



# KEY DEVELOPMENTS 2010 - 2011

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# I FOREIGN EXCHANGE LAWS

## A FOREIGN DIRECT INVESTMENT (FDI)

The Department of Industrial Policy and Promotion (DIPP) has decided with effect from 1<sup>st</sup> April 2010 to issue a consolidated FDI Policy every six months. It has been clarified that this is a consolidation/compilation and comprehensive listing of most matters on FDI and is not intended to make changes in the extant regulations.

Further the RBI also issues yearly Master Circulars on FDI regulations.

Based on the Master Circulars issued by RBI and the FDI Policy issued by DIPP, the revised position in relation to key issues is summarized below.

No.	Topic	Revised position
<b>Definitions / clarifications provided for</b>		
1.	Capital	<ul style="list-style-type: none"> <li>◆ Means equity shares, Compulsory Convertible Preference Shares and Compulsory Convertible Debentures.</li> <li>◆ Any other instruments like warrants, partly paid shares etc. shall be considered as capital subject to prior approval.</li> </ul>
2.	Owned	<ul style="list-style-type: none"> <li>◆ A company is considered as 'Owned' by resident Indian citizens if more than <b>50% of its capital</b> is beneficially owned by Resident Indian (RI) / Resident Indian Entity (RIE)</li> </ul>
3.	Holding company	<ul style="list-style-type: none"> <li>◆ As per Companies Act 1956.</li> </ul>
4.	Non-Fund Based activities by NBFCs	Activities classified as Non-Fund Based activities: <ul style="list-style-type: none"> <li>◆ Investment Advisory Services</li> <li>◆ Financial Consultancy</li> <li>◆ Forex Broking</li> <li>◆ Money Changing Business</li> <li>◆ Credit Rating Agencies</li> </ul>
5.	Share premium – Minimum capitalization	<ul style="list-style-type: none"> <li>◆ Share premium to be included as capital for computing minimum capitalization under FDI only if such premium is paid on fresh issue of equity shares</li> </ul>
6.	Share Swap	<ul style="list-style-type: none"> <li>◆ FIPB approval is required for share swap</li> <li>◆ Valuation of the shares to be done by a Merchant Banker registered with SEBI or an Investment Banker outside India registered</li> </ul>

No.	Topic	Revised position
		with the appropriate regulatory authority in host country
7.	Downstream Investment from internal accruals	<ul style="list-style-type: none"> <li>◆ Internal accruals permitted for downstream investments</li> <li>◆ Introduction of online intimation</li> </ul>
8.	Original Investment in development & construction projects	<ul style="list-style-type: none"> <li>◆ Original investment means the entire amount brought in as FDI.</li> <li>◆ The lock-in period of three years will be applied from the date of receipt of each installment /tranche of FDI or from the date of completion of minimum capitalization, whichever is later.</li> </ul>
9.	NBFC	<ul style="list-style-type: none"> <li>◆ 100% foreign owned NBFC can set up step down subsidiaries in India without bringing additional funds towards minimum capitalisation.</li> </ul>
10.	Cash & Carry Wholesale trading/Wholesale trading (WT)	<ul style="list-style-type: none"> <li>◆ Means sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.</li> <li>◆ Sales can be made to customers holding                             <ul style="list-style-type: none"> <li>◆ sales tax/ VAT registration/service tax/excise duty registration; or</li> <li>◆ trade licenses</li> <li>◆ Institutions having certificate of incorporation or registration as a society or registration as public trust</li> </ul> </li> <li>◆ WT to group concerns not to exceed 25% of the total turnover</li> </ul>
<b>FDI in sectors / entities</b>		
11.	FDI in Trusts	<ul style="list-style-type: none"> <li>◆ FDI in Trusts other than VCF is not permitted</li> </ul>
12.	Investment by FVCI	<ul style="list-style-type: none"> <li>◆ In VCF formed as a trust – with Government approval.</li> <li>◆ Any other entity – under FDI route</li> </ul>
13.	FDI in development of real estate projects – hotels & hospitals	<ul style="list-style-type: none"> <li>◆ It is now clearly provided that projects for construction and development of hotels and hospitals would also be covered under this category</li> </ul>
14.	New introductions	<ul style="list-style-type: none"> <li>◆ Security Agencies in Private Sector – 49% with approval</li> </ul>

No.	Topic	Revised position
		<ul style="list-style-type: none"> <li>◆ 100% automatic route</li> <li>◆ Data processing, software development and computer consultancy services; Software supply services; Business and management consultancy services, Market Research Services, Technical testing &amp; Analysis services.</li> <li>◆ Storage and Warehouse Services</li> <li>◆ Transport and Transport Support Services</li> <li>◆ R&amp;D Services excluding setting of institutions awarding degrees / certificates</li> <li>◆ Advertising &amp; films</li> <li>◆ Health &amp; medical services</li> <li>◆ Dealing in genetically modified seeds</li> </ul>
15.	Prohibited activity	<ul style="list-style-type: none"> <li>◆ Lottery Business is extended to include Government / private lottery, online lotteries, etc. and Gambling and Betting is extended to include casinos, etc.</li> </ul>
<b>Others</b>		
16.	PN 2 / 2005	<ul style="list-style-type: none"> <li>◆ Both - Investor and Investee responsible (earlier only investor was responsible) for obtaining all necessary project approvals with respect to building / layout plans, infrastructure, etc.</li> </ul>
17.	Pricing for issue of capital under FDI policy	<ul style="list-style-type: none"> <li>◆ To be decided/determined upfront at the time of issue.</li> </ul>
18.	Refund of share application outstanding beyond a period of 180 days from the date of receipt	<ul style="list-style-type: none"> <li>◆ Refund as well as allotment beyond a period of 180 days may be considered by the Reserve Bank, on the merits of the case.</li> </ul>
19.	Purchase of securities by NRI on non repatriation basis	<ul style="list-style-type: none"> <li>◆ No prior approval of SIA / FIPB shall be required for purchase of shares by Non resident investor having an existing venture or tie up in India as on January 12, 2005, through investment / technical collaboration / trade mark agreement in the same field in which the Indian company whose shares are</li> </ul>

