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NARESH CHANDRA COMMITTEE REPORT – A HALF HEARTED ATTEMPT

The Government of India has set up a high level committee under the leadership of Shri Naresh Chandra, former Ambassador of United States. The Committee was set up to consider various aspects of Corporate Governance including role of directors, auditors and management in the light of corporate governance crises observed in US and the apprehension of the Government that a similar threat exists in India.

The Committee has submitted its report in the 2nd half of December, 2002 after more than four months deliberations. A thorough review of the report would suggest that the Committee has miserably failed to address the real issues and contracted on certain peripheral issues and has suggested mainly cosmetic changes in the legal framework to achieve better Corporate Governance. The Committee's report has been significantly impacted by the Sarbanes Oxley Act of US passed after the Enron Worldcom episode and the Committee failed to address the real issues in the Indian scenario.

The corporate India in general has realised that it is very important for them to voluntarily adopt best corporate practices and to run the corporate in a transparent manner. This corporate culture is setting in fast. The global competition has written on the walls for the corporate India that if they need to revive, grow, prosper and compete with the international giants, they have to consolidate their strength as corporate and to run them most effectively in an efficient cost effective and competitive manner. On the other hand there are some corporates who do not care for the corporate governance or investors' interest. The interest of the stake holders including customers, suppliers, bankers, environment, society and the government are not given any weightage by some of them.

Naresh Chandra Committee Report has some how failed to provide any solution to address the problem of dealing with a handful of fly by night operators resorted to diversion of funds, siphoning of funds, manipulating the capital market and also indulged in fraudulent activities, seriously impacting the interest of various stake holders. No legal framework has been suggested to bring these mischievous promoters to books. In today's scenario the investors have no recourse to recover their hard earned money swallowed by some of these promoters by making toll and false claim in the prospectus or by diverting funds or otherwise misusing the funds of the investors. The proposal of Finance Minister to set up a Fraud Office is welcome but it could proceed only with a clearly outlined legal framework.

The Naresh Chandra Committee Report has concentrated it's suggestions on appointment of independent directors and composition and size of the board of directors. While dealing with the aspect of good corporate governance the Committee has actually failed to address the real issues as outlined before. It would be most important for the Government, the society and most importantly for the professional including Chartered Accountants to bring in real corporate governance by educating the importance and benefits of best corporate practices to the corporates in a transparent manner coupled with integrity. This has to be matched with serious action by the rules of management by exception against those who act in a manner which has a serious threat to the public interest.

The suggestions of Naresh Chandra Committee in respect of auditors' independence for better corporate governance by suggesting rotation of partners is only an eye wash. This will not bring any change whatsoever in the corporate governance. The importance of auditors in corporate governance has been rightly

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TAXATION

1.0 FINAL RECOMMENDATIONS OF KELKAR REPORT

The highlights of the final recommendations of Kelkar Report are as follows:

DIRECT TAXES

(a) Corporate Tax

- 30% for domestic companies and 35% for foreign companies.
- Dividend exempt from tax in the hands of shareholders, no dividends distribution tax.
- Tax on long-term capital gains eliminated.
- Elimination of MAT under Section 115JB.
- Distinction between unabsorbed depreciation and business loss eliminated.
- Section 10A and 10B to continue for software and other services exporters.
- Section 80IA and 80IB to go.
- Depreciation rates for depreciation allowance under Section 32 reduced to 15%.
- Section 35AC relating to expenditure on eligible projects eliminated ; projects already approved to enjoy tax rebate at 20%
- Section 36(1)(iii) on interest on borrowed capital eliminated.
- Option-II package of the task force report recommends removal of deductions under Section 10 and Chapter VI A of Income Tax Act with immediate effect.

(b) Personal Income Tax

- 20% for Rs.1-4 lakh income and 30% for over Rs. 4 lakh.
- Exemption limit for senior citizens and widows at Rs. 1.5 lakh.
- Rs. 50,000/- deduction allowed for interest on home loans.
- Dividend tax eliminated.
- Long-term capital gains on listed equity exempted.
- Standard deduction eliminated, exemption for conveyance allowance upto Rs.9,600.
- 10% rebate for medical insurance premium up to Rs. 3,000.
- 10% rebate for repayment of educational expenses up to 1000.
- Rebate on homes under Section 88 for savings eliminated.
- Rebate under section 88B for senior citizens eliminated.
- Interest and dividend income under Section 80L eliminated.
- Resident but not ordinarily resident resident status eliminated.

