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## NEW RBI EMPANELMENT NORMS - SOME ISSUES



Vinod Jain\*

The Statutory Bank Branch audit has been an important source of revenue for smaller firms and the firms of chartered accountants in smaller towns.

The profession of Chartered Accountants in India primarily consists of sole proprietary and smaller CA firms, as would be clear from the following data:

No. of Partners	No. of Firms	Percentage
1	34524	73.9
2 - 3	9647	20.6
4 - 10	2466	5.3
10 - 20	95	0.2
	<b>46732</b>	<b>100%</b>

The recent empanelment norms available on [www.icai.org](http://www.icai.org) issued by Reserve Bank of India effective 1st September, 2004 for appointment of statutory auditors of Public Sector Banks would result into marginalizing a number of chartered accountant firms. RBI for the purpose of allocation of audits have categorized CA firms into 4 categories besides a separate category for Central Statutory Auditors which include Part C Auditors.

- 1) The sole proprietorship firms have not been included even in the last category i.e. category 4 except when it employ at least one chartered accountant. The seniority of such firms in such cases, will be reduced by 3 years. Although, the Hon'ble Supreme Court of India has directed CAG to empanel sole proprietorship firms for audit of PSUs, while observing that the size of the firms has no direct relevance to the capability of a professional.
- 2) A minimum 3 years standing of audit firm has been introduced even for category 4.

- 3) The category 3 and category 4 will be entitled for allotment of audit of branches with an outstanding advance of less than Rs.150 lacs, with audit fee of Rs.11,250 per branch.
- 4) In respect of Central Statutory Auditors a minimum continuous association of two partners one with at least 15 years and the other with at least 10 years, two partners with a minimum of 5 years has been made mandatory.
- 5) The firms (and not partners) are required to have a minimum 15 years of statutory bank audit experience.
- 6) In respect of Central Statutory Auditors, at least one of the partners of the firm or its paid Chartered Accountant must possess CISA/ISA or any other equivalent qualification. There is a strong belief that in respect of bank audit the prescription of this qualification is completely unwarranted. The ISA qualification would be relevant only for specialized Information System Audit. All the banks would be required to get their information system audit done separately by a specialized firm of Information System Auditors. This area is not within the scope of statutory audit.
- 7) The Reserve Bank of India is also withdrawing the system of giving preference to experienced unallotted audit firms carried over from the previous year.

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# EXIM-FEMA

## 1.0 LIBERALISED REMITTANCES FACILITIES TO NRIs/PIOs AND FOREIGN NATIONALS

RBI vide its various circulars/notifications provided liberalised remittances facilities to NRIs / PIOs and Foreign Nationals. The gist on various aspects of the facility, eligibility criteria, purpose and the ceiling for repatriation are given herein below:

### Facilities for remittance of assets held in India by Non-Residents

#### (a) Who is eligible?

The repatriation facility is available to the following category of persons:

- (i) Foreign national [other than a citizen of Nepal or Bhutan or a Person of Indian Origin (PIO)] who:
  - has retired from an employment in India or
  - has inherited the assets from a person who was a resident in India or
  - A widow resident outside India and has inherited assets of her deceased husband who was an Indian Citizen, resident in India.
- (ii) NRI/PIO who acquired the assets in question, out of rupee resources when he was in India or by way of legacy/inheritance from a person who was a resident in India.

#### (b) Funds/assets eligible for repatriation

- sale proceeds of immovable property,
- assets acquired by way of Inheritance/legacy
- a deposit with a bank or a firm or a company,
- provident fund balance or superannuation benefits,
- amount of claim or maturity proceeds of insurance policy,
- sale proceeds of shares, securities,
- any other asset held in India, in accordance with the provisions of the Act or Rules or Regulations made thereunder (as defined at Regulation 2(v) of Notification No.FEMA 13/2000-RB dated May 3, 2000)

#### (c) Specific conditions relating to repatriation of sale proceeds of immovable property.

- Repatriation of sale proceeds of immovable property, acquired out of Rupee funds is available subject to the condition that the property should have been held for a minimum period of 10 years. If such a property acquired out of Rupee funds is sold after being held for less than 10 years, remittance can be made, if the sale proceeds have been held by the NRI / PIO for the balance period in NRO Account (Savings/ Term Deposits) or in any other eligible security, provided such investment is traced to the sale proceeds of the immovable property.
- There is no lock-in-period in respect of immovable property acquired by way of Inheritance/legacy and Foreign currency funds (through inward remittance or by debit to FCNR/NRE accounts..

