

# The Chartered Accountant World



ESTD. - 1989

A JOURNAL OF  
ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY

VOLUME XV

No. 1

January, 2004

Editorial Advisory Board

Mr. Vinod Jain, FCA, President

Members — Mr. Sunil Khemka FCA, Mr. Vinod Rustagi FCA, Mr. Anil Sharma FCA,  
Mr. Vijay Gupta FCA, Mr. Naveen Jain FCA and Mr. Shiv Mittal FCA

Annual Subscription for C.A.'s Rs. 150/- Single Copy Rs. 15.00  
Annual Subscription for Students Rs. 100/- Single Copy Rs. 10.00  
Annual Subscription for Others Rs. 200/- Single Copy Rs. 20.00

## AUTONOMY OF CHARTERED ACCOUNTANCY PROFESSION – UNDER SERIOUS THREAT



Vinod Jain\*

The Government of India has presented The Chartered Accountant (Amendment) Bill, 2003 in the Rajya Sabha in December, 2003 providing for completely unwarranted provisions giving sweeping powers to the Government to interfere in the autonomy of the Accounting Profession.

The Government propose to set up a Quality Review Board to fix the standards for the services provided by the members of the Institute, to review the quality of services actually provided including the audit services. The Government also wish to take necessary powers to give general or special directions to the Council of the Institute as it may think fit and in case the Council do not follow such directions, to dissolve the Council.

The Bill also recommended substantial increase in the fee payable by the Members on admission, annual membership fee, fellowship, Certificate of Practice etc. payable upto Rs. 5000/- in each case.

The clutches of one of the most severe disciplinary mechanism is proposed to be further tightened by removing all limits on penalties, even in case of minor faults. Technically speaking once this bill is enacted, a member can be removed from the membership of the Institute for full life for a small technical breach. The Government also proposed to prescribe the circumstances in which a Certificate of Practice can be cancelled besides taking over the powers of framing rules for other professional misconduct and ethics from the Council. This is highly objectionable.

In terms of the amended provisions, the Council shall have no right to disagree with the findings of the Disciplinary Committee and have to necessarily refer the matter to an appellate authority proposed to be set up.

The amendments also propose to create a number of bodies for

which the appointments will be made by the Government, salary and allowances will be fixed by them, but the payment will have to be made by the Institute out of the monies collected from the members. This is going to increase the burden on membership manifold in the years to come.

In spite of continuous recommendations and follow up by the CA profession, the Government has completely failed even to review the outdated code of conduct and code of ethics. The profession is already suffering from very tight rules and regulations as compared to multinational consulting firms operating in India with full freedom and flouting all rules and regulations.

The Bill do not provide for corporatisation of practice, multi-disciplinary firms, permission to practice internationally, merger, demerger, restructure of C.A. firms and several other initiatives taken by the Council which can be implemented recently.

The Chartered Accountant (Amendment) Bill, 2003, if implemented in the manner it is presented to Rajya Sabha, will be a direct

Contd....2

### IN BRIEF

CONTENTS	PAGE
1. AUDIT	
1.0 Asset Classification and Provisioning Norms	2
2. MINI BUDGET - HIGHLIGHTS	2
3. EXIM-FEMA	
1.0 Investment in Proprietorship Concern/Partnership Firm	3
3.0 Advance Remittance for Imports	3
5.0 Residential Status of Indian Students Studying Abroad	3
8.0 Export of Goods and Services - Liberalisation	4
12.0 Acquisition of Immovable Property	4
4. SERVICE TAX	
1.0 E-Filing of Service Tax Returns	5
5. TAXATION	
1.0 Income Tax Judgements	5
6. LATEST IN FINANCE	
1.0 Indian Direct Investment in JV/WOS abroad	6
5.0 Unhedged Foreign Currency Exposures of Corporates	7
7. CAPITAL MARKET	
2.0 SEBI Defers Implementation of Revised Listing Agreement	7
5.0 Curbs on promoters' stake in Preferential Allotment	7

*We wish you a very  
Happy & Prosperous New Year 2004*

\*Mr. Vinod Jain, FCA, FCS, FICWA, LL.B Convenor, National Economic Forum (NEF).