INDIRECT TAXES

(a) Customs

- By 2004-05 – 20% on finished goods; 10% on raw materials and intermediates.
- By 2006-07 – 20% on consumer durables; 10% on finished goods; 8% on intermediate goods; 5% on raw material.
- Exemption for life saving drugs and sovereign imports.
- 150 per cent for specified farm products and demerit goods.

(b) Excise

- 14% Cenvat rate
- 20% parking rate for cars, Acs and aerated water
- 6% on processed food products and matches

- Exemptions for life saving drugs, security items and farm products.
- Uniform duty of 16% for textile fibre and yarn 14% by 2004-05.
- Exemption for small-scale units with a turnover of up to Rs. 50 lakhs.
- Nationwide value-added tax and a comprehensive service tax from April 2003.
- No budgetary compensation for states for VAT losses.
- Enhancement of service tax rate to achieve parity with Cenvat rate.

(c) Petroleum Sector

- 8% Customs duty on crude, 15% on products by 2003-04
- 5% on crude and 10% on products by 2004-05
- Excise on petroleum products to be fixed every quarter
- Excise on kerosene to be raised by Re. 1 a litre, additional Re. 1 duty on LDO.

2.0 MAURITIUS ROUTE OF TAX BENEFITS IS IN PROBLEM

The Mauritius route for investing in India may no longer remain attractive as the government has started denying benefits of the Indo-Mauritius Double Taxation Avoidance Convention (DTAC) to Mauritius based companies investing in the country.

3.0 TAXMANS SCRUTINIZING RETURNS FOR LAST TWO YEARS

The Income Tax department is taking the unprecedented step of scrutinizing the returns filled in 2002-03 and 2001-02. The department has also decided to scrutinize the largest 200 tax payers.

4.0 RECENT IMPORTANT JUDGEMENT – UNDER INCOME-TAX ACT, 1961

4.1 Assessee is not entitled to get interest on the excess amount of advance tax deposited.

In the matter of *EIMCO-KCPLTD. Vs CIT*, [258 ITR 449] Hon'ble Madras High Court decided that "though the assessee had shown as per its estimate the payable installments correctly in form No. 28A, it had made excess payment and that could not be deemed to be advance tax. Hence, the assessee was not entitled to earn interest on that excess amount."

4.2 Assessee is entitled to get deduction of gross earnings u/s 80-O of the Income Tax Act, 1961.

Hon'ble Bombay High Court in the matter of *CIT Vs. Asian Cables Corporation*, recently decided that the service exporters' gross earnings in foreign currencies are entitled for deduction. With this the gross amount received from abroad against export of services as per section 80-O would be entitled for deduction.

4.3 Payment made under Voluntary Retirement Scheme (VRS)

Income tax Appellate Tribunal Bombay Bench has recently decided that the payment made under Voluntary Retirement Scheme (VRS) before 2000-2001 would be allowable in a year of payment.

4.4 Kar Vivad Scheme settled cases not to be re-opened.

The Supreme Court has set aside the Bombay High Courts judgement and quashed the income tax department notice to *Killick Nixon Ltd.* stating that once the declaration under the Kar Vivad Samadhan Scheme, 1998, was accepted, the assessment cannot be re-opened.

LATEST IN FINANCE

1.0 PROHIBITION/RESTRICTION ON LOANS TO BANK DIRECTORS

It has been decided to issue the following guidelines to the Financial Institutions in regards to the connected lending:

A. Credit facilities to the Directors

In order to obviate the possibility of conflict of interest in the lending operations of the FIs, it has been decided in consultation with the Government of India that, with immediate effect, the FIs should not:

- grant any loan or advance on the security of its own shares; or
- enter into any commitment for granting any loan or advance to or on behalf of: (i) any of its Directors, or (ii) any firm in which any of its Directors is interested as Partner, Manager, Employee or Guarantor, or (iii) any company (not being a subsidiary of the FI or a company registered under Section 25 of the Companies Act, 1956, or a Government Company) of which, or the subsidiary or the holding company of which, any of the Directors of the FI is a Director, Managing Agent, Manager, Employee or Guarantor or in which he holds substantial interests, or (iv) any individual in respect of whom any of its Directors is a Partner or a Guarantor.