#### (d) Purpose of remittance

The liberalised remittance facility is available for any bonafide purpose.

#### (e) General conditions to be satisfied for repatriation of assets.

- Documentary evidence in support of the acquisition of the funds/assets proposed to be remitted.
- Undertaking and Certification relating to tax compliance.

#### (f) Remittance Procedure

- In case, the remittance is to be made in more than one instalment, the remittances of all instalments should be remitted through the same authorised dealer.
- It is also clarified that the remittance facility is available even if the NRI/PIO/Foreign National is not maintaining any NRO account. However, the remittance should be routed through banking channel only, subject to tax compliance.

(Source : AP/DIR Series Circular No. 62 dated January 31, 2004)

## 2.0 LIBERALISED REMITTANCE SCHEME OF USD 25,000 FOR RESIDENT INDIVIDUALS

It has been decided that resident individuals may freely remit upto USD 25,000 per calendar year for any purpose for which a Scheme has been formulated as detailed below:

#### (a) Eligibility – All resident individuals are eligible to avail of the facility under the scheme. The facility will not be available to corporates, partnership firms, HUF, Trusts, etc.

#### (b) Purpose

- This facility is available for making remittance up to USD 25,000 per calendar year for any current or capital account transactions or a combination of both.
- Under this facility, resident individuals will be free to acquire and hold immovable property or shares or any other asset outside India without prior approval of the RBI.
- Individuals will also be able to open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the scheme without prior approval of Reserve Bank.
- The foreign currency account may be used for putting through all transactions connected with or arising from remittances eligible under this scheme.
- It is further clarified that the facility under the scheme is in addition to those already available for private travel, business travel, gift remittances, donations, studies, medical treatment etc as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- The remittance facility under the scheme is not available for any purpose specifically prohibited under the regulations viz remittance for purchase of lottery/sweep stakes, ticket proscribed magazines, remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan, other countries identified by the Financial Action Task Force etc., as prescribed.

(Source : AP/DIR Series Circular No. 64 dated February 4, 2004)



## EXIM-FEMA

### 3.0 EXIM POLICY 2002-07 - HIGHLIGHTS

In a major fine tuning exercise of the 2002-07 Export-Import (EXIM) policy, the Government announced various amendments. The highlights of the same are as follows:

- Ceiling on export of Gifts abroad raised from Rs One Lakh to Rs Five Lakh per annum.
- Advance Licence for free of cost material re-introduced.
- Facility of clubbing of EPCG licences introduced for discharge of export obligation.
- Deemed export facility extended for items having Zero% basic Customs duty.
- Imports allowed freely for Gold and Silver with no canalising agency.
- Gold Card Scheme for credit worthy exporters with good track record for easy availability of export finance.
- National Export Insurance Account for ECGC to underwrite high value projects being implemented abroad.

### 4.0 EXIT NORMS FOR EOUs RELAXED

Export Oriented Units (EOUs), units operating under the Electronic Hardware Technology Park (EHTP) and Software Technology Park (STPs) would now be allowed to exit the schemes even if show cause notices or demands from the Revenue Department are pending against them.

As a safeguard measure CBEC has now suggested that the unit could be asked to give an undertaking on stamp paper that it would not dispose of its land, building, capital goods etc. till such time that the show-cause notice is adjudicated and the amount confirmed if any, paid. This undertaking could be backed by a bank guarantee of 10% of the amount involved in the show-cause notice.

