Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, MCA, RBI and SEBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at **eboard@icai.org.**

(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

A. NOTIFICATIONS

1. Extension of time limit for filing ITR-V forms for A.Y. 2010-11 and 2011-12

In order to mitigate the hardship and grievance of the tax payers who have been prevented by reasonable causes to file the ITR-V in time, the Director General of Income Tax (System), has through this notification, extended the time limit for filing ITR-V forms in respect of Income tax returns filed electronically (without digital signature certificate) for A.Y. 2010-11 and for A.Y. 2011-12, up to 31st December, 2012 or within a period of 120 days from the date of uploading of the electronic return data, whichever is later.

The Press release further mentions that the taxpayers can also verify their status of receipt of ITR-V at e-filing website http://incometaxindiaefiling.gov.in. They can also download the ITR-V from the same website from sub-menu ***"My return"*** under main menu of ***"My account"*** after login into the above mentioned website.

[Notification No. 1/2012 under CPR Scheme 2011 & Press Release, dated 23-10-2012]

2. Capital Gains Accounts (First Amendment) Scheme, 2012 – Inclusion of reference to new Section 54GB

As per the provisions of Income-tax Act, 1961 relating to taxation of Capital gains, it has been provided that the amount of capital gain not utilised by the assessee before the date of furnishing the return of income under Section 139, for the purchase or construction of a new asset, as the case may be, shall be deposited before furnishing such return, in any bank or institution, as may be specified in and utilised in accordance with any scheme notified by the Central Government.

Section 54GB has been inserted by the Finance Act, 2012 to exempt long term capital gains on sale of a residential property (house or plot of land) owned by an individual or a HUF in case of re-investment of sale consideration in the equity shares of an eligible company being a newly incorporated SME company engaged in the manufacturing sector, which is utilised by the company for the purchase of new plant and machinery. The Capital Gain Account Scheme, 1988 has accordingly, been amended to include reference to Section 54GB in the relevant paragraphs and Forms A, C and G to the said scheme.

Further, in para 13 of the said scheme relating to "closure of the account", sub-para (1A) has been inserted to provide:

"(1A) If a depositor, being an eligible company, referred to in Section 54GB, desires to close its account, then, -

(i) it shall make a joint application signed by the eligible assesse referred to in Section 54GB;

(ii) the application shall be made with the approval of the Assessing Officer having jurisdiction over the eligible assesse referred to in Section 54GB; and

(iii) such application shall be made in Form G to the deposit office or as near thereto as possible,

and the deposit office shall pay the amount of balance including interest accrued, to the credit in the account of the depositor by means of crediting such amount to any bank account of the depositor.".

[Notification No. 44/2012, dated- 25-10-2012]

3. Exemptions- Interest on Bonds/debentures- Specified companies authorised to issue tax-free, secured, redeemable, non-convertible bonds during F.Y. 2012-13

Section 10(15)(iv)(h) exempts interest on bonds/

debentures issued by any public sector company and notified by the Central Government in the Official Gazette. Accord-ingly, in exercise of the powers conferred by Section 10(15)(iv)(h) of the Income tax Act, 1961, the Central Government has through this notification, authorised National Highways Authority of India, Indian Railway Finance Corporation Limited, India infrastructure Finance Company Limited, Housing and Urban Development Corporation Limited, National Housing Bank, Power Finance Corporation, Rural Electrical Corporation Limited, Jawaharlal Nehru Port Trust, Dredging Corporation of India Limited & Ennore Port Limited to issue, during the financial year 2012-13, tax free, secured, redeemable, non-convertible bonds, aggregating to amounts mentioned therein the notification, subject to fulfilment of certain conditions relating to tenure of bonds, PAN, rate of interest, issue expense and brokerage, public issue, private placement, repayment of bonds and selection of merchant bankers, as detailed in the said notification.