B. Non-fund facilities on behalf of the Directors

The FIs should, ensure while extending non-fund based facilities, such as guarantees, L/Cs, acceptances, etc., on behalf of Directors and the companies/firms in which the Directors are interested, that:

- adequate and effective arrangements have been made to the satisfaction of the FI that the commitments would be met by the applicants for guarantees, openers of L/Cs or acceptors, out of their own resources;
- the FI will not be called upon to grant any loan or advance to meet the liability consequent upon the invocation of guarantee or devolvement of L/Cs; and
- no liability would devolve on the FI on account of LCs / acceptances.

In case, the contingencies as at (b) & (c) above arise, the FI will be deemed to be a party to the violation of the provisions of this Circular.

C. Loans and advances to relatives of the FI's Directors or to the Directors of other FIs / banks and their relatives

Without prior approval of the Board or without the knowledge of the Board, no loans or advances should be granted, except to the extent permitted in the guidelines in the following paragraphs, to the undernoted categories of counterparties:

- relatives of the FI's Chairman / MD or other Directors;
- Directors of other FIs and banks and their relatives;
- Directors of Scheduled Co-operative Banks and their relatives;
- Directors of subsidiaries / trustees of mutual funds / trustees of venture capital funds set up by the financing FIs or other FIs and banks, and their relatives.

In order to obviate the possibility of development of **reciprocal arrangements** amongst the FIs / banks for extending credit and non-funded facilities, as also for awarding contracts, to each other's Directors, their relatives, etc., the following guidelines should be adopted.

Unless sanctioned by the Board of Directors / Management Committee, the FIs should not grant loans and advances, aggregating **Rs. 25 lakhs and above**, to:-

- Directors (including the Chairman/Managing Director) of other FIs and banks (including Directors of Scheduled Co-operative Banks, Directors of subsidiaries / trustees of mutual funds / trustees of venture capital funds);
- any firm in which any of the Directors of other FIs and banks (including Directors of Scheduled Co-operative Banks, Directors of subsidiaries / trustees of mutual funds / trustees of venture capital funds) is interested as a partner or guarantor; and
- any company in which any of the Directors of other FIs and banks (including Directors of Scheduled Co-operative Banks, Directors of subsidiaries / trustees of mutual funds / trustees of venture capital funds) holds 'substantial interest' or is interested as a Director or as a guarantor.

Unless sanctioned by the Board of Directors / Management Committee, the FIs should also not grant loans and advances aggregating **Rs. 25 lakhs and above** to -

- any relatives of the FI's Chairman / MD or other Directors;
- any relatives of the Chairman / Managing Director or other Directors of other FIs and banks (including Directors of Scheduled Co-operative Banks, Directors of subsidiaries / trustees of mutual funds / trustees of venture capital funds);
- any firm in which any of the relatives as mentioned at (a) & (b) above is interested as a partner or guarantor; and
- any company in which any of the relatives as mentioned at (a) & (b) above holds 'substantial interest' or is interested as a Director or as a guarantor.

The term "**substantial interest**" for the purpose of these instructions

- in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, singly or taken together, in the shares of the company, paid-up on which exceeds five lakhs of rupees or ten per cent of the paid-up capital of the company, whichever is less;
- in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm.

The proposals for credit facilities of an amount **less than Rs. 25 lakh** to these borrowers may be sanctioned by the appropriate authority in the financing FI under the powers vested in such authority, but the matter should be **reported to the Board**.

D. Non-participation of the interested Directors in the proceedings

The Chairman / MD or other Director who is directly or indirectly concerned or interested in any proposal should disclose the nature of his interest to the Board or the Committee (as the case may be)

LATEST IN FINANCE

when any such proposal is discussed. He should **not be present** in the meeting unless his presence is required by the other Directors for the purpose of eliciting information in which case the Director, so required to be present, **shall not vote** on any such proposal.

