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EDITORIAL

INDIA TOWARDS GROWTH – CA PROFESSION TO LEAD



CA Vinod Jain*

After the world economic slowdown, the Indian economy and various stakeholders including industries, service sector as well as capital markets has witnessed a long spell of pessimism and negative sentiments, which impacted the growth rate severely. After the knee jerk reaction to the world economic slowdown, the

Indian economy has consolidated and is now poised towards a smart recovery.

The Industrial growth rate, growth rate in service sector, import as well as export have indicated signals of strong recovery, the upsurge in demand especially in steel, cement, power sector and infrastructure is strongly supported by a fifteen month high level of Sensex - Nifty.

The Indian businesses are not only gaining strength but also are spreading their wings internationally and the growth

rate of International businesses lead by Indian entrepreneurs has crossed more than 20% compound growth in last three years. The growth of Indian Businesses internationally will gain further momentum in the current scenario of solid economic growth at the domestic front. The inorganic growth through international mergers and acquisitions as well as organic growth through setting up new businesses internationally by Indian entrepreneurs can pave the way to strengthen Indian power in the international economic frontiers.

In the aforesaid backdrop, the Indian Chartered

Accountant's role in strategizing and implementing growth at domestic front as well as internationally is crucial. The entrepreneurial outlook among the Chartered Accountants community including those who are in employment as well as those who are in practice needs special attention.

The conservatism as an accountant or as an auditor is to be super imposed by risk taking entrepreneurial attitude to not only guide Indian businesses towards the right direction of growth but also to ensure that the growth is sustainable in the long run.

The profession needs to gear up necessary capacity to deliver services, ideas and strategies to meet larger challenges of being amongst the ten largest economies in the world. We need to professionalize the entire delivery mechanism to set international benchmarks of excellence, which can be followed by the world. The castles of cards like Lehmann Brothers need not be built up and let the growth be

more solid and transparent coupled with innovation and new techniques of financial engineering.

The Indian Chartered Accountant firms need to gear up for not only national presence but have to immediately plan international setups toward truly Indian multinational accounting firms. On domestic front, we are already gearing up to give tough competition to multinational foreign accounting firms, which need to be strategized, capitalized and implemented with a difference. What is needed is confidence, entrepreneurship, excellence in professionalism with typical Indian touch.

The Indian Chartered Accountant firms need to gear up for not only national presence but have to immediately plan international setups toward truly Indian multinational accounting firms.

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LATEST IN FINANCE

1.0 SEBI WIDENS ASBA WINDOW TO HNIs

According to SEBI, application supported by blocked amounts (ASBA) method for payment for initial public offerings and rights issues will be extended to high net worth individuals (HNIs) and to corporate investors from 10th January 2009.

The ASBA facility is currently available only to retail investors. Here the application money for share in a public issue is blocked in the applicant's bank account till allotment. The banks which offer such facilities are approved by SEBI as self-certified syndicate banks (SCSBs).

The-restrictions placed on investors under ASBA phase-I that only investors can apply at cut-off, that there will be not more than one bid and that bids cannot be revised will no longer be there under ASBA phase II.

2.0 RBI PUSH FOR LOCAL AREA BANKS

The Reserve Bank of India plans to allow more local area banks from the net financial year to provide an impetus to the government's financial inclusion drive. Local area banks with operations in two or three contiguous districts were conceived in the 1996 Union Budget to mobilize rural savings and make them available for investments in local areas.

3.0 ECB POLICY AMENDED

On a review of the prevailing macroeconomic conditions and developments in international financial markets, the Reserve Bank of India (RBI) has decided to modify some aspects of the External Commercial Borrowings (ECB) policy as indicated below:

Amendments with immediate effect

(i) ECB for the NBFC Sector

As per the current ECB norms, Non-Banking Finance Companies (NBFCs), which are exclusively involved in the financing of the infrastructure sector, are permitted to avail of ECBs from multilateral / regional financial institutions and Government owned development financial institutions for on-lending to the borrowers in the infrastructure sector under the approval route. It has been decided with immediate effect to allow NBFCs exclusively involved in financing the infrastructure projects

to avail of ECB from the recognized lender category including international banks under the approval route, subject to complying with the prudential standards prescribed by the RBI.

