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CS Update  September 06, 2011

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TAX LAW UPDATE

➤ SELF ASSESSMENT IN CUSTOM (CBEC dated 02.09.2011)

PREVIOUS ISSUES OF CS UPDATE ARE AVAILABLE AT THE FOLLOWING LINK:

http://www.icsi.edu/Member/CSUpdate/tabid/1635/Default.aspx

Disclaimer: - Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.
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CS Update  September 06, 2011

39th National Convention of Company Secretaries

Dates

October 13-14-15, 2011

Venue

Jaypee Palace Hotel & Convention Centre, Agra

THEME

Corporate Dynamism and Innovative Professionalism

Sub Themes

- Dynamic Business Environment, Innovation and Risk Management
- Regulatory Convergence, Technology and Innovative Professionalism
- From Compliance to Creative Solutions – Vision 2020 challenges
- Leveraging Globalisation for Trade in Professional Services
- Harmonisation of Companies Bill, vis-à-vis other Corporate Laws

Further details of the Convention and delegate registration form available at the link:

http://www.icsi.edu/WebModules/LinksOfWeeks/39NC-Brochure.pdf

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RECORDING OF WEBCAST ON XBRL
ARRANGED BY ICSI

Details can be accessed at:
http://www.streamonweb.com/ICSI/archivals

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## FORTHCOMING PROGRAMMES

<table>
<thead>
<tr>
<th>Date</th>
<th>PCH</th>
<th>Organised by and Venue</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>CII-ICSI</td>
<td>16.09.2011 at 9.30 hrs INTERACTIVE SESSION ON XBRL - EXTENSIBLE BUSINESS REPORTING LANGUAGE</td>
<td>4 Programe Credit Hours to ICSI members</td>
<td>Mr. Sudipto Pal Joint Director WIRC-ICSI 13, Jolly Maker Chambers No.2 (First Floor) and Nos.56 &amp; 57 (fifth Floor) Nariman Point, Mumbai-400 021 Tel: 022-22844073 022-22047569 Fax: 022-22850109 E-mail: <a href="mailto:Sudipto.pal@icsi.edu">Sudipto.pal@icsi.edu</a></td>
</tr>
<tr>
<td>CII-ICSI</td>
<td>21.09.2011 at 1500 hrs INTERACTIVE SESSION ON SALVAGING DISPUTE RESOLUTION</td>
<td>2 Programe Credit Hours to ICSI members</td>
<td>Mr. Ashish Modi Confederation of Indian Industry 23, Institutional Area Lodi Road New Delhi 110 003 Tel: 91 11 24601180/24629994-7 Fax: 91 11 24615693 E-mail: <a href="mailto:ashish.modi@cii.in">ashish.modi@cii.in</a></td>
</tr>
</tbody>
</table>
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The Institute has always been in the frontline to promote good corporate governance and it has been the constant endeavour of the Institute to raise awareness among the members and students in Corporate Governance arena. This watch gives an update of the latest happenings in the area of Corporate Governance and Corporate Social Responsibility.

**CG & CSR : WATCH**

**NEW DEVELOPMENTS**

1. **Code for Responsible Investing in South Africa’ (CRISA) 19 July 2011**

   The Code for Responsible Investing in South Africa (CRISA) was launched by Committee on Responsible Investing by Institutional Investors in South Africa in order to encourage institutional investors to integrate into their investment decisions sustainability issues such as environmental, social and governance (ESG). It aims to provide the investor community with the guidance needed to give effect to the King Report on Corporate Governance South Africa (King III) as well as the United Nations-backed Principles for Responsible Investment (PRI) initiative. Both require institutional investors to consider ESG issues in their investment.

   It applies to institutional investors such as pension funds and insurance companies as the owners of assets, and their service providers including asset managers and consultants. It encourages institutional investors and service providers to adopt its principles and practice recommendations on an “apply or explain” basis. The effective date for reporting on the application of CRISA is 1 February 2012.

   The King Code was written from the perspective of the board of the company as the focal point of corporate governance. CRISA is intended to give guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance.

   Institutional investors and service providers are expected to adopt the principles and practice recommendations in CRISA on an “apply or explain” basis. Where there is conflict between CRISA and applicable legislation, the legislation will prevail.