No.	Topic	Revised position
		being transferred is engaged.
20.	Pricing guidelines for transfer of shares from resident to non-resident and vice versa	<ul style="list-style-type: none"> <li>◆ Are now applicable to all sectors including financial service sector which were earlier excluded.</li> </ul>

## B PRICING GUIDELINES FOR ISSUE OF SHARES

The Pricing guidelines for issue of shares, through rights issue or otherwise and transfer of shares has been amended as under:

- ◆ Issue of shares / Transfer of shares by resident to non resident shall not be at a price less than
  - i. In case of Listed companies,
    - On issue of shares, price in accordance with SEBI guidelines
    - On transfer of shares, price at which a preferential allotment of shares can be made under the SEBI Guidelines
  - ii. In case of unlisted companies, Fair valuation by SEBI registered Category I Merchant Banker or Chartered Accountant as per the Discounted Free Cash Flow ('DFCF Method')
- ◆ Transfer of shares by non resident to resident shall not be at a price more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.
- ◆ Rights issue to non residents
  - i. In case of Listed companies, at a price as determined by the company
  - ii. In case of unlisted companies, at a price not lower than that at which the offer is made to Indian resident investors

## C MASTER CIRCULAR ISSUED BY RBI

The key changes as per the Master Circulars are summarised as under:

No.	Topic	Revised Position
<b>External Commercial Borrowings (ECB)</b>		
1.a	End uses not permitted - investment in capital market	<ul style="list-style-type: none"> <li>Investment in Capital market shall specifically include investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc.</li> </ul>
1.b	Parking of Foreign Currency Exchangeable Bonds (FCEB) proceeds abroad	<ul style="list-style-type: none"> <li>The proceeds of FCEB can now be repatriated to India for credit to the borrower's Rupee accounts with AD in India pending utilization for permissible end-uses (earlier only retention and / or deployment of proceeds of FCEB overseas was permitted).</li> </ul>
<b>Direct Investment outside India</b>		
2.a	Definition of Indian party under Overseas Direct Investment (ODI)	<ul style="list-style-type: none"> <li>Individuals have been specifically excluded from definition of Indian party eligible to make overseas investments.</li> <li>Hence even personal guarantees given by individuals on behalf of any company for availing funding facility would now not be possible under the automatic route.</li> </ul>
2.b	Submission of Annual Performance Report (APR)	<ul style="list-style-type: none"> <li>Although annual return in form APR does not require furnishing of audited accounts, the provisions applicable for winding up require that form APR has to be submitted along with audited accounts.</li> </ul>
<b>Remittance facilities</b>		
3.a	Remittances to Non resident Students	<ul style="list-style-type: none"> <li>Non resident students can receive remittances from India under the Liberalized Remittance Scheme, in addition to other modes available.</li> </ul>

## D EXTERNAL COMMERCIAL BORROWINGS (ECB)

### ◆ TAKE OUT FINANCE

- ◆ RBI has now permitted refinancing of domestic rupee loan with ECB under the approval route, for new projects in the sectors such as sea port and airport, roads including bridges and power sectors, subject to compliance with various conditions including tripartite agreement with domestic banks and overseas recognized lenders for either a conditional or unconditional take-out of the loan within three years of the scheduled Commercial Operation Date (COD), loan to
  - i. have a minimum average maturity period of seven years,
  - ii. The fee payable, if any, to the overseas lender until the take-out shall not exceed 100 basis points per annum,
  - iii. Domestic banks / Financial Institutions will not be permitted to guarantee the take-out finance or to carry any obligation on its balance sheet after the occurrence of the take-out event etc.

### ◆ LIBERALISATION

Corporate in the Hotels, Hospitals and Software sectors are now permitted to avail ECB beyond USD 100 million under the Approval Route for foreign currency and/or Rupee capital expenditure for permissible end-uses. Hitherto, such entities were not allowed to avail ECB beyond USD 100 million per financial year.

### ◆ MODIFICATION IN THE ECB POLICY

Infrastructure Finance Companies (IFCs) are now permitted to avail ECBs for on-lending to the infrastructure sector under the Approval route.

As a measure of liberalization, IFCs will be permitted to avail of ECBs (including the outstanding ECBs) up to 50 % of their owned funds under the Automatic route. ECBs by IFCs above 50% of their owned funds would be considered under the Approval route.