[Notification No. 46/2012, dated-06-11-2012, as amended by Notification No. 50/2012, dated 15-11-2012]

The complete details of the text of the Notification and Press release can be downloaded from the link: http://law.incometaxindia.gov.in/DIT/Notifications.aspx & http://www.incometaxindia.gov.in/home.asp

B. CIRCULARS

1. Section 194C - Deduction of tax at source on payment of gas transportation charges by the purchaser of Natural gas to the seller of gas

In response to the representations received by CBDT, on the difficulties being faced in the matter of Tax Deduction at Source on Gas Transportation Charges paid by the purchasers of Natural gas to the owners/sellers of gas, CBDT has through this Circular clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in Section 194C of the Act. Therefore, in such circumstances, the provisions of Chapter XVII-B of the Act are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

It has also been mentioned that transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and TDS shall be deductible on such payment to the third party at the applicable rates.

[Circular No. 9/2012, dated 17-10-2012]

The complete details of the text of the circular can be downloaded

from the link: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

C. PRESS RELEASES

1. Final Report of the Committee constituted for formulating Accounting Standards for the purposes of notification under Section 145(2) of the Income-tax Act, 1961

The Committee constituted by CBDT for formulating Accounting Standards for the purposes of notification under Section 145(2) of the Act, has submitted its final report, wherein it had mentioned that it had examined all the 31 Accounting Standards issued by the ICAI and recommended notification of Accounting Standards on 14 issues under the Act. The Committee has further recommended that the Accounting Standards notified under the Act be made applicable only for the computation of taxable income and a taxpayer would not be required to maintain books of account on the basis of Accounting Standard so notified.

The Final Report of the said Committee (including drafts of the 14 Tax Accounting Standards) has been uploaded on the Finance Ministry website (www.finmin.nic.in) and Income-tax Department website (www.incometaxindia.gov.in) for comments from stakeholders and general public.

[Press release, dated 26-10-2012]

2. Protocol amending the convention between India, UK and the Northern Ireland signed for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on Income and Capital Gains

India and UK have signed a Protocol amending the Convention between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect of Taxes on Income and Capital Gains (DTAC), on 30th October 2012.

The Convention, as amended by this Protocol, will provide tax stability to the residents of India and UK and will facilitate mutual economic cooperation between the two countries. It will also stimulate the flow of investment, technology and services between India and UK.

[Press Release, dated 01-11-2012 & 09-11-2012]

The complete details of the text of the press releases can be downloaded from the link: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

(Matter on FEMA has been contributed by CA. Manoj Shah and CA. Hinesh Doshi)

A. Trade Credits for Import into India

A.P. (DIR Series) Circular No. 39 dated 9th October, 2012

It has been decided to continue all-in-cost ceiling as specified in the A.P. (DIR Series) Circular No. 28 dated 11th September, 2012 for trade credits for imports into India until further review.

B. External Commercial Borrowings (ECB) Policy

1. A.P. (DIR Series) Circular No. 40 dated 9th October, 2012

It has been decided that the all-in-cost ceiling as specified in A.P. (DIR Series) Circular No. 99 dated 30th March, 2012 shall continue to be applicable until further review.

2. A.P. (DIR Series) Circular No. 48 dated 6th November, 2012

ECB by Small Industries Development Bank of India (SIDBI)

SIDBI has been included as an eligible borrower for availing of ECB for on-lending to Micro, Small and Medium Enterprises (MSME) sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, subject to the following terms and conditions:-

a) such on-lending by SIDBI shall be to the

borrower's directly either in INR or in foreign currency;

(i) the foreign currency risk shall be hedged by SIDBI in full in case of on-lending to MSME sector in INR; and

(ii) on-lending in foreign currency shall be subject to Regulation 5(5) of FEMA Notification No. 3/2000-RB dated 3rd May, 2000, as amended from time to time and shall only be to those beneficiaries which have natural hedge by way of foreign exchange earnings

b) availment of ECBs, including the outstanding ECBs, up to 50% of their owned funds, for on-lending to MSME sector, shall be under the automatic route and beyond 50% of owned funds, shall be under the approval route, subject to a ceiling of $ 500 million per financial year; and

c) the proceeds of ECB availed by SIDBI, shall be used for on-lending to MSME sector only for the permissible end-uses as provided under the existing ECB policy.