### 5.0 EXEMPTION FROM DECLARATION OF EXPORT OF GOODS & SOFTWARE

It has been decided to waive the submission of Declaration in Form GR/SDF/PP/SOFTEX in respect of export of goods and software of value not exceeding USD 25,000 or its equivalent.

(Source : AP/DIR Series/Circular no. 61 dated January 31, 2004)

### 6.0 CAUTION LIST EXPORTERS - EXPORT OF GOODS AND SERVICES - LIBERALISATION

It has now been decided that any declaration to be furnished to the specified authority by the caution listed exporters should be submitted to the Authorised Dealer for prior approval. Accordingly, GR / PP / SDF and Softex forms of exporters who have been placed on the caution-list may be approved by Authorised Dealers, if the exporters concerned produce evidence of having received an advance payment or a valid irrevocable letter of credit in their favour covering the full value of the proposed exports. Such approval may be given even in cases where usance bills are to be drawn for the shipment, provided the relative letter of credit covers the full export value and also permits such drawings and the usance bills mature for payment within six months from the date of shipment.

(Source: A.P.(DIR Series) Circular No.68 dated February 11, 2004)

## SERVICE TAX

### 1.0 EXEMPTION FROM SERVICE TAX

Computer Training Institutes providing commercial coaching or training relating to computer software or hardware were exempted from the payment of service tax upto 29th February, 2004. Now, this exemption has been extended upto 30th June, 2004 vide Notification No. 1/2004-ST, dated 4th February, 2004.

*Contd. from page no. 1*

### NEW RBI EMPANELMENT NORMS ....

- 8) No credit is proposed to be given for experience in industry or in employment. The Chartered Accountant employed in industry or with a CA firm should be given equal weightage of their earlier experience.

The new empanelment criteria will marginalize smaller CA firms and would take away important source of professional assignment from 85% of the existing CA Firms. The criteria on the one hand insist on a minimum continuous association of the partners with the firm and also insist on exclusive association with a firm of Chartered Accountant. These criterias will dampen the speed of merger, demerger, reorganization and networking of CA firms and will not be in line with the resolutions of the Council passed in October, 2003.

With other similar developments taking place, the profession of Chartered Accountants is at a crossroad. There are number of government corporations and departments inviting CA firms to undertake large assignments but simultaneously requiring them to be of very large size themselves. For example, a NHAI advertisement for appointment of internal auditors require that the eligible firms should have at least minimum 50 CA employees, 15 partners, 10 crore turnover and office at least in 6 metros. This criteria can be fulfilled only by two or three accounting firms, thereby disintitling very capable small and medium size firms which could have implemented this assignment equally effectively.

The manner in which the winds are blowing the smaller and medium size firms are not being equitably treated. The Institute of Chartered Accountants of India should take up with all such authorities vigorously and effectively so as to provide necessary relief to small and medium size firms. The income tax provisions are also required to be modified to remove hardship of higher taxes on firms with larger number of partners. It is suggested that professional accounting firms should be taxed on the lines of corporate taxation. Also, it may be necessary to immediately relax the rules relating to merger, demerger, reconstitution and networking of firms. The introduction of limited liability partnership and corporate form of practice should also be immediately brought in to enable Indian Accounting Firms to face the onslaught of competition and also provide them capability to provide service to larger clients spread geographically within India and outside.



# TAXATION

## 1.0 TAXATION OF BPO UNITS IN INDIA

The Central Board of Direct Taxes (CBDT) has viewed that in a case where a non-resident, carrying on manufacture and sale of goods or merchandise or provision of services outside India, outsources some of its incidental activities viz. conclusion of contracts and procurement of orders (which enable the core activities to be carried on abroad) to an IT-enabled entity in India, which constitutes a permanent establishment of the non-resident principal, then the insignificant profit which is difficult to determine and attributable to the conclusion of such contracts or procurement of such orders can be considered to be embedded in the income of the permanent establishment taxable in India, if the price charged in respect of the above services by the permanent establishment is an arm's length/ fair market price.