E. List of transactions that shall not be included in the term "loans and advances"

- loans or advances to the Agriculture Finance Corporation Ltd.;
- such loans or advances as can be made by a FI to any of its directors (who immediately prior to becoming a director, was an employee of the FI) in his capacity as an employee of that FI and on the same terms and conditions as would have been applicable to him as an employee of that FI, if he had not become a director of the FI.
- such loans or advances as are granted by a FI to its Chairman and Chief Executive Officer, who was not an employee of the FI immediately prior to his appointment as Chairman/MD / CEO, for the purpose of purchasing a car, personal computer, furniture or constructing/acquiring a house for his personal use and Festival Advance, **with the prior approval of RBI** and on such terms and conditions as may be stipulated by it.
- such loans or advances as are granted by a FI to its whole time director, for the purpose of purchasing a car, personal computer, furniture or constructing/acquiring a house for his personal use and Festival Advance, **with the prior approval of RBI** and on such terms and conditions as may be stipulated by it.
- Facilities like bills purchased/discounted (whether documentary or clean and sight or usance and whether on D/ A basis or D/P basis), purchase of cheques, other non-fund based facilities like acceptance / co-acceptance of bills, opening of L/Cs and issue of guarantees, purchase of debentures from third parties, etc.

F. The scope of the term "relative"

scope of the term 'relative' will includes Spouse; Father; (including step-mother); Son (including step-son); Son's daughter (including step-daughter); Daughter's Husband; (including step-brother); Brother's wife; Sister (including step-sister); Sister's husband; Brother (including step-brother) of the spouse; Sister (including step-sister) of the spouse

(Source: DBS.FID No.C-10/ 01.02.00 / 2002- 03 dated December 21, 2002)

2.0 EEFC ACCOUNT SCHEME

It has been decided that, payments received in foreign exchange by a unit in Domestic Tariff Area (DTA) for supply of goods to a unit in Special Economic Zone (SEZ) out of its foreign currency account are to be treated as eligible foreign exchange earnings for the purpose of credit to the EEFC Account. It will, therefore, be in order for authorised dealers to credit such payments received in foreign exchange by a unit in DTA to its Exchange Earner's Foreign Currency (EEFC) Account. The facility will be available in respect of foreign exchange received by the recipients from the date of this circular.

(Source: A.P. (DIR Series) Circular No.62 dated December 17, 2002)

3.0 FAIR PRACTICES CODE ON LENDERS' LIABILITY

The following guidelines are prepared for the purpose to put several stringent conditions on banks and financial institutions to remove arbitrariness in lending practices:

- Loan Application forms** – Loan Application forms shall be comprehensive to include information about rate of interest and manner of charging (monthly/quarterly/half-yearly/yearly rests), process fees and other charges, penal interest rates, pre-payment options and any other matter which affects the interest of the borrower.
- Acknowledgement** – Banks and FIs should devise a system of giving acknowledgement for receipt of all loan applications. Acknowledgement should also state the amount of process fees paid or to be paid and the extent to which such fees shall be refunded in the event of rejection of any application for loan.
- Rejection of Loan Application** – In the case of rejection of any loan application, lenders should convey in writing the specific reasons therefor.
- Assessment of Loan Application** – Lenders should ensure that there is proper assessment of credit requirement of borrowers. The credit limit, which may be sanctioned, should be mutually settled.
- Terms and Conditions of Loan Application** – Terms and conditions and other caveats governing credit facilities given by banks/FI arrived at after negotiation by the lending institution and the borrower should be reduced in writing duly witnessed and certified by the authorised sanctioning authority.
- Disbursement of Loan** – Lenders should ensure timely disbursement of loans sanctioned. Stipulation of margin and security should be based on due diligence and credit worthiness of borrowers.
- Regular Information to Borrower** – Lenders should keep the borrowers apprised of the state of their accounts from time to time.
- Liability of Lender to Borrower** – The loan agreement should clearly specify the liability of lenders to borrowers in regard to allowing drawings beyond the sanctioned limits, honouring the cheques issued for the purpose other than agreed, disallowing large cash withdrawals and obligation to meet further requirements of the borrowers on account of growth in business etc. without proper revision and sanction in credit limits, and disallowing drawings on a borrowal account on its classification as a non-performing asset or on account of non-compliance with the terms of sanction.
- Lenders should give reasonable notice** to borrowers before taking decision to recall / accelerate payment or performance under the agreement or seeking additional securities.
- Lenders should release all securities** on receiving payment of loan or realisation of loan subject to any legitimate right of lien for any other claim lenders may have against borrowers. If such right of set off is to be exercised, borrowers shall be given notice about the same with full particulars.