3. Press Release dated 9th November, 2012 issued by Ministry of Finance, Government of India

Relaxation in ECB Policy for the upcoming 2G spectrum auction

Keeping in view the large outlay of funds required to be paid directly to the Government within a limited period of time, the following relaxations are provided in ECB Policy for upcoming 2G spectrum auction:

- The successful bidders in the 2G auction would be eligible to refinance their Rupee loans availed of from the domestic lenders for making the upfront payment with a long-term ECB, under the 'automatic route' subject to certain conditions.
- Such bidders can also avail of short term foreign currency loan in the nature of bridge finance under the 'automatic route' for the purpose of making upfront payment towards 2G spectrum allocation and replace the same with a long term ECB under the 'automatic route' subject to certain terms and conditions.
- Successful bidders will also be allowed to avail of ECB from their ultimate parent company without any maximum ECB liability-equity ratio under the 'automatic route' subject to certain conditions.

RBI is expected to issue relevant circular giving effect to the aforesaid liberalisation measures in ECB policy within a week.

C. Loans to Non Residents/third parties against security of Non Resident (External) Rupee Accounts (NR(E)RA)/Foreign Currency Non Resident (Bank) Accounts (FCNR(B)) Deposits

A.P. (DIR Series) Circular No. 44 dated 12th October, 2012

Presently, the banks may grant loans against security of funds held in NR(E)RA and FCNR(B) deposits either to the depositors or third parties upto ₹ 100 lakh. In view of the recommendation of the Committee to review the facilities for individuals under FEMA, 1999 (Chairperson: Smt. K. J. Udeshi), the RBI has allowed banks to grant rupee loans in India or foreign currency loans outside India against NR(E)RA and FCNR(B) to either the account holder or a third party without any ceiling to the extent of the balance in the NRE/FCNR (B) account subject to margin requirements. The premature withdrawal of NRE/FCNR deposits shall not be allowed where loans against such deposits are to be availed of.

D. Facilities for Persons Resident outside India - Foreign Institutional Investors (FIIs)

A.P. (DIR Series) Circular No.45 dated 22nd October, 2012

Presently, only designated branches of AD Category I banks maintaining accounts of FIIs are allowed to act as market makers to FIIs for hedging their currency risk on the market value of entire investment in equity and/or debt in India as on a particular date.

RBI has now allowed FIIs to approach any AD Category I bank for hedging their currency risk on the market value of entire investment in equity and/

or debt in India as on a particular date subject to certain specified conditions.

For detailed terms and conditions, refer RBI Circular available at: http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7637&Mode=0

E. Supply of Goods and Services by Special Economic Zones (SEZs) to Units in Domestic Tariff Areas (DTAs) against payment in foreign exchange

A.P. (DIR Series) Circular No. 46 dated 23rd October, 20121

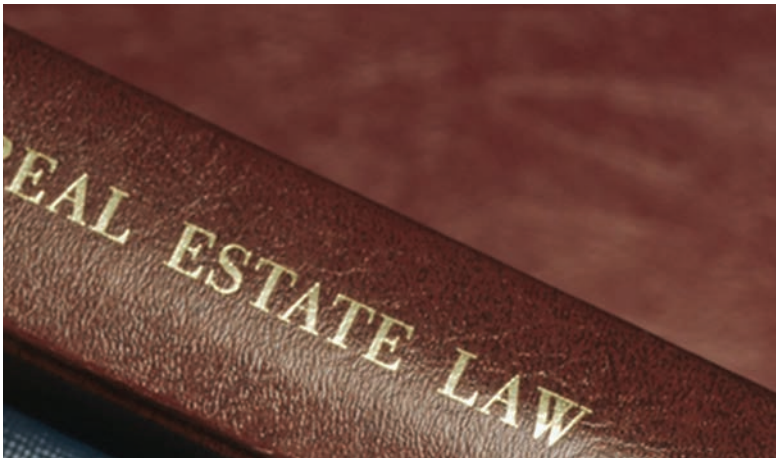
Presently, units in the DTAs have been permitted to purchase foreign exchange from ADs for making payment towards goods supplied to them by units in the SEZs.