In such a situation, therefore, no income shall separately accrue or arise or be deemed to accrue or arise to the non-resident principal in India.

(Source : Circular No. 1/2004 Dated 02.01.2004)

## 2.0 ISSUE OF APPELLATE ORDER WITHIN 15 DAYS OF LAST HEARING

With a view to avoid delay in passing/issue of the appellate orders by the Commissioner of Income Tax (Appeals) which causes hardship to the assessee, the Central Board of Direct Taxes (CBDT) has intended that appellate orders by Commissioner of Income Tax (Appeals) should be issued within 15 days of the last hearing.

Any lapse on this account shall be viewed adversely. The same is fully applicable to orders passed by the CIT (Administration)/CCIT as regards matters within their purview under varied Sections of Income Tax Act such as Sections 80G, 264, 263 or Orders under Rule 86 of Second Schedule and under other allied direct taxes.

(Source : Instruction No. 20/2003 Dated 23.12.2003)

## 3.0 SIMPLIFIED PROCEDURES UNDER DIRECT TAXES TO BE IMPLEMENTED W.E.F. APRIL 1, 2004

Government has simplified the procedures under Direct Taxes which will be implemented from April 1, 2004. The main relaxations are as follows:-

- No filing of returns for employees having salary income upto Rs. 1,50,000;
- Pensioners to be exempt from the purview of one-by-six scheme;
- For perquisite valuation, rates of interest for housing loans etc., to be reduced to SBI lending rate, to bring them in line with the prevailing market rates;
- there will be just one certificate from the Assessing Officer for no tax deduction at source (TDS) in case of tax exempt entities like trusts etc;
- Infrastructure projects to be granted one time approval for purpose of exemption under section 10(23G).

(Source : Circular dated January 8, 2004)

## 4.0 PRIORITY HEARING IN CASES INVOLVING DISPUTED DEMAND OF RS. 10 CRORES & ABOVE

The Central Board of Direct Taxes (CBDT) has cleared that the concerned Chief Commissioners of Income Tax/Director Generals of Income Tax(Investigation) should invariably request the ITAT for priority hearing of appeals wherever the demand in dispute is Rs. 10 crores or more, for early resolution of the dispute and also for recovery of the disputed demand.

(Source: Instruction No. 17/2003 Dated 23.12.2003)

## 5.0 DATE OF FILING OF TDS RETURNS ON COMPUTER MEDIA EXTENDED

The Central Board of Direct Taxes (CBDT) has extended the last date of filing of TDS returns on computer media to 31st March, 2004 in respect of previous year 2002-2003.

## 6.0 CAs ALLOWED TO ISSUE PAN

Expanding the outsourcing net for the filing of income tax returns and issuing of Permanent Account Number (PAN), the Central Board of Direct Taxes has decided to permit tax professionals like Chartered Accountants and tax advocates to act as e-intermediaries between the revenue departments and the assessee.

## 7.0 CAs CAN NOW E-FILE TAX RETURNS

The Central Board of Direct Taxes has stated that the finance ministry will allow Chartered Accountants, tax advocates and Income Tax Practitioners to file Income Tax returns in electronic mode.

## 8.0 CORPORATES CAN FILE TDS RETURNS ONLINE

It has now been possible to file an e-TDS return through the Tax Information Network (TIN). The network was recently officially launched by Finance minister.

## 9.0 INCOME TAX JUDGEMENTS

### 9.1 Supreme Court bars Settlement Commission to waive interest

Supreme Court in the matter of *CIT vs. Sant Ram Mangat Ram Jewellers* has held that Settlement Commission has no power to waive or restrict interest, which is mandatorily leviable under the law. [264 ITR 564]

### 9.2 Compensation for mental agony - Capital Receipt

Hon'ble Income Tax Appellate Tribunal, Mumbai Bench 'A' in the matter of *Dhruv N Shah vs. Dy Commissioner of Income Tax* has decided that any amount received by the assessee as a compensation for suffering mental tension and agony for loss of good bargain, steep rise in the prices of real estate is a capital receipt not liable to tax. [88 ITD 118]