(ii) ECB for Spectrum in the Telecommunication Sector

Payment for obtaining license/permit for 3G Spectrum is considered an eligible end - use for the purpose of ECB under the automatic route. It has now been decided to permit eligible borrowers in the telecommunication sector to avail of ECB for the purpose of payment for Spectrum allocation.

Amendments with effect from 1st January 2010

(i) All-in-cost ceilings

It has been decided to withdraw the existing relaxation in the all-in-cost ceilings under the approval route with effect from 1st JANUARY 2010. Accordingly, the all-in-cost ceilings under the approval route for the ECBs, where loan agreements have been signed on or after 1st January, 2010 will be as under:

Average Maturity Period	All-in-cost Ceilings over six month Libor*
3 - 5 years	300 basis points
Over 5 years	500 basis points

*for the respective currency of borrowing or applicable benchmark.

(ii) Integrated township

It has been decided to extend the current policy until December 31, 2010, under the approval route. All other terms and conditions remain unchanged.

iii) Buyback of the Foreign Currency Convertible Bonds (FCCBs)

It has been decided to discontinue the facility with effect from January 1, 2010.

RBI/2009-10/ Circular No.19 dated 9th December 2009

4.0 MOBILE BANKING TRANSACTION LIMIT RAISED

Responding to banks petitions, The Reserve bank of India (RBI) has raised the transaction limit for mobile banking to Rs. 50,000 a day. This will enable customers to transfer Rs. 50,000 per day through their mobile phones as well as buy goods and services for the same amount.



LATEST IN FINANCE

5.0 RBI EXTENDS DATE FOR MFs

The Reserve Bank of India (RBI) has further extended period within which mutual funds can pay back any loans from any banks to June 30, 2010. Earlier it was extended upto December 31, 2009.

6.0 INSURANCE FIRMS EMERGE A MAJOR FORCE ON THE BOURSES

Insurance companies have become a major force in Indian Stock Markets with the growing popularity of their market-linked plans. The insurance industry manages equity assets of nearly Rs 2.7 lakh crore.

Equity Investment

Year	Rs. in crore
2005-06	10,280
2006-07	27,572
2007-08	42,232
2008-09	51,000

Source: IRDA and Life Insurance Council new business premium

7.0 GDP GOWTH MAY BE 7-7.5%

Dr C. Rangarajan, Chairman of the Economic Advisory Council to the Prime Minister, has forecast the GDP to grow at 7 to 7.5 percent this fiscal, signaling an improvement in the domestic economic climate.

CORPORATE LAW

1.0 COMPULSORILY PAYMENT OF STAMP DUTY THROUGH ELECTRONIC MODE

The 1st day of April, 2010, shall be the effective date, for a company to compulsorily make payment electronically for stamp duty in respect of all the States which have authorized to the Central Government to collect stamp duty on their behalf. In respect of the States from whom the authorization is yet to be received, the company shall continue to pay stamp duty outside the MCA portal.

2.0 MCA REPORT ON CORPORATE GOVERNANCE

According to the report on voluntary corporate governance guidelines, prepared by the ministry of Corporate Affairs (MCA):-

- Term of Independent Directors cannot exceed six years.

- A period of 3 years should elapse before an individual is inducted in the same company in any capacity.
- Companies may have a nomination committee comprising independent directors, including its chairman.
- Audit partner should be rotated once every three years and audit firms should be rotated once every five years.
- A clear demarcation between the roles of the chairman of the board and those of the managing director or the chief executive officer is important.
- The ministry will issue a mandatory corporate governance code within one year. Code will be a mix of guidelines and recommendations of India Inc.

3.0 BANKS LIABILITY FOR INCORRECT PAYMENT

The Supreme Court has held in the case of Vijaya Bank vs Gurnam Singh that banks are liable to compensate a customer whose money was wrongly paid to another person without verifying the original signature of the account-holder.

4.0 AUDITORS ROTATION EVERY 3 YEARS

The periodicity of rotation for an audit partner should be once in every three years, while for an audit firm it should be once every six years, according to the Institute of Company Secretaries of India recommendations to the ministry of corporate affairs.