   The code contains five principles and practice recommendations for the institutional investors and service providers. If an institutional investor has not fully applied one of the Principles of the Code, the reasons should be disclosed. Disclosure as well as policies should be made public.

2. **International Integrated Reporting Committee (IIRC) Pilot Programme**

Integrated Reporting demonstrates the linkages between an organization’s strategy, governance and financial performance and the social, environmental and economic context within which it operates. By reinforcing these connections, it can help business to take more sustainable decisions and enable investors and other stakeholders to understand how an organization is really performing. It supports the creation of long-term sustainable value by bringing together financial and non-financial information on areas that are material to an organization’s strategy and business performance.

The International Integrated Reporting Committee (IIRC) was established to create a globally accepted integrated reporting framework which brings together financial, environmental, social and governance information in a clear, concise, consistent and comparable format.

IIRC has launched the Pilot Programme to bring together a group of leading companies across different industry sectors and geographies to test the initial proposals for an International Integrated Reporting Framework being developed by the IIRC. Through participation in the Programme, companies will develop an expertise in Integrated Reporting, supported by a network of peer-group companies with whom knowledge can be exchanged and experiences shared in applying the principles of the IIRC’s draft Integrated Reporting Framework.

Companies should register their interest in joining the Programme by emailing the expression of interest form to pilotprogramme@theiirc.org. The IIRC encourages early expression of interest. The programme commences in October 2011.

The Integrated Reporting Pilot Programme offers a select group of companies the opportunity to demonstrate global leadership in this emerging field of corporate reporting.

The Pilot Programme will underpin the development of the Integrated Reporting framework in 2011 and onwards. Through the Pilot Programme, the principles and practicalities of Integrated Reporting will be tried and tested, to support the creation a new global standard in Integrated Reporting. The Programme will consist of three phases:

1. **Dry run**
2. **Pilot Cycle 1**
3. **Pilot Cycle 2**

The Pilot Programme encompasses companies and the investor community, with expert support from the secretariat of the International Integrated Reporting Committee (IIRC) and peer group feedback from other participants in the Programme.

The details can be accessed at:

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GREEN CORNER

GREEN IDEA

E-waste Management

Manage your e-waste responsibly.

Loosely discarded, surplus, obsolete, or broken electrical or electronic devices is e-waste.

Informal processing of electronic waste in developing countries causes serious health and pollution problems.

Contact nearest E-waste Management facility before dumping your e-waste.

Something Good:

Concept of ‘Paryavarana Ganapathi’ -- The Andhra Pradesh Pollution Control Board (APPCB) is advocating celebrating eco-friendly Ganesha Chaturthi through various awareness programmes and workshops to promote clay Ganesh idols and use of environment-friendly colours to protect the water bodies. APPCB has dispatched guidelines set by the Central Pollution Control Board (CPCB) to district collectors and departments concerned for compliance.

To Remember:

September 8 - International Literacy day
September 15- International Democracy Day
September 27- World tourism Day

Quote of the Month

"Until the poor become asset creators, we are not empowering them."

2011 Ramon Magsaysay Award winner Harish Hande on poverty reduction

Forthcoming Events

CSR Asia Summit --- The Summit is the annual flagship event of CSR Asia which aims to be the most innovative and thought-provoking gathering on corporate social responsibility in Asia. Themed “Asian Growth: Global Responsibility”, the conference will bring together over 400 international delegates to discuss key CSR issues and strategies, and provide new insights for businesses, governments, CSR practitioners and NGOs.

---September 27th- 28th 2011 – Hotel Istana, Kuala Lumpur, Malaysia.
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Corporate Secretaries International Association --- First International Corporate Governance Conference – “Sustainable Corporate Governance – Towards a Global Model?”
--21-23 September 2011- JW Marriott Hotel, Shanghai.

OECD - Asian Roundtable on Corporate Governance and the Task Force on Board Nomination and Election
--3-4th October, 2011, Bali, Indonesia

Feedback & Suggestions
Readers may give their feedback and suggestions on this page to Mrs. Alka Kapoor, Joint Director, ICSI (alka.kapoor@icsi.edu)

Disclaimer:
The contents under CG & CSR: Watch have been collated from different sources. Readers are advised to cross check from original sources.
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CORRIGENDUM TO COMPANY LAW SETTLEMENT SCHEME, 2011

General Circular No. 60/2011

F. No. 2/11/2011-CL V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 10th Aug, 2011

To
All Regional Director,
All Registrars of Companies.

Subject: Corrigendum to Company Law Settlement Scheme, 2011

Sir,

In continuation of the Ministry’s General Circular No. 59/2011 dated 5.8.2011 on the subject cited above, it is stated that the said scheme shall be applicable to Form 52 (filing of annual accounts by a foreign company) as foreign companies are included in the scheme.

2. All the terms and conditions of the General Circular No. 59/2011 dated 5.8.2011 will remain the same.

Yours faithfully,

-Kamna Sharma-
Assistant Director

Encl: As above
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FOR DETAILS:

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CS Update

September 06, 2011

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COMPANY LAW SETTLEMENT SCHEME, 2011

General Circular No. 59/2011

F. No. 2/11/2011-CL V
Government of India
Ministry of Corporate Affairs
5th Floor, A Wing, Shastri Bhavan, Dr. R.P. Road, New Delhi,
Dated the 05th Aug, 2011

To

All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2011

Sir,

It has been observed that a large number of companies are not filing their due statutory documents (i.e. Balance Sheets and Annual Returns) timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to not filing the documents on time, companies are burdened with additional fee, facing the prosecutions and being debarred from filing other documents electronically as provided in Circular No. 33/2011 dated 01.06.2011 also.

2. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing such belated documents and to become a regular compliant in future, the Ministry, in exercise of the powers under Section 611(2) and 637B (b) of the Companies Act, 1956 has decided to introduce a Scheme namely, “Company Law Settlement Scheme, 2011,” condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The details of the Scheme are as under:-

(ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act;

(c) "defaulting company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act, which has made a default in filing of documents on the due date(s) specified under the Companies Act, 1956 and rules made there under;

(d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.

(iii) **Applicability**: - Any “defaulting company” is permitted to file belated documents, which were due for filing till **30.06.2011**, in accordance with the provisions of this Scheme:

(iv) **Manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme** - The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardised under sub-section (2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

(v) **Withdrawal of appeal against prosecution launched for the offences** - If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application;
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(vi) Application for issue of immunity in respect of document(s) filed under the scheme - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed, after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be, but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form;

(vii) Order by designated authority granting immunity from the penalty and prosecution - The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed in the Scheme;

(viii) Scheme not to apply to certain documents –

(a) This Scheme shall not apply to the filing of documents other that following documents:-

   Form 20 B - Form of filing annual return by a company having a share capital

   Form 21 A – Particulars of annual return for the company not having share capital

   Form 23AC & 23ACA – Form for filing Balance Sheet and Profit & Loss account

   Form 66 - Form for submission of Compliance Certificate with the Registrar

(b) This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

(ix) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);
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3. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

Yours faithfully,

(Karma Sharma)
Assistant Director

Encl: As above
CORRIGENDUM TO GENERAL CIRCULAR NO. 54/2011

GENERAL CIRCULAR NO. 58/2011

F. No. 35/6/2011/Insolvency
Government of India
Ministry of Corporate Affairs

5th Floor, ‘A’ Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 1st August, 2011

To
All Regional Directors
All ROCs
All Official Liquidators

Subject: Corrigendum to General Circular No. 54/2011.

***

In view of the representations from professional Institutes, it has been decided to amend Para (c) the Circular No. 54/2011 dated 26th July, 2011. Para (c) of the said Circular may be read as under:

(c) “In each case the OL will file an application praying to the Court to direct the management of the company to submit following information duly verified by a Chartered Accountant/a Company Secretary/a Cost Accountant in practice:—”

2. All other clauses of the said Circular remain unaltered.

(Jaikant Singh)
Director
MASTER CIRCULAR ON PROSECUTION OF DIRECTORS

Master Circular No. 1/2011

No.3/57/2011/CL-II
Government of India
Ministry of Corporate Affairs

5th Floor, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110001,
Dated the 29th July, 2011

To,
All Regional Directors,
All Registrars of Companies,
All Official Liquidators.

Sub: Master Circular on Prosecution of Directors – Regarding

Sir,

The question of treating a person as an officer in default by ROCs when prosecutions are launched against a company and its directors for violations under Companies Act, 1956 has come up for examination time and again. The Department has issued various circulars in this regard so far. It may be recollected that the Department vide circular No.42/7/73-CL.II dated 20.9.1973 had clarified that a person appointed as a nominee director, whatever interest he represents or protects is responsible for the proper discharge of his obligations and fiduciary responsibilities under the statute in the similar manner as an ordinary director. However, in the same circular, it was further clarified that nominees of institutions set up under Acts having non-obstante clauses can enjoy immunity from prosecutions.

2. In Departmental circular No.6/98 dated 12.11.1998, it was clarified that where penal provisions provide for “punishment of officers in default”, prosecutions should be filed primarily against managing director(s)/ whole time director(s)/manager(s) and the company secretary, if any. It was also clarified that only in those cases where the above mentioned managerial personnel are not available in any company; prosecutions should be against ordinary directors. In the same circular, it was also clarified that there are provisions in the Act which though do not use the expression “officers who are in default” for fastening liabilities in case of their contraventions, yet the persons against whom the proceedings can be initiated is specified. In such
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cases, the persons expressly specified in the relevant provisions of the Act should alone be prosecuted.

3. It has come to the notice of the Department that in spite of various rulings available on the question of “officers in default” who can be held liable for violations of a particular provision under the Companies Act, the ROCs are arraying all the directors of the company for the violations without differentiating between officer in default and or others.

4. It is noticed that penal actions are also initiated against certain Directors who are not charge with the responsibility, particularly in following cases: --

(a) For listed companies Securities and Exchange Board of India (SEBI) requires nomination of certain Directors designated as Independent Directors.

(b) For public sector undertakings, respective Government nominates Directors on behalf of the respective Government.

(c) Various Public Sector Financial Institutions, Financial Institutions and Banks having participation in equity of a Company also nominate Directors to the Board of such companies.

(d) Directors nominated by the Government u/s 408 of the Companies Act, 1956.

In super session of all earlier circulars, it is clarified that Registrar of Companies should take extra care in examining the cases where above Directors are also identified as Officer in default. No such Director as indicated above shall be held liable for any act of omission or commission by the company or by any officer of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. The Board process includes meeting of any committee of the Board and any information which the Director was authorized to receive as Director of the Board as per the decision of the Board. All the Regional Directors are advised to directInspecting Officers also to examine the Board’s minutes of the company to arrive at a conclusion if Independent director is also responsible for any violation of the provisions of Companies Act, 1956.

5. It is further clarified that before taking penal action under the Companies Act, 1956 against the Directors the following compliances should be verified by Registrar of Companies: -

(a) A director resigns and the company does not file Form 32 as required in terms of Section 302(2) of the Act. In case, the director concerned has informed/endorsed a copy of his resignation to the Registrar of Companies, the Registrar should enquire into such cases and try to find out whether such director has actually resigned or not.
(b) In case the status of a director, i.e. whether he is a nominee director or not, is not reflected in the Annual Return or other documents of the company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;

(c) The timing of the commission of offence is also material to identify the director's responsibility; and Form 1AB should also be checked in case any person has been charged by the Board under Section 5(f) with the responsibility of complying with some particular provision or in case any director has been specified by the Board under Section 5(g) of the Act.

(d) Special Directors appointed by BIFR under section 16 (6)(b) of SICA 1985, shall not incur any obligation or liability for anything done or omitted to be done in good faith and in discharge of duties. Hence they shall be excluded in the list of officers in default.

6. For default u/s 209(5), 209(6), 211 and 212 of the Act, the following persons shall be the 'officers in default for the purpose of prosecution under these provisions:–

(a) Where there is a Managing Director or Manager, the Managing Director or the Manager as the case may be and in addition, the Company Secretary appointed u/s 383A or the person who has been charged with work of maintenance and preparation of Annual Accounts in compliance with aforesaid provisions.

(b) Where there is no Managing Director or Manager, every director and the Company Secretary appointed u/s 383A of the Act.

(c) Any persons amongst officers and employees other than Managing Director/Manager/Directors who has been charged by the Managing Director/Manger or Board of Directors with specific responsibility of complying with aforesaid provisions, in addition to Managing Director/Manager/Board of Directors as the case may be.

(d) Directors including Non-Executive Directors, officers and employees not connected with responsibility with the above provisions should not be arrayed as delinquent directors.