(Source : DBOD.No.Leg.BC. /09.07.007 / 2002-03 dated December 2002)

LATEST IN FINANCE

4.0 RISK MANAGEMENT AND INTERBANK DEALINGS

RBI has decided to permit the following further relaxations:

(a) Foreign currency-rupee swaps

In terms of RBI circular EC.CO.FMD.447/02.03.75/2000-2001 dated November 25, 2001, Authorised dealers are permitted to offer foreign currency rupee swaps to a person resident in India to hedge long term exposures subject to the condition that the market access by Authorised dealers on account of such swaps shall not exceed USD 25 million. Thereafter, on specific requests, certain banks were permitted higher limits.

It has been decided that such specified limits will not be applicable to swaps offered to facilitate customers to hedge their foreign exchange exposures. Accordingly, authorised dealers are free to offer such swaps to customers subject to overall prudential and risk management guidelines. The specified limits would, however, continue for swap transactions facilitating customers to assume a foreign exchange liability, thereby resulting in supply in the market. Positions arising out of cancellation of swaps by customers need not be reckoned within the cap.

(b) Investments in Overseas Market

It has been decided to withdraw the cap on investment limit. Accordingly, Authorised dealers are now free to undertake investments in overseas markets subject to the limits approved by the banks' Board of Directors. All other existing instructions on the subject remain unchanged.

(c) Booking of forward contracts based on past performance

In terms of our circular No.EC.CO.FMD/453/02.03.75/2001-02 dated December 1, 2001, Authorised dealers are permitted to offer forward contracts to their exporter/importer customers upto the limit/s worked out on the basis of last 3 years' average import/export performance. This is subject to the condition that at any point of time forward contracts so booked and outstanding shall not exceed 25 per cent of the eligible limit, within a cap of USD 50 million.

It has been decided to enhance the cap to USD 100 million. Accordingly, Authorised dealers may permit their customers to book forward contracts upto the eligible limit, subject to the condition that forward contracts outstanding at any point of time shall not exceed 25 per cent of the eligible limit, within the cap of USD 100 million. It may be noted that the eligible limits are to be computed separately for import and export transactions. All other conditions remain unchanged.

(d) Booking and cancelling of forward contracts

Authorised dealers were permitted, vide circulars EC.CO.FMD.790/02.03.75/2001-02 dated March 26, 2002 and EC.CO.FMD.2/02.03.75/2002-03 dated July 31, 2002, to allow resident entities to rebook cancelled contracts covering all transactions subject to certain conditions. While detailed instructions were issued for calculating the eligible limit, it was indicated that irrespective of the eligibility, there would be a cap of USD 100 million per financial year for a customer.

It has been decided to withdraw this cap. Accordingly, Authorised dealers are free to offer this facility of rebooking of cancelled contracts to all foreign exchange exposures falling due within one year. However, this facility may be made available only to customers who submit details of exposure to the authorised dealers as per the revised format enclosed.

Forward contracts booked to cover exposures falling due beyond one year and long term foreign currency-rupee swaps, once cancelled, cannot be rebooked. Authorised dealers may continue to offer this facility without any restrictions in respect of export transactions.

(e) Hedging of capital of foreign banks

In terms of our circular No.EC.CO.FMD.6/02.03.75/2002-03 dated November 20, 2002, foreign banks operating in India are permitted to hedge their Tier I capital held in Indian books, subject, inter-alia, to the condition that the hedge transactions are spread over a period of six months.

It has been decided to withdraw this restriction and banks are now free to make their own decision as regards the timing of the hedge transactions. All other conditions remain unchanged.

(f) Forward cover for foreign direct investments

In terms of paragraph 3 of Schedule II to Notification No.FEMA.25/RB-2000 dated May 3, 2002, Reserve Bank may allow a person resident outside India to book forward contract to hedge the investments made in India since January 1, 1993. It has been decided to accord general permission to Authorised dealers to offer such forward contracts to persons resident outside India. Accordingly, Authorised dealers are free to offer forward contracts to persons resident outside India subject to verification of the exposure in India. These forward contracts once cancelled are not eligible to be rebooked.

(Source: A.P.(DIR Series) Circular No.63 dated December 21, 2002)

5.0 SECURITISATION BILL PASSED

After the assent of the President, the Securitisation Bill has now become the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and it seeks to deal with three distinct actions in respect of financial assets of banks and financial institutions in the form of securitisation of financial assets, setting up of asset reconstruction companies and enforcement of security interest.

6.0 NEGOTIABLE INSTRUMENT BILL PASSED

After the assent of the President, the Negotiable Instrument Bill has now become the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, and it seeks to provide stringent punishment for bouncing of cheques, which will be two years besides provision of summary trials by court to hand down speedy, time bound and deterrent punishment to the culprits. The trial in this regard will be on a day to day basis. Offences relating to bouncing of cheques will be compoundable.

7.0 COMPETITION BILL PASSED

The Lok Sabha passed a Competition Bill to check monopolies, create a new framework for competition and a regulatory body to replace the MRTP Commission.

LATEST IN FINANCE

8.0 COMPANIES BILL PASSED

The assent of the President to the Companies (Amendment) Bill 2001, pave the way for the notification which will amend the Companies Act, 1956, to facilitate corporate restructuring, whether through liquidation, merger or amalgamation. The Act creates a revival funds and a National Company Law Tribunal (NCLT), that would replace the functions of the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

Co-op. Bill – The Lok Sabha also passed legislation, Companies (Second Amendment) Bill 2001, which would enable co-operatives to transform themselves into companies and enable them to compete with other enterprises on an equity footing.

9.0 GUIDELINES FOR INTERNAL AUDIT SYSTEM

The Reserve Bank of India has finalised the guidelines for risk-based internal audit systems in banks and asked them to form a task force to prepare a plan to move to the new system and submit an quarterly audit policy implementation report beginning January - March, 2003.

(Source: DBS FID.No. C-11.01.02.00/2002-03 dated December 31, 2002)

10.0 DEFAULTERS RUSH FOR OTS

Pursuant to notices served under Securitisation Ordinance in July 2002, most of the defaulting companies are making beeline to banks and financial institutions for one-time settlement (OTS) of their dues. Some of the companies that have offered an OTS include Parasrampuriah Synthetics, JCT Electronics, Indian Charge Chrome Ltd. and Modern Syntex.

11.0 RBI DIRECTIONS UNDER SECURITISATION ACT

RBI has issued the following draft of the directions under the Securitisation Act:

- Draft of the General Guidelines for Securitisation Companies/ Reconstruction Companies;
- Draft of the directions proposed to be issued to Securitisation Companies/ Reconstruction Companies in the matter of asset reconstruction and matters related thereto;
- Draft of the directions on prudential norms related to Securitisation Companies/ Reconstruction Companies.

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EXIM-FEMA

1.0 FULL CONVERTIBILITY OF DEPOSIT SCHEMES

RBI has issued following clarification in relation to the operational aspects of the deposit schemes:

(i) Renewal of overdue NRNR deposits

As the authorised dealers cannot accept fresh deposits by way of renewal or otherwise under NRNR Scheme with effect from April 1, 2002, overdue NRNR deposits should not be renewed. If the matured and overdue NRNR deposit receipts are presented for renewal after April 1, 2002 the same may be credited to the NRE accounts of the deposit holders on the date of presentation.

(ii) Credit of matured NRNR deposits to NRE Account and thereafter to FCNR(B) Account

The maturity proceeds of NRNR deposits credited to NRE Account can subsequently be transferred to FCNR(B) account in terms of paragraph 4(c) of Schedule 1 to RBI Notification No.FEMA.5/2000-RB dated May 3, 2000.

(iii) Repatriation of maturity proceeds of NRNR Accounts

If the NRNR deposit holder does not hold NRE account, he may be allowed to repatriate the maturity proceeds of the NRNR Deposit outside India.

(iv) Credit of matured NRNR deposits to RFC Account

NRNR deposits maturing on or after April 1, 2002 held by such NRNR deposit holders, who have since become residents, may be credited to their RFC accounts.

(Source : A.P. (DIR Series) Circular No.60 dated Dec 10, 2002)

2.0 FACILITY FOR RESIDENT INDIVIDUALS

It has been decided that Resident Foreign Currency (Domestic) Account may also be credited with/opened out of, foreign exchange earned and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels by resident individuals. Foreign exchange earnings could be through export of goods and/or services, royalty, honorarium, etc.

(Source: A.P.(DIR Series) Circular No.64 dated December 24, 2002)

3.0 "WRITE-OFF" OF UNREALISED EXPORT BILLS

It has been directed by RBI to banks that they should ob document/s evidencing surrender of export incentives availed of before permitting the relevant outstanding bills to be written off. The ADs are also advised to put in a place a system under which their internal inspectors or auditors carry out random sample check/percentage check of outstanding export bills written off.

(Source: A.P.(DIR Series) Circular No.61 dated December 14, 2002)

INSURANCE

1.0 IRDA ISSUES 12 BROKING LICENSES

Insurance Regulatory and Development Authority (IRDA) has finally issued 12 "in-principal" broking licenses. The "in-principal" clearance means that the applicants will have to meet capitalisation and other condition that the insurance watch-dog might have put as a pre-condition for getting their full license.

CAPITAL MARKET

Contd. from page no. 1

NARESH CHANDRA COMMITTEE

highlighted by the Committee. The Committee has, however not clearly addressed the main issue impacting auditors' independence. The appointment, remuneration as well as removal of auditors is being decided by the majority shareholders on the basis of recommendation of the management and the board of directors. This do not provide adequate freedom and independence of the auditors, even if the appointment of auditors is continued to be made by the shareholders. The following important suggestions which would require consideration by the government and which are not addressed by the Naresh Chandra Committee are:

- 1) The shareholders who are in minority and those who are not represented in the management should have an important role in appointment and removal of auditors.
- 2) There should be a mandatory appointed of joint auditors in companies in which public has a substantial interest, providing for rotation of audit firms. At least one of the joint auditors could be appointed by the regulatory authorities and/or by the minority shareholders.
- 3) A minimum scale of remuneration for the auditors is required to be fixed by a "Schedule" to the Companies Act, which should be based on turnover or capital employed or similar other criteria.
- 4) The removal of auditors by the management should be made more difficult and the reasons expressed for removal or retirement of auditors should be subjected to scrutiny by regulatory agency.
- 5) The auditors' powers to seek information are to be further strengthened to enable auditors to cross-verify various facts presented before them by the management.

The proposals of Government of India intervening into the disciplinary framework of the Institute of Chartered Accountants of India is completely ill founded. The delay in the disciplinary process could be addressed by legislative support to the authority has set a glorious example as one of the best regulatory authority in the country.

The Joint Parliamentary Committee on security search has also supported the request of the Institute of Chartered Accountants of India to immediately sanction necessary legislative changes so that disciplinary process against erring auditors could be expedited and made more effective.

1.0 TRADING OF GOVERNMENT SECURITIES ON THE STOCK EXCHANGES

With a view to encouraging wider participation of all classes of investors, including retail, across the country in government securities, the Government, the Reserve Bank of India (RBI) and SEBI propose to introduce trading in government securities through a nation wide, anonymous, order driven, screen based trading system of the stock exchanges, in the same manner in which trading takes place in equities. This facility will be in addition to the present system of dealing in government securities through the Negotiated Dealing System of the RBI.

2.0 SEBI ANNOUNCES RISK CONTAINMENT MEASURES, CRITERIA FOR STOCK OPTIONS

In a significant move that will pave the way for the expansion of the derivatives market, SEBI released risk containment measures and the broad eligibility criteria of stocks on which stock options and single stock futures could be introduced.

(Source: SMDRP/DC/CIR-13/02 dated December 18, 2002)

3.0 T+2 SETTLEMENTS BY APRIL, 2003

SEBI has started steps to introduce T+2 rolling settlement in the stock markets by April 1 '03. SEBI has worked out a schedule for moving into T+2 settlement cycle, which seeks to settle trade on the third day of transaction.

4.0 ONLINE INTER-DEPOSITORY TRANSFERS

Online transfer of inter depository instructions has commenced w.e.f December 14, 2002. In the online inter depository transfer (OLIDT) module, Inter Depository Transfer instructions for the day will be exchanged online between the two depositories. Thus, the instructions executed by Depository Participants (DPs) may get settled at shorter intervals.

5.0 DISCLOSURES UNDER INSIDER TRADING NORMS TIGHTENED

Tightened disclosure norms relating to the holdings of the officers and directors with regard to insider trading. According to the amendments, an officer or a director of a Company will have to disclose any change in his holdings exceeding Rs.5 lakh, 25,000 shares, or one percent of the total share holding. Previously, the limits were set at 5000 shares and a 2 per cent shareholding.

SEBI, however, relaxed the applicability of Regulation 3A, which prohibits a company from dealing in the securities of another company or associate with it while it is in the possession of the other's price-sensitive information. SEBI has thus explicitly announced the conditions in which the insider trading norms will not apply.

The revised norms allow a company to defend itself by saying the decision to enter into a disputed transaction or agreement was taken on its behalf by a person or persons other than the officer or employee in possession of the price-sensitive information.

Publications

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All India Chartered Accountants' Society

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NBFC NEWS

1.0 AMENDMENT TO NBFC DIRECTIONS

The Reserve Bank of India on being satisfied that it is necessary so to do, in exercise of its powers conferred under Section 45 NC of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, in supersession of the Notification No. DFC (COC) No.99 ED(JRP) / 97 dated March 6, 1997 hereby directs that:

(1) The provisions of Section 45-IA, 45-IB, 45-IC, 45MB and 45MC of the Reserve Bank of India Act, 1934 (2 of 1934) and provisions of Non-Banking Financial Companies Acceptance of Public Deposit (Reserve Bank) Directions contained in Notification No. DFC.118 / DG(SPT)-98, the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 contained in Notification No. DFC. 119/ DG(SPT)-98 dated January 31, 1998 **shall not apply to any non-banking financial company not holding or accepting public deposit** as defined in paragraph 2(1)(xii) of the Notification No. DFC.118/DG(SPT)-98 dated January 31, 1998, and -

- doing the business of insurance, holding a valid certificate of registration issued under Section 3 of the Insurance Act, 1938 (IV of 1938);
- being a stock exchange, recognised under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); and
- doing the business of a stock-broker or sub-broker holding a valid certificate of registration obtained under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)

The provisions of Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 (2 of 1934) shall not apply (including non-banking financial company):

- Companies registered under Section 620A of the Companies Act, 1956 (1 of 1956), known as Nidhi Companies; and
- doing the business of chits, as defined in clause (b) of Section 2 of the Chit Funds Act, 1982 (No. 40 of 1982).

Source: Notification No. 164 / CGM(CSM) - 2003 dated January 8, 2003

If undelivered, please return to:

- All India Chartered Accountants' Society
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AUDIT

1.0 SECRETARIAL AUDIT

SEBI has instructed issuers to subject themselves to a secretarial audit to be undertaken by a qualified Chartered Accountant or a Company Secretary. The Audit shall cover the following aspects and certify among others:

- that the total of the shares held in NSDL, CDSL and in the physical form tally with the issued/paid-up capital.
- that the Register of Members is updated.
- that the dematerialisation requests have been confirmed within 21 days.
- the details of changes in share capital during the quarter.

Accordingly, issuers will be required to submit a report on the audit conducted on a quarterly basis to the stock exchanges where they are listed, w.e.f. December 31, 2002.

(Source: D&CC/FITTC/CIR-16/2002 dated December 31, 2002)

CFO
WORLD

Where Ideas Converge

MEETING OF CFO WORLD

We are pleased to inform you that the next meeting of CFO World, a forum promoted by All India Chartered Accountants' Society and The Chartered Accountant World is scheduled as per the following programme:

Date :

Saturday, January 25, 2003

Time :

8.45 a.m. to 11.30 a.m.

Venue :

The Oberoi, Dr. Zakir Hussain Marg, New Delhi-110 003

PROGRAMME

Breakfast and Informal Interaction : 8.45 a.m. to 9.15 a.m.

"DNA OF A WINNING ORGANISATION"

SPEAKERS :

**Mr. Sudershan Banerjee, Managing Director,
IXL Enterprises (Dalmia Group)**

The programme is open for members of **CFO WORLD**.

For membership details please contact Ms. Sapna Jain

Tel.: 2622 3712, 2622 8410; Fax: 91-11-2622 3014;

E-mail: cfoworld@vsnl.net

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