According to the ICSI report, a maximum tenure of six years in aggregate should be specified for independent directors. At present, there is no such limit for the independent directors under the Companies Act, 1956. It also mentions that Clause 49 of the listing agreement needs to be suitably amended by specifying positive attributes for independent directors such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements

5.0 DEBT RECOVERY TRIBUNAL CANNOT RECOVER SHARE PROCEEDS

The Delhi high court in the case of Cochin International Airport Ltd. vs Hudco has ruled that equity shares cannot be considered as liabilities under the Recovery of Debts Due to Banks and Financial Institution Act.



FEMA

1.0 ESTABLISHMENT OF BRANCH OFFICE/ LIAISON OFFICE IN INDIA BY FOREIGN ENTITIES

With the objective of achieving greater transparency, it has been decided to place the eligibility criteria and the procedural guidelines for establishment of Branch Office (BO) and Liaison Office(LO) in India by foreign entities; in the public domain.

General Requirements:

- The application for establishing BO/LO in India may be forwarded by the foreign entity in **Form FNC** through AD Category -1 Bank to RBI.
- A Uniform Identification Number (**UIN**) will be allotted to existing as well as new BOs/ LOs, which will be required to be quoted in all references to the RBI and AD Category -1 banks.
- PAN should be obtained by BO/LO on setting up of offices in India

Eligibility criteria*Basic criteria*

- Principal business of the foreign entity falls under sectors where 100 per cent FDI is permissible under the automatic route.
- Principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications under this category are considered by the RBI, in consultation with the Government of India, Ministry of Finance.

*Additional criteria**Track Record*

- For Branch Office - a profit making track record during the immediately preceding five financial years in the home country.
- For Liaison Office - a profit making track record during the immediately preceding three financial years in the home country.

Net Worth

- For Branch Office - not less than USD 100,000 or its equivalent.
- For Liaison Office - not less than USD 50,000 or its equivalent.

based on last audited balance sheet.

Applicants that do not satisfy the eligibility criteria and are subsidiaries of other companies may submit a Letter of Comfort from their parent company, subject to the condition that the parent company satisfies the prescribed eligibility criteria.

Scope of activities permitted and other procedural guidelines regarding functioning of a Branch Office / Liaison Office in India**■ Permitted activities*****BRANCH OFFICE***

- Export/ Import of goods
- Rendering professional or consultancy services
- Research work in which parent company is engaged
- Promoting technical or foreign collaborations
- Acting as a selling/buying agent
- Rendering services in IT, software development
- Technical support for supplies by parent company
- Foreign Airline/Shipping company

LIAISON OFFICE

- Representing the parent/group company(ies)
- Promoting Export/Import
- Promoting technical collaboration
- Acting as a communication channel

■ Applications for additional offices or undertaking additional activities.

- Requests to be submitted to RBI.
- Fresh FNC form to be submitted.
- Justification for additional office/s to be provided if the number of Offices exceeds 4.
- Identify one of the Offices in India as the Nodal Office.
- Requests for undertaking additional activities to be submitted through the AD Category -I bank to the RBI.

Extension of validity of the approval of Liaison Offices

- Requests on letter head of LO for extension of time to be submitted to the AD Category - I bank concerned under whose jurisdiction the LO /Nodal Office is located before the expiry of the validity of the approval.



- Applications from foreign banks and insurance companies to be directly received and examined by RBI and IRDA respectively.
- No extension would be considered for LOs of entities which are NBFCs and those engaged in Construction and Development sectors (excluding infrastructure development companies). Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) /Wholly Owned Subsidiary (WOS

Winding up of Branch/Liaison Offices

Application for closure of the BO / LO and allowing the remittance of winding up proceeds of BO / LO may be submitted to the AD Category - I bank along with the following documents:

- a. Copy of the RBI approval for establishing the BO/ LO.
- b. Auditor's certificate :
 - i) indicating the manner in which the remittable amount has been arrived at
 - ii) confirming that all liabilities in India have been either fully met or adequately provided for;
 - iii) confirming that no income accruing from sources outside India has remained unrepatriated to India.
- c. No-objection or Tax Clearance Certificate from the Income-Tax authority for the remittance.
- d. Confirmation that no legal proceedings in any Court in India are pending against the BO / LO.
- e. A report from the ROC regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the BO /LO in India.

Delegation of Power

With a view to liberalizing the existing procedure in respect of BO/ LOs, it has been decided to delegate the powers to the designated AD Category - I banks, as under w.e.f 1st February 2010:

1. Annual Activity certificates, on or before April 30, to be submitted to the designated AD Category - I bank instead of RBI.
2. AD Category-1 Bank may extend the validity period of LO/s for a period of 3 years if the applicant has complied with the following:
 - a. LO has submitted Annual activity Certificate for the previous years and

- b. Account of LO maintained with the AD is being operated in accordance with the stipulated terms and conditions.
3. The work related to closure of BO / LO shall be handled by the designated AD Category - I bank in place of RBI.

2.0 FOREIGN TECHNOLOGY AGREEMENT POLICY LIBERALISED

The existing policy of Government of India on the payment of royalties under Foreign Technology Collaboration provides for automatic approval for foreign technology transfers involving payment of lumpsum fee of US\$ 2 million and payment of royalty of 5% on domestic sales and 8% on exports. In addition, where there is no technology transfer involved, royalty up to 2% for exports and 1% for domestic sales is allowed under automatic route on use of trademarks and brand names of the foreign collaborator. Separate norms are available for the hotel sector vide Press Note 18 (1991 Series) and Press Note 1 (1995 Series). Technology transfers involving payments above these limits required prior permission of the Government of India (Project Approval Board, Department of Industrial Policy and Promotion).

The Government of India has reviewed the extant policy and it has been decided to permit, with immediate effect, payments for royalty, lumpsum fee for transfer of technology and payments for use of trademark/brand name on the automatic route i.e. without any approval of the Government of India. All such payments will be subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time. A suitable post-reporting system for technology transfer/collaborations and use of trade mark/ brand name will be notified by the Government separately.

Source: Press Note 8 (2009 Series)

TAXATION

1.0 MANUFACTURING & PACKAGING IN HILL STATES QUALIFIED FOR TAX SOPS

The Government has clarified that manufacturers that carry out production as well as repackaging activity in the tax-free zone of Himachal Pradesh and Uttarakhand will be able to enjoy tax exemption. The move comes as a major respite to a number of FMCG and pharma companies in these states. The Central



Board of Excise and Customs (CBEC), has directed its field officers in a circular that the benefit on excise duty exemption has to be allowed in cases where both the activity of manufacture and the peripheral activities mentioned in the notification are undertaken in Uttarakhand or Himachal Pradesh. The CBEC in January 2008 issued a notification stating that only genuine manufacturing carried out in these states will be eligible for exemption. The clarification comes in the wake of questions from field officers as to whether benefit of area-based exemption notification would be applicable if both the activities namely the manufacture of main product (say hair oil in bulk) and peripheral activities (say repacking into bottles) are carried out in the specified areas.

2.0 NO TDS ON THIRD PARTY CLAIM

Bombay high court has ruled that the insurance companies, while settling third party insurance claims, cannot deduct tax at source (TDS) on the interest earned on the compensation amount. The judges also agreed with the petitioner's argument that they are not liable to pay income tax and so the Tax is not to be deducted. As per the relevant case, a Motor Accidental Claims Tribunal granted the family a compensation of Rs15.61 lakh and an interest of Rs9.25 lakh. As the interest income per year exceeds the limit of Rs50,000, the company wanted to deduct the TDS.

3.0 FOREIGN UNIVERSITY NOT LIABLE TO TAX

The Authority for Advance Rulings (AAR) held that Foreign Universities providing consultancy services to business chambers or other non profit organizations are not liable to pay tax in India. The Authority pointed out that the payment made in this respect by FICCI to the University of Texas cannot be treated as fee for technical services, which are taxable under the Income Tax Act, 1961. They cannot be subjected to tax as business profits in view of the undisputed and undeniable fact that Texas University has no permanent establishment (PE) in India and the services were not carried out through a PE in India.