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# CAPITAL MARKET

## 1.0 DISCLOSURE OF TRADE DETAILS OF BULK DEALS

With a view to imparting transparency in bulk deals so as to prevent rumours/speculation about such deals causing volatility in the scrip price, it has been decided to bring about greater disclosure of such deals as mentioned below:-

- The disclosure shall be made with respect to all transactions in a scrip where total quantity of shares bought/sold is more than 0.5% of the number of equity shares of the company listed on the stock exchange.
- The brokers shall disclose to the stock exchange the name of the scrip, name of the client, quantity of shares bought/sold and the traded price.
- The disclosure shall be made by the brokers immediately upon execution of the trade.
- The Stock exchanges shall disseminate the aforesaid information on the same day after market hours to the general public.

(Source : SEBI/MRD/SE/Cir-7 /2004 dated January 14, 2004)

## 2.0 TAKEOVER CODE - AMENDMENTS

SEBI has decided to effect the following amendments in its takeover code:

- Financial Institutions, Banks, FIIs, and mutual funds kept out of definition of promoters.
- Promoters can use the creeping acquisition route to raise their stakes only upto 51%; Required to make open offers if shareholding increases beyond 51%.
- Even open offers have to comply with 25% public shareholding norm.
- Acquirers in open offers that violate this norm will have to make good the deficit if they wish to keep the company listed.
- Acquirer will have to either issue new shares or sell from their existing shareholding to maintain public shareholding.
- Companies that do not wish to comply with revised norms will have to delist.

## 3.0 AMENDMENTS UNDER FCCB GUIDELINES

The Government recently announced revisions in the operative guidelines of foreign currency convertible bonds (FCCBs). Now FCCBs exceeding US\$ 50 million will be permitted only for financing the import of equipment and for the foreign exchange needs of infrastructure projects.

All FCCBs are subject to maximum of 150 points above the currency linked to LIBOR for normal projects, 250 points for infrastructure projects and 300 points for long term projects.

## 4.0 SEBI TIGHTENS STOCK BROKERS' ANNUAL AUDIT NORMS

In a concept paper prepared by SEBI, it has been provided that the annual audit report should contain a certification as to whether the books of accounts have been maintained properly by the stock brokers relating to financials and member dealings with clients and major deficiencies and non conformance with regulatory requirements.

## 5.0 T+2 ROLLING SETTLEMENT - MARGIN SYSTEM

The SEBI has advised stock exchanges to comply with the following provisions in relation to **VaR based margin** :

- The VaR based margin shall be collected on an upfront basis at the time of trade (instead of T+1 day).
- The VaR based margin shall be collected /adjusted against the additional capital /collateral deposited by the member in the form as specified in circular No. SEBI/SMD/SE/Cir-22/2003/11/06 dated June 11, 2003.
- The margin so collected may be released along with the pay-in.

(Source : SEBI /MRD/SE/AT/47/03 dated December 30, 2003)

# INSURANCE

## 1.0 NO PENSION PLAN UNDER EQUITY SCHEME

The IRDA has asked Insurance Companies not to offer pension schemes where the entire fund is invested in equities, even if it is on a unit linked platform. The regulator has also asked two companies - HDFC Standard Life and Birla Sun Life Insurance - to withdraw their group gratuity scheme which offer a 100% equity investment option.

## 2.0 INSURERS CAN INVEST IN DEBT, INCOME SCHEMES

IRDA has allowed insurers to invest in debt and income schemes of mutual funds, subject to certain restrictions. In its latest investment guidelines, the regulator has also specified the kind of schemes an insurance company can invest in. The schemes include government security plans, debt / income plans, serial plans and liquid funds.

