



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 assesseees 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

1.0 19 BANKS FINED FOR VIOLATION OF DERIVATIVES NORMS

The RBI has imposed penalties on 19 commercial banks for flouting instructions related to derivative. The banks that have been fined include six private sector banks, nine foreign banks and one public sector bank. According to the RBI, the penalties have been imposed on these banks for contravention of various instructions issued by the Reserve Bank in respect of derivatives. Such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route.

2.0 BANK LICENCE APPLICANTS' NAMES TO BE PUBLISHED ON RBI WEBSITE

- This is for the first time that any regulatory body will be publishing names of competing candidates right at the beginning of selection.
- Following the 2G scam, RBI, in consultation of the ministry of finance, has decided not to take chances in selection.
- Pre requisites for getting selected would be a spotless image, and also, applicants need to have enough exposure to the financial sector.

3.0 CIBIL MAKES CREDIT SCORES AVAILABLE TO INDIVIDUALS

Credit Information Bureau (India) Limited (CIBIL), the agency gathering data on credit histories of individuals, has now made credit scores available to individuals for a fee of Rs. 450/- per request. An individual's credit score would be a three-digit numeric summary of his credit history for the last three years, and this would be rated on a scale of 300-900. The higher an individual's score, the better would be his chances of securing a loan. Banks have, since the last two years, used this data as an important factor in deciding on whether to approve or reject a loan. Making credit scores available to borrowers can also be seen as a step towards risk-based pricing.

4.0 INDUSTRIAL GROWTH DIPS TO 3.6% IN FEB

Industrial growth refused to be perked up, staying below 5 per cent mark for the fourth month in a row when it fell to 3.6 per cent in February. This reflects the impact of rising interest rates on investment, besides high base of last year when the growth stood way above at 15.1 per cent.

5.0 SEBI REGISTERED FIIs TO INVEST MORE IN SECONDARY MARKET

Reserve Bank of India (RBI) vide its Circular RBI/2010-11/492 A.P. (DIR Series) Circular No. 55 dated April 29,

2011 has enhanced the limits of investments by Foreign Institutional Investors (FIIs) in Corporate Debt in Secondary Market. Now FIIs can invest in listed non convertible debentures / bonds upto USD 40 billion (with a sub limit of USD 25 billion for investment in listed non-convertible debentures / bonds issued by corporate in the infrastructure sector).

6.0 BANK LOANS TO MICRO FINANCE INSTITUTIONS (MFIS) - PRIORITY SECTOR STATUS

It has been decided to regulate microfinance sector by the Reserve Bank as a separate category. In this connection, RBI has advised that bank credit to Micro Finance Institutions extended on, or after, April 1, 2011 for on-lending to individuals and also to members of SHGs / JLGs will be eligible for categorisation as priority sector advance under respective categories viz., agriculture, micro and small enterprise, and micro credit (for other purposes), as indirect finance, provided not less than 85% of total assets of MFI (other than cash, balances with banks and financial institutions, government securities and money market instruments) are in the nature of "qualifying assets". In addition, aggregate amount of loan, extended for income generating activity, is not less than 75% of the total loans given by MFIs. The banks have to ensure that MFIs comply with the following caps on margin and interest rate as also other 'pricing guidelines', to be eligible to classify these loans as priority sector loans:

- ❖ Margin cap at 12% for all MFIs. The interest cost is to be calculated on average fortnightly balances of outstanding borrowings and interest income is to be calculated on average fortnightly balances of outstanding loan portfolio of qualifying assets.
- ❖ Interest cap on individual loans at 26% per annum for all MFIs to be calculated on a reducing balance basis.
- ❖ Only three components are to be included in pricing of loans viz., (a) a processing fee not exceeding 1% of the gross loan amount, (b) the interest charge and (c) the insurance premium.
- ❖ The processing fee is not to be included in the margin cap or the interest cap of 26%.
- ❖ Only the actual cost of insurance i.e. actual cost of group insurance for life, health and livestock for borrower and spouse can be recovered; administrative charges to be recovered as per IRDA guidelines.
- ❖ There should not be any penalty for delayed payment.
- ❖ No Security Deposit/ Margin are to be taken.

RBI/2010-11/505 RPCD.CO.PLAN BC. 66 /04.09.01/2010-11 MAY 3, 2011

7.0 FIN HOLDING FIRM MUST FOR ENTERING BANKING SPACE

The Government and Reserve Bank of India (RBI) have decided to make it mandatory for corporate groups wanting



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including tendering, award of contracts, policy

to set up banks to ring-fence their financial sector operations from other businesses by setting up a Financial Holding Company (FHC). For the existing financial conglomerates, however, conversion into FHC would be optional. Officials also indicated that companies being investigated by the CBI, Central Vigilance Commission and Enforcement Directorate will not be permitted entry in the banking sector. This could dash hopes of some companies which are embroiled in the 2G spectrum scam but are known to be interested in a foray into the banking sector.

8.0 FII LIMIT FOR INVESTMENT IN INFRASTRUCTURE BONDS RAISED TO \$25 B

In a bid to boost FII investment in debt instruments (non-convertible debentures and bonds) issued by Indian infrastructure companies, the Government of India has increased FII limits from \$5 billion to \$25 billion for investment in infrastructure bonds. With this, the overall FII limit for investment in corporate bonds increases to \$40 billion (\$15 billion in corporate and \$25 billion in infrastructure bonds). Experts said that though the definition of the term 'infrastructure' is as per extant ECB guidelines, there were certain glitches.

FEMA

1.0 ESCROW ACCOUNTS FOR SECURING FDI TRANSACTIONS

To provide structured flexibility and easiness to the resident/non-resident shareholders of Indian Company, Reserve Bank of India (RBI) vide its Circular **RBI/2010-11/ 498 A. P. (DIR Series) Circular No. 58 dated May 02, 2011** has decided to permit AD category -1 banks to open and maintain, without prior approval of the Reserve Bank, non-interest bearing Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and /or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions. Further, It has also been decided to permit SEBI authorized Depository Participants, to open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities subject to the terms and conditions. These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non- residents.

2.0 PLEDGE OF SHARES FOR BUSINESS PURPOSES

Reserve Bank of India (RBI) vide its Circular RBI/2010-11 /497 A. P. (DIR Series) Circular No. 57 dated May 02, 2011 has reviewed the guidelines relating to Pledge of Shares by non-resident investor. RBI delegated its powers to the AD Category - I banks to allow pledge of shares of an Indian company held by non-resident investor(s) in accordance with the FDI policy in the following cases subject to defined compliances:

1. Shares of an Indian company held by the non-resident investor can be pledged in favour of an Indian bank in India to secure the credit facilities being extended to the resident investee company for bonafide business purposes subject to the defined conditions.
2. Shares of the Indian company held by the non-resident investor can be pledged in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-resident promoter of the Indian company or its overseas group company, subject to the defined conditions.



CORPORATE LAWS

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1.0 COs RIGHT TO PERSONAL PRIVACY



INDIRECT TAXATION

1.0 HC : COMPANIES NEEDN'T PAY STAMP DUTY ON INCREASED CAPITAL

The Delhi High Court has held that a company is not required to pay the stamp duty on the increased amount of its authorized share capital arising out of merger.

2.0 DELHI HIGH COURT STAYS DECISION ON IMPOSITION OF SERVICE TAX FOR LAWYERS

The amendment to the Finance Act introducing service tax on lawyers has been stayed by the Gauhati High Court. After the amendment, the representation by an advocate in any court, tribunal or authority will be subject to levy of service tax. Similar stay is granted for tax on representation services by CAs by Delhi High Court.

3.0 SC: APPELLATE APPLIED WRONG PRINCIPLES IN REJECTING CLAIM FOR CUSTOMS DUTY

The Supreme Court has stated that the Customs, Excise & Service Tax Appellate Tribunal had applied wrong principles while rejecting the claim for customs duty drawback in the case, Siddachalam Exports Ltd. vs. Commissioner of Central Excise. The exporter was accused of inflating shipping bills for export of ladies' tops and denim shirts consigned to a Russian firm. The Court stated that instead of first determining the value of the goods on the basis of contemporaneous exports of identical goods, the revenue department erroneously resorted to a market enquiry. If for any reason data of contemporaneous exports of identical goods was not available, the procedure laid down under the 1988 Rules should be followed and market enquiry could be conducted only as a last resort.

4.0 BINJRAJKA STEEL TUBES LTD. VS. ASSTT. CIT, CIR-1(3), HYDERABAD

Whether benefit of depreciation obtained by assessee in earlier years could not be termed as an allowance or expenditure claimed by assessee in earlier years, hence, any recoupment received by assessee on this count could not be taxed under section 41(1)- Held, yes

[2011] 130 ITD 46/[2010] 8 7 (Hyd.)

5.0 CIT VS. MONIKUMAR SUBBA

Income from House Property - Annual Letting Value - Determination - "Amount for which property could reasonably be expected to be let"- Determination of fair rent - Principles - Assessee taking inordinately large sum as interest-free deposit compared to Agreed monthly rent - Addition of Notional Interest thereon - Not proper - Fair Rent must be determined - Income-Tax Act, 1961, s. 23(1)(a), (b).

[2011] 333 ITR 38 (Delhi) [FB]

DIRECT TAXATION

1.0 AAR: CAPITAL GAINS FROM TRANSFER OF SHARES HELD BY MAURITIAN COMPANY NOT TAXABLE IN INDIA

The Authority for Advance Rulings (AAR), a quasi-judicial panel, has ruled that capital gains arising from transfer of shares held by a Mauritian company in an Indian firm are not taxable in India. The ruling, in response to a plea by DB Zwiir Mauritius to ascertain its taxability on transfer of equity shares of Quippo Telecom Infrastructure, will come as a major relief to UK-based Vodafone which has sought the authority's opinion in a transaction of similar nature. Vodafone has sought AAR's opinion on if the company was required to deduct tax on payment made to Essar for the 22% stake held by the Indian company through a Mauritius-based entity.

2.0 DELHI HC: AO CERTIFICATE FOR DEDUCTION OF TAX TENTATIVE AND NOT FINAL

The Division Bench of Chief Justice Dipak Misra and Justice Sanjiv Khanna of the Delhi High Court, held in a judgment passed on April 25 that the opinion expressed by the assessing officer (AO) while giving a certificate for deduction of tax at a lower rate under section 197 of the Income Tax Act, 1961 is interim or tentative or provisional in nature and would not bar the AO from initiating proceedings under section 147 of the Act on the ground that there has been a change of opinion. Areva T&D had filed a writ petition before the High Court claiming that a mere change of opinion does not confer jurisdiction on the authority to initiate a proceeding under section 147 of the Act after it has issued a certificate under section 197 of the Act.

3.0 COMPANIES TAKING LLP ROUTE TO ESCAPE TAX LIABILITY

Corporates are masking their true identities to jump regulatory hurdles and form holding entities that help them lower their tax burden. Promoters of at least 30 companies have formed limited liability partnerships (LLPs) by suppressing the information that the newly-floated LLPs would serve as group investment companies, a disclosure that would have called for a non-objection certificate from the Reserve Bank of India (RBI).

4.0 FOREIGN RETAIL INVESTORS' EQUITY PORTFOLIO TO ATTRACT CAPITAL GAINS TAX

The domestic law regarding capital gains tax will prevail in case of foreign retail investors putting in their money in Indian equity schemes unless India has a double taxation avoidance agreement with the country the investor belongs to, revenue secretary.



CORPORATE LAWS

1.0 NEW NORMS ON HIRING RELATIVES IN COMPANIES

The government has released norms for appointment of relatives in companies, a decision that will allow directors or managers to engage services of close ones without seeking permission of the Centre. A company, however, will be required to seek the permission of the central Government if monthly payment made to relatives is more than Rs 2,50,000, the Corporate Affairs Ministry said in a notification. Earlier, approval of the Corporate Affairs Ministry was required for appointment of relatives of directors or managers, in case the monthly remuneration to be paid to the person exceeded Rs 50,000. Further, with regard to selection of such relatives of directors or managers of a listed company, the Ministry has maintained that it would be done by the Selection Committee

[F.NO. 17/75/2011-C.L.V], DATED 6-4-2011

2.0 ARBITRATION CLAUSE WOULD NOT BAR ROLE OF HC AND SC

The Supreme Court ruled that an arbitration clause in a contract would not exclude the power of the high courts or the Supreme Court to decide disputes between the parties. The Supreme Court rejected both the arguments and emphasized that the courts need not force the parties to go for the alternative remedy of arbitration every time. "Justice, whenever and wherever it takes place, has to be struck down as anathema to the rule of law and the provisions of the Constitution," the judgment said.

AUDIT

1.0 RBI TIGHTENS PROVISIONING NORMS

The Reserve Bank of India (RBI) has increased the provisioning requirements. Under the new guidelines, loans classified as sub-standard will attract a provision of 15 per cent as against the existing 10 per cent requirement. For unsecured loans that are classified as sub-standard assets an additional 10 per cent provision has to be made over the 15 per cent. So, the total provisioning for sub-standard unsecured loans will now be 25 per cent instead of 20 per cent as mandated earlier. The central bank also raised the provision required for the secured portion of advances, which have remained in the doubtful category for up to one year, to 25 per cent from the present 20 per cent. The secured advances in this category for more than one year but up to three years will now attract a provision of 40 per cent instead of 30 per cent. The restructured loans classified under the standard category will need a provision of two per cent in the first two years from the date of restructuring. In case of moratorium on payment of interest and principal after restructuring, two per cent

provision has to be maintained for the period covering the moratorium and two years thereafter, RBI said. If restructured loans, which are classified as non-performing advances, are upgraded to the standard category, banks have to make a provision of two per cent in the first year from the date of upgrade. The existing provision on these loans was 0.25-1.00 per cent depending on the category of advances.

2.0 RBI RELAXES NORMS FOR NPA PROVISIONING

The Reserve Bank of India (RBI) has relaxed norms regarding setting aside money for bad loans- a move which has come as a major relief for all commercial banks. The banking regulator has said banks should maintain 70% of the provision coverage ratio (PCR) of their gross bad loans as on September 2010, but they do not have to maintain 70% of PCR on an ongoing basis. RBI has said from September, 2010 onwards, on incremental NPAs banks would have to set aside money based on the income recognition norms. This ranges from 10% in the initial months when the asset is classified as substandard to 100% when it is classified as a loss asset after a few years.

3.0 BANK AUDITS TO CARRY NOTES GRATUITY & PENSION IMPACT

The accounting regulator has asked auditors to detail the financial impact of the pension and gratuity liability of public sector banks in their audit of 2010-11 accounts.

4.0 COMMON FINANCIAL STATEMENT FORMAT FOR POLITICAL PARTIES ON THE ANVIL

Political parties may soon have to present their financial statements in a standardized format with more disclosures. The Central Council of the ICAI has at its latest meeting given its nod for a uniform auditing and accounting framework for political parties.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (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)

INSURANCE

1.0 INSURANCE POLICIES WILL NOW COME IN DEMAT FORM

Insurance Policy holders can finally store their various policies in a dematerialized form similar to shareholders holding shares in demat scrip. Regulator IRDA issued guidelines for insurance repositories and electronic issuance of insurance policies.

2.0 THIRD PARTY PREMIUM RISES BY UP TO 70%

The Insurance Regulatory and Development Authority (IRDA) has increased the third-party motor premium by up to 70% from April 25. Rates to be reviewed annually, to be based on average claims cost, frequency of claims, inflation index.

ACCOUNTING

1.0 ACCOUNTING NORMS FOR INSURERS RELAXED

Insurance regulator IRDA relaxed accounting norms for insurance companies to take care of higher liability arising out of enhanced outgo towards gratuity for their employees. The regulator allowed the insurance and reinsurance companies to amortise (pay off in regular intervals) the additional liability on account of gratuity over a period of five years starting from financial year 2010-11.

2.0 CAs CAN UPLOAD FIRM PAPERS ON MCA SITE

Chartered Accountants, cost accountants and company secretaries can now directly upload certified annual documents of firms on the portal of the corporate affairs ministry, without its approval

INMACS



2 MW Wind Power Project in Tamil Nadu : Rs. 12 Crore Project

Loan of Rs 8.75 Crores

We have been approached by a leading Vanaspati Oil Trader for the funding of 2 MW Wind Power Project in Tamil Nadu for a Loan Amount of Rs 8.75 crores from any Institution.

The challenges of this deal were:-

- Promoters wanted to have project Finance not having any exposure of Corporate Finance.
- Promoters wanted to have REC Mechanism. REC Mechanism is that in which the part of tariff will be through Renewable Energy Certificate which will be traded in the exchange.
- The third challenge is to get it done by 31st March 2011, because promoters wanted to claim Accelerated Depreciation.

Promoters were having experience of Wind Power & are running established company & PPA was at advanced stage.

How we achieved

The Institutions were satisfied about the Promoters. Only apprehension coming was that there was no certainty of Tariff through REC Mechanism. To avoid that the structure was created to make available cash flows of the existing Wind Power Turbine & also some part of Revenue shortfall if any to be covered by Bank Guarantee for 3 years. Once the revenue stream is established then Bank Guarantee will not be needed.

**Through this structure we were able to manage Project
Finance of Rs 8.75 crs without any Collateral.**

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