4.0 SC STAYS RULING ON TECH FIRMS DEDUCTING TAX ON PAYMENTS TO NRIs

The Supreme Court has stayed the Karnataka High Court ruling that asked technology firms to deduct tax on all payments made to non-residents on software purchases.

5.0 IMPORT DUTY ON POWER EQUIPMENT REDUCED

The Government has halved the duty on the import of equipment used for mega power projects to 2.5 percent to boost electricity supply. A recent notification issued by the Central Board for Customs and Excise says customs duty are now placed at 2.5 percent on "goods required for setting up any mega power project".

AUDITING

1.0 INTERNAL AUDIT FOR CRAs

It has been decided in consultation with the credit rating agencies (CRAs) that the audit envisaged under Regulation 22 of the SEBI (Credit Rating Regulations), 1999 shall include an internal audit to be undertaken in the following manner:

- It shall be conducted on a half yearly basis.
- It shall be conducted by Chartered Accountants, who are in practice and who do not have any conflict of interest with the CRA.
- It shall cover all aspects of CRA operations and procedures, including investor grievance redressal mechanism, compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made there under, and guidelines issued by SEBI from time to time.

SEBI/MIRSD/CRA/Cir-01/2010 /January 06, 2010

2.0 EXTERNAL FIRMS PREFERRED FOR INTERNAL AUDIT

Internal audit work is increasingly being outsourced to external firms as a spate of recent corporate scandals involving governance issues and fraud have prompted Indian companies to take visible steps to set up an independent and objective audit system. Also an external audit firm would bring in best practices that probably would not be there in an internal audit team drawn from the company's employees. The independence and objectivity that an external agency has is difficult for an audit team consisting of existing employees.

3.0 CAG SEEKS POWER TO AUDIT SPVs

The Government's top auditor wants the power to examine the books of infrastructure projects being built by the private sector, such as airports and highways, to make them accountable to Parliament. The Comptroller and Auditor General (CAG) of India



has proposed that it should be armed with powers to check the accounts of all special purpose vehicles (SPVs)-which are essentially project-specific companies-running infrastructure projects.

4.0 PROVISIONING REQUIREMENT FOR STANDARD ASSETS

In view of large increase in credit to the Commercial Real Estate (CRE) sector over the last one year and the extent of restructured advances in this sector, it would be prudent to build cushion against likely non-performing assets (NPAs). Accordingly, it has now been decided to increase the provisioning requirement for advances to the CRE sector classified as 'standard assets' to 1.00 per cent.

The standard asset provisioning requirements for all categories, after the above change, are summarized below:

Sr. No	Category of Standard Asset	Rate of Provisioning	
		Tier II	Tier I
a)	Direct advances to Agriculture and SME sectors	0.25 %	0.25%
b)	Commercial Real Estate (CRE) sector	1.00 %	1.00%
c)	All other loans and advances not included in (a) and (b) above	0.40%	0.25%

RBI/2009-10/ 249 / December 8, 2009

5.0 GOVT CONFIDENT OF IFRS SWITCH

The Union Corporate Affairs Ministry and The Institute of Chartered Accountants of India (ICAI) are confident of meeting the April 2011 deadline to shift to IFRS. But industry stakeholders say a complete transition from the Indian Generally Accepted Accounting principles to the IFRS regime may take time.

CAPITAL MARKET

1.0 SEBI TO LOOK INTO EXCHANGES' SELF-LISTING PLANS

Stock market regulator SEBI has proposed to set up an expert committee to study the issues arising out of self-listing by exchanges and possible conflicts of interest, besides corporate governance at the exchanges.

2.0 NO NOC TO SHIFT MF DISTRIBUTORS

The SEBI has announced that the Investors would not have to produce a no-objection certificate (NOC)

from their mutual fund distributors while shifting the vendor or opting to deal directly with the fund concerned.

3.0 BOURSES/ BROKERS TO PRESERVE PAPERS FOR 5 YEARS

To ensure assistance to enforcement agencies during investigations, the SEBI has asked stock exchanges and brokers to preserve original records for a period ranging from 2 to 5 years. Stock exchanges and its members are required to maintain and preserve the specified books of accounts and documents for as long as five years and according to SEBI if a copy is taken by such enforcement agency either from physical or electronic record, then the respective original is to be maintained till the trial or investigation proceedings have concluded.