## E EXPORTS & IMPORTS

### ◆ EXPORT OF GOODS AND SOFTWARE

Exporters (other than SEZ units and exports made to warehouses outside India) are entitled to avail relaxation upto 31<sup>st</sup> March 2011 for realization and

repatriation to India of the full export value of goods or software exported within 12 months instead of 6 months.

◆ **WRITE OFF OF UNREALIZED EXPORT BILLS**

ADs were permitted to give consent for write-off requests by exporters subject to the exporter surrendering the export incentives availed. It is clarified that the ADs are not required to insist on the surrender of the proportionate export incentives except the Duty Drawback scheme subject to the applicable conditions.

## **F ESTABLISHMENT OF BRANCH OFFICE / LIAISON OFFICE IN INDIA**

- ◆ Due date for submission of Annual Activity Certificates (AACs) by Liaison Offices (LO) / Branch Offices (BO) for the year ended March 31 is extended from April 30 to September 30 of that year.
- ◆ In cases where the annual accounts of the LO/BO are finalized with reference to date other than March 31, AAC is required to be submitted within six months from the due date of the Balance Sheet.
- ◆ AAC is now required to be submitted along with the audited Balance Sheet.

## **G FOREX INSTRUMENTS**

◆ **BUYBACK / PREPAYMENT OF FOREIGN FCCBs**

Applications for buyback of Foreign Currency Convertible Bonds (FCCBs) under the approval route shall be considered till June 30, 2011 (extended from June 30, 2010).

◆ **TRADING IN CURRENCY OPTIONS**

Persons resident in India including individuals can now trade in currency options on the USD-INR spot rate on the recognized stock exchanges to hedge an exposure to risk in addition to the existing trading of currency futures. The size of each contract shall be USD 1000.



◆ **FOREX DERIVATIVES / HEDGE OF COMMODITY PRICE & FREIGHT RISKS**

RBI has introduced comprehensive guidelines on Over the Counter (OTC) Foreign Exchange (Forex) Derivatives and hedging of Foreign Exchange Exposures which are effective from 1<sup>st</sup> February 2011.

**H FEMA - OTHERS**

◆ **INCREASED LIMITS FOR RELEASE OF FOREIGN EXCHANGE**

The foreign exchange limit for travel abroad (Basic travel quota) in respect of all countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States has been revised from \$ 2,000 to \$ 3,000.

## II SEBI

### A MUTUAL FUNDS / AMCS

- ◆ Mutual fund units can now be transacted through clearing members of the registered stock exchanges in addition to Mutual Funds and registered stock brokers. Depository participants of registered depositories are also permitted to process redemption request of units held in dematerialized form.
- ◆ Asset Management Companies (AMCs) shall not enter into any revenue sharing arrangement with offshore funds in any manner and shall not receive any revenue in respect of investment made on behalf of Fund of Fund Schemes. Any commission or brokerage received from the underlying fund shall be credited into concerned scheme's account.
- ◆ AMCs shall not collect any entry load or additional fees for all types of mutual fund schemes.

### B PORTFOLIO MANAGERS

- ◆ **AMENDMENTS IN THE CLIENT AGREEMENTS:**

- ◆ In relation to Fees
  - i. Profit sharing / performance based fees shall be computed on the basis of High Water Mark Principle over the life of the investment, where High Water Mark shall be the highest value that the portfolio/account has reached.
  - ii. Value of the portfolio for computation of High Water Mark shall be taken to be the value on the date when performance fees are charged. The portfolio manager shall charge performance based fee only on increase in portfolio value in excess of the previously achieved High Water Mark.
  - iii. The frequency of charging the performance fee shall not be less than quarterly.
  - iv. High Water Mark shall be applicable for discretionary and non-discretionary services and not for advisory services.

v. In case of interim contributions/ withdrawals by clients, performance fees may be charged after appropriately adjusting the high water mark on proportionate basis.

◆ Others

i. Separate Annexure listing all fees and charges payable to the portfolio manager along with illustrations pertaining to increase or decrease in portfolio value.

ii. Liability of a client shall not exceed his investment with the portfolio manager, in case of a discretionary portfolio manager.

◆ **OTHER CLARIFICATIONS ISSUED TO PORTFOLIO MANAGERS**

◆ The first single lump-sum investment amount received as funds/ securities from clients by portfolio managers should not be less than INR 5 Lacs.

◆ Portfolio Managers not to organize investment portfolios as “Schemes” akin to Mutual Fund Schemes while marketing their services to clients.

◆ Portfolio Managers to disclose the performance of the portfolios to the prospective clients as per the prescribed format provided by SEBI.

## **C EQUITY LISTING AGREEMENTS**

◆ **AUDITORS CERTIFICATES / REPORTS:**

◆ On submission of the scheme of amalgamation / merger / reconstruction, etc. to the stock exchanges under the Equity Listing Agreement, the listed entities are also required to submit an auditors’ certificate stating that the accounting treatment contained in such schemes is in compliance with all the applicable Accounting Standards.

i. For the purpose of limited review / statutory audit reports, the disclosure of Balance Sheet items shall be in the format specified in Annexure IX drawn from Schedule VI of the Companies Act.

ii. Only those auditors who have subjected themselves to the peer review process of ICAI and who hold a valid certificate to that effect can submit the limited review / statutory audit reports to the concerned stock exchanges.

iii. All companies issuing shares are required to get a secretarial audit done for reconciliation of the total admitted capital with both the depositories and the total issued and listed capital. The terminology “Secretarial Audit” has now been modified from to “Reconciliation of Share Capital Audit”.