In consultation with the Ministry of Commerce and Industry, Government of India, the RBI has allowed ADs to sell foreign exchange to a unit in the DTA for making payment in foreign exchange to a unit in the SEZ for the services rendered by it (i.e. a unit in SEZ) to a DTA unit. It may, however, be ensured that there is an enabling provision of supplying these goods/services by the SEZ unit to the DTA unit and for payment in foreign exchange for such goods/services to the SEZ unit, in the Letter of Approval (LoA) issued to the SEZ unit by the Development Commissioner (DC) of the SEZ.

F. Export of Goods and Services – Simplification and Revision of Softex Procedure

A.P. (DIR Series) Circular No. 47 dated 23rd October, 2012

RBI had vide A.P. (DIR Series) Circular No.80 dated 15th February, 2012 simplified and revised the Softex procedure and initially the revised procedure was applicable in the Software Technology Parks of India (STPI) at Bangalore, Hyderabad, Chennai, Pune and Mumbai with effect from 1st April, 2012. Since the revised procedure is running successfully at the five designated centres, RBI has now



decided to implement the revised procedure in all the STPIs in India with immediate effect.

As per the revised procedure, a software exporter, whose annual turnover is at least ₹1,000 crore or who files at least 600 SOFTEX forms annually on all India basis, shall be eligible to submit a statement in excel format as detailed in A.P. (DIR Series) Circular No.80 dated 15th February, 2012.

G. Money Transfer Service Scheme (MTSS)

A.P. (DIR Series) Circular No. 49 dated 7th November, 2012

As per extant instructions, Authorised Persons (APs), who are Indian Agents under the MTSS, are required to submit list of their Sub Agents to the Foreign Exchange Department (FED), Central Office (CO) of the Reserve Bank (RBI) on a half yearly basis.

On a review, RBI has decided to discontinue submission of the said half yearly statement to FED, CO. The list of Sub Agents has already been placed on the RBI website. Authorised Persons (Indian Agents) should inform any addition/deletion to the list (names and addresses of Sub Agents) immediately, as and when they appoint/remove any Sub Agent under the scheme, to (i) the concerned Regional Offices (ROs) of the FED of the RBI, under whose jurisdiction their registered offices fall and (ii) the Forex Markets Division, FED, CO, RBI.

Authorised Persons (Indian Agents) should visit the RBI website and verify the list of Sub Agents on regular intervals and any aberration to the list observed may immediately be brought to the notice of the concerned FED ROs and FED CO. Further, Authorised Persons (Indian Agents) should confirm the veracity of the list placed on RBI website to FED CO either in form of a letter or by e-mail at within 15 days of the end of a quarter.

H. Memorandum of Instructions governing Money Changing Activities

A.P. (DIR Series) Circular No. 50 dated 7th November, 2012

In terms of A.P. (DIR Series) Circular No.57 [A.P.(FL/RL Series) Circular No.04] dated 9th March, 2009, all single branch Authorised Money Changers (AMCs) having a turnover of more than $100,000 or equivalent per month and all multiple branch AMCs should institute a system of monthly audit.

Based on representations received, it has been decided to allow AMCs having multiple branches to put in place a system of Concurrent Audit which will cover 80% of the transactions value-wise under a system of monthly audit and rest 20% of the transactions value-wise under quarterly audit.

(Matter on Corporate Laws has been contributed by CA. Jayesh Thakur)

MCA (www.mca.gov.in)

1. Quality of XBRL filings certified by professionals

The MCA has issued General Circular No. 33/2012 dated 16-10-2012 stating that it had done a random scrutiny of XBRL filings of financial statements by few companies to the MCA for FY 2010-11 for which the e-forms were certified by CA/CS/CWA professionals for their completeness and correctness in representation with respect to the audited financial statements of the company. MCA has stated that the scrutiny has revealed significant variations in disclosures in published results and the XBRL filings due to 'incorrect' mapping of disclosures. The MCA observes that few disclosures were 'mapped/tagged' with incorrect accounting concept despite availability of appropriate element in taxonomy. Also, provisions of "Block Text tagging" and/or "Footnote" have been inappropriately used to report disclosures like subsidiary details,

related party transactions, Director's Report, etc., even when appropriate elements were available in the taxonomy for such disclosures. Few instances of "incorrect" tagging of XBRL documents are provided at Annexure-I to this General Circular. The MCA has advised that such filings are inaccurate and would not adequately represent true and fair view of the state of affairs of the company in terms of the provisions of Section 211 of the Companies Act, 1956. Such XBRL filings, apart from being misleading, also dilute the effectiveness of XBRL for stakeholders' usage relating to the companies. The MCA warns that such incorrect though certified data can lead to the certifier liable to be penalised. The MCA has also stated that XBRL filings are being minutely scrutinised to see if similar mistakes also appear in a larger sample. The MCA has also advised the professional institutes to take necessary steps to improve the quality of XBRL filing for FY 2011-12 to be undertaken by its members by conducting further trainings, issue guidelines, etc. so that such quality related issues are appropriately resolved. One may refer to the above citation for further details.

2. Examination of balance sheets by RoCs

The MCA has issued General informative Circular No. 37/2012 dated 6-11-2012 stating that every company registered under the provisions of the Companies Act, 1956 is required to file its balance sheet annually with the office of the Registrar of Companies (RoC) within whose jurisdiction the registered office of the company is located. Presently, there are more than 8 lakh companies registered with various offices of the RoCs located all over the country. Balance sheets of all the companies who carry out the filing are available for public inspection on the portal of this Ministry (http://www.mca.qov.in). The underlying idea behind the filing of balance sheets and other documents which require similar filings is to publicly disclose information which reflects various aspects of the working of a company so that the company's public accountability is maintained. It is neither intended nor feasible for the RoCs to scrutinise or verify the contents of filing except on a random basis. Companies and its Directors and officials are liable to be penalised for any incorrect, false or misleading information that such filing disclose. In the following cases, however, the Registrars routinely scrutinise balance sheets: (a) of companies against whom there are complaints;

(b) of companies which have raised money from the public through public issue of shares/debentures etc.; (c) in cases where the auditors have qualified their reports; (d) Default in payment of matured deposits and debentures; and (e) References received from other regulatory authorities pointing out violations/irregularities calling for action under the Companies Act, 1956. After the scrutiny, suitable steps are initiated wherever necessary to obtain explanation and clarification and to institute inspections, investigations and prosecutions wherever warranted. One may refer to the above citation for further details.

3. Appointment of cost auditor by companies

The MCA has issued General Circular No. 36/2012 on 6-11-2012 in relation to the above and directing that a company shall, within thirty days from the date of approval by MCA of the application made to the Central Government in the prescribed Form 23C seeking its prior approval for the appointment of cost auditor, issue formal letter of appointment to the cost auditor, as approved by the Board. The cost auditor shall, within thirty days of the date of formal letter of appointment issued by the company, inform the Central Government in the prescribed form 23D, alongwith a copy of such appointment. In case of change of cost auditor caused by the death of existing cost auditor, companies are allowed to file fresh e-form 23C, without any additional fee, within 90 days of the date of death. The additional fee payable as per the Companies (Fees on Applications) Rules, 1999 [as amended] shall become applicable after expiry of the said 90 days. Accordingly, e-forms 23C and 23D are being modified to capture such details.

In case of change of cost auditor for reasons other than death of the existing cost auditor, companies are required to file fresh e- form 23C with applicable fee & additional fee, clearly specifying the reasons of change. In case of change due to resignation of the existing cost auditor, e-form 23C should be accompanied by the resignation letter of the existing cost auditor. In case of change due to the management policy of periodical rotation, then attach a copy of the Board approved rotational policy with the e-form 23C. In any other case, the change should be duly justified and supported with the relevant documents.

In order to ensure compliance of Section 224(1-B) of the Companies Act 1956, required changes are being made in the MCA21 system to restrict the number of cost audit approvals to the limits specified in Section 224(1-B) through a counter on the membership number of the sole proprietor or partner of the firm. It will be further ensured that in case of a sole proprietor, he has completed the audit and submitted the cost audit report. In case of a partnership firm, the partner so appointed or any other partner of the same firm is allowed to complete the audit & submit cost audit report subject to his total numbers not exceeding the limit specified in Section 224(1-B). MCA is regularly receiving requests from companies and cost auditors for making corrections in the e-forms 23C & 23D in respect of minor typographical errors or other mistakes such as incorrect financial year, incorrect name of the cost auditor or the cost audit firm, incorrect PAN number, incorrect scope of audit, etc. In MCA21 system, no changes are permitted in the approved e-forms. Therefore, all companies and cost auditors are hereby informed to carefully verify all particulars before uploading e-forms 23C or 23D on the MCA21 portal. In any rare case, if still any error/mistake is observed, it should be brought to the notice of MCA well before its approval enabling it to return the said e-form for re-submission after making the required corrections. Else, the companies and cost auditors shall be required to file fresh e-forms 23C & 23D containing correct particulars, alongwith the applicable fee and additional fee. If a company or the cost auditor contravenes any provisions of this circular, the company and every officer thereof who is found to be in default, and the cost auditor in case he is in default, shall be punishable as per applicable provisions of the Companies Act, 1956.

The modifications contained in this circular shall be effective from the financial year commencing on or after the 1st January, 2013. One may refer to the above citation for further details.

4. Default by the Cost Auditors in filing Form 23D

The MCA has issued General Circular No. 35/2012 on 5-11-2012 in relation to the revised procedure to be followed for appointment of cost auditors whereby each company is required to e-file its application with the central government in the prescribed form 23C within ninety days from the date of commencement of each financial year, which shall be approved by MCA within 30 days. Upon approval by MCA, the company is required to issue formal letter of appointment to the cost auditor, who shall, within 30 days of receipt of such letter of appointment, inform the Central Government in the prescribed Form 23D alongwith a copy of such appointment.

The MCA has observed that since 1st April, 2011, though all the appointment applications made by the companies concerned in form 23C have already been approved by the MCA, a large number of cost auditors have defaulted in filing the required Form 23D within the stipulated time. In many cases, the default period is even more than a year. This has been viewed very seriously by the Ministry.

Keeping in view the initial operation of the revised procedure, all the defaulting cost auditors are requested to file their required Form 23D that have already become due till date, by 16th December, 2012 positively. In case of any further default, names of such defaulting members shall be sent to the Institute on 17th December, 2012 intimating the Institute to initiate disciplinary proceedings against them under

the relevant provisions of Cost and Works Accountants Act, 1959. In cases where the company concerned, after approval of Form 23C, has failed to issue the formal letter of appointment to the cost auditor, they shall do so within 15 days of the issue of this Circular enabling the cost auditor to file Form 23D within the extended time indicated above. In case of non-compliance, the company and every officer thereof who is found to be in default shall be punishable as per provisions of the Companies Act, 1956. One may refer to the above citation for further details.

5. Filing of balance sheet and profit & loss account in XBRL format – date extended

The MCA has issued General Circular No. 34/2012 on 25-10-2012 stating that the time limit to file financial statements in the XBRL mode without any additional fee/penalty has been extended up to 15th December, 2012 or within 30 days from the date of Annual General Meeting of the company whichever is later. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

1. Public issues in electronic form and use of nationwide broker network of Stock Exchanges for submitting application forms

The SEBI has issued Circular No. CFD/14/2012 dated 04-10-2012 referring to the announcement made by the Finance Minister in his speech while presenting the Union Budget 2012-13 that "Simplifying the process of issuing Initial Public Offers (IPOs), lowering their costs and helping companies reach more retail investors in small towns. To achieve this, in addition to the existing IPO process, I propose to make it mandatory for companies to issue IPOs of ₹10 crore and above in electronic form through nationwide broker network of stock exchanges". Taking this forward and in consultation with various market participants, SEBI has decided to introduce an additional mechanism for investors to submit application forms in public issues using the stock broker ("broker") network of Stock

exchanges, who may not be syndicate members in an issue. This mechanism can be used to submit ASBA as well as non-ASBA applications by investors. Stock exchanges shall provide for download of application forms on their websites/broker terminals, so that any investor or stock broker can download/print the forms directly. Stock Exchanges shall ensure that the information relating to price band is pre-filled in such downloadable application forms. The facility to submit the application forms will be available in more than 1,000 locations which are part of the nationwide broker network of the Stock Exchanges and where there is a presence of the brokers' terminals (hereinafter referred to as "broker centre"). Based on the feedback received from market participants in this regard, it has been decided to increase the number of broker centres, in a phased manner such that in the first phase, around four hundred (400) broker centres would be covered by 1st January, 2013, and in the second phase, the remaining centres would be covered by 1st March, 2013. The details of locations including name of the broker, contact details such as name of the contact person, postal address, telephone number, e-mail address of the broker, etc. where the application forms shall be collected will be disclosed by the Stock Exchanges on their websites at least 15 days before the dates specified above. The stock exchanges should ensure that the details so disclosed on their websites are regularly updated. More details of this mechanism and the indicative timelines for various activities under this mechanism are specified at Annexures A and B to the above circular. It is also stated that merchant bankers shall ensure that appropriate disclosures in this regard are made in the offer document. This circular shall be applicable for all offer documents filed with the office of the Registrar of Companies on or after 1st January, 2013. One may refer to the above citation for further details.

2. SEBI lays down framework for rejection of Offer Document

The SEBI has issued General Order No. 01 of 2012 under Section 11A of the Securities and Exchange Board of India Act 1992 dated 09-10-2012 laying general criteria which would allow SEBI to reject draft offer documents filed with it, where it has reasonable grounds to believe, for the protection of interest of investors, that the adequacy and quality of disclosures in such offer documents are not satisfactory, and/or where an investor may not be able to assess the risks associated with the issue. The criteria for rejection are summarised as hereafter, (a) Existence of circular transactions for building up capital/net worth of the issuer, (b) Ultimate promoters are not identifiable and the promoters' contribution is not in compliance with SEBI (ICDR) Regulations, 2009, (c) Objects of the issue are vague for which a major portion of the proceeds are proposed to be utilised, (d) Object of the issue is to repay loan or ICD or any other borrowing and the issuer is not able to disclose the ultimate purpose for which loan was taken, (e) Object of the issue is to utilise major portion of the issue proceeds for the purpose which does not create any tangible asset and the issuer does not have enough justification for the creation of such assets, (f) Object of the issue is to set up a plant and the issuer has not received crucial clearances/licenses/permissions from the required competent authority necessary for commencement of the activity, (g) Time gap between raising and proposed utilisation of funds is unreasonably long, (h) Issuer has exaggerated, complex or misleading business model which the investors may not be able to assess the risks associated with such business model, (i) Sudden spurt in the business before filing the draft offer document without any satisfactory clarifications, (j) Qualified audit reports or the reports in which the auditors have raised doubts/concerns over the accounting policies, (k) Change in accounting policy to show enhanced prospects for the issuer, (l) Majority of the business is with related parties or circular transactions with connected/group entities, (m) Outcome of the pending litigation including regulatory action on which the

survival of the issuer is dependent, (n) Pending litigation which has been wilfully concealed or covered, (o) Non-failure to provide complete documentation in terms of SEBI (ICDR) Regulations, 2009, (p) Delay or non-furnishing of information or furnishing incorrect information, and, (q) Failure to resolve conflicts of interest. SEBI has clarified that mere triggering of any or few of the above criteria would not be considered as an automatic case for rejection and in all such cases a final view on rejection shall be taken by SEBI after considering the materiality of the findings and facts and circumstances of each case. The consequence of rejection of the draft offer document would be that such entities would not be allowed to access the capital markets for at least one year from the date of rejection which may be increased depending upon the materiality of the omissions and commissions. The rejection of draft offer document under the Order shall be without prejudice to SEBI's right to initiate any action which may be undertaken against issuer or merchant banker in accordance with law. This Order shall be effective immediately. One may refer to the above citation for further details.

3. Amendment to Issue and Listing of Debt Securities Regulations

The SEBI has issued Notification No. LAD-NRO/GN/2012-13/19/5392 dated 12-10-2012 amending the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 providing that where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to this notification to the recognised stock exchange within fifteen days from the date of allotment of such debt securities. The amendment is also made by inserting regulation relating to filing of shelf disclosure document and it is provided that an issuer making a private placement of debt securities and seeking listing thereof on a recognised stock exchange may file a shelf disclosure document containing disclosures as provided in Schedule I to this notification. An issuer filing a shelf disclosure document shall not be required to file disclosure document, while making subsequent private placement of debt securities for a period of 180 days from the date of filing of the shelf disclosure document – this will be subject to the fact that the issuer while making any private placement under shelf disclosure document, shall file with the concerned stock exchange updated disclosure document with respect to each tranche, containing details of the private placement and material changes, if any, in the information provided in shelf disclosure document. One may refer to the above citation for further details.

4. Arbitration Mechanism in Stock Exchanges

The SEBI has issued Circular No. CIR/MRD/ICC/29/2012 dated 7-11-2012 in relation to amount to be deposited by the investors at the time of making arbitration reference and based on inputs received, it is now decided that a client, who has claim/counter claim upto ₹10 lakh and files arbitration reference, shall be exempt from the deposit. Expenses thus arising with regard to such applications shall be borne by the Stock Exchanges. SEBI has also stated that the SEBI inspection of stock exchange shall cover implementation of this circular. One may refer to the above citation for further details.

5. Debt Allocation Mechanism for FII

The SEBI has issued Circular No. CIR/IMD/FIIC/22/2012 dated 7-11-2012 stating that earlier it had provided the facility of re-investment of up to two years from the date of the circular, or to the extent of twice the size of the debt portfolio, to those FIIs and sub-accounts that had already acquired limits and/or invested in debt in the manner prescribed in the said circular. With a view to provide operational flexibility, beginning 1st January, 2014, it has been decided that the FIIs/sub-accounts can re-invest during each calendar year to the extent of 50% of their debt holdings at the end of the previous calendar year. SEBI has now decided that the time period for utilisation of the Government debt limits (for both old and long term limits) allocated through bidding process shall be 30 days while the time period for utilisation of the corporate debt limits (for both old and long term infra limits) allocated through bidding process shall be 60 days. SEBI has also decided that FII/sub-accounts may avail limits in the Corporate Debt Long Term Infra category without obtaining SEBI approval till the overall FII investments reaches 90% (ninety percent), after which the auction mechanism shall be initiated for allocation of remaining limits. SEBI will put in place a mechanism to monitor the utilisation of the limit. One may refer to the above citation for further details. ■