## AUTONOMY OF CA PROFESSION ....

interference into the autonomy of the profession. The Government proposed to interfere even in travel bills what to talk of giving freedom to operate to the profession of accounting so that we can compete with the best in the world.

The Government have not taken any action on the continuous requests being made by the Institute to provide support to Indian Chartered Accountants, at least in areas which will make them competitive vis a vis international competition.

In case the Government wish to harmonise law in respect of various profession, let it propose the courage of having similar changes in case of legal profession or medicine and others, where the disciplinary mechanism is not even at the level of CA profession. These amendments are completely unwarranted and must be withdrawn suo moto by the Government. Displeasing accounting profession could be very dangerous. The Government should have a long term vision and such half hearted approach is neither in the interest of the profession nor the society nor in the interest of our nation. The accounting is the backbone of growth of economy and the Government should not consider such a sensitive matter in such a light manner. A half hearted approach will only bring confusion, resistance and controversies. It may be noted that there has not been any occasion in last 54 years where the Government has ever interfered into the working of the Institute or has brought such changes. Such a harsh step can only be justified for those who behave notoriously and not for those who have been honestly contributing to the Government, economy and to the nation to the best of their ability.

The Indian profession of Chartered Accountants have the capability and vision to bring International glory on the lines of Information Technology Sector. There is a need of the hour that government should create an environment to unshackle the profession and be competitive in free trade environment of WTO, instead of making unwarranted amendments as proposed in the Bill.

## AUDIT

### 1.0 ASSET CLASSIFICATION & PROVISIONING NORMS FOR THE FIs – MODIFICATIONS

It has been decided that, with effect from the year ending March 31, 2006, an asset should be classified as NPA if the interest and / or instalment of principal remain overdue for more than 90 days. As regards the additional provision arising as on March 31, 2006 on account of the modification in the norms, the FIs would have the option to phase out the required provisioning over a period of three years beginning from the year ending March 31, 2006, subject to at least one fourth of the additional required provision being made in each year. All other instructions regarding asset classification and provisioning would remain unchanged.

(Source : DBS.FID No. C-9/ 01.02.00/2003-04 dated November 15, 2003)

## MINI BUDGET

### INDIRECT TAXES

Government has decided to make certain changes in the rates of **Indirect Taxes**, which take effect from January 9, 2004. Highlights of the same are given below:

#### 1. Overall duty structure (Customs)

- Peak rate of customs duty on non-agricultural goods is being reduced from 25% to 20%.
- Special additional duty (SAD) of 4% on customs is being abolished.
- Customs duty on project imports with investment of at least Rs. 5 crore, in plant and machinery, is being reduced from 25% to 10%.
- Customs duty on coal is being reduced from 25% to 15%.
- Customs duty on nickel & articles thereof is being reduced from 10% to 5%.

#### 2. Power Sector

- Customs duty on electricity meters is being reduced from 25% to 15%.

#### 3. Information Technology/Electronics

- Customs duty on cellphones is being reduced from 10% to 5%.
- Excise duty on computers is being reduced from 16% to 8%.
- Recorded video compact discs (VCDs) and digital video discs (DVDs) are being exempted from excise duty.

#### 4. Civil Aviation

- Inland air travel tax of 15% is being abolished.
- Foreign travel tax of Rs. 500 per passenger is being abolished.

#### 5. Trade Facilitation Measures

- Baggage rules are being liberalised:
  - Duty on six specified items under transfer of residence are being made duty free.
  - Laptops brought as part of baggage are being exempted from customs duty.

### DIRECT TAXES

In order to further simplify the procedures under direct taxes, government has decided to amend the rules in respect of the following and new procedures to be implemented from April 1, 2004:

- No income-tax returns for salaried income upto 1.5 lakh. Salary Certificate to be treated as return.
- Pensioners exempted from the purview of one-by-six scheme.
- Infrastructure projects get exemption under 10(23G).
- Single certificate for TDS exemption.
- For perquisite valuation, rates of interest for housing loans etc. cut in line with the prevailing market rates.

#### Some administrative measures:

- Paperless IT returns through Internet under digital signatures for salaried tax payers, professionals like doctors and accountants.
- Computer network to be expanded to cover all income-tax offices by June 2004.
- Challan forms for TDS payment cut from four to one.



# EXIM-FEMA

## 1.0 INVESTMENT IN PROPRIETORSHIP CONCERN/ PARTNERSHIP FIRM IN INDIA BY NRIs / PIOs

### (a) Investment on non-repatriation basis

A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India may invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis, i.e., the amount invested shall not be eligible for repatriation outside India, *provided*:

- the amount is invested by inward remittance or out of NRE/FCNR/NRO account maintained with Authorised Dealer;
- the firm or proprietary concern is not engaged in any agricultural/plantation or real estate business, i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom.

### (b) Investment with repatriation benefits

NRIs/PIOs may invest in sole proprietorship concerns/partnership firms with repatriation benefits only with the prior approval of Secretariat for Industrial Assistance (SIA), Government of India/RBI.

### (c) Investment by non-residents other than NRIs/PIOs

No person resident outside India other than NRIs/PIOs shall make any investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India provided that the Reserve Bank may, on an application made to it, permit a person resident outside India subject to such terms and conditions as may be considered necessary.

(Source : A.P./DIR Series/Circular No. 39 dated December 3, 2003)

## 2.0 GENERAL PERMISSION TO OPEN PROJECT OFFICE IN INDIA BY FOREIGN ENTITY

RBI has granted general permission to a foreign entity for setting up a Project Office in India subject to the conditions, as prescribed.

The foreign company is required to furnish a report to the concerned Regional Office of Reserve Bank of India under whose jurisdiction the Project Office is set up comprising the prescribed details.

Further, the Project Office established in terms of the above mentioned provisions may approach Regional Offices of Reserve Bank of India for granting permission for opening Foreign Currency Accounts, if required.

The Reserve Bank of India granted general permission to foreign entities to remit the surplus on winding up/completion of projects through authorised dealers. Authorised dealers may allow such remittances on receipt of requests from their respective constituents subject to specified conditions.

Now, it has been further advised by RBI that in case of request by the Project Office for intermittent remittance of temporary surplus, Authorised Dealers may approach the concerned Regional Office of the Reserve Bank for necessary approval.

(Source : A.P./DIR Series/Circular No. 37 dated November 15, 2003)

## 3.0 ADVANCE REMITTANCE FOR IMPORTS

It has been clarified by the Reserve Bank of India that a Public Sector Company or a Department Undertaking of the Central/State Government's which is not in a position to obtain a guarantee from an international bank of repute against an advance payment, is required to obtain a specific waiver for the bank guarantee from the Ministry of Finance, Government of India before making advance remittance exceeding USD 100,000.

(Source : A.P./DIR Series/Circular No. 49 dated December 15, 2003)

## 4.0 INVESTMENT BY AN UNINCORPORATED ENTITY UNDER FDI SCHEME

It has been clarified that only an entity incorporated/registered under the relevant statutes, laws of the host country (other than an entity in Bangladesh or Pakistan) is allowed to make fresh investments under Foreign Direct Investment (FDI) Scheme including the Automatic Route.

(Source : A.P./DIR Series/Circular No. 54 dated December 20, 2003)

## 5.0 REVISION IN RESIDENTIAL STATUS OF INDIAN STUDENTS STUDYING ABROAD

It has been observed that when students leave India for studying a course of specified duration, such stay outside India exceeds the period officially intended for various reasons. On consideration of various such circumstances, it is clear on both counts that:

- they (students) will stay abroad for more than 182 days in the preceding financial year;
- their (students) intention to stay outside India is for an uncertain period.

Thus, on the basis of above it has been decided that such students can be treated as non-resident Indians (NRIs) under FEMA when they go abroad for their studies.

As NRIs, these students will be eligible for receiving remittances from India, as follows:

- a) upto US\$ 100,000 from close relatives on self-declaration towards maintenance. This could include remittances towards their studies also,
- b) upto US\$ 1 million out of sale proceeds/balances in their accounts maintained with an authorised dealer in India,
- c) all other facilities available to NRIs under FEMA, and
- d) educational and other loans availed of by students as residents in India can be allowed to continue as per prescribed provisions.

(Source : A.P./DIR Series/Circular No. 45 dated December 8, 2003)

## 6.0 RELEASE OF FOREIGN EXCHANGE FOR MISCELLANEOUS REMITTANCES

It has been clarified by Reserve Bank of India that Authorised Dealers need not obtain any document, including Form A2, except a simple letter from the applicant containing the basic information, viz., names and addresses of the applicant and the beneficiary, amount to be remitted and the purpose or remittance, as long as the exchange is being purchased for a current account transaction and the amount does not exceed USD 5000 or its equivalent and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft.

(Source : A.P./DIR Series/Circular No. 55 dated December 23, 2003)



## 7.0 DE RECOGNITION OF OCBs

The Reserve Bank of India had vide its circular no. 14 dated September 16, 2003 conveyed its decision to derecognise the Overseas Corporate Bodies (OCBs) in India as an eligible 'class of investors' under various routes/schemes available under extant Foreign Exchange Management Regulations.

Now, in order to address various operational issues associated with the exit arrangement for OCBs, the RBI has placed on its website ([www.rbi.org.in](http://www.rbi.org.in)) FAQs on following topics:

- General
- Investment in shares/convertible debentures and other securities
- Portfolio Investment Scheme
- Deposits
- Borrowing or Lending in foreign currency or in Rupees
- Hedging of certain transactions.

(Source : A.P./DIR Series/Circular No. 44 dated December 8, 2003)

## 8.0 EXPORT OF GOODS AND SERVICES – LIBERALISATION

It has been decided to allow all exporters (including Status Holder) to:

- write-off (including reduction in invoice value) outstanding export dues, and
- extend the prescribed period of realisation beyond 180 days or further period as applicable,

provided, the aggregate value of such export bills written-off (including reduction in invoice value) and bills extended for realisation does not exceed 10 per cent of the export proceeds due during the calendar year and such export bills are not a subject of investigation by ED / CBI or any other Investigating Agencies. This facility will be available in respect of export proceeds falling due from January 1, 2004. In the case of exports where Reserve Bank has prescribed longer period of realisation, the said facility would be available for exports made prior to July 2003, but proceeds of which are due for realisation within the prescribed period of one year.

Exporters dealing with more than one Authorised Dealer can avail of this facility through each AD, i.e., the limit of 10 per cent for self write-off (including reduction in invoice value) and extension of time for realisation of export proceeds would be applicable for export bills lodged for realisation with that Authorised Dealer. However, exporters operating under a consortium of banks or with multiple banks will also have the option of computing the 10 per cent limit on an aggregate basis with all the banks, provided the lead bank of the consortium or in case of multiple banking, a nodal bank undertakes to verify the exporters' annual performance on behalf of all the banks.

Within a month from the close of the calendar year, exporters should submit a statement, as per prescribed format, giving details of export proceeds due, realised and not realised to the concerned Authorised Dealer.

(Source : A.P./DIR Series/Circular No. 40 dated December 5, 2003)

## 9.0 COMPANIES CAN OFFER EQUITY AGAINST ALL EXTERNAL COMMERCIAL BORROWINGS (ECBs)

The Government has permitted Indian companies to issue equity shares against all types of external commercial borrowings (ECBs) (excluding those deemed as ECBs) received in convertible foreign currency, subject to meeting all tax liabilities and procedures.

The types of ECBs that are eligible for such conversion includes commercial bank loans, buyer's credit, supplier's credit, securitised instruments, credit from official export credit agencies, commercial borrowings from the private sector window of multilateral financial institution, as well as investment by foreign institutional investors in dedicated debt funds.

## 10.0 SOFTWARE EXPORTERS ALLOWED TO IMPORT ONLY 'PROFESSIONAL EQUIPMENT'

Software exporters and other service providers have been barred from importing capital goods, other than 'professional equipment' specifically required for rendering their service, under the Duty Free Credit Entitlement Certificate (DFCEC) Scheme introduced in the recent Exim Policy.

The DFCEC scheme allows service providers (other than hotels) to undertake duty-free imports equivalent to 10% of the average foreign exchange earned by them in the preceding three years. In the case of hotels, the corresponding entitlement is 5%.

## 11.0 BOOKING OF FORWARD CONTRACTS BASED ON PAST PERFORMANCE

It has been decided that the eligible limit to book forward contracts on the basis of declaration of an exposure based on past performance, would be the average of the past three years' export/import turnover or the previous year's turnover, whichever is higher. The forward contracts so booked and outstanding at any point of time shall not exceed 50% (raised from 25%) of the eligible limit without any cap, provided that any amount in excess of 25% of the eligible limit shall be only on a deliverable basis. These limits shall be computed separately for export/import transactions. All other conditions prescribed for this facility remain the same.

Importers/exporters desirous of availing limits higher than the overall cap of 50% may forward their applications through the ADs to the CGM, ECD (FM Div.), RBI, Central Office, Mumbai.

(Source : A.P./DIR Series/Circular No. 46 dated December 9, 2003)

## 12.0 ACQUISITION OF IMMOVABLE PROPERTY

The Reserve Bank of India has issued an updated instructions on following topics, summarising modifications and measures for liberalisation with regard to acquisition of immovable property by foreign companies/person resident outside India. The text of the same is available at RBI website ([www.rbi.org.in](http://www.rbi.org.in)):

- Acquisition by way of transfer, gift, inheritance of immovable property in India
- Purchase/Sale of immovable property by foreign embassies/diplomats/consulate generals
- Acquisition of immovable property for carrying on a permitted activity including repatriation of sale proceeds
- Prohibition on acquisition by citizens of certain countries.

(Source : A.P./DIR Series/Circular No. 43 dated December 8, 2003)



## EXIM-FEMA

### 13.0 FOREIGN EXCHANGE MANAGEMENT (INSURANCE) REGULATIONS

In relation to insurance claims/maturity/surrender value settled in foreign currency, it has been decided that:

- (i) Resident beneficiaries of the insurance claims/maturity/surrender value settled in foreign currency may be permitted to open and credit the proceeds thereof to their RFC (Domestic) Account instead of RFC Account as advised earlier.
- (ii) Non-Resident Indian Policy Holders who are beneficiaries of insurance claims/maturity or surrender value settled in foreign currency in respect of policies issued by Insurance Companies in India and registered with Insurance Regulatory and Development Authority to conduct insurance business may be permitted to credit the proceeds to the RFC Account opened by them on their becoming residents.

(Source : A.P. DIR Series Circular No. 51 dated December 15, 2003)

## SERVICE TAX

### 1.0 E-FILING OF SERVICE TAX RETURNS

The Central Board of Excise and Customs (CBEC) vide its Circular No. 52/1/2003-ST dated 11th March, 2003 allowed e-filing of service tax returns from the month of April, 2003 in respect of 10 select class or group of service tax providers.

It has now been decided by CBEC vide its Circular No. 71/1/2004-ST dated 2nd January, 2004 to extend the facility of e-filing to all 58 taxable services with immediate effect.

(Source : F. No. 137/9/2003-CX.4 dated January 2, 2004)

### 2.0 FACILITIES PROVIDED TO ASSESSEES PROVIDING MORE THAN ONE SERVICES

The Central Board of Excise and Customs (CBEC) vide its Circular No. 72/2/2004-ST dated 2nd January, 2004 has clarified that a service provider providing more than one taxable service would be provided with following facilities:

- to take only single registration in respect of all the taxable services provided by him and
- to file only one service tax return in respect of all the taxable services.

(Source : F. No. 137/9/2003 CX.4 dated January 2, 2004)

### 3.0 SERVICE TAX ON FOOD GRAIN AGENTS

The Central Board of Excise and Customs (CBEC) vide its Circular No. 73/3/2004-ST dt. 5th January, 2004 has clarified that the activity of grain agent is covered under the 'Commission Agent' falling under the purview of 'Business Auxiliary Services', which has come into force from 1st July, 2003. Commission agents as per the definition are covered under the Not. No. 13/2003-ST dt. 20th June, 2003 and are exempt from service tax. In other words, Adhatiyas (Food Grain Agents) are exempt from service tax in view of Not. No. 13/2003-ST dt. 20th June, 2003.

(Source : F. No. 159/3/2003 CX.4 dated January 5, 2004)

## TAXATION

### 1.0 INCOME TAX JUDGEMENTS

#### 1.1 Specification of "share in loss" is not necessary

Hon'ble Supreme Court in the matter of *Commissioner of Agriculture Income Tax Vs. P.V. Balakrishnan Nair* rejected department's view that "specification of shares in loss is necessary even where no minor has been admitted". The view of department was also found incorrect by Hon'ble Kerala High Court in the matter of *Kerala Publicity Bureau vs. CIT*. [264 ITR 366]

#### 1.2 Non-Resident Indians are eligible for rebate u/s 88

Hon'ble Karnataka High Court in the matter of *CIT Vs. K.C. John* found that what was barred was deduction under Chapter VIA and not tax rebate. The High Court pointed out that though Section 88 was in substitution of Section 80C, it does not follow that the tax rebate is not admissible in the absence of any corresponding amendment to Section 115D(2) consequent to such substitution. [264 ITR 715]

#### 1.3 Capital Gains on Power of Attorney Sales

Hon'ble Guwahati High Court in the matter of *Assam Vegetables and Oil Products Ltd. Vs. CIT* barring one view that any power of attorney is accompanied by transfer of possession in pursuance of an agreement or sale, it may well be treated as a transfer, so that the agreement holder alone would be liable to tax on the difference between the agreed amount paid and the consideration finally received by him. [264 ITR 47]

#### 1.4 Slump sale of Business is a Capital Sale.

Hon'ble Bombay High Court in the matter of *Premier Automobiles Ltd. Vs. ITO* found that the law on the subject of slump sale, though well established was spelt out with reference to established precedents in the contract or sale of an entire undertaking as a going concern in contrast to sale of itemwise assets. Various other decisions are also in favour of the assessee viz. *CIT Vs. Mugneeram Bangur and Co. (Land Department)* 57 ITR 299 (SC) and *CIT Vs. Electric Control Gear Manufacturing Co.* 227 ITR 278 (SC). [264 ITR 193]

#### 1.5 Income from incidental activities is also business income

Hon'ble Income Tax Appellate Tribunal Bangalore, in the matter of *Jindal Vijayanagar Steel Ltd. Vs. ACIT* decided that when assessee is authorized to carry on several businesses if it carried on any one of business, it was sufficient to say that it had commenced its business. [87 ITD 630]

### 2.0 CAs TO CARRY OUT E-FILING OF RETURNS

Salaried income-tax assessee reticent to approach banks for e-filing of returns will have the option of using the services of chartered accountants or tax advocates of their choice.

The government is set to allow CAs and tax accountants who obtain digital signatures to function as e-intermediaries. It would be mandatory for these intermediaries to obtain a power of attorney from salaried assessee. These e-intermediaries will also be allowed to process PAN applications and the allotment would be done by UTI Investor Services Ltd.



## LATEST IN FINANCE

### 1.0 INDIAN DIRECT INVESTMENT IN JOINT VENTURES/ WHOLLY OWNED SUBSIDIARIES ABROAD

With a view to simplifying and liberalising the present policy of overseas direct investment, the existing guidelines have been modified by RBI in following manner:

#### (a) Investment by Firms in India

It has been decided to permit firms in India registered under the Indian Partnership Act, 1932 and having a good track record, to make direct investments outside India in an entity engaged in any bonafide business activity under the Automatic Route upto 100% of its net worth or USD 10 mn. or its equivalent, whichever is less, in one financial year. Firms intending to undertake financial services activities would, however, have to satisfy the additional requirements, as prescribed.

#### (b) Investment through SPV under the Automatic Route

It has been decided to cover, investments in JV/WOS abroad through the medium of a Special Purpose Vehicle (SPV) also under the Automatic Route in terms of Regulation 6 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended subject to the following:

- Indian parties included in the Reserve Bank's Caution List or under investigation by the ED are not eligible to make overseas investments under the Automatic Route.
- The restriction is also applicable to Indian parties which are defaulters to the banking system in India and whose names appear in the Defaulters' List published/circulated by the Reserve Bank. Indian parties whose names appear in the Defaulters' List may be advised to apply to the Reserve Bank for prior approval for the investment.

#### (c) Investment by way of share swap

All proposals for investment by way of swap of shares are permitted under the Automatic Route as per the conditions specified in Regulation 6 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended. However, all share swap transactions require prior approval of the Foreign Investment Promotion Board (FIPB) for the inward leg of investment.

Such swap transactions would have to be in accordance with the valuation norms, as prescribed.

In the case of investment by way of share swap, ADs are additionally required to submit to Reserve Bank the details of transactions such as number of shares received /allotted, premium paid/ received, brokerage paid/ received etc., and also confirmation to the effect that the inward leg of transaction has been approved by FIPB and the valuation has been done as per laid-down procedure and that the overseas company's shares are issued / transferred in the name of the Indian investing company. Authorised Dealers may also obtain from the applicants an undertaking to the effect that future sale/ transfer of shares so acquired by Non-Residents in the Indian Company shall be in accordance with the provisions of Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time.

#### (d) Direct Investment Abroad in Financial Services Sector Activities

It has been decided that the stipulation of the minimum net worth of Rs. 15 crores, has been dispensed with, for the Indian companies engaged in financial sector activities in India and complying with additional norms prescribed in Regulation 7 of Notification No. FEMA.19/RB-2000 dated May 3, 2000, to invest abroad in the financial sector.

However, henceforth any Indian entity engaged in the financial services sector and wishing to undertake financial sector activities abroad should also obtain approval for doing so from the concerned Regulatory Authorities both in India and abroad before venturing into such activity.

All other conditions stipulated in the above mention Regulation 7 remain unchanged. While forwarding the report of remittance in respect of the above category in form ODR to the Reserve Bank, ADs may forward details of such regulatory approvals also.

#### (e) Diversification of activity/step down investments by JV/WOS established by an Indian party

It has been decided to remove the existing restriction and provide a level playing field for all whether holds 50% or more of the paid up capital of the overseas entity or is a minority shareholder in overseas entity.

Authorised Dealers may accordingly consider the proposals for diversification /step down investments by the Indian parties having JV/WOS abroad and they are allowed remittance within the limits applicable for investments under the automatic route.

The Indian Party shall report to the Reserve Bank the details of decisions taken by the JV/WOS within 30 days of the approval of those decisions by the share holders/promoters/directors of the JV/WOS in terms of the local laws of the host country and include the same in the Annual Performance Reports (APR) required to be forwarded annually to the Reserve Bank.

#### (f) Transfer by way of sale of shares of a JV/WOS outside India

It has now been decided to permit Indian party to transfer by way of sale to another Indian party, which complies with the provisions as contained in the Regulation or to a person resident outside India, any share or security held by it in a joint venture or wholly owned subsidiary outside India subject to the conditions and reporting requirements, as prescribed.

An Indian party, which does not satisfy the eligibility norms and proposals and seek "write-off" of the investment, shall have to apply to the Reserve Bank for prior permission.

(Source : A.P./DIR Series/Circular No. 41 dated December 6, 2003)

#### (g) Disinvestment of investment in a JV/WOS

It has been decided to permit Indian listed companies to disinvest their investment in a JV/WOS abroad even in case where such disinvestment may result in a write-off of the capital invested to the extent of 10% of the previous year's export realisation.

Other prescribed terms and conditions and reporting requirements remain unchanged.

(Source : A.P./DIR Series/Circular No. 42 dated December 6, 2003)



## LATEST IN FINANCE

### 2.0 DCA FAVOURS INDEPENDENT MERGERS & ACQUISITIONS (M&As) VALUER

The expert group appointed by the Department of Company Affairs has recommended that transactions in the corporate sector including mergers, acquisitions, sales and purchases should mandatorily be valued by a third party.

The valuation norms will be applicable to all listed companies, unlisted public companies accepting public deposits with a minimum net worth of Rs. 25 crore and minimum turnover of Rs. 150 crore, all other unlisted companies with a minimum net worth of Rs. 100 crore and turnover of Rs. 500 crore.

At present, independent valuations in any corporate transaction are not mandatory and the purchase or sale price is arrived at through a process of mutual negotiation.

### 3.0 LOK SABHA PASSES IDBI BILL

The Lok Sabha has recently passed the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002, that would allow the corporatisation of the development financial institution and its conversion into a banking entity.

### 4.0 SANCTIONING OF LOAN TO SPVs/ PSUs, EWS HOUSING ETC.

It has been decided that the banks/FIs should appraise credit proposals received from SPVs/ Public Sector units, EWS housing and urban infrastructure etc. on commercial basis with respect to viability and in accordance with the credit policy laid down by the Board instead of relying solely on the strength of State Government guarantees.

(Source : DBOD No. BC. 45/21.04.141/2003- 2004 dated November 17, 2003)

### 5.0 UNHEDGED FOREIGN CURRENCY EXPOSURES OF CORPORATES

It is noticed that despite RBI's exhortations, hedging has not been ensured. This may entail significant but avoidable risks to some corporate balance sheets, possibly impacting the quality of banks' assets in some cases.

It has been decided that henceforth, foreign currency loans above US\$ 10 million, or such lower limits as may be deemed appropriate vis-à-vis the bank's portfolios of such exposures, can be extended by banks only on the basis of a well laid out policy of their Boards with regard to hedging of such foreign currency loans.

Banks are further advised that the policy for hedging, to be framed by their boards, may consider, as appropriate for convenience, excluding the following :

- Where forex loans are extended to finance exports, banks may not insist on hedging but assure themselves that such customers have uncovered receivables to cover the loan amount.
- Where the forex loans are extended for meeting forex expenditure.

(Source : DBOD.BP.BC. 51/21.04.103/2003-2004 dated 5th December, 2003)

## CAPITAL MARKET

### 1.0 PURCHASE/SALE OF SHARES AND/OR CONVERTIBLE DEBENTURES BY FIIs

It has now been decided to permit SEBI registered FIIs/sub-accounts of FIIs to buy/sell equity shares/debentures of Indian companies (excluding companies engaged in the print media sector), units of domestic mutual funds, dated Government Securities and Treasury Bills through stock exchanges in India at the ruling market price, invest / trade in exchange traded derivative contracts, and also to buy/sell shares and debentures etc. of listed/unlisted companies otherwise than on stock exchange at a price approved by SEBI/ Reserve Bank as per terms and conditions as prescribed.

(Source : AP/DIR Series/Circular No. 53 dated December 17, 2003)

### 2.0 SEBI DEFERS IMPLEMENTATION OF REVISED LISTING AGREEMENT

It has been decided that SEBI is revisiting changes to clause 49 (made on August 26, 2003) of the listing agreement and implementation of the same is being deferred till the further notice.

### 3.0 SEBI PANEL MOOTS CURBS ON STOCK SPLIT

The Secondary Market Advisory Committee of SEBI has recommended that listed companies with an average market price of less than Rs.500 per share in the last six months should not be allowed to split their share. In case the company has gone in for a split or a consolidation, it will not be able to do so again for three years, counted from the date on which the split is implemented.

### 4.0 SEBI SETS FLOOR FOR NUMBER OF INVESTORS IN MUTUAL FUNDS

SEBI has stipulated that new schemes launched by mutual funds should have a minimum of 20 investors and that no single investor should account for more than 25% of the scheme's corpus.

(Source : SEBI/IMD/CIR No. 10/22701/03 dated December 12, 2003)

### 5.0 SEBI SEEKS CURBS ON PROMOTERS' STAKE IN PREFERENTIAL ALLOTMENT

The primary market advisory committee (PMAC) of SEBI has recommended a ban on promoters selling their stake for some time before and after any preferential allotment of shares to them. In case promoter of a company sell their shares in the six months preceding the relevant date, they will not be eligible to acquire shares through the preferential allotment.

### 6.0 SEBI MOOTS MINIMUM DISCLOSURE NORMS FOR RESTRUCTURING OF COMPANIES

The Securities and Exchange Board of India has prescribed a set of minimum disclosures that companies undergoing restructuring need to make to their shