

### **EDITORIAL**

## CORRUPTION THE BIGGEST ENEMY OF NATION



CA Vinod Jain\*

The profession of Chartered Accountants has committed to eradicate corruption from our social, economic and commercial system.

The menace of corruption is becoming larger and larger in our system and off late very serious

charges of corruption at highest level are being examined by the investigating agencies. The size and nature of corruption has broken all previous records and the greed of corrupt is surmounting day by day. The babus, inspectors, junior engineers, SDO's, chief engineers, administrator as well as officials at the highest level of bureaucracy. The corruption has also not spared Private Sector and professionals. The corruption is getting so deep rooted that eradication of corruption is possible by a national movement with a complete commitment of the public at large, senior politicians, bureaucrats and ofcourse most importantly the social and religious activists.

### Lokpal Bill:

The recent agitation at Jantar Mantar followed by constitution of a Committee consisting of 5 Cabinet Ministers and 5 Representatives of a group has been mandated to complete the drafting of a New Lokpal Bill by 30th June, 2011. It is important to involve Chartered Accountants to give final shape to this law. This Bill will be subjected to critical analysis by all sections of Society and if implemented in an effective manner will create a framework of prosecution of

the corrupts persons at all levels.

### **Prosecution Not Enough:**

It is important to prosecute the corrupt individuals at all levels and punish them very severely including confiscation of assets of such person and their family. It will not be enough to eradicate corruption from our political, economic and commercial system just by prosecuting corrupt.

### **National Movement Necessary:**

It is very important for the country to be led by a National Movement against corruption so that corrupts are seen with great disrespect by the society and the current position of achieving esteem and stature, only with a barometer of wealth have to be replaced by hatred and disapproval.

### **System Change:**

To eradicate corruption it will be very important to ensure that the human intervention in processing various government applications and approvals are replaced by automatic processes The personal interaction of assessees with the tax department is needed to be done away with and be replaced by email questioning, where the identity of the officers raising questions is kept confidential and secret.

The various officers of the government should be mandated to take decision on each matter in a time bound manner and without one to one personal interaction. All the process of the government

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### LATEST IN FINANCE

### **LATEST IN FINANCE**

#### 1.0 RBI FORMS NBFC PANEL

The Reserve Bank of India (RBI) has formed a 15-members committee under its former Deputy Governor Mrs. UshaThorat to address issues and complexities relating to Non Banking Finance Companies (NBFC) and suggest changes in the legislative framework.

The working group will focus on the definition & classification of finance companies and address regulatory gaps and regulatory arbitrariness.

### 2.0 GOVERNMENT CAPS SERVICE TAX ON FOREX TRANSACTIONS AT RS.5000

The Government has decided that service tax on foreign exchange transaction above Rs.10 lakhs would be capped at Rs5000. Service tax for foreign exchange transactions will be calculated as under:

GROSS AMOUNT OF CURRENCY EXCHANGED	RATE OF SERVICE TAX
Upto Rs.1 lakh	0.1% of gross amount or Rs.25, whichever is lower.
Between Rs.1 Lakhs and Rs.10 Lakhs	Rs.100, plus 0.5% of gross amount.
Above Rs.10 Lakhs	Rs.550, Plus 0.01% of Gross amount or Rs.5000, whichever is lower.

#### 3.0 CHEQUE PAYMENTS TO GET COSTLIER

Making payments through cheques will now be a costly affair, as Reserve Bank of India(RBI) has allowed banks to levy higher service charges for their clearing, especially of high-value and outstation cheques. As per Reserve Bank of India(RBI) circular coming into effect from April 1, 2011, banks would be free to fix service charges on speed clearing of cheques of value above Rs.1 lakh. At present, RBI does not allow banks to charge more than Rs.150 per cheque for speed clearing of cheques worth over Rs.1 lakh, while there are no charges for value up to Rs 1 lakh.

### 4.0 VOTING RIGHT CAP FOR PRIVATE BANK SHAREHOLDERS TO GO

Major Proposals in the Banking laws (amendment) Bill, 2011

- ✓ Allows nationalized banks to issue bonus shares and come up with rights issue to raise capital for expansion of business.
- ✓ Bank mergers not to come under CCI lens.
- ✓ Allows the RBI to supersede the board of directors of a banking company for a period not exceeding 12 months.
- ✓ Power conferred on the RBI to levy penal interest in case of non-maintenance of required CRR.

✓ The ceiling cap of 1% for voting rights will go and a Shareholders can take upto 10 % equity with voting rights.

The Bill also seeks to empower the Reserve Bank of India(RBI) to call for information and returns from the associate enterprises of banking companies and also inspect them

### 5.0 COINS OF 25 PAISE AND BELOW - WITHDRAWN FROM CIRCULATION

The coins of 25 Paise and below shall cease to be legal tender after 29th June, 2011.

### 6.0 CCI GETS POWER TO APPROVE BIG M&As

The Competition Commission of India (CCI) will now be able to vet and approve big mergers and acquisitions in the country, with the government notifying the key provisions of the Competition Act.

The provisions, Sections 5 and 6, would grant the competition watchdog the powers to scrutinize amalgamation proposals of companies with a threshold of Rs.1,500crore. The CCI would take a maximum of 180 days to vet mergers.

### 7.0 PF DEPOSITS INTEREST

Over 4.7 crore employees will get 9.5 per cent interest on provident fund deposits for the year 2010-11.

#### 8.0 SEBI SECURITISED LISTING NORMS

In a move expected to improve liquidity and deepen the securitized debt market, the Securities and Exchange Board of India (SEBI) introduced a 'Listing Agreement for Securitized Debt Instruments'. This is expected to make these instruments more transparent and improve their secondary market liquidity.

The decision was taken to enhance information available in the public domain on performance of asset pools on which securitized debt instruments are issued.

It will help bring transparency in listing of securitized debt instruments, as issuers would now need to disclose information of three levels - the pool level, tranche level and select loan information.

## 9.0 RBI ALLOWS INTEREST RATE FUTURES IN 91-DAY T-BILLS

It has been decided to introduce Interest Rate Futures on 91-Day Treasury Bills issued by the Central Government. At present, only 10-year government bonds are traded in the Interest Rate Futures Market.

## 10.0 RBI TO MONITOR ROLL OUT OF NEW EXPRESS CHEQUE CLEARING SYSTEM

Addressing the demand from banks for complete automation of the cheque clearing exercise including

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### **EDITORIAL/FEMA**



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### CORRUPTION - BIGGEST ENEMY OF NATION......

including tendering, award of contracts, policy proposals, processing of applications are to be made completely transparent.

The criteria and norms for determining for allocation of licenses or for other similar purposes. For example, telecom licenses, licenses for bank, allocation of particular assignments or contracts, wherein networth, experience or other technical and financial criteria are kept, these are many times drafted to suit to certain specific parties and are not transparent. This is major source of breeding corruption. Every government officials as well as the policy documents or tender documents and similar other papers prescribing for such requirements should be subjected to review by an independent judicial authority and any member of the public should be allowed to get the same examined at any time. The judicial authority should have vast powers similar to High Courts and national level judicial authorities' decision should also be subjected to review by Supreme Court.

A committed Good Governance at political, Government and Business level will ensure eradication of corruption.

### **FEMA**

## 1.0 RELEASE OF REVISED THIRD EDITION OF CONSOLIDATED FOREIGN DIRECT INVESTMENT (FDI) POLICY EFFECTIVE FROM 1 APRIL 2011

Government of India (GOI) has released Consolidated Foreign Direct Investment (FDI) policy effective from 1 April 2011. The key changes / liberalizations introduced by the revised Foreign Direct Investment (FDI) policy are:

### **✓** Pricing of Convertible instruments

The earlier Foreign Direct Investment (FDI) policy required the conversion price of equity convertible instruments (debentures and preference shares) to be determined upfront at the time of issue of such convertible instruments. With an intention to provide better valuation based on performance, the revised Foreign Direct Investment (FDI) Policy permits the option of using a conversion formula for such convertible instruments subject to FEMA/ SEBI guidelines on pricing.

## ✓ Issue of Shares permitted against specified non-cash considerations under Approval Route

Apart from conversion of ECB/lump-sum fee/ Royalty into equity under the Approval Route, the revised Foreign Direct Investment (FDI) policy now permits issue of equity / equity convertible instruments under the Government / Approval route in the following cases:

- Import of capital goods/ machinery/ equipment (including second-hand machinery)
- Pre-operative/ Pre-incorporation expenses (including payments of rent etc.).

The above is subject to compliance with specified conditions including special resolution of the company and pricing guidelines.

## ✓ Approval / conditionalites surrounding previous joint venture/collaborations done away with

The revised Foreign Direct Investment (FDI) policy has done away with the prior approval requirement for new ventures / collaboration by Non-residents who had existing joint ventures / technical collaboration in the same field. Further, for new joint ventures/ technical collaboration, the requirement for incorporating a 'conflict of interest' clause in the Joint Venture Agreement has been done away with.

### ✓ Guidelines relating to Down-Stream investments

The revised Foreign Direct Investment (FDI) policy now incorporates only two categories of Companies - 'companies owned or controlled by foreign investors' and 'companies owned and controlled by Indian residents'. The earlier categorization of companies as 'investing companies', 'operating companies' and 'investing-cum-operating companies' has been done away with.

✓ Sector specific policy for FDI in agriculture In the Agriculture Sector, the revised Foreign Direct Investment (FDI) policy now permits Development and production of Seeds and planting material without the stipulation of having to do so under controlled conditions

### 2.0 BANK INVESTMENTS SUBJECT TO FDI NORMS

Besides ICICI Bank, other lenders who have more than 50% foreign equity holding are HDFC Bank, Yes Bank, IndusInd Bank, Federal Bank, ING Vysya and Development Credit Bank. As these banks are classified as foreign entities, they will have to follow Foreign Direct Investment (FDI) guidelines.



### **CORPORATE LAWS**

#### 1.0 COs RIGHT TO PERSONAL PRIVACY

The United States (US) Supreme Court (SC) said that companies have no right to personal privacy. In a ruling that contains an extended discussion of the exact meaning of the word 'personal', the US Court ruled that only individuals can have such a right, not companies or other similar bodies.

A right to privacy petition, filed by Ratan Tata, group chairman Tata Sons, is currently pending in the Indian Supreme Court. The petition argues that his right to privacy was violated by the leaking of taped conversations he had with lobbyist NiiraRadia.

AT & T had argued that the release of documents violated its 'personal privacy'.

# 2.0 PROSECUTION OF DIRECTORS RESTRICTED TO ACTUAL DEFAULTEES IN TERMS OF A NOTIFICATION BY MINISTRY OF CORPORATE AFFAIRS

In supersession of all earlier circulars, it is clarified that no independent or nominee shall be held

liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act,1956, and which occurred:

- ✓ Without his knowledge attributable through Board process includes meeting of any committee of the Board and any information which the Director was authorised to receive as Director of the Board as per the decision of the Board,
- ✓ Without his consent or connivance or
- ✓ Where he has acted diligently in the Board process

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

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

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

## 3.0 STRICTER NORMS FOR INDEPENDENT DIRECTORS ON PSU BOARDS SOON

The Government will announce stricter guidelines for board appointments at state-run companies and simplify succession planning in them. There is need to upgrade the quality of independent directors in the boards of Public Sector Undertakings (PSUs).

Around 70 posts of CMDs and full-time directors and 300 posts of independent directors are currently lying vacant at PSUs.

### 4.0 PAN UPDATION MADE MANDATORY

As a next step towards simplification in allotment of DIN (after allotment of DIN online if the DIN e-form digitally signed by an appropriate professional), the MCA has decided to make the following fields mandatory in the DIN 1 eform:-

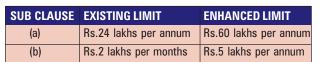
- ✓ Name of applicant
- ✓ Father's name of the applicant
- ✓ Date of birth
- ✓ PAN in place of all Indian Nationals
- ✓ Passport in case of all Foreign Nationals

At present, the PAN of the applicant is not a mandatory field in DIN eform-1. In order to examine DIN-4 e-form through the system and to avoid duplicate DIN, it has been decided that all existing DIN Holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 e-form by 31st May, 2011.

## 5.0 PARTICULARS OF EMPLOYEES AMENDED IN COMPANIES AMENDMENTS RULES 2011

The Central Government has amended the Companies (Particulars of Employees) Rules,1975 so as to enhance the limit u/s 217(2) w.r.t providing employees detail in directors' report as under





### 6.0 SIMPLIFICATION OF PROCEDURE FOR DEALING APPLICATIONS UNDER EASY EXITSCHEME 2011

-	EASY EXIISCHEME 2011						
S.NO.		REVISED PROCEDURES					
	EXISTING PROCEDURE	TO BE FOLLOWED BY ROCs					
1.	Prosecution if pending has to be compounded or disposed by Court.	If the prosecutions are only for non filing of Annual Returns U/s 159 or Balance Sheet U/s 220 of Companies Act 1956 6the company is actually a Defunct one as reflected in the Statement of Accounts submitted along with their application under EES Scheme, such application may be accepted, provided the applicants have already filed compounding application or has furnished an undertaking that the compounding application will be filed before closing of EES Scheme.					
2.	Issue relating to Companies having assets and liabilities is not specifically discussed in the scheme.	Ministry is not advising Directors and Shareholders for waiver of their liabilities and distribution of assets, to the shareholder other than the process provided in the Act. It is for the management of the company to take action as permissible under law of the Land.					
3.	Directors should be as per database. As per signatories details are checked from the database and sometimes it does not match and needs clarification/documentary evidence in this regard.	Recommended Professionals giving their membership number and Certifying that the applicants are present Directors of the Company can be considered. Recommended professionals are					
4.	Indemnity Bond and Affidavit needs to be furnished by the directors.	Foreign Nationals and NRIs have to get their Indemnity Bond and Affidavit notarized as per their respective country's laws.					

### **CAPITAL MARKET**

### 1.0 SEBI CANNOT IMPOSE PENALTY U/S 11B

A recent decision of the Securities Appellate Tribunal (SAT) has once again underlined the principle that the power of the Securities and Exchange Board of India (SEBI) to issue directions under Section 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act) cannot be used to impose penalties.

## 2.0 SEBI TELLS LISTED COS TO RUN UPDATED WEBSITES FROM 1<sup>ST</sup>APRIL, 2011

Securities & Exchange Board of India (SEBI) makes it mandatory for listed companies to have a functional website with latest details of various investor-sensitive information about them. This will come into effect from April 1 2011.

### 3.0 MFs FLEXIBLE COMMISSION REGIME IN COMING DAYS

Securities & Exchange Board of India (SEBI) has said that mutual funds should segregate the load balance into two accounts - one to reflect the balance on July 31, 2009, and the other to reflect accumulation since August 1, 2009. Securities & Exchange Board of India (SEBI) said that funds can use the exit load accumulated after July 31 to pay fees to distributors. The regulator, in an order on June 2009, had placed restrictions on the use of exit load proceeds.

## 5.0 CHECK OUTFLOW OF NEWS, BROKERS TOLD

In a bid to contain manipulation of shares prices on the domestic equity bourses, the capital market regulator has directed all Securities & Exchange Board of India (SEBI) registered market intermediaries to put in place proper internal code of conduct and controls to check the flow of unauthenticated news circulated by them.

### **NBFC**

## 1.0 ALL DEPOSIT TAKING NBFCS TO MAINTAIN 15% CRAR

The Reserve Bank of India (RBI) said on Thursday that all deposit taking non-banking financial companies (NBFCs) should maintain a minimum capital ratio consisting of Tier-I and Tier-II capital of 15% from March 31, 2012.

Earlier such NBFCs had to maintain a minimum capital ratio of 12% of the aggregate risk weighted assets on the balance sheet and of risk adjusted value off-balance sheet items.



### TAXATION/INDIRECT TAXATION

### **TAXATION**

### 1.0 SENIOR CITIZENS & THOSE EARNING UNDER RS.10L TO BE SPARED FROM TAX SCRUTINY

Senior citizens and individual taxpayers whose gross total income does not exceed Rs.10 lakh will now not face the hassle of an income tax scrutiny. They will be subject to scrutiny only if the income tax department is in possession against credible information.

## 2.0 TAX DEPT TO KEEP A TAB ON CLIENT CODE CHANGES

The Central Board of Direct Taxes (CBDT) has now made it mandatory for all stock exchanges to furnish a monthly statement of all transactions in which client codes have been modified.

### 3.0 FINANCE BILL 2011 - RELAXATION

- ✓ The Government rolled back the controversial 5% service tax on highend hospitals and certain diagnostic services:
- ✓ Concessional tax of 15% on dividends for firms from foreign arms to apply where the former holds more than 26%, as against 50%.
- ✓ Employer's share in NPS to be tax exempt.
- ✓ MAT rules for SEZ tightened further.
- ✓ Garment makers abatement available for levy of excise duty on retail price of branded garments and textile made-ups has been raised from 40% to 55%.

### 4.0 DTC ON TRACK FOR APRIL '12 ROLLOUT: REVENUE SECRETARY

The Government hopes rollout of Direct Tax Code by April 2012 but things are not on track in case of Goods and Services Tax (GST).

### **INDIRECT TAXATION**

## 1.0 SERVICE TAX LIABILITY TOO FIXED AT INVOICE STAGE

The Central Board of Excise and Customs (CBEC) has tweaked service tax rules, making service providers liable to pay tax as soon as they issue an invoice to their clients or has completed the service, whichever is earlier. Under the earlier rules, service tax became due only when a provider received payment for the service. This was at variance with the taxation of goods. States levy sales tax (value-added tax) on goods when the invoice is issued. Excise duty is also paid at the factory gate when the goods leave the factory on issuance of an invoice. The new rules provide a consistent regime for taxation of goods and services and aim to set the stage for the Goods and Services Tax (GST), which the government intends to roll out from April 2012. The Central Board of Excise and Customs (CBEC) had put out a draft of these rules for discussion in August last vear.

The Chartered Accountants and other notified professions will continue to pay service tax on cash basis.

### 2.0 CHANGES IN CENVAT CREDIT RULES

CENVAT Credit of services to setting up of a business premise will not be allowed w.e.f. 1<sup>st</sup> April, 2011 to the manufacturer of final products or output service provider.

Scope of input services has also been restricted by deleting the phrase "activities relating to business such as". Therefore w.e.f. 01/04/2011 CENVAT Credit of only services covered under specified activities is eligible under inclusive part.

# Latest news Lates

### ACCOUNTS & AUDIT/INSURANCE/NBFC/LATEST IN FINANCE

### **ACCOUNTS & AUDIT**

### 1.0 INDIAN ACCOUNTING FIRM FINED \$7.5 MILLION OVER FRAUD AT SATYAM

"The Indian affiliate of PricewaterhouseCoopers routinely failed to follow the most basic audit procedures". The United States (US) Securities and Exchange Commission (SEC) penalized the firm for its failure in audits of Satyam Computer Services, the Indian company that falsely reported more than \$1 billion profits.

The Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) fined PWC India of \$7.5 million, which is the largest American penalty ever against a foreign accounting firm.

Securities and Exchange Commission (SEC) stated that failures in the confirmation process on the Satyam audit were not limited to that engagement. Cease-and-desist order were also issued against the firm.

### **INSURANCE**

### 1. IRDA SEEKS DISCLOSURE OF NAV-GUARANTEED PRODUCTS

The Insurance Regulatory Development Authority (IRDA) has decided that the data must be provided separately for NAV-guaranteed and other products (both for existing and withdrawn), which are in Insurance Company books.

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### LATEST IN FINANCE

automation of non-MICR clearing houses, the Reserve Bank of India (RBI) has decided to implement a new express cheque clearing system (ECCS).

### 11.0FIMMDA ACCREDITED BROKERS FOR TRANSACTIONS IN OTC INTEREST RATE DERIVATIVES MARKET

The Primary Dealers (PDs) are allowed to undertake Securities or Derivatives transactions among themselves or with clients through the members of the BSE, NSE or OTCEI. These brokers are accredited by the FIMMDA.

## 12.0 AMENDMENT TO DEFINITION OF INFRASTRUCTURE LOAN

It has now been decided to include "Telecom Towers" also as an infrastructure facility for availing credit facility and have obtained a minimum credit rating 'A' or equivalent of CRISIL, FITCH, CARE, ICRA or equivalent rating by any other credit rating agency accredited by Reserve Bank of India (RBI).

## 13.0 NOMINATION IN CASE OF JOINT DEPOSIT ACCOUNTS

The nomination facility is available for joint deposit accounts also. Banks are advised to ensure that their branches offer nomination facility to all deposit accounts including joint accounts opened by the customers. Signatures of the accountholders in forms DA1, DA2 and DA3 need not be attested by witnesses.

## 14.0 EXPORT OF GOODS AND SOFTWARE - REALISATION AND REPATRIATION OF EXPORT PROCEEDS - LIBERALISATION

A.P. (DIR Series) Circular No. 57 dated June 29, 2010 enhanced the period of realization and repatriation to India of the amount representing the full export value of goods or software exported, from six months to twelve months from the date of export. This relaxation will now be extended upto September 30<sup>th</sup>, 2011.

FINANCIAL INDICATORS				
	Current Rate*	Month Ago		
	(in %)	(in %)		
3 Month LIBOR	0.28	0.31		
3 Month MIBOR	8.91	10.12		
SENSEX	19263	18174		
NIFTY	5786	55445		
CRR	6%	6%		
REPO	6.75	6.5		
REVERSE REPO	5.75	5.5		
Gold (per 10 gm)	21348	20972		
Silver (per kg)	59817	54041		
Crude (USD/bbl)	124.82	113.84		
Rs. vs USD	44.2	45.21		
Rs. vs Euro	63.9	62.43		
*As on 12th April 2011				
(Sources: Bloomberg, NSE, BSE,RBI)				

R.N.I. No. 50796/90

Posting Date: 14/15 April, 2011

#### SCHEDULE VI - NOTIFIED

We congratulate CA Sanjeev Goel and CA Pramod Kapoor for preparing intial draft of the New Schedue-VI for and on behalf of the Institute of Chartered



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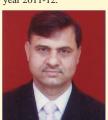
Accountants of India, which has been notified recently by the Ministry of Corporate Affairs Government of India to prepare all Financial statements of Companines in India for Financial Years commencing on or after 1st April, 2011:



CA Sanjeev Goel

#### CONGRATULATIONS!

We congratulate CA N.C. Maheshwari on his election as All India President of Association of National Exchange Members of India (ANMI) for the year 2011-12.



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