◆ **VOLUNTARY ADOPTION OF INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)**

- ◆ Listed companies having subsidiaries can submit their consolidated financial results either in accordance with the accounting standards of the Companies Act, 1956, or in accordance with IFRS.
- ◆ Where the financial results of the current period are stated as per IFRS and that of the pervious year are as per notified Accounting Standards, a reconciliation should be provided in respect of significant differences.
- ◆ Standalone financial results to the stock exchanges shall continue to be in accordance with the notified Accounting Standards.

◆ **TIMELINES FOR SUBMISSION AND PUBLICATION OF FINANCIAL RESULTS**

- ◆ Revision in the timelines for submission of the financial results to the stock exchanges.

No.	Particulars	Existing timelines (from the end of quarter)	New timelines (from the end of quarter)
1	Disclosure of Quarterly financial results <ul style="list-style-type: none"> <li>◆ Audited consolidated or Un- audited consolidated with limited review</li> <li>◆ Audited standalone or Un- audited standalone with limited review</li> <li>◆ Submission of limited review to stock exchange</li> </ul>	<ul style="list-style-type: none"> <li>◆ Two month</li> <li>◆ One month</li> <li>◆ Two month</li> </ul>	} 45 days
2	In case of last quarter option to disclose financial results <ul style="list-style-type: none"> <li>◆ Annual – audited</li> <li>◆ Last quarter un audited with limited review</li> <li>◆ Submission of limited review to stock exchange</li> </ul>	<ul style="list-style-type: none"> <li>◆ Three month</li> <li>◆ One month</li> <li>◆ Two month</li> </ul>	} 60 days } 45 days

- ◆ The company shall further publish the following
  - i. Half yearly statement of assets and liabilities as part of the audited or un-audited financial results for the half year.
  - ii. However, if a company opts to submit un-audited financial results for the last quarter of the financial year, it shall, submit the above statement as at the end of the financial year only along with the audited financial results for the entire financial year, as soon as they are approved by the Board.
  - iii. Along with the consolidated financial results, on standalone basis (a) Turnover (b) Profit before tax and (c) Profit after tax shall also be disclosed.
  
- ◆ **DISCLOSURE AMENDMENTS**
  - ◆ Shareholding pattern to be submitted to the stock exchange one day prior to the date of listing.
  - ◆ Revised shareholding pattern to the stock exchange to be submitted within 10 days from the date of allotment of shares pursuant to any capital restructuring done by the company resulting in a change exceeding +/- 2% of the total paid up share capital.
  - ◆ Companies which have issued Depository Receipts (DRs) overseas shall segregate the present disclosure pertaining to 'shares held by custodians and against which DRs have been issued' into those pertaining to the 'promoter / promoter group' and to the 'public'.
  - ◆ Disclosure of details in respect of agreements entered into by the company with media companies on their websites and to also notify the stock exchange.
  - ◆ A pre – announced fixed pay date for payment of dividends and for credit of bonus shares, the same shall also be intimated to the stock exchange on closure of the Board Meeting.
  
- ◆ **ISSUE OF SECURITIES**
  - ◆ The time gap between the issue closure and its listing has been reduced from 22 days to 12 days.

- ◆ The benefits of fast track issues not to be available only where a show cause notice or prosecution proceedings have been initiated by SEBI.
- ◆ Earlier, one of the conditions to be fulfilled before filing DRHP with SEBI was that there should not be any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after IPO. Now such condition is required to be fulfilled at the time of registration of prospectus with ROC.
- ◆ All types of investors are required to deposit 100% of the application money as margin along with the application for securities in public issues.
- ◆ Draft offer documents of issue size upto INR 100 crore are to be filed with the concerned regional office of SEBI where the issuer's registered office is located and for an issue size greater than INR 100 crore, documents have to be filed with SEBI's head office in Mumbai.
- ◆ SEBI has revised fees for issuers making a rights issue.
- ◆ **OTHERS**
  - ◆ A listed entity can appoint a CFO only with the prior permission of its audit committee.
  - ◆ The definition of 'employee', has now been widened to include employee of the holding company or subsidiary company or of that material associates of the issuer whose financial statements are consolidated with the issuer's financial statements as per Accounting Standard 21.
  - ◆ Provisions for lock-in period prescribed under preferential issues shall not apply to preferential issue of equity shares pursuant to conversion of loan or option attached to convertible debt instruments or a scheme approved by a High Court under section 391 to 394 of the Companies Act.
  - ◆ SEBI has now provided the procedure for dealing with unclaimed shares.
  - ◆ All listed companies shall mandatorily maintain a functional website that contains certain basic information about them and is duly updated for all statutory filings.

## **D SEBI ICDR REGULATIONS**

- ◆ **INTRODUCTION OF ISSUE OF SPECIFIED SECURITIES BY THE SMALL AND MEDIUM ENTERPRISES**

- ◆ A separate SME Exchange will be set up for listing of the securities. The SME exchange is meant for Issuer whose post issue capital does not exceed 10 Crore and option is given in cases where it will not exceed 25 Crore. The salient features include filing of draft offer document through Merchant Banker with simultaneous filing with SME exchange and ROC, 100% of issue to be underwritten with minimum 15% by Merchant Banker, Merchant Banker to ensure market making for minimum of 3 years etc.
  