## 3.0 ENTRY OF NBFCs INTO INSURANCE BUSINESS

It has now been decided that NBFCs registered with Reserve Bank of India may take up insurance agency business on fee basis and without risk participation, without the approval of Reserve Bank of India subject to the following conditions:

- (i) The NBFCs should obtain requisite permission from IRDA and comply with the IRDA regulations for acting as 'composite corporate agent' with insurance companies.
- (ii) The NBFCs should not adopt any restrictive practice of forcing its customers to go in only for a particular insurance company in respect of assets financed by the NBFC. The customers should be allowed to exercise their own choice.
- (iii) As the participation by a NBFC's customer in insurance products is purely on a voluntary basis, it should be stated in all publicity material distributed by the NBFC in a prominent way. There should be no 'linkage' either direct or indirect between the provision of financial services offered by the NBFC to its customers and use of the insurance products.
- (iv) The premium should be paid by the insured directly to the insurance company without routing through the NBFC.
- (v) The risks, if any, involved in insurance agency should not get transferred to the business of the NBFC.

(Source: DNBS (PD) C.C. No. 35 / 10.24 / 2003-04 dated February 10, 2004)



## LATEST IN FINANCE

### 1.0 INTERIM BUDGET - 2003- 2004 - HIGHLIGHTS

The salient features of Interim Budget proposals, 2004 announced by Finance Minister are as follows:

#### DIRECT TAXES

- The regime of listed equities acquired on or after March 1, 2003 being exempt from long term capital gains tax should be extended for a further period of three years.
- Capital gains on acquisition of agricultural land should be exempt from tax.
- If outsourced services are ancillary and auxiliary in nature and adequate remuneration is paid to the Indian call center, then there shall be no tax on such foreign company as has outsourced its activity to India.

#### STAMP DUTY REFORM

- Decision to reduce stamp duty on all such instruments where the authority to fix rates is of the Central Government.
- Existing stamp duty structure being reduced by 50% on all Central Government stamp papers.

#### INDIRECT TAXES

**Baggage Rules** - Free baggage allowance raised from Rs. 12,000 to Rs. 25,000. Customs Duty on such baggage also reduced from 50 percent to 40 percent with immediate effect.

**Service Tax** - A single registration and single return for assesses providing more than one taxable services.

### 2.0 ESTABLISHMENT OF BRANCH OFFICES / UNITS IN SPECIAL ECONOMIC ZONES

It has been decided to grant General Permission to foreign companies to establish Branch Offices / Units in Special Economic Zones to undertake manufacturing and service activities, subject to the following conditions:

- such units are functioning in those sectors where 100% FDI is permitted,
- such units comply with part XI of the Companies Act (Section 592 to 602),
- such units function on a stand-alone basis,
- in the event of winding-up of business and for remittance of winding-up proceeds, the branch/unit shall approach an Authorised Dealer with the requisite documents prescribed under Regulation 6 (1) (iii) of Notification No. FEMA 13/ 2000-RB dated 3rd May 2000.

(Source: A.P./DIR Series/Circular No. 58 dated 16.01.2004)

### 3.0 MARGIN FOR ADVANCES AGAINST SHARES

The Reserve Bank of India has asked banks to raise the margin on all advances against shares/financing of Initial Public Offerings (IPOs) and issue of guarantees to 50 per cent with immediate effect. It has also asked banks to raise the minimum cash margin in respect of guarantees issued by banks for capital market operations to 25 per cent (within the margin of 50 per cent).

(Source : Press Release No. 2003-2004/820 dated 03.01.2004)

### 4.0 OVERSEAS INVESTMENT BY INDIAN COMPANIES/ PARTNERSHIP FIRMS IN AGRICULTURE SECTOR

It has been decided to allow resident corporates and registered partnership firms to invest upto 100 per cent of their net worth in overseas JV/WOS without any separate monetary ceiling, subject to reporting in form ODR.

Also, in order to enable the Indian companies to take advantage of global opportunities and also to acquire technological and other skills for adoption in India, it has now been decided to allow resident corporates and registered partnership firms to undertake agricultural activities overseas including purchase of land incidental to this activity either directly or through their overseas offices (i.e. other than through JV/WOS) within the overall limit available for investment overseas under the Automatic Route viz. upto 100% of their net worth, subject to reporting in form ODR.

