our fraternity, both within and outside the Council, chosen with care and conviction. With meetings convened in CCGRT, Belapur, SSB meets regularly and painstakingly undertake the tasks assigned to it to harmonise different practices followed with recourse to those across jurisdictions, pay major attention to minor details, unify differing strands of thought and reflection in the creation of its Standards. The voluntary adherence to the Secretarial Standards by many leading corporations, both in private and public sectors, is by itself an ample testimony to the quality of output, consistently



From the President

produced by SSB reflecting the highest commitment to the call of duty. I take this opportunity to compliment the SSB, past and present, comprising many of our senior members of respect and reverence, for their outstanding contribution towards making the Standards widely accepted, practised and now mandated and would fall short if I do not express my deepest gratitude and sincere appreciation to CS S. V. Subramanian, Chairman, SSB, since 2006 for his stewardship skills, his exemplary dedication, his almost anonymous but huge presence and his chiselled wisdom and many more in steering this constituent of ICSI to its current eminence and exalted stature.

CCGRT, since inception in 1995, has witnessed many a chequered times, faced innumerable trials and tribulations, and has sustained with remarkable resilience and resolve. With the state-of-the-art facility created over a decade, CCGRT campus has hosted many an important guest and witnessed many a major events. The CCGRT-MSOPs have acquired a special brand equity amongst aspiring members, assiduously developed over the years with devotion and care. These residential MSOPs have transformed many students and have assumed the status of an in-house laboratory for innovation and invention in making these fifteen-day programmes widely sought for. In the same vein, CCGRT programmes are also sought after by many of our members from far and wide and have attained the quality and content in delivery through years of dedication and commitment in building and sustaining relationships with proven experts in their chosen fields. Its publications have also gained currency and reference and is poised for further expansion through hardcore and dedicated research. With conferment of autonomy and concomitant authority on the anvil, this constituent of ICSI would certainly attain further heights of glory in the days to come. A major achievement has been securing a grant of about Rs. 1.3 crore from British High Commission for undertaking research in financial sector reforms. I salute all those who ideated its creation, installed its premises and implemented the project with purpose and promise. I also compliment CCGRT for heralding out this quiet transformation in its fortunes through utmost dedication, abiding passion for the profession and unswerving zeal in its pursuit to chosen and assigned tasks.

ICSI Governance Research and Knowledge Foundation has been incorporated to facilitate the accomplishment of tasks which essentially fall into its domain and create the professional leadership platform for Governance. Currently housed in CCGRT premises in Belapur, ICSI GRKF will, over the years, develop into a credible institution of governance research and dissemination of critical knowledge inputs for ICSI and its constituents. This section 25 company outfit will also have the ICSI Centres of Excellence in its fold and is expected to provide thought leadership to ICSI and its constituents.

ICSI and its quite efficient personnel have been witness to many changes in its policies and programmes and it is to the credit of

my predecessors that the Eleventh Council discussed an agenda for action on its first day in office on 19th January, 2011. Ever since, much clarity and content have emerged through dialogue, discussion and debate. I take this opportunity to express my deepest gratitude to each and every employee of ICSI for their single minded devotion to duty, instinctive yearning for growth and betterment, and adaptability to innovate through emerging uncertain situations.

Eventually, it is the Team which moves things and I express my sincere thanks and appreciation to each of my colleagues in the Council for their support, guidance and participation in the affairs of ICSI, more particularly to CS Nesar Ahmad, CS B. Narasimhan, CS R. Sridharan, CS Sudhir Babu, CS Ashok Pareek, CS Umesh Ved, Mr. Arun Balakrishnan, and Mr. Ardhendu Sen for their passionate performance in the tasks assigned by the Council and their singularly significant contribution to many achievements during the year.

Before I bid Au Revoir, let me conclude from where I began,

GOD,

Give Me The Serenity To Accept Things That
I Cannot Change

The Courage To Change The Things That
I Can AND

The WISDOM To Know The Difference.

– the Serenity Prayer by American
theologian Reinhold Neibuhr.

Jo Hua Accha; Jo Nahin Hua Sabse Accha.

– Harivanshrai Bacchan.

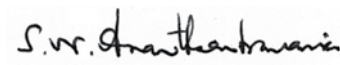
As the New Year is already upon us, I take this cherished opportunity to wish ICSI, its constituents, its stakeholders, known and unknown, and each one of you, a very fulfilling 2014 and beyond, with abundant peace, prosperity and purpose and unalloyed success in whatever you endeavour to undertake and pursue.

With kind regards,

Yours sincerely,

Thane

01st January, 2014


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The Impact of Foreign Direct Investment in India

- From the view of professional growth, Company Secretaries need to extend considerable advisory and consultancy services to non-resident companies/ entities bringing Foreign Direct Investment into India with regard to the various conditions/restrictions and sectorial laws that need to be complied with under the FDI Policy, approval letters from SIA/FIPB/RBI and the Foreign Exchange Management Act, 1999 as these have serious implications on a company's operations, including business policy, capital resources, employment, tax implications which are areas in which a company secretary is well versed.

Objectives

The Government of India, in formulating its Consolidated FDI Policy, has placed significant emphasis on accelerating capital investment through foreign direct investment in specified sectors in India to supplement domestic capital, technology and skills and achieve higher economic growth of the Country. The present Circular No. 1 of 2012 dated 10.04.2012 issued by the Ministry of Commerce & Industry, Department of Industrial Policy and Promotion (DIPP), Government of India contains the updated Consolidated FDI Policy in keeping with the regulatory changes. The Reserve Bank of India (RBI) issues procedural circulars and amendments to the Foreign Exchange Management Act (FEMA), 1999 to implement the FDI Policy.

The FDI Policy Framework in India

As per the RBI, "there has been a sea change in India's approach to foreign investment from the early 1990s when it began structural economic reforms encompassing almost all the sectors of the economy. In the Pre-liberalisation period,



India had followed an extremely cautious and selective approach while formulating FDI policy in view of the dominance of 'import-substitution strategy' of industrialisation. With the objective of becoming 'self-reliant', there was a dual nature of policy intention – FDI through foreign collaboration was



➤ Indian companies are permitted to issue non-convertible, optionally convertible or partially convertible Preference shares/ Debentures, which are considered as debt instruments, against which funds received and the norms applicable for External Commercial Borrowings (ECBs) relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. will apply to these instruments. The rupee interest rate will be based on the London Interbank Offered Rate (LIBOR) plus the permissible spread as per tenure.

welcomed in the areas of high technology and high priorities to build national capability and discouraged in low technology areas to protect and nurture domestic industries. The regulatory framework was consolidated through the enactment of Foreign Exchange Regulation Act, 1973 (FERA), wherein foreign equity holding in a joint venture was allowed only up to 40 per cent. Subsequently, various exemptions were extended to foreign companies engaged in export oriented businesses and high technology and high priority areas including allowing equity holdings of over 40 per cent. Moreover, drawing from successes of other country experiences in Asia, the Government not only established special economic zones (SEZs) but also designed liberal policies and provided incentives for promoting FDI in these zones with a view to promote exports.

As India continued to be highly protective, these measures did not add substantially to export competitiveness. Recognising these limitations, partial liberalisation in the trade and investment policy was introduced in the 1980s with the objective of enhancing export competitiveness, modernisation and marketing of exports through Transnational Corporations. The announcements of the Industrial Policy (1980 and 1982) and Technology Policy (1983) provided for a liberal attitude towards foreign investments in terms of changes in Policy directions. The Policy was characterised by de-licensing of some of the industrial rules and promotion of Indian manufacturing exports as well as emphasizing on modernisation of industries through liberalised imports of capital goods and technology. This was supported by trade liberalisation measures in the form of tariff reduction and shifting of large number of items from import licensing to Open General Licensing (OGL).

In the Post-liberalisation period, a major shift occurred when India embarked upon economic liberalisation and reforms program in 1991 aiming to raise its growth potential and integrating with the world economy. Industrial policy reforms gradually removed restrictions on investment projects and business expansion on the one hand and allowed increased access to foreign technology and funding on the other. A series of measures that were directed towards liberalizing foreign investment included (i) introduction of dual route of approval of FDI – RBI's automatic route and Government's approval (SIA/FIPB) route, (ii) automatic permission for technology agreements in high priority industries and removal of restriction of FDI in low technology areas as well as liberalisation of technology imports, (iii) permission to Non-resident Indians (NRIs) and Overseas Corporate Bodies (OCBs) to invest up to 100 per cent in high priorities sectors, (iv) hike in the foreign equity participation limits to 51 per cent for existing companies and liberalisation of the use of foreign 'brand name' and (v) signing the Convention of Multilateral Investment Guarantee Agency (MIGA) for protection of foreign investments. These efforts were boosted by the enactment of Foreign Exchange Management Act (FEMA), 1999 which was less stringent than FERA. This alongwith the sequential financial sector reforms paved way for greater capital account liberalisation in India [Source: www.rbi.org.in]

The Consolidated FDI Policy is summarised in Table 1 below:

Sector	FDI Cap/ Equity	Entry Route	Conditions
1. Agriculture & Animal Husbandry			
Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aquaculture, Cultivation of vegetables & mushrooms, services related to agro and allied sectors.	100%	Automatic	Sectorial laws/ conditions
2. Tea plantations (FDI is not allowed in any other agricultural sector /activity)	100%	FIPB	Sectorial laws.
3. Mining Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	-do-
Coal and lignite mining for captive consumption by power projects, iron & steel, cement production.	100%	Automatic	-do-
Mining and mineral separation of titanium bearing minerals	100%	FIPB	-do-
4. Petroleum & natural gas : a. Refining (PSUs)	100% 49%	Automatic	Sectorial laws. No dilution of equity by PSU.
5. Manufacturing:			



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The Impact of Foreign Direct Investment in India

(a) MSE Units	100%	Automatic	-do-
(b) Non-MSE units where cap/ equity >24% have to give min. 50% export obligation within 3 years of commencing commercial production.	100%	IDRA license	-do-
6. Defence (On case to case basis, which ensure access to modern and 'state-of-art' technology in the country)	26%	FIPB	Sectorial laws/ IDRA license. Above 26% to Cabinet Committee on Security (CCS)
7. Broadcasting (a) FM Radio (b) Cable network; (c) Direct to home; (d) Hardware facilities such as up-linking, HUB. (c) Up-linking /non-current news (d) News/Current affairs TV Channel	26% 49% (FDI+FII) 100% 26%	FIPB	Sectorial laws/ conditions & Guidelines by Ministry of Information & broadcasting
8. Print Media a. Publishing of newspaper and periodicals dealing with news and current affairs b. Publishing of scientific magazines / specialty journals/ periodicals	26% 100%	FIPB FIPB	-do-
9. Civil Aviation			
(a) Greenfield airport projects	100%	Automatic	Sectorial laws/ conditions
(b) Existing airports	100%*	74% through automatic route & above 74% by FIPB	-do-
(c) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline.	49% (100% for NRIs).	Automatic route	DGCA permission
(d) Non-Scheduled Air Transport Services	74% (100% for NRIs)	Automatic up to 49% and FIPB beyond 49%.	-do-
(e) Helicopter services/seaplane services	100%	Automatic route	-do-
(f) Ground Handling Services	74% (100% for NRIs)	Automatic up to 49% and FIPB beyond 49%.	Sectorial laws & Security clearance
(g) Maintenance & Repair organizations; flight training & technical training institutions:	100%	Automatic route	Sectorial laws

10. Construction /development of townships/Housing & built up infrastructure	100%	Automatic	Sectorial laws/ conditions w.r.t min. area/time and value requirements.
11. Industrial Parks	100%	Automatic	Sectorial laws/ conditions w.r.t. min. area
12. Establishment and operation of Satellites	74%	FIPB	Dept. of Space/ ISRO approval.
Services sector			
13. Courier services	100%	Automatic	Sectorial laws
14. Private Security Agencies	49 %	FIPB	-do-
15. Telecom Services (including Telecom Infrastructure Providers (Category-I) All telecom services including Telecom Infrastructure Providers viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/ Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic upto 49%. Above 49% through FIPB	Observance of licensing and security conditions by licensee/ investors as notified by the Dept. of telecommunications (DoT).
16. Wholesale trading (WT) /Cash & Carry wholesale trading	100%	Automatic	Compliance of Acts/Rules/Orders of State Govt./ local authority.
17. E-commerce activities	100%	Automatic	B2B only. Compliance with rules of State/ local body
18. Single Brand product retail trading	100%	Up to 49% Automatic Above 49% SIA/ FIPB	Compliance of conditions including Acts/ Rules/Orders of State Govt/local authority.
19. Financial services sector			
(a) Asset Reconstruction companies	100%	Upto 49% automatic & beyond 49% Government.	RBI registration.
(b) Banking (private) sector	74% FDI+FII). FII not to exceed 49%	Automatic	Min. 26% of the paid up capital to be held by Indian residents.



(c) Commodity Exchanges	49% (FDI+FII) (FDI 26% & FII 23%)	Automatic	Guidelines of the Department of Consumer Affairs/ Forward Markets Commission (FMC).
(d) Credit Information Companies (CICs)	74% (FDI & FII)	Automatic	No single entity should directly or indirectly hold more than 10% equity. FII investment under the Portfolio Investment Scheme permitted upto 24% only for listed CICs within the said limit.
(e) Infrastructure companies in security markets namely Stock exchanges, depositories & clearing corporations	49% (FDI+ FII) [FDI 26% & FII 23%]	Automatic	Compliance with SEBI regulations
(f) Power Exchanges	49% (26% FDI +23% FII)	Automatic	Regd. With the Central Electricity Regulatory Commission (Power Market) Regulations, 2010
(g) Insurance	26%	Automatic	IRDA Clearance
(h) NBFCs: underwriting, portfolio management services, investment advisory services, financial consultancy, stock broking, asset management, venture capital, custodian, factoring, leasing and finance, housing finance, forex broking, etc.	100%	Automatic up to 49% and FIPB beyond 49%.	Minimum capitalisation norms
20. Drugs & Pharmaceuticals	100%	Automatic	Sectorial laws.

Sectors where FDI is banned

As a matter of Government/public policy, investment is prohibited in the sectors like Retail Trading (except single brand product retailing); Lottery Business including Government/private lottery, online lotteries, etc.; Gambling and Betting including casinos etc.; Chit funds and Nidhi companies; Trading in Transferable Development Rights (TDRs); Real Estate Business or Construction of Farm Houses; Manufacturing of tobacco products or tobacco substitutes and activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems). Further, the foreign technology collaboration in any form including licensing for franchise, trademark, brand name and management contract is also prohibited for Lottery Business, Gambling and Betting activities.

Entry Conditions on Investment

Investments by non-residents are permitted in the capital of a resident entity in certain sectors/activity with entry conditions such as norms for minimum and maximum capitalization, lock-



in period, dilution of equity, approvals from regulatory authorities and concerned Government Ministries like Industry, Finance, Commerce, Civil Aviation, Broadcasting. Besides this, the investors are required to comply with the applicable sectorial laws/regulations such as Companies Act 1956; Environment Protection Act; Air & Water Pollution Control Acts; Industries (Development & Protection) Act 1951; Micro, Small and Medium Enterprises Development Act, 2006; Foreign Trade (Development and Regulation) Act 1992; Mines and Minerals (Development & Regulation) Act, 1957; The Coal Mines (Nationalization) Act 1973; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997; Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002; Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80; as specified in the said FDI circular and the provisions of the FEMA and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 and applicable government policy guidelines.

Levels of approvals for cases under Government route

Prior to 18.02.2003, proposals of more than Rs. 600 crore were to be approved by the Cabinet Committee on Foreign Investment (CCFI). Now, the FDI proposals will be considered by the Foreign Investment Promotion Board (FIPB) which consists of the Minister in charge and the Secretary level officials from the Ministry of Economic Affairs, Ministry of Finance, Ministry of External Affairs, Ministry of Commerce & Ministry of Overseas India Affairs. The Board has also co-opted top officials from Financial Institutions & Banks, Commerce & Industry. The Ministry would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs. 1200 crore. The FIPB recommendations on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration



Article

The Impact of Foreign Direct Investment in India



The FDI Policy framework is one of the key factors driving investment flows to a country. Apart from underlying macro fundamentals, ability of a nation to attract foreign investment essentially depends upon its policy regime - whether it promotes or restrains the foreign investment flows.

of Cabinet Committee on Economic Affairs (CCEA). The CCEA would also consider the proposals which may be referred to it by the FIPB/ Ministry of Finance.

Entry Routes for Investment:

The FDI Policy provides two entry routes for investments by non-resident investors in the capital of the investee as under:

(a) The Automatic Route:

Investment proposals falling under the Automatic route and matters related to FEMA are dealt with by RBI. Under the automatic route, a non-resident investor or the Indian company does not require any approval from the Government of India or the RBI for making investment in India. The investors are only required to notify the concerned Regional office of RBI of receipt of inward remittances within 30 days of such receipt and are required to file the documents with the RBI office within 30 days after issue of shares to foreign investors.

(b) The Government Route:

Under the approval route, the proposals are considered in a time-bound and transparent manner by the FIPB. Approvals of composite proposals involving foreign investment/ foreign technical collaboration are also granted on the recommendations of the FIPB. The Government approval route relating to FDI policy are through its three institutions, viz., the Foreign Investment Promotion Board (FIPB), the Secretariat for Industrial Assistance (SIA) and the Foreign Investment Implementation Authority (FIIA).

Foreign Currency resources

Foreign Direct Investment means the investments by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000. 'Capital' means equity shares; compulsorily & mandatorily fully convertible preference shares and compulsorily & mandatorily fully convertible debentures of an Indian company subject to pricing guidelines/valuation norms prescribed under the FEM Regulations. The price/ conversion formula of convertible capital instruments are required to be determined upfront at the time of issue of the instruments. The Indian Company may also issue 'warrants' and partly paid shares to person/ (s) resident outside India after approval through the Government route.

Indian Companies are permitted to issue Non-convertible, optionally convertible or partially convertible Preference shares/Debentures, which are considered as debt instruments, against which funds received and the norms applicable for External Commercial Borrowings (ECBs) relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. will apply to these instruments. The rupee interest rate will be based on the London Interbank Offered Rate (LIBOR) plus the permissible spread as per tenure.

Indian companies are also permitted to raise foreign currency resources abroad through the issue of Foreign Currency Convertible bonds (FCCBs)/Depository Receipts (DRs), American Depository Receipts (ADRs) and Global Depository Receipts (GDRs), in accordance with the RBI Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and government guidelines from time to time without monetary limit. The Indian company is permitted to invest the fund proceeds pending utilization in India in Deposits, Certificate of Deposits or other instruments offered by banks rated by S & P, Fitch, IBCA, Moody's, etc. with rating not below the rating stipulated by RBI from time to time; Deposits with branches of





Indian Authorized Dealers outside India; and Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less. There is a ban on deployment / investment of such funds in real estate or the stock market. The Government of India has introduced a 'Two-way Fungibility Scheme' and the Sponsored ADR/GDR mechanism for ADRs / GDRs for Indian companies to promote investment. Erstwhile OCBs who are not eligible to invest in India and entities prohibited from buying, selling or dealing in securities by SEBI, will not be eligible to subscribe to ADRs/ GDRs issued by Indian companies.

Categories of Non-resident investors

The FDI Policy does not permit non-residents who are citizens of Pakistan or an entity incorporated in Pakistan to invest in India. A citizen of Bangladesh or an entity incorporated in Bangladesh may invest only under the Government route. NRIs resident in Nepal and Bhutan and citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels. OCBs have been derecognized as a class of investors in India from 16.09.2003. However, erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI may make fresh investments under the FDI Policy as incorporated non-resident entities through Government route or with the prior approval of RBI if the investment is through Automatic route. The FDI Policy permits any non-resident entity such as FII, SEBI registered Foreign Venture Capital Investor (FVCI) and Qualified Foreign Investor (QFI) to invest in India through SEBI registered Depository Participants (DPs), upto the limits

stipulated in the FDI Policy in force. An FII may invest in the capital of an Indian Company under the Portfolio Investment Scheme upto the stipulated limits (10% individual holding and 24% as aggregate limit of the capital of the company). QFIs may invest upto 5% as individual and 10% aggregate investment limits of the paid up capital of an Indian company through SEBI registered Depository Participants (DPs) in equity shares of listed Indian companies through recognized brokers on recognized stock exchanges in India as well as in equity shares of Indian companies which are offered to public in India in terms of the applicable SEBI guidelines/regulations. The QFIs are also permitted to acquire equity shares by way of right shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the prescribed investment limits. QFIs are permitted to sell the equity shares so acquired subject to the relevant SEBI guidelines. These limits shall be above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme for foreign investment in India. A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian Venture Capital Undertaking (IVCU) and may also set up a domestic asset management company to manage the fund under the automatic route subject to the SEBI (Venture Capital Fund) Regulations, 1996, FEMA regulations and FDI policy.

Entities in which investment is permitted

Indian Companies are permitted to issue capital against FDI. NRIs or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided (a) the amount is invested by inward remittance or out of Non-Resident external (NRE) or Foreign Currency non-resident bank deposits (FCNR(B)) or Non-resident Ordinary (NRO) account maintained with the Authorized Dealers/Authorized banks (b) The firm or proprietary concern is not engaged in any agricultural/ plantation or real estate business or print media sector and (c) the amount invested shall not be eligible for repatriation outside India. However, NRIs/PIO and other Non-residents may invest in sole proprietorship concerns/partnership firms with repatriation option after obtaining the prior permission from RBI. Foreign Venture Capital Funds (FVCFs) are allowed to invest in Indian Venture Capital Undertakings (IVCUs) / domestic Venture Capital Funds (VCFs) / other companies. If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF subject to approval of the Foreign Investment Promotion Board (FIPB). However, if a domestic VCF is set-up under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the prescribed pricing guidelines, reporting requirements, mode of payment, minimum





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capitalization norms, etc. In case of Limited Liability Partnerships (LLPs), FDI is permitted through the Government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions subject to the conditions of the FDI policy.

FDI is not permitted in Trusts other than VCF. FDI in resident entities other than those mentioned above is also not permitted.

Impact of the FDI Policy

The FDI Policy framework is one of the key factors driving investment flows to a country. Apart from underlying macro fundamentals, ability of a nation to attract foreign investment essentially depends upon its policy regime - whether it promotes or restrains the foreign investment flows. A review of India's FDI Policy framework with regard to the nature and pattern of FDI inflows into the various FDI sectors over the past years as shown based on DIPP data is shown in the following tables:

Table 2: TOP 11 COUNTRY-WISE FDI EQUITY IN FLOWS FROM APRIL, 2000 TO JUNE, 2013

S.No	Country	Amount of Foreign Direct Investment in flows		% age with total FDI inflows (+)
		(In Rs crore)	(In US \$ million)	
1	Mauritius	347,247.15	74,765.29	37.63
2	Singapore	100,418.45	21,311.99	10.73
3	United Kingdom	80,740.85	17,599.35	8.86
4	Japan	71,222.63	14,749.51	7.42
5	U.S.A	52,679.33	11,436.27	5.76
6	Netherlands	44,672.02	9,372.76	4.72
7	Cyprus	32,911.00	6,992.74	3.52
8	Germany	28,326.44	5,989.97	3.01
9	France	17,425.15	3,672.32	1.85
10	UAE	11,584.65	2,471.81	1.24
11	Switzerland	11,268.65	2,403.40	1.21
12	Others	127912.30	27913.21	14.05
	Total:	926,408.62	198,678.62	100.00

Source: www.dipp.com

Table 3: SECTOR-WISE FDI EQUITY INFLOWS FROM APRIL, 2000 TO JUNE, 2013

S.No	Sector	Amount of FDI in flows		% age with total FDI inflows (+)
		(In Rs crore)	(In US\$ million)	
1	SERVICES SECTOR	177,594.62	38,179.78	19.22
2	CONSTRUCTION DEVELOPMENT: Townships, housing, built-up infrastructure and construction-development projects	101,994.86	22,247.50	11.20
3	TELECOMMUNICATIONS	58,785.79	12,865.83	6.48
4	COMPUTER SOFTWARE & HARDWARE	53,757.60	11,862.37	5.97
5	DRUGS & PHARMACEUTICALS	54,321.68	11,318.32	5.70

6	CHEMICALS (OTHER THAN FERTILIZERS)	41,118.29	8,993.12	4.53
7	AUTOMOBILE INDUSTRY	42,015.28	8,810.07	4.43
8	POWER	36,805.41	7,953.93	4.00
9	METALLURGICAL INDUSTRIES	35,448.07	7,620.73	3.84
10	HOTEL & TOURISM	33,819.35	6,731.89	3.39
11	PETROLEUM & NATURAL GAS	24,950.25	5,406.70	2.72
12	TRADING	19,243.58	4,063.79	2.05
13	INFORMATION & BROADCASTING (INCLUDING PRINT MEDIA)	16,163.91	3,406.19	1.71
14	ELECTRICAL EQUIPMENTS	14,826.59	3,211.43	1.62
15	NON-CONVENTIONAL ENERGY	13,425.78	2,683.72	1.35
16	CEMENT AND GYPSUM PRODUCTS	11,941.58	2,656.29	1.34
17	MISCELLANEOUS MECHANICAL & ENGINEERING INDUSTRIES	11,432.46	2,477.18	1.25
18	INDUSTRIAL MACHINERY	11,504.84	2,388.12	1.20
19	CONSTRUCTION (INFRASTRUCTURE) ACTIVITIES	10,332.94	2,198.77	1.11
20	CONSULTANCY SERVICES	9,928.46	2,136.36	1.08
21	FOOD PROCESSING INDUSTRIES	9,534.62	1,964.32	0.99
22	HOSPITAL & DIAGNOSTIC CENTRES	9,169.24	1,914.28	0.96
23	PORTS	6,717.38	1,635.08	0.82
24	AGRICULTURE SERVICES	7,866.74	1,620.65	0.82
25	ELECTRONICS	5,986.51	1,292.48	0.65
26	TEXTILES (INCLUDING DYED, PRINTED)	5,871.60	1,258.91	0.63
27	SEA TRANSPORT	5,504.15	1,196.57	0.60
28	FERMENTATION INDUSTRIES	5,263.53	1,163.46	0.59
29	RUBBER GOODS	5,944.50	1,154.61	0.58
30	MINING	4,385.34	1,001.38	0.50
31	PAPER AND PULP (INCLUDING PAPER PRODUCTS)	4,096.21	872.83	0.44
32	PRIME MOVER (OTHER THAN ELECTRICAL GENERATORS)	4,196.03	860.24	0.43
33	EDUCATION	4,106.87	820.58	0.41
34	MEDICAL AND SURGICAL APPLIANCES	3,185.03	653.45	0.33
35	MACHINE TOOLS	3,037.00	635.08	0.32
36	SOAPS, COSMETICS & TOILET PREPARATIONS	3,115.55	632.40	0.32
37	CERAMICS	2,780.98	611.63	0.31
38	AIR TRANSPORT (INCLUDING AIR FREIGHT)	2,066.14	456.82	0.23
39	GLASS	2,122.17	420.35	0.21
40	DIAMOND, GOLD ORNAMENTS	1,891.81	405.06	0.20
41	VEGETABLE OILS AND VANASPATHI	1,898.45	385.79	0.19
42	RAILWAY RELATED COMPONENTS	1,682.64	348.64	0.18
43	AGRICULTURAL MACHINERY	1,659.26	337.21	0.17



44	FERTILIZERS	1,536.11	318.24	0.16
45	PRINTING OF BOOKS (INCLUDING LITHO PRINTING INDUSTRY)	1,270.42	274.66	0.14
46	COMMERCIAL, OFFICE & HOUSE HOLD EQUIPMENTS	1,183.63	255.17	0.13
47	EARTH-MOVING MACHINERY	770.54	175.21	0.09
48	LEATHER, LEATHER GOODS AND PICKERS	554.92	112.35	0.06
49	TEA AND COFFEE (PROCESSING & WARE HOUSING COFFEE & RUBBER)	476.63	104.97	0.05
50	SCIENTIFIC INSTRUMENTS	534.30	101.51	0.05
51	RETAIL TRADING (SINGLE BRAND)	468.37	96.96	0.05
52	TIMBER PRODUCTS	433.20	85.19	0.04
53	INDUSTRIAL INSTRUMENTS	310.56	67.06	0.03
54	PHOTO GRAPHIC RAW FILM AND PAPER	269.26	66.54	0.03
55	BOILERS AND STEAM GENERATING PLANTS	306.75	62.00	0.03
56	SUGAR	242.32	51.82	0.03
57	COAL PRODUCTION	119.19	27.73	0.01
58	DYE-STUFFS	87.32	19.50	0.01
59	GLUE AND GELATIN	71.31	14.69	0.01
60	MATHEMATICAL, SURVEYING AND DRAWING INSTRUMENTS	39.80	7.98	0.00
61	DEFENCE INDUSTRIES	24.36	4.94	0.00
62	COIR	10.37	2.17	0.00
63	MISCELLANEOUS INDUSTRIES	36,206.17	7,976.00	4.01
	TOTAL	926,408.62	198,678.62	100.00

Source: www.dipp.com

Table 4: FINANCIAL YEAR-WISE FDI INFLOWS since FY 2000-2001 to June 2013:

S.No	Financial Year (April-March)	Amount of FDI inflows		%age growth over previous Year (in terms of US \$)
		(In Rs crore)	(In US \$ million)	
	FINANCIAL YEARS 2000-01 to 2013-14			
1	2000-01	10,733	2,463	-
2	2001-02	18,654	4,065	(+) 65%
3	2002-03	12,871	2,705	(-)33%
4	2003-04	10,064	2,188	(-) 19%
5	2004-05	14,653	3,219	(+) 47%
6	2005-06	24,584	5,540	(+) 72%
7	2006-07	56,390	12,492	(+)125%
8	2007-08	98,642	24,575	(+)97%
9	2008-09	142,829	31,396	(+)28%
10	2009-10	123,120	25,834	(-)18%
11	2010-11	97,320	21,383	(-) 17%
12	2011-12	165,146	35,121	(+) 64%
13	2012-13	121,907	22,423	(-) 36%
14	2013-14 (Apr-Jun, 2013)	30,029	5,397	

CUMULATIVE TOTAL (from April, 2000 to June, 2013)	926,942	198,800	-
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Source: www.dipp.com

Table 5: FINANCIAL YEAR-WISE FDI EQUITY INFLOWS UPTO JUNE 2013

S.No	Financial Year (April-March)	FOREIGN DIRECT INVESTMENT(FDI)						Investment by F IIs Foreign Institutional Investors Fund (net)	
		Equity		Re-invested earnings	Other capital	FDI FLOWS INTO INDIA			
		FIPB Route/ RBI's Automatic Route/ Acquisition Route	Equity unincorporated bodies (estimated)			Total FDI Flows	%age growth over previous year (inUS\$ terms)		
FINANCIAL YEARS 2000-01 to 2013-14									
1	2000-01	2,339	61	1,350	279	4,029	-	1,847	
2	2001-02	3,904	191	1,645	390	6,130	(+) 52%	1,505	
3	2002-03	2,574	190	1,833	438	5,035	(-) 18%	377	
4	2003-04	2,197	32	1,460	633	4,322	(-) 14%	10,918	
5	2004-05	3,250	528	1,904	369	6,051	(+) 40%	8,686	
6	2005-06	5,540	435	2,760	226	8,961	(+) 48%	9,926	
7	2006-07	15,585	896	5,828	517	22,826	(+) 146%	3,225	
8	2007-08	24,573	2,291	7,679	300	34,843	(+) 53%	20,328	
9	2008-09	31,364	702	9,030	777	41,873	(+) 20%	(-) 15,017	
10	2009-10(P)	25,606	1,540	8,668	1,931	37,745	(-) 10%	29,048	
11	2010-11(P)	21,376	874	11,939	658	34,847	(-) 08%	29,422	
12	2011-12(P)	34,833	1,022	8,206	2,495	46,556	(+) 34%	16,812	
13	2012-13(P)	21,825	1,059	11,025	2,951	36,860	(-) 21%	27,583	
14	2013-14(P) (Apr-Jun, 2013)	5,396	243	2,061	1,441	9,142	-	-	
CUMULATIVE TOTAL (from April, 2000 to June, 2013)		200,362	10,064	75,388	13,405	299,220	-	144,654	

(p) Figures are provisional

Source: www.dipp.com

The FDI in the Manufacturing sector is about 75% of the total FDI inflow. The FDI in the Service sector is about 19.22% and growing. The FDI inflow is mainly from 5 countries namely Mauritius, Singapore, UK, Japan and USA which accounts for about 70% of the total FDI inflow. As compared to the growth of about 34% in FY 2011-12, there has been a decline in FDI in FY 2012-13 (-21%). This is possibly due to procedural delays in implementation of several large projects. Hence the causes need to be looked into and redressed at an early date. However, the cumulative inflow of FDI into India has been increasing over the years and therefore the FDI Policy has been very successful.

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Remittance and Reporting Requirements under FDI - A Potential Area for Practising Company Secretaries

➤ The various reporting requirements under FDI entail significant imperatives from a corporate secretarial perspective. They call for a proper understanding of the extant policy and the practice thereunder. The fact that the company secretary (either in industry or in practice) is also obliged to certify there under makes it a relevant subject of discussion. This article briefly looks at the various reporting requirements under the FDI policy.

Introduction

The advisory and consultancy role, indeed the role if any, of the company secretary under foreign exchange laws and regulations do not often get sufficiently articulated or recognised at any forum. More often than not lives in the shadow of the big brother called company law! The FDI policy, for instance, has, for several years conferred a statutory duty of certification upon the company secretary. In the recent past, this has also been extended to the practising side of the profession – in case of companies not required to appoint a whole time secretary under section 383A of the Companies Act, 1956.

While the advisory and consultancy role of the profession under FEMA or foreign exchange laws and regulations is the subject matter of a much larger canvas, the various reporting requirements under FDI entail significant imperatives from a corporate secretarial perspective. They call for a proper understanding of the extant policy and the practice thereunder. The fact that the company secretary (either in industry or in practice) is also obliged to certify thereunder makes it a relevant subject of



discussion. This article briefly looks at the various reporting requirements under the FDI policy, highlights some grey areas, outlines a few practical issues and makes some submissions to the Institute of Company Secretaries of India (ICSI) for following up with the various authorities to bring in a more professional outlook to the whole matter.



Extant FDI Policy

The Department of Industry Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India has issued the Consolidated FDI Policy for the year 2013-14 Vide Circular 1 of 2013 which came into force from 5 April 2013. This is the basic regulatory framework concerning the regulation of FDI in India. The policy *inter alia* deals with:

- The Intent and objectives of the policy
- General conditions pertaining to FDI
- Guidelines for calculation of foreign investment
- Role of the FIPB
- Sector specific FDI conditions (including permitted and prohibited sectors)
- Remittance, reporting and violation provisions

Remittance and Reporting requirements under FDI

Chapter 7 of the Policy deals with Remittance, reporting and violation.

Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies

- (i) The policy provides that sale proceeds of shares and securities and their remittance is 'remittance of asset' and are governed by The Foreign Exchange Management (Remittance of Assets) Regulations 2000 under FEMA.
- (ii) It is further provided that AD Category-I banks can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department has been produced.

Remittance on winding up/liquidation of Companies

As per the policy, AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, 1956. AD Category-I banks shall allow the remittance provided the applicant submits:

- (a) No objection or Tax clearance certificate from Income Tax Department for the remittance.
- (b) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

➤ a certificate from the company secretary, or where the company is not required to mandatorily appoint a company secretary, from a practising company secretary, that the legal and procedural requirements pertaining to declaration and payment of dividend and interest, as the case may be, must be required to accompany the remittance. This is a fertile area and a golden opportunity for the company secretaries' profession.

- (c) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.
- (d) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

While it seems appropriate that a certificate from the auditor be insisted upon under (b) above, in respect of certifications under (c) and (d), it is equally appropriate that practising company secretaries be authorized to issue the certificate. While the former is an affirmation of compliance with the provisions of the Companies Act, 1956 with regard to winding up, the latter pertains to certification of any impending legal proceedings before any court of law either against the applicant or the company and that there is no legal impediment to permit the said remittance. It is submitted that the ICSI can take up this matter with the appropriate authorities and initiate required endeavours for an amendment in this regard. This would be apposite.

Repatriation of Dividend

The policy stipulates that dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

Repatriation of Interest

Interest on fully and compulsorily convertible debentures is also freely repatriable without any restriction (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

It is submitted that in both the above cases, a certificate from the company secretary, or where the company is not required to



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mandatorily appoint a company secretary, from a practising company secretary, that the legal and procedural requirements pertaining to declaration and payment of dividend and interest, as the case may be, must be required to accompany the remittance. This is a fertile area and a golden opportunity for the company secretaries' profession. Presently, only an auditor certificate is being issued for remittance of dividend.

Reporting of FDI

(A) Reporting of Inflow

- (i) The policy states that an Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form enclosed as Annex-5 to the Policy. The format is a simple one-page requiring provision of basic information about the remittance.
- (ii) Further, the company is required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category-I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as Annexure 6 to the policy) of the non-resident investor from the overseas bank remitting the amount.
- (iii) The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.
- (iv) The KYC report needs to be signed by the AD bank receiving the remittance. Interestingly, the RBI, has clarified informally at various forums that the responsibility of obtaining the KYC is on the Indian company receiving the remittance.

(B) Reporting of issue of shares

1. After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures / fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in Annex-1, not later than 30 days from the date of issue of shares.
2. Form FC-GPR, duly filled up and signed by Managing Director/Director/Secretary of the Company has to be submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank.
3. Documents required to be submitted
The following documents have to be submitted along with the form:
 - A certificate from the Company Secretary of the company certifying that:
 - (A) all the requirements of the Companies Act, 1956 have been complied with;
 - (B) terms and conditions of the Government's approval, if

any, have been complied with;

- (C) the company is eligible to issue shares under these Regulations; and
 - (D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.
4. In cases where the company is not required to mandatorily appoint a whole time company secretary, the same may be issued by a practising company secretary.
 - A certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India. (This would not be applicable in case of listed companies)
 - The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.
 5. The reporting requirement in Form FC-GPR is applicable in respect of Issue of bonus or rights shares, exercise of stock options issued to persons resident outside India directly or on amalgamation/merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty/lump sum technical know-how fee/import of capital goods by units in SEZs.
 6. In the case of listed companies, it is interesting to note that a certified copy of the Form FC-GPR duly acknowledged by the authorized dealer bank is required to be submitted to the stock exchange while applying for listing/trading approval.

(C) Reporting of Transfer of Shares

In terms of the policy, reporting of transfer of shares between residents and non-residents and vice- versa is to be done in Form FC-TRS (Annexure 8 of the policy). Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.

(D) Reporting of Non-Cash transactions

In terms of the FDI policy, details of issue of shares against conversion of ECB have to be reported to the Regional Office concerned of the RBI, as indicated below:

- In case of full conversion of ECB into equity, the company has to report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated



on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.

- In the case of partial conversion of ECB, the company has to report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

(E) Reporting of FCCB/ADR/GDR Issues to RBI

- An Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the Form enclosed as Annexure 9 to the Policy, within 30 days from the date of closing of the issue.
- The company should also furnish a quarterly return in the Form enclosed as Annexure 10, to the Reserve Bank within 15 days of the close of the calendar quarter.
- The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per the extant Reserve Bank guidelines.

(F) Continuous Reporting

- The annual return on foreign liabilities and assets as appearing in Annexure 7 to the Policy needs to be filed on a yearly basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information submitted by 31st July will pertain to all the investments made in the previous years up to March 31).
- The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date.
- The details of overseas investments in the company both under direct/portfolio investment may be separately indicated.

This is the successor to the erstwhile Form FC-GPR Part B. The Reserve Bank of India vide AP (DIR Series) Circular No. 45, dated 15 March 2011 discontinued the old form FC-GPR Part B and introduced Annual return on Foreign Liabilities and Assets.

However, this reporting requirement mandated by the Policy is apparently at variance with A.P. (DIR Series) Circular No.133, dated 20 June 2012. An easy-to-fill soft form of the return with guidance to users and in-built validations has been made available on the RBI website ([www.rbi.org.in / Forms category / FEMA Forms](http://www.rbi.org.in/Forms/category/FEMAForms)) which can be duly filled-in,

validated and sent by e-mail, by July 15 every year. The FDI policy issued in April 2013 does not synchronise with the provisions of the said circular both on format and on time lines for reporting.

It is suggested that the annual return should also be required to be certified by a practising company secretary as this will be an external, professional check on the data being furnished. This becomes all the more relevant when one considers the volume of information contemplated herein – both qualitatively and quantitatively.

Some practical aspects to be discerned

- In case of issue or allotment of bonus shares, the FC-GPR may be filed after the listing/trading approval has been obtained, but within 30 days from the date of the allotment. Further, FIRC is not applicable in this case.
- The allotment of shares must be completed within a period of 180 days from the date of receipt of the funds. In the event of non-allotment of shares, the amount needs to be refunded to the remitter within the said period of 180 days.
- In the case of issue of shares to employees of the company or its subsidiaries upon exercise of employee stock options, for administrative and operational convenience, the employees may remit the funds to the subsidiary company outside India and the latter may make the remittance to the company in India. A "no-objection certificate" may be issued by the overseas subsidiary reflecting the stated facts and that the said shares may be allotted to the employees concerned.
- A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company is ineligible to be allotted stock options (SEBI guidelines).

Conclusion

It is quite evident from the foregoing discussion that there are mandatory periodic reporting requirements under the FDI regime. While the advisory and consultancy role of the profession under FEMA or foreign exchange laws and regulations is the subject matter of a much larger canvas, the various reporting requirements under FDI entail significant imperatives from a corporate secretarial perspective. There is substantial scope for practising company secretaries to furnish reports such as (A) Reporting of Inflow, (B) Reporting of issue of shares (C) Reporting of Transfer of Shares (D) Reporting of Non-Cash transactions (E) Reporting of FCCB/ADR/GDR Issues to RBI (F) Continuous Reporting to various authorities. There is an imperative need to get some of the documents verified and certified by a practising company secretary as this would provide an external and professional check on key data that are being collated by the appropriate authorities. It is suggested that the ICSI initiate required endeavours with the RBI and carve out more areas of practice for the members.

CS



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Foreign Direct Investment Arena for Company Secretaries to take Lead Role

➤ FDI is an instrument which is essentially required to supplement the domestic capital, technology and skill for accelerated economic growth. Nevertheless, various policies, processes and compliances, issued by the Government of India from time to time, are required to be observed to bring FDI in India. Company Secretaries are placed at an advantageous position to take a lead in observing these compliances. Further, with the enactment of the Companies Act, 2013, they have to confirm compliance of all laws applicable to companies.

PREAMBLE

Foreign Direct Investment ('FDI'), a cross border investment made by an enterprise based in one economy into an enterprise of another economy, is a proved instrument in spurring the development of a nation. FDI has certain advantages both for the investee and investor companies like capital formation by utilizing the fresh inflow of capital, acquisition of new and improved technology, management skills, greater market availability, employment generation, increase in production, etc. All the above factors lead to the overall economic growth of the country. Post liberalization in 1991, India has attracted huge foreign investments and became one of the major recipients of FDI in the Asia-Pacific region. The intent and objective of Government of India ('GoI') to attract and promote FDI is to supplement the domestic capital, technology and skill for accelerated economic growth.

FDI inflows in 2012-13 aggregated to USD 22.42 billion, a

decline from USD 36.50 billion in 2011-12. India is projected to require around USD 1 trillion between 2012-13 and 2016-17, the 12th Five Year Plan period, to fund infrastructure growth covering sectors such as ports, airports and highways. [Source: www.dnaindia.com]

Nevertheless, various policies, processes and compliances are required to be observed to bring FDI in India and Company Secretaries ('CS') should assume lead role in the matter.

Through this article, the authors' aim is to lay emphasis on the fact that CS should take lead role in the matter pertaining to FDI as it is CS who eventually confirms the compliances whenever a company receives FDI.

Rationale for CS to take Lead Role in FDI

FDI is governed by Foreign Exchange Management Act, 1999 ('FEMA') and the Companies Act (in case of listed companies, compliances of listing agreement and SEBI Regulations) and CS is required to confirm the compliances of receiving FDI as summarised below:-

a. FEMA

In accordance with para 9 of the Notification No. FEMA 20/2000-RB dated 3rd May, 2000, while submitting FC-GPR which is ultimate reporting requirement to Reserve Bank

* The views expressed in this article are solely the views of the authors and are not connected in any way with the views of the Company/ or the Group where the authors are employed.



of India ('RBI'), CS needs to confirm the compliance of the requirement of the Companies Act, eligibility to issue securities, compliance of terms & conditions of the Gol approval, if any, etc. Additionally, FC-GPR is also required to be mandatorily signed by the director or the CS.

b. The Companies Act, 2013

Section 205 of the Companies Act, 2013 ('the Act') requires the CS to report to the Board the about compliance with the provisions of the Act and other laws applicable to the company. Further, the role of CS, *inter-alia*, includes obtaining approval of the Board, shareholders and providing such guidance as the directors (collectively or individually) required to discharge their duties, responsibilities & powers to safeguard interest of all the stakeholders.

c. SEBI Regulations and Listing Agreement

In the case of listed companies, FDI requires submission of disclosures to Stock Exchanges ('SEs') in accordance with requirement of Listing Agreement and compliances of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 & SEBI (Prohibition of Insider Trading) Regulations, 1992 ('SEBI Regulations'). CS, being Compliance Officer, is responsible for all such compliances.

The above mandates CS to be primarily responsible for matters pertaining to FDI and the said responsibility can be discharged by CS effectively by observing the following:-

Eligibility of Persons

The persons eligible to invest in Indian companies are:-

- A non-resident entity can invest in India except in the prohibited sectors. Exceptions: A citizen of Bangladesh and Pakistan can invest only through Gol approval. Further, a citizen of Pakistan cannot invest in defence, space, atomic energy and other prohibited sectors.
- Non-resident Indians ('NRIs'), resident/ citizens of Nepal & Bhutan are permitted to invest in the capital of Indian companies on repatriation basis.
- OCBs cannot invest in India with effect from September 16, 2003. However, erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI policy as incorporated non-resident entities, with the prior approval of Gol.
- FIIs may invest in the capital of an Indian company upto an individual holding of 10% of the capital of the company and aggregate holding of 24% of the capital under the Portfolio Investment Scheme. This aggregate limit of 24% can be increased to the sectoral cap/ statutory ceiling, as applicable, by the Indian company concerned through a resolution passed by its Board of Directors followed by a special resolution approved by its general body and subject to prior intimation to RBI. FIIs and NRIs registered

» FDI necessarily means investment made by foreign entities in equity shares, convertible preference shares and convertible debentures (both fully and mandatorily convertible) with the pricing being decided upfront. The price/ conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments.

with SEBI can only invest/ trade through a broker in the capital of Indian companies on recognised Indian SEs.

- Foreign Venture Capital Investor ('FVCI') registered with SEBI may contribute up to 100% of the capital of an Indian Venture Capital Undertaking ('ICVU') and may also set up a domestic asset management company to manage the fund through automatic route. Such investment would be subject to FEMA regulations and FDI policy including sectoral cap, etc.
- Qualified Foreign Investors ('QFIs') are permitted to invest through SEBI registered Depository Participants only in equity shares of listed Indian companies offered to the public through brokers on recognized SEs in India as per the applicable SEBI guidelines/ regulations. The individual and aggregate limits for the QFIs are 5% and 10% respectively of the paid up capital of an Indian Company.

Entities into which FDI can be made

FDI can be made only in the following entities:

- **Companies:** FDI can be made in Indian companies which in turn would be required to issue capital against FDI.
- **Partnership firm/ Proprietary concern:** An NRI or a person of Indian Origin ('PIO') can invest in the capital of a partnership firm or a proprietary concern on repatriation basis in India. Nevertheless, an NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/ plantation activity, real estate business or print media.
- **Venture Capital Fund ('VCF'):** An NRI/ FVCI can invest in IVCU, set up as an incorporated company under the Act, under the automatic route of FDI.
- **Trusts:** FDI, other than in VCF, is not permitted in Trusts.
- **Limited Liability Partnerships ('LLPs'):** FDI is allowed through Gol approval route only in LLPs operating in sector/ activities where 100% FDI is allowed. Further, LLPs with FDI are prohibited to operate in agricultural/ plantation activity, print media or real estate business.



Article

Foreign Direct Investment Arena for Company Secretaries to take Lead Role

ROUTES FOR INVESTMENTS

Foreign entities can invest in the equity shares, preference shares and debentures (whether fully, compulsorily or mandatorily convertible) of an Indian company through the following two entry routes:

- **Automatic Route:** In this route, no approval of the GoI is required for making investments by the non-resident investor(s).
- **Government Route:** Prior approval of the GoI is required for making investment under this route which is considered by Foreign Investment Promotion Board ('FIPB'). The Minister of Finance consider the proposals recommended by the FIPB with total foreign equity inflow of and below Rs.1,200 crore. Cabinet Committee on Economic Affairs consider the proposals with total foreign equity inflow of more than Rs.1,200 crore.

FDI in different sectors

a. **Prohibited Sectors:** FDI is prohibited both under the GoI and automatic approval routes in the following sectors:

- Lottery Business
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- Manufacturing of cigarettes and cheroots of tobacco or of tobacco substitutes
- Sectors not open to private sector investment e.g. Atomic Energy

b. **Restricted Sectors:** FDI is restricted in some sectors and foreign entities are not permitted to invest in these sectors beyond the specified limits. Some of the restricted sectors are as follows:-

- Defence sector* - 26%
- Insurance - 26%
- Print Media* - 26%
- Private Banking - 74% [Government route: Above 49% and upto 74%]
- Public Banks* - 20%
- Single Brand Retail - 100% [Government route: Above 49%]
- MBRT* - 51%
- Telecom services - 100% [Government route: Above 49%]
- Pharma - 100% [Government route: Brownfield]
- Credit Information Cos. - 74%
- Asset Reconstruction Cos. - 100% [Government route: Above 49%]
- Commodity Exchanges - 49%
- Power Exchanges - 49%

- Petroleum refining by PSUs - 49%
- Civil Aviation - 49% [Government route: Above 49% and upto 74% for non scheduled air transport services]

* Government route only.

c. **Permitted Sectors:** 100% FDI is permitted, including courier services, under automatic route in most of the other Sectors.

Issue of instruments

FDI necessarily means investment made by foreign entities in equity shares, convertible preference shares and convertible debentures (both fully and mandatorily convertible) with the pricing being decided upfront. The price/ conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments.

Valuation

In case of unlisted Company, the valuation should be based on the Discount free Cash Flow ('DCF') method whereas for listed company, it should be market value in terms of SEBI (ICDR) Regulations. Issuance of Depository Receipts and FCCBs are treated as FDI.

A certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the foreign entities has to be submitted to RBI alongwith FC-GPR. With the enactment of the Act, Practising CS ('PCS') can become registered valuers. Hence, PCS can also do valuation of shares, debentures, etc. in relation to FDI. Therefore, it is pertinent to mention that RBI would suitably align the FDI Policy with the requirement of the Act, enabling PCS to issue certificate of valuation of instruments etc. pertaining to FDI.

Other requirements

The CS also needs to observe and ensure the following:-

- Obtain prior approval of GoI/ FIPB for FDI in sectors/ activities with sectoral caps requiring Government approval.
- Apart from the entry conditions on FDI, ensure to comply with all relevant sectoral laws, regulations, rules and other conditions.
- Obtain prior permission from RBI for issue of rights shares to erstwhile OCBs as OCBs have been de-recognised as class of investor. Nevertheless, bonus shares can be issued to them without the approval of RBI.
- Ensure that company receiving FDI, report the details of amount received in the Advance Reporting Form to Regional Office concerned of the RBI, within 30 days of receipt of consideration/ FDI.
- Ensure to report the details of the amount of consideration for issue of shares/ debentures together with the copies of



FIRC(s) evidencing the receipt of remittance and the KYC report of the investor from the overseas bank remitting the amount.

- After issue of shares, Form FC-GPR has to be filed to the Regional Office of RBI through Authorised Dealer within 30 days from the date of issue of shares. It must be ensured that Authorised Dealer files the said Form FC-GPR with RBI within the said 30 days time period only.
- A certificate from the CS of the Company certifying that the company is eligible to issue shares and terms and conditions of GoI approval, if any, etc. have been complied with shall be submitted along with Form FC-GPR. Further, a certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the foreign entities shall also be submitted to RBI.
- Indian company issuing ADRs/GDRs shall submit full details of such issue within 30 days from the date of closing of the issue. The company is also required to furnish a quarterly return to the RBI within 15 days of the close of the calendar quarter till the entire amount raised through ADRs/GDRs is either repatriated to India or utilized abroad as per RBI guidelines.
- Ensure to report the non-cash (details of issue of shares against conversion of ECB) to the Regional Office of RBI as under:-
 - In case of full conversion of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office of the RBI as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM) within 7 days from the close of month to which it relates.
 - In case of partial conversion, the Company to report the converted portion in Form FC-GPR as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion.
- In case there is transfer of shares between residents and non-residents and vice-versa, then Form FC-TRS should

be submitted to AD Category I bank within 60 days from the date of receipt of the amount of consideration. The Bank will subsequently forward the Form to its link office which would then consolidate the Form FC-TRS and submit a monthly report to the RBI.

- Prompt disclosures to SEs in terms of the requirement of listing agreement and SEBI Regulations.

Penalties for Non-Compliance

The penalties for non-compliances of FDI regulations are severe. As per Section 13 of FEMA, 1999, if any person contravenes any provision of the FEMA or rules, regulations, notification, press note, press release, circular, direction/ order or contravenes any conditions subject to which an authorization is issued by the GoI/ FIPB/ RBI, then such person shall be liable to penalty which:-

- if the amount is quantifiable, be liable to a penalty up to thrice the sum involved in such contraventions
- If the amount is not quantifiable, be liable to a penalty upto Rs. 2 lakhs
- If such contravention is a continuing one, further penalty may be imposed which may extend to Rs.5,000 for every day after the first day during which the contravention(s) continues.

Where the person contravening any rules, regulations, etc. is a company, then every person who, at the time of the contravention was in charge of, and responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the contravention and shall be liable to be punished accordingly.

The amount of penalty need to be paid within 90 days from date of service of notice for payment of penalty, failing which, contravener shall be liable to civil imprisonment. Further, a warrant for arrest of the defaulter can be issued if Adjudicating Authority ('AA') is satisfied that the defaulter is likely to abscond or leave the local limit of the jurisdiction of the AA.

Conclusion

As per FDI Policy, CS has to confirm the compliance of the requirement of the Act, eligibility to issue securities, sectoral cap and other terms and conditions of GoI's approval etc. Further, the role of CS has assumed a new dimension with the enactment of the Companies Act, 2013 as CS now have to play the lead role in confirming compliances of not only the Act but also various other laws, rules and regulations, etc. that are applicable to the Company. This necessitates CS to keep themselves abreast with the latest FDI policy, Press note/ release, if any, issued from time to time, and ensure compliances and avoid stringent penalty for non-compliances. Thus, FDI is new arena where CS can take lead role to ensure effective compliances which would augment the immense trust reposed by the GoI on CS in confirming the timely compliances of matters pertaining to FDI also.

CS



Article



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Facilities available to Non-Resident Indians

➤ Non resident Indians, persons of Indian origin and overseas citizens of India have been granted several benefits in the matter of remittances and investments in India, income tax concessions, travel benefits and the like. These have been enumerated in this article.

INTRODUCTION

The 'residential status' of a person has to be determined for the purpose of taxation, foreign exchange management laws and Investments in India. Residential status is the most important factor for determining the applicability and incidence of both the Income Tax Act, 1961 and the Foreign Exchange Management Act, 1999 (FEMA), amongst other applicable laws. However the manner of determination of residential status is different under Income Tax Act and Foreign Exchange Management Act. Under the Income Tax Act, 1961 the residential status of a person being assessed to tax, is determined based only on the 'number of days of stay' in India. Under FEMA, residential status is determined in addition to the above, on the 'intention' of the person to stay in India.

NRI UNDER INCOME TAX ACT 1961

Under Section 115C (e) of the Income Tax Act, a non resident Indian (NRI) is defined as 'An individual being a citizen of India or a person of Indian origin (PIO) who is not a resident'. A person is deemed to be a PIO if he or either of his parents or any of his grandparents, was born in undivided India. The Residential Status referred here is as per the provision of Section 6 of the Income Tax Act, 1961.

ADVANTAGES TO NRIs UNDER INCOME TAX ACT, 1961

1. In the case of a non-resident Indian, only the income received, deemed to be received, accrued or deemed to be accrued in India is taxable in India. Accordingly, income earned by him outside India would not be taxable in India.

2. NRIs can avail the benefits of the Double Taxation Avoidance Agreements (DTAAs) entered into by India with several countries which attempt to minimise double tax on the same income (i.e. if tax is payable in India by NRIs on their income in India, credit for tax payable in India is available against tax payable in foreign country on such income). Also tax on dividends, royalty, fees for technical services earned in India by NRIs are offered concessional tax treatment under DTAAs rather than the rate at which this Income would be taxable to a resident Indian.
3. NRIs receiving interest income from Government or from any other person in respect of money used for business or profession in India or for any source of income in India would be taxable in India. However, interest income on securities or bonds (as specified by the Central Government by notification in this behalf) held by a NRI; interest on Non-Resident (External) Rupee Account and interest on notified Savings Certificates issued before 1.6.2002 which was purchased in convertible foreign exchange and held by NRI who is an Indian citizen or a person of Indian origin is exempt from tax.
4. Special rates of tax are applicable on certain business incomes like income from business of operation of ships, business of operation of aircraft etc.
5. The benefit of concessional rate of tax on investment income and long-term capital gain is given to NRI.
6. NRI has also been given exemption of not filing his return in certain cases.

NRI UNDER FOREIGN EXCHANGE MANAGEMENT ACT, 1999

FEMA, 1999 defines a person resident in India and a person



resident outside India, however it does not define the term 'Non Resident Indian (NRI)'. The term 'NRI' is defined under FEMA rules and regulations as 'A person resident outside India who is a citizen of India or is a person of Indian origin (PIO)' (Regulation 2(vi) of Foreign Exchange Management (Deposit) Regulations, 2000).

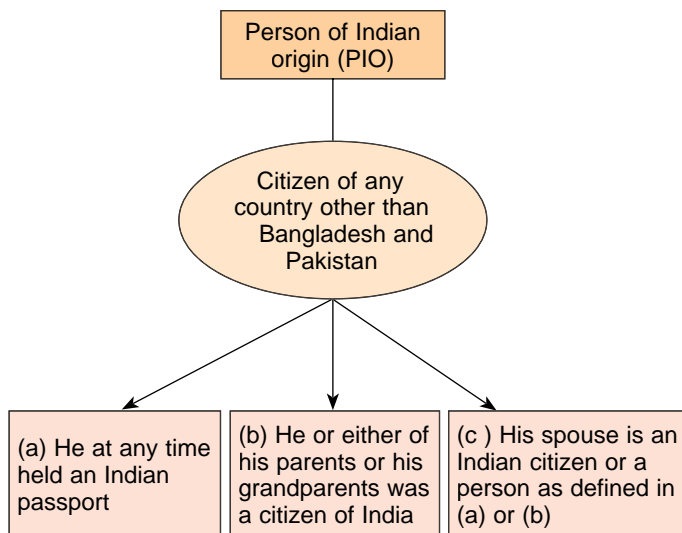
Thus the following persons are Non Resident Indians:

- i). an Indian Citizen residing outside India
- ii). a Foreign Citizen of Indian origin residing outside India

As referred above, person of Indian origin is defined under Clause 2 (xii) of Foreign Exchange Management (Deposit) Regulations, 2000 and means a citizen of any country other than Bangladesh or Pakistan, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

Thus, diagrammatically it can be represented as follows:



However for matters pertaining to immovable properties a Person of Indian Origin is defined as an individual other than citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan with the above mentioned criterion. Thus the PIOs who are national of the subject nations are denied the advantages pertaining to acquisition of immovable property in India.

PERSON OF INDIAN ORIGIN

Every PIO who is a citizen of another country, NOT being a citizen of any country that may be specified by the Government of India from time to time, will be eligible to apply for PIO Card, if he

➤ The Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005. The Scheme provides for registration as Overseas Citizen of India (OCI) of all persons of Indian origin (PIOs) who were citizens of India on 26th January, 1950 or there after or were eligible to become citizens of India on 26th January, 1950 except who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.

satisfies all eligibility conditions specified above in definition of 'PIO'.

Presently, the specified countries whose nationals are ineligible for grant of PIO Card are Pakistan, Bangladesh, Sri Lanka, Bhutan, Afghanistan, Iran, China and Nepal. Further, if the applicant himself or either of his parents, grandparents or great grandparents held the nationality of these specified countries at any time, he will not be granted PIO Card.

Iranian nationals of Indian origin can be considered for grant of PIO card. The Missions or other agency authorized to issue PIO card would obtain prior clearance from the Ministry of Home Affairs before issuing the card to an Iranian national.

ISSUE OF PIO CARD

A PIO card is issued to 'Persons of Indian Origin' which allows them visa free travel (15 years) and gives several benefits to the cardholder. The new PIO scheme came into force with effect from 15th September, 2002.

An application for issue/renewal of a PIO Card shall be made in the prescribed form and shall be accompanied by documentary evidence to show that the applicant is a person of Indian origin as defined.

An application for issue of a PIO Card shall be made to an Indian Mission in the country where the applicant is ordinarily resident. Applicants already in India on long term visa (one year or more) may submit the application in India at designated places. A fee of Indian Rs. 15,000 or equivalent in local foreign currency shall be payable along with the application. The fee for a PIO Card for a child upto the age of 18 Years will be Rs. 7,500 (or, its equivalent in local foreign currency). The Card will be valid for 15 years subject to the condition that a valid passport accompanies it.



Article

Facilities available to Non-Resident Indians

FACILITIES AVAILABLE TO A PIO CARD HOLDER:

The PIO cardholders are entitled to the following benefits:

- He or she does not require visa to enter India. PIO Card itself is treated as a multiple entry, multi-purpose visa for entering India
- No separate Student/ Employment /Business visa will be required for admission in colleges/institutions or taking up employment, business, etc in India
- He or she will be exempted from the requirement of registration if his/her stay in India does not exceed 180 days. In the event of continuous stay in India of the PIO Card holder exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned Foreigners Registration Officer at District Headquarter
- Also exemption from registration with local police authorities for continuous stay upto 180 days in India is provided
- PIO Card holder shall enjoy parity with NRIs in respect of all facilities available to the latter in the economic, financial and educational fields except in matters relating to the acquisition of agricultural land/plantation properties. No parity shall be allowed in the sphere of political rights
- Various housing schemes of Life Insurance Corporation of India, State Government and other Government Agencies can be availed
- It does not give voting rights to the holders of the card
- PIO Card can be used as identity proof for applying for a (I) PAN card, (II) driving licence and (III) opening of Bank account in India, if the PIO card holder resides in India.

OVERSEAS CITIZEN OF INDIA (OCI)

The Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005. The Scheme provides for registration as Overseas Citizen of India (OCI) of all persons of Indian origin (PIOs) who were citizens of India on 26th January, 1950 or there after or were eligible to become citizens of India on 26th January, 1950 except who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.

The OCI documents consist of OCI Registration Booklet and a Universal visa sticker. It is mandatory for registered OCIs to carry their passports which carry the Universal visa sticker for entry into/ exit from India. OCI registration booklets of OCIs are treated as their identification for any services rendered to them. In case proof of residence is required, Overseas Citizens of India may give an affidavit attested by a notary public stating that a particular/specific address may be treated as their place of residence in India and may also in their affidavit give their overseas residential address as well as e-mail address, if any.



The fee for application for OCI card is US \$ 275 or equivalent in local currency for each applicant. In case of PIO card holder, US \$ 25 or equivalent in local currency for each applicant. In case of application filled in India, fee of Rs.15,000/- for general category, for PIO card holders Rs.1,400/- and for minor PIO card holder Rs.8,000/- to be paid by way of Demand Draft. Application is to be made to the Indian Mission/Post of the country of citizenship of the applicant. If the applicant is not in the country of citizenship, to the Indian Mission/Post of the country where he is ordinarily residing. If the applicant is in India, to the Foreigners Regional Registration Officer (FRRO) as per specified Jurisdiction of the FRRO concerned.

FACILITIES AVAILABLE TO OCI CARD HOLDER

Following benefits will be allowed to an OCI:

- Multiple entry, multi-purpose life long visa to visit India
- Exemption from reporting to Police authorities for any length of stay in India
- Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties
- Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India, visiting the national monuments, historical sites and museums in India
- They can pursue the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-
 - (a) doctors, dentists, nurses and pharmacists
 - (b) advocates



- (c) architects
- (d) chartered accountants
- There is parity with Non-Resident Indian to appear for the All India Premedical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts
- Parity with resident Indian nationals in matters of tariffs in domestic air fares. Any other benefits to an OCI will be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B(1) of the Citizenship Act, 1955.

LIMITATIONS OF OCI STATUS

- OCI is not entitled to apply for and obtain a normal Indian Passport which is given to a citizen of India
- OCIs are not entitled to voting rights in India
- OCIs are not entitled to hold constitutional post in India
- OCIs are not entitled to hold Government posts in India except for the posts specified by an order by the Central Government.

COMPARISON OF FACILITIES AVAILABLE TO OCI V/S-A V/S PIO CARDHOLDERS

- i. An OCI is entitled to life long visa with free travel to India whereas for a PIO card holder, the visa is only valid for 15 years.
- ii. A PIO cardholder is required to register with local Police authorities for any stay exceeding 180 days in India on any single visit whereas an OCI is exempted from registration with Police authorities for any length of stay in India.
- iii. An OCI gets a specific right to become an Indian Citizen as per

Section 5(i) and (ii) of the Citizenship Act, 1955.

BENEFITS OF NRI/PIO/OCI STATUS

NRIs can make various types of investments in India and apart from that there are several other advantages of the NRI status, which are outlined below:

1. MAINTENANCE OF BANK ACCOUNTS IN INDIA

NRIs can, without the permission from the Reserve Bank, open, hold and maintain the different types of accounts given below with banks specially authorised by the Reserve Bank in its behalf [Authorised Dealer (AD)]. NRO Savings accounts can also be maintained with the Post Offices in India. However, individuals/ entities of Bangladesh and Pakistan require prior approval of the Reserve Bank.

a. Non-Resident (External) Rupee Accounts (NRE Accounts)

These are rupee denominated accounts and can be in the form of savings, current, recurring or fixed deposit accounts. Such accounts can be opened only by the non-resident himself and not through the holder of the power of attorney. Such accounts can be operated through power of attorney in favour of residents for the limited purpose of withdrawal of local payments or remittances through normal banking channels to the account holder himself. Balances held in the NRE account are freely repatriable.

b. Non-Resident Ordinary Rupee Accounts (NRO)

These are rupee denominated non-repatriable accounts and can be in the form of savings, current recurring or fixed deposits. These accounts can be opened jointly with residents of India and/or non-residents. NRI/PIO may remit from the balances held in NRO account an amount not exceeding USD one million per financial year, subject to payment of applicable taxes. The limit of USD 1 million per financial year includes sale proceeds of immovable properties held by NRIs/PIOs.

c. Foreign Currency Non-Resident (Bank) Account (FCNR (B) Account)

These accounts may be opened only in the form of term deposits for 1 to 5 years. This Account can be in any freely convertible currency. All debits /credits permissible in respect of NRE accounts, including credit of sale proceeds of FDI investments, are permissible in FCNR (B) accounts also.

Foreign Currency Account outside India

A person resident in India who has gone abroad for studies or who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India. However, in case of departure from India for participation in an exhibition/trade fair outside India, the balance in the account is



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Facilities available to Non-Resident Indians

repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair.

2. ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTIES IN INDIA

NRI / PIO / Foreign National who is a person resident in India (citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank) may acquire immovable property in India other than agricultural land/ plantation property or a farm house out of repatriable and / or non-repatriable funds. The NRI may acquire this immovable property also by way of gift or inheritance.

The payment of purchase price, if any, of this immovable property should be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank.

An NRI may transfer any immovable property in India to a person resident in India. He may also transfer any immovable property (other than agricultural or plantation property or farm house) to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.

3. INVESTMENTS IN SECURITIES/SHARES OF, AND DEPOSITS WITH, INDIAN FIRMS/COMPANIES AND OTHER INVESTMENTS

NRIs may, without limit, purchase on repatriation basis:

- Government dated securities / Treasury bills
- Units of domestic mutual funds
- Bonds issued by a public sector undertaking (PSU) in India
- Non-convertible debentures of a company incorporated in India
- Perpetual debt instruments and debt capital instruments issued by banks in India
- Shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids
- Shares and convertible debentures of Indian companies under the FDI scheme (including automatic route & FIPB), subject to the terms and conditions specified in Schedule 1 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time
- Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.

NRIs may, without limit, purchase on non-repatriation basis :

- Government dated securities / Treasury bills
- Units of domestic mutual funds
- Units of Money Market Mutual Funds
- National Plan/Savings Certificates
- Non-convertible debentures of a company incorporated in India
- Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedules 3 and 4 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.
- Exchange traded derivative contracts approved by the SEBI, from time to time, out of INR funds held in India on non-repatriable basis, subject to the limits prescribed by the SEBI.

Note: NRIs are not permitted to invest in small savings or Public Provident Fund (PPF).

4. IMMOVABLE PROPERTIES ABROAD

NRIs can freely acquire immovable properties abroad out of earnings abroad. He can invest anywhere in the world. He can start any business abroad. He can become trustee-beneficiary of a trust set up abroad. He can retain all these even on his return to India and need not even intimate RBI about his foreign assets. NRI's can set up family trusts abroad for education of his children/ maintenance of his family members. Such trusts can also be Asset Protection Trusts where the assets held by the trust are free from attachment by the creditors.

5. FACILITIES TO RETURNING NRIS

Returning NRIs/PIOs may continue to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned when resident outside India. The income and sale proceeds of assets held abroad need not be repatriated.

Returning NRIs /PIOs may open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts. Proceeds of assets held outside India at the time of return can be credited to RFC account. RFC accounts can be maintained in the form of current or savings or term deposit accounts, where the account holder is an individual and in the form of current or term deposits in all other cases.

6. FACILITIES TO STUDENTS

Students going abroad for studies are treated as Non- Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.

As non-residents, they will be eligible to receive remittances from India (i) up to USD 100,000 from close relatives in India, on self declaration, towards maintenance, which could include remittances



towards their studies also (ii) up to USD 1 million per financial year, out of sale proceeds of assets / balances in their NRO account maintained with an Authorised Dealer bank in India and (iii) upto USD 75000 per financial year for any permitted current or capital account transaction or a combination of both, under the Liberalized Remittance Scheme.

Also, as mentioned above, a student who has gone abroad for studies may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India.

7. GOLD

NRI's can bring 10 kgs. of gold (on payment of duty) and 100 kgs. of silver (on payment of duty) once in six months on his visit to India.

The customs duty on imports of gold and silver is 2% and 6% respectively, of the value. Duty on gold and silver imported by NRIs in hand baggage is Rs 300 per 10 gram and Rs 1,500 per kg respectively.

8. INTERNATIONAL CREDIT CARDS

Authorised Dealer banks have been permitted to issue International Credit Cards to NRIs/PIO, without prior approval of Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR (B) / NRE / NRO Accounts.

9. TAX CONCESSIONS

NRIs can enjoy several tax concessions in India on his assets in India.

10. ADVANCE RULINGS

NRIs can seek Advance ruling from the Authority for Advance Ruling on the taxability (income tax) of transactions.

11. RESERVED SEATS

There are special reserve seats for children of NRIs for Engineering/Medical/MBA courses in certain institutions in India provided the fees are paid in foreign exchange.

12. REMITTANCE FACILITIES FOR NON RESIDENT INDIANS (NRIS) / PERSONS OF INDIAN ORIGIN (PIO)

Remittance of funds from the sale of capital assets in India held by a person, whether resident in or outside India, requires approval of the Reserve Bank of India except to the extent provided in FEMA or Rules or Regulations made thereunder.

The remittances will be allowed to be made by the Authorized Dealer banks on production of an undertaking by the remitter and a certificate from a Chartered Accountant in the formats prescribed

by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/ 2002 dated October 9, 2002 [cf. A.P.(DIR Series) Circular No. 56 dated November 26, 2002].

a. Remittance of current income

Remittance outside India of current income like rent, dividend, pension, interest, etc. in India of the account holder is permissible. For this purpose, the Authorised Dealer bank will permit debit of NRO Account.

In case of NRIs who do not maintain a NRO account in India, Authorised Dealer banks may allow repatriation of current income like rent, dividend, pension, interest, etc. based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.

b. Remittance of Assets

NRI or a PIO may remit an amount up to USD one million, per financial year, out of the balances held in his Non-Resident (Ordinary) Rupee (NRO) account or from the sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement), for all bonafide purposes, subject to the satisfaction of the Authorized Dealer bank and in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance.

The sale proceeds of immovable property purchased out of rupee funds can be remitted without any lock-in-period.

In case of assets acquired by way of inheritance or legacy or settlement where there is no lock-in-period, the NRI / PIO may submit to the Authorised Dealer documentary evidence in support of inheritance or legacy of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the prescribed formats.

The remittance facility in respect of sale proceeds of immovable property is not available to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

The facility of remittance of sale proceeds of other financial assets is not available to citizens of Pakistan, Bangladesh, Nepal and Bhutan.

c. Repatriation of sale proceeds of residential property purchased by NRIs / PIO out of foreign exchange

Repatriation of sale proceeds of residential property purchased by NRI / PIO is permitted to the extent of the amount paid for acquisition of immovable property in foreign exchange received through banking channels. The facility is restricted to not more than two such properties. The balance amount can be credited to the NRO account and can be remitted under USD one million facility as mentioned above in the case of 'remittance of assets'.



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External Commercial Borrowing- An Effective Way of Cross Border Funding

➤ External Commercial borrowing, ECB in brief is an instrument used in India to facilitate the access to foreign money by Indian corporations and PSUs (Public Sector Undertakings). ECBs provide an additional source of funds to the companies allowing them to supplement domestically available resources and take advantage of lower rates of interest prevailing in the international financial markets.

Money has always been the lifeblood of business. From production to expansion and from acquisition to mergers and amalgamations, everywhere finance is required. Therefore search for a suitable resource of fund is a never ending process. Searching for right option of funding is not an easy task. Leverage is one such important factor in this regard. In daily life the fund is required to be maintained in such a way that there should be a proper balance between equity capital as well as borrowed capital. The search for suitable funding option has yielded various new products. Moreover it evenly crossed the boundary line of the country. External Commercial Borrowing (ECB) is one such new product. It facilitates to borrow the money from outside the country.

As the name suggests it has to be a commercial borrowing only. The External Commercial Borrowing may be referred as the borrowing of business fund from abroad. Typically an external commercial borrowing (ECB) is an instrument used in India to facilitate the access to foreign money by Indian corporations and PSUs (Public Sector Undertakings). ECBs provide an additional source of funds to the companies allowing them to supplement domestically available resources and take advantage of lower rates of interest prevailing in the international financial markets. ECBs have become very popular amongst the Indian companies, during the past few

years due to the limitations in the Indian debt market in the form of short maturity period and high rate of interest.

VARIOUS CONSTITUENTS OF EXTERNAL COMMERCIAL BORROWING

ECB in itself is not an instrument. It contains some specific instruments like –

- 1) Commercial Loan in the form of Bank Loan





- 2) Buyer's Credit
- 3) Supplier's Credit
- 4) Securitised Instruments in the form of floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partly convertible preference Shares
- 5) FCCB (Foreign Currency Convertible Bonds), FCEB (Foreign Currency Exchangeable Bonds)
- 6) Non-convertible, optionally convertible or partially convertible Preference Shares. This instrument is valid on or after 1ST May, 2007 and it will be considered as debt and should conform the ECB policy and guidelines.

ADVANTAGES OF EXTERNAL COMMERCIAL BORROWING

1) AVAILABILITY OF FOREIGN CURRENCY

Foreign currencies are often required to pay off the foreign suppliers for their dues. Therefore instant availability of foreign currency certainly solves the problem for paying off the foreign suppliers.

2) COMPARATIVELY CHEAPER RATES

This is one of the most important advantages of External Commercial Borrowing. The prime focus in recent market condition is to reduce cost and attain profit maximization. In India where interest rate is on rising trend, cost of External Commercial Borrowing is relatively cheaper compared to INR borrowings. Lower interest rate makes ECB one of the important avenues of borrowing.

3) BROADENING THE INVESTOR BASE

ECB can also be mentioned as a measure of expansion of company. By using External Commercial Borrowing a company resorts to expand its investor base overseas. Therefore more and more non-resident persons are induced in the company as investors. Therefore the investor base of company gets more and more diversified.

4) AVAILABILITY OF HUGE FUND

With increasing requirements for funds, companies are resorting to External Commercial Borrowing. In the case of large projects where the fund requirement is essentially high, borrowing through ECB route seems to be a good choice. Corporates can raise ECBs from internationally recognized sources such as banks, export credit agencies, suppliers of equipment, foreign collaborators, foreign equity holders, international capital markets etc.

5) FLEXIBILITY IN TERMS OF PROVIDING SECURITY FOR ECB

Providing security for taking loans has always been a crucial matter. The security to be provided is always being weighed

» ECB for investment in real estate sector, industrial sector, especially infrastructure sector in India, are under Automatic Route, i.e. do not require RBI / Government approval. Companies except financial intermediaries, units in Special Economic Zones (SEZ), NGOs engaged in micro finance activities, Micro Finance Institutions (MFIs) engaged in micro finance activities are also eligible to access automatic route.

by the lenders. However it is often observed that compared to Indian lenders; foreign lenders provide far more flexibility in terms of providing security for ECBs. As per the recent RBI guidelines the choice of security to be provided to the lender/supplier is left to the borrower.

6) FLEXIBILITY IN TERMS OF LENDING PERIOD

Compared to the Indian lending companies/financial institutions, the foreign lenders provide much more flexibility in terms of the period in ECB. The period for investment in ECB can be as short as 3 Years. Therefore the various range of ECB provides a good option for both lenders and borrowers.

7) INTEREST AND BORROWED MONEY IS REPATRIABLE

Repatriability has given the best advantage to ECB. Both the interest and borrowed money is repatriable.

8) MANAGING THE ECB PROCEEDS

RBI has granted option to the borrower to either keep ECB proceeds abroad or to remit these funds to India.

DISADVANTAGE OF EXTERNAL COMMERCIAL BORROWING

Since the funds are raised through ECBs in foreign currency and the interest and redemption proceeds are also payable in the foreign currency, the issuing company has to hedge its foreign exchange exposure, which involves expenditure. In case the company opts to keep its foreign exchange exposure unhedged, it carries a huge risk due to fluctuation in foreign exchange rates. RBI has also acknowledged this problem and has instructed the banks to put in place a system for monitoring the unhedged foreign exchange exposure of small and medium enterprises.



Article

External Commercial Borrowing-An Effective Way of Cross Border Funding



Refinancing is an important aspect of External Commercial Borrowing. An ECB may be refinanced by raising another ECB. However the condition is that the new ECB should have lower all-in-cost. A higher all-in-cost ECB is allowed only under approval route subject to the condition that the outstanding maturity of the original ECB should not be disturbed.

PRICING OF ECB

The pricing of the External Commercial Borrowing implies the total cost to the company comprising –

- rate of interest / margin (it is linked with the risk profile of the intending borrower)
- arrangement / upfront fee and other fees.

Here one thing that must be noted is that the arrangement fee/upfront fee is a onetime cost. The pricing depends on various factors such as the credit rating of the borrower, tenor of the loan, demand/supply position of the foreign currency available, market conditions etc. The prices keep on changing as per the market scenario and are normally valid for a period of 30 days. In addition to the pricing, there are legal and documentation expenses etc. These are normally affordable in the range but can be higher in some cases. Pricing offered is flexible, can be discussed and negotiated.

The Government has placed a ceiling limit on overall cost of ECB. The cost ceiling depends on the average maturity period of ECB. Until now two categories of maturity period has been defined.

- Average Maturity Period three to 5 Years. All-in-cost Ceilings over 6 month LIBOR is 350 basis points
- Average Maturity Period

ROUTES FOR AVAILING ECB

ECB can be availed under two routes,

- (1) Automatic Route outlined
- (2) Approval Route

ECB for investment in real estate sector, industrial sector, especially infrastructure sector in India, are under Automatic Route, i.e. do not require RBI / Government approval. Companies except financial intermediaries, units in Special Economic Zones (SEZ), NGOs engaged in micro finance activities, Micro Finance Institutions (MFIs) engaged in micro finance activities are also eligible to access automatic route. However one may note that in case of doubt as regards eligibility to access Automatic Route, applicants may take recourse to the Approval Route. Small Industries Development Bank of India (SIDBI) can avail of ECB for on-lending to MSME sector.

Under approval route the following types of Companies can

raise ECB

- 1) Infrastructure Companies
- 2) Multistate Co-operative society particularly engaged in manufacturing activities
- 3) Banks & Financial Institutions
- 4) Export finance Companies
- 5) Non-banking Financial Companies particularly engaged in to finance import of infrastructure equipment for leasing.

AMOUNT AND MATURITY

Until now there were two categories of maturity period - one for minimum 5 Years and another for minimum 3 Years. The maturity period to be ascertained depends on the amount to be borrowed.

Loan amount	Period
ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent	Minimum average maturity of five years.
ECB up to USD 20 million or its equivalent	Minimum average maturity of three years

Recently RBI has placed a ceiling limit on the total amount to be borrowed in a financial year as under:

The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors	USD 750 million or its equivalent during a financial year.
The maximum amount of ECB which can be raised by a corporate in hotels, hospitals and software sector	ECB up to USD 200 million or its equivalent in a financial year
NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs)	USD 10 million or its equivalent during a financial year
SIDBI	50 per cent of their owned funds including the outstanding ECB, subject to a ceiling of USD 500 million per financial year.

END-USE OF ECB

- ECBs can be raised for investment (import of capital goods as classified by DGFT in Foreign Trade Policy (FTP)) in new projects, modernization/expansion of selected existing units in industrial and service sectors including infrastructure sector and SME.
- Overseas direct investment in Joint Ventures (JV)/Wholly



Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.

- (c) First stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- (d) NBFCs categorized as Infrastructure Financing Companies (IFC) are permitted to avail ECBs including outstanding in existing ECBs upto 75% of their owned funds under Automatic Route for lending to infrastructure sector.
- (e) For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities, etc.
- (f) Reserve Bank of India recently allowed infrastructure companies, to pay interest during construction out of the proceeds of ECB. RBI also allows use of the proceeds of ECB for maintenance and operations of toll systems for roads and highways for capital expenditure subject to the conditions that it forms a part of the original project.
- (g) SIDBI had been given power to the borrowers in the MSME sector for permissible end uses, having natural hedge by way of foreign exchange earnings.
- (h) Refinancing of Bridge Finance (including buyers'/ suppliers' credit) availed of for import of capital goods by Companies in Infrastructure Sector.
- (i) Reserve Bank of India has granted permission to the companies engaged in the manufacturing and infrastructure sectors to import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.

REFINANCING OF EXTERNAL COMMERCIAL BORROWING

Refinancing is an important aspect of External Commercial Borrowing. An ECB may be refinanced by raising another ECB. However the condition is that the new ECB should have lower all-in-cost. A higher all-in-cost ECB is allowed only under approval route subject to the condition that the outstanding maturity of the original ECB should not be disturbed.

RESTRICTIONS ON USE

The Reserve Bank of India has clearly asked the borrowers not to use ECB proceeds for any purpose other than the activities mentioned in the "End Use" List. Apart from that the other negative sectors are as follows:-

- (a) For lending and investment in Capital market including Special Purpose vehicles and Money Market Mutual Funds.
- (b) For acquiring a Company in India.
- (c) Real-Estate Sector.
- (d) for working capital, general corporate purpose and repayment of existing rupee loans.

CONCEPT OF FOREIGN EQUITY HOLDER AS RECOGNISED LENDER

Apart from other sources of ECB, Foreign Equity Holders are also treated as "Recognised Lenders". However to be eligible as recognised lender, the required minimum holding of paid-up equity in the borrower company is as under:

- (i) For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender;
- (ii) For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 7:1.

CS



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Currency Derivatives – Recent Changes

- Hedging is a risk management tool or insurance against any unwanted movements in the currency rates in future. Through currency derivatives, traders protect themselves from any upside or downside risk. Currency speculation exists whenever someone buys a foreign currency because he hopes to sell the currency at a higher rate in the future, without having any underlying exposure.

Introduction

Currency derivative is a contract between two traders agreeing to exchange currency at a fixed price at a future date. Currency derivatives, in simple words, are contracts between the buyer and the seller trading in currencies. According to this contract, both the parties decide to exchange one currency for another on a future date at a price that is set at the beginning. One of the main reasons why people enter in such an agreement is hedging. Hedging is a risk management tool or insurance against any unwanted movements in the currency rates in future. Through currency derivatives, traders protect themselves from any upside or downside risk. Currency speculation exists whenever someone buys a foreign currency because he hopes to sell the currency at a higher rate in the future, without having any underlying exposure. Though, some currency speculation is necessary to facilitate international trade.

While the processing and interpretation of information is an integral part of currency markets, “herd behaviour” among currency traders is equally important, especially since it makes many interpretations self-fulfilling. If large number of traders behave in the same way, a currency will automatically gain or lose in value. If a country introduces more “business friendly



policies,” such as deregulation of business activities or measure to attract more Foreign Institutional Investors, a few speculators will decide that it is worth buying a currency, thus driving the price of the currency up. To make sure that the value of this currency continues to rise, the original buyers will provide enough



information to convince other speculators to buy the currency also. A consensus is formed for a while where everybody believes that the particular currency will only gain in value, and for a while this is true as everybody continues to buy. Thus, the profits which the original buyers had expected are generated by more speculators buying this particular currency.

Thus the value of domestic currency fluctuates a lot *vis-a-vis* foreign currencies. Information that signals speculators to sell FIs usually give indications that local profit opportunities are decreasing. Such signals include increase in inflation, strict government regulation, tougher business environment, and increase in Taxes or an emerging labour movement. It fluctuates every minute, every second.

If we have Import/export business or have some plan to invest abroad, or foreigners have any plan to invest or lend in currencies, it is very essential to hedge the value of currency through currency derivatives, else there will be a chance that value of the currency we have may depreciate and the business incur loss. It is also possible that the loan we have borrowed in foreign currency for domestic use will strengthen and we have to pay more than the principal we have borrowed.

Currency Market and Rules of the market

Because of fluctuation of value of foreign exchange transactions, it is potentially profitable, provided the position is taken at right price. The large speculators (mainly multinational banks) are devoting more and more of their resources to such activities. For example, in the third quarter of 2013, Bank of America reported \$106 million, Chase Manhattan \$228 million, and Citibank \$435 million in foreign exchange earnings. Since these earnings are the fastest growing part of bank incomes, it is not surprising that billions of new dollars continue to enter the global currency markets, thus enhancing the power of speculators. World-over, exchange-traded currency derivatives are slowly eating into the traditional foreign exchange trading platforms, especially the spot and over-the-counter markets.

The three bourses — NSE, MCX-SX and USE — together recorded a turnover of Rs 12.80 lakh crore in June 2013, according to the latest data compiled by market regulator SEBI.

Exchange traded derivative markets, to be efficient and complete, require a certain set of policy framework for the underlying markets. Essentially what the exchange traded markets demand are friction-free underlying markets with no restrictions on taking long or short positions and a seamless integration between different segments enforced through free participation by all agents. In simple words, efficient exchange traded derivative markets and controls in the underlying market do not go together. This is a fundamental challenge faced by the policy makers in economies where macroeconomic and structural constraints as

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well as financial stability considerations necessitate certain restrictions on the underlying markets. In the case of India, for instance, there are policy-imposed limitations on participation by various economic agents. There is still a requirement of an underlying exposure for undertaking forex derivative transactions. Most importantly, the real sector tolerance for high volatility in exchange rates as well as interest rates is limited and this makes policy interventions in the cash markets an additional variable to contend with.

RBI has issued a circular on 15th Dec 2011 proposing changes to the foreign exchange derivative guidelines. The objective is to curb speculative positions, which have contributed to the recent slide in the rupee value and increased volatility of USD/INR exchange rate. The changes, which have come into effect immediately, are as follows:

- a) Forwards contracts involving rupee and with confirmed underlying exposures are not permitted to be cancelled and reboked. However the circular is silent on rollover of such forward contracts. There is ambiguity in that the circular is silent on rollover of forward contracts against contracted exposures, while similar rollover is permitted to FIs. In case the roll over is not permitted, a corporate will not be in a position to hedge currency risks if the payment is delayed due to some reason, which is a reality in business. If this is true then we believe this to be a temporary measure and expect a roll back once the USD/INR stabilizes.
- b) The past performance booking limit for importers and exporters was earlier the average of last 3 years import/export turnover or last year's turnover, whichever is higher. For the importers this limit now stands reduced to 25%. No



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Currency Derivatives – Recent Changes

further booking is permitted for importers who have currently exceeded this limit.

- c) The forward contracts under the past performance limit are to be settled on a fully deliverable basis. Earlier this requirement was for only 25% of the limit. Moreover in case of cancellations the customer is not entitled to avail the forex gains.
- d) All cash & spot transactions by AD banks on behalf of clients are to be undertaken for actual remittances/ delivery only and are not permitted to be cancelled or cash-settled.
- e) The FIIs were earlier allowed to cancel and rebook only 10% of their portfolio value at the beginning of the financial year. Now they are not permitted to rebook on cancellation of forward contract. However the FIIs are permitted to roll over the forward contract on or before maturity. RBI would advise AD banks revised limits with reduction in the Net Overnight Open Position Limit (NOOPL), which were fixed by their respective boards. The Intraday Open Position Limit is also not permitted to exceed the NOOPL. However these arrangements would be subject to review in the view of changing market conditions. RBI has effectively withdrawn, for the time-being, the powers earlier delegated to the boards of AD banks, for fixing the overnight limits. While the speculative trades are discouraged, banks may also come under pressure to square-up most of their day-end positions, including over-sold positions resulting from higher demand for dollars. Also the forward contract restrictions for FIIs may not be so critical as most of the FIIs hedge their portfolio exposures in the NDF markets.

Accounting effects of changes in Foreign Exchange Rates

Accounting Standard 11 “The Effects of Changes in Foreign Exchange Rates” was revised in 2003 by the ICAI, from 1st April 2004 i.e. FY 2004-05. According to the revised Standard all Forex gains/losses arising at the end of each accounting period irrespective of their nature whether balance sheet or P&L items, have to be taken to P&L A/C (either Dr. or Cr.). The revised standard also introduced accounting for forward contracts. However the standard was not followed uniformly across the board, owing to contradicting provisions in Schedule VI under the Companies Act.

The Ministry of Corporate Affairs announced the Companies (Accounting Standards) Rules on 7th December 2006, prescribing implementation of AS 11 as issued by ICAI. Then came 2008 turmoil in global financial markets and new lows for INR. Pressure mounted on Govt from the corporate who were to book heavy losses on account of rupee depreciation. Govt. on the last day of financial year 2008-09 came out with a notification - Exchange differences arising on reporting of Long Term Foreign Currency Monetary Items (LTFCMI) at the end of each accounting period, to the extent they are related to acquisition of depreciable



capital assets – can be added to or deducted from that asset and depreciation also calculated accordingly.

In case of other LTFCMI, such differences would be accumulated in a balance sheet account Foreign Currency Monetary Item Translation Difference Account (FCMITDA) and amortized over the life of such long-term asset or liability – and this treatment was initially allowed up to 31st March 2011. LTFCMI covered balance sheet items like long term debt, creditors and loans & advances with their original life of 12 months or more. The above notification, allowed retrospective reinstatement of accounts from Dec' 2006, at the option of the company. A number of companies with long-term foreign currency liabilities exercised the option, in order to avoid accounting losses resulting from Rupee depreciation. The option, once chosen, cannot be revoked.

Meantime, convergence of Accounting Standards with IFRS, originally scheduled to take effect from April 1, 2011, got deferred indefinitely. The MCA extended the above relaxation till 31 March 2012, by a notification issued on 11th May 2011. In 2010-11, Forex markets have worsened taking rupee to 50+ levels, forcing companies to declare heavy FX losses for the quarter ended September 2011. In view of steep depreciation of Rupee, the MCA has further extended the relief granted for valuation adjustment; vide Notification dated 29 December 2011, till 31 March 2020. As a result, current position is: Exchange gains/ losses on FC monetary items duration of 1 year or more, retrospectively for the period commencing from December 2006, adjusted to (debit / credit) the corresponding depreciable asset account, where the asset was funded by the liability, and In all other cases, gains / losses on such long term FC monetary items can be accumulated in a Translation Difference account, to be amortized over the period till 31 March 2020. AS 11, however, would continue to apply to short-term foreign currency cash flows (with maturity less than 1 year), which will be marked-to-market at closing rates as at quarter-end / year-end.



Snap Shot of RBI comprehensive Guidelines*

RBI released the final comprehensive guidelines on hedging with foreign exchange derivatives. The guidelines were made applicable from 1st February 2011. Some of the important aspects are :

1. Banks can only offer plain vanilla European Options. Exotic options like Barriers & Binary not allowed anymore. By banning exotic options like barriers, range accruals and leverages RBI has tried to clamp down on complex derivatives deals, which always faced pricing & risk management issues.
2. INR - FCY swap (to move from rupee liability to foreign currency liability) may be restricted to listed companies or unlisted companies with Rs 200 Cr. minimum net worth. Companies permitted to benefit from interest rate carry by shifting from rupee liability to FCY liability through INR-FCY swaps, may not be able to hedge the derived FX exposure against Rupee (cross currency exposures can be hedged).
3. Range Forwards, Call Spreads, Put spreads etc. permitted only to companies with minimum net worth of Rs.100 Cr. Adoption of Accounting Standards 30 and 32. Having a risk management policy with the specific clause allowing these structures.
4. Cost reduction structures like Range forwards, Put/Call spreads & Seagulls have been permitted only to the companies with a minimum net worth of Rs.100 Cr. and adoption of AS 30/32. RBI has not banned zero-cost structures, even though some of the medium and long term zero cost structures had recently caused derivative losses to several companies, provoking legal action against the counter-party banks. We may note here that structures like Put/Call spreads do reduce the hedging costs and they never result in negative MTM unlike range forwards &

* RBI circular no RBI/2011-12/243 DBOD.No.BP.BC. 44 / 21.04.157 / 2011-12 on "Comprehensive Guidelines on Derivatives" issued on Aug 2011. The relevant provisions of comprehensive guidelines on Derivatives issued vide DBOD.No.BP.BC. 86/21.04.157/2006-07 dated April 20, 2007 are also applicable to forex derivatives.

seagulls, and hence are relatively less risky.

5. RBI has made it compulsory to indicate the delta of the structure in the term sheet for cost reduction option structures. Delta is the sensitivity of the option price to a change in the underlying. For greater transparency, RBI should have also made it obligatory for the banks to furnish generic options, with breakup of the structure in the term sheet as against the prevalent practice of indicating only pay-off against spot on maturity.
6. RBI continues to restrict cancellation and rebooking of currency and interest rate swaps, hedging FC loan liability against FC-Rupee risk, while there is no such restriction on cross-currency swaps.
7. There are more restrictions on hedging based on past performance. Only companies with net worth of Rs. 200 Cr. and exim turnover of Rs. 1000 Cr. will be eligible to hedge projected business based on past performance (last year turnover or average of last 3 years whichever is higher). The limit will be one time limit; limit for cancelled/expired contracts will not be restored. 75% of the hedge contracts should be on deliverable basis.
8. SMEs are allowed to freely book/cancel/rollover forward contract without production of underlying documents, to manage their exposures efficiently, subject to approval of necessary credit limits by their bankers.
9. The pricing of all derivatives should be locally demonstrable at all times.
10. A high level committee chaired by Economic Affairs Secretary R.Gopalan announced a series of changes in the External Commercial Borrowing (ECB) guidelines. The committee comprised of officials from both Ministry of Finance as well as the RBI. The key changes that were announced were as under: The ECB limit for more than 5yr maturities through the automatic route, wherein the RBI approval is not required has been hiked from \$500 mn to \$750 mn for individual companies. The overall ECB issuance however for the current fiscal has been kept unchanged at \$30 bn with an assurance that it may be increased at a later stage incase required. The end-use of ECB funds has been widened by allowing 25% of the ECB proceeds to be utilized towards repayment of existing rupee debt. And the ECB proceeds can now be utilized towards refinancing of buyer's and supplier's credit also.
11. ECB denominated in rupee can now be availed. The ECB denominated in rupee is a welcome move as this will eliminate the currency risk for a corporate, while retaining the interest benefit. The requirement of entering into separate derivative contracts like swaps, currency options, caps etc. to hedge ECB exposure can be done away with. However it is important to see if the rates offered by banks would be in line all-in cost of ECB in foreign currency. The corporate availing Rupee ECB will however forego the benefit of profit Rupee appreciation, while repaying the ECB.
12. ECB denominated in Chinese Yuan (CNY) is now permitted



Article

Currency Derivatives – Recent Changes



If we are inclined to treat currency derivatives as commodity derivatives then currency derivatives should be traded on commodity exchange. However it is traded on stock exchanges in the same manner as security derivatives. Moreover the currency derivatives cannot be settled by physical delivery, but can only be cash settled (settled by payment of differences).

with an overall limit of \$1 bn. The Yuan denominated ECB will provide access to cheaper funding as the Chinese interest rates are relatively lower and also lesser currency volatility will make the currency an attractive funding source. Recently Reliance Power and a nationalized Bank have tapped CNY funds through an offshore bond issuance. However the corporates need to keep in mind that the CNY is a managed currency and we cannot rule out sudden adverse monetary developments in the CNY. Moreover hedging a CNY ECB would be another issue in terms of the lack of derivatives market for the CNY.

Taxation of Currency Derivatives

In the taxation laws we can see that there is a significant difference in the tax treatment of security derivatives and commodity derivatives. It is pertinent to know whether the currency derivatives are to be treated as the security derivatives or as the commodity derivatives. If we are inclined to treat currency derivatives as commodity derivatives then currency derivatives should be traded on commodity exchange. However it is traded on stock exchanges in the same manner as security derivatives. Moreover the currency derivatives cannot be settled by physical delivery, but can only be cash settled (settled by payment of differences).

One more pertinent question is whether transactions of trading in currency derivatives are to be regarded as speculative transactions? Since the definition of speculative transaction refers to a contract for the purchase or sale of any commodity, including stocks and shares, there is an old decision of the Court of Appeals in England, where the court has taken the view that foreign currency is a commodity. The Tribunal in India has followed this view in the context of other assets, though there is one Tribunal decision which has taken the view that foreign currency is not a commodity. The matter, therefore, seems to be slightly debatable, though the better view seems to be that currency is a commodity, since it has physical existence and can be the subject matter of trade. If that is the position, a currency derivative transaction would be covered by the main part of the definition of speculative transaction.

One of the exceptions is in relation to certain types of hedging transactions. This exception, however, applies to contracts in respect of raw materials or merchandise entered into by a person in the course of manufacturing or merchant business, to guard against loss through future price fluctuations in respect of contracts for the actual delivery of goods manufactured by him or

merchandise sold by him. Currency derivatives transactions are certainly not contracts in respect of raw materials or merchandise, and, therefore, this exception may not apply.

Conclusion

The Indian forex derivatives market is still in its infancy, though the growth potential is huge. The development of a vibrant forex derivatives market in the country would critically depend on the growth in the underlying spot/ forward markets, growth in the rupee derivative markets along with the evolution of a supporting regulatory structure. Factors such as market liquidity, investor behavior, regulatory structure and tax laws will have a heavy bearing on the behaviour of market variables. Increasing convertibility on the capital account would accelerate the process of integration of Indian financial markets with international markets.

Introduction of derivative products tailored to specific corporate requirements would enable corporates to completely focus on their core businesses and de-risk the currency and interest rate risks while allowing them to gain despite any upheaval in the financial markets. Increasing convertibility on the rupee and regulatory impetus for new products should see a host of innovative products and structures, tailored to business needs. The possibilities are many and include INR options, currency futures, exotic options, rupee forward rate agreements, both rupee and cross currency swap options, as well as structures composed of the above to address business needs as well as create real options.

In order to develop this critical market, it is important to see how effectively we can address the present issue plaguing the Indian corporate and banking sector. If we can address these issues, these forex derivative instruments can truly achieve their intended purpose acting as insurance for hedging purposes by the Indian corporate world.

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4. Web site of the Bank of International settlement [www. Bis.org](http://www.Bis.org)



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Case Study on Compounding of Contraventions under FEMA, 1999 with Specific Reference to Foreign Direct Investment*

➤ Compounding refers to the process of voluntarily admitting a contravention/breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules, regulations, notification, circulars, etc issued there under by the person committing such contravention and seeking redressal. This article has tried to cover some of the hidden practical aspects of compounding with respect to FDI.

The provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention either before or after the institution of adjudication proceedings. The Government of India has framed Foreign Exchange (Compounding Proceedings) Rules, 2000, empowering Reserve Bank of India to compound contraventions under Section 13 of FEMA, 1999 except the contravention under section 3(a) wherein Directorate of Enforcement has the powers of compounding.

PROCESS OF COMPOUNDING

An entity can apply for compounding on becoming aware of the contravention either *suo motu* or through a memorandum issued to him by RBI (hereinafter referred to as CA). Even if an entity goes for compounding *suo motu*, CA prepares a Memorandum of all the defaults or contraventions, if any made by that entity based on documents available with it. In any case, memorandum preparation is required to record not just the only contravention being disclosed by the entity *suo moto* but all the contravention/ defaults, if any, made by the said entity which needs to be compounded. CA ensures that once compounding is taken up by it against an entity, all the

defaults are considered in one go itself.

Any contravention relating to an entity, within a time span of 3 years after the compounding from RBI, will go straight to Directorate of Enforcement for compounding and not to the RBI.

A Memorandum generally describes all the contraventions sequentially, giving details of the period of delay or the regulations/ sections which are being violated/ not complied, the amount involved in the contravention, the authority to which the contravener can apply for compounding, and so on. Therein RBI further advises the time limit within which compounding application can be made.

APPLICATION FOR COMPOUNDING

- Duly completed application form (in duplicate) as appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 to the Compounding authority (RBI)
- Details of contravention
- Information in Table A, B & C to the application form as detailed below
- Other enclosures

Information in Table A :

- Details of all the foreign remittances received by the applicant entity from "the date of Incorporation of the entity till the date of application"
- Date of reporting to be given in the tables is the date of reporting

* With support from Radhika Bagtharia.



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Case Study on Compounding of Contraventions under FEMA, 1999 with Specific Reference to Foreign Direct Investment

to RBI and not AD

- Every foreign inward remittance needs to be reported to RBI in prescribed form with requisite enclosures.

In terms of Section 11 (2) of FEMA, 1999, the Reserve Bank may, for the purpose of ensuring the compliance with the provisions of the Act or of any rule, regulation, notification, direction or order made there under, direct any authorized person to furnish such information, in such manner, as it deems fit. Accordingly, RBI has entrusted to the Authorized Dealers (ADs) the responsibility of complying with the prescribed rules/ regulations for the foreign exchange transactions and reporting the same as per the directions issued from time to time. Hence an entity is required to report to AD which then forwards it to RBI. But it is the responsibility of the applicant entity to ensure that the Authorized Dealer has duly reported to RBI in time. In case of default it will be a default on Entity's part and not AD. In order to avoid any chances of non compliance it is recommended to ensure hand delivery of all the documents to RBI under its acknowledgment.

Information in Table B

- Details relating to allotment of shares to a foreign investor for which there has been foreign inward remittance.

Allotment of shares should be done within 180 days from the date of receipt of inward remittance. If entire share subscription amount is not received in one shot and inward remittance is in various tranches, time period of 180 days starts for every single tranche from the date that tranche is received. Normally default lies where the entity assumes the period available with them for allotment of shares starts from the date of the last tranche i.e. after the entire subscription amount is received. Thereafter the Entity issuing shares has to report to RBI through AD in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares. In any case if there have been two or more allotments with the time frame of 30 days, one FC-GPR can be filed giving details of those allotments.

Information in Table C

- Details regarding refund of excess application/ subscription money needs to be provided.

In case shares are not allotted within 180 days then the amount of consideration received or after allotment if there is any excess application money, then such excess consideration shall be refunded to the person concerned. If on an application made to RBI, RBI permits to refund such outstanding application money beyond the period of 180 days, then RBI approval letter and date of such letter shall be provided in table C. Where there is remittance of money outside India, Form A2 is also to be filed and given to the AD.

ENCLOSURES

- Copies of Balance Sheet of all the years where there has been foreign inward remittance and allotment of shares.
- Reasons of contraventions be given for all the contraventions mentioned in the memorandum issued to the applicant.

On submission of duly completed documents, the RBI re-studies the

entire matter and gives an opportunity to the applicant entity to present its representations, if any.

OPPORTUNITY OF PERSONAL HEARING

CA allows applicant to appear in person for hearing on the matter of compounding.

RBI vide its press release dated January 18, 2013 has clarified that appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. Applicant may enclose full information relating to case with the application or thereafter and may exercise his discretion with regard to appearing for hearing. However direct appearance by the applicant is encouraged by RBI. Appearing for or opting out of personal hearing does not have any bearing whatsoever on the amount of penalty. It is recommended that the applicant should appear before the CA. While presenting his case in personal hearing, applicant must be ready with a brief summary of the activities of the entity, foreign exchange related matters like foreign exchange inflows and outflows, details of foreign investors, reasons for contraventions with supporting documents. In explaining the reason for delay in reporting to RBI, the onus is on the entity to prove that it filed and reported to RBI on time, no matter if it did file with AD in time and delay was by AD for whatsoever reason. Since RBI deals with AD, the entity has to coordinate with AD for timely reporting, to get acknowledgement, etc. If there is any default by AD it is primarily the entity who will be penalized.

Vide circular no. 76 dated Jan 17, 2013, RBI has reported that from the data of compounding cases received by Reserve Bank, it is observed that more than 70% of the total cases pertain to FDI within which about 72% relate to delay in advance reporting/ submission of FCGPR. In the case of ECB, 24% of the cases received relate to drawdown without obtaining LRN. Similarly, 66% of the ODI cases relate to non-reporting of overseas investments online. RBI has also reiterated that in terms of Section 11(3) of FEMA, 1999, it may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank.

PENALTY

The penalty imposed by CA in its order is final and conclusive. No appeal is allowed against the penalty amount. The applicant must make the payment of penalty within 15 days from the date of order. In case applicant fails to pay the penalty amount within the time specified, he shall be deemed to have never made an application for compounding of any contravention under the Foreign Exchange (Compounding Proceedings) Rules, 2000 and the provisions of the Foreign Exchange Management Act, 1999 for contravention shall apply to him.

ACKNOWLEDGMENT OF PAYMENT OF PENALTY

After payment, applicant shall receive from RBI an acknowledgement of payment of penalty and thereafter the matter is deemed to be closed.

CS



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Foreign Exchange Volatility: Effect on Corporate Expansion Plans

➤ Going global has several benefits as well as risks. Volatility in foreign exchange rates is too crucial for a firm and affects the expansion and diversification plans in various ways. Besides explaining how exchange rate fluctuations affect corporates this article outlines the measures to safeguard against such volatility.

When a company wants to expand its business beyond the geographical boundaries by establishing new offices, incorporating subsidiaries or acquiring existing firms, the reasons for such expansion are to reap larger profits, develop a diversified market, acquire resources and skills, improve the competitive position and penetrate into new areas. Sometimes the objective is also to develop a defensive strategy. Normally going global has several benefits and also has several risks. The regulatory environment, cultural differences, political risk, currency movements are the important factors. The movements in foreign exchange rates have crucial impact on a firm and affects it in various ways and it can result in recalculation of the obligations of debtor and creditor, re-value the assets and liabilities.

FLOW OF EASY MONEY

Theoretically currency movements should be driven by the economic fundamentals and progress of the economy. But 'easy money', a surplus of money flowing around the globe originated either in the form of Quantities Stimulus (QE), large scale subsidy by Governments, emergence of sovereign wealth funds (created by Governments to invest), the emergence of large financial institutions and funds accessing offshore markets, have all increased the currency volatility. This highly hot-tempered

money, targeting short term instruments, stock, commodity and currency market, has created some advantages in India but if we aren't prepared, in its worst form It can impede the business as a whole.

The problem with the flow of easy money and its effect can be seen in 1997 currency crisis in South-East Asian Countries, in the Sub-prime Crises of 2008 (Collapse of Global Investment Banks and other Financial Institutions, emergence of Toxic Assets and their notorious effect throughout the world) and in the recent deep European recession. The question is how we are prepared to face such problem. In India in an era of liberalized ECB norms and liberal export import policy with the issue of Foreign Currency Instruments such as ADR/GDR, FCCB, ECB, and carrying huge foreign exchange liability, corporates, which often carry plenty of hidden currency risk in their portfolios are equally responsible for the currency fluctuations.

EFFECT ON VALUATION OF FIRM

A bid primarily depends upon factors such as value of capital, assets and liabilities and the brand value the firm carries, whose values are correlated with the denomination of currency. The strength of Sterling compared to the declining fortunes of the Indian Rupee means that the Dollar will buy approximately 10% more than it would have done 12 months ago. This could make a very significant difference on large purchases. For example on 1.5 million rupees, you would now be able to retain an additional Rs. 150,000.



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The 'easy money' has two effects - first, it affects the Stock Market trend (In India FIIs are the biggest market driver) and second the price of local currency (a strong reason for the fluctuation is foreign unstable money comes for portfolio investment); both the currency and the stock market effects may reflect errors in valuation or wealth explanations. The change in currency may affect in two ways - first, in transactions effected in foreign denominated currency and restated into foreign currency before they can be recorded and second in translating net assets, including equity investments and liabilities "denominated" in a foreign currency.

With a fluctuating currency, while offering a cross border merger/takeover bid it is very difficult to communicate a clear message to the shareholders of the target company about the real consideration and the actual price. Some sectors, have large foreign exposure such as mining, textile, software, and outsourcing, are highly sensitive. It is a normal phenomenon for them since with the change in currency prices their share prices also go up and down.

Sometimes a bidder is concerned about exchange rate fluctuations impacting on the value of the target chosen to make its bid conditional on a particular exchange rate; in this the deals settled in foreign exchange currency need to be specific about the circumstances triggering the exchange rate condition (e.g. what measure will be used for the relevant exchange rate and at what time will this measure be applied) though inclusion of such condition may have practical issues and even in determining the real value to be paid to the investor.

Two very popular strategies, solely based on prediction, leading

(fasten the transaction due to the exchange rate being unfavorable) and lagging (delay the transaction with an anticipation of exchange rate being unfavorable) are used by the bidders in a currency fluctuation environment. With this kind of strategy the investor's interest may get affected and there are chances that a group of Investors may get undue advantage or may have to bear loss. Now a days the shareholding pattern is divided among three main players namely the Indian retail investor, domestic institutional Investor, and foreigners include FII, QFI and NRIs. The change in currency prices and consequently bid valuation may create a currency swapping option which ultimately makes it possible that for the same transaction two investors may receive different considerations.

REGULATORY CONCERNS

Do we have any system to deal with cross currency acquisitions in such a situation? The answer cannot be a definite one. India has generally been a current account deficit country. In view of the large current account deficit, the exchange rate of the rupee is susceptible to the influence of large capital movements, especially during crisis periods. The exchange rate pressure also evidences that the demand for foreign currency has increased vis-a-vis that of the Rupee in part because of the improving domestic liquidity situation.

If we talk about an investment decision made by a foreign entity in India, the Companies Act 1956 is not very affirmative about the merger of an Indian company with any foreign company. But the new Companies Act has such provisions. Neither the SEBI Takeover Code nor ICDR has specific provisions to deal with the bid originally denominated in foreign currency; even the pricing norms do not cover cross currency adjustments. The Foreign Exchange Management Act along with the Reserve bank of India Regulations provide a cap of 400% of networth for overseas expansions. This cap is in Indian rupees and the actual value of investment which is denominated in foreign currency may vary and largely depend on what is the current price of Indian Rupee. The absence of clear provisions makes the situation more complex.

In case the consideration offered for that stake is not in the same currency as the bid consideration, how you will treat the actual value of the consideration paid due to the fluctuation in currency prices? Whether bidder and/or target entity need to make any regulatory disclosure in this regard?

The question will be more important when the target company has a foreign stakeholder. Might be due to the change in the rate he may be in a disadvantageous or advantageous position and may get a higher/lower price, than a domestic investor. The Regulators need to come up with the clearer provisions to deal with these situations.

THREAT OF INTERNATIONAL DISPUTES

Since 1990, corporates are welcoming foreign money and





allowing outbound investments through FPI, FDI via JV/Alliances/Technology Agreements. The Government has also encouraged Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs). These treaties/agreements advocate international dispute resolution mechanism. The number of investment disputes brought to international arbitration is continuously on the rise necessitating the need for public debate about the efficacy of the investor-State dispute settlement (ISDS) mechanism and reform thereof. The cancellation of Telecom Licenses and consequent demand for compensation by the foreign partners, the dispute between India's leading FMCG and its foreign partners, and the recent decision by the Supreme Court over a patent issue are the example of such disputes. Actually not only the foreign partners but also the recently emerged various groups of investors are dragging the Countries and the corporates into legal battle by using BITs, FTAs, and agreements. This phenomenon is worldwide and India is not an exception to this. The claims they are making are huge enough to wipe out the benefits one can expect with the respective deals and can cause a huge outflow of foreign currency and adversely affect the financial position of the company.

SMALLER AND MEDIUM FIRMS ARE ON RISKIER SIDE

Even if you have no exposure towards international currency fluctuations you still have to face risk. It may directly affect you when you are competing with the firms which have international risk diversification. Even indirectly exchange rate fluctuations like rising interest rate change in prices, inflation and other financial effects can affect the business. The small and medium companies by failing to protect themselves from the effects of currency fluctuations lost almost £ 900 million in 2007.

It is also important to understand that India has generally been a current account deficit country. In view of the large current account deficit, the exchange rate of the rupee is susceptible to the influence of large capital movements, especially during crisis periods. India, has been particularly affected despite its relatively promising economic fundamentals. The exchange rate pressure also evidences that the demand for foreign currency has increased vis-a-vis that of the Rupee and this tight monetary situation can affect smaller and medium firms more than the bigger ones which have better capital adjustment capacity.

EMERGENCE AND FAILURE OF CARRY TRADE

If one had the opportunity to borrow money at 1%, and then invest that cash and earn, say, 3%, who wouldn't be interested? One would be generating essentially free money because the borrowed cash is costing less than what could be earned by investing that money. In the investment world, this is known as the "carry trade" – borrowing at low rates to invest at higher rates. It's a strategy particularly prevalent among currency traders and now

» Even if you have no exposure towards international currency fluctuations you still have to face risk. It may directly affect you when you are competing with the firms which have international risk diversification. Even indirectly exchange rate fluctuations like rising interest rate change in prices, inflation and other financial effects can affect the business.

being used in corporate expansions and investments.

During the last two decades emerging markets like India remain a favorite destination for investors. This can be seen from high volume of foreign portfolio investments, inflated share prices, sky touching Stock Market Indexes, higher volume of trading activities, and the emergence of FII and market leaders. Easy availability of foreign money has multiplier effects on domestic institutional and individual investors as well. The trend had benefited Indian firms in several ways; they get cheaper capital, which allows expansion more rapidly and also the facility to make international expansions. Indian firms went for overseas acquisitions and also for listing and issue foreign currency denominated debt, equity and quasi instruments, external borrowings. The strategy has dual effects - it not only increases foreign exposure and underscores the need to an effective currency risk management system but also allows operational hedging involving cross-border mergers and acquisitions (M&A), because it is possible to increase the currency-denominated sales or costs by buying a foreign company. It is not very clear as to whether operational hedging of currency risk exposure will drive the decision whether or not to undertake cross-border deal but firms with higher exposure to target currencies and market values become less sensitive to fluctuations of the target currency after the takeover.

CRISIS EFFECT CREATES A CYCLE DIFFICULT TO BREAK

The situation has changed after the 2008 crises which resulted in several financial theories being re-written and redefined the flow of easy money and search for safe heavens. This time suddenly corporates that issued convertible debt instruments fell into a deep financial crisis. Some went for debt restructuring and some chose the dangerous path of paying back the debts. But unfortunately the easy money is no longer as easier as it was some time before. International credit rating agencies have also downgraded risk worthiness of the Indian Economy. Global Investors started to look at options other than the Stocks and moved to safe instrument like Gold (an anti stock and anti Dollar instrument). Retailers moved to debt instruments and in India



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during the last couple of years even the corporates raised money more through bond than through equity. It results in another cycle; sudden flow of money makes Rupee weaker which causes inflationary pressure and results in higher interest rate making it difficult for the corporates to access money; lower share prices, decline in investors' wealth and delayed project implementation/expansion.

REGIONAL ZONES

Differences in valuation can affect expansion propensities through two main channels. Differences in wealth that occur because of exchange rate or other shocks provide a financing advantage by lowering the cost of a potential acquisition. High debt financing and large foreign exchange risks make Indian firms a cheaper option for merger and can be acquired at a cheaper cost than they were 4-5 years ago. At the same time Indian firms find it difficult to acquire foreign firms. During the last decade so many new investment destinations have emerged in ASEAN, Eastern Europe, Latin America, and even in Africa. The European recession along with the weakening of Euro made European Blue chips cheaper and attractive and the foreign investors started to move towards them. With familiar market and clearer Regulation European Companies are in better position now to make global penetration despite regional problems.

WHAT CORPORATES CAN DO

The problem is only either activity specific, for short term or for a predefined period and the long term strategy to stabilize currency is left only with the Central Banks, Financial players, and the Governments. A close look on the Indian corporates shows that their balance sheet is affected most through fluctuation in US Dollars than other currencies. Managing the P&L and cash flow impacts related to foreign exchange exposures can appear to be daunting problems. The following precautions would help to mitigate the problem of fluctuation:

- Be cautious and carefully analyze the foreign Inward/outward investment agreement
- Before expanding overseas or collaborating with a foreign firm define a sustained foreign Exchange path which matches with the company's present and future objectives. In particular consider the following aspects carefully:
 - (1) The decision to search for foreign investment
 - (2) An assessment of the political climate in the host country
 - (3) An examination of the company's overall strategy
 - (4) Cash flow analysis
 - (5) Required rate of return
 - (6) Economic evaluation
 - (7) Selection
 - (8) Risk analysis
 - (9) Implementation
 - (10) Expenditure control
 - (11) Post-audit.

- A close look at possible assets creation, demand supply pattern, investment and receivables and liabilities adjusted with currency exchange rate pattern
- Assess whether the investment would result in a natural offset or netting of some of the foreign currency balance sheet exposure. Re-measure the remaining net consolidated balance sheet positions due to changes in foreign exchange rates with the impacts recorded in the income statement
- Foreign-exchange rates, interest rates, and inflation are three external factors that affect Currency Prices; these factors stem from several sources, such as economic conditions, government policies, monetary systems, and political risks. Investors must have a close look on these factors
- Monitor on an ongoing basis. Periodically review the foreign currency balance sheet positions and update changes in the anticipated foreign currency cash flows by subsidiary. Review monthly income statements and ensure foreign currency gains and losses are reasonable based on identified exposures and derivative contracts in place. If they are not, a foreign currency exposure has likely changed or not been identified, requiring further investigation.

NEED FOR THE COLLECTIVE EFFORTS

A foreign investment decision involves many unique variables. They include (1) different tax systems, (2) foreign-exchange risk, (3) project versus parent cash flows, (4) restrictions on remittance of funds, and (5) political, financial, and business risks. The reason behind the currency fluctuation is macroeconomic and a single entity may have a little control over the same but may have substantial effects on the firm's valuation, credit worthiness and can lead to a crisis. The efforts need to tackle this problem cannot be left only with the Regulator but will have to be at each level. It can be possible by strengthening international alliances and growth in total fixed capital formation (i.e., private sector investment in plant and equipment plus public sector investment). In order to sustain current growth patterns, a number of supply-side issues, such as the enhancement of human resources, development of supporting industries, technological and infrastructure improvements, as well as the containment of inflation, must be addressed.

Till date it appears that India Inc and most of the Government policies will basically be for adjusting to exchange rate fluctuation vis-a-vis the U.S. dollar. On the Government front strategies should be to minimize macro-economic imbalances as well as bottle necks for growth in production and capital procurement capabilities. Taking such long-term policies into account, it is necessary to enforce a comprehensive measure which would incorporate necessary adjustments to policies relating to price increases and reduction of short-term current account deficits. Budgeting for International Business Management ties come from hard thinking, careful planning, and, frequently, large outlays for research and development and must be implemented carefully.

CS



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FDI: Issue of Shares for consideration other than Cash

➤ A company incorporated in India under the Companies Act, 1956/2013 and having share capital has the option of issuing shares for cash consideration or consideration other than cash. This article highlights the law and procedure relating to issue of shares for consideration other than cash, with particular reference to issue of shares to non-residents as defined by the Foreign Exchange Management Act, 1999.

Introduction: Issue of shares for consideration other than cash

Under the existing provisions of Companies Act, 1956 the compliance requirement for issue of shares for consideration other than cash to a resident is as follows:

- Ascertain and value the asset/consideration for which the shares are proposed to be issued
- Enter into a valid agreement for the issue of shares against the intended non-cash consideration
- Pass appropriate resolutions for the allotment of the shares and issue of share certificate
- File the return of allotment and the copy of the Agreement referred to in (b) above with Registrar of Companies.

There are no restrictions, as such, in respect of what may constitute the “consideration other than cash”. It may be anything, as long as it is legally valid. Examples include any asset, (fixed or current), service provided, sweat equity, technical collaboration fee, royalty fee, extraordinary payments, franchisee contracts, goodwill, intangibles.

But a similar privilege is not available for a company to issue shares for consideration other than cash to non-residents as

defined in the Foreign Exchange Management Act 1999(FEMA). The company in this regard, is bound by the extant provisions of FEMA and Reserve Bank of India (RBI) guidelines and circulars issued from time to time.

The following paragraphs outline the various aspects encompassing the issue of shares to non-residents as regulated by the FEMA and the RBI, and in particular, highlight the various aspects relating to the allotment of shares for non-cash consideration.

Meaning of Cash and non-cash consideration: Companies Act v. FEMA

In the context of understanding the legal and procedural aspects relating to the issue of shares to non-residents for consideration other than cash, it is important to note that the meaning of “cash consideration” and “consideration other than cash” under the Companies Act 1956 and FEMA are significantly different. Under the Companies Act, issue of shares against cash received or cheque received or a genuine debt due for repayment qualify as consideration received in cash¹. But under FEMA, debt due for

Genuine debt: Is it “consideration for cash”?



¹ CLB Circular 8/4/75 dated 18.11.1969 & 8/32/(75)77-CL V dated 13.3.1978.



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FDI: Issue of Shares for consideration other than Cash

» Preference capital, whether convertible into equity or not forms part of share capital under Companies Act 1956, but, under FEMA only fully and mandatorily convertible preference capital is classified as share capital and redeemable preference shares is classified as debt [ECB]. This distinction is very important as it has an impact on the determination of "fair value" (by discounted cash flow method) of shares of an unlisted company.

repayment cannot be treated as consideration received in cash for the purpose of issuing shares. Issue of shares against certain types of debt is possible by adhering to the procedures prescribed for converting such debt into equity as discussed elsewhere in this article.

Meaning of Equity and Preference Capital: Companies Act v. FEMA

Another important point to be noted is the difference in the meaning 'capital' and 'debt' as envisaged in the Companies Act and FEMA. Under the Companies Act, 1956, share capital comprises both equity and preference shares, irrespective of whether the preference shares are convertible into equity or not.

Non-convertible preference shares: Capital or Debt ?

Equity capital is the 'permanent capital' of the company. Equity capital cannot be redeemed during the life time of the company. The paid up equity capital of a company can never be reduced except by way of buy back of shares (funded by its profits, securities premium, free reserves or out of the proceeds of new issue of shares) or by way of capital reduction (by making an appropriate application to the Court under section 100 of the Companies Act 1956/ Section 66 of the Companies Act 2013). As such equity capital of the company remains with the company 'for ever'.

Preference share capital, under the Companies Act, 1956/ Companies Act, 2013 forms part of share capital of the company. In terms of 'permanency' preference shares are different from equity shares – a company can issue only redeemable preference shares and the maximum term for redemption is 20 years². At the

end of the predetermined term, preference shares are required to be either redeemed or converted into equity shares. Under FEMA, preference share capital which is convertible into equity at a predetermined price and time frame is classified as share capital. Non-convertible/ irredeemable shares are considered as debt and are governed by the regulations prescribed for availing External Commercial Borrowing (ECB). FEMA considers an instrument which does not have the 'permanency' character of equity as debt.

Thus, preference capital, whether convertible into equity or not forms part of share capital under the Companies Act 1956, but, under FEMA only fully and mandatorily convertible preference shares is classified as debt [ECB]. This distinction is very important as it has an impact on the determination of "fair value" (by discounted cash flow method) of shares of an unlisted company. Valuation of shares (as mandated by FEMA) is an important matter in the context of adhering to the pricing guidelines for issue of shares to non-residents /transfer of shares between residents and non-residents and buy back of shares.

Present position of law: issue of shares/ convertible instruments under Foreign Direct Investment

Foreign Direct Investment [FDI] in an Indian company as reckoned by FDI policy/issued by Dept. of Industrial Policy & Promotion on 01/04/2013 and up-dated from time to time) governs the issue of equity shares, mandatorily convertible preference shares and other instruments to non-residents. These regulations are applicable to issue of fully convertible debentures also.

Which Way:
Automatic Route or
Permission Route

Issue of shares to non-residents may be made under the Automatic Route or Permission Route.³

1. The Automatic route permits issue of shares without prior approval, subject to adherence to prescribed norms. Briefly, the norms require that such an issue should be for an activity covered under automatic route and is within the prescribed sectoral cap of quantum of investment; mandates adherence to pricing guidelines and receipt of consideration in foreign currency through one of the following channels:
 - inward remittance through normal banking channels
 - debit to NRE / FCNR account of a person concerned maintained with an AD category I bank
 - debit to the Escrow Account in which the money is remitted and held until the actual issue happens.
- Inward remittance by other modes, i.e. by way of international

² Section 80 (5A) 1978.

³ Consolidated FDI Policy dated 1.4.2013.



demand draft or any source which is not a clear one is unacceptable as it would render verification of Know your Customer (KYC) difficult.

Other conditions require the company to issue the shares within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR(B)/Escrow account; failing which the amount received requires to be refunded. The RBI may, on an application made to it and for sufficient reasons, permit a company to refund/allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt. The company is required to comply with reporting requirements by filing the relevant forms with the Authorised Dealer. (Filing Annexure 6/KYC and Form FC-GPR).

Exceptions

Apart from the above, a company may, in terms of the recent liberalised norms, issue shares [equity or mandatorily convertible instruments/shares] against the following, provided the prescribed conditions are satisfied.

(i) Indian companies have been granted general permission for conversion of ECB other than deemed ECB [import payables or trade credits] into shares/ convertible debentures, subject to the following conditions and reporting requirements:

Exceptions: liberalised norms: issue of shares

- Conversion of ECB
- Import of Capital Goods, Royalty & technical know-how fee
- Pre-operative Expenses

- The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government's approval for foreign equity
- The foreign equity after conversion of ECB into equity is within the sectoral cap, if any
- Pricing of shares is determined as per SEBI regulations for listed company or discounted cash flow (DCF) method for unlisted company
- Compliance with the requirements prescribed under any other statute and regulation in force
- The conversion facility is available for ECBs availed under the Automatic or Approval Route and is applicable to ECBs, due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators, but not for import payables or trade credits.

(ii) General permission is also available for issue of shares against lump-sum technical know-how fee, royalty, under automatic route or FIPB route, subject to pricing guidelines of RBI/SEBI and compliance with applicable tax laws.

(iii) Units in Special Economic Zones (SEZs) are permitted to issue equity shares to non-residents against import of capital goods subject to the valuation done by a Committee consisting of Development Commissioner and the appropriate Customs

officials.

(iv) Issue of equity shares against Import of capital goods/ machinery/equipment (excluding second-hand machinery), is allowed under the Government route, subject to compliance with the following conditions:

- The import of capital goods, machinery made by a resident in India, is in accordance with the Export / Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the FEMA relating to imports issued by the Reserve Bank
- There is an independent valuation of the capital goods/ machinery/equipment by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents/certificates issued by the customs authorities towards assessment of the fair-value of such imports
- The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity
- Applications complete in all respects, for conversion of import payables for capital goods into equity should be made within 180 days from the date of shipment of goods.

(v) Issue of equity shares against pre-operative / pre – incorporation expenses (including payment of rent etc.) is allowed under the Government route, subject to compliance with the following conditions:

- Submission of Foreign Inward Remittance Certificate for remittance of funds by the overseas promoters for the expenditure incurred
- Verification and certification of the pre-incorporation / pre-operative expenses by the statutory auditor
- Payments made directly by the foreign investor to the company. (Payments made through third parties citing the absence of a bank account or similar such reasons will not be allowed)
- Application for capitalisation to be made within 180 days from the date of incorporation of the company
- All requests for conversion should be accompanied by a special resolution of the company.

There are some practical difficulties in conversion of the pre-incorporation /pre-operative expenses into shares – for example-opening of a bank account is possible only after the incorporation of the company. However the condition listed above requires the remittance to be made through a bank account only.

2. **Government Permission Route:** Any issue that does not fall within the purview of the above said Automatic Route is required to be done only after getting the approval from the



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FDI: Issue of Shares for consideration other than Cash



while considering the issue of shares against consideration other than cash, it is important for the company to consider the implications of provisions of the Income Tax Act /Rules and any other statute and take a composite view before issuing such shares to non-residents. For example, under the IT Act, issue of shares by a private company to residents for a price above the fair value determined by DCF method, is liable to tax.

Foreign Investment Promotion Board (FIPB). Thus it is evident from the above that issue of shares for consideration other than cash to non-residents, falls under this category.

Allotment of shares requiring the approval of the FIPB: Issue of shares for consideration other than cash

Issue of shares to non-residents against funds not received through channels listed in the preceding para require the prior approval of the FIPB. However the present day complex business transactions, evolving business opportunities, capital intensive projects, large outlay of pre-incorporation expenses, long gestation period of a project, etc. may compel companies and promoters to consider issue of shares to the non-residents for consideration other than cash. Given below are examples of some situations in which a company may want to consider issue of shares against non-cash consideration. The FIPB considers each such application on merit to grant or deny permission.

(i) Issue of shares against import of raw material/ trade payables

Often, companies, especially start-ups having a long cycle of manufacture - marketing or distantly spaced milestone related realisation of revenue or sick companies, find it difficult to make payments upfront for materials imported or may have substantial trade payables. Such companies may greatly benefit if they are allowed to issue shares in lieu of import payments or trade dues. This may also help to promote mutually beneficial long term business relationship between the company and the importer.

Any proposal to issue shares against raw material import or trade payables should have the approval of the FIPB. As evident from published information, FIPB has not granted such approvals.

Import of capital goods, raw material /trade payable are all governed by the EXIM policy, FEMA and valuation by customs authorities. It is to be noted that permission is granted for issue of shares against import of capital goods while it is denied for issue of shares against raw material imports/ trade payables. This can

The big challenge:
Valuation

be explained if we consider issuance of shares against raw material imports/trade payables to be in the nature of recurring current account transaction (falling outside the purview of FDI) versus issue of shares against import of capital goods which is in the nature of capital account transaction.

(ii) Issue of shares in lieu of services

Companies with substantial commitments in respect of services availed from non-residents may desire to issue shares in lieu of payments for such services. Also, issue of shares for such services tends to promote mutually beneficial long term business relationship between the company and the service provider.

However the issue of shares in lieu of services availed is not permitted under FEMA and it requires the permission of FIPB. It is a difficult proposition for the FIPB or other regulatory authorities to grant approvals under this category. The main constraint would be the difficulty in ascertaining value of services rendered and the authentication as to whether such services were actually rendered/delivered. Unlike valuation of import of capital goods, valuation of services imported is subjective and cannot be based on a formula or any rigid framework. It may also be noted that the payments for import of services is a current account transaction and payments for the same may be made freely as a current account transaction, just like making payment for the import of raw materials or goods.

(iii) Share swaps

Share swap, simply put, means that the Indian company acquires shares in a foreign company by exchanging its own shares. An increasing number of companies are acquiring shares in overseas companies. Such investments are governed by the Overseas Direct Investment (ODI) guidelines and procedures prescribed under FEMA/RBI. Companies opt for share-swap route as it reduces the requirement for the entities involved to arrange for the cash funds to invest in the overseas company. It is also mutually beneficial and meets the investment objectives for the concerned.

The issue of swap of shares requires the approval of the FIPB. The FIPB considers share-swap proposals on a case to case basis. Values of shares of the entities involved should be comparable for obtaining FIPB approval. In many cases



the approval has been granted.

(iv) Issue of shares against intangible assets

Companies often acquire intangible asset such as goodwill, brand value, trade mark, or franchisee rights. These may have large outlays and payments may be spread over a long period of time. Companies may prefer to issue shares in consideration of acquiring such assets. However issue of shares for such consideration can be done only with the prior approval of the FIPB.

In the absence of widely accepted, objective methods for valuation of intangible assets, the possibility of over-valuation/ under valuation looms large and poses a huge challenge for the regulatory authorities to grant approval. Further creation of fictitious assets and money laundering are other serious concerns for the FIPB.

(v) Issue of shares against one-time extraordinary payments

Companies may come across the need to allot shares against one-time and generally large amount of extraordinary payment obligations. Examples include issue of shares in Joint Venture Company in consideration of the business in the form of assets, liabilities and accumulated profits; issue of shares in lieu of an award sum payable in an arbitration case. In such instances, the FIPB considers the application on a case to case basis and generally grants approval if such requests are within the purview of FEMA.

(vi) Advance received for export

Situations have often compelled companies to consider issue of shares against export advance received. This requires prior approval by FIPB. FIPB has not favoured issue of shares against export advance received, as the same is not permitted under FEMA. This again can be explained that advance received for export obligation is in the nature of a current account transaction.

(vii) Issue of Sweat equity shares

Sweat Equity shares are usually issued to promoters in order to compensate them for their contribution in the formation of the company /execution of projects. The issue of sweat equity to non-residents requires the approval of the FIPB. As the Companies Act permits this, FIPB has been liberal in granting approval, and treats the issue of sweat equity as an issue for consideration other than cash.

(viii) Issue of shares against dividend payable

A company cannot issue shares in lieu of dividend declared as the Companies Act, 1956 prohibits it. Dividend declared and payable to a non-resident should be remitted through the banking channels to the non-resident-investor. The company cannot treat dividend declared as debt due to the non-resident investor and set it off by issuing shares against it.



Therefore conversion of dividend payable into shares requires the approval of FIPB.

(ix) Issue of shares against outstanding loan

Companies have found themselves in situations where non-residents have cleared obligations on behalf of the company or incurred expenses, thereby resulting in loans/amounts due to them. This can be done only with the approval of the FIPB. If the loans have been properly obtained as ECB, there would be no difficulty in issue of shares against them.

(x) Other kinds of consideration /unclear source of money for issue of shares

The need for a company to issue shares against various types of consideration may arise during the course of its existence and these may be very peculiar and usually one time situations. Issue of shares against expenses incurred in purchase of land, or against NRI clearing an overdraft, issue of shares against amount received by invoking a bank guarantee, obligations under settlement schemes, payment of management service fee, payment of foreign branch office costs are some examples of consideration "other than cash" against which shares cannot be allotted unless prior approval of FIPB has been obtained.

The FIPB grants approvals on a case to case basis and only if such instances fall within the broad framework of law and in particular FEMA. Grant of approvals by FIPB / RBI under FEMA is always subject to compliance under other statutes. It is not possible to generalise the grounds on which the FIPB may grant or reject an application for issue of shares for non-cash consideration.

FIPB: perspective, approach and way forward

The FDI policy is framed by the Government of India, Ministry of



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FDI: Issue of Shares for consideration other than Cash

Commerce & Industry- Department of Industrial Policy & Promotion(DIPP). The FIPB is the authority for granting permission for issue of shares for consideration other than cash, as dictated by FDI policy.

The FIPB is aware of the increasing and pressing needs of corporates to issue shares for consideration other than cash. It had, way back in 2009⁴ itself, observed that proposals for issues of shares for consideration other than cash have been on the rise every year. However in the absence of norms or guidelines to adhere to in this regard, the FIPB adopts a cautious approach. It is perhaps weary of letting the specific approval route becoming a norm, thereby defeating the very purpose of FDI Regulations. It has also been impressing upon the DIPP to expedite formulation of liberalised and clear policy in regard to issue of shares for non-cash consideration. Till such clarity emerges companies will continue to find ways and means of convincing the FIPB to grant approval issuing shares for consideration other than cash.

Would "permission route" defeat the purpose of FDI Regulation?

Implications of the Income Tax Act/Other Statutes

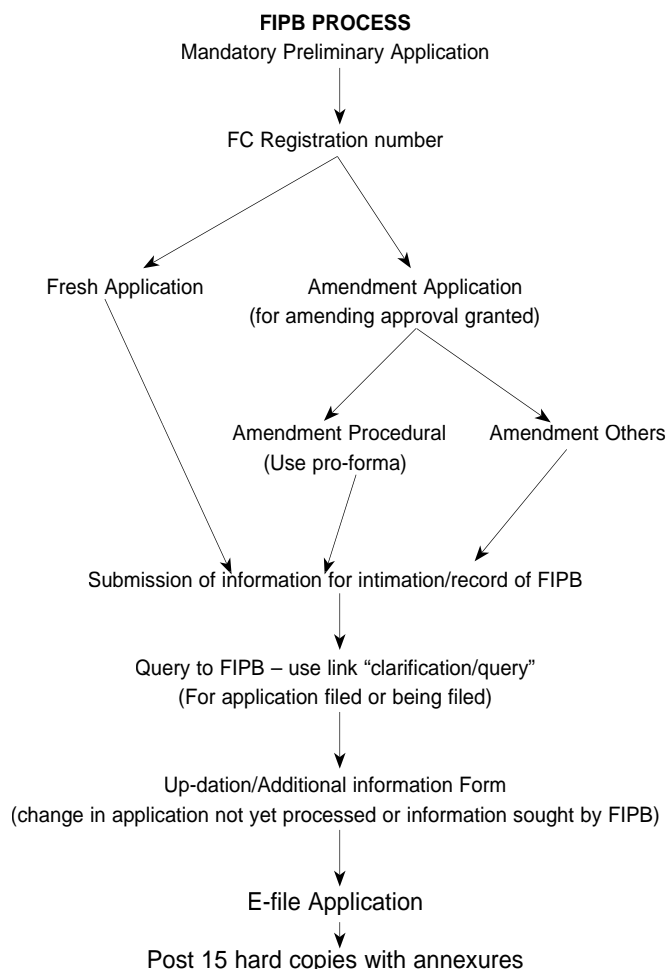
Last but not the least, while considering the issue of shares against consideration other than cash, it is important for the company to consider the implications of provisions of the Income Tax Act/Rules and any other statute and take a composite view before issuing such shares to non-residents. For example, under the IT Act, issue of shares by a private company to residents for a price above the fair value determined by DCF method, is liable to tax. [Section 56 (2) (viib) of the IT Act] Whereas it is not applicable to issue of shares to non-residents. Likewise the implication of the depreciation on imported machinery, which fall under various blocks / rates of depreciation will have an impact on the profitability and future valuation of the shares. Any permission granted by the FIPB for conversion of shares for which general permission is available, is subject to compliance of tax laws [such as TDS] and other applicable laws.

Rare & Peculiar Cases

Brief Procedure for making an application to FIPB

An application made to the FIPB should be complete and

convincing in every respect. The process is elaborate. The application is usually considered and disposed off by the high powered FIPB consisting of members drawn from concerned Ministries of the Government of India (such as finance, industry) and experts, where required. The process of making an application is depicted in the chart below⁵



Conclusion

The law and process for issue of shares for consideration other than cash is evolving. The concerned authorities should give due importance to the various factors and balance the conflicting needs of the stake holders i.e. corporates, professionals, economy and the government. Valuation of the asset is the most critical factor. Corporates and professionals need to take a comprehensive, long term view and approach in understanding and implementing any proposal to issue shares for consideration other than cash.

CS

⁴ Annual Report published by FIPB – 2009 & 2010.

⁵ Website of FIPB: www.fipbindia.com.

Articles in Chartered Secretary Guidelines for Authors

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2. The article must be original contribution of the author.
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4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
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11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

Declaration-cum-Undertaking

1. I, Shri/Ms./Dr./Prof, declare that I have read and understood the Guidelines for Authors.
2. I affirm that:
 - a. the article titled "....." is my original contribution and no portion of it has been adopted from any other source;
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(Signature)



Corporate Laws

LW: 01:01:2014

IN RE: M/S. SVC RDSOURCES LTD. [CLB]

C.A.No.108/CLB/MB/2013 in CP NO.31(MUM)/2013

D. R. Deshmukh, J

[Decided on 11.12.2013]

Companies Act,1956 - section 169 - holding of EOGM - company failing to hold EOGM inspite of directions - whether CLB can order the holding of the EOGM - Held,yes.

Brief facts:

This is the second round of litigation before the CLB. In the first round, Mumbai branch of the CLB rejected the Petitioner's application for holding EOGM of the company and instead it directed the company to hold the EOGM. The Petitioners appealed to the High Court which held that they can move the CLB if the directions to hold the meeting were not followed by the company. The Respondent Company on receipt of a requisition under Section 169(1) did not hold an EOGM within the period contemplated under sub-clause (vi) of Section 169 of the Companies Act, 1956 and even despite the direction contained in the abovementioned orders. Therefore, the Petitioner moved the CLB again. The contention of the respondent was that in the absence of a specific prayer to call, convene and hold an EOGM, CLB cannot order for holding of such a meeting.

Decision: Application allowed.

Reason:

After considering the facts and circumstances and the rival submissions and the widest amplitude of powers of the Company Law Board to grant relief under Section 186,402 and 403 of the Companies Act, 1956 and placing reliance on *Sanjay Gambhir & Ors v.D.D. Industries Ltd & Ors* 199 (2013) DLT144,in view of the impasse created by the Company and the facts and circumstances under which the EOGM of the Company has not yet been called, held and conducted to consider the said resolution mentioned in the requisition by the Petitioners under Section 169(1) it is necessary that the powers under Section 186(1) read with

Section 402 and 403 of the Companies Act 1956 are exercised.

I, therefore, direct the Respondent No. 1 Company to call, convene and hold EOGM on 11th January 2014 at 10.30 AM at the Conference Hall of any five star hotel in Mumbai after sending advance written notice of this order and of such venue to all shareholders of the company including the Petitioners within a week from the date of this order. The said EOGM shall be held under the supervision of an Observer appointed by this Board.

LW: 02:01:2014

HB STOCKHOLDING LTD v. DCM SHRIRAM INDUSTRIES LTD & ORS [CLB]

CA No.12/C.No.1/2013 in C.P. No.192/2007

D.R, Deshmukh, J.

[Decided on 10/12/2013]

Companies Act,1956 - sections 397 & 398 - preferential allotment - SEBI & SAT approving the allotment - Petitioner complaining of oppression- whether petition lie before the CLB - Held, Yes.

Brief facts:

Petitioner moved the CLB alleging acts of oppression against the R-1 company with respect to the issue of preferential allotment of convertible warrants @ 90/- to other person against its offer of Rs.120/-. The SEBI refused to intervene in the said allotment on the ground that the said allotment was made with the voting of majority shareholders and SAT followed suit. However, both SEBI and SAT observed that even though the preferential allotment could be valid under the said provision, yet an action could lie before the CLB on the grounds of oppression and they cannot go into this aspect. The petitioner preferred an appeal to the Supreme Court against the order of the SAT.

The respondent Company, vide the present application, prayed dismissal of the C.P.No.192/2007 as well as CA NO.448/2009 and in the alternative deferment of hearing thereof till civil appeal is adjudicated by the Supreme Court of India.

Decision: Application dismissed.

Reason:

I have perused the written submissions filed by the parties and the case laws cited therewith. I am of the considered opinion that the application CA No.12/C.No.1/2013 deserves to be dismissed for the reasons delineated below:

In its order dated 31.3.2011 the SEBI has, while taking note of the petition filed by HB Stock Holding Ltd before the CLB held



that SEBI would as regulator, intervene only when the interests of the shareholders, in any manner adversely affected because of the act of company and since the shareholders had voted in majority for the allotment of warrants to the promoter group of preferential basis, SEBI would have no adverse remarks on the mode adopted by the company for mobilising capital for its working needs. So far as the offer by the Petitioner i.e. HB Stock Holding Ltd to subscribe to the warrants at a price of Rs.120/-per share as against the price of Rs.90/- SEBI has refrained from making any observations since this issue was pending adjudication before the CLB. Even SAT in its order dated 25.4.2012 has declined to interfere with the above view. It has further taken note of the fact that the appellant i.e. the Petitioner herein is perusing its grievance on the same issue before the CLB.

Placing implicit reliance on the dictum of the Supreme Court of India in *Needle Industries (India) Ltd & Ors v. Needle Industries Newey (India) Holding Ltd & Ors.* (1981) 3 SCC 333, I am of the considered opinion that the burden of establishing that even though the SEBI or the SAT have declined to interfere with the issue of Preferential share warrants (convertible) by R-1 yet the same lacks probity and amounts to an act of oppression on the Petitioners. An act technically legal and correct may nevertheless be demonstrated to be sufficient to justify the application of just and equitable jurisdiction of the CLB and be demonstrated to be oppressive to the shareholders under sections 397 and 398 of the Companies Act, 1956. Thus the jurisdictions under which SEBI/SAT and CLB operate are distinct and separate and not overlapping.

LW: 03:01:2014

FABER-CASTELL AKTIENGESELLSCHAFT v. M/S A. W. FABER-CASTELL (INDIA) PVT LTD & ORS [CLB]

C.A No.306/2013 in C.P No. 85/ 2013

Ashok Kumar Tripathi

[Decided on 27/11/2013]

Companies Act,1956 - sections 397 & 398 - MD holding 10% of shares - creating impasse the functioning of the company - directions issued.

Brief facts:

The CLB passed an order giving certain directions to the Non applicant/R2 whereby he was to cooperate with the other directors of the R1 company in complying with various provisions of the Companies Act and other laws. However, R2 being the MD of R1 company failed to follow the said order. Therefore, the petitioner/applicant moved the present application before the CLB seeking certain restrictions against the R2.

Decision: Directions issued.

Reason:

I have carefully perused the signed statement of the Non-Applicant/R2. I have also considered the rival submissions.

Firstly, I would like to clarify that the directions in the order dated 18.09.2013 were passed by me keeping in my mind the paramount interest of the R1 Company to break the deadlock situation in the R1 Company due to dispute among the shareholders/directors to regulate the conduct of the affairs of the R1 Company for its growth and smooth functioning. By the said directions, I tried to balance the equities and do substantial justice between the parties and therefore granted appropriate protection to the Non-Applicant/R2.

In the light of the above, I have no hesitation to say that the conduct of the Applicant/Petitioner has not been found aboveboard. In my view, he failed to act and perform his duties being the Managing Director of the R1 Company in true spirit of the directions, despite the Board which while passing appropriate directions in the order dated 18.09.2013 protected his interest as well.

I may like to add here that apprehensions expressed by the Non-applicant/R2 may not be unfounded. However, at this stage it would not be proper for me to form any opinion based merely on his apprehensions. Be that as it may, it is undisputed position that the Non-Applicant/ R2 has decided to exit out from the R1 Company upon receiving a fair valuation of his shares held in the R1 Company. I am of the view, that until his final exit, Non-Applicant/R2 has right to express his doubts/apprehensions and file objections in the course of the deliberations to be held in the meeting(s). Further, he is also entitled to ask the R1 Company to put his objection on record. He may sign the documents with the remark "without prejudice to his rights and contentions" in the event of further dispute. In my view, this is enough to protect his interest. In addition, the Non-Applicant/R2 is further entitled to take his objections before the valuer appointed by this Bench and/or any other competent forum. But in any event, the Non-Applicant/ R2 holding 10 % shares of the total paid up capital cannot be allowed to obstruct the business decisions of the R1 Company in an arbitrary manner for the reason that the presence of Non- Applicant/R2, is must to constitute the quorum for the meeting as required in the AOA of the R1 company and in his absence, the resolution(s) if any' passed may amount as invalid resolution. This is what the doctrine of corporate governance says.

Further, I find force in the arguments that the Non-Applicant/ R2 who intends to leave the R1 Company must refrain himself from taking any important administrative decision relating to appointment transfer and termination of the employees of the R1



Company. I further subscribe to this view, that if Non-Applicant/R2 is allowed to do so in an arbitrary manner which he has done on the previous occasion, this may lead to indiscipline, dissatisfaction and grievances among the officials of the R1 Company resulting into hampering its smooth administration.

Based on the above discussions, the interim prayers made is disposed of in the following manner:-

- a. The R1 Company may take such steps as required under the provisions of the companies Act, 1956 to hold meeting for approving the Balance Sheet and Profit & Loss A/c of R1 Company after due notice to the Non-Applicant/R2 who is directed to remain present and participate in such meeting. He may put on record his protest in writing without prejudice to his right and contentions as mentioned above. It is clarified that if he still chooses to remain absent, the meeting may be held and concluded in his absence by the other directors of the R1 Company.
- b. Two directors of the R1 Company being majority shareholders may sign the accounts which may be authenticated by the Non-Applicant/R2 subject to his objection, if any to be recorded therein. However, prior to placing the Balance sheet and Profit & Loss accounts in the proposed meeting, the Non-Applicant/R2 will be provided the documents reflected in his statement produced before the Bench on 26.11.2013. If the same are in the possession of the R1 Company. If such documents are not in possession of the R1 Company an affidavit shall be filed to the same effect in the Court.
- c. The right of the Non-Applicant/R2 to challenge the veracity of the accounts and make appropriate submission before the Valuer or such other Forum as he deems fit is kept reserved.
- d. The Non-Applicant/R2 will also attend the other Meeting(s)/ AGMs etc. which the R1 Company may hold in accordance with law and the R1 Company may take such decisions as it deems fit, save and except prohibited in my earlier order, subject to recording of objections if any, tendered by the Non-Applicant/R2 in the course of such meeting(s).
- e. The minutes of meeting(s) will be circulated not later than 3 days from the date of holding of such meeting(s) and if the R2/Non-Applicant feels aggrieved, he will be at a liberty to file an appropriate application seeking appropriate relief(s) in the instant petition.
- f. The Non-Applicant/R2 in the capacity of MD of the R1 company will not take any decisions relating to appointment and termination, transfer, promotion etc of any employee without obtaining prior approval of the Board.
- g. In so far as the Prayer sought for by the Applicant/ Petitioner to change the signatories for various bank accounts of R1 Company and determining the mode of operation of such bank accounts is concerned, the same is hereby rejected.



LW: 04:01:2014

[MICROMAX INFORMATICS LTD v. TELEFONAKTIEBOLAGET LM ERICSSON \(PUBL\) \[CCI\]](#)

Case No. 50/2013

Ashok Chawla, Dr. Geeta Gouri, Anurag Goel, M. L. Tayal, S. L. Bunker

[Decided on 12/11/2013]

Competition Act, 2002 - sections 3 and 4 - unfair demand of royalties - whether results in abuse of dominance - Held, yes.

Brief facts:

The Informant has alleged that the OP was demanding unfair, discriminatory and exorbitant royalty for its patents regarding GSM technology. The royalty demanded by Ericsson was excessive when compared to royalties charged by other patentees for patents similar or comparable to the patents held by Ericsson.

The Informant had submitted before the Commission that OP abused its dominant position by imposing exorbitant royalty rates for SEPs, as it is well aware that there was no alternate technology available and OP was the sole licensor for the SEPs of globally acceptable technology standards. The Informant argued that royalty rates imposed by the OP were not product based i.e. royalty was not being charged on the basis of cost of product licensed but was being charged on the basis of value of the phone in which product of the OP was being used and the Informant had to pay a percentage of cost of the phone as royalty. The OP had arbitrarily imposed royalty on basis of sale price of the phone, while the royalty should be charged on basis of value of technology/chipset used in the phone. Due to this, royalty for use of same chipset in a smart phone is more than 10 times the royalty for ordinary phone, while the chipset gives no additional value to a smart phone, than it gives to an ordinary phone. Such misuse of SEPs would ultimately harm consumers. The Informant also submitted that OP had subjected all its present as well as prospective licensees to Non-Disclosure agreements, naming the disclosure of commercial terms between similarly placed patent seekers,



which also shows that royalty being charged from the Informant may be many times the royalty being charged from others.

The OP argued that Informant had taken different stands before the Commission and High Court of Delhi. Informant had started making payments of the royalty as per the interim arrangement recorded by the Delhi High Court, still Informant challenged the same royalty rates as exorbitant before the Commission. Further, the OP had alleged that the present dispute was of commercial and civil nature and the Commission should not acquire the role of a price setter or concern itself with excessive prices. The OP had also argued that seeking of injunction from court does not constitute abuse of dominance.

Decision: Investigation ordered.

Reason:

In the present case, the SEPs owned by OP are in respect of the 2G, 3G and 4G patents used for smart phones, tablets etc., which fall under "GSM" technology. As such, *prima facie* the relevant product market would be the SEP(s) in GSM compliant mobile communication devices. The Informant has contended dominance of Ericsson in the Indian markets and the relevant geographic market would be the territory of India. The relevant market thus would be the SEP(s) in GSM complaint mobile communication devices in India. From the perusal of the Information and the documents filed by the Informant, *prima facie* it is apparent that Ericsson is dominant in the relevant market of GSM and CDMA in India and holds large number of GSM and CDMA patents. Ericsson has 33,000 patents to its credit, with 400 of these patents granted in India, and the largest holder of SEPs for mobile communications like 2G, 3G and 4G patents used for smart phones, tablets etc. Further, since the OP holds SEPs and there is no other alternate technology in the market, OP enjoys complete dominance over its present and prospective licensees in the relevant product market. As such, OP can be said to be dominant.

The allegations made in the information and not refuted by OP concerning royalty rates make it clear that the practices adopted by the OP were discriminatory as well as contrary to FRAND terms. The royalty rates being charged by the OP had no linkage to patented product, contrary to what is expected from a patent owner holding licences on FRAND terms. The OP seemed to be acting contrary to the FRAND terms by imposing royalties linked with cost of product of user for its patents. Refusal of OP to share commercial terms of FRAND licences with licensees similarly placed to the informant, fortified the accusations of the Informant, regarding discriminatory commercial terms imposed by the OP. For the use of GSM chip in a phone costing Rs. 100, royalty would be Rs. 1.25 but if this GSM chip is used in a phone of Rs. 1000, royalty would be Rs. 12.5. Thus increase in the royalty for patent holder is without any contribution to the product of the

licensee. Higher cost of a smartphone is due to various other softwares/technical facilities and applications provided by the manufacturer/licensee for which he had to pay royalties/charges to other patent holders/patent developers. Charging of two different license fees per unit phone for use of the same technology *prima facie* is discriminatory and also reflects excessive pricing *vis-a-vis* high cost phones. The issues raised before the High Court by OP are in respect of infringement of its IPR rights. The Informant has every right to raise issues before the Commission. Section 62 of the Act makes it clear that provisions of Competition Act are in addition to and not in derogation of other existing laws. Section 3(5) of the Act protects IPR rights of a person, subject to reasonable conditions. Section 4(1) prohibits abuse of dominant position by an enterprise. Section 4(2) provides that imposition of unfair and discriminatory conditions in purchase or sale of goods or services amounted to an abuse of dominant position. Thus this Commission has obligation and jurisdiction to visit the issues of competition law. Pendency of a civil suit in High Court does not take away the jurisdiction of the Commission to proceed under the Competition Act. In view of above discussion, the Commission is of the opinion that it was a fit case for thorough investigation by the DG into the allegations made by the Informant, and violations, if any, of the provisions of the Competition Act.

LW: 05:01:2014

GRASIM INDUSTRIES LTD v. COMPETITION COMMISSION OF INDIA [DEL]

W.P(C). No.4159 of 2013

V. K. Jain, J.

[Decided on 17.12.2013]

Competition Act, 2002- sections 3, 4 & 26 - powers of DG to investigate - whether DG can investigate into issues not referred to it by the Commission - Held, No.

Brief facts:

An Information was received by the Competition Commission of India (hereinafter referred to as the "Commission") that the manufacturers of Man Made Fibres (for short "MMF") i.e. Polyester Staple Fibre (PSF), Acrylic Staple Fibre (ASF), Viscose Staple Fibre (VSF) & Nylon Staple Fibre (NSF) had imposed several restrictions on Indian Textile Industry, which are their customers for purchase of MMF, and such restrictions constitute anti-competitive actions. The Commission, vide order dated 22.6.2011, on consideration of the information submitted by the informant, formed a *prima facie* opinion that there existed a case to direct the Director General to cause an investigation into the matter. The Director General was



accordingly instructed to conduct an investigation into the matter. The allegations against MMF manufacturers, who were alleged to be contravening the provisions of Section 3(3) (a)(b)(c) of the Competition Act, 2002.

During the course of investigation by the Director General, the informant alleged that Grasim Industries Limited (GIL), which is the petitioner before this Court and is the only manufacturer of Viscose Staple Fibre (VSF) in the country on account of its dominant position in the market of VSF, was indulging into various anti-competitive practices.

The Director General, therefore, decided to investigate into these issues as well, and accordingly submitted its report to the Commission. The DG reported that no violation of the provisions of Section 3(3)(a)(b)(c) either by GIL or by other MMF manufacturers was made out, but GIL being a dominant enterprise had abused its dominant position. Thus, according to the Director General, the petitioner was found to have abused its dominant position in the VSF market, thereby contravening Sections 4(2)(a) & 4(2)(b) of the Act.

GIL filed an application before the Commission seeking *inter alia* quashing and setting aside of the Director General's report to the extent it pertains to the alleged violation of Section 4 of the Act and the orders passed by the Commission considering the said report, primarily on the ground that investigation into the alleged violation of Section 4 of the Act was beyond the scope of the powers of the Director General. The said application was dismissed by the Commission and GIL moved the High Court.

Decision: Petition partly allowed.

Reason:

The scheme of the Competition Act, 2002 (the Act), does not permit investigation by Director General into any information which was not considered by the Commission, while forming opinion under sub-section (1) of Section 26 of the Act. The formation of opinion by the Commission and direction to cause an investigation to be made by the Director General being a pre-requisite condition for initiation of investigation, the Director General would have no power to undertake investigation in respect of the complaint which the Commission did not consider while forming an opinion and directing investigation by the Director General. If the Director General investigates an information which the Commission did not consider in the first instance, while forming opinion with respect to existence of a *prima facie* case, such an act on his part shall be *ultra vires* his power under the Act and, therefore, clearly illegal. It is settled legal proposition that when the provisions of a Statute requires an act to be done in a particular manner, such an act can be done only in the prescribed manner and not otherwise. Since the Act requires the Director General to investigate only such

information which was considered by the Commission, while forming its opinion with respect to existence of a *prima facie* case, it cannot, of its own carry out investigation based upon an information which was not available to the Commission. It would be appropriate to note here that though MRTP Act, 1969 empowered the Director General to exercise *suo motu* power of investigation, the said power has been expressly denied to him under the Competition Act. In clause (5) of the Statement of Objects and Reasons for enacting the Competition Act, it is clearly stated that "the Director General would be able to act only if so directed by the Commission, but will not have any *suo motu* power for initiating investigation". If the Director General, is directed by the Commission to cause an investigation to be made into information "X" and he, besides investigating information "X" also investigates information "Y", which was not considered by the Commission, while directing investigation by him, that would amount to conferring *suo motu*, power of investigation upon the Director General which would clearly contravene the scheme of the Act, as far as investigation into complaint "Y" is concerned.

It is quite understandable if the Commission, on consideration of any information forms an opinion that there exists a *prima facie* contravention of Section 3 of the Act and the Director General, while investigating the said information, reports contravention of Section 4 or Section 3 as well as Section 4 of the Act. Such a report, in my opinion, will not be contrary to the provisions of the Act, since the information which is investigated by the Director General was considered by the Commission, before it formed an opinion in terms of sub-section (1) of Section 26 of the Act. If, however, the investigation by the Director General is based upon an altogether different information which the Commission did not consider, while forming its opinion with respect to existence of a *prima facie* case, his action would be contrary to the scheme of the Act and the powers conferred upon him. As noted earlier, clause (4) of Regulation 18 requires the Director General to give report containing his findings on each of the allegations made in the information or the reference as the case may be. This is yet another indicator that the report of the Director General is to be confined to the allegations made in the information or the reference received by the Commission and he is not competent to travel outside the said information or reference.

For the reasons stated hereinabove, the writ petition is disposed of with the direction that the report of the Director General, to the extent he has reported contravention of the provisions of Section 4 of the Act by the petitioner by misuse of its dominant position as a VSF manufacturer, shall not be subjected to the procedure prescribed in sub-section (8) of Section 26 nor shall the Commission be entitled to pass order on the said report, in terms of the provisions of Section 27 of the Act. The Commission, however, shall be entitled to treat the aforesaid part of the report of the Director General as an



information in terms of Section 19 of the Act and proceed accordingly in terms of the provisions of the Act, if the Commission on consideration of the aforesaid part of the report of the Director General, is of the opinion that there exists a *prima facie* case of contravention of the provisions of Section 4 of the Act by the petitioner.



General Laws

LW: 06:01:2014

ARASMETA CAPTIVE POWER CO. PVT. LTD v. LAFARGE INDIA P. LTD. [SC]

Civil Appeal No.11003 of 2013

Anil R. Dave & Dipak Misra, J.J.

[Decided on 12/12/2013]

Arbitration and Conciliation Act,1996 - Section 11 - arbitrability of disputes - excepted matters - SC clarifies and explains these issues.

Brief facts:

The appellant-company had entered into two agreements with the respondent for supply of power to the respondent. In course of subsistence of the agreements dispute arose between the parties relating to amounts that is due and payable. The appellants treated the dispute raised to be a "billing dispute" and sought to appoint an expert in accordance with clause 16.2 of the agreements and, accordingly, communicated with the respondent vide letter dated 4.5.2012 proposing for appointment of one of the three persons of expertise and repute for appointment as an expert in respect of both the PPAs. The appellant No.1 requested the Confederation of Indian Industry vide letter dated 30.5.2012 to appoint a suitable expert. The respondent did not accede to resolve the dispute by way of appointing an expert, instead it moved the High Court for appointment of an arbitrator.

In support of the application for appointment of arbitrator, it was contended before the learned designated Judge that as the claims for recovery of arrears had not been settled and the respondents therein had communicated that the claims came

within the ambit of sub-clause (a) of clause 9.3 of the agreement and required the matter to be dealt with by an expert and an expert should be appointed in terms of clause 16.2 and 16.4 of the agreement and declined to take recourse to arbitration, it had become incumbent to move the court for appointment of an arbitrator.

The said stand and stance put forth by the respondent before the High Court was resisted by the present appellants that disputes would come within clause 16.2 of the agreement that deals with "Dispute Resolution" which provides a specific mechanism and not arbitration, for it has been clearly postulated therein that where any dispute is not resolved as provided for in clause 16.2 then only the matter shall be submitted to arbitration at the request of either of the parties by written notice in accordance with the provisions contained in the Act.

The High Court adverted to the meanings of "billing date", "billing period", "billing year", "clarification notice" and various terms used in the agreement, scanned the anatomy of clause 9.3 of the agreement that deals with "billing disputes" and arrived at the conclusion that disputes raised do not come within the purview of sub-clause (a) of clause 9.3 and, accordingly, appointed an arbitrator.

Decision: Appeal partly allowed.

Reason:

It is luculent that the larger bench in *SBP & Co v. Patel Engineering Ltd.* (2005) 8 SCC 618, after deliberating at length with regard to the role of the Chief Justice or his designate, has thought it appropriate to define what it precisely meant in paragraph 39 of the judgment. The majority, if we allow ourselves to say so, was absolutely conscious that it required to be so stated and hence, it did so. The deliberation was required to be made as the decision in *Konkan Railway Corporation Ltd. v. Rani Construction (P) Ltd.* (2002) 2 SCC 388, where the Constitution Bench had held that an order passed by the Chief Justice under Section 11(6) is an administrative order and not a judicial one and, in that context, the Bench in many a paragraph proceeded to state about the role of the Chief Justice or his designate.

The phrases which have been emphasized, it can be irrefragably stated, they cannot be brought to the eminence of *ratio decidendi* of the judgment. The stress laid thereon may be innovative but when the learned Judges themselves have culled out the *ratio decidendi* in paragraph 39, it is extremely difficult to state that the principle stated in *SBP & Co. (supra)* requires the Chief Justice or his designate to decide the controversy when raised pertaining to arbitrability of the disputes. Such an inference by syllogistic process is likely to usher in catastrophe in jurisprudence developed in this field. We are disposed to think so as it is not apposite to pick up a



line from here and there from the judgment or to choose one observation from here or there for raising it to the status of “the *ratio decidendi*”. That is most likely to pave one on the path of danger and it is to be scrupulously avoided.

The propositions set out in *SBP & Co. (supra)*, in our opinion, have been correctly understood by the two-Judge Bench in *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.* (2009) 1 SCC 267 and the same have been appositely approved by the three Judge Bench in *Chloro Controls India Pvt. Ltd. v. Seven Trent Water Purification Inc & Ors.* (2013) 1 SCC 641 and we respectfully concur with the same. We find no substance in the submission that the said decisions require reconsideration, for certain observations made in *SBP & Co. (supra)*, were not noticed. We may hasten to add that the three-Judge Bench has been satisfied that the *ratio decidendi* of the judgment in *SBP & Co. (supra)* is really inhered in paragraph 39 of the judgment.

We will be failing in our duty if we do not take note of another decision in *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors* (2011) 5 SCC 532, where in paragraph 34 the Court has dealt with the meaning of the term “arbitrability” and stated that arbitrability has different meanings in different contexts. The Court enumerated three facets which relate to the jurisdiction of the Arbitral Tribunal. In sub-para (ii) of the said paragraph it has been stated that one facet of arbitrability is whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the “excepted matters” excluded from the purview of the arbitration agreement. On a careful reading of the said judgment we find that the learned Judges have referred to paragraph 19 of *SBP & Co. (supra)* and thereafter referred to Section 8 of the Act and opined what the judicial authority should decide. Thereafter the Court proceeded to deal with nature and scope of the issues arising for consideration in an application under Section 11 of the Act for appointment of the arbitrator and, in that context, it opined thus:

“While considering an application under Section 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of “arbitrability” or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the Arbitral Tribunal. If the arbitrator wrongly holds that the dispute is arbitrable, the aggrieved party will have to challenge the award by filing an application under Section 34 of the Act, relying upon sub-section (2)(b)(i) of that section.”

The said ruling is absolutely in consonance with the principle laid down in *SBP & Co. (supra)*. The meaning given to arbitrability thereafter has been restricted to the adjudication under Section 8 and not under Section 11 of the Act. Thus, the reliance on the

said decision further reflects how the court has consistently understood the principles laid down in *SBP & Co. (supra)*. In view of our foregoing analysis we sum up our conclusions as follows: -

- i) The decisions rendered in *Boghara Polyfab Private Limited (supra)* and *Chloro Controls India Private Limited (supra)* are in accord with the principles of law stated in *SBP & Co. (supra)*.
- ii) The designated Judge, as perceived from the impugned order, while dealing with an application under Section 11(6) of the Act, on an issue raised with regard to the excepted matters, was not justified in addressing the same on merits whether it is a dispute relating to excepted matters under the agreement in question or not.
- iii) The designated Judge has fallen into error by opining that the disputes raised are not “billing disputes”, for the same should have been left to be adjudicated by the learned Arbitrator.
- iv) The part of the order impugned that reflects the expression of opinion by the designate of the Chief Justice on the merits of the disputes, being pregnable, deserves to be set aside and is hereby set aside.



LW: 07:01:2014

[SUNDARAM INDUSTRIES LTD. v. SUNDARAM INDUSTRIES EMPLOYEES UNION\[SC\]](#)

Civil Appeal No. 11016 of 2013

[T. S. Thakur & Vikramjit Sen, JJ.](#)

[Decided on 13/12/2013]

Dismissal employees for not obeying to the instructions - change in working conditions - whether the dismissal is tenable - Held, No.

Brief facts:

The appellant-company is engaged in the manufacture of rubber products for various industrial applications. It had, at the relevant point of time, 877 employees in its establishment out of which as



many as 488 were working as moulders to operate the rubber moulding machines. The moulding work involved placing rubber into the moulding press which would then be pressed into rubber components and marketed for varied industrial and commercial uses.

In March 1999, the management of the appellant-company required the workmen engaged as moulders to place their individual bags of production on the weighing scale at the end of their work shift. That procedure was observed for about a week whereafter 13 out of 488 moulders declined to abide by the instructions issued by the management. The defaulting members of the work force were on that basis placed under suspension by the management. Aggrieved by the action taken against its members, the respondent-union raised a dispute before the Labour Officer who advised the union and its workmen to tender an apology to the management and an undertaking to the effect that they would not repeat their acts in future.

The appellant's case is that despite the apology and undertaking furnished pursuant to the said advice, the defaulting workmen not only continued disobeying the instructions but succeeded in enticing three others to follow suit, thereby disrupting the work in the factory. The appellant took note of the disobedience shown by the workmen concerned and initiated disciplinary proceedings against them in April, 1999. Pending such proceedings the workmen concerned were placed under suspension on the charge of their having persistently refused to follow the instructions despite an apology and undertaking furnished by them earlier. The inquiry initiated against the workmen culminated in the dismissal of the delinquent workmen based on the charges of misconduct, persistent disobedience and insubordination proved against them. The respondent-union once again espoused the cause of the workmen and approached the Industrial Tribunal, Chennai in a reference made by the Government for adjudication of the dispute. The Tribunal came to the conclusion that although the domestic inquiry conducted by the management against the delinquent workmen was fair and proper and the charges stood proved, the punishment of dismissal imposed upon the workmen was shockingly disproportionate to the gravity of the offence. The Tribunal accordingly set aside the order of dismissal passed against the workmen and directed their reinstatement with 50% back wages.

Aggrieved by the award made by the Tribunal, the appellant challenged the award before the High Court, which was heard and dismissed by a learned Single Judge and the appeal to the Division Bench also met the same fate.

Decision: Appeal dismissed.

Reason:

The short question that falls for determination is whether the Tribunal and the High Court were justified in holding that the penalty of dismissal imposed upon the workmen was

disproportionate to the gravity of the misconduct allegedly committed by them. Whether or not the punishment is disproportionate, more often than not, depends upon the circumstances in which the alleged misconduct was committed, as also the nature of the misconduct.

It is thus evident that the refusal of the workmen to carry out the instructions issued by the management was not without a lawful or reasonable justification. The same could not at any rate be described as contumacious. The essence of the matter was whether the management could, without additional remuneration, ask the workmen who were responsible for attending to the production work alone to do additional work which was hitherto being done by another group of workmen, especially when compliance with the instructions to the workmen would require them to tie their production bags, carry them to the weighing machine, wait in the queue till the process was to be completed and leave only thereafter. In the course of hearing before us, it was fairly conceded by the representative of the appellant that since the number of moulders working in the establishment was fairly large and weighing machines limited in number, the workmen had to wait in a queue for their turn to have their production weighed which was earlier being done by some other workmen who were disbanded. Inasmuch as the workmen concerned had declined to undertake this additional responsibility which was not only consuming additional time but also additional effort they could not be accused of either deliberate defiance or misconduct that could be punished. The Tribunal was in that view wrong in holding that the charge framed against the respondents was proved. Refusal to carry out the instructions requiring workmen to do additional work beyond the shift hours was clearly tantamount to changing the conditions of service of the workmen which was impermissible without complying with the requirements of Section 9-A of the Industrial Disputes Act.

On behalf of the appellant it was contended that the respondents-workmen were not legally entitled to assail the finding of the tribunal, on the charges framed against them, as the workmen had not assailed the award made by the Tribunal before the High Court. The findings of the Tribunal had on that account attained finality. We do not think so. The Tribunal had no doubt held the charges to have been proved but it had, despite that finding, set aside the dismissal of the workmen on the ground that the same was disproportionate to the gravity of the misconduct.

It had on that basis directed reinstatement with 50% back wages. To that extent the award was in favour of the workmen which they had no reason to challenge. But that did not mean that in any proceedings against the award the respondent workmen could not support the direction for their reinstatement on the ground that the finding of the Tribunal regarding proof of misconduct was not justified.

We have, therefore, no hesitation in rejecting the contention that



the finding regarding commission of misconduct by the workmen cannot be assailed by the workmen in these proceedings. Even assuming that the finding regarding the commission of misconduct is left undisturbed, the circumstances in which the workmen are alleged to have disobeyed the instructions issued to them did not justify the extreme penalty of their dismissal.



LW: 08:01:2014

NOKIA INDIA PVT LTD v. ADDL. COMMISSIONER OF INCOME TAX & ANR[DEL]

CM No. 15485/2013 in Writ Petition (Civil) No. 6150/2013

Sanjiv Khanna & Sanjeev Sachdeva, JJ.

[Decided on 12/12/2013]

Income tax Act, 1961 - section 281B - attachment of properties and assets - assessee's assets and properties purchased by Microsoft under a scheme - whether assessee can sell its assets and properties - Held, Yes but with certain conditions.

Brief facts:

The income tax department attached various assets and properties of Nokia India (Nokia) in pursuance of proceedings initiated under Section 281B of the Income Tax Act, 1961 (Act, for short). Nokia challenged the said order before the High Court. Noticing the fact that Nokia is an operating and a running company, the court passed an interim order, *inter alia*, restricting Nokia from (i) surrendering the lease hold rights or transfer the ownership rights in respect of any of the immovable asset or transfer the fixed asset to any third person and (ii) transferring, selling or alienating movable plant or machinery located in the immovable properties. By the present application Nokia seeks modification of the above restrictions pleading that Nokia Finland, its parent company has received an offer from Microsoft Corporation (Microsoft, for short), a company incorporated in United States of America for purchase of substantial portion of devices and services business of Nokia Finland on global basis and wanted to sell its assets to Microsoft.

Decision: Application allowed.

Reason:

We are inclined to modify our interim order dated 26th September, 2013, in particular clause (1) and (3) thereof. We permit and allow sale of assets by Nokia India to Microsoft/Microsoft International subject to fulfilment of the following conditions:-

- (i) Nokia Finland will be bound by the statement that they shall be jointly liable and shall pay tax demand determined and payable under Section 201/201(1A), interest and penalty thereon.
- (ii) Nokia Finland shall be liable to pay taxes including penalty and interest due and payable by them as determined under the Act i.e. the Income Tax Act, 1961.
- (iii) Nokia India/Nokia Finland will deposit atleast Rs.2250 crores in an escrow account, details of which will be furnished to the respondents with one month of the agreement with Microsoft/Microsoft International. The amount of deposit will go up or increase upon higher consideration being received from Microsoft/Microsoft International, as per valuation report.
- (iv) Copy of the valuation report will be furnished to the respondents within 15 days of acceptance.
- (v) Rs.2250 crores or the higher amount, which will be deposited in the escrow account, at the option of the respondents may not be adjusted or appropriated against tax demands including interest and penalty relating to TDS/ order under Section 201/201(1A) or tax demands determined and payable by Nokia Finland. Respondents can insist that the escrow account shall be first adjusted or appropriated towards demand pursuant to assessments under Section 143(3)/147 of the Act against Nokia India.
- (vi) In case of an adverse assessment or re-assessment order or tax demand being created against Nokia India under Section 143(3)/147 of the Act, the demand will be paid from the escrow account subject to stay order, if any, against recovery of the said demand from appellate authority or Indian courts and in case Nokia India pays any amount, or is appropriated from the escrow account, and Nokia India subsequently succeeds, the amount will be refunded with interest in accordance with the provisions of the Act. Interest earned on the escrow account will also be included in the amount payable.
- (vii) Income Tax Department without prejudice to their rights and without affecting the obligation of Nokia, Finland mentioned in clauses (i) and (ii) above, can in the case of non-payment, seek payment/appropriation of Rs.2250 crores or the higher amount in the escrow account including interest towards dues under Section 201/201(1A), penalty and interest. The said appropriation or payment would not affect the obligation of Nokia, Finland.
- (viii) Nokia Finland, in addition to the undertaking or letter of guarantee quoted above, will file another letter in form of guarantee/undertaking WPC 6150/2013 Page 33 of 36



incorporating the terms and conditions mentioned herein and file the said letter/undertaking with the income tax authorities i.e. Deputy Director of Income Tax (International Taxation) and Commissioner of Income, Delhi-V and in this writ petition. This will be treated as undertaking to the Court. The letter/undertaking will clearly state that Nokia Finland will abide by clauses (i) and (ii) above and will cooperate in payment of tax dues payable under Section 201/201(1A) or the dues payable by Nokia Finland. Copy of the letters/undertaking will be filed by Nokia Finland with their Government.

- (ix) Nokia Finland will not be liable to pay the tax dues of Nokia India, except to the extent permissible and recoverable under the provisions of the Act i.e. the Income Tax Act, 1961. However, in case the total amount due and payable by Nokia Finland in clause (i) is less than Rs.3,500 crores, and Nokia India is unable to pay dues under clause (vi), Nokia Finland will be liable to pay tax dues of Nokia India upto but not exceeding Rs 3500 crores. In other words, Nokia Finland will not be liable to pay tax dues under clause (i), and the present clause exceeding the figure of Rs.3,500 crores. This amount has been fixed as dividend of Rs.3,500 crores stands paid by Nokia India to Nokia Finland. Demand under clause (ii) stands excluded as the said liability is personal to Nokia WPC 6150/2013 Page 34 of 36 Finland. This limit of Rs.3500 crores does not apply to demand under clause (i).
- (x) Microsoft/Microsoft International will not be liable to pay tax dues of Nokia India and Nokia Finland, except when any amount is due and payable as per the provisions of the Act.
- (xi) In case of non-compliance of clauses (i) and (ii) above or non-payment of the settled demand in terms of clause (ix), Revenue can approach the Court for appropriate orders. In such circumstances, the Court will have the power to take action or directions as may be justified and appropriate steps to ensure compliance.
- (xii) Nokia India/Nokia Finland will continue and pay Rs.700 crores in installments in terms of the order dated 21 st June, 2013 and this amount has no co-relation with Rs.2250 crores or higher amount, which will be deposited in the escrow account.
- (xiii) Nokia India/ Nokia Finland will be entitled to contest the income tax proceedings and demands under clauses (i) and (ii) against Nokia India/Nokia Finland which can be enforced by the respondents in accordance with law, subject to right of Nokia India/Nokia Finland to plead and ask for stay. In absence of stay, demands will be recoverable.
- (xiv) It is open to the parties to take recourse to mutual agreement WPC 6150/2013 Page 35 of 36 procedure or mutually modify the terms and conditions of this order and approach the Court in case modification or if any clarification is required.

- (xv) Attachment of shares of Nokia India held by Nokia Finland is not subject matter of this order.
- (xvi) Other stipulations and directions in the interim order dated 26 th September, 2013 will continue.

LW: 09:01:2014

CCE, HYDERABAD v. VICTORY ELECTRICALS LTD [CESTAT]

Appeal Nos.E/251 to 253/2009

G. Raghuram & P. K. Das & Mathew John

[Decided on 18/11/2013]

Reference to larger bench - receipt of liquidated damages - treatment of liquidated damages in the assessable value - whether deductible - Held, yes

Brief facts:

The order of reference identified a conflict of opinion between decisions of the Tribunal, in *United Telecom Ltd v. CCE Bangalore*, 2006 (204) ELT 626 (Tri.-Bang.) and subsequent decisions, particularly, in *CCE Noida v. Electron Energy Equipments Ltd*, 2011 (264) ELT 153 (Tri.-Del.). There are other decisions referred to in the order of reference, which followed the decision in *United Telecom Ltd.* (*supra*).

Issue:

Whether any deduction claimed by the buyer of excisable goods as compensation for the delay in the supply of the goods by its manufacturer (assessee) under the contract between them, during any period after 01.07.2000, is liable to be included in the assessable value of the goods under Section 4 of the Central Excise Act?

Decision: Answered in the affirmative.

Reason:

Section 4 read with the definition of “transaction value” in Section 4 (3) (d) enables levy of duty on the transaction value paid or payable for the goods. The value payable in a case where liquidated damages is applied would therefore be the consequent value and this would constitute the “transaction value”.

Except the decision of *United Telecom (supra)* which are clearly and apparently after due consideration of provisions of the amended Section 4 read with definition of “transaction value” in Section 4 (3) (d), other decisions adverted to above were either on the basis of provisions of Section 4 prior to its amendment by Finance Act, 2000 or without analysis of provisions of the amended Section 4 and the distinct concepts of “penalty” and “liquidated damages”, pointed out in *United Telecom Ltd.*

The decision in *Electron Energy Equipments Ltd. (supra)*, which



is in conflict with the decision in United Telecom Ltd. (noticed by the referral order), is subsequent to amendment of Section 4 vide the Finance Act, 2000. However, this decision did not proceed on any analysis of the amended provisions of Section 4 or due consideration of the definition of "transaction value" in Section 4 (3) (d). It proceeded merely on the premise that deduction of penalty/liquidated damages in terms of provisions of the agreement between the parties, from the agreed price on account of delay in delivery, would not entitle deductions for the purpose of ascertaining the transaction value.

In our considered view, post the amendment of Section 4 and the statutory definition of 'transaction value' in sub-section (3) (d) thereof, of the Act, the eventual value payable after factoring in any liquidated damages contractually stipulated for delayed supply would be the transaction value and this value would be the value relevant for levy of duty.

On the aforesaid analysis, we answer the reference by holding that wherever the assessee, as per the terms of the contract and on account of delay in delivery of manufactured goods is liable to pay a lesser amount than the generically agreed price as a result of a clause (in the agreement), stipulating variation in the price, on account of the liability to "liquidated damages", irrespective of whether the clause is titled "penalty" or "liquidated damages", the resultant price would be the "transaction value"; and such value shall be liable to levy of excise duty, at the applicable rate.

The substantive appeals are remitted to the regular Bench for disposal on merits and in terms of the reference answered as above.

LW: 10:01:2014

HINDUSTAN AERONAUTICS LTD v. COMMISSIONER OF SERVICE TAX, BANGALORE [CESTAT]

ST/285/2009

G. Raghuram, P.K. Das & Mathew John

[Decided on 21/11/2013]

Reference to larger bench - taxability of service relating to repair and maintenance - excluding the cost of the goods sold or deemed to have been sold to the service recipient - whether tenable - Not answered.

Brief facts:

In the present appeal (wherein the order of reference is made), the taxable service in issue is not photography service but repair and maintenance service. The dispute arose in the context of the assessee claiming benefits under Notification No.12/2003-ST dated 20.6.2003. While the assessee claims benefits of exemption Notification No. 12/2003-ST, for excluding the cost of the goods sold or deemed to have been sold to the service recipient; Revenue premised that the benefit of Notification No. 12/2003-ST must be confined to sale of goods, excluding "deemed sale"

i.e. the value of goods incorporated into a composite transaction involving service and sale. This is the competing position between the parties which has resulted in the order of reference; and at a point when the decision of the larger bench was not pronounced.

Reference was made at a point of time when the decision of the Larger Bench of the Tribunal in Aggarwal Colour Advance Photo System reported in 2011 (23) STR 607 (Tri. – Bang.) was pending consideration of the Larger Bench of the Tribunal.

Decision: Declined to answer.

Reason:

The Larger Bench of the Tribunal, as already noticed, answered the reference on 11.8.2011. It is however contended before us that other decisions of the Tribunal and of the Supreme Court have progressively clarified the distinct scope and ambit of taxability of goods and services including in the recent decision of the Delhi High Court in the *G.D. Builders & Others v. Union of India and Others* dated 13.11.2013 - 2013-TIOL-908-HC-DEL-ST. It is urged that the Delhi High Court explained the scope of Section 67 of the Act as being limited to ascertaining value of only the service component, wherever complex transactions involving service and sale elements including deemed sale are presented for valuation of a transaction as a taxable service. It is also contended on behalf of the assessee in this appeal and other learned counsel for intervenors that the jural bases of both aspects answered by the Larger Bench in Aggarwal Colour Advance Photo System is eclipsed by binding authority, of other decisions of Supreme Court and in particular, the decision of the Delhi High Court in *G.D. Builders*.

The learned Departmental Representative is agreed that the judgment of the Delhi High Court and the other judgments of the Supreme Court which have clarified the distinct loci of taxability of service and of sale of goods in the context of provisions of the Act and of sales tax legislations, considered within the overarching constitutional allocation of discrete legislative powers, to the Union and State legislatures, ought to be considered, without treating the Larger Bench decision in Aggarwal Colour Advance Photo System as providing a quietus to the complex matrix of issues, of taxability of goods and services.

In the circumstances, and since it is the submission of the counsel and representatives of the respective parties that the core of the dispute stands settled by higher authority of the Supreme Court and the Delhi High Court, we do not consider necessary to answer the issues referred for our consideration. The grievance of the appellant is in the circumstances more appropriately decided by the regular Bench which will now consider all relevant decisions presented for its consideration and resolution.

In the circumstances, we decline to answer the reference and remit the appeal, for disposition on merits, to the regular Bench.



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From the Government



Corporate Laws

01 Clarification with regard to applicability of section 182(3) of the Companies Act, 2013.

[Issued by the Government of India, Ministry of Corporate Affairs vide Circular No. 19/2013 dated : 10.12.2013]

Ministry has received representations seeking clarification on disclosures to be made under section 182 of the companies Act, 2013. The same have been examined. with the coming into force of the scheme relating to 'Electoral trust companies' in terms of section (24M) of the Income Tax Act, 1961 read with Ministry of Finance Notification No. S.O.309(E) dated 31st January, 2013 it will be expedient to explain the requirements of disclosure on part of a company of any amount or amounts contributed by it to any political parties under section 182(3) of the Companies Act, 2013. It is hereby clarified as under;

- (i) Companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013. It will suffice if the Accounts of the company disclose the amount released to an Electoral Trust Company.
- (ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 192(3) of the Companies Act, 2013.
- (iii) Electoral trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.

Vinod Sharma
Deputy Director

02 Rationalization of Periodic Call Auction for Illiquid Scrips

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/38

/2013 dated : 19.12.2013]

1. SEBI vide circular no CIR/MRD/DP/ 6/2013 dated February 14, 2013 issued guidelines for trading in the illiquid scrips through Periodic Call Auction session. After introduction of periodic call auction framework, representations have been received from market participants regarding the aforesaid circular. The issues raised by market participants were examined and deliberated in Secondary Market Advisory Committee (SMAC).
2. Based on recommendations of SMAC and feedback received from market participants and stock exchanges, it has been decided to rationalize the periodic call auction mechanism.
3. Accordingly, following conditions of aforesaid circular are modified as under:
 - 3.1. Para 2.2 shall be replaced by the following
 - a) For the purpose of this circular, a scrip which trades in the normal market and is not shifted to trade for trade settlement, shall be classified as illiquid on a stock exchange if the following conditions are met:
 - i. Average daily turnover of less than Rs.2 lakhs calculated for previous two quarters and
 - ii. The scrip is classified as illiquid at all exchanges where it is traded
 - b) Of the scrips identified as per above criteria, scrips which satisfy any of the following conditions shall be excluded.
 - i. Scrips with average market capitalization more than Rs.10Cr.
 - ii. Scrips where company is paying dividend in at least two out of last three years.
 - iii. Scrips where company is profitable in at least 2 out of last 3 years, and not more than 20% of promoters shareholding is pledged in the latest quarter and book value is 3 times or more than the face value.
 - 3.2. Para 2.4.1 shall be replaced by the following:

"The scrip has remained in periodic call auction for at least one quarter."
 - 3.3. Para 2.6 shall be replaced by following:

"Number of auction sessions – Stock Exchange may determine the number of call auction session for illiquid stocks. However in order to have minimum trading sessions and uniform closing session, there shall be at least 2 sessions in a trading day with one uniform closing session across the exchanges."
 - 3.4. Para 2.8 shall be replaced by following:



“Order Placement- The orders may remain valid throughout the trading day and un-matched orders remaining at the end of a call auction session may be moved into next call auction session.”

4. All other conditions for trading in periodic call auction sessions contained in the circulars CIR/MRD/DP/21/2010 dated July 15, 2010, CIR/MRD/DP/32/2010 September 17, 2010 and CIR/MRD/DP/6/2013 February 14, 2013 remain unchanged.
5. Stock Exchanges are directed to:
 - 5.1. take necessary steps and put in place necessary systems for implementation of this circular from the beginning of the next quarter.
 - 5.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision;
 - 5.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.
6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Maninder Cheema
Deputy General Manager

03 Declaration and Undertaking regarding PCC, MCV or equivalent structure by FIIs

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FIC/21/2013 dated : 19.12.2013]

SEBI vide circular CIR/IMD/FIIC/1/2010 dated April 15, 2010 had mandated all Foreign Institutional Investors/ Sub Accounts to submit Declaration and Undertaking with regard to their opaque structure such as Protected Cell Companies (PCC), Multi Class Share Vehicles (MCV) or equivalent structure.

In light of representations received it is clarified as follows:

If any applicant is required by its regulator or under any law to ring fence its assets and liabilities from other funds/ sub funds, such applicant shall not be treated as having opaque structure, provided:

- a) the applicant is regulated in its home jurisdiction
- b) each fund/ sub fund in the applicant satisfies broad based

criteria, and

- c) the applicant gives an undertaking to provide information regarding its beneficial owners as and when SEBI seeks this information.

The custodians are requested to bring the contents of this circular to the notice of their respective FII clients for necessary compliance.

This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

The circular is available on SEBI website at www.sebi.gov.in under the categories “Legal framework” and “information for - FII”.

S. Madhusudhanan
Deputy General Manager

04 Deposit Requirements for members of the Debt Segment

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DRMNP/37/2013 dated : 19.12.2013]

1. SEBI vide circular no CIR/MRD/DP/03/2013 dated January 24, 2013 prescribed guidelines for providing dedicated debt segment on stock exchanges. Subsequently, SEBI (Stock Brokers and Sub-Brokers) Regulations was amended to enable registration of Stock Broker, Proprietary Trading Member, Clearing Member and Self Clearing Member of debt segment of the stock exchange.
2. Further, SEBI vide circular no CIR/MRD/DP/27/2013 dated September 12, 2013 prescribed the “Risk Management Framework for Dedicated Debt Segment on Stock Exchanges”.
3. In continuation to the above, the deposit requirements for the members of the debt segment shall be as under –
 - a. **Stock Broker / Proprietary Trading Member:** SEBI circular dated December 19, 2012 on Base Minimum Capital shall also be applicable to Stock Broker / Proprietary Trading Member of the debt segment.
 - b. **Clearing Member (CM) / Self Clearing Member (SCM):** The deposit shall be ₹ 10 lacs. No exposure shall be granted against such deposit requirement of the Clearing Member/ Self Clearing Member.

Provided no deposit shall be payable by entity desirous of being CM / SCM in debt segment, in case,



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it is already a CM or SCM or stock broker of any other segment of the stock exchange / clearing corporation.

Provided further that no deposit shall be payable in case a CM / SCM clears and settles trades only on gross basis for both securities and funds, and where no settlement guarantee is provided by the clearing corporation.

4. The Stock Exchanges and Clearing corporations are directed to:
 - a. take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations, within one month from the issuance of the circular;
 - b. bring the provisions of this circular to the notice of the members and also disseminate the same on its website;
 - c. communicate to SEBI the status of implementation of the provisions of this circular.
5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Shashi Kumar
General Manager

05 Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DP/36/2013 dated : 16.12.2013]

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:
 - a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a

separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.

- b) There are no other grounds/reasons for continuation of the trading in TFTS.
3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Maninder Cheema
Deputy General Manager

Annexure-A

Sr. No.	Name of the Company	ISIN
1.	Inertia Steel Limited	INE767M01011
2.	Emed.Com Technologies Limited	INE379F01019
3.	W W Technology Holdings Limited	INE972M01017
4.	Hemakuta Industrial Investment Company Limited	INE088P01015
5.	Multipurpose Trading & Agencies Limited	INE017P01014
6.	Velox Industries Limited	INE092P01017
7.	P.L.Enterprise Limited	INE265N01014
8.	Patidar Buildcon Limited	INE637N01014
9.	Kappac Pharma Limited	INE601D01011
10.	Magnanimous Trade & Finance Limited	INE664N01018
11.	Ravinay Trading Company Limited	INE812K01027
12.	Mercury Metals Limited	INE763M01010
13.	Fischer Chemic Limted	INE771F01017
14.	Unimode Overseas Limited	INE348N01018
15.	B B Investments Limited	INE222P01010
16.	Kausambi Vanijya Limited	INE223P01018
17.	EFL Foods Limited	INE601E01019
18.	Viji Finance Limited	INE159N01019
19.	Hindusthan Safety Glass Industries Ltd	INE324N01019

06 Exchange Traded Cash Settled Interest Rate Futures (IRF) on 10-Year Government of India Security

[Issued by the Securities and Exchange Board of India vide CIR/MRD/DRMNP/35/2013 dated : 05.12.2013]

1. SEBI vide circular No. SEBI/DNPD/Cir- 46 /2009 dated August 28, 2009 permitted Stock Exchanges to launch physically settled futures on 10-Year Government of India (GoI) Security.
2. In consultation with RBI, after taking into account feedback from market participants and Stock Exchanges, it has been decided to permit stock exchanges to introduce cash settled Interest Rate Futures on 10-Year Government of India Security.



3. The product specifications, position limits and risk management framework for cash settled futures on 10-year Gol security is given in Annexure-1. Two different designs (Option-A: Coupon bearing Government of India security as underlying and Option-B: Coupon bearing notional 10-year Government of India security with settlement price based on basket of Securities as underlying) are permitted for cash settled futures on 10-year Gol Security. Exchanges are permitted to launch contracts on either one or both of these options.
4. The cash settled 10-year IRF is being introduced on a pilot basis and the product features would be reviewed based on the experience gained.
5. Before the launch of the product, the Stock Exchange/ Clearing Corporation shall submit the proposal to SEBI for approval giving the details of contract specifications, risk management framework, the safeguards and the risk protection mechanisms, the surveillance systems etc.
6. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
7. This circular is available on SEBI website at www.sebi.gov.in, under the category "Circulars".

Shashi Kumar
General Manager

Annexure -1 Cash Settled interest rate futures on 10-year Gol Security

1. **Underlying**
Option-A: Gol security of face value Rs 100 with semi-annual coupon and residual maturity between 9 and 10 years on the day of expiry of IRF contract, as decided by stock exchanges in consultation with FIMMDA.
Option-B: Notional coupon bearing 10-year Gol security with a notional coupon paid semi-annually and face value of Rs 100. For each contract, there shall be basket of Government of India Securities, with residual maturity between 9 and 11 years on the day of expiry of IRF contract, with appropriate weight assigned to each security in the basket. Exchanges shall determine criteria for including securities in the basket and determining their weights such as trading volumes in cash market, minimum outstanding etc.

Exchanges shall disclose the criteria for selection of the underlying bond/s in both options of cash settled Interest

Rate Futures on 10 –Year Government of India security.

2. **Coupon**
Option-A: Coupon shall be same as that of the underlying bond.
Option-B: To be decided by the exchange to reflect the interest rate environment during the launch of the contract.
3. **Trading Hours**
 9 a.m. to 5.00 p.m. on all working days from Monday to Friday. Exchanges shall align the trading hours of IRF with that of underlying market in case of change of trading hours of underlying NDS-OM platform.
4. **Size of the Contract**
 Each futures contract shall represent 2000 underlying bonds of total face value of INR 2,00,000/-.
5. **Quotation**
 The Quotation shall be similar to the quoted price of the Government of India security.
6. **Tenure of the Contracts**
 To begin with, serial monthly contracts with maximum maturity of 3 months shall be available.
7. **Contract Value**
 The contract value shall be: = Quoted price * 2000
8. **Daily Contract Settlement Value**
 The Daily Contract Settlement Value shall be: = $P_w \times 2000$ (Here P_w is volume weighted average futures price of last half an hour).
 In the absence of last half an hour trading, theoretical futures price shall be considered for computation of Daily Contract Settlement Value. For computing theoretical futures price, following shall be considered:-
 a) Weighted average price of underlying bond in last two hours of trading on NDS-OM
 b) If no trades are executed in the underlying bond then, a theoretical price with reference to FIMMDA rates shall be used.
 Exchanges shall be required to disclose the model/ methodology used for arriving at the theoretical price.
9. **Expiry/Last trading day**
 The expiry / last trading day for the contract shall be the last Thursday of the expiry month. If any expiry day is a trading holiday, then the expiry/ last trading day shall be the previous trading day.
10. **Settlement Day**
 Settlement day shall be the next working day of the



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Expiry day.

11. Settlement Mechanism

Settlement shall happen in cash in INR.

12. Final Contract Settlement Value

The Final Contract Settlement Value shall be = $2000 * P_f$ where P_f is the final settlement price of the Underlying/ Notional bond, which shall be determined as given below.

Option-A:

P_f will be arrived at by calculating the weighted average price of the underlying bond based on the prices during the last two hours of the trading on NDS-OM. If less than 5 trades are executed in the underlying bond during the last two hours of trading, then FIMMDA price shall be used for final settlement.

Option-B:

The final settlement price shall be based on average settlement yield (Y_s) which shall be the weighted average of the yields of bonds in the underlying basket, where weights will be the assigned weight of the bonds in the underlying basket. Y_s will be rounded off to 4 decimal digits. For each bond in the basket, yield shall be calculated by determining weighted average yield of the bond based on last two hours of the trading in NDS-OM. If less than 5 trades are executed in the bond during the last two hours of trading, then FIMMDA price shall be used for determining the yields of individual bonds in the basket.

$P_f =$

$$\left[\frac{100}{\left(1 + \frac{Y_s}{2}\right)^{20}} \right] + \left[\sum_{k=1}^{20} \frac{100 * \frac{C}{2}}{\left(1 + \frac{Y_s}{2}\right)^k} \right]$$

where,

Y_s : Settlement yield

C : The notional coupon of underlying bond

13. Position Limits

Following position limits shall be applicable for IRF contracts:

a) Client Level

The gross open positions of the client across all contracts shall not exceed 3% of the total open interest or INR 200 crores, whichever is higher.

b) Trading Member Level

The gross open positions of the trading member across all contracts shall not exceed 10% of the total open interest or INR 600 crores, whichever is higher.

c) Clearing Member Level

No separate position limit is prescribed at the level of clearing member. However, the clearing member shall ensure that his own trading position and the positions of each trading member clearing through him is within the limits specified above.

d) FIIs

The gross open positions of the FII across all contracts shall not exceed 10% of the total open interest or INR 600 crores, whichever is higher.

Additional restriction: The total gross short (sold) position of each FII in IRF shall not exceed its long position in the government securities and in Interest Rate Futures, at any point in time. The total gross long (bought) position in cash and IRF markets taken together for all FIIs shall not exceed the aggregate permissible limit for investment in government securities for FIIs.

FIIs shall ensure compliance with the above limits. Stringent action shall be taken against FII in case of violation of the limits.

e) Exchange Level Overall Position Limit:

Following limits shall be applicable on overall open interest on derivatives contracts on each underlying per exchange:

Option-A: INR 25,000 crore or 25% of the outstanding of underlying bond whichever is higher.

Option-B: INR 30,000 crore or 20% of the outstanding of all underlying bonds whichever is higher.

14. Price Bands

For every IRF contract, Stock Exchanges shall set an initial price band at 3% of the previous closing price thus preventing acceptance of orders for execution that are placed beyond the set band. Whenever a trade in any contract is executed at the highest/lowest price of the band, stock exchanges may expand the price band for that contract by 0.5% in that direction after 30 minutes after taking into account market trend. However, no more than 2 expansions in the price band shall be allowed within a day.

Further, SEBI in consultation with RBI may halt the trading in case of extreme volatility in the IRF market.

15. Risk Management Framework

Clearing Corporations shall determine appropriate risk management framework for the product and submit the same to SEBI for approval.

The Initial Margin requirement shall be based on a worst case loss of a portfolio of an individual client across various scenarios of price changes. The various scenarios of price changes would be so computed so as to cover a 99% VaR over a one day horizon. Further Extreme Loss margins and calendar spread margins shall also be prescribed by clearing corporations. Margins shall be



deducted from the liquid assets of the clearing member on an on line, real time basis.

07 Simplification of demat account opening process

[Issued by the Securities and Exchange Board of India vide CIR/MIRSD/12/2013 dated : 04.12.2013]

1. SEBI has taken a number of steps in the recent past to simplify the Account opening and KYC process in the securities markets. In continuation of the efforts in the same direction, it has now been decided in consultation with both the Depositories and Associations of stock brokers and Depository Participants to further simplify and rationalize the demat account opening process.
2. The existing Beneficial Owner-Depository Participant Agreements shall be replaced with a common document "Rights and Obligations of the Beneficial Owner and Depository Participant". The document annexed herewith shall be mandatory and binding on all the existing and new clients and depository participants. This will harmonize the account opening process for trading as well as demat account. This will also rationalise the number of signatures by the investor, which he is required to affix at present on a number of pages.
3. The Depository Participant shall provide a copy of Rights and Obligations Document to the beneficial owner and shall take an acknowledgement of the same. They shall ensure that any clause in any voluntary document neither dilutes the responsibility of the depository participant nor it shall be in conflict with any of the clauses in this Document, Rules, Bye-laws, Regulations, Notices, Guidelines and Circulars issued by SEBI and the Depositories from time to time. Any such clause introduced in the existing as well as new documents shall stand null and void.
4. The Depositories are directed to:
 - i. Bring the provisions of this circular to the notice of the Depository Participants and also disseminate the same on their websites. They shall take necessary steps to implement this circular immediately and ensure its full compliance in respect of all new clients within 3 months from the date of this circular.
 - ii. Advise the depository participants to intimate their clients the modified provisions of the Rights and Obligations Document, replacing the existing BO-DP agreements.

iii. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in coordination with each another to achieve uniformity in approach.

iv. Communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of and to regulate the securities markets.
6. This circular is available on SEBI website (www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

Asha Shetty

Deputy General Manager

08 Illustrative format of Statement of Assets & Liabilities in SEBI (ICDR) Regulations, 2009

[Issued by the Securities and Exchange Board of India vide CIR/CFD/DIL/15/2013 dated : 03.12.2013]

1. Regulation - (2)(IX)(B)(9)(f) of Part-A of Schedule VIII of SEBI (ICDR) Regulations, 2009 provides for the illustrative format of Statement of Assets and Liabilities in offer document which is in accordance with the erstwhile format of Schedule VI of the Companies Act, 1956.
2. After the notification and implementation of the revised Schedule VI of Companies Act, 1956, the aforesaid format has been updated and brought in line with the requirements of the Companies Act, 1956. The revised format is also in line with the requirements of Companies Act, 2013 as Schedule III of Companies Act, 2013 has adopted the same format as notified under revised Schedule VI of Companies Act, 1956. The revised format for disclosure of Statement of Assets and Liabilities in offer document is placed at Annexure A.
3. This circular is applicable for all draft/final offer documents filed with the Board on or after the date of this circular.
4. It may be noted that necessary amendments to SEBI (ICDR) Regulations, 2009 are being carried out and upon such amendment, this circular would stand rescinded.
5. This circular is issued in exercise of the powers conferred



From the Government

under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.

6. This circular is available on SEBI website at www.sebi.gov.in under the category “Legal Framework”.

Anindya Das

Deputy General Manager

Annexure-A

Illustrative format of Statement of Assets and Liabilities

As at March 31,...					
	20X1	20X2	20X3	20X4	20X5
(Rupees in lakhs)					
(1) Equity & Liabilities					
Shareholders' Funds					
(a) Share capital					
(b) Reserves & surplus					
(2) Non Current Liabilities					
(a) Long term borrowings					
(b) Deferred tax liabilities (net)					
(c) Long term provisions					
(3) Current Liabilities					
(a) Short term borrowings					
(b) Trade payables					
(c) Other current liabilities					
(d) Short term provisions					
Total					
Assets					
(4) Non Current Assets					
(a) Fixed Assets					
(b) Non current investments					
(c) Long term loans and advances					
(d) Other non current assets					
(5) Current Assets					
(a) Current Investments					
(b) Inventories					
(c) Trade receivables					
(d) Cash and bank balances					
(e) Short term loans and advances					
(f) Other current assets					
Total					

09 SEBI Circulars No. CIR/CFD/DIL/3/2013 dated January 17, 2013 and - CIR/CFD/DIL/7/2013 dated May 13, 2013 - Extension of time line for alignment

[Issued by the Securities and Exchange Board of India vide CIR/CFD/POLICYCELL/14/2013 dated : 29.11.2013]

- SEBI vide circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013, inter alia, made certain amendments to the Equity Listing Agreement and SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 [“SEBI (ESOS and ESPS) Guidelines, 1999”] in order to address the concerns over acquisition of shares by employee welfare trusts from the secondary market.
- SEBI, on receiving various representations seeking clarification on applicability of the circular as well as on the continued holding of securities already acquired by employee benefit trusts before the date of the aforesaid circular beyond June 30, 2013, issued certain clarifications vide circular No. CIR/CFD/DIL/7/2013 dated May 13, 2013. The time line for aligning the existing employee benefit schemes involving securities of the company with the SEBI (ESOS and ESPS) Guidelines, 1999 was also extended to December 31, 2013 vide the said circular dated May 13, 2013.
- SEBI, based on the representations received, also initiated a consultative process for reviewing the existing SEBI (ESOS and ESPS) Guidelines, 1999 for framing a set of regulations with a view to ensure better enforceability, address the concerns raised with regard to composition of employee welfare trusts, disclosures, etc. and to enable secondary market transactions with adequate safeguards. As part of the said process, SEBI has issued a discussion paper on November 20, 2013.
- In light of the ongoing review, it has been decided to extend the time line for alignment of existing employee benefit schemes with the SEBI (ESOS and ESPS) Guidelines, 1999, to **June 30, 2014**. Accordingly, in Clause 35C (ii) of the Equity Listing Agreement, the words “**December 31, 2013**” shall be replaced with “**June 30, 2014**”.
- All other requirements including the disclosures specified under the aforesaid circulars dated January 17, 2013 and May 13, 2013 shall continue to apply to the listed companies.
- This circular is being issued in exercise of the powers under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
- This circular is available on SEBI website at www.sebi.gov.in in under the categories “Legal Framework” and “Issues and Listing”.

Amit Tandon

Deputy General Manager



CHARTERED SECRETARY



10 Circular on Infrastructure Debt Fund (IDF) Foreign Institutional Investors (FIIs) which are long term investors

[Issued by the Securities and Exchange Board of India vide CIR/IMD/DF/20/2013 dated : 29.11.2013]

1. SEBI, vide Circular CIR / IMD / DF / 7 / 2013 dated April 23, 2013, has designated the following categories of FIIs as long term investors for the purpose of IDF:
 - a. Foreign Central Banks
 - b. Governmental Agencies
 - c. Sovereign Wealth Funds
 - d. International/Multilateral Organizations/ Agencies
 - e. Insurance Funds
 - f. Pension Funds
2. It has been decided that regulated foreign feeder funds, having at all times, at least 20% of their assets under management held by investors belonging to one of more of the above categories of FIIs, shall also be categorized as FIIs which are long term investors, for the purpose of IDF.

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 the 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.

PARAG BASU

Chief General Manager

11 Investments by FIIs/QFIs in Credit Enhanced Bonds

[Issued by the Securities and Exchange Board of India vide CIR/IMD/FIC/19/2013 dated : 28.11.2013]

1. On September 10, 2012, Government of India decided to permit Foreign Institutional Investors (FIIs) to invest in "Credit Enhanced INR Bonds" up to an equivalent of US\$ 5 billion within the overall Corporate Bond limit of US\$ 51 billion. The Reserve Bank of India vide circular RBI/13-14/368 dated November 11, 2013 had permitted FIIs and QFIs to invest in the credit enhanced bonds, as per paragraph 3 and 4 of the RBI A.P. (DIR Series) Circular No. 120 dated June 26, 2013, up to a limit of USD 5 billion within the overall limit of USD 51 billion earmarked for corporate debt.
2. The depositories shall monitor FII/QFI investments in credit enhanced bonds, so as to ensure that aggregate investments by FIIs/QFIs in such bonds shall not be more than 90% of the US \$ 5 billion limit i.e US \$ 4.5 billion. The Custodian/QDP shall provide on a daily basis, FII/QFI wise, ISIN wise and company wise buy/sell information and any other transaction or any related information to their respective depositories on the same day i.e the day on which the transaction was carried out, before the time stipulated by the depositories.
3. The depositories shall jointly publish/ disseminate the aggregate investment of FIIs/QFIs in Credit Enhanced Bonds, to public, on a daily basis.
4. When the aggregate investments of all the FIIs/QFIs reaches 90% of the investment limit, notice informing the same shall be published by the depositories on their websites and no fresh purchases shall be allowed without prior approval of the depositories. The same shall be informed by the depositories to the Custodians/QDPs and recognized stock exchanges having nationwide terminals. The depositories shall also inform the Custodians/QDPs and stock exchanges when aggregate investments of all the FIIs/QFIs fall below 90% of the investment limits.
5. For fresh purchases by FIIs/QFIs after the investment limit reaches 90%, prior approval of the depositories shall be obtained. The FII/QFI shall make such request for prior approval to the concerned depository through the Custodians/QDPs specifying therein the name of the FII/QFI, PAN and other unique identification number relating to that FII/QFI, by way of any mode of communication as specified by the depositories in consultation with each other. The concerned depository shall provide the details of prior approval requests received by it to the other depository.
6. After market hours, the depository shall give approval to request for purchase on a firstcome- first-served basis in co-ordination with the other depository, based on time of receipt of the prior approval requests by the depositories. The validity of the approval shall be for the next two trading days.
7. In case the aggregate holding of the FII/QFI exceeds overall investment limit, the depositories shall jointly notify the respective Custodians/QDPs regarding the breach along with the names of the FII/QFI due to whom the limits have been breached. For this purpose, the stock exchanges shall provide the required information so as to enable the depositories to identify the transaction details of the FII/QFI including the name of FII/QFI, PAN and/ or other unique identification number relating to that



From the Government

FII/QFI, purchase quantity and time or any other information as may be required by the depositories.

8. In case the aggregate holding of the FII/QFIs exceeds overall investment limit for whatsoever reason, the FII/QFI due to whom the limit is breached shall mandatorily divest excess holdings within seven working days of such breach being notified by depositories to the DP. The Custodians/QDPs shall obtain necessary authorization from the FII/QFI at the time of account opening for such divestment of excess holdings.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

S MADHUSUDHANAN

Deputy General Manager



Economic Laws

12

Amendment of the existing policy on issue of shares by unlisted Indian Companies under FCCB/ADR/GDR, pursuant to the Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013.

[Issued by the Government of India, Ministry of Commerce and Industry (DIPP) vide Press Note No.7 (2013 Series) dated : 03.12.2013]

1.0 Present Position:

- 1.1 Paragraph 3.3.4 (iii) of the 'Consolidated FDI Policy', effective from April 5, 2013, relating to the issue of shares by unlisted Indian Companies under FCCB/ADR/GDR, reads as below:-

(iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international

market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. ADRs/GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India: Pending repatriation or utilization of the proceeds, the Indian company can invest the funds in:-

- (a) Deposits, Certificate of Deposits or other instruments offered by banks rated by Standard and Poor, Fitch, IBCA, Moody's etc. with rating not below the rating stipulated by Reserve Bank from time to time for the purpose;
- (b) Deposits with branch/es of Indian Authorized Dealers outside India; and
- (c) Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less.

2.0 Revised Position:

- 2.1 The Government of India has reviewed the position in this regard and notified the Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013 vide Notification no. G.S.R. 684 (E) dated 11th October, 2013.

- 2.2 Accordingly, Paragraph 3.3.4 (iii) of the 'Consolidated FDI Policy', effective from April 5, 2013 is replaced by the following:

"Unlisted companies shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period for two years subject to the following conditions:

- (a) Unlisted companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
- (b) The Companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;
- (c) While raising resources abroad, the listing company shall be fully compliant with the FDI policy in force;
- (d) The capital raised abroad may be utilized for retiring outstanding overseas debt or for operations abroad including for acquisitions;
- (e) In case the funds raised are not utilized abroad as



stipulated at (d) above, such companies shall remit the money back to India within 15 days and such money shall be parked only in AD category banks recognized by RBI and may be used domestically.”

3.0 The above decision will take immediate effect.

Anjali Prasad

Additional Secretary to the Govt. of India



Banking Laws

13 Investment in Credit Information Companies

[Issued by the Reserve Bank of India vide DBOD.CID.BC.No.74/20.16.042/2013-14 dated 29.11.2013.]

- In exercise of the powers conferred by sub-section (1) of Section 11 of Credit Information Companies (Regulation) Act, 2005, and in supersession of its direction on Investment in Credit Information Companies dated November 20, 2008, Reserve Bank of India, being satisfied that it is necessary and expedient in the public interest to do so, hereby directs that investments directly or indirectly by any person, whether resident or otherwise, shall not exceed ten per cent of the equity capital of the investee company.
- Notwithstanding the above, the Reserve Bank may consider allowing higher FDI limits as under to entities which have an established track record of running a Credit Information Bureau in a well regulated environment:
 - up to 49% if their ownership is not well diversified (i.e., one or more shareholders each hold more than 10% of voting rights in the company)
 - up to 74% if their ownership is well diversified or
If their ownership is not well diversified, at least 50% of the directors of the investee CIC in India are Indian nationals/ Non-Resident Indians/ Persons of Indian Origin subject to the condition that one third of the directors are Indian nationals resident in India.
 - The investor company should preferably be a listed

company on a recognised stock exchange.

- In case the investor in a Credit Information Company in India is a wholly owned subsidiary (directly or indirectly) of an investment holding company, the conditions as at (a), (b) and (c) of (2) above will be applied to the operating group company that is engaged in credit information business and has undertaken to provide technical know-how to the Credit Information Company in India.

B. Mahapatra

Executive Director

14 Interest Rates on FCNR (B) Deposits

[Issued by the Reserve Bank of India vide DBOD. Dir. BC. 73/13.03.00/2013-14 dated 29.11.2013.]

- Please refer to our circular DBOD. Dir. BC. 38/13.03.00/2013-14 dated August 14, 2013 advising interest rate ceilings on FCNR (B) deposits for maturity period of one year to less than three years and three to five years, respectively. In terms of para 4 thereof, these instructions are valid up to November 30, 2013, subject to review.
- In this connection, we advise that the interest rate ceiling prescribed vide circular under reference will remain unchanged till January 31, 2014, subject to review.
- An amending directive DBOD.Dir.BC. 72/13.03.00/2013-14 dated November 29, 2013 is enclosed.

(Rajesh Verma)

Chief General Manager

15 Interest Rates on FCNR (B) Deposits

[Issued by the Reserve Bank of India vide DBOD.Dir.BC. 72/13.03.00/2013-14 dated 29.11.2013.]

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, and in modification of the directive DBOD.No.Dir.BC.37/13.03.00/2013-14 dated August 14, 2013 on Interest Rates on FCNR(B) Deposits, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby directs that the interest rate ceiling on FCNR (B) deposits prescribed vide Directive referred to above will remain unchanged till January 31, 2014, subject to review.

(B. Mahapatra)

Executive Director



From the Government

16 Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits

[Issued by the Reserve Bank of India vide RBI/2013-14/387 DBOD. No. Dir. BC. 71 / 13.03.00/ 2013-14 dated 29.11.2013.]

1. Please refer to our circular DBOD. Dir. BC. 40/13.03.00/2013-14 dated August 14, 2013 allowing banks the freedom to offer interest rates on incremental NRE deposits with maturity of 3 years and above without any ceiling in order to pass on the benefit of exemption provided on such deposits from CRR/ SLR requirements. In terms of para 4 thereof, these instructions are valid up to November 30, 2013, subject to review.
2. In this connection, we advise that the above instructions issued vide circular under reference will remain unchanged till January 31, 2014, subject to review.
3. An amending directive DBOD. Dir. BC. 70/13.03.00/2013-14 dated November 29, 2013 is enclosed.

Rajesh Verma
Chief General Manager

17 Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits

[Issued by the Reserve Bank of India vide DBOD. Dir. BC. 70/13.03.00/2013-14 dated 29.11.2013.]

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, and in modification of the directive DBOD. Dir. BC. 39/ 13.03.00/ 2013-14 dated August 14, 2013 on Deregulation of Interest Rates on Non-Resident (External) Rupee (NRE) Deposits, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby directs that instructions issued vide directive referred to above will remain unchanged till January 31, 2014, subject to review.

B. Mahapatra
Executive Director

18 Financing of Infrastructure - Definition of 'Infrastructure Lending'

[Issued by the Reserve Bank of India vide RBI/2013-14/386 DNBS.PD. CC.No.362 /03.10.001/2013-14 dated 29.11.2013.]

1. Please refer to our Circular DNBS.PD.CC.No.

354/03.10.001/2013-14 dated August 02, 2013 on Financing of Infrastructure - Definition of 'Infrastructure Lending'.

2. Government of India, vide its Gazette Notification dated October 7, 2013 has updated the Harmonised Master List of Infrastructure sub-sectors and the following new sub-sectors have been added in the Master List:
 - i. Hotels with project cost of more than Rs.200 crores each in any place in India and of any star rating.
 - ii. Convention Centres with project cost of more than Rs.300 crores each.
3. Accordingly, the extant definition of infrastructure loan given in the NBFC Prudential Norms Directions, 2007 stands amended with immediate effect. The revised definition of infrastructure lending is given in the Annex to this circular. Also please find enclosed the amending notifications of date for meticulous compliance.

N. S. Vishwanathan

Principal Chief General Manager

Annex

List of sub-sectors for 'Infrastructure Lending'

A credit facility extended by lenders (i.e. NBFCs) to a borrower for exposure in the following infrastructure sub-sectors will qualify as "Infrastructure lending" :

Sr. No.	Category	Infrastructure sub-sectors	
1.	Transport	i	Roads and bridges
		ii	Ports ¹
		iii	Inland Waterways
		iv	Airport
		v	Railway Track, tunnels, viaducts, bridges ²
		vi	Urban Public Transport (except rolling stock in case of urban road transport)
2.	Energy	i	Electricity Generation
		ii	Electricity Transmission
		iii	Electricity Distribution
		iv	Oil pipelines
		v	Oil / Gas / Liquefied Natural Gas (LNG) storage facility ³
		vi	Gas pipelines ⁴
3.	Water & Sanitation	i	Solid Waste Management
		ii	Water supply pipelines
		iii	Water treatment plants
		iv	Sewage collection, treatment and disposal system
		v	Irrigation (dams, channels, embankments etc)
		vi	Storm Water Drainage System
		vii	Slurry Pipelines
4.	Communication	i	Telecommunication (Fixed network) ⁵
		ii	Telecommunication towers
		iii	Telecommunication & Telecom Services



5.	Social and Commercial Infrastructure	i	Education Institutions (capital stock)
		ii	Hospitals (capital stock) ⁶
		iii	Three-star or higher category classified hotels located outside cities with population of more than 1 million
		iv	Common infrastructure for industrial parks, SEZ, tourism facilities and agriculture markets
		v	Fertilizer (Capital investment)
		vi	Post harvest storage infrastructure for agriculture and horticultural produce including cold storage
		vii	Terminal markets
		viii	Soil-testing laboratories
		ix	Cold Chain ⁷
		x	Hotels with project cost ⁸ of more than Rs.200 crores each in any place in India and of any star rating.
		xi	Convention Centres with project cost ⁸ of more than Rs.300 crores each

Notes

1. Includes Capital Dredging
2. Includes supporting terminal infrastructure such as loading / unloading terminals, stations and buildings
3. Includes strategic storage of crude oil
4. Includes city gas distribution network
5. Includes optic fibre / cable networks which provide broadband / internet
6. Includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centres
7. Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.
8. Applicable with prospective effect from the date of this circular and available for eligible projects for a period of three years; Eligible costs exclude cost of land and lease charges but include interest during construction.

19 Participation of NBFCs in Insurance sector

[Issued by the Reserve Bank of India vide RBI/2013-14/383 DNBS.PD. CC.No.361/03.02.002/2013-14 dated 28.11.2013.]

1. Please refer to the circular DNBS.(PD).CC.No.13/02.01/99-2000 dated June 30, 2000 which contains the Guidelines for entry of NBFCs into Insurance Business issued on June 09, 2000, and subsequent modification carried out vide Circular DNBS.(PD).CCX.No.35/10.24/2003-04 dated February 10, 2004 and CC No. 221/03.02.002/2010-2011 dated May 27, 2011. As per the extant instructions issued on May 27, 2011, in case more than one company (irrespective of doing financial activity or not) in the same group of the NBFC wishes to take a stake in the insurance company, the contribution by all companies in the same group shall be counted for the limit of 50 per

cent equity investment in the Insurance JV company.

2. In the operation of Insurance Company, very often, the IRDA requires an insurance company to expand its capital taking into account the stipulations of the Insurance Act and the solvency requirements of the insurance company. The restriction of a group limit of the NBFC to 50% of the equity of the insurance JV company prescribed in the above mentioned circular may act as a constraint for the insurance company in meeting the requirement of IRDA.
3. On a review, it has been decided that in cases where IRDA issues calls for capital infusion into the Insurance JV company, the Bank may, on a case to case basis, consider need based relaxation of the 50% group limit specified in CC No 221 dated May 27, 2011. The relaxation, if permitted, will be subject to compliance by the NBFC with all regulatory conditions specified in DNBS(PD) Cc.No.35/10.24/2003-04 dated February 10, 2004 and such other conditions as may be necessary in the specific case.
4. Application for such relaxation along with supporting documents may be submitted by the NBFC to the Regional Office of the Reserve Bank under whose jurisdiction its registered office is situated.

N. S. Vishwanathan

Principal Chief General Manager

20 Foreign Direct Investment in Financial Sector – Transfer of Shares

[Issued by the Reserve Bank of India vide RBI/2013-14/366 A. P. (DIR Series) Circular No.72 dated 11.11.2013.]

1. Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Regulation 10(A)(v) of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time and Para 2(B) (iv) of A.P.(DIR Series) Circular No.43 dated November 4, 2011, in terms which for transfer of shares from Residents to Non-Residents where the investee company is in the financial services sector, No Objection Certificate (NoC) is required to be obtained from the respective financial sector regulator/regulators of the investee company as well as transferor and transferee entities and such NoC(s) are to be filed with the form FC-TRS to the AD bank.
2. On a review, it has now been decided that the requirement of NoC(s) will be waived from the perspective of Foreign



From the Government

Exchange Management Act, 1999 and no such NoC(s) need to be filed along with form FC-TRS. However, any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

3. All the other instructions contained in the above referred A.P.(DIR Series) Circular shall remain unchanged.
4. AD Category – I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
5. Reserve Bank of India has since amended the relevant Regulations and notified vide Notification No. FEMA.290/2013-RB dated October 4, 2013, notified vide. G.S.R.No.682(E) dated October 11, 2013.
6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

21 Foreign investment in India - participation by SEBI registered FIIs, QFIs and SEBI registered long term investors in credit enhanced bonds

[Issued by the Reserve Bank of India vide RBI/2013-14/368 A. P. (DIR Series) Circular No.74 dated 11.11.2013.]

1. Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors, such as, Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks, may purchase, on repatriation basis, Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time. The present limits for investments by FIIs, QFIs and long term investors registered with SEBI in Government securities and corporate debt stands at USD 30 billion and USD 51 billion, respectively.
2. Attention of AD Category - I banks is also invited to A.P.

(DIR Series) Circular No. 40 dated March 02, 2010 and A.P. (DIR Series) Circular No. 120 dated June 26, 2013, relating to External Commercial Borrowings (ECB) Policy – Structured Obligations. In terms of A.P. (DIR Series) circular dated June 26, 2013, credit enhancement can be provided by eligible non-resident entities to the domestic debt raised through issue of INR bonds/ debentures by all borrowers eligible to raise ECB under the automatic route. All the other terms and conditions mentioned in para 4 (iv), (vi) to (viii) of A.P. (DIR Series) Circular No. 40 dated March 02, 2010 will remain unchanged.

3. On a review, it has been decided to allow SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks - to invest in the credit enhanced bonds, as per paragraph 3 and 4 of A.P. (DIR Series) Circular No. 120 dated June 26, 2013, up to a limit of USD 5 billion within the overall limit of USD 51 billion earmarked for corporate debt.
4. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.
5. Reserve Bank of India has since amended relevant Regulations vide Notification No.FEMA.289/2013 dated October 4, 2013, notified vide G.S.R.No.681(E) dated October 11, 2013.
6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

22 Amendment to the "Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993"

[Issued by the Reserve Bank of India vide RBI/2013-14/363 A.P. (DIR Series) Circular No. 69 dated 08.11.2013.]

1. Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No.11 dated September 5, 2005s regarding issue of American Depository Receipts (ADRs)/ Global Depository Receipts (GDRs) read with Paragraph 4 of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person



Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which unlisted Indian companies which have not yet accessed Global Depository Receipts/ Foreign Currency Convertible Bond route for raising capital in the international market were required to have prior or simultaneous listing in the domestic market.

2. On a review, it has now been decided to allow unlisted companies incorporated in India to raise capital abroad, without the requirement of prior or subsequent listing in India, initially for a period of two years, subject to conditions mentioned below. This scheme will be implemented from the date of the Government Notification of the scheme, subject to review after a period of two years. The investment shall be subject to the following conditions:

- (a) Unlisted Indian companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
- (b) The ADRs/ GDRs shall be issued subject to sectoral cap, entry route, minimum capitalisation norms, pricing norms, etc. as applicable as per FDI regulations notified by the Reserve Bank from time to time;
- (c) The pricing of such ADRs/GDRs to be issued to a person resident outside India shall be determined in accordance with the captioned scheme as prescribed under paragraph 6 of Schedule 1 of Notification No. FEMA. 20 dated May 3, 2000, as amended from time to time;
- (d) The number of underlying equity shares offered for issuance of ADRs/GDRs to be kept with the local custodian shall be determined upfront and ratio of ADRs/GDRs to equity shares shall be decided upfront based on applicable FDI pricing norms of equity shares of unlisted company;
- (e) The unlisted Indian company shall comply with the instructions on downstream investment as notified by the Reserve Bank from time to time;
- (f) The criteria of eligibility of unlisted company raising funds through ADRs/GDRs shall be as prescribed by Government of India;
- (g) The capital raised abroad may be utilised for retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions;
- (h) In case the funds raised are not utilised abroad as stipulated above, the company shall repatriate the funds to India within 15 days and such money shall be parked only with AD Category-1 banks recognised by RBI and shall be used for eligible purposes ;
 - (i) The unlisted company shall report to the Reserve Bank as prescribed under sub-paragraphs (2) and (3) of Paragraph 4 of Schedule 1 to FEMA Notification No. 20.

3. A copy of the Press Release dated September 27, 2013 issued by Ministry of Finance, Government of India and the Government Notification dated October 11, 2013 are annexed (Annex 1 and 2, respectively).
4. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar
Chief General Manager-in-Charge

Annex-1

Unlisted Indian Companies Allowed on A Pilot Basis for A Period of Two Years to List and Raise Capital abroad without the Requirement of Prior or Subsequent Listing in India

At present, unlisted companies that are incorporated in India are not allowed to directly list in overseas markets without prior or simultaneous listing in Indian markets. It has now been decided with the approval of the Union Finance Minister that unlisted companies may be allowed to raise capital abroad without the requirement of prior or subsequent listing in India.

This scheme will be implemented on a pilot basis for a period of two years from the date of notification of the scheme. After the initial two year period, the impact of this arrangement will be reviewed.

The approval to list abroad is subject to the following conditions:

- Unlisted companies may be allowed to list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
 - The Companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;
 - While raising resources abroad, the listing company shall be fully compliant with the FDI Policy in force;
 - The capital raised abroad may be utilised for retiring outstanding overseas debt or for operations abroad including for acquisitions;
 - In case the funds raised are not utilised abroad as stipulated above, such companies shall remit the money back to India within 15 days and such money shall be parked only in AD category banks recognised by RBI.
- Ministry of Finance (MoF), Department of Industrial Policy and Promotion (DIPP) and Reserve Bank of India (RBI)



From the Government

would be issuing the necessary notifications in due course in order to implement the required changes to the existing rules.

Annex-2

Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013

G.S.R. 684(E).—Central Government hereby amend the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, namely:—

1. This Scheme may be called the issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013.
2. The Scheme shall be deemed to have come into force from the date of publication of Notification; and
3. In the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

In Paragraph 3(1)(B) the words “Unlisted Indian Companies Issuing Global Depository Receipts/Foreign Currency Convertible Bonds shall be required to simultaneously list in the Indian stock Exchanges(s)” shall be replaced by the following

“Unlisted companies shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period of two years subject to the following conditions.

- a. Unlisted companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
- b. The Companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of PMLA. They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;
- c. While raising resources abroad, the listing company shall be fully compliant with the FDI Policy in force;
- d. The capital raised abroad may be utilised for retiring outstanding overseas debt or for operations abroad including for acquisitions;
- e. In case the funds raised are not utilised abroad as stipulated at d above, such companies shall remit the

money back to India within 15 days and such money shall be parked only in AD category banks recognised by RBI and may be used domestically.

23 Foreign Direct Investment (FDI) in India – definition of 'group company'

[Issued by the Reserve Bank of India vide RBI/2013-14/356 A.P. (DIR Series) Circular No.68 dated 01.11.2013.]

1. Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified by the Reserve Bank vide Notification No. FEMA. 20/2000-RB dated 3rd May 2000, as amended from time to time.
2. The extant FDI policy has since been reviewed and it has been decided to incorporate the definition for 'group company' as under; 'Group company' means two or more enterprises which, directly or indirectly, are in position to:
 - (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or
 - (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.
3. Copy of Press Note No. 2 (2013 Series) dated June 3, 2013 issued by Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India in this regard is enclosed.
4. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.
5. Reserve Bank has since amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment) Regulations, 2013 which have been notified vide Notification No. FEMA.292/2013-RB dated October 4, 2013, vide G.S.R. No. 683(E) dated October 11, 2013.
6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Rudra Narayan Kar

Chief General Manager-in-Charge



**Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Press Note No. 2(2013 Series)**

Subject: Foreign Direct Investment Policy- definition of 'group company'

1.0 The Government has decided to incorporate the following definition of 'group company' in the FDI Policy contained in 'Circular 1 of 2013- Consolidated FDI Policy', effective from 05-04-2013:

2.1	Definition
2.1.15 bis	"Group company" means two or more enterprises which, directly or indirectly, are in a position to: (i) exercise twenty-six per cent, or more of voting rights in other enterprise: or (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.

2.0 The above decision will take immediate effect.

D. V. Prasad
Joint Secretary

24 External Commercial Borrowings (ECB) by Holding Companies / Core Investment Companies for the project use in Special Purpose Vehicles (SPVs)

[Issued by the Reserve Bank of India vide RBI/2013-14/397 A.P. (DIR Series) Circular No. 78 dated 03.12.2013.]

1. Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the A.P. (DIR Series) Circular No. 5 dated August 1, 2005 as amended from time to time relating to the External Commercial Borrowings (ECB).
2. In order to strengthen the flow of resources to infrastructure sector, it has been decided to permit Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank to raise ECB under the automatic route/approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs) with the following terms and conditions:
 - i. The business activity of the SPV should be in the infrastructure sector where "infrastructure" is defined as per the extant ECB guidelines;
 - ii. The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project;
 - iii. The ECB proceeds is utilized either for fresh capital expenditure (capex) or for refinancing of existing

Rupee loans (under the approval route) availed of from the domestic banking system for capex as per the extant norms on refinancing;

- iv. The ECB for SPV can be raised up to 3 years after the Commercial Operations Date of the SPV;
- v. The SPV should give an undertaking that no other method of funding, such as, trade credit (if for import of capital goods), etc. will be utilized for that portion of fresh capital expenditure financed through ECB proceeds;
- vi. The ECB proceeds should be kept in a separate escrow account as per the extant guidelines on parking of ECB proceeds pending utilization for permissible end-uses and use of such proceeds should be strictly monitored by the ADs for permissible uses;
- vii. In case of Holding Companies that come under the Core Investment Company (CIC) regulatory frame work of the Reserve Bank, the additional terms and conditions for raising ECB for project use in SPVs will be as under:
 - a) The ECB availed is within the ceiling of leverage stipulated for CICs, i.e., their outside liabilities including ECB cannot be more than 2.5 times of their adjusted net worth as on the date of the last audited balance sheet; and
 - b) In case of CICs with asset size below Rupees 100 crore, the ECB availed of should be on fully hedged basis.
3. The above modifications to the ECB guidelines will come into force with immediate effect. All other aspects of extant ECB guidelines (including provisions contained in A.P. (DIR Series) Circulars No. 25 and 111 dated September 23, 2011 and April 20, 2012 to the effect that maximum 25 per cent of ECB raised by the infrastructure companies can be utilised for refinancing of the Rupee loans availed from the domestic banking system (40 per cent in case of power sector) under the approval route) shall remain unchanged.
4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers.
5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

C. D. Srinivasan
Chief General Manager





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188	Ms. Minal Tuteja	ACS - 34407	NIRC	241	Ms. Ruchita Chandak	ACS - 34459	EIRC
189	Mr. Gagandeep Singh Vig	ACS - 34408	NIRC	242	Ms. Nikitha P	ACS - 34460	SIRC
190	Mr. Raveendra Babu Mannem	ACS - 34409	SIRC	243	Ms. Ramya C	ACS - 34461	SIRC
191	Ms. Sushma	ACS - 34410	NIRC	244	Mr. Tapasvi Dixit	ACS - 34462	EIRC
192	Ms. Prathibha L	ACS - 34411	SIRC	245	Ms. Veena B R	ACS - 34463	SIRC
193	Ms. Pallavi Gandhi	ACS - 34412	NIRC	246	Ms. Subashree R S	ACS - 34464	SIRC
194	Ms. Shivangi Sharma	ACS - 34413	NIRC	247	Ms. Sunitha	ACS - 34465	SIRC
195	Ms. Shivangi Sharma	ACS - 34413	NIRC				
196	Ms. Ruby Singh	ACS - 34414	NIRC		Restored*		
197	Mr. Manish Kumar	ACS - 34415	NIRC	1	Sh. Farroukh Kolah	ACS - 14735	WIRC
198	Mr. Himanshu Goyal	ACS - 34416	NIRC	2	Sh. P J Shah	ACS - 9278	WIRC
199	Ms. Preeti Sharma	ACS - 34417	NIRC	3	Sh. Gopal Choudhary	ACS - 11709	WIRC
200	Ms. Archana Agarwal	ACS - 34418	NIRC	4	Sh. V Ravichandran	ACS - 15661	SIRC
201	Ms. Anjali Sharma	ACS - 34419	NIRC	5	Sh. Harsh Kumar Mishra	ACS - 14822	WIRC
202	Ms. Palak Dilip Kumar Parekh	ACS - 34420	WIRC	6	Sh. Anand Prakash Garg	FCS - 4323	NIRC
203	Ms. Jyoti Aggarwal	ACS - 34421	NIRC	7	Sh. Shashi Bhushan Singh	ACS - 12903	NIRC
204	Mrs. Soumya Sharma	ACS - 34422	WIRC	8	Sh. Prashant Saini	ACS - 23769	NIRC
205	Mr. Ashish Garg	ACS - 34423	NIRC	9	Ms. Sonia Parnami	ACS - 21872	NIRC
206	Mr. Rahul Jain	ACS - 34424	NIRC	10	Mr. Amit Singh	ACS - 29952	NIRC
207	Ms. Parkhi Johar	ACS - 34425	NIRC	11	Mr. Vivek Vats	ACS - 28841	NIRC
208	Ms. Priyanshi Madan	ACS - 34426	NIRC	12	Sh. Nikhil Sehgal	ACS - 28190	NIRC
209	Ms. Shruti Jagdish Chindak	ACS - 34427	SIRC	13	Ms. Rubina	ACS - 14188	NIRC
210	Ms. Srividhya Narasimhan	ACS - 34428	SIRC	14	Sh. Rajendra Kumar Goel	ACS - 1795	NIRC
211	Mr. Sridhar M	ACS - 34429	SIRC	15	Sh. Sameer Maheshwari	ACS - 13237	WIRC
212	Mr. Shreyans Jain	ACS - 34430	WIRC	16	Sh. Rajesh Chura	ACS - 4929	EIRC
213	Mr. Benjamin Alexander	ACS - 34431	NIRC	17	Sh. Manoj Agarwal	ACS - 18009	EIRC
214	Mr. T N Sivasubramanian	ACS - 34432	SIRC	18	Sh. Marcus Norbert Lobo	FCS - 4256	WIRC
215	Mr. T H Vijay Prasad	ACS - 34433	SIRC	19	Sh. Bipin Babubhai Shah	ACS - 2748	WIRC
216	Ms. Kavya Anegundi	ACS - 34434	EIRC	20	Sh. Ravindra P Deshpande	ACS - 19357	NIRC
217	Mr. Chandramohan Ikkurthi	ACS - 34435	EIRC	21	Sh. Siddhartha Swarup Sarkar	ACS - 12981	EIRC
218	Mr. Rajesh Desaiapati	ACS - 34436	SIRC	22	Mr. Radhaballav Mandal	ACS - 23365	EIRC
219	Mr. Bhamidi S Krishna Sirish	ACS - 34437	SIRC				
220	Ms. Soniya Shrivastava	ACS - 34438	EIRC				

* Restored from 21st November, 2013 to 20th December, 2013.

* Restored from 21st November, 2013 to 20th December, 2013

News From the Institute



23	Sh. Sunil Shyamsukha	ACS - 4806	EIRC	76	Sh. Jatin Gehlot	ACS - 15514	NIRC
24	Sh. Bibhuti Bhusan Bhaumik	ACS - 1236	EIRC	77	Ms. Madhumita Pal Chowdhury	ACS - 20723	NIRC
25	Sh. Supriya Coomer	ACS - 5052	EIRC	78	Sh. A R Sharma	ACS - 4967	NIRC
26	Sh. Satish Daruka	ACS - 12328	EIRC	79	Mrs. Swapnali Sagar Puranik	ACS - 26732	WIRC
27	Ms. Pramila Parakh	ACS - 17749	EIRC	80	Sh. Vignesh J	ACS - 21161	SIRC
28	Ms. Suhita Mukhopadhyay	ACS - 17150	EIRC	81	Sh. K Raghu	ACS - 1552	SIRC
29	Sh. Hiren U Sanghavi	ACS - 5586	EIRC	82	Sh. Leela Krishan Dhamija	ACS - 11756	NIRC
30	Sh. Rahul Mohnot	FCS - 2291	NIRC	83	Ms. Ananya Ganguly	ACS - 12934	SIRC
31	Ms. Sarita Johri	ACS - 31330	NIRC	84	Sh. Pankaj R. Majithia	ACS - 2251	WIRC
32	Sh. Bhawsagar Singh Bhup Munjal	ACS - 10225	WIRC	85	Sh. M P Suresh Kumar	FCS - 3400	SIRC
33	Sh. Shorabh Aggarwal	ACS - 18625	NIRC	86	Ms. Dishita Pankaj Kumar Shah	ACS - 18817	WIRC
34	Sh. M. V. S. Kumar	ACS - 25265	WIRC	87	Mr. Vikas Mohanlal Agarwal	ACS - 28954	WIRC
35	Ms. Rupanjana De	ACS - 17161	EIRC	88	Sh. Bipin Kumar Popatlal Kanani	ACS - 14670	WIRC
36	Ms. Madhu Bansal	ACS - 28386	NIRC	89	Sh. R L Shenoy	ACS - 1888	WIRC
37	Sh. Arijit Ganguly	ACS - 18417	SIRC	90	Sh. B L Taparia	FCS - 1245	WIRC
38	Sh. K Ullas Kamat	ACS - 23327	SIRC	91	Sh. Bankim Shukla	FCS - 4373	WIRC
39	Ms. Mridula P Thomas	ACS - 23957	SIRC	92	Ms. Anamika Gupta	ACS - 16954	WIRC
40	Sh. Laxminarayan Hegde	ACS - 10390	SIRC	93	Sh. Dushyant Ajit Gadgil	ACS - 2186	WIRC
41	Sh. Amit Singh Chauhan	ACS - 16723	SIRC	94	Ms. Samata Sonu Saraf	ACS - 17620	WIRC
42	Sh. Khushi Ram Jadhvani	ACS - 18033	WIRC	95	Sh. Ramawtar Jangir	ACS - 17079	WIRC
43	Sh. K Purushothama Adiga	ACS - 19113	NIRC	96	Sh. G Ranganathan	ACS - 5564	SIRC
44	Sh. Pankajrai S Mittal	FCS - 3156	NIRC	97	Sh. Narendra Kumar Joshi	ACS - 10034	WIRC
45	Sh. Prakash V Bhandare	ACS - 3477	WIRC	98	Sh. Parvinder Singh Arora	ACS - 15407	NIRC
46	Sh. B Venkatarami Reddy	FCS - 4827	SIRC	99	Ms. Alka Gupta	ACS - 4209	SIRC
47	Sh. Sanjeev Shamrao Jagtap	ACS - 12650	WIRC	100	Sh. Bhalchandra Kashinat Khare	FCS - 687	WIRC
48	Sh. Amarjeet Singh Sachdeva	ACS - 12161	NIRC	101	Sh. S Rajeswara Rao	FCS - 5830	WIRC
49	Sh. S D Yardi	ACS - 4067	WIRC	102	Sh. Shailendra Agrawal	ACS - 5666	NIRC
50	Sh. Dara Shashi Raj	ACS - 20250	SIRC	103	Ms. Kunal Ramji Chheda	ACS - 28781	WIRC
51	Mr. Ajilal A S	ACS - 31449	SIRC	104	Sh. Gurdeep Singh Bakshi	ACS - 12888	NIRC
52	Sh. R Chandrasekhar	ACS - 9132	WIRC	105	Sh. G S Giridharan	ACS - 10397	SIRC
53	Mr. Rajneesh Kumar	ACS - 31230	WIRC	106	Ms. Tanu Srivastava	ACS - 12469	WIRC
54	Sh. Saleem Raja	ACS - 4138	WIRC	107	Sh. Narayan Das Dujari	FCS - 834	WIRC
55	Sh. Raj Kumar Dubey	ACS - 11684	NIRC	108	Ms. Nikita Ashwin Timbadia	ACS - 30461	WIRC
56	Sh. M L Soneji	FCS - 2099	WIRC	109	Sh. N Sridhar	ACS - 11830	WIRC
57	Sh. N Krishnamurthy	FCS - 743	SIRC	110	Ms. Sadhana Naik	ACS - 9434	WIRC
58	Ms. Priya Mahadevan	ACS - 22480	SIRC	111	Sh. Kamlesh Upadhyaya	ACS - 4160	WIRC
59	Sh. Sanjay Kumar Sen	ACS - 27157	EIRC	112	Sh. P N Ramakrishnarao	ACS - 3280	NIRC
60	Sh. Anand Madhusudan Khot	ACS - 9545	WIRC	113	Ms. Vinodhini Kanagaraj	ACS - 24822	SIRC
61	Ms. Madhavi V Joshi	ACS - 13731	WIRC	114	Sh. J Subramanian	ACS - 4904	SIRC
62	Ms. Manisha Wadhwa	ACS - 16307	NIRC	115	Sh. Kaushik Kirit Kumar Desai	ACS - 17240	WIRC
63	Ms. Ruchi Anand Chopra	FCS - 4745	NIRC	116	Sh. Ashok Kumar Agrawal	ACS - 4010	NIRC
64	Sh. Gunjan Taunk	ACS - 23346	WIRC	117	Ms. . Inderpreet Kaur Bhatia	ACS - 21424	NIRC
65	Sh. Abhitap Kumar Jain	ACS - 15575	WIRC	118	Sh. R Mani Parthasarathy	ACS - 1373	SIRC
66	Ms. G Lata	ACS - 8571	SIRC	119	Ms. Neha Soni	ACS - 21678	NIRC
67	Sh. Mehernosh D Baria	FCS - 3396	NIRC	120	Ms. Pooja Kirtani	ACS - 31611	NIRC
68	Sh. Prem Kumar Khandelwal	FCS - 3526	WIRC	121	Sh. Rambabu Bandaru	ACS - 22719	SIRC
69	Sh. Dinesh Kumar Gandhi	ACS - 8328	WIRC	122	Mr. Amit Tukaram Bondre	ACS - 26105	WIRC
70	Mr. Biswajit Das	ACS - 26429	EIRC	123	Sh. Sahil Gupta	ACS - 14726	NIRC
71	Sh. Venkatesan Ramachandran	FCS - 893	SIRC	124	Sh. Manoj Sharma	ACS - 10894	NIRC
72	Sh. Surender K Gupta	ACS - 4577	NIRC	125	Sh. Prakash S	ACS - 22495	SIRC
73	Ms. K S Sunitha	ACS - 15358	SIRC	126	Ms. Deepali Dilipkumar Agarwal	ACS - 31066	NIRC
74	Sh. Jatin Luthra	FCS - 3307	NIRC	127	Ms. Meghna Jhavar	ACS - 27200	NIRC
75	Sh. Ajay Bhatnagar	FCS - 4168	NIRC				



News From the Institute

Certificate of Practice

Sl. No.	Name	ACS/FCS No.	C P No.	Region
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ISSUED*

1	Sh. Ranganathan Mukundan	ACS - 7876	12635	SIRC
2	Sh. Brij Kishore Sharma	FCS - 6206	12636	NIRC
3	Mr. Rahul Sharma	ACS - 33943	12637	NIRC
4	Ms. Swarnima Bhardwaj	ACS - 33130	12638	NIRC
5	Sh. N A Harish Kumar	ACS - 9107	12639	SIRC
6	Mr. Abhishek Pandey	ACS - 33649	12640	NIRC
7	Mr. Sunil Kumar Mishra	ACS - 33253	12641	NIRC
8	Ms. Deepa Bisht	ACS - 31179	12642	NIRC
9	Mrs. Averil Fredrick Pinto	ACS - 30272	12643	WIRC
10	Mr. Durdundi Ningappa Birangaddi	ACS - 33845	12644	WIRC
11	Ms. Supriya Sharma	ACS - 20059	12645	NIRC
12	Ms. Priyanka Oberoi	ACS - 32400	12646	NIRC
13	Mrs. Sneha Pratik Shah	ACS - 33920	12647	WIRC
14	Ms. Deepika Sureka	ACS - 24676	12648	EIRC
15	Ms. Shakshi Mittal	ACS - 32114	12649	NIRC
16	Ms. Arpita Laddha	ACS - 33909	12650	NIRC
17	Mr. Gunjan Kumar	ACS - 34047	12651	NIRC
18	Ms. Renuka Deovrat Marathe	ACS - 32079	12652	WIRC
19	Mr. Saheb Ali	ACS - 33361	12653	EIRC
20	Sh. V Ramachandran	FCS - 2646	12654	WIRC
21	Ms. Lavang Arora	ACS - 33274	12655	NIRC
22	Ms. Snehalata Shantaram Gengaje	ACS - 34068	12656	WIRC
23	Sh. R Sivaram	FCS - 6744	12657	SIRC
24	Mr. Deepak Sharma	ACS - 33816	12658	NIRC
25	Mr. Suresh Kumar Thakral	ACS - 33977	12659	NIRC
26	Dr. Rameshwar Sharma	FCS - 4727	12660	NIRC
27	Mrs. Ekta Tushar Vadaria	ACS - 32326	12661	WIRC
28	Ms. Kavya Jain	ACS - 34041	12662	NIRC
29	Mr. Manoranjan Kumar	ACS - 33630	12663	EIRC
30	Mr. Parveen Kumar Saini	ACS - 34105	12664	NIRC
31	Ms. Sanhita Gajanan Godkar	ACS - 33417	12665	WIRC
32	Sh. Amit Shekhar	ACS - 21989	12666	NIRC
33	Mr. Saurabh Kapoor	ACS - 33969	12667	NIRC
34	Mr. Ankit Gupta	ACS - 34021	12668	NIRC
35	Sh. Raghava Reddy Sadhu	ACS - 14428	12669	SIRC
36	Mrs. Isha Kharkia	ACS - 24304	12670	EIRC
37	Ms. Dimpi Kishorbbhai Sampat	ACS - 33893	12671	WIRC
38	Ms. Pratibha Goyal	ACS - 24928	12672	NIRC
39	Ms. Bhoomijha Murali	ACS - 10779	12673	SIRC
40	Ms. Neha Rohatgi	ACS - 32880	12674	EIRC
41	Mr. Mahesh Vinod Baheti	ACS - 34132	12675	WIRC
42	Ms. Pragathi P	ACS - 34199	12676	SIRC
43	Ms. Nidhi Singh	ACS - 31638	12677	NIRC
44	Sh. K V Soorianarayanan	ACS - 3380	12678	SIRC

45	Mr. Vivek Kumar Sharma	ACS - 3340	12679	NIRC
46	Mr. Tara Nath Bingimalla	ACS - 33306	12680	SIRC
47	Sh. K T Mayuranathan	ACS - 3547	12681	SIRC
48	Mr. Sujit Ramdas Indore	ACS - 34213	12682	WIRC
49	Mr. Suyog Mohan Metha	ACS - 420	12683	WIRC
50	Ms. Kamini Sharma	ACS - 33754	12684	NIRC
51	Ms. Priyanka Dadhich	ACS - 2101	12685	WIRC
52	Ms. Krutika Dilip Shah	ACS - 31279	12686	WIRC
53	Ms. Nileema Anand	ACS - 33927	12687	EIRC
54	Ms. R Sarada	ACS - 6284	12688	EIRC
55	Ms. Ashma Marwah	ACS - 17784	12689	NIRC
56	Mrs. Deepti Hemantkumar Ganatra	ACS - 26680	12690	WIRC
57	Mr. Manish Rakesh	ACS - 29424	12691	NIRC
58	Ms. Anisha Sharma	ACS - 33991	12692	EIRC
59	Ms. Sudeshna De	ACS - 33850	12693	WIRC
60	Mr. Sunny Kohli	ACS - 33789	12694	NIRC
61	Mr. Nittin Mittal	ACS - 34187	12695	NIRC
62	Ms. Sneha Khemka	ACS - 33729	12696	NIRC
63	Mr. Nikhil Madhavajibhai Ambaliya	ACS - 34194	12697	WIRC
64	Mr. Sagar Dattusingh Chauhan	ACS - 33032	12698	WIRC
65	Ms. Monika Agrawal	ACS - 31258	12699	NIRC
66	Sh. Chandan Navalkishor Kshirsagar	ACS - 29761	12700	WIRC
67	Ms. Ashita Jain	ACS - 27780	12701	NIRC
68	Ms. Priya Deepika R	ACS - 34260	12702	SIRC
69	Mr. Hardik Ashok Shah	ACS - 34254	12703	WIRC
70	Sh. Umesh P Maskeri	FCS - 831	12704	WIRC
71	Mrs. Priya Kannan	ACS - 33877	12705	SIRC
72	Ms. Puneeta Ahuja	ACS - 33470	12706	NIRC
73	Ms. Ankita Bhatnagar	ACS - 34113	12707	NIRC
74	Mr. Sunil Kumar Sharma	ACS - 34218	12708	WIRC
75	Mr. Sarath V Gopan	ACS - 34055	12709	SIRC
76	Sh. Viral Maheshkumar Shah	ACS - 22519	12710	WIRC
77	Mr. Lalit Narayan Dwivedi	ACS - 31636	12711	NIRC
78	Mr. Sunny Kakkar	ACS - 34170	12712	NIRC
79	Mr. Ritesh Jain	ACS - 32858	12713	NIRC
80	Sh. Suneet Verma	ACS - 25003	12714	NIRC
81	Mr. Suman Chatakundu	ACS - 34190	12715	SIRC
82	Mr. Umesh Aggarwal	ACS - 34035	12716	NIRC
83	Sh. Anish K S	ACS - 25717	12717	SIRC
84	Ms. Achita Sobti	ACS - 33858	12718	NIRC
85	Ms. Prakshi Agrawal	ACS - 24350	12719	NIRC
86	Mrs. Khyatee Chirayu Vyas	ACS - 21434	12720	WIRC
87	Mr. Chintan Jagdishgiri Goswami	ACS - 33697	12721	WIRC
88	Mr. Hitesh Jagdamkumar Gupta	ACS - 33684	12722	WIRC
89	Ms. Shilpa Rajendra Singh	ACS - 27173	12723	WIRC
90	Ms. Monika Narendra Sankhla	ACS - 34214	12724	WIRC
91	Sh. Ronakbhai Dhanendrabhai Doshi	ACS - 23712	12725	WIRC
92	Mr. P Nallasenapathi	ACS - 30805	12726	SIRC
93	Mr. Hemraj Kaluramji Mistry	ACS - 34137	12727	WIRC
94	Mr. B Shivaram Prasad	ACS - 22427	12728	SIRC
95	Ms. Shivani Khanna	ACS - 33730	12729	EIRC
96	Mr. K Bhima Sankara Rao	ACS - 34124	12730	SIRC
97	Ms. Sharanya Sriram	ACS - 33621	12731	SIRC

* Issued during the month of November 2013



CANCELLED*

1	Ms. Swati Kedia	ACS - 30664	11228	NIRC
2	Ms. Amita Diwan	ACS - 27541	9977	EIRC
3	Sh. Harish Kumar Sharma	ACS - 6557	11119	NIRC
4	Ms. Sonam Agrawal	ACS - 31209	11468	WIRC
5	Ms. Sukhmeet Kaur	ACS - 30107	11202	WIRC
6	Ms. Ankita Sati	ACS - 33176	12231	NIRC
7	Sh. Sachin N Sinha	ACS - 24045	12561	WIRC
8	Sh. Varun Kalra	ACS - 24482	11593	NIRC
9	Ms. Varsha Shukla	ACS - 14996	6957	WIRC
10	Sh. Jitendra M Bhamare	ACS - 33073	12530	WIRC
11	Sh. Pramod K Sabot	ACS - 22537	11422	WIRC
12	Sh. Rupesh K Jain	ACS - 12059	11114	WIRC
13	Ms. Reema A Tayshete	ACS - 30217	11615	WIRC
14	Ms. Chandani Mohta	ACS - 24214	8999	EIRC
15	Ms. Swati Babbar	ACS - 29947	10894	NIRC
16	Sh. Abhishek P Dhoot	ACS - 22288	8114	WIRC
17	Ms. Supriya Mahajan	ACS - 28036	11430	WIRC
18	Sh. Dharamveer Singh	ACS - 27648	10000	NIRC
19	Ms. Ashmika Poddar	ACS - 31954	11790	EIRC
20	Ms. Mithali Gupta	ACS - 27058	11136	NIRC
21	Ms. Neha Agarwal	ACS - 25861	9815	WIRC
22	Sh. M G Wadhwani	FCS - 1876	5061	WIRC
23	Ms. Anu R Nair	ACS - 30525	11108	WIRC
24	Sh. Saurabh Maheshwari	ACS - 32026	11955	NIRC
25	Ms. Mansi Agarwal	ACS - 32362	12172	NIRC
26	Ms. Bhawna Gupta	ACS - 27176	10289	NIRC
27	Sh. Arun Kumar	ACS - 32226	11812	NIRC
28	Sh. Dinesh Kumar Verma	FCS - 6928	7571	EIRC
29	Sh. Nikhil Dua	ACS - 29603	10665	NIRC
30	Ms. Sruthy Suresh	ACS - 33264	12272	SIRC
31	Ms. Deepa Bisht	ACS - 31179	12642	NIRC

Licentiate ICSI

Sl. No.	Name	Licentiate No.	Region
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ADMITTED**

1	Mr. Rahul Dhurukumar Ladhani	6586	WIRC
2	Mr. Parag Ramakant Javeri	6587	WIRC
3	Mr. A.D. Santhosh Kumar	6588	SIRC
4	Ms. Somya Sethi	6589	NIRC
5	Ms. Priti A Atkulwar	6590	WIRC
6	Mr. Abhay Sharma	6591	WIRC
7	Mr. Shrinivas Bhat	6592	SIRC
8	Mr. Pankaj Sharma	6593	SIRC
9	Ms. Swetha Balakrishnan	6594	SIRC

* Cancelled During the Month of November, 2013

** Admitted During the Month of November, 2013

ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEES FOR 2013-14

The names of members who could not remit their annual membership fee for the year 2013-14 by the last extended **date i.e. 31st August, 2013** stand removed from the Register of Members w.e.f. **1st September, 2013**. They may pay the fee and get their names restored by making an application in Form 'BB' with the entrance fee (Associate members Rs. 1500/- & Fellow members Rs. 1000/- respectively) alongwith restoration fee of Rs. 250/-. Form-BB is available on the web-site of the Institute and also published else where in this issue.

The Certificate of Practice of the members who could not remit their annual Certificate of Practice fee for the year 2013-14 by the specified date i.e. on or before **30th September, 2013** stand cancelled w.e.f. **1st October, 2013**. They may restore their Certificate of Practice by making an application in Form 'D' with the restoration fee of Rs. 250/-. Form-D is available on the web-site of the Institute and also published else where in this issue.

The annual membership and certificate of practice fee payable is as follows:-

1. Annual Associate membership fee	Rs. 1125/-
2. Annual Fellow membership fee	Rs. 1500/-
3. Annual certificate of practice fee	Rs. 1000/- (*)

*The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.in and also published elsewhere in this issue.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of :

- On-Line (through payment Gateway of the Institute's web-site (www.icsi.edu)).
- Credit card at the Institute's Headquarter at Lodi Road, New Delhi or Regional Offices located at Kolkata, New Delhi, Chennai and Mumbai.
- Cash/ local cheque drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi at the Institute's Headquarter or Regional/ Chapter Offices located at Kolkata, New Delhi, Chennai, Mumbai and Chandigarh, Jaipur, Bangalore, Hyderabad, Ahmedabad, Pune respectively. Out Station cheques will not be accepted. However, at par cheques will be accepted.
- Demand draft / Pay order drawn in favour of 'The Institute of Company Secretaries of India', payable at New Delhi (indicating on the reverse name and membership number).

For queries, if any,

the members may please contact Mr. D.D. Garg, Admn. Officer or Mrs. Vanitha Dhanesh on telephone Nos.011-45341062/64 or Mobile No.8130454693 or through e-mail [ids: annualfee@icsi.edu](mailto:annualfee@icsi.edu), cp@icsi.edu



APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION * OF CERTIFICATE OF PRACTICE See Reg. 10, 13 & 14

To
The Secretary to the Council of
The Institute of Company Secretaries of India
'ICSI HOUSE', 22, Institutional Area,
Lodi Road, New Delhi - 110 003

Sir,
I furnish below my particulars
(i) Membership Number FCS/ACS:
(ii) Name in full:
(in block letters) Surname Name
(iii) Date of Birth:
(iv) Professional Address:
.....
(v) Phone Nos. (Resi.) (Off.)
(vi) Mobile No Email id
(vii) Additions to or change in qualifications, if any:
1.Submitted for (tick whichever is applicable):
(a) Issue (b) Renewal (c) Restoration

2. (a)Particulars of Certificate of Practice issued / surrendered/Cancelled earlier

Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

(b) Unique Code Number
(i) Individual/Proprietorship concern
(ii) Partnership firm

3. Areas of Practice

Sl. No.	Areas of Practice	Please tick (If Applicable)
1	Corporate Law	
2	Financial Services and Consultancy	
3	Securities/Commodities Exchange Market	
4	Finance including Project/Working Capital/Loan Syndication(Specify the area being handled)	
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc) Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)	
6	Excise/CUSTOMS (Filing of return, Handling assessment, appearing before the appellate authority)	
7	Sales Tax/VAT Practice (Filing of returns, Handling assessment, appearing before the appellate authority)	
8	Income Tax Practice (Filing of returns, Handling assessment, appearing before the appellate authority)	
9	Service Tax Practice(Filing of returns, Handling assessment, appearing before the appellate authority)	
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/ returns, appearing before RBI etc)	
11	Foreign Collaborations & Joint Ventures	
12	Intellectual Property Rights (Specify the areas being handled)	
13	Depositories	
14	Monopolies/Restrictive Trade Practices/Competition Law	

15	Consumer Protection Laws	
16	Arbitration and Conciliation	
17	Import and Export Policy & Procedure	
18	Environment Laws(Specify the areas)	
19	Labour and Industrial Laws (Specify the areas of practice)	
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)	
21	Financial Consultancy	
22	Other Economic Laws	
23	SEBI / Securities Appellate Tribunal	
24	Banking and Insurance	
25	Any Other Service (Please specify)	

- 4.
- I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the ICWAI.
 - I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
 - I hereby undertake that, I shall adhere to the mandatory ceiling of not more than eighty companies in aggregate in a calendar year in terms of the Guidelines for Issuing Compliance Certificate and Signing of Annual Return issued by the Institute on 27th November, 2007.
 - I state that I have issued / did not issue advertisements during the year 20... - ... in accordance with the **Guidelines for Advertisement by Company Secretary in Practice issued by the Institute***.
 - I state that I issued Corporate Governance compliance certificates under Clause 49 of the listing agreement during the year 20... .. *
 - I state that I have / have not undertaken Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20... - ... *
 - I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries issued by the Institute. *
 - I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.
5. I send herewith Bank draft drawn on Bank Branch bearing No. for Rs. towards annual certificate of practice fee** for the year ending 31st March
6. I hereby declare that I attended the following professional development programmes held during the financial year -----:

S. No.	Name of Programme	Organised by	Place	Date	Duration* No.	No. of Program Credit Hours Secured	Details of Cert. for Program Credit Hours

*Please specify whether full day/half day/number of hour

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

***Encl.

Date:

* Applicable in case renewal or restoration of Certificate of Practice

**Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)

Copy of the relieving letter in case earlier in employment.

Copy of Form 32 regarding cessation of employment in case working earlier as Company Secretary.

Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.



APPLICATION FOR RESTORATION OF MEMBERSHIP

To,
 The Secretary to the Council of
 The Institute of Company Secretaries of India
 'ICSI' House, 22, Institutional Area
 Lodi Road, New Delhi-110003

Sir,

I hereby apply for restoration of my name in the Register as an Associate/Fellow Member of the Institute of Company Secretaries of India in accordance with the provisions contained in the Company Secretaries Act, 1980 and Regulations made thereunder and declare that I am eligible for the membership of the Institute and am not subject to any disabilities stated in the act or the Regulations of the Institute. The required particulars are furnished below:

1. Name in full :
(In Block Letters) Surname M. Name F. Name

2. Address

(i) Professional

Designation

Name of Company

Address

.....

.....

Pin Code:

Telephone No. Fax

E -mail

(ii) Residential

.....

.....

Pin Code:

Contd.

Telephone No. Fax

3. Date of admission as Associate / :
 Fellow Member of the Institute

4. Membership Number

5. I hereby undertake that if re-admitted as an Associate/Fellow Member of the Institute, I will be bounded by the Company Secretaries Act, 1980 and the Regulations made thereunder, as amended from time to time

6. I also undertake that such instances will not recur and I will make the payment of annual fee in future within the stipulated time (i.e. on or before 30th June of each year)

7. I send herewith a sum of Rs. being the arrears of Annual Membership fee of Rs. for the years to and restoration fee of Rs.250/- alongwith entrance fee (Rs. 1500/- for Associates & Rs. 1000/- for fellows)

8. I solemnly declare that what I have stated above is true and correct.

Place:

Yours faithfully

Date:

Signature



Company Secretaries Benevolent Fund

MEMBERS ENROLLED* REGIONWISE AS LIFE MEMBERS OF THE
COMPANY SECRETARIES BENEVOLENT FUND



Sl. No.	LM No.	Name	Mem No.	City
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EIRC

1	10144	MR.. MD JAMSHED ALAM	ACS - 22965	HOWRAH
2	10147	MR. GAUTAM DUGAR	FCS - 7139	HOWRAH
3	10151	MR. KAMALA KANTA GIRI	ACS - 34449	BHUBANESWAR

NIRC

4	10140	MR. JAGDISH PRASAD LAKHOTIA	FCS - 2175	NEW DELHI
5	10141	MS. NEHA KOTHARI	ACS - 34257	BHADOHI
6	10143	MR. GANESH RAM JAIN	ACS - 16090	NEW DELHI
7	10146	MR. ARUN KUMAR	ACS - 30596	CHANDIGARH
8	10156	MR. KUMAR INDRAMANI	FCS - 7413	GHAZIABAD
9	10158	MR. MUKESH KUMAR MITTAL	ACS - 32496	GHAZIABAD
10	10160	MS. MONIKA VERMA	ACS - 28538	JALANDHAR
11	10161	MR. TANUSH JOSHI	ACS - 30975	JAIPUR

SIRC

12	10137	MR. G L SUBHRAMANIAN	ACS - 27282	CHENNAI
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Sl. No.	LM No.	Name	Mem No.	City
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13	10139	MS. KAJAL M SAIYA	ACS - 29636	CHENNAI
14	10145	MR. SHANKAR KULAL	ACS - 34307	BANGALORE
15	10148	MR. S RAMACHANDRAN	FCS - 7399	KANCHEEPURAM
16	10152	MR. JAYAPRAKASH K	ACS - 25338	CHENNAI
17	10154	MR. R KANNAN	ACS - 3105	CHENNAI

WIRC

18	10138	MS. BHAVNA VIRAL DEDHIA	ACS - 24926	MUMBAI
19	10142	MR. KHERAJMAL TEJANMAL KHATRI	ACS - 34302	AHMEDABAD
20	10149	MS MAYURA PRAKASH NIPHADKAR	ACS - 21429	MUMBAI
21	10150	MR. VIRALKUMAR THAKER	ACS - 27351	VADODARA
22	10153	MR. MANISH CHANDRAKANT PANDE	FCS - 5004	NAGPUR
23	10155	MR. PRATIK MUKESH SHAH	FCS - 7431	MUMBAI
24	10157	MRS. RUPALI ABHIJEET VAIDYA	ACS - 26315	THANE
25	10159	MR. RAHUL KEDIA	ACS - 32839	MUMBAI

* Enrolled from 22nd November 2013 to 20th December, 2013.





News From the Institute



List of Companies & other Organisations Registered for Imparting Training During the Month of November 2013

Region	Training Period	Stipend (Rs.)
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Eastern

K I C Metaliks Ltd.
4th Floor, Room No. 2
Sir RNM House, 3B Lal Bazar Street
Kolkata 700 001

3 Months Suitable

Village Financial Services Pvt. Ltd.
F - 15 Geetanjali Park
18/3A Kumud Ghoshal Road, Ariadaha
Kolkata 700057, West Bengal

15/3 Months Suitable

Harsh Fuels Pvt. Ltd.
40 Lans Downe Terrace
2nd Floor, Kolkata 700 026

15 Months Suitable

Northern

Aforeserve Company Ltd.
B 21 Sector 8, Noida, UP

15/3 Months Suitable

Hella India Automotive Pvt.Ltd.
9th Milestone
Gurgaon-Farookhnagar Road
Dhankot, Gurgaon 122001

15/3 Months Suitable

D & A Partners
B 44 Rajendra Vihar
New Akashwani, Kota, Rajasthan

15 months Suitable

Interglobe Hotels Pvt. Ltd.
Plot No. 86- P, Sector 44
Gurgaon 122003

15 Months Suitable

Reed Elsevier India Pvt. Ltd.
14th Floor, Building No. 10B
DLF Cyber city, Gurgaon 122002

15 Months Suitable

Basil Partners Advocate & Solicitors (Law firm)
4/23-B LGF, Specialized
Jangpura B, Mathura Road, New Delhi

15 Months & 15 Days Suitable

OPG Securities Pvt. Ltd.
4/10 Asaf Ali Road
New Delhi - 110 02

15/3 Months Suitable

Alra Infrastructures Pvt. Ltd.
5/125 Jeevan Tara Building
Gate No. 4, Ground Floor
Parliament Street, New Delhi - 110 001

15 Months Suitable

Punjab State Power Corpn. Ltd.
PSEB Head Office
The Mall, Patiala

15 Months Suitable

GI Power Corpn. Ltd.,
B-1/E3 Second Floor
Mohan Cooperative Industrial Estate
Mathura Road, New Delhi 110044

15 Months Suitable

Capital Local Area Bank
MIDAS Corporate Park
3rd Floor, 37 G T Road
Jalandhar 144 001

15 Months Suitable

MRL Lubricants India Ltd.
B 2 Panch Vatika
Opp Chambal Power House
Hawa Sarak, Jaipur - 302006

15/3 Months Suitable

Raj Landmark Pvt. Ltd.
D 38-A, Ahinsa Circle
Subhash Marg,
C Scheme, Jaipur - 302001

15/3 Months Suitable

Sabita IT Solutions Pvt. Ltd.
266 Subhash Khand
Giri Nagar
New Delhi - 110 019

15 Months Suitable

JTL Infra Ltd.
SCO 18-19, Sector 28 C
Chandigarh 160002

15 Months Suitable

South

TVS Investments Ltd.
No. 9, Second Floor
Seshadri Road
Alwarpet, Chennai

15 Months Suitable

Frontier Lifeline Pvt. Ltd.
R - 30 - C
Ambattur Inds. Estate Road
Chennai - 600 001

15 Months Suitable

Karvy Investor Services Ltd.
Karvy House
46 Avenue 4 Street No. 1
Banjara Hills
Hyderabad 500 034

15/3 Months Suitable



Western

MDP & Partner Advocates & Solicitors 1st Floor, Udyog Bhavan 29 Walchand Hirachand Marg Ballard Estate, Mumbai - 400 001	15/3 Months	Suitable
Meru Kapital Pvt. Ltd. 1307 Dalamal Towers Nariman Point, Mumbai 400 0021	15/3 Months	Suitable
Fiat Group Automobiles India Pvt. Ltd. Benefice, 2nd Floor, Mathuradas Mills Compound Opp Kamala Mills Lower Parel (West), Mumbai 400013	15 Months	Suitable
ECS Biztech Pvt. Ltd. ECS House, 11 Garden View Opp AUDA Garden, Nr. Merriment Party Plot Sindhu Bhavan Road, Off. S G Highway Bodakdev, Ahmedabad 380054	15/3 Months	Suitable
Satra Property Developers Pvt. Ltd. Dev Plaza, 2nd Floor Opp. Andheri Fire Station S V Road, Andheri (West) Mumbai 400 058	15/3 Months	Suitable
Kamendu Joshi & Associates Solicitors & Avocates 104 First Floor, Maurya Atria Above Reliance Fresh Opp Atithi Dining Hall Lane Bodakdev, Ahmedabad - 380 015	15 Months	Suitable
Marudhar Spg. Mills (P) Ltd. U/3 Jignesh Chamber, Salabatpura Maliniwadi, Surat - 395 002	15 Months	Suitable
National Capital Management Pvt. Ltd. 5 Laxmi Society, B/H Sasuji Dinning Hall Off C G Road, Ahmedabad 380006	15/3 Months	Suitable
Khaitan & Co. One Indiabulls Centre 13 Floor, Tower 1, 8 41 Senapati Bapat Marg Mumbai - 400013	15 Months	Suitable
Andritz Hydro Pvt. Ltd. D 17 MPAKVN Industrial Area, Mandideep Dist. Raipur 462 046, Bhopal	15 Months	Suitable
Atul Auto Limited National Highway 8 B Near Microwave Tower Shaper (Veraval), Rajkot 360 024	15/3 Months	Suitable

List of Practising Members Registered for the Purpose of Imparting Training During the Month of November, 2013



CS KUNAL MADAAN Company Secretary in Practice 3159, Jawahar Colony, N.I.T Faridabad - 121 005	PCSA- 3748
CS SUDHANSHU KUMAR SINGH Company Secretary in Practice 306, Surya Complex 21 Veer Savarkar Block, Shakarpur, Delhi - 110 092	PCSA- 3749
CS N D SATISH Company Secretary in Practice No. 885, Second Floor, 5th CR 1st "A" Main 3rd Block BSK III Stage Bangalore -560 085	PCSA- 3750
CS ANUJ KUMAR Company Secretary in Practice SE-23, Singlepur Village Shalimar Bagh Delhi - 110 088	PCSA- 3751
CS TEJAS MADHUSUDAN PATANKAR Company Secretary in Practice 108, Mohite Paradise Manikbank Sinhagad Road Pune - 411 051	PCSA- 3752
CS VIJAY SIYAMANI TIWARI Company Secretary in Practice D/6, Ashirwad Society Plot No. 35 Gorai - I Borivali (W), Mumbai - 400 091	PCSA- 3753
CS SANJAY UTTAMRAO PATARE Company Secretary in Practice Office No -1 SR No.-1020 Shukruwar Peth Pune - 411 002	PCSA- 3754



News From the Institute

CS LOKENDER KUMAR GUPTA

Company Secretary in Practice
613, Metro View Apartments
Pocket -B, Sector 13
Dwarka, New Delhi – 110 075

PCSA- 3755

CS S NATARAJAN

Company Secretary in Practice
Sf 154/1, Lakshmi Narayna Enclave
Ilnd Cross West,
Thiruvalluvar Nagar
Vadavalli (W),
Coimbatore – 641 046

PCSA- 3756

CS ISHA GUPTA

Company Secretary in Practice
B-168, Suraj Mal Vihar
Delhi – 110 092

PCSA- 3757

CS HEMANT KUMAR SINGH

Company Secretary in Practice
306, Surya Complex
21, Veer Savarkar Block
Shakarpur
(Near Nirman Vihar Metro Station)
Delhi – 110 092

PCSA- 3758

CS SONIA KHENDUJA

Company Secretary in Practice
8/33, 3rd Floor
Satbhava School Marg
Near Singh Sahib Hotel
Karol Bagh, New Delhi – 110 005

PCSA- 3759

CS MUKESH KUMAR SARSWAT

Company Secretary in Practice
415, 4th Floor, Trinity Building,
Dhobi Talao, Marine Lines
Mumbai – 400 002

PCSA- 3760

CS MITESH KUMAR RANA

Company Secretary in Practice
605, 6th Floor, Blue Chip Complex
Sayajigunj, Vadodara

PCSA- 3761

CS SHINDE SANTOSH JANARDHAN

Company Secretary in Practice
SR. No.35/1, Narhegaon
Pune – 411 041

PCSA- 3762

CS PANKAJ AGARWALA

Company Secretary in Practice
Manar Elegance, Block –B/105
HSR Layout , Sector – 2
Bangalore – 560 102

PCSA- 3763

CS RAVINDER KUMAR

Company Secretary in Practice
306, H-1, Garg Tower
Netaji, Subhash Place
Pitampura, New Delhi – 110 034

PCSA- 3764

CS T. SARASWATHI

Company Secretary in Practice
48, New Ramnad Road
Madurai – 625 009

PCSA- 3765

CS SWASTI TRIPATHI

Company Secretary in Practice
538 –A, Bakshi Khurd
Daraganj
Allahabad – 211 006

PCSA- 3766

CS PADMAPRIYA V.

Company Secretary in Practice
No. 7/2, 2nd Street
Panchamukhi Apartments
Race View Colony, Guindy
Cheenai - 32

PCSA- 3767

CS TAPAN KUMAR BANERJEE

Company Secretary in Practice
50, Weston Street. 1st Floor
Room No.-105
Kolkata – 700012

PCSA- 3768

CS SATYENDRA SHIRISH KAKADE

Company Secretary in Practice
2037, Sadashiv Peth
Tilak Road, Pune - 411002

PCSA- 3769

CS NITIN MEHTA

Company Secretary in Practice
Gulab House, B-156,
Bapu Nagar
Bhilwara – 311 001

PCSA- 3770

CS DR. RAMESHWAR SHARMA

Company Secretary in Practice
Santosh Bhawan, Mehli
P.O. Kasumpti, Shimla – 171 009

PCSA- 3771

CS RENU YADAV

Company Secretary in Practice
A-93, Gali No-6, Madhu Vihar,
I P Extn., Delhi – 110 092

PCSA- 3772

CS ABHAY KULKARNI

Company Secretary in Practice
1108/34, Jaduban Plaza
New Shahupuri
Kolhapur – 416 001

PCSA- 3773



CS SANJU JAJU

Company Secretary in Practice
3 Orient Zone
Pilgrim Road
Cuttack – 753 003

PCSA- 3774

CS KRUTIKA DILIP SHAH

Company Secretary in Practice
Flat No.-3, Neel Shobha CHS.
Near Union Bank Of India
Sir N.V. Road
Andheri (East)
Mumbai - 400069

PCSA- 3775

CS RAJ KISHOR CHOURASIA

Company Secretary in Practice
57/7 B T Road
Cossipore
Kolkata – 700 002

PCSA- 3776

CS RAJKUMAR GOEL

Company Secretary in Practice
House No.66
Gulmohar Park
Laxman Nagar, Raipur – 492 001

PCSA- 3777

CS RAHUL SHARMA

Company Secretary in Practice
R- 14 A, Mohan Garden,
Uttam Nagar
New Delhi -110 059

PCSA- 3778

CS BRIJ KISHORE SHARMA

Company Secretary in Practice
AB- 162, Vivekanand Marg
Nirman Nagar
Ajmer Road,
Jaipur -302 019

PCSA- 3779

CS SHASHAL SAHU

Company Secretary in Practice
E-107, Near Krishna Big Cinema
Samta Colony
Raipur -492 001

PCSA- 3780

CS HARPREET PARASHAR

Company Secretary in Practice
2/11- B, Basement
Block- A, Jangpura
New Delhi -110 014

PCSA- 3781

CS POONAM MUNDHRA

Company Secretary in Practice
74, G .T. Road (North)
Salkia
Howrah -711 106

PCSA- 3782

CONGRATULATIONS



Chartered Secretary greets and congratulates **Shri U. C. Nahta** on his selection as Director General, Ministry of Corporate Affairs at the level of Additional Secretary to the Government of India. Shri Nahta as DG will coordinate/be in charge of inspections, investigations, public grievances, prosecutions, legal matters and registration of companies.

READERS' WRITE

The erstwhile POINTS OF VIEW column of Chartered Secretary has been re-captioned as READERS' WRITE. Members are invited to send in their queries and views for consideration for publication in this column for soliciting views/comments from other members of the Institute.

APPOINTMENT

A Manufacturing Company, listed at BSE & NSE and situated in Central India, requires:

Company Secretary

Candidate should be preferably Chartered Accountant and Company Secretary or a Company Secretary and LLB with 8 to 10 years experience in the industry - preferably in manufacturing segment with multi-location presence, who can look after secretarial matters besides handling central excise and legal matters. The candidate should be well versed with the Corporate Laws and should have good knowledge of Secretarial, listing compliances and legal matters. Candidate should have flair for writing, drafting and vetting of legal documents, agreements, contracts, etc. Emoluments for the above position are negotiable and would be at par with the industry standards.

Interested candidates may send their detailed resume within 15 days along with recent passport size photograph to

mrsudhirjain@hotmail.com



News From the Institute & Regions

News From the Regions

» Eastern India Regional Council

BHUBANESWAR CHAPTER Study Circle Meeting

The Chapter organized a series of study circle meetings at its premises. On 23.11.2013 the third study circle meeting of the Chapter was held on "Independent Director". On 30.11.2013 the fourth study circle meeting on "Board Meeting" was organized. On 7.12.2013, the fifth study circle meeting of the Chapter was organized on "Board of Directors' Report". Again on 14.12.2013 the sixth study circle meeting of the Chapter was held on "CSR". In each of the study circle meetings two members took initiatives of the proceedings of the study circle meetings. Chapter Chairman CS A. Acharya introduced the objective of the study circle meetings. More than 100 members and students of the Chapter participated in the above four study circle meetings.

Campus Interview

On 27.11.2013 the Chapter arranged campus interview at its premises wherein M/s. Mecon Limited, Ranchi attended the campus and selected the students. Five candidates attended the placement programme of the Chapter. The Mecon representatives who conducted the interview thanked the Chapter for its support for campus selection.

Investor Awareness Programme

The Chapter conducted three Investor Awareness Programmes. On 1.12.2013 the programme was conducted at Bhubaneswar Chapter and on 8.12.2013 at Nangigaon and Dhusuri of Bhadrak District of Odisha. While CS A. Acharya, Chapter Chairman, CS P. Nayak, Chapter Treasurer and CA & CS Vijaya Batth, Practising CA addressed at Bhubaneswar, CS S.N. Mallick, Practising Company Secretary, CS D. Mohapatra, Secretary & CS. P. Nayak, Chapter Treasurer addressed at the Bhadrak district of Odisha. The programmes were held under the aegis of IEPF, MCA, Govt. of India. The HO of the ICSI coordinated the programmes. Investors/general public, school/college teachers, housewives, advocates, members of the Institute and students, small traders and businessmen attended the programmes.

Career Awareness Programmes

Bhubaneswar Chapter organized a series of Career Awareness Programmes in the month of December, 2013 in different schools/colleges of Odisha. The details of the programmes are as under: On 4.12.2013 the Career Awareness Programmes were held at PN Autonomous College, Ramamani Mahavidyalaya, Kantabada, Khurdha, K.D. Mahavidyalaya (Degree), Kalahari, KDA Junior College, Kalapathara, Cuttack and Pathani Samanta College, Khandapada, Nayagar. On 9.12.2013 the Programmes were held at Bhapur Mahavidyalaya, Bhapur, Nayagarh, Padmavati Degree College, Padmavati, Cuttack, Bahugram Junior College, Bahugram, Salepur, Cuttack and DAV Public School, Chandrasekharapur, Bhubaneswar. On 13.12.2013 the Career Awareness Programme was held at Bahugram Degree College, Bahugram, Salepur, Cuttack.

Dr. Binayak Rath, Faculty of Commerce of PN Autonomous College, Kailash Chandra Mishra, Principal of Ramamani Mahavidyalaya, Binodini Mahapatra, Principal of KD Degree College, H.N. Mohapatra, Principal of KD Junior College, Jagadish Prasad Mohapatra, HOD of English of Pathani Samanta Mahavidyalaya, Dr. K.C. Satapathy, Principal, DAV Public School actively participated in the programmes at their respective institutions. While CS A. Acharya, Chairman and CS Suravi Mohapatra, Member of the Managing Committee of the Chapter addressed at Bhubaneswar programme, CS Sunil Sovan Samantaray, and CS R.R. Satapathy, addressed at the programmes held in Khurdha, Nayagarh & Cuttack district of Odisha. Career leaflets, posters, brochures were distributed amongst the students and they were apprised about the CS course, its career prospects, syllabus and fee structures and examination patterns and online services of the ICSI. Further the speakers apprised the students about the placement facilities, library & other programmes of the ICSI. During these programmes, students raised various queries about the CS course which were replied by the speakers. Teachers' kits were presented to the above Institutions. Bhubaneswar Chapter provided all logistic and administrative support for these programmes.

Career Fair-cum-Career Exhibitions

From 4.12.2013 to 15.12.2013, the Chapter participated in 12 days Rajdhani Book Fair at exhibition ground, Bhubaneswar. The fair was well participated by Professional Institutions, Engineering, Banks, Management, Media, Computer, Media Institutions and book sellers from Orissa. The ICSI information centre was well displayed with posters, banners, card boards. Academicians, media personnel, large number of students with their parents, School and College teachers visited the ICSI stall and enquired about the CS course and its future career prospects. Office Bearers of the Managing Committee, other Members and voluntary students of the Chapter managed both the fairs and made the visitors aware how to take admission, where the forms to be submitted, online services, course fees, syllabus, employment



opportunities, pay package, training facilities, examinations, publications, various recognitions of CS course with universities, library-cum-reading room & oral coaching facilities etc. Informative brochures were distributed to the students, their parents and faculties during the programmes. Office-in-charge and other employees of the Chapter coordinated the fair.

JAMSEHDPUR CHAPTER

Full Day Seminar on Companies Act, 2013

On 5.10.2013 the Chapter organised a Seminar on Companies Act, 2013 at SNTI Auditorium. The inaugural session was addressed by Dr. Navarang Saini, Regional Director, MCA, Kolkata who was the Chief Guest of the Seminar. Adarsh Agarwal, MD Jamipol Limited was the Guest of Honour in the seminar. Dr. Saini spoke about regulatory aspect of the new law and stringent penal provisions. Adarsh informed the industry and corporate expectation from the new law.

A press conference was also organized on Companies Act, 2013 after the inaugural session. Anil Murarka, Past President, Deepak Khaitan, Chairman, EIRC, Adarsh Agrawal and Rajesh Mittal replied the various queries of print and electronic media. The First Technical Session was chaired by Adarsh Agarwal. Anil Murarka, FCS and Past President of the ICSI from Kolkata gave his presentation on Comparison between Old and New Companies Act, Key Managerial Persons, etc. Deepak Khaitan, FCS and EIRC Chairman from Kolkata addressed on the new provision relating to Board Meetings, Directors appointment, remuneration etc.

The Second Technical Session was chaired by Dr. Navarang Saini. Lalit Kumar, FCS and Advocate of New Delhi gave his presentation on new provision on Share Capital, Allotment, Deposit, etc. Mamta Binani, FCS from Kolkata discussed the provisions of Accounts and Audit of company in detail. Lastly, Anjan Kumar Roy, FCS from Kolkata spoke about the provisions of National Company Law Tribunal, mergers and amalgamations. The seminar was attended by professionals like CS, CA and CMA, Corporate Executives and Students of ICSI in large number. The members of Jamshedpur Chapter of ICSI namely, Rajesh Mittal, Sital Swain, P K Singh, Mona, Harpreet provided support in organizing the seminar.

Study Circle Meeting

On 14.9.2013 the Chapter organized a study circle meeting on Companies Act 2013 and on 9.11.2013 on Notified Section of Companies Act, 2013 for members. The programme was attended by 15 members.

NORTH EASTERN CHAPTER

Study Circle Meeting and

Professional Development Programme

On 23.11.2013 the Chapter organised a study circle meeting and Professional Development Programme on "Corporate Governance & Ethics Governing Company Secretary and Highlights on Companies Act, 2013 and Incorporation of Company and Matters Incidental thereto with special reference to Companies Act 2013" at Guwahati. CS Ananta Dev Goswami in his address highlighted various aspects of the Companies Act, 2013.

CS Vivek Sharma, Practising Company Secretary conducted a very interactive session on "Incorporation of Company & Matters Incidental thereto with special reference to the Companies Act 2013".

Queries raised by the participants were ably replied by the speakers on the occasion.

> Northern India Regional Council

Career Awareness Programmes / Fairs

The Regional Council organised 25 Career Awareness Programmes/Fairs during the month of November 2013 in various schools & colleges located in Delhi and surrounding areas. CS JK Bareja, T.R. Mehta, Laxman Dev and Himanshu Sharma addressed in these Career Awareness Programmes.

Meeting of Company Secretaries in Practice on Transfer & Transmission of Shares – Contentious Issues

On 9.11.2013 the Regional Council organised a Meeting of Company Secretaries in Practice on Transfer & Transmission of Shares – Contentious Issues. CS P.K. Mittal, Council Member, the ICSI was the speaker.

North Delhi Study Group Meeting on Companies Act, 2013 (Inspection & Investigation; Accounts, Audit & Auditors; Oppression & Mismanagement including Class Action Suits)

On 10.11.2013 at the North Delhi Study Group Meeting on the above topic CS Saurabh Kalia, Partner, Sastra Legal was the speaker.



News From the Institute & Regions

South Delhi Study Group Meeting on Opportunities for CS in NCLT under the Companies Act, 2013

On 15.11.2013 at the South Delhi Study Group Meeting on Opportunities for CS in NCLT under the Companies Act, 2013 CS Vinay Shukla, Co-Founder Whitespan Advisory was the speaker.

West Zone Study Group Meeting on Elevated Role of Company Secretaries under the Companies Act, 2013

On 16.11.2013 at the West Zone Study Group Meeting on the above topic Deepali A Mendiratta was the speaker.

Two Day PCS Induction Programme

On 16 & 17.11.2013 a Two Day PCS Induction Programme was held. CS S Kumar, CS Samrish Bhanja, CS Pradeep Kathuria, CS Munish Sharma, CS Vijay Kaul, CS Rajesh Lakhanpal, CS Deepak Gupta, CS S Koley and CS Avtaar Singh were the speakers.

Meeting of Company Secretaries in Practice on Transition Issues for Private Companies under the Companies Act, 2013

On 25.11.2013 at the Meeting of Company Secretaries in Practice on Transition Issues for Private Companies under the Companies Act, 2013 CS Hitender Mehta, Past Chairman, NIRC was the speaker.

Workshop on Overview of the Companies Act, 2013 for College Professors/Lecturers

On 27.11.2013 at the Workshop on Overview of Companies Act, 2013 for College Professors/Lecturers, CS Nesar Ahmad, Immediate Past President, ICSI, CS G P Madaan, Past Chairman, NIRC-ICSI & CS JK Bareja, Associate Professor, Shyam Lal College were the speakers.

Study Circle Meeting on Personality Development through Change Management & Innovation

On 29.11.2013 at the Study Circle Meeting on Personality Development through Change Management & Innovation, CS Rajiv Bajaj, Past Chairman, NIRC-ICSI & Suneel Keswani, Renowned Corporate Trainer were the speakers.

Workshop on the Companies Act, 2013

On 30.11.2013 at the Workshop on the Companies Act, 2013 CS Atul Mittal, Council Member, the ICSI, CS Rajeev Goel & CS Subhash Setia, Company Secretary, DLF Ltd. were the speakers.

East Zone Study Group Meeting on Acceptance of Deposits by Companies

On 30.11.2013 at the East Zone Study Group Meeting on Acceptance of Deposits by Companies CS Munish Sharma was the speaker.

Valedictory Session of 182nd MSOP

On 22.11.2013 NIRC-ICSI organized the valedictory session of 182nd MSOP at ICSI-NIRC Building, New Delhi. CS Sanjeev Gemawat, was the Chief Guest & CS Anupam Garg, was the Guest of Honour. CS Deepak Kukreja, CS Avtaar Singh, CS Vineet Chaudhary and T R Mehta were present on the occasion. CS Avtaar Singh in his welcome address emphasized that every individual should give his 100% in all activities. He advised the participants that to become successful it is essential to add value to the industry. He also said that the Board of Directors expects good advice and guidance from professionals like the company secretaries.

CS Deepak Kukreja while delivering his address said that MSOP is a ceremony to celebrate success. He congratulated the participants for completing their last leg of training i.e. MSOP. He said that MSOP is designed to enhance the practical knowledge of the participants. He mentioned that in near future all the participants would not only represent themselves but the CS Profession & the Institute.

CS Vineet Chaudhary said that focused approach & updated knowledge are essential for any Professional to be successful. He said that the Companies Act, 2013 provides various opportunities for Company Secretaries and also they are among the KMPs.

CS Anupam Garg congratulated the participants for completing their last leg of training i.e. MSOP. He said that all the participants should believe in their strengths. He emphasized on updating knowledge and suggested the participants to never follow shortcuts. Dr Sanjeev Gemawat congratulated the participants for completing the 182nd MSOP. He advised the participants that they have to keep themselves ready to face the competition in the corporate world. He said that as a professional one should continuously update his knowledge with the changing laws. He mentioned that participants are free to choose between employment and self-employment. He advised the participants to maintain dignity, decorum & focused approach. He offered best wishes to the participants in their future endeavors. CS Avtaar Singh concluded the valedictory session of 182nd MSOP.

183rd MSOP

On 26.11.2013 the NIRC-ICSI inaugurated the 183rd MSOP at ICSI-NIRC Building, New Delhi. CS Vijay Sahni was the Chief Guest and CS Ravi Grover was the Guest of Honour on the occasion. The programme was inaugurated by the Chief Guest, Guest of Honour and the Regional Council Members present. CS



Avtaar Singh while coordinating the inaugural session of 183rd batch of MSOP in his welcome address suggested the participants to be participative & interactive with the faculties of MSOP. He advised them to be disciplined during the 15 days of MSOP & said that discipline plays a vital role in development of any successful professional. He informed that after completion of this MSOP, the participants would develop bonding between themselves.

CS Deepak Kukreja said that the entire corporate world is looking up towards CS professionals. He advised the participants to learn from the expert faculties of MSOP and suggested to be attentive & responsive during the MSOP.

CS Alka Arora in her address said that for the next 15 days the participants will be students but after the completion they will be treated as Members of ICSI.

CS Ravi Grover advised the participants to enjoy every day and learn from eminent faculties of MSOP.

CS Vijay Sahni advised the participants to think like entrepreneur. He said that Institute can provide opportunities but it will depend upon individuals to do justice to their professional qualification. He wished the participants for their future.

T R Mehta while concluding said that they all should learn from the expert knowledge of Senior Members of the Institute.

On 13.12.2013 at the Valedictory Session CS R K Agarwal, was the Chief Guest who in his address said that the participants should believe in their strength. He emphasized on doing hard work, continuous updation of knowledge & development of good behavior & Public Relations. He said that good training plays an important role to become good professional. He advised them to think beyond compliances. He also informed the participants about the opportunities in super specialized fields like Taxation/Accounting/IPR etc.

Earlier CS Avtaar Singh in his welcome address suggested the participants to follow the proactive approach to be a successful professional. He emphasized on continuous updation of knowledge and grabbing good opportunities coming up under the Companies Act 2013. He advised the participants to be a Performer.

CS Deepak Kukreja welcomed the participants to the family of Company Secretaries. He said that participants are free to choose between employment and self-employment. He intimated the participants that CS Professionals are among the KMPs due to dedicated efforts of Senior Members of the Institute. He informed the participants that Companies Act, 2013 provides a lot of unexplored areas to be tapped by the young Professionals.

T R Mehta while concluding the Valedictory Session of 183rd MSOP stated that the senior members are invited by the Institute

at such occasions so that the participants can learn from them. He wished the participants for their great future.

One day Seminar on Banking, Corporate Debt Restructuring and Asset Reconstruction

On 23.11.2013 the NIRC-ICSI organized a one day seminar on "Banking, Corporate Debt Restructuring and Asset Reconstruction" at Noida. Dr Mahesh Sharma, Hon'ble MLA, Noida & Chairman and Managing Director, Kailash Group of Hospitals & National Convener, Medical Cell was the Chief Guest and Sanjiv Agrawal, Chairman & Managing Director, Tirupati Inks Ltd. was the Guest of Honour on the occasion. Around 400 members were present at the inaugural session of the seminar.

Inaugural Session: CS Vineet Chaudhary anchored the inaugural session of the seminar. He among others informed the delegates about the Certificate Course on Valuation started by NIRC in view of its importance under the Companies Act, 2013.

CS S Sundaram requested the members for enlarging their area of work and briefly informed about the coverage of the programme. CS Deepak Kukreja said that the Company Secretaries have been granted with various recognitions under the Banking Sector viz. Reserve Bank of India (RBI) has recognized Company Secretaries in Practice for Certifying the Diligence Report for Banks. The Institute has also entered into MOU with Indian Institute of Banking & Finance for Certified Banking Compliance Professional Course for the members & students of the Institute and CAIIB qualified officers working in banks. ICSI has vide notification No.2 of 2013 introduced new syllabus for the executive and professional programmes of the Company Secretary Course. Introduction of the new syllabus and inclusion of specialized subjects will go a long way to create competent professionals in various disciplines. Professional Programme level of the CS courses has included Banking Law and Practice as one of the elective papers. It has now become possible for a Company Secretary to acquire expert knowledge in Banking Laws. The Institute has issued "Guidance Note on Diligence Report for Banks" to guide the professionals in carrying out/preparation of a Diligence Report regarding compliance by the scheduled commercial banks and primary urban co-operative banks of all statutory and contractual obligations in respect of companies availing multiple banking/consortium lending arrangements on half-yearly basis. Company Secretaries are also playing very important role in the processes of Corporate Debt Restructuring & Asset Reconstruction.

CS Atul Mittal said that valuation mechanism is of main importance in financial restructuring. While doing this, it is essential to take care of the enhancement of shareholders' value in every business. Sanjiv Agrawal stated that he is a past professional and aspiring Industrialist. He has been able to have some opportunities in past which made him switch from profession to industrial venture. The



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learning he said has brought home that the right financial management of the business requires balancing between funding that paves way for setting up/scaling up the business and the reality check and obstacles faced in the business which become hurdle in getting the required funds. All it needs is step by step resolution of challenges while full monitoring and realignment of all the steps in the chain.

Dr. Mahesh Sharma said that professionals like Company Secretaries play a major role in the smooth conduct of business. A lay businessman, who does not know Debits & Credits of law, leaves everything in the hands of Professional like a sick man leaves his life in the hands of Doctor. He said that under the Companies Act, 2013 government has put blind faith on Company Secretaries. A good Professional is one who is also a good human being and that will only take him to heights. He said that this society has given so much to them and because of this only India is able to survive in times of financial crisis & it is the time to pay back to the society. He stressed on the attitude of learning and seeking help from seniors. Organising these kinds of seminars help the Professionals to learn new amendments in various laws.

CS Avtaar Singh arranged presentation of the awards & mementoes to 181st MSOP participants. T R Mehta, Deputy Director, NIRC arranged presentation of completion Certificates to the participants of First Certificate Course of Valuation organized by NIRC-ICSI. CS Ravi Bhushan Kumar concluded the inaugural session of the seminar.

First Technical Session: CS Avtaar Singh anchored the first technical session of the seminar. He briefly informed about the coverage of the first technical session. CS Rajiv Bajaj gave introduction of the guest speakers of the first technical session.

Alok Dhir, Managing Partner, Dhir & Dhir Associates, Advocates & Solicitors spoke on "Revival & Restructuring of Sick Companies and Asset Reconstruction". He in his address said that the topic of the seminar is very apt which deals with the legislative arena in the Country. He discussed in detail the provisions of Chapter XIX of the Companies Act, 2013 relating to revival of the Sick Company. He also discussed various issues and how revival of Sick Companies dealt with in SICA. He also made a comparison between the provisions relating to revival of Sick Companies under SICA and Companies Act, 2013. He also discussed the entire process of revival under Chapter XIX of Companies Act, 2013.

Hari Hara Mishra, Head Strategic Business Operations, International Asset Reconstruction Company Pvt. Ltd. spoke on "ARC's: Systematic Response to NPA Management". While addressing the gathering he discussed the Indian banking Perspective and the key issues relating to Indian Banking Sector which include effective reduction in NPAs and improvements in the loan recovery process, need to achieve sustainable financial inclusion through suitable business and delivery models, need to stimulate and foster competition in the banking sector and

liberalize licensing policies and need for decisive changes in the present banking structure to enable it to grow in size, resource, efficiency and inclusivity. He also discussed the implications of the increase in gross NPAs, restructured assets and the stress in the banking system. He explained the background of creation of ARCs and said that in the year 2002, SARFAESI Act was passed enabling creation of ARCs. He also explained the provisions of SARFEASI Act, 2002 relating to asset reconstruction, advantages of ARCs, issues before ARCs etc.

Ashwani Kumar Chadha, Deputy Chief Executive, UV Asset Reconstruction Company Ltd. spoke on "Asset Classification under RBI Guidelines". He discussed what are NPAs and RBI Guidelines relating there to.

After the presentations of the first technical session, participants present raised various queries which were very well responded by the guest speakers.

Second Technical Session: CS Vineet Chaudhary anchored the second technical session. CS G M Ramamurthy, Advocate, Chennai and Ex-Executive Director, IDBI, Mumbai spoke on "Banking: Current Scenario and Opportunities for Professionals". He in his address mainly dealt with the provisions relating to Asset Reconstruction viz. meaning of asset reconstruction, enactments which govern asset reconstruction, Reasons for asset reconstruction, Measures for asset reconstruction, RBI Directions & Guidelines on the measures of asset reconstruction, the enforcement of Security Interest and Recovery of Debt Laws (Amendment) Act, 2013, Amendment in SARFEASI Act etc. He discussed various opportunities available for Company Secretaries in the Banking Sector.

Nilesh Sharma, Partner, Dhir & Dhir Associates, Advocates & Solicitors spoke on "Corporate Debt Restructuring". He discussed the meaning of Corporate Debt Restructuring, its introduction in India, objective, scope of CDR, Structure of CDR system and mentioned that it is having three tier structure viz. CDR Standing Forums and its Core Group, CDR Empowered Group and CDR Cell. He also discussed the eligibility criteria & ineligible cases under CDR system, the procedure of reference to CDR system, legal basis to CDR and Exit Option, etc.

Santosh Ramaswamy, Manager, CDR Cell, IDBI, Mumbai spoke on "Corporate Debt Restructuring & Negotiated Settlement". He discussed in detail the genesis & evaluation, structure & key concepts and present position & issues relating to Corporate Debt Restructuring.

After the presentations of the second technical session, participants present raised various queries which were very well responded by the guest speakers.

Third Technical Session: CS Vineet Chaudhary anchored the



session. CS Atul H Mehta, Council Member, the ICSI spoke on "Enhanced Disclosures, Signing & Certification of Annual Return".

CS G P Madaan & CS Rajeev Goel spoke on "Related Party Transactions-Disclosures, Issues & Concerns".

CS Pramod Rai spoke on "Enhanced Disclosures – Board's Report". While addressing the participants he compared the provisions relating to Board's report under the Companies Act, 1956 & the Companies Act, 2013. He also discussed the enhanced disclosure requirements in Board's Report, Additional Directors Responsibility Statement, CSR Rules, Directors and employees, additional disclosures, penalties and also challenges for Company Secretaries.

CS Vineet Chaudhary concluded the session.

Chandigarh State Conference

On 16.11.2013 the NIRC-ICSI organized Chandigarh State Conference on "Companies Act, 2013 - Opportunities & Challenges" at Chandigarh. Ramendra Jakhu, IAS, Addl. Chief Secretary, Govt. of Haryana was the Chief Guest. Perna Puri, IAS, Addl. Secy. Home, Chandigarh Administration and CS Dhan Raj, Member, Company Law Board were the Guests of Honour on the occasion. Around 200 members & students were present at the inaugural function of the Conference.

Inaugural Session: CS Vineet Chaudhary anchored the inaugural session of the Conference. He said that the theme of the Conference is very relevant for the professionals.

CS Deepak Kukreja, Chairman, NIRC while addressing the gathering said that the Companies Act, 2013 provides for plethora of opportunities for CS members but as always opportunities are being followed by the challenges. Only such professionals can deliver best to their clients or industry who keep pace with the fast changing Corporate World and keep on updating themselves. These conferences provide ample opportunities to update the knowledge base and improve the professional skills. Keeping this in mind the theme & sub-themes of the State Conference has been devised.

CS Mukesh Sharma introduced the dignitaries on the dais. He thanked the Regional Council for choosing Chandigarh Chapter for hosting the State Conference on the new legislation which is very important for Company Secretaries.

Ramendra Jakhu, IAS, Addl. Chief Secretary, Govt. of Haryana while addressing the gathering said that the topic of the State Conference is very apt as due to expansion of business and increased number of regulations various challenges are being faced by the entrepreneurs which in turn emerge as opportunities for the professionals. He mentioned that the new Act, makes it mandatory for companies to spend on social welfare, empowers

investors against frauds committed by promoters, encourages companies to have women directors, and seeks to bring in greater transparency in corporate governance matters such as executive salaries and the role of auditors. He advised the professionals to be ethical & committed for the job assigned.

Perna Puri, IAS, Addl. Secretary, Home, Chandigarh Administration while addressing the gathering said that when the New Companies Act comes fully into effect, company secretaries will get more powers. She also said that company secretaries play a larger role in the form of chief governance officer and are the compliance officers in a corporate set up. Company Secretary as a community is an effective tool to implement the New Company Law.

CS Dhan Raj, Member, Company Law Board said that Council of the Institute has taken a conscious decision to hold capacity building workshops for the members on various aspects of the New Company Law covering *inter alia* Secretarial Audit, NCLT, Restructuring & Insolvency, Valuation, Annual Return/Pre-certification, etc. He said that the enhanced role envisaged for Company Secretaries under the new Act would enable them to shoulder the onerous responsibility cast upon them by the regulator and they in turn would be acting as extended arms of the Ministry. CS Punit K Abrol concluded the inaugural session of the Conference.

First Technical Session: CS Vishawjeet Gupta and CS K V Singhal anchored the first technical session of the Conference.

The session was chaired by Perna Puri, IAS, Addl. Secretary (Home), Chandigarh Administration.

CS Pavan Kumar Vijay, Past President, the ICSI, & Managing Director, Corporate Professionals Capital Pvt. Ltd. addressed on "New Concepts & Professional Opportunities for CS" and CS Atul Mittal, Council Member, the ICSI & Director – Tax & Regulatory, Deloitte Touché Tohamtsu India Pvt. Ltd. addressed on "Corporate Restructuring – Changes & Challenges".

After the presentation of the first technical session, participants present raised various queries which were very well responded by the guest speakers.

Second Technical Session: CS Parul Arora anchored the second technical session of the Conference. The session was chaired by Justice J S Narang (Retd.).

CS P K Mittal, Council Member, the ICSI and Chief Advisor, PKMG Law Chamber addressed on the topic Oppression, Mismanagement & Class Action Suit and CS Anil Aggarwal of Aggarwal & Associates addressed on NCLT & NCLAT – Powers & Jurisdiction. After the presentations of the second technical session, participants present raised various queries which were very well responded by the Chairman of the session and the guest speakers.



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GHAZIABAD CHAPTER Career Awareness Programmes

The Ghaziabad Chapter of NIRC of the ICSI organized Career Awareness Programmes at various schools and colleges in and around Ghaziabad. CS course structure, fees, and employment opportunities/avenues in practice were explained and the brochures were distributed to the students. On 3.12.2013 the Career Awareness Programme was held at Shambhu Dayal Inter College; on 4.12.2013 at Sanatan Dharm Inter College; on 5.12.2013 at MMH Inter College, Ghaziabad (for Students of Class 11) and on 9.12.2013 at MMH Inter College, Ghaziabad (for Students of Class 12). Around 400 students participated in these Career Awareness Programmes.

GURGAON CHAPTER Deliberation & Discussion on Draft Rules on the Companies Act, 2013

On 27.9.2013 Gurgaon Chapter organized a panel discussion on draft rules on the new Companies Act, 2013. The discussion assumed significance that new draft rules have been notified by MCA recently. It was informed to members by CS Vineet Malhotra that one of the main features of the new legislation is setting up of the National Company Law Tribunal (NCLT) and Appellate Tribunal. Once formed NCLT would replace the Company Law Board. Appeals against the orders of NCLT would be heard by the National Company Law Appellate Tribunal. CS RBS Yadav informed that on September 9, the Ministry had come out with the first set of draft norms that covered 16 chapters of the new legislation. CS Ashwini Sahu said that the second set of draft rules were notified on September 20, 2013. A lot of other draft rules like meetings of Board through video conferencing or other audio visual means, passing of resolution by circulation, board committees, etc. were discussed in detail by the members.

Study Circle Meeting on Drafting of Commercial Agreements

On 11.10.2013 Gurgaon Chapter organized a study circle meeting on drafting of commercial agreement. Rudra Kumar Pandey, Principal Associate from Amarchand Mangaldas addressed the meeting. He said that company secretaries should enhance their commercial awareness and knowledge required through each step of negotiating, constructing, drafting and managing commercial contracts. He cautioned the members that drafting should therefore take the greatest care to avoid unnecessary recitals and to ensure that all recitals are both correct and judicious. He further elaborated that it is not difficult to draft a simple Agreement but there are certain kinds of Agreements which are of complex nature and require some skill in drafting.

Half Day Seminar on Panel Discussion

on the Companies Act, 2013

On 28.10.2013 the Chapter organized a half day seminar on panel discussion on the Companies Act, 2013 at Gurgaon. CS Parvesh Kheterpal, Chapter Chairman while introducing the theme of the seminar said that it is very important for company secretaries to acquaint themselves with all aspects of new Act which replaced the six decade long Act. The panel speakers were CS Hitender Mehta, Partner Vaish Associates & Co-opted Member, CS K K Singh Co-opted Member of Gurgaon Chapter, CS U N Kini, GM (Legal) & CS, Coca Cola India & South West Asia and CS N K Jain, past Secretary, the ICSI. The seminar was attended by members and CS students.

Valedictory Session of 14th MSOP

At the valedictory session of 14th MSOP dignitaries present welcomed the participants in the prestigious profession and wished them best of luck. Certificates to all the participants were distributed. Best participant award went to Mohd. Khalid in male and Sweta Goyal in female category. Award for best project report was given for SEBI takeover code for group comprising Divya, Rohit and Sangeeta and Best presenter group for Corporate Governance to Mohd. Khalid, Sumit and Seema. Award for Best presenter for project report presentation was given to Sweta and Anurag for female and male category respectively.

Career Awareness Programme & Career Fair

On 11.11.2013 the Chapter organized a Career Awareness Programme at Guru Dronacharya College, Gurgaon. A team comprising CS Parvesh Kheterpal, Chairman; CS K K Singh, CS Arun Gupta, CS Sukesh Saini and Animesh Srivastava, Executive Officer of the Chapter was present. CS Parvesh Kheterpal interacted with the students and discussed opportunities in employment after passing CS course. CS K K Singh, CS Arun Gupta informed the students about opportunities in practice.

Animesh Srivastava, Executive Officer stated various formalities required to be complied with to complete CS course. The seminar was attended by about 400 commerce students and faculty members along with college Principal. A brief film on CS as a career option was also shown to the students. Informative brochures containing all information were distributed to the students. The event was widely covered in local reputed newspapers like Dainik Jagran, Dainik Bhaskar, Nav Bharat Times, Dainik Hindustan & Aaj Samaj.

On 12 and 13.11.2013 the Chapter also participated in a career fair at Delhi Public School, Gurgaon. Information was provided to the students about the Company Secretaryship as a career option after class 12. Geeta, Chapter Assistant helped in conduct of the career fair. Information brochures containing all information were distributed to the students. About 1500 students attended the fair.

Full Day Seminar on Drafting of



Commercial Agreements

On 14.12.2013 the Chapter organised a full day seminar on "Drafting of Commercial Agreements" at City Centre, Gurgaon.

JAIPUR CHAPTER

Valedictory Session of 08th MSOP

On 26.11.2013 the Valedictory session of 08th MSOP of Jaipur Chapter was organized. Chief Guest G.P. Gupta, Director, SBI Bhopal Zone, in his address, gave an overview of the new avenues available to the CS in the Companies Act, 2013. As a custodian of good governance in the corporate, the CS should be updated with latest laws and follow good ethics. He also distributed certificates to the participants.

Chapter Chairman CS Anshul Jain suggested that the participants be always attached with the Institute by contributing articles to the Chartered Secretary and other journals or volunteer to become faculties for the training programmes and oral coaching programmes of the Institute or conducting career awareness programmes in the colleges and schools known to them. He concluded by requesting the participants to become the member of CSBF.

Full day Seminar on the Companies Act, 2013 & FEMA

On 24.9.2013 the Chapter conducted a full day seminar on the new Companies Act, 2013. The purpose of the programme was to provide an insight into the Companies Act, 2013 for the corporate professionals and to give emphasis on the scope for Company Secretaries.

Programme Director CS Shyam Agrawal said in his inaugural address that a company secretary will have to draw a list of all the laws and rules made there under applicable to his company and get familiarize with the requirements therein to ensure the compliance of all applicable Laws. This will be particularly important in the case of multi-product and multi-location companies as laws applicable to different products as also various local laws will come into play. A company operating in several States will have to comply with the applicable laws of each such State and in addition will also have to comply with the local municipal laws as well.

The speaker for the seminar was CS K R Chandratre, Practicing Company Secretary, Pune and CA Vinod Jain, Practicing Chartered Accountant, New Delhi.

K R Chandratre in his address stressed upon schedule XI, XII. Independent Directors, Resident Directors, Key Managerial Personnel, Duties of Company Secretary and Directors, Appointment and Rotation of Auditors, Women Directors, the salient provisions relating to matters where Tribunal /Court has role by way of direction or by adjudication. He gave a gist on

Corporate Social Responsibility and SFIO. This was followed by an interactive session between the speaker, the members and student community. After the Inaugural ceremony, he enunciated the key issues of the Act and also discussed the Provisions of Annual General Meeting, Board Meeting, Vacation of Office of Directors, Loan to Directors, etc. His session concluded with an open house, wherein the delegates very actively participated in the discussions.

The second session was led by CA Vinod Jain who focused on provisions of FEMA. He provided details about the Foreign Investments in India, Investment Routes and Procedures, Foreign Direct/Portfolio Investment, Foreign Exchange Management, External Commercial Borrowing, Foreign Currency Convertible Bonds, ADRs/GDRs, Deferred Payment Protocols, etc.

Campus Placement

On 14.12.2013 the Chapter organized campus placement for last MSOP batch students at the Chapter premises. The campus placement was attended by more than 40 MSOP participants. Many reputed companies participated in the Campus placement some of them were HDFC Bank, HDFC Standard Life Insurance, AU Financiers Limited, Biyani Group of Colleges. More than 15 candidates were offered appointment or shortlisted for appointment by the participant companies.

MODINAGAR CHAPTER

Study Circle Meeting on the Companies Act, 2013 – Opportunities and Challenges

On 1.12.2013 the Chapter organized a Study Circle Meeting on the Companies Act, 2013 – Opportunities and Challenges. CS M.K Singhal, Chapter Chairman briefed on recent changes in Audit and Accounting highlighting on uniform financial year ending on 31st March each year, consolidation of financials for a Company having a subsidiary associate or a joint venture made mandatory, Constitution of NFRA by Central Government to provide for dealing with matters relating to Accounting and Auditing Policies and Standards to be followed by Companies and their Auditors. Mandatory Internal Audit for prescribed classes of Companies and rotation of Auditors, etc.

CS S.K Sharma, Vice Chairman, CS Anup Gupta, Secretary and CS PC Gautam highlighted on Share Capital, deposits – deposit accepted before the commencement of 2013 Act or any interest due thereon to be re-paid within 1 year from the commencement of 2013 Act or from the date on which such payments are due whichever is earlier. Credit rating is made mandatory for acceptance of public deposits. Corporate Social Responsibility (CSR) stating that 2% of average net profits of last 3 years to be mandatorily spent on CSR by Companies having – net worth of Rs. 5 billion or more or turnover of Rs.10 billion or more or net profit of Rs.50



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million or more.

CS Sushil Antal, Practising Company Secretary and CS Deepak Garg highlighted various provisions such as - related party transactions, inter corporate loans/investments, loan to Directors, merger and Acquisitions, etc.

» Southern India Regional Council

Study Circle Meeting on Service Tax Voluntary Compliance Encouragement Scheme, 2013

On 22.11.2013 CS Babu Sankara Subramanian V, Company Secretary in Practice addressed the members on the above topic. The speaker threw light on the scheme and its features and opined that the scheme has received only lukewarm response so far. He also requested the members, being professionals to advise their companies and clients on the scheme.

Half Day Seminar on Buy Back of Securities and Setting up of Branch or Liaison office under FEMA

On 30.11.2013 the Regional Council conducted a Half Day Seminar on Buy Back of Securities and Setting up of Branch or Liaison Office under FEMA. The first session was on Buy Back of Securities of Listed Companies, addressed by Yogesh Chande, Consultant, Economic Laws Practice, Advocates & Solicitors, Mumbai. The speaker explained two prominent modes of buy back i.e., tender offer and stock exchange. Yogesh, subsequently, elaborated the documents required and the due diligence issues pertaining to the tender offer mode.

The speaker also focused on the operational issues relating to the buy back under stock exchange mode. Darshan Upadhyay was the speaker for the second session on Setting up of Branch or Liaison Office under FEMA. Darshan elaborated on the restricted activities of the branch and liaison offices under FEMA and the registration requirements, as mandated by the RBI.

BANGALORE CHAPTER Second Campus Placement Programme

On 22.11.2013 the Chapter organised its 2nd Campus Placement Programme for Students and Members of ICSI (Freshers) at Seshadripuram Degree College, Seshadripuram, Bangalore. The entire day was occupied with placement procedure. The Students were explained about employment opportunities and there was

great enthusiasm and excitement shown by the participants in the placement programme. The hard work and efforts put in for the placement proved to be fruitful as many of the appearing students got short listed for employment and for training (some of the candidates were shortlisted in more than one company) for final round of the interview at their place. A few students/fresher members also participated from Hyderabad, Delhi, Coimbatore, Kochi and Mumbai. The Chapter made arrangements for Campus Placement Programme well in advance. Announcement of the Campus Placement Programme was published on the front page of the Chapter website nearly one month before from the date of the programme and the invitation was forwarded well in advance to corporates, members and students. The programme got overwhelming response from students and fresher members from all over India. Overall 60 candidates, who were recently qualified as Company Secretaries and about 40 students pursuing Company Secretaries course participated in the campus placement programme. The programme was fruitful in building the brand image of the institute. Besides, 22 companies and 8 Practising firms participated in the Campus Placement programme. Some of the leading names of Indian industry including Cognizant, Mind Tree, JSW Group, Lenovo, Toyota Logistics, Kishor India Pvt. Ltd, InMobi, Tata Hitachi, Nippon Express, Shruth Shruth Dharma Public Limited, Kronos, Kennametal India, Quest Global Manufacturing Pvt. Ltd, National Stock Exchange, JBM Ogihara Automotive, ING Vysya Life Insurance, WeP Solutions Limited and Sri Chamundeswari Sugars Limited, and other leading Practising Company Secretaries and Chartered Accountants participated in the Placement Programme.

There was an increase of 25% in the Employers and more than 100% increase in the shortlisted candidates for employment/training as compared to the previous year Campus Placement Programme held in 2012 at Bangalore. Chapter Chairman CS M Manjunatha Reddy, CS Srinivasan R, Chairman, Placement Committee, Sreejith.P, Desk Officer, Coordinator-Campus Placement Programme, Noor Sumayya, Asst. Education Officer and other staff members of the Chapter and student volunteers managed the event. The corporates, students and members of the ICSI expressed their thanks to the Bangalore Chapter of ICSI for organizing such a mega successful Campus Placement Programme and for giving a wonderful opportunity to them.

KOCHI CHAPTER Joint PDP on Internal Audit and Risk Management

On 30.11.2013 the Kochi Chapter of SIRC of the ICSI organised a Professional Development Programme on "Internal Audit and Risk Management" at Kochi. Organised in partnership with the Cochin Chapter of Institute of Cost Accountants of India, the programme featured CA Vivek Shenoy, Senior Vice President, Muthoot Pappachan Group as the expert speaker. The speaker



presented an abstract picture of the concepts of internal audit and risk management and explained in depth various tools used for them. With his in-depth knowledge and experience in the subject, he has given different practical examples and situations to enlighten the audience on the visible and invisible connecting threads of internal audit and risk management. Members present very actively interacted with the speaker and got clarifications for all their queries. The programme was attended by more than 90 delegates. The delegates gave excellent feedback on the programme.

Discussion on issues related to Draft Companies (Cost Records & Cost Audit) Rules, 2013

On 7.12.2013 Kochi Chapter of the ICSI, jointly with the Cochin Chapter of Institute of Cost Accountants of India organized a discussion on issues related to the Draft Companies (Cost Records & Cost Audit) Rules, 2013, under the Companies Act, 2013 published by the MCA recently at Kaloor, Ernakulam. The delegates critically analysed various provisions of the draft Companies (Cost Records & Cost Audit) Rules, 2013 and their impact on the industry, economy and the professionals. Issues exclusively related to MSME sector were also debated. The legislative intent behind different provisions of the draft Rules were analysed. The suggestions from members were recorded for submitting to the Ministry. The members of Kochi Chapter of the ICSI actively participated in the discussion.

Professional Development Programme on Indian Rupee and Indian Ethos

On 14.12.2013 Kochi Chapter of SIRC of the ICSI organized a one day Professional Development Programme on Indian Rupee and Indian Ethos at Kaloor. The programme was organized in partnership with the Cochin Chapter of Institute of Cost Accountants of India. There were two technical sessions. The morning session was led by CS K.G. Mohan, FCS, Partner of Mohans & Associates, a firm of Company Secretaries and the Founder Director of Mohans Institute of Corporate Studies (MICS) at Tripunithura. The topic of this session was "Tumbling Rupee" and it featured the travel of Indian Rupee over years with critical analysis on its deep fall at times. The presentation covered the gradual depreciation of Rupee followed by sudden fall in the early part of 2013, the basic reasons for the fall, US tapering and its impact, the damage control exercise initiated by the Government, analysis of hedging and forward contract and the future outlook. With his vast experience in diversified fields of banking, company secretarial and financial services CS K.G. Mohan presented the topic with all precision. The session was lively with the active participation of members.

The afternoon session was handled by CA V. Sreeraman from Salem. The topic was "Global Economics & Ethical Dilemmas - Indian Ethos showing the way forward". The session critically

analysed major issues like present global economic scenario, major issues confronting developed and developing nations, issues specific to India, expert opinion on dealing with it and challenges within and need of the hour. The speaker also enlightened the delegates on how a professional can balance the professional challenges and personal goals without compromising on ethics. The session captured attention of the delegates by the serenity of the theme and the convincing suggestions put forward by the speaker. The participants interacted with the speaker and got cleared their doubts.

MADURAI CHAPTER

One Day Seminar on Companies Act, 2013 – Impact on Stakeholders & TN VAT Audit

On 30.11.2013 the Chapter organized a One day Seminar on Companies Act 2013 - Impact on Stakeholders and TN VAT Audit. Chapter Chairman S.Kumararajan in his welcome address to the gathering which included Members, persons from industry besides students, also explained the subjects of the seminar and their relevance.

B.T.Bangera, Managing Director, M/s. Hi-tech Arai (P) Ltd. inaugurated the seminar. In his address he emphasized the need for the CSR on the Companies Act, 2013, and the companies to take this more as voluntary than as compulsion and added that M/s. Hi-tech Arai is implementing the CSR for the past 10 years. He also stated that the New Act has thrown open new opportunities for the Practising Members as well as Members in Service. He is being recognized as a Key Managerial Person and the companies to make use of his knowledge for betterment. Also the company secretaries and companies are to keep the ethics and morals for the benefit of all stakeholders.

The First Technical Session on TN VAT AUDIT was addressed by V. S.Kurinjiselvan, Deputy Commissioner, Administrative wing, commercial taxes, Tamil Nadu Government. He in his address said that the Department is expecting the professionals to verify the input credit eligibility. Hence the auditor is to take note of this to avoid revenue loss. At the same time they should be helpful to the companies/dealers to get their due share by advising them properly.

The Second Technical Session on Board Management and Governance was handled by CS C.V.Madhusuthanan, Practising Company Secretary from Coimbatore.

The Third and Final Technical Session was dealt with by K. V. Omprakash, Director, Conscientia Law Associates, Bangalore on "Impact of Stakeholders in the Companies Act, 2013 as compared to the Companies Act, 1956".



News From the Institute & Regions

MANGALORE CHAPTER

Full Day Programme

On 30.11.2013 the Mangalore Chapter of SIRC of the ICSI conducted a full day programme at Mangalore. The programme started with a silent prayer and inauguration by Central Council Member, Office Bearers of SIRC, Chennai and the Office Bearers of Mangalore Chapter.

The First Technical Session was addressed by the Central Council Member CS Gopalakrishna Hegde on the Features of The Companies Act, 2013. He started his presentation by giving a brief historical review of the passing of the Companies Act, 2013. He then stated the appropriate definitions that formed the part of his explanation as well as point of discussion among the various delegates and dignitaries present there from the Companies Act, 2013. Highlighting the gist of The Companies Act, 2013 his staging revolved around the meaning of the terminology associated to the Corporate Social Responsibility and the various parts and sections dedicated in the Companies Act, 2013. Finally, he ended his presentation by urging all the professionals to dedicate themselves towards the new Act. The queries raised after and along the presentation were ably replied with great enthusiasm.

Thereafter, CS C. Dwarakanath, Chairman of SIRC of the ICSI, Chennai took the Second Technical Session on Meetings of Boards and its Powers. He began his presentation by concise outlay of the sections and the corresponding sections covering the topic in the Companies Act, 2013. Further he explained the point by point outline so drawn in detail. Beginning with the Requirements and Procedures under the Draft Rules, exploring further with notes on Notice period of Board Meeting and Mode of Issuing Notice, also providing explanation regarding the same in connection with One Man Company, Dormant Company and Small Company. He further touched upon topics like Quorum required, Passing of Resolution during the Board Meeting and concluded his presentation by giving epigrammatic details on Audit Committee and Vigil Mechanism. After the presentation the queries raised by the participants were satisfactorily replied by the resource person.

Post lunch session the gathering was enlightened on General Meetings under the Companies Act, 2013 by CS Nagendra D. Rao, Secretary of SIRC, Chennai. Commencement of the presentation revolved around the clarification of the very basics related to the general meeting i.e. Scope and Applicability of the General meetings, he further improved his talk by giving inputs on the topic Power of Tribunal to call the Meeting and punishment in default. Further he explained the Calling of EGM and Notice of the Meeting regarding the same. Also giving valuable inputs on the Statement to be annexed with the Notice, Quorum for the meeting, Chairman and Proxies for the meeting. He also gave

details regarding restriction on voting rights, voting by Show of Hands, Electronic mode and Postal ballot. He concluded his talk by giving importance to The Representation of Body Corporate at the Meeting of the Board and of Creditors. Doubts were clarified at the utmost capability of the resource persons.

The Fourth and the Final Session was taken by Professor Dr. Sudhir Raj K, Justice K.S. Hegde Institute of Management, NITTE, giving a robust talk to the audience on Understanding Neuroscience for High Impact Personality. The very intimating talk started by stressing the importance of having a Personality in one's life and giving a clear picture on what one thinks of him and what he is in reality. The enlightened words explained all on Person and Personality: Being and becoming, then he led us to the path of Consciousness and Self Awareness and then connect it all to the Neuroscience and thereafter concluded his encouraging talk by giving all the ways and means to develop a High Impact Personality and Time Mastery. The programme concluded on a high note with the appreciation from all and a formal conclusion was proposed by CS P.V.Rai, Chapter Secretary.

Talk on Companies Act, 2013

On 13.11.2013 the Mangalore Chapter of SIRC of the ICSI organized a talk on Companies Act, 2013 for members and students. The speaker of the programme was CS Jagan Mohan Rao P V S (Dr.), former President of the Institute. The speaker touched upon various provisions of the Companies Act, 2013 in general and the following subjects in particular: Incorporation of a Company - role of Promoters; Auditing standards and appointment of Auditors; Authorised capital/net worth; Key Managerial Personnel; Officer who is in default; Corporate Social Responsibility; Secretarial Standards; Need for Environmental Protection; Role of Company Secretaries and Emerging Opportunities. The programme received an overwhelming response and was well received by the participants.

Western India Regional Council

PUNE CHAPTER

Joint Study Circle Meeting on Service Tax - Focus on Input Service & Reverse Charge

On 15.11.2013 the Chapter organised a Study Circle Meeting jointly with Pune Chapter of ICAI on "Service Tax - Focus on Input Services & Reverse Charge" at Pune. Sushant Joshi was the faculty of the study circle. The technical session was very informative and appreciated by the gathering at large. One (1) PCH was allotted to members who attended the programme and



the students were allotted two (2) PDP for the programme.

Campus Interview

On 22.11.2013 the Chapter organized Campus Interview for students who Cleared Executive Programme of the CS course at Pune. In Total 76 participants attended the campus interview.

THANE CHAPTER

Inauguration of New Premises of Thane Chapter and One Day Seminar on the Companies Act, 2013

On 30.11.2013 CS S N Ananthasubramanian, President, the ICSI inaugurated the new premises of Thane Chapter of WIRC at 202/203, Sai Plaza, Ghodbunder Road, Thane West after performing Ganesh Poojan. The inauguration of the Chapter was succeeded by One Day Seminar on the Companies Act, 2013.

The inaugural session of the seminar was presided over by CS S N Ananthasubramanian. CS B Narasimhan, Chairman Infrastructure Committee, Thane Chapter and Central Council Member was the Guest of Honour for the session, CS R T RajGuroo, Past Chairman, Thane Chapter, CS Rahul Sahasrabuddhe, Chapter Chairman and CS Manish Pahwa, Chapter Secretary were also present at the inaugural session. CS R T RajGuroo, Past Chairman of the Chapter in his address

congratulated members of the Chapter for having well deserved premises. CS B Narasimhan spoke about important role required to be played by Company Secretaries in implementing provisions of the Companies Act, 2013. In his first Presidential Address at Thane, CS S N Ananthasubramanian described about the journey of Companies Act since 1956 to 2013 and expressed that the Act would be contemporary and dynamic in nature.

On the occasion CS R T RajGuroo, CS Kiran Somvanshi-Kabtta, Past Chairpersons, Thane Chapter were honored by the President for their contribution towards the Chapter.

CS K Sethuraman made a presentation on New Concepts and Enhanced Disclosure under the Companies Act, 2013.

In the Second Technical Session CS Shashikala Rao deliberated on various provisions of the Companies Act, 2013 dealing with Incorporation of Company, Directors, Managerial Remuneration, Charges, Secretarial Audit and Annual Returns. CS Shailesh Rajyadhyaksha in his session discussed relevant provisions of the Companies Act, 2013 dealing with Meetings, Loans by a Company. In the panel discussion, CS S V Subramanian and CS N L Bhatia discussed Evolving role of Company Secretaries and Independent Directors under the new Act.

In the closing remark, CS Nesar Ahmad, Immediate Past President, the ICSI, CS S N Ananthasubramanian, and CS M S Sahoo, Secretary, the ICSI expressed that the Companies Act, 2013 brings additional responsibilities on Company Secretaries.

Invitation of Articles for Special Issues of Chartered Secretary

It has been decided to bring out a special issue of Chartered Secretary as under:

Issue	Last Date for receiving Articles for this Issue	Theme	Illustrative Coverage
March, 2014	February 15, 2014	Gloomier Side of Business	<ul style="list-style-type: none"> • Corporate Fraud • Violations of Corporate Laws • Securities Market Manipulation • Violations of Securities Laws • Enforcement Actions • Benami Transactions • Money laundering • Financing of Terrorism • Serious Fraud Investigation Office • Financial Intelligence Unit • Financial Action Task Force • Economic Offences

Articles on the aforesaid subject are welcome for consideration by the Editorial Advisory Board for publication in the said special issue. Contributors may also refer to the general guidelines for authors published elsewhere in this issue.

The articles may kindly be forwarded to:

The Deputy Director (Publications)

The Institute of Company Secretaries of India, 22, Institutional Area
Lodi Road, New Delhi – 110003.

e-mail: ak.sil@icsi.edu

copy to: ks.gopalakrishnan@icsi.edu



ICSI - CCGRT

PROGRAMME ON COMPANIES ACT, 2013

ICSI-CCGRT, in its series of conferences on the subject, conducted a Programme on Companies Act, 2013 (with draft rules and forms thereunder) at its premises in Navi Mumbai on 22.11.2013. The speakers for the programme were Prakash Pandya, Practising Company Secretary, Mumbai, Kalidas Ramaswamy, Company Secretary, Reliance Power Limited, Mumbai, Prachi Manekar, Corporate Legal Consultant, Mumbai and Shailesh H Rajadhyaksha Consultant - Tata Capital Financial Services Limited and Former Head – Legal & Compliance & Company Secretary - Tata Capital Limited, Mumbai.

Prakash Pandya shared his experience and enlightened the participants about the significant changes in provisions relating to incorporation of companies, secretarial audit and annual returns under the Companies Act 2013. He discussed the new insertion to the types of companies viz. One Person Company (OPC). Section 2(62) defines a One Person Company as a company which has only one person as a member. He explained the various salient features of OPC which include incorporation as a private limited company only, one member at any point of time, only one director, exemption from holding Board Meetings (in case of only one director) and General Meetings. Further he discussed the recent changes in incorporation of companies. According to the new Act, the memorandum of association of a company shall be in respective forms specified in Tables A, B, C, D and E (previously it was in Tables B, C, D, E) in Schedule I as may be applicable to such company. He further stated that the directors and subscribers now will have to declare by an affidavit that they have not been convicted under the Companies Act, 1956, which makes the process of incorporation very lengthy. Further, particulars of interest in other firms and bodies corporate, if any, in relation to the first directors are to be filed with ROC. He also stated that Secretarial Audit by PCS has been made compulsory for listed and prescribed class of companies. According to Section 92 of the Companies Act, 2013 (which corresponds section 159 of the Companies Act, 1956), Annual Return must be certified by a PCS and requirement of compliance certificate by PCS is dispensed with. The annual return should contain particulars like the extract of the annual return as provided under sub-section (3) of section 92, Number of meetings of Board, Director's Responsibility, a statement on declaration given by independent directors etc. PCS should also certify that the provisions of the Companies Act, 2013 have been complied with.

Kalidas Ramaswamy spoke on Board Management and Directors under the Companies Act, 2013. He highlighted the

fact that 98 sections have been notified under new Companies Act which include many of the provisions relating to Board Management and Directors. Sections 164-175 have not been notified which include disqualification of directors, number of directorships, duties of directors, vacation of office, resignation of directors, removal of directors, etc. Further, Non-Cash Transaction under section 192 is a notified provision which applies to both private and public companies. He thereafter covered various relevant Definitions under the Companies Act, 2013 *vis-a-vis* Companies Act, 1956 viz. Board of Directors, director, KMP, Managing Director, Whole Time Director and CEO. Section 2(18) refers CEO to an officer of a company who has been designated as such by it, while as per Clause 49, CEO is MD or manager appointed under the Act. He also discussed Section 194 which deals with the prohibition on forward dealings in securities of a company, Section 149 which provides for at least one woman director and Section 181 which deals with Contribution to charitable funds and corresponds to section 293(1)(e) of the Companies Act, 1956. Regarding Board Meetings, he said that Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out. The Central Government may, however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [Clause 173(2)].

Prachi Manekar elaborated on class action suits, National Company Law Tribunal (NCLT) and CS as a private liquidator. She primarily discussed the investor protection measures citing various cases like Tyco International (settled in 2007 for \$3.2 billion), World.Com (settled in 2005 for \$6.2 billion), Enron (settled in 2006 for \$7.2 billion), Harshad Mehta Case, Ponzi Scheme, Ketan Parekh Scam, Satyam Scam & NSEL. Explaining about class actions, she said that for the first time, a provision has been made for class action. Specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors may file an application before the Tribunal on behalf of the members or depositors. Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. She further highlighted the new powers of NCLT under the Companies Act,



2013 viz. Decide class action, Remove auditor of a company, Deregister a company and determine other incidental matters, Reopen of books of accounts, Revising books of accounts and Additional powers in case of non-payment of deposits.

Shailesh Rajadhyaksha, in his session on Inter Corporate Loans & Investments and Meetings, focussed on loans and investments by companies. He discussed the major changes in law relating to intercorporate loans and investments viz. Loans, guarantee and security made to any person (the 1956 Act dealt only with body corporate) will attract the 2013 Act compliance requirement; Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 years, 5 years or 10 years Government Security closest to the tenure of the loan; The list of exemptions has been curtailed. He further stated that company cannot make investment through more than 2 layers of investment companies. He gave some clarification with regard to applicability of provision of section 372A consequent upon notifying section 185 of the Companies Act, 2013. He further discussed Clause 185 which deals with loan to directors. No company shall directly or indirectly advance any loan (including loan represented by a book debt) or given guarantee or provide security in connection with such loan to any director/related persons. An exception to the above rule is made for MD or a whole time director (WTD) if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by special resolution. He also covered the important changes in the provisions relating to Board meetings and AGMs in the old and new Act specifically focussing on Shorter notice for General Meeting as given in Section 101(1) of Companies Act, 2013 which corresponds to Section 171 of the Companies Act, 1956. He highlighted that a General Meeting of a company may now be called by giving not less than 21 clear days' notice either in writing or through electronic mode, if consent in writing is given by not less than 95% of the members entitled to vote at such meeting as against consent by members holding 95% of total paid-up share capital which was the case earlier. The response to the programme was overwhelming.

Three Days Workshop on Secretarial Practice, FEMA and Tax Laws

From 29.11.2013 to 1.12.2013 the ICSI-CCGRT organised, in its series of workshops on the subject, 3 days' workshop on Secretarial Practice, FEMA and Tax Laws from 29.11.2013 to 1.12.2013 at its premises in CBD Belapur, Navi Mumbai for young company secretaries and students. During the 3 days, various aspects of Secretarial Practice, Finance & Accounts and laws relating to FEMA, SEBI & RBI were discussed. The speakers Smitesh Desai, Practising Company Secretary, Valsad, Arvind Salvi, Former DGM, RBI and Surendra U Kanstiya, Practising Company Secretary, Mumbai shared their practical experience.

The programme provided participants a medium to interact with the experts and equip themselves with the day-to-day working requirements in the office.

Programme on Corporate Restructuring through Mergers and Takeovers

ICSI-CCGRT organised two days' programme on Corporate Restructuring through Mergers and Takeovers on 23.11.2013 and 24.11.2013 at its premises in CBD-Belapur, Navi Mumbai. Senior members of ICSI including practising members attended the programme.


On the first day of the programme, Shailashri Bhaskar, Practising Company Secretary and Former DGM, SEBI spoke on Due Diligence for Mergers and Acquisitions. She pointed out that every business has its own secret and it is the responsibility of the professionals carrying out due diligence of the target company to find out the secret, analyse it and advise the client accordingly. She then discussed various types of due diligence viz. financial due diligence, legal/corporate due diligence, operational due diligence, commercial due diligence, environmental, human capital, cultural, tax, etc. and explained each of them in detail.

On the second half of the first day, Ramesh Laxman, Practising Chartered Accountant spoke on Valuation in Mergers and Acquisitions and shared his practical experience. He reiterated that valuation plays a very crucial role in mergers and acquisitions of any entity. He explained with various examples, case studies and videos on how valuation is done and how to analyse the financial statements of target entity. The session was very interactive.

On the first half of the second day, Yogesh Chande, Partner, Economic Laws Practice (ELP) discussed the practical aspects of Takeovers, also covering in detail the SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011. He also enlightened the participants about the practical difficulties involved/faced during takeovers and some possible solutions available.

On the second half of the second day, Sharad Abhyankar, Partner, Khaitan & Co. made a presentation on the Practical Aspects of Mergers and Amalgamations and explained the impact of the Companies Act, 2013 on transactions of Mergers and Acquisitions with practical case studies. He also elucidated on various kinds of transaction structure and the role of corporate lawyers or company secretaries in a transaction of mergers and/or acquisitions. The queries raised by the participants were well addressed by the speakers. The programme was well received.





**THE INSTITUTE OF
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**CENTRE FOR
CORPORATE
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RESEARCH &
TRAINING (CCGRT)**

PCH- 4

Announces

PDP- 8

Program on

COMPANIES ACT, 2013

(As assented by the President of India)
And the Draft Rules thereunder

Background	<p>The Companies Bill 2013, passed by the Rajya Sabha on August 08, 2013, has now received assent from the President, Pranab Mukherjee on August 29, 2013.</p> <p>The Companies Act 2013 is set to replace the nearly six-decade old regulations that govern corporates in the country.</p> <p>The MCA has also notified draft rules under some of the sections. The Companies Act 2013 will add significance to the manifold role of Company Secretaries. In view of the above, ICSI-CCGRT is organising a program on "Companies Act, 2013"</p>								
Day, Date & Time	Friday, January 17, 2014 09.30 a.m. to 05.30 p.m. followed by lunch								
Venue	ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614								
Proposed Coverage	Overview of 'Companies Act, 2013' covering incorporation, meetings, company administration, managerial remuneration and corporate actions.								
Speakers include	Eminent speakers with practical exposure to the subject will address the participants.								
Participant Mix	Company Secretaries, Cost Accountants, Chartered Accountants and other Corporate Professionals from different Industries.								
Fees (Inclusive of Service Tax@12.36%)	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Members of ICSI, ICAI & ICAI-CMA</td> <td style="text-align: right;">₹ 1,250/- per participant</td> </tr> <tr> <td>Students</td> <td style="text-align: right;">₹ 1,000/- per participant</td> </tr> <tr> <td>Non – Members</td> <td style="text-align: right;">₹ 1,850/- per participant</td> </tr> <tr> <td colspan="2">(to cover the cost of background material, program kit, lunch and other organisational expenses.)</td> </tr> </table>	Members of ICSI, ICAI & ICAI-CMA	₹ 1,250/- per participant	Students	₹ 1,000/- per participant	Non – Members	₹ 1,850/- per participant	(to cover the cost of background material, program kit, lunch and other organisational expenses.)	
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Students	₹ 1,000/- per participant								
Non – Members	₹ 1,850/- per participant								
(to cover the cost of background material, program kit, lunch and other organisational expenses.)									

For Registration

Fees may be paid through local / Par cheque payable at Mumbai in favour of **"ICSI-CCGRT A/c"** and sent to: Gopal Chalam, Dean, ICSI-Centre for Corporate Governance, Research & Training (ICSI-CCGRT), Plot No. 101, Sector-15, Institutional Area, CBD Belapur, Navi Mumbai- 400 614

☎ 022- 4102 1501/1515, 27577814, Fax: 022- 27574384; email: cgrt@icsi.edu

LIMITED SEATS AND HENCE PRIOR REGISTRATION IS DESIRABLE



AN ICSI E-INITIATIVE

Primer on Companies Act, 2013

The Institute of Company Secretaries of India has developed comprehensive 'Primer on Companies Act, 2013' in the form of 16 videos of about 30-35 minutes each on various aspects of the Companies Act, 2013 and made the same available on the web site of the MCA (www.mca.gov.in), Institute (www.icsi.edu) and YouTube at the link: <http://www.youtube.com/user/icsicompaniesact2013>.

These videos endeavour to explain the fundamental provisions of law in as simple language as possible through interactive discussions. Some of the distinguished experts from government, regulators, industry, academia and professionals have participated as panelists and a leading advocate is the anchor in all episodes. The Primer covers the following:

EPISODE NO.	THEME	DETAILED COVERAGE
1	Philosophy, Thrust and Principles	Subordinate Legislation, Self-Regulation, Time Bound Delivery, Efficiency
2	Novelties	One Person Company, Small Company, Dormant Company, Registered Valuers, Layers of Companies, E-Governance, KMP, CSR, Corporate Governance
3	Incorporation	Memorandum, Articles, Entrenchment, Alterations of M&A, Registered Office, Certification by Professionals
4	Regulatory Jurisdiction	Responsibilities of MCA and SEBI, Rules, Regulations, Corporate Governance
5	Fund Raising	Public Offer, Private Placement, Deposits, Charges, Dividend
6	Management and Administration	General Meetings, Voting, E-voting, Resolutions
7	Disclosures and Transparency	Annual Return, Board's Report, Report on AGM, Promoter Holding
8	Accounts and Audit	NFRA, Rotation of Auditors, Reopening of Accounts, Voluntary Revision of Financial Statements, Internal Audit
9	Corporate Governance I	Accountability, Board Composition, Meetings, Various Committees, IDs
10	Corporate Governance II	Gender Diversity, Vigil Mechanism, Remuneration, Corporate Social Responsibility
11	Corporate Governance III	Responsibilities and Challenges of Company Secretary's Functions, Key Managerial Personnel, Secretarial Audit, Secretarial Standards
12	Enforcement Actions I	Inspection, Inquiry, Investigation, SFIO, Fraud, Mediation & Conciliation
13	Compromise, Amalgamation and Arrangements	Single forum for approval of mergers and acquisitions, Simple and shorter merger process for two small cos. or holding –subsidiary co., Power to acquire shares of dissenting shareholders, Purchase of minority shareholding
14	Investor Protection	IEPF, Class Action, Exit opportunity, E-Voting, Disgorgement, Deposits, Fair valuation by registered valuer, Oppression and mismanagement
15	Winding up	Voluntary, By Tribunal, Liquidators, Unregistered Companies, Summary Procedure for Liquidation
16	Enforcement Actions II	Penalties, Special Courts, Adjudication, NCLT, NCLAT, Supreme Court, Compounding

DVD version of this knowledge initiative was launched at the hands of Hon'ble Minister for Corporate Affairs (I/C), Sh. Sachin Pilot, on the 7th of November, 2013 to coincide with the 41st National Convention of the Institute.

The Institute of Company Secretaries of India dedicates this initiative to the Nation.

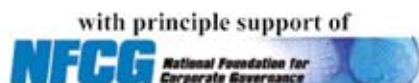
This is the first level MOOCs (Massive Open Online Courses) of ICSI



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NORTHERN
INDIA
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Foundation for
Integral Management



with principle support of
Jointly organising
One Day National Seminar

on
**SUSTAINABILITY – CORPORATE EVOLUTION
THROUGH CONSCIOUSNESS**

- **Day, Date & Time:** Saturday, the 18th January, 2014 - 10 AM - 5 PM
- **Venue:** Hotel Eros Continental, Nehru Place, New Delhi

Sessions of the Seminar:

- Inaugural Session
- Session 1: Guiding Values for Corporate Governance - A Consciousness Perspective
- Session 2: Corporation, Community and Sustainability - An Integral Approach

Guest Speakers:

1. Shri T N Chaturvedi, Chairman, SAFIM Advisory Board and Former Governor Karnataka & Kerala
2. Shri T S Krishnamurthy, Member, SAFIM Advisory Board and Former Chief Election Commissioner
3. Shri M J Joseph, Additional Secretary, Ministry of Corporate Affairs**
4. Shri S N Ananthasubramanian, President ICSI and Member SAFIM Advisory Board
5. Dr A K Baliyan, MD & CEO, Petronet LNG Ltd and Member SAFIM Advisory Board
6. Shri B L Bagra, Member SAFIM Advisory Board and Former CMD, NALCO
7. Shri Ashok B Chakraborty, Chief Sustainability Officer, National Foundation for CSR
8. Dr Ashok Haldia, ED, PTC India Financial Services Limited and Member & SAFIM Governing Board
9. Prof. Subhasis Ray, Associate Professor, Xavier Institute of Management, Bhubaneswar
10. Ms. Amita Joseph, Founder Director, Business Community and Foundation
11. Dr Akhil Prasad, Country Counsel India and Company Secretary, Boeing International Corporation India Pvt. Ltd.
12. Shri K G Narendranath Dy. Editor, Financial Express**
13. Dr. Jai Prakash Singh, SAFIM
14. Shri Avimukt Dar, Partner, IndusLaw

** Confirmation awaited

Fee: Rs.2,250/- per delegate inclusive of service tax; **FREE for Corporate Members of NIRC**

Program Credit Hours: Members of the ICSI will be entitled for 4 credit hours.

Registration: Application for registration may be sent along with local cheque/demand draft favouring 'NIRC of ICSI' payable at New Delhi to NIRC of the ICSI, ICSI-NIRC Building, Plot No. 4, Prasad Nagar Institutional Area, New Delhi-110005 Ph. 011- 49343000 E-mail: niro@icsi.edu

Memorandum of Understanding For Capacity Building of Members of ICSI

The Institute, as part of capacity building of its members, has entered into Memoranda of Understanding (MOU) with Indian Institute of Banking and Finance (IIBF); Insurance Institute of India (III) and National Institute of Securities Market (NISM). The Institute has launched a course on Certified Banking Compliance Professional jointly with IIBF. A course on Compliance, Governance and Risk Management in Insurance is being launched shortly and in accordance with MOU with NISM the Institute has jointly organised conferences on Ethics and Governance and workshop on Compliance with Listing Agreement.

A brief description of understanding under these MOUs is given below:

MEMORANDUM OF UNDERSTANDING WITH INDIAN INSTITUTE OF BANKING AND FINANCE (IIBF)

In terms of MOU with IIBF, the Institute offers a Certified Banking Compliance Professional Course jointly with Indian Institute of Banking and Finance (IIBF) to build the capacity of members to work in the compliance departments in banks. The course primarily covers compliance, risk management and governance in banks. It would prepare members to perform the dual role of Risk Manager and Compliance officer in addition to responsibilities as Company Secretary in Banks. The brochure of the course is available at: <http://www.icsi.edu/webmodules/member/Certified%20Banking%20Compliance%20Professional.pdf>

In addition the MOU provides for jointly offering structured coaching classes for ICSI members pursuing diploma in banking and finance course; jointly developing, offering, holding, seminars, workshops and conferences; regular exchange of faculties; co-operation for developing curriculum for academic and continuing education programmes and developing new certification courses and modules.

The Certified Banking Compliance Professional Course is administered by IIBF. Admission for the Course is on-line. Application forms may be downloaded from IIBF Website www.iibf.org.in. Contact person for clarifications on registration and classroom training : Dr. Rekha Rani Singh, Joint Director (Training), Indian Institute of Banking & Finance, Kohinoor City, Kurla (West), Mumbai - 400 070; e-mail : training@iibf.org.in; Tel : 022-25039746 / 25039604 / 25039907.

MEMORANDUM OF UNDERSTANDING WITH INSURANCE INSTITUTE OF INDIA (III)

In terms of MOU with III, the Institute offers a Certificate Course on Compliance, Governance and Risk Management in Insurance jointly with Insurance Institute of India (III) to build the capacity of members to work in the compliance departments in insurance. The course primarily covers compliance, governance and risk management in insurance. It would create a cadre of Company Secretaries with sound knowledge of insurance and Insurance Professionals who are well equipped with knowledge of regulatory compliances. This course is expected to be launched shortly. The brochure of the course is available at: http://www.icsi.edu/web-modules/linksofweeks/ICSI-III_%20Compliance%20Governance%20&%20Risk%20Management%20in%20Insurance.pdf

In addition the MOU provides for train the trainer programmes, develop, offer and organisation conferences, seminar, workshops; exchange of faculty(ies) and resources, developing curriculum of academic and continuing education programme and to develop new certification module.

MEMORANDUM OF UNDERSTANDING WITH NATIONAL INSTITUTE OF SECURITIES MARKET (NISM)

ICSI has entered into a Memorandum of Understanding with National Institute of Securities Markets (NISM) to achieve common goal in promoting Corporate Governance & Public Policy, Financial Reporting & Disclosures, Inclusive Growth & Sustainable Development, Business Environment, Capacity Building, Corporate Social Responsibility, Quality & Assurance Services.

The MOU provides for Fee concession to students/members of ICSI appearing for certification course/ programmes offered by NISM; ICSI to offer Company Secretaryship Course to the student of NISM's Securities Markets Programme.

In terms of MOU both the institutes would jointly organise seminars, conferences, workshops, certificate programmes for corporate and securities market professionals and executives, as well as students' exchange programmes; joint research projects/surveys, publish monographs/papers/reports/studies/cases etc. on corporate governance, corporate finance, financial markets, corporate social responsibility, sustainability & sustainability reporting; conduct development programmes for Director's/top management in areas of Corporate Governance, Corporate Laws, Accounting, Finance, Management etc.



ATTENTION MEMBERS

CHANGE OF ADDRESS

Member's attention is drawn to Regulation 3 of the Company Secretaries Regulations, 1982 according to which every member of the Institute is required to communicate to the Institute any change of Professional address within one month of such change. The contravention of the same amounts to professional misconduct under clause (1) of part II of the Second Schedule to the Company Secretaries Act, 1980.

Members are, therefore, requested to intimate the change in their professional address within the specified period.

A The members may change their professional and residential address and other details online through Institute's portal www.icsi.edu by following the steps given below:-

1. Login to portal www.icsi.edu.
2. Click online services on the right top corner and then click 'Login' on page.
3. Fill the User name: Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password. You may retrieve your password in case your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to dd.garg@icsi.edu
5. After login, go to 'Members Option' (from top menu) then click on "My Account "
6. Click on Manage Account
7. Click on Change of Address
8. A window will be displayed with the option "Professional" or " Residential" then change the details and click on "go" button
9. A screen will be displayed with the options "Existing details as per records" and "Enter change Details"
10. Change the details as required and press on "Submit" button.

B Members may also send their request for change of address to the Institute's email IDs at member@icsi.edu & ashish.tiwari@icsi.edu from their e-mail ID as recorded with the Institute.

C Members may send the request through electronic mode as described under A, B & C above. Otherwise, members may also send their request through post to the Membership Section of the Institute at ICSI House, 22 Institutional Area, Lodi Road, New Delhi – 110003.

For Clarifications if any, members may contact **Ms. Meena Bisht**, Assistant at telephone no. 011 45341062 or write at e-mail ids meena.bisht@icsi.edu

ATTENTION MEMBERS

UPLOADING OF SCANNED IMAGES OF PHOTOGRAPHS & SIGNATURES ON INSTITUTE'S WEBSITE

The Institute has reoriented its online services to capture the information pertaining to photographs and signatures of members. The members may upload the scanned image of their photograph and signature on the website of the Institute by following the steps given below:

1. Login to portal www.icsi.edu.
2. Click online services on the right top corner and then click 'Login' on page.
3. Fill the User name : Enter your membership number (like A1234) as per the sample given on the page.
4. Password. Fill the password. In case you do not have a password, you may retrieve your password provided your email is correctly registered in the Institute. Alternatively you may send an email request for password with your ACS / FCS membership number to [<dd.garg@icsi.edu>](mailto:dd.garg@icsi.edu).
5. After login, go to 'Members Option' (from top menu) then click on "My Account".
6. Click on Manage Image.
7. Then upload your Photo (passport size) and Signature and click on Upload button.

(The format of the file containing the photograph and signature should be in .jpeg format and the size of the file containing the photograph and signature should be maximum of 150kb each).

In case the members are facing any problem in doing the same, the members are requested to send their images of photograph and signature from their email id registered with the Institute at email IDs at meena.bisht@icsi.edu.

For clarifications if any, members may contact **Ms. Meena Bisht**, Assistant at phone 011 45341062



(With Effect from 1st April 2012)

BACK COVER (COLOURED)

Non - Appointment

Per Insertion	₹ 75,000
4 Insertions	₹ 2,70,000
6 Insertions	₹ 3,96,000
12 Insertions	₹ 7,65,000

COVER II/III (COLOURED)

Non - Appointment

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FULL PAGE (COLOURED)

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Per Insertion	₹ 40,000	₹ 10,000
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12 Insertions	₹ 2,04,000	₹ 51,000

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For 'Situation Wanted' ads.	₹ 50
For Others	₹ 100

MECHANICAL DATA

Full Page - 18 x 24 cm	Half Page - 9 x 24 cm or 18 x 12 cm	Quarter page - 9 x 12 cm
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The Institute reserves the right not to accept order for any particular advertisement.
The journal is published in the 1st week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:
The Editor,
"CHARTERED SECRETARY",



**THE INSTITUTE OF
Company Secretaries of Inc**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003
Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045
Email : ak.sil@icsi.edu website : www.icsi.edu

Panel of Examiners for CS Examinations

INVITATION OF APPLICATIONS FOR PANEL OF PAPER SETTERS AND/EXAMINERS FOR THE COMPANY SECRETARIES EXAMINATIONS

The Institute is inviting applications for preparing a panel of Paper Setters and/Examiners for evaluation of answer books from suitably qualified, competent and experienced persons having academic flair and willingness to undertake such academic and confidential assignments in the following subjects of Company Secretaries examinations:

I	LEGAL DISCIPLINE SUBJECTS	
	(a) Law:	
	(i) Economic and Commercial Laws	Executive Programme
	(ii) Company Law	Executive Programme
	(iii) Industrial, Labour and General Laws	Executive Programme
	(iv) Capital Markets and Securities Laws	Executive Programme
	(b) Law and Practice:	
	(i) Tax Laws and Practice	Executive Programme
	(ii) Company Secretarial Practice	Professional Programme
	(iii) Drafting Appearances and Pleadings	Professional Programme
	(iv) Corporate Restructuring and Insolvency	Professional Programme
	(v) Advanced Tax Laws and Practice	Professional Programme
	(c) Law and Management:	
	(i) Strategic Management, Alliances and International Trade	Professional Programme
	(ii) Due Diligence and Corporate Compliance Management	Professional Programme
	(iii) Governance, Business Ethics and Sustainability	Professional Programme
II	ACCOUNTING AND FINANCE DISCIPLINE SUBJECTS	
	(i) Company Accounts and Auditing Practices	Executive Programme
	(iii) Cost and Management Accounting	Executive Programme
	(iii) Financial, Treasury and Forex Management	Professional Programme

QUALIFICATIONS:

A person applying for empanelment of his/her name as Paper Setter or Examiner should be holding professional qualification as member of the Institute of Company Secretaries of India/Institute of Cost Accountants of India/Institute of Chartered Accountants of India at least for five years and/or a Doctorate Degree/Postgraduate Qualification with at least second class in the discipline of Law, Management, Finance, Accounting, Commerce, etc., with five years experience either in an academic position or in practice or in employment in the concerned field/discipline having relevance to the subjects of examinations.

DESIRABLE EXPERIENCE:

Persons having adequate experience of teaching and as Head Examiner/Moderator/Paper Setter/Examiner in subjects of Law, Management, Finance, Accounting, etc. at graduate/post-graduate level or professional examinations or in writing book(s) or study material in the relevant subject(s) or any other specialised graduate/post-graduate level course (s) with relevant work experience having direct relevance to the aforesaid subject(s) of examination(s) will be preferred.

SCALE OF HONORARIUM FOR EVALUATION OF ANSWR BOOKS

Sl No.	Stage of Examination	Rate
(i)	Executive Programme	Rs.80/- per answer book.
(ii)	Professional Programme	Rs.100/- per answer book.

HOW TO APPLY:

Candidates fulfilling the above conditions and not registered as a student of the Institute may send their bio-data in the prescribed application form along with relevant certificates to the **Joint Director, Directorate of Examinations, The Institute of Company Secretaries of India, C-37, Institutional Area, Sector - 62, NOIDA – 201 309.** The prescribed application form can be downloaded from the Institute's website: <http://www.icsi.edu/webmodules/member/forms/examnew.pdf>



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Headquarters

ICSI House, 22 Institutional Area, Lodi Road, New Delhi - 110003
tel 011- 4534 1000, 4150 4444 fax + 91-11-2462 6727
e-mail info@icsi.edu website www.icsi.edu



2014

LIST OF HOLIDAYS

JANUARY

14th - Tuesday

Milad-Un-Nabi or Id-E-Milad
(Birthday of Prophet
Mohammad)

26th - Sunday

Republic Day

MARCH

17th - Monday

Holi

APRIL

08th - Tuesday

Ram Navami

13th - Sunday

Mahavir Jayanti

18th - Friday

Good Friday

MAY

14th - Wednesday

Buddha Purnima

JULY

29th - Tuesday

Idul Fitr

AUGUST

15th - Friday

Independence day

18th - Monday

Janmashtami

OCTOBER

02nd - Thursday

Mahatma Gandhi's Birthday

03rd - Friday

Dussehra

06th - Monday

Id-ul-Zuha(Bakrid)

23rd - Thursday

Diwali (Deepavali)

NOVEMBER

04th - Tuesday

Muharram

06th - Thursday

Guru Nanak's Birthday

DECEMBER

25th - Thursday

Christmas Day



Gazetted Holiday's
Restricted Holiday's

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
SUN			30			01		31			30	
MON			31			02			01			01
TUE				01		03	01		02			02
WED	01			02		04	02		03	01		03
THU	02			03	01	05	03		04	02		04
FRI	03			04	02	06	04	01	05	03		05
SAT	04	01	01	05	03	07	05	02	06	04	01	06
SUN	05	02	02	06	04	08	06	03	07	05	02	07
MON	06	03	03	07	05	09	07	04	08	06	03	08
TUE	07	04	04	08	06	10	08	05	09	07	04	09
WED	08	05	05	09	07	11	09	06	10	08	05	10
THU	09	06	06	10	08	12	10	07	11	09	06	11
FRI	10	07	07	11	09	13	11	08	12	10	07	12
SAT	11	08	08	12	10	14	12	09	13	11	08	13
SUN	12	09	09	13	11	15	13	10	14	12	09	14
MON	13	10	10	14	12	16	14	11	15	13	10	15
TUE	14	11	11	15	13	17	15	12	16	14	11	16
WED	15	12	12	16	14	18	16	13	17	15	12	17
THU	16	13	13	17	15	19	17	14	18	16	13	18
FRI	17	14	14	18	16	20	18	15	19	17	14	19
SAT	18	15	15	19	17	21	19	16	20	18	15	20
SUN	19	16	16	20	18	22	20	17	21	19	16	21
MON	20	17	17	21	19	23	21	18	22	20	17	22
TUE	21	18	18	22	20	24	22	19	23	21	18	23
WED	22	19	19	23	21	25	23	20	24	22	19	24
THU	23	20	20	24	22	26	24	21	25	23	20	25
FRI	24	21	21	25	23	27	25	22	26	24	21	26
SAT	25	22	22	26	24	28	26	23	27	25	22	27
SUN	26	23	23	27	25	29	27	24	28	26	23	28
MON	27	24	24	28	26	30	28	25	29	27	24	29
TUE	28	25	25	29	27		29	26	30	28	25	30
WED	29	26	26	30	28		30	27		29	26	31
THU	30	27	27		29		31	28		30	27	
FRI	31	28	28		30			29		31	28	
SAT			29		31			30			29	



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Our Members

CONGRATULATIONS



Shri S. N. Ananthasubramanian, FCS, President of the Institute of Company Secretaries of India on his being nominated as an Independent Director on the Board of Directors of the Multi Commodity Exchange of India Ltd. (MCX), Mumbai for a period up to 31-03-2016.

Shri B. Balakrishnan, FCS, Practising Company Secretary on his unanimous election as Vice President of Quality Circle Forum of India, Secunderabad a non profit organization registered under the A.P Societies Registration Act with the object to promote modern Quality Concepts such as 5S, Kaizen, Quality Circle, TQM, TPM Six Sigma and other allied modern quality management concepts in manufacturing and service Industries.

Dr. SANJAY BINDAL, ACS on his being awarded the Ph.D Degree by Devi Ahilya Vishwavidyalaya, Indore (M.P) on the subject "Liquor Industry and Socio Economic Implications (With Special Reference to Madhya Pradesh 2005-2010).

KIND ATTENTION MEMBERS

The forms A, B & D i.e. application for admission as an Associate Member, Fellow Member and for issue/restoration/renewal of Certificate of Practice have been modified.

The modified forms are available on [ICSI website www.icsi.edu](http://www.icsi.edu).

The modified forms will be implemented w.e.f.

1st January, 2014.

ATTENTION MEMBERS

The soft copy (CD) of List of Members of the Institute as on 1st April, 2013 is available at Rs.250/- (Rupees Two Hundred and Fifty only) for the Members of the ICSI and at Rs.500/- (Rupees Five Hundred only) for others.

Those desirous to have a copy of the CD may send a request in writing along with the requisite charges by way of a Demand Draft/at par Cheque drawn in favour of "The Institute of Company Secretaries of India" and payable at Delhi.

Kindly send your request together with the like amount to Anita Mehra, Desk Officer, The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.

For queries, if any please contact at
Tel.No. 011-45341049.

CS QUIZ

Rate of excise duty payable in the case of cement was increased in the Finance Act, 2008. This was made through an amendment made in the Bill introduced in Parliament on presentation of the Budget but Schedule 7 appended to the Bill was not amended. The amending Bill also did not mention that the increase in duty on cement would come into effect immediately. In the light of the above fact can the increased duty be collected from the date the amendment was moved to the Finance Bill, 2008 or from the date the Finance Act, 2008 was put on the statute Book?

Conditions

- 1] Answers should not exceed one typed page in double space.
- 2] Last date for receipt of answer is 8th February, 2014.
- 3] Two best answers will be awarded Rs. 1000 each in cash and the names of the contributors and their replies will be published in the journal.
- 4] The envelope should be superscribed '**Prize Query January, 2014 Issue**' and addressed to :

Deputy Director (Publications)

The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110003.

OBITUARIES

"Chartered Secretary" deeply regrets to record the sad demise of the following members:

SHRI M ANANDAM, ACS (10.09.1933 – 07.12.2013), an Associate Member of the Institute from Coimbatore. He was also the Chairman of the Coimbatore Chapter of the ICSI during the period 1983-84.

SHRI M P BADRINATH, ACS (19.01.1947 – 12.11.2013), an Associate Member of the Institute from Bangalore.

SHRI P M SALASKAR, FCS (30.12.1940 – 12.06.2013), a Fellow Member of the Institute from Mumbai.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed Souls rest in peace.

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- Chief advisor to the board of directors on best practices in Corporate Governance
- Responsible for all regulatory compliances of company
- Corporate planner and strategic manager

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Pre-Membership Training (16 Months)

Professional Programme (9 Papers)

Executive Programme (7 Papers)

Foundation Programme (4 Papers)

Stages to become
Company Secretary

After qualifying the CS Foundation Programme, Students are required to clear the Executive and Professional Programme and undergo rigorous Management and Executive Development and Training Programme.

Eligibility

Foundation Programme : 10+2 Pass or its equivalent
Executive Programme : Graduation / CS Foundation Pass / Foundation Pass of ICAI - CMA / CPT Pass of ICAI

- Students of any discipline in Arts, Commerce and Science (excluding Fine Arts) can pursue the Company Secretaries Course.
- The CS Course is by Correspondence / Distance Learning with provision for optional oral coaching classes
- 24X7 Study through E-Learning (<http://elearning.icsi.edu>)
- The Online CS Course includes: Web based Training (WBT), Video based Training (VBT), Live Virtual Classroom (LVC)

Admission to CS Course :

- Admission is open throughout the year.
- Examination is held twice a year in June and December

Cut-off dates :

CS Foundation Programme : 31st March, 30th September
CS Executive Programme : 28th February, 31st May
31st August & 30th November

Prospectus & Application Form:

- Available at Headquarters/Regional Councils/Chapters

Foundation Programme

- Cash payment ₹500/-
- By Speed Post ₹550/-

Executive Programme

- Cash payment ₹500/-
- By Speed Post ₹550/-

(DD/PO drawn in favour of **The Institute of Company Secretaries of India** payable at New Delhi)



THE INSTITUTE OF Company Secretaries of India

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Statutory body under an Act of Parliament

Headquarters: ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi 110 003
tel 011-45341076, 45341077, 4534 1000, 4150 4444 fax 24626727 e-mail info@icsi.edu

For further details, please contact / write to: Director (Student Services)

The Institute of Company Secretaries of India (ICSI), C-37, Sector 62, NOIDA 201 301 (U.P.),
tel: 0120-4522 061 / 071 / 081, e-mail: ss_reg@icsi.edu; ss_enrol@icsi.edu

EASTERN INDIA REGIONAL COUNCIL : ICSI-EIRC Building, 3-A Ahiripukur I Lane, Kolkata 700 019 Phone: 22832973, 22816541, 22816542, 22901065, 22902178-79 Fax: 22816542, E-mail: eirc@icsi.edu

Chapters: Bhubaneswar: 2552282 Dhanbad: 2205076 North Eastern Chapter (Guwahati): 2467644 Hooghly: 26720315, 908677392 Jamshedpur: 2234273 Patna: 9234705754 Ranchi: 3254128

NORTHERN INDIA REGIONAL COUNCIL : ICSI-NIRC Building, Plot No.4, Prasad Nagar Institutional Area, New Delhi-110005 Phone: 49343000 Fax: 25722662 E-mail: niro@icsi.edu

Chapters: Agra: 4031444 Ajmer: 2425013 Allahabad: 3266100 Alwar: 9413740652 Amritsar: 2566861, 2227270-71 Bareilly: 2310708 Bhilwara: 329603, 238044 Chandigarh: 2661840 Dehradun: 9411108794 Faridabad: 913660601-05 Ghaziabad: 4559681 Gurgaon: 2380021 Jaipur: 2707236, 2707736 Jalandhar: 2280315, 9872397506 Jammu: 2475148 Jodhpur: 5102551 Kanpur: 2296535, 2212767 Karnal-Panipat: 3290035 Kota: 2476176 Lucknow: 4109382, 7388892362 Ludhiana: 2545456 Meerut: 9212605990 Modinagar: 243048 Noida: 9811231064 Shimla: 9805761656 Sonapat: 9416972240 Srinagar: 9796341055 Udaipur: 2413977 Varanasi: 2507491, 2506077 Yamunanagar: 9813276611

SOUTHERN INDIA REGIONAL COUNCIL : ICSI-SIRC House, No.9 Wheat Crofts Road, Nungambakkam, Chennai - 600 034 Phone: 28279898, 28222212 Fax: 28268685 E-mail: sirc@icsi.edu

Chapters: Bangalore: 22286574, 22287158 Calicut: 2374702 Coimbatore: 2452006 Hyderabad: 23399541, 23396494 Kochi: 2392950, 4050502 Madurai: 2340797 Mangalore: 2216482 Mysore: 2516065 Palakkad: 2574061 Pudukcherry: 2251151, 9362251151 Salem: 8754340840 Thiruvananthapuram: 2541915 Thrissur: 2327860, 9995639511 Tiruchirappalli: 2416337 Visakhapatnam: 2533516

WESTERN INDIA REGIONAL COUNCIL : 13 Jolly Maker Chambers, No.2, First Floor, Nariman Point, Mumbai 400021 Phone: 22844073, 22047569, 22047580, 22047604 Fax: 22850109 E-mail: wiro@icsi.edu

Chapters: Ahmedabad: 9879785656 Aurangabad: 2451124 Bhayander: 2818388 Bhopal: 2577139 Dombivli: 2445423 Goa: 2435033 Indore: 4248181, 2494552 Kolhapur: 2659498 Nagpur: 2453276 Nashik: 2509989, 2500150 Navi Mumbai: 27721488 Pune: 24263228, 24260341 Raipur: 3267784 Rajkot: 3059646 Surat: 2463404 Thane: 25444478, 25444479 Vadodra: 2331498

Overseas Chapters: Dubai: +971.55.886.8029

CS Helpline : 011-41504444

www.icsi.edu

I KEEP MINUTES, BUT GUARD EVERY SECOND.

Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

I am a member of ICSI.
Only I do what I do.



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