- ◆ **KEY AMENDMENTS RELATING TO THE EXISTING SEBI ICDR REGULATION**
  - ◆ The limit for application or bidding of specified security by retail investor has been increased from INR 1 lakh to INR 2 lakh.
  - ◆ The issuer is now required to make a public announcement of the draft offer document in newspapers (English, Hindi and regional language).
  - ◆ Even if the minimum public shareholding is 10% the allocation of the net offer to the public shall be as - 50% to QIB, 35% to retail investor and 15% to non institutional investor (earlier the same was 60% to QIB, 30% to Retail investor and 10% to non institutional investor).
  - ◆ At the time of rights issue the issuer can now give only one payment option to all the investors – either full payment on application or part payment on application and balance to be paid on call (provided the necessary regulatory approvals have been obtained).
  - ◆ Merchant bankers are now required to submit a compliance certificate with respect to news reports appearing in stipulated newspapers, major business magazines and print & electronic media after filing the draft offer document till the date of closure of the issue as to whether the contents are supported by disclosures in the offer document.
  - ◆ Earlier if a person belonging to the promoter(s) or promoter group sold equity shares of the company only that person would become ineligible for preferential issue for the next 6 months. However, now even if one of the promoters sells equity shares in the company, then it will render the entire promoter group ineligible for preferential issue for the next 6 months.
  - ◆ Failure to exercise warrants which was previously subscribed, by any person belonging to the promoter(s) or promoter group, shall render the entire promoter group ineligible for preferential issue for a period of 1 year from the date of cancellation / expiry of the warrants.

- ◆ The Board of Directors are now required to give details of the current as well as past directorships in listed companies which are / were suspended from the stock exchange or are / were de-listed from the exchange for five years prior to filing draft offer document.
- ◆ The issuer is now required to make a disclosure of Proforma Financial Statement in the offer document in case of material acquisition / divestment made by the issuer after the end of the latest disclosed annual financial results, due to which certain companies become / cease to be direct or indirect subsidiaries of the issuer.

## **E TRADING IN THE SECONDARY MARKET**

- ◆ Listed companies will continue trading in the normal segment on stock exchanges only if 50 % of their non-promoter holding is in dematerialized form, or else the shares would be traded only in the trade for trade (TFT) segment, wherein the trades would be settled with delivery of securities i.e. netting off will not be permitted.
- ◆ In case of mergers, demergers, capital reduction, corporate debt restructuring, rehabilitation packages approved by the BIFR, and securities admitted directly from another exchange, the stocks would be traded in the TFT segment (except if the securities are traded in the derivatives segment) for the first 10 days.
- ◆ SEBI registered brokers who provide Internet Based Trading are now eligible to provide securities trading using wireless technology which include devices such as mobile phone, laptop with data card, etc, that use Internet Protocol (IP).

## **F DEPOSITORY PARTICIPANTS**

- ◆ Depositories are required to post regulatory orders, i.e., orders against listed companies, depository participants, trading / clearing members and arbitration awards issued by them on their websites.
- ◆ In case of all existing and new accounts held with DPs, in the event of closing of the demat account or shifting of the demat account from one DP to another, the AMC collected upfront on annual/half yearly basis by the DP shall be refunded to the account holder for the balance of the quarter/s.
- ◆ Currently PAN is mandatory for all transactions in the securities market. It is clarified that demat accounts which are not PAN compliant shall be

suspended for credits except for credits arising out of automatic corporate actions.

- ◆ SEBI has authorized acceptance of third party address on behalf of the owner of the demat account for correspondence purpose subject to compliance with the KYC norms by such third party. However this facility is not extended to PMS clients.

## **G OTHERS**

- ◆ Stock exchanges can introduce index option contracts with a tenure of 5 years (subject to compliance of certain conditions), as against a tenure of 3 years earlier.
- ◆ SEBI has permitted the Stock Exchanges in India to introduce Derivative Contracts based on foreign stock indices in the equity derivatives segment. These contracts would be denominated, traded and settled in Indian rupees. Trading in these derivatives is currently restricted only to residents in India.
- ◆ All stock exchanges are required to make available the Annual Reports of the listed companies on their respective websites from the financial year 2009-10 onwards.
- ◆ All public companies, listed or proposed to be listed, shall require at least 25% of each class of equity shares and convertible debentures to be held by the public. In case where the public holding is less than 25%, the same shall be required to be raised by at least 5% p.a.