(e) While considering the non-executive directors for including in the list of officers in default for a particular violation of the Companies Act, it should be examined whether the violation has taken place with his knowledge attributable through board process, with his consent or connivance and whether he acted diligently or not.

(f) Where prosecution is required to be filed against any Government company, its directors/officers and Member of Parliament and Member of Legislator under the Companies Act, 1956, Registrar of Companies should seek prior authorization of Central Government in terms of Section 621 of the Act.
7. There should be proper application of mind on the part of Registrar of Companies in deciding whether a person to be implicated is an ‘officer in default’ by examining the Annual Return, Form 32(s) and DIN-3 database available in the Registry. The guidelines issued herein above should be applied and wrongful prosecution should be avoided. Wherever the Registrar of Companies has doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to Regional Director, who shall guide Registrar of Companies in the matter.

8. All the Regional Directors are required to ensure that such cases are reviewed, based on these parameters and a report must be sent by each Regional Director with specific recommendation in case the proceedings are proposed to be discontinued.


Yours faithfully

Sd/-

(R K Bakshi)
Deputy Director
Tel. No. 23073230

Copy to:
1. PS to CAM
2. PS to MOS
3. PS to Secy. MCA
4. PS to AS, MCA
5. PS to Joint Secy. (A) & Joint Secy. (R)
6. PS to DII (DR)
7. PS to DII (Policy)
8. PS to Economic Advisor
9. Spare Copies

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FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN XBRL MODE

Circular No: 57/2011

No. HQ/MCA/DigitisedBS/AR/2009
Government of India
Ministry of Corporate Affairs

5th Floor, “A” Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi – 110001
Dated: 28.07.2011

All the Regional Directors,
All the Registrar of Companies/ Official Liquidators
All stakeholders

Sub: Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.

Sir,

The Para 3 of the Circular no. 37/2011 dated 07.06.2011 may be read as under:

“All companies falling in Phase-I class of companies (excluding exempted class) are permitted to file their financial statements without any additional fee up to 30.11.2011 or within 60 days of their due date, whichever is later.”

2. Further, in supersession of Para 2 (i) of Ministry’s Circular No. 43/2011 dated 07.07.2011, it is informed that the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professional like Chartered Accountant or Company Secretary or Cost Accountant in whole time practice.

3. This issue with approval of Competent Authority.

Yours faithfully,

J.N. Tikkur
Joint Director
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THE TELECOM COMMERCIAL COMMUNICATIONS
CUSTOMER PREFERENCE (SIXTH AMENDMENT)
REGULATIONS, 2011

(5 OF 2011)

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the – 05th September, 2011

No.352-4/2011-CA (QoS) pt.- In exercise of powers conferred by section 36, read with sub-clause (v) of clause (b) of sub-section (1) and clause (c) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations, namely:-

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Sixth Amendment) Regulations, 2011.
   (2) They shall come into force from the date of their publication in the official Gazette.

2. In sub-regulation (2) of regulation 1 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (hereinafter referred to as the principal regulations),---
   (a) for clause (d), the following clause shall be substituted, namely:-
   “(d) Regulations 12, 18, 19, 20, 21 and 22 of these regulations shall come into force on the 27th day of September, 2011.”

3. In regulation 2 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (hereinafter referred to as the principal regulations),----
   (a)after clause (m), the following clause shall be inserted, namely:----
“(ma) “licensee” means any person licensed under sub-section (1) of section 4 of Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;”

4. In clause (ab) of regulation 2 of the principal regulations,---
   (a) for sub-clause (i), the following sub-clause shall be substituted, namely:-
   “(i) information pertaining to the account of its customer sent to the customer by a licensee or Bank or financial institution or insurance company or credit card company or depositories registered with Securities and Exchange Board of India or Direct to Home Operators;”

   (b) for sub-clause (iii), the following sub-clause shall be substituted, namely:-
   “(iii) information from a registered educational institution to its students or their parents or guardians;”

5. In clause (ac) of regulation 2 of the principal regulations,---
   (a) for sub-clause (ii), the following sub-clause shall be substituted, namely:-
   “(ii) any message transmitted by or on the directions of the Central Government or State Government;”

   (b) after sub-clause (ii), the following sub-clauses shall be inserted, namely:-
   “(iii) any message transmitted by or on the directions of bodies established under the Constitution; or
   (iv) any message transmitted by or on the directions of the Authority;
   (v) any message transmitted by any agency authorized by the Authority from time to time;”

6. In regulation 8 of the principal regulations,---
   (a) In sub-regulation (1), for the words, ‘three months’, the words ‘seven days’ shall be substituted.

7. In regulation 17 of the principal regulations, ----
(a) for sub-regulation (11), the following sub-regulation shall be substituted, namely:-

“(11) Every Access Provider shall withdraw before the 26th September, 2011 all telecom resources allocated to a telemarketer except those telecom resources which have been allocated in accordance with the provisions of the regulations.”

8. In sub-regulation (2) of regulation 20 of the principal regulations,---

(a) in clause (a), after the word ‘unless’ and before the word ‘has’, the word ‘it’ shall be inserted.

(b) for clause (j), the following clause shall be substituted, namely:-

“(j) every Access Provider shall ensure that any commercial communication including SMS, other than transactional messages, is sent to a customer only between 0900 Hrs to 2100 Hrs;”

(c) after clause (k), the following clauses shall be inserted, namely:-

“(ka) no Access Provider shall permit sending of more than one hundred SMS per day per SIM:

Provided that in case of post paid telephone number the Access Provider shall not permit more than three thousand SMS per SIM per month:

Provided further that in case of post paid telephone number, the Access Provider shall not permit sending of more than one hundred SMS per day per SIM from a date to be notified by the Authority;

(kb) the Authority may by direction, from time to time, specify the category of SMS which shall be excluded from the limit of one hundred SMS per day per SIM:

Provided that before permitting a customer to send specified category of SMS beyond the limit of one hundred SMS per day per SIM, the Access Provider shall obtain an undertaking from such customer that he shall not use such telephone number for
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sending any commercial communications:

Provided further that the Access Provider shall enter, in the list maintained in the National Telemarketer Register, the telephone number, name and address of the customer, category of exempted SMS and date of permitting sending of SMS beyond limit of one hundred SMS per day per SIM and the said list shall be updated every Monday.”

9. In regulation 25 of the principal regulations,---

(a) for clause (d), the following clause shall be substituted, namely:--

“(d) the provisions contained in regulations 12, 16, 17 and 18 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) shall remain in force till the 26th day of September, 2011.”

10. In Schedule-I to the principal regulations --

(a) under the heading ‘Miscellaneous’, after serial number II, the following shall be inserted, namely:--

“III. A customer may exercise his option to receive messages for the following preferences: 1- Banking/Insurance/Financial products/credit cards, 2- Real Estate, 3- Education, 4- Health, 5- Consumer goods and automobiles, 6- Communication/Broadcasting/Entertainment/IT, 7-Tourism and Leisure.

IV. The Authority may by direction, from time to time, specify additional preferences in the partially blocked category.

V. For sending the promotional messages, the telemarketers shall use alphanumeric identifier in the format XY-RZZZZZ where X stands for code allotted to Access provider, Y stands for service area, as specified by the Authority from time to time and R being any digit from 0 to 7, where 0 indicate that the SMS is commercial communication but does not belong to any preference specified under serial number III, 1-7 indicates the preference specified under serial number III and ZZZZZ indicates five digit unique identification code allotted to telemarketer by the Access Provider. As and when additional
preferences are specified by the Authority, the same will be assigned number 8 onwards for ‘R’.”

11. In Schedule-III to the principal regulations ---

(a) for clause (15), the following clause shall be substituted, namely:–

“(15) The telecom resources allotted by an Access Provider to the telemarketer shall be from the number series ‘140’ allocated by Department of Telecommunications for voice calls and SMS header as specified by the Authority.”

(R. K. Arnold)
SECRETARY

Note 1: The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification No. 305-17/2010-QoS dated 1st December, 2010.

Note 2: The principal regulations were amended vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14th December, 2010.

Note 3: The principal regulations were further amended (second amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28th December, 2010.

Note 4: The principal regulations were further amended (third amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 31st January, 2011.

Note 5: The principal regulations were further amended (fourth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28th February, 2011.
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Note 6: The principal regulations were further amended (fifth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 18th March, 2011.

Note 7: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Sixth Amendment) Regulations, 2011 (of 2011).

Explanatory Memorandum

The Telecom Regulatory Authority of India issued the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) dated the 1st December, 2010 to provide an effective mechanism for curbing unsolicited commercial communications. Regulation 13, 14, 15, 16 and 17 of the regulations were implemented with effect from the 15th day of January, 2011, while regulation 3, 4, 5, 6, 7, 8, 9, 10 and 11 were implemented with effect from the 10th day of the February, 2011. Regulation 12, 18, 19, 20, 21 and 22 of these regulations were to be implemented, from a date to be notified by the Authority.

2. DoT vide letter No. 16-5/2009-AS.III/(Vol. IV) dated 31st January, 2011 had provided ‘140’ number series to be allocated to telemarketers for mobile network. However, number series for fixed network was not allocated. Due to non-availability of numbering resources from fixed line network, date of implementation of relevant clauses of The Telecom Commercial Communications Customer Preference Regulations, 2010 was amended to be effective from a date to be specified by the Authority. Now, DoT vide letter no. 16-5/2009-AS.III/Vol. IV dated 16th August 2011 has provided ‘140’ number series to be allocated to telemarketers for fixed line network. Access Providers have to make relevant provisions in their network before allocation of resources to telemarketers using ‘140’ numbering series from fixed line network. Accordingly, relevant clauses of regulations has been amended and the regulations are being implemented from 27th September, 2011.
3. The Authority also considered the need to modify the definition of the transactional messages considering the practical aspect of business. Accordingly the Authority has made certain changes in definition of Transactional message.

4. The need to send SMSs in public interest by the Authorities established under the Constitution was also considered. Accordingly, any message transmitted by or on the directions of the Authority established under the Constitution or Telecom Regulatory of India (TRAI) or agencies authorized by the Authority has been exempted from the definition of Unsolicited Commercial Communications.

5. As per the existing provisions of regulations, a customer after registering or changing his preference in NCPR cannot change it before a period of three months. In order to provide flexibility to a customer to change his preference, the existing restriction of three months has been reduced to seven days.

6. In order to ensure smooth flow of the transactional messages without any restrictions as specified for commercial communications, the relevant clauses of regulation have been amended.

7. The Authority also considered the operational requirements of certain categories for sending non-commercial SMS in excess of one hundred SMS per SIM per day. Accordingly necessary provision has been made.

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SUBMISSION OF CREDIT INFORMATION TO CREDIT INFORMATION COMPANIES – DISSEMINATION OF CREDIT INFORMATION OF SUIT-FILED ACCOUNTS

RBI/2011-12/165
DBOD.No. CID.BC.30 /20.16.042/2011-12

September 5, 2011

Chairmen/Managing Directors/CEOs
All Scheduled Commercial Banks
(excluding RRBs and LABs)
All India Notified Financial Institutions

Dear Sir,

Submission of Credit Information to Credit Information Companies – Defaulters of Rs. 1 Crore and above and Wilful Defaulters of Rs. 25 lakh and above – Dissemination of Credit Information of suit-filed accounts

Please refer to our Circulars DBOD.No.DL.BC.111/20.16.001/2001-02 dated June 4, 2002 regarding submission of credit information to Credit Information Bureau (India) Ltd (CIBIL) and DBOD No. DL.BC.95/20.16.002/2003-04 dated June 17, 2004 regarding the Dissemination of Credit Information – Role of CIBIL.

2. As you are aware, Certificate of Registration (CoR) has since been issued to 3 Credit Information Companies (CICs), viz., M/s Experian Credit Information Company of India Pvt. Ltd, M/s Equifax Credit Information Services Pvt. Ltd and M/s High Mark Credit Information Services Pvt. Ltd to commence the business of credit information under the Credit Information Companies (Regulation) Act, 2005.

3. You are advised to submit the quarterly list of suit-filed accounts of Rs.1 Crore and above, classified as doubtful or loss, to CIBIL and/or any other credit information company which has obtained CoR from RBI and of which your bank is a member.

4. In terms of Para 2.9 of Master Circular on Wilful Defaulters dated July 1, 2011, Banks / FIs have already been advised to submit the list of suit-filed accounts of wilful defaulters of Rs. 25 lakh and above as at end-March, June, September and December every year to CIBIL and / or any other credit information company which has obtained CoR from RBI and of which that bank is a member.

5. Further, we advise that the above CICs have been advised to disseminate credit information covering data supplied by banks / FIs on such suit-filed accounts on their respective websites.

Yours faithfully

(P R Ravi Mohan)
Chief General Manager
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SELF-ASSESSMENT IN CUSTOMS

Circular No.39/2011-Customs

F.No.450/20/2007-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
227-B, North Block,
New Delhi-110001.

2nd September, 2011.

To
All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.
All Director Generals under CBEC.

Subject: Self-Assessment in Customs - regarding.

Sir / Madam,

Vide Finance Act, 2011, ‘Self-Assessment’ has been introduced under the Customs Act. Under ‘self-assessment’, responsibility of filing correct declaration lies with the importer or exporter. The declaration filed by the importer or exporter may be verified by the proper officer when so interdicted by the Risk Management systems (RMS). In rare cases, such interdiction may also be made with the approval of the Commissioner of Customs or an officer duly authorized by him, who shall not be below the rank of Additional Commissioner of Customs, and that will necessarily be done after making a record of the same in the EDI system. On account of interdictions, Bills of Entry may either be taken up for action of review of assessment or for examination of the imported goods or both. If the self-assessment is found to be incorrect, the duty may be reassessed. In cases where there is no interdiction, there will be no cause for the declaration filed by the importer to be taken up for verification, and such Bills of Entry will be straightaway facilitated for clearance without assessment and examination, on payment of duty, if any.

2. Further, provisions have been made in section 17 of the Customs Act, 1962 to empower the officers of Customs to carry out verification of correctness of assessment of duty relating to imported or export goods at premises of the importer or exporter. This will lead to introduction of ‘On-Site Post Clearance Audit’ in Customs in near future. The focus of self-assessment is reliance on declarations made by the importer and exporter for higher facilitation of consignment at Customs stations and verification of correctness of documents at importer’s or exporter’s premises to detect any infringement. Thus, self-assessment has provided a legal framework to significantly enhance facilitation level in Customs by reducing pre-clearance checks based on risk parameters in case of self assessed documents.
3. It is felt that subsequent to introduction of self assessment, the existing facilitation levels under RMS could be increased as responsibility of filing correct declarations has been shifted to importers and exporters. The idea is to move towards a trust based Customs control. Therefore, risk based techniques are desired to be fine-tuned to meet this objective. The risk parameters and risk rules should be so designed so as to have an effective interdiction system. The matter was also discussed in the meeting of National Risk Management Committee (NRMC) wherein it was decided that conceptually there should be a fixed target for facilitation for different facilities such as Air Cargo, ports, ICDs, etc.

4. It has been reported that the level of facilitation on an average in the last year in Air, Sea and ICD was 60%, 50% and 40% respectively. Also, large numbers of transaction selected by RMS were actually found to be compliant. Therefore, it is felt that there is a need to control the interdiction in RMS and comprehensively rationalize various interventions, targets, rules. Similarly, there is a need to check tendency of faulty and indiscriminate construction of targets, etc. by local Commissioners. It is on record that faulty and indiscriminate targets have resulted in false hits and unnecessary interventions. These ineffective interdictions have resulted in delay in clearance of goods. It is assumed that if this rationalization of redundant and ineffective targets of Local Risk Management (LRM) and National Risk Management (NRM) are carried out, the percentage of facilitation is bound to increase substantially.

5. To streamline the procedures and for effective implementation of self assessment using RMS, Board has decided that the facilitation target of 80% for Air Cargo Complexes, 70% for Seaports and 60% for ICDs should be achieved in the next six months.

6. Further, to make NRMC broad based, it is decided to include Joint Secretary (Customs), CBEC as one of the members of the Committee. Para 5.2 of Board’s Circular No.23/2007-Customs dated 28.6.2007 stands modified to the above extent. Board has also desired that meeting of NRMC should be held every quarter as outlined in the Board Circular without any exception.

7. Board desires that decision taken by Board should be complied with strictly. DG (Systems) and RMD should ensure that necessary rationalization and fine-tuning of the Risk Management System is carried out in a time bound manner so that desired level of facilitation as set out by the Board in respect of Air Cargo Complexes, Seaports and ICDs can be achieved. Board also expects that DG (Systems) should send a report at the interval of two months detailing progress made in this regard to Board. The first such report may be sent on 25.10.2011.

8. Difficulty faced, if any, may be brought to notice of the Board immediately.

Yours faithfully,

( R. P. Singh )
Director (Customs)

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