(Source A.P.(DIR Series) Circular No. 57 dated 13.01.2004)

### 5.0 MASTER CIRCULAR

Reserve Bank of India has recently issued Master Circular on following topics, the text of the circulars are available on RBI website ([www.rbi.org.in](http://www.rbi.org.in)):

- Housing Finance
- Guarantees, Co-acceptances & letters of credit
- Finance for Housing Scheme

### 6.0 FDI - SECTORAL GUIDELINES

With a view to liberalizing the Foreign Direct Investment (FDI) regime, Government of India have effected the following changes in the FDI policy:

- FDI upto 100% is permitted in printing scientific and technical magazines, periodicals and journals. FDI in this sector would be permissible with prior Government approval.
- FDI upto 100% is permitted on the automatic route on petroleum product marketing.
- FDI upto 100% is permitted on the automatic route in oil exploration in both small and medium sized fields subject to and under the policy of the Government.
- FDI upto 100% is permitted on the automatic route for petroleum product pipelines subject to and under the Government policy and regulations thereof.
- FDI upto 100% is permitted for Natural Gas/LNG pipelines with prior Government approval.

(Source: 9/1/2002-FC dated 28.01.2004 / Press Note No.1 / 2004 Series)

### 7.0 FIPB TO BE SCRAPPED

It has been recently proposed by Finance Minister to wind up the Foreign Investment Promotion Board (FIPB), which is housed in Finance Ministry at present.

### 8.0 INDIA'S FOREIGN CURRENCY RATINGS UPGRADED

The two International credit rating agencies, Moody's and Fitch has enhanced the 'feel good factor' prevailing in the Indian economy, by upgrading the country's rating in two significant rating categories. It has been believed that it would bring down the borrowing costs of companies in India.



## LATEST IN FINANCE

### 9.0 GUIDELINES FOR ACKNOWLEDGEMENT OF TRANSFER/ALLOTMENT OF SHARES IN PRIVATE SECTOR BANKS

In order to streamline the procedures for obtaining acknowledgement by removing uncertainties for investors including foreign investors (FDI, FII and NRI) in regard to the allotment or transfer of shares and indicate in a transparent manner in private sector banks.

Acknowledgement from RBI for acquisition/transfer of shares will be required for all cases of acquisition of shares which will take the aggregate holding of an individual or group to equivalent of 5 percent or more of the paid-up capital of the bank. RBI while granting acknowledgement may require such acknowledgement to be obtained for subsequent acquisition at any higher threshold as may be specified.

In deciding whether or not to grant acknowledgement, RBI may take into account all matters that it considers relevant to the application, including ensuring that shareholders whose aggregate holdings are above specified thresholds meet the fitness and propriety tests. The application of such tests is a common regulatory mechanism adopted internationally to ensure that the banks are operated in a sound and prudent manner. In this context, the RBI may call for additional information and documents including shareholder agreements while considering the requests for grant of acknowledgement.

In determining whether the applicant (including all entities connected with the applicant) is fit and proper to hold the position of a shareholder, RBI may take into account all relevant factors, as appropriate, including, but not limited to:

- The applicant's integrity, reputation and track record in financial matters and compliance with tax laws.
- Whether the applicant has been the subject of any proceedings of a serious disciplinary or criminal nature, or has been notified of any such impending proceedings or of any investigation which may lead to such proceedings.
- Whether the applicant has a record or evidence of previous business conduct and activities where the applicant has been convicted for an offence under any legislation designed to protect members of the public from financial loss due to dishonesty, incompetence or malpractice.
- Whether the applicant has achieved a satisfactory outcome as a result of financial vetting. This will include any serious financial misconduct, bad loans or whether the applicant was judged to be bankrupt.
- The source of funds for the acquisition.
- Where the applicant is a body corporate, its track record of reputation for operating in a manner that is consistent with the standards of good corporate governance, financial strength and integrity in addition to the assessment of individuals and other entities associated with the body corporate as enumerated above.

(Source : DBOD.No.PSBS.BC.64/16.13.100/2003-04 dated 03.02.2004)

### 10.0 FINANCE AGAINST SHARES AND DEBENTURES BY PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBs)

UCBs are permitted to grant loans only to individuals against primary / collateral security of shares / debentures upto a limit of Rs. 5 lakhs if the security is in physical form and upto Rs. 10 lakh, if the security is in demat form. Further, it was prescribed that the aggregate of all such loans should be within the overall ceiling of 20 per cent of the owned funds of the bank and that a margin of 40 percent should be maintained on all such loans.

It has now been decided to raise the above said margin on all advances against shares to 50% with immediate effect with no change in the quantum of loan that can be granted. The margin of 50% will apply to all fresh advances against shares / debentures. The existing advances issued may continue at the earlier margin until they come up for renewal.

(Source : UBD.NO. DS. PCB CIR 29 / 13.05.00/2003-04 dated 05.01.2004)

### 11.0 ECB - REVISED GUIDELINES

The Reserve Bank of India has recently announced the revised guidelines in relation to External Commercial Borrowings (ECB). The highlights of the same are as follows:

#### (A) Automatic Route

- The automatic route has been considerably liberalized for corporates, other than financial intermediaries.
- All loans for investment in industrial, infrastructure sector and for acquisition of shares under the Government's disinvestments programme of PSU shares up to US \$ 500 million having minimum average maturity of 5 years are covered under the automatic route. In other words, such loans do not require prior approval of either Reserve Bank of India or Government of India.
- Within this category, loans up to US \$ 20 million with minimum average maturity of 3 years are also covered.

#### (B) Approval Route

Under the Approval Route, among the categories of ECB covered are :

- Financial institutions dealing exclusively with infrastructure of export finance;
- Banks and financial institutions which had participated in the textile or steel sector restructuring package approved by the Government and based on assessment of prudential norms by RBI, and
- Cases falling outside the purview of the automatic route.

#### (C) All in cost ceilings

The all-in-cost-ceilings have been fixed at 200 basis points and 350 basis points over six months LIBOR for ECB of minimum average maturity of 3-5 years and more than 5 years respectively.

#### (D) Reporting arrangements

The borrower is required to comply with the reporting arrangements. The primary responsibility to ensure that ECB raised/ utilized are in conformity with the ECB Reserve Bank, is that of the concerned borrower.

(Source : RBI/2004/34/AP/DIR Series/Circular No. 60 dated January 31, 2004)



## EXCISE

### 1.0 CLARIFICATIONS ON THE TERM "SUBSTANTIAL EXPANSION" IN THE AREA BASED EXEMPTIONS

With a view to ensure smooth implementation of the exemption schemes, following guidelines are circulated to explain the scope of "substantial expansion" so far as it relates to the applicability of various notifications issued on the basis of area based exemptions:

- Increase in installed capacity of an existing unit by not less than 25% should be the result of installation of additional plant and machinery. Any increase in the installed capacity by means other than installation of additional plant and machinery would not qualify for the benefit of exemption under "substantial expansion".
- As substantial expansion is defined in terms of increase in installed capacity by 25% or more, value of investment in plant and machinery is not the criteria to define substantial expansion. So long as additional installation of plant and machinery results into increase in installed capacity by not less than 25% quantum or value of investment in plant and machinery is not very material in deciding the criteria of substantial expansion.
- There is no bar on use of second hand machinery for undertaking substantial expansion so long as it enhances the existing installed capacity by not less than 25%. What is relevant is the increase in installed capacity by not less than 25% by way of additional installation of plant and machinery.
- The term substantial expansion is not defined in terms of original or depreciated value of plant and machinery. The only criterion to be satisfied is accretion in installed capacity by at least 25% with additional plant and machinery.
- Additional investment in plant and machinery for modernization or for improving the quality of existing products, unless it leads to increase in installed capacity by 25% or more, would not tantamount to substantial expansion.

(Source : Circular No. 772/5 /2004-CX dated Jan 21, 2004)

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