4.0 SLB FRAMEWORK MODIFIED

The tenure of contracts in SLB may be upto a maximum period of 12 months. The Approved Intermediary (Clearing corporation / Clearing House) shall have the flexibility to decide the tenure (maximum period of 12 months). The lender / borrower shall be provided with a facility for early recall / repayment of shares subject to condition specified.

SEBI/MRD/DoP/SE/Dep/Cir- 01 /2010 /January 06, 2010

5.0 STRICTER BROKER -CLIENT RULES

Capital market regulator SEBI has tightened key clauses in the client-broker agreement, as part of its attempts to curb the misuse of client money by brokers. As per, SEBI stock brokers should maintain a book containing all the mandatory and non-mandatory documents required for registering a client. To make the agreement more investor-friendly and less cumbersome, brokers should mandatory maintain the member-client agreement, know your client (KYC) form and the risk disclosure document Brokers will have to ensure compliance with the new norms latest by 31st March 2010.

6.0 FII HOLDING LIMIT OF GOVERNMENT DEBTS REDUCED

The market regulator has slashed the allocation limit of Government Debt investment via the bidding process for allocation of debt investment limits for a single foreign institutional investor (FII) to Rs. 300 crores from Rs. 800 crores. The minimum amount that an FII can bid has been brought down to Rs. 50 crores (Rs. 250 crores now) and the minimum tick size has been halved to Rs. 50 crores (Rs. 100 crores).

7.0 SEBI SETTLED SEKSARIA ISSUE

SEBI has settled proceedings against Mr Manoj Dev Seksaria in the IPO scam of 2003-05 through consent settlement. Mr Seksaria has agreed to disgorge Rs 2.05 crore of unjust profits made in the IPOs of Sasken Communications, IDFC and Suzlon Energy and also Rs 20.5 lakh towards settlement charges. The consent amount was worked out on the basis of the unjust profit made in the said matter.

8.0 FIIs INFUSED Rs. 24,800 CR IN DECEMBER QUARTER

The stock markets witnessed a net inflow of Rs. 24,800 crore from overseas investors during Dec. 2009 quarter.

ICAI

1.0 CA TRAINING ABROAD

Accounting regulator Institute of Chartered Accountants of India (ICAI) has allowed Indian students of chartered accountancy to undergo their mandatory three year training programme outside India.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0.25	0.25
3 Month MIBOR	4.63	4.36
SENSEX	17423	17119
NIFTY	5210	5117
Gold (per 10 gm)	17030	17250
Silver (per kg)	28400	28270
Crude (USD/bbl)	79.74	69.87
Rs. vs USD	45.40	46.52
Rs. vs Euro	65.86	68.55

* as on 12th January, 2010.

(Sources: Bloomberg, NSE, MCX)

PLEDGE OF SHARES IN CONNECTION WITH ECBs

Pledge of shares of a company incorporated in India

- I. Subject to a 'no objection certificate' (NOC) from an authorized dealer bank, the promoter of an Indian company which has raised ECBs can secure the same by pledging the borrower company's shares or the shares of its associated resident companies.
- II. Authorized dealer bank may grant NOC on satisfaction of the following –
 - underlying ECB is in compliance with extant ECB guidelines
 - loan agreement is signed by both lender and borrower
 - existence of security clause in loan agreement requiring the borrower to create charge on financial securities
 - borrower has obtained loan registration number (LRN) from RBI

Additional conditions –

- period of pledge is co-terminus with the maturity of the underlying ECB
- in case of invocation of pledge, transfer shall be in accordance with the FDI policy and RBI's directions
- certificate from statutory auditor has been obtained that the borrower will utilize/has utilized the ECBs for permitted end-use/s only

The regulation has been made effective from 11 July 2008.

By implication, it now appears that any other kind of pledge of shares would require a specific approval of the Reserve Bank of India.

Notification NO. G.S.R. 851(E) [No. FEMA 202/2009-RB], dated 10-11-2009.

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