## III NBFC

### A CORE INVESTMENT COMPANIES (CIC'S)

- ◆ The Reserve Bank of India (RBI) has introduced a *fifth* category of Non-Banking Finance Company (“NBFC”) viz. Core Investment Company (CIC).
- ◆ CIC means a NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions:
  - ◆ It holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, debt or loans in group companies. It has been clarified that the balance 10% of net assets would include real estate or other fixed assets which are required for effective functioning of a company, but should not include other financial investments/loans in non group companies. It would however include investments in other group entities that are not companies eg: Trusts etc;
  - ◆ Its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Net Assets;
  - ◆ Net Assets specified above shall mean total assets excluding cash and bank balances, investment in money market instruments as well as money market mutual funds, advance payment of taxes and deferred taxes;
  - ◆ Companies in the same group have been defined as any arrangement involving two or more entities related to each other. i.e. Subsidiary – parent, Joint ventures, Associates, Promoter-promotee as per the Takeover regulations for listed companies, related party in terms of AS 18, common brand name and investment in equity shares of 20% and above;
  - ◆ It has been clarified that the above definition of Group Companies is not applicable to NBFCs;
  - ◆ It does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

- ◆ It does not carry on any other financial activity referred in the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, loans and investments in debt issuances of group companies or guarantees issued on behalf of group companies.
- ◆ CICs having an asset size of more than Rs.100 crore and which raises funds or hold public funds (Commercial Papers, debentures, inter-corporate deposits and bank finance excluding instruments compulsorily convertible in equity shares) would be treated as Systemically Important Core Investment Companies (CIC-ND-SI) and would require registration with the RBI. In cases where there are more than one CICs in a Group, they would be aggregated and the registration will be required if asset size is above INR 100 crores.
- ◆ RBI has also declared that companies which are not Systematically Important CIC are not required to get themselves registered with RBI.
- ◆ CICs-ND-SI applying for certificate of registration (CoR) would need to meet the following conditions.
  - ◆ Maintain a minimum capital ratio whereby its adjusted net worth shall not be less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year. It has been notified that Revaluation Reserve arising from revaluation of investments in quoted investments is not to be considered for calculation of Adjusted Net worth.
  - ◆ Its outside liabilities at all the times shall not exceed 2.5 times of its adjusted net worth as on the date of the last audited balance sheet as at the end of the financial year. It has been notified that instruments compulsorily convertible in equity shares are not to be considered for determining Outside Liabilities.
- ◆ A CIC-ND-SI which adheres to the requirements as specified above, may to the extent necessary, be exempted from compliance with:-
  - ◆ Maintenance of statutory minimum Net Owned Fund (NoF) and,
  - ◆ Requirements of Prudential Norms including requirements of capital adequacy and exposure norms.
- ◆ Transition Period provisions
  - ◆ All CICs-ND-SI, irrespective of whether they were specifically exempted in the past from registration with the RBI or not, should apply to the RBI for

obtaining the CoR within 6 months from the date of the notification i.e 12<sup>th</sup> August 2010.

- ◆ It is further clarified that the companies which fail to apply within the aforesaid period will be regarded as contravening the provisions of the RBI Act, 1934 if they are regarded as carrying on the business of CIC-ND-SI.
- ◆ Companies which presently have an asset size of less than Rs 100 crore would be required to apply to RBI for COR within three months of the date of achieving an asset sheet size of Rs 100 crore.

## **B PROVISIONING NORMS FOR NBFCs**

RBI has introduced provisioning norms on the standard assets of NBFCs. The extant regulations require NBFCs to make provisions only for Non Performing Assets (NPAs). The key amendments are as under:

- ◆ NBFCs are required to make general provision at the rate of 0.25% of their outstanding standard assets.
- ◆ However, the above provision shall not be considered while arriving at the net Non Performing Assets.
- ◆ The provision on standard assets will not be required to be netted off from Gross Advances, but the same shall be shown separately in the balance sheet as 'Contingent Provisions against Standard Assets'.
- ◆ NBFCs will be allowed to include the provision on standard assets in Tier II Capital along with the other 'General Reserves / Loss Reserves', however, this shall be subject to the maximum limit of 1.25 % of the total risk weighted assets.

## **C TIMELINES FOR FINALIZATION OF BALANCE SHEET:**

Every NBFC is required to submit a Statutory Auditor's certificate with respect to the position of the company within one month from the date of finalization of the balance sheet but not later than 30<sup>th</sup> December of that year.

As per the RBI notification, every NBFC shall finalize its balance sheet within a period of 3 months from the date to which it pertains. E.g.: Balance Sheet as on March 31<sup>st</sup> of a year shall be finalized by June 30<sup>th</sup> of the relevant year.

## IV SERVICE TAX (ST)

### A NOTIFICATIONS / CIRCULARS

Nature/ Type of service	Exemption details
Coaching Classes	The services in relation to Modular Employable Skill Courses which are approved by the government have been exempted from levy.
Air transport services	<ul style="list-style-type: none"> <li>◆ Service tax levy to be limited to Rs.100 per travel for domestic journey in any class and Rs. 500 per travel for international journey by economy class.</li> <li>◆ Domestic air travel to and from the country's northeast would be exempt from this tax</li> <li>◆ Existing exclusion to in-transit passengers for levy of service tax on international journey by air withdrawn.</li> </ul>
Sponsorship services	Tournaments or championships organized by specific associations, Indian Universities etc have been exempted
Various specified services provided within / wholly within a port or an airport.	<p>Various services (listed below) provided within a port or a airport have been exempted</p> <ul style="list-style-type: none"> <li>◆ Services of repair of ships or boats or vessels belonging to the Government of India including Navy, Coast Guard or Customs,</li> <li>◆ Supply of water, electricity,</li> <li>◆ Treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service),</li> <li>◆ Services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre,</li> <li>◆ Services provided by fire service agencies, pollution control services,</li> <li>◆ Commercial or Industrial construction services for construction, repair,</li> </ul>

Nature/ Type of service	Exemption details
	<p>alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways, etc.</p> <ul style="list-style-type: none"> <li>◆ Cargo handling agency and ware housing services in relation to agricultural produce or goods intended to be stored in a cold storage.</li> <li>◆ Transport of export goods in an aircraft by an aircraft operator.</li> <li>◆ Of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.</li> </ul>
Distribution of electricity services	Services provided by a distribution licensee, a distribution franchisee, or any other person authorized to distribute power are exempted from service tax.
Transport of goods by rail services	The exemption from service tax in respect of services provided by Indian Railways under the category of "Transport of goods by rail" was extended third time till 1 <sup>st</sup> April 2011.
Outdoor catering services	Services provided by registered Non Government Organisation under central assisted Mid-Day Meal Scheme are exempted.
Persons involved in marketing of lottery (other than distributors or selling agents appointed or authorized by the lottery organising state)	Exempted from levy of Service tax in respect of services provided in the financial year only if Distributors or selling agents opts to discharge the service tax under composition scheme.
Services for Packaged or Canned software.	100% exemption on fulfilment of certain conditions.
Services in connection to the management, maintenance and repair of bridges, tunnels, dams, airports, railways and transport terminals.	Exempted from the levy of service tax. Earlier, the exemption was restricted only to the maintenance of roads.
Services provided under Weather Board Crop Insurance Scheme or	100% exemption for general insurance service

Nature/ Type of service		Exemption details
Modified Agricultural Scheme(MNAIS)	National Insurance	

## B CIRCULARS & CLARIFICATIONS

### ◆ CONSTRUCTION SERVICES

- ◆ Increase in abatement from 67% to 75% of the gross value of property including land value for construction service. Effective service tax rate in such cases to reduce from 3.39% to 2.57%.
- ◆ Procedural bottlenecks relating to the completion certificate prescribed in the law are being simplified.
- ◆ Exemption from levy in case of property value upto Rs 20 lacs under specified government housing scheme.

### ◆ CLARIFICATION ON VARIOUS DISPUTES

#### ◆ Container Detention Charges

The government has issued a circular clarifying that detention charges paid by customers to shipping lines / steamer agent for delay in returning the container beyond pre-determined period is not chargeable to service tax.

#### ◆ Laying of Cables

The government has clarified various disputes which have arisen regarding applicability of service tax on certain activities such as shifting of overhead cables to underground on account of renovation/widening of roads, laying of electrical cables under or alongside roads/railway tracks, between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights etc .

### ◆ AMENDMENT TO CENVAT CREDIT RULES

Retrospective amendment has been made in CENVAT Credit Rules 2004 which requires proportionate reversal of CENVAT Credit attributable to inputs used in manufacture of exempted goods has been extended to input services.

◆ **SCOPE OF REFUND OF SERVICE TAX ON EXPORT EXTENDED**

The refund of service tax can now also be claimed on Airport services provided in any airport and used in export of said goods. The refund can be availed on fulfilment of certain conditions which have been mentioned in the circular.

◆ **DUMPERS OR TIPPERS ELIGIBLE AS CAPITAL GOODS FOR CENVAT CREDIT**

Service providers engaged in services of Site formation & clearance, excavation, earthmoving, demolition and mining of mineral, oil or gas services will be eligible to claim CENVAT credit on Dumpers or tippers provided these are registered in the name of the service provider and are used for providing taxable services. Other service providers and manufacturers are not eligible.

◆ **NO LEVY OF SERVICE TAX ON SERVICE PROVIDED BY STATE GOVERNMENT**

It has been clarified that State Government or their agencies/departments who are implementing Centrally Sponsored Schemes under a central grant are not liable to pay service tax.

◆ **CUSTOMIZED GROUP INSURANCE POLICY**

Exemption from levy of service tax is now available on customized group insurance policy schemes known as 'Janata Personal Accident Policy' (JPAP), to extend risk cover to target populations, and to fulfil the 'rural or social sector' obligation.

◆ **FUMIGATION OF EXPORT CARGO**

Activity of fumigation of export cargo including agricultural / horticultural produce, whether loaded into containers or otherwise does not fall under taxable services 'cleaning services' i.e. and is not liable under service tax.

## **V ACCOUNTING**

### **A POSITION PAPER ON TAX ISSUES ARISING OUT OF IFRS**

ICAI had constituted a group for identifying tax related issues arising out of convergence with IFRS.

On the basis of suggestions received from group some major tax issues arising out of convergence with IFRS were identified in form of 'position paper'. The Position Paper is to be submitted to the Ministry to assist the concerned ministries in policy formulation.

### **B NOTIFICATION OF CONVERGED ACCOUNTING STANDARDS**

In pursuance of G-20 commitment given by India, the process of convergence of Indian Accounting Standards with IFRS has been carried out by the government. Thirty five Indian Accounting Standards converged with International Financial Reporting Standards (henceforth called IND AS) have been notified.

## VI COMPANY LAW

### A CIRCULARS & CLARIFICATIONS

#### ◆ EXEMPTION TO PUBLISH ACCOUNTS OF SUBSIDIARY COMPANIES

In order to reduce the administrative burden and considering the globalization, development of the regulatory framework, accounting standards etc, the Central Government through a circular has notified that the requirement of attaching the accounts of the subsidiary company along with that of the Holding company in terms of Section 212 will not apply to those companies which fulfil certain conditions.

#### ◆ EXEMPTION TO DISCLOSE QUANTITATIVE DETAILS ETC IN ANNUAL ACCOUNTS

The companies are required to provide in its Notes to Account various disclosure (particularly quantitative details, CIF value of Imports, details of turnover, etc.) as required by Schedule VI of the Companies Act, 1956. Considering that similar disclosure standards do not prevail in other countries putting Indian companies to a disadvantage the Central Government has, by notification, issued a general exemption whereby certain class of companies like Shipping Companies, Hotels Companies including restaurants, Export Oriented Companies, Manufacturing companies, Trading companies, Companies producing defence equipments including space research will be exempted from giving certain disclosures like quantitative details etc.

#### ◆ MANAGERIAL REMUNERATION IN UNLISTED PUBLIC COMPANIES

Schedule XIII of the Companies Act 1956 have been amended to provide that unlisted public companies (i.e other than subsidiaries of listed companies) shall not require Government approval for paying managerial remuneration even in cases of where there are no profits/ inadequate profits, provided they meet the other conditions stipulated in the Schedule XIII of the Companies Act, 1956.

#### ◆ EASY EXIT SCHEME

Easy exit scheme which was notified to help defunct companies to strike off their name has been extended for another three months i.e. upto 30<sup>th</sup> April, 2011 and all the terms & conditions notified earlier remains the same.

## VII OTHERS

### A REVISION IN ESI CEILING LIMITS

As per the recent notification issued by Ministry of Labour and employment, the ESI wages ceiling limit has been increased from current limit of INR 10,000 per month to INR 15,000 per month with effect from 1st May 2010.

### B REVISION IN GRATUITY LIMITS

Gratuity amount payable under the Payment of Gratuity Act, 1972 has been enhanced from the current limit of INR 3,50,000 to INR 10,00,000 with effect from 24<sup>th</sup> May 2010.

### C AMENDMENT TO THE PUBLIC PROVIDENT FUND SCHEME, 1968

All accounts opened on behalf of a HUF prior to 13th May 2005 shall be closed after the expiry of 15 years. In case wherein the period of 15 years has already been completed, those accounts shall be closed as at 31st March 2011.

### D ISSUANCE OF NCDS

Salient features of RBI's directions concerning Non Convertible Debentures ('NCDs') (a debt instrument issued by a corporate (including NBFCs) with original or initial maturity up to one year and issued by way of private placement) effective from August 02, 2010 are as under:

- ◆ **ELIGIBILITY TO ISSUE NCDS**
  - ◆ Tangible net worth of not less than Rs.4 crore, as per the latest audited balance sheet;
  - ◆ Sanctioned working capital limit or term loan by bank/s or all-India financial institution/s. However RBI has exempted NBFCs including primary dealers from complying with this condition.; and

- ◆ Borrowal account is classified as a Standard Asset by the financing bank/s or institution/s.
- ◆ Obtained a minimum credit rating of P-2 of CRISIL or such equivalent rating by other specified agencies
- ◆ Financial institutions are now eligible to invest in NCDs of maturity of upto one year
  
- ◆ **TERMS OF NCDs**
  - ◆ Aggregate amount of NCDs shall be within such limit as may be approved by the Board of the corporate or as indicated by the Credit Rating Agency for the rating granted, whichever is lower.
  - ◆ NCDs may be issued at face value carrying a coupon rate or at a discount to face value as zero coupon instruments as determined by the corporate.
  - ◆ Their maturity shall not be less than 90 days from the date of issue.
  - ◆ Exercise date of option (put/call), if any, attached to the NCDs shall not fall within the period of 90 days from the date of issue.
  - ◆ Tenor of the NCDs shall not exceed the validity period of the credit rating of the instrument.
  - ◆ Debenture Trustee to be appointed.
  
- ◆ **OTHER COMPLIANCES REQUIRED**
  - ◆ Disclosure of financial position to investors as per the standard market practice.
  - ◆ Auditor's certificate to the effect that all eligibility conditions set forth in these directions for the issue of NCDs are met by the corporate.
  - ◆ Compliance with provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, as applicable.



## **E FOREIGN CONTRIBUTION (REGULATION) ACT 2010**

The Government has enacted the Foreign Contribution (Regulation) Act 2010 (FCRA 2010) on 26<sup>th</sup> September 2010. Some of the critical provisions of FCRA 2010 is provided below:

- ◆ Interest accrued on Foreign Contribution (FC) deposited in any bank or any other income derived from FC or interest thereon shall be construed as FC.
- ◆ The following are not considered as FC:
  - i. Fee (including fees charged by an Indian educational institution from foreign student).
  - ii. Amount towards cost in lieu of goods or services rendered by such person in the ordinary course of his business.
  - iii. Contribution from an agent of a foreign source towards such fee or cost.
- ◆ FC from relatives is permitted.
- ◆ Utilization of FC for Speculative Business is prohibited.
- ◆ Registration certificate shall be valid for a period of five years. Renewal application needs be filed within 6 months prior to expiry of the term of registration.
- ◆ Administrative expense in excess of 50% of FC received in a financial year requires prior approval of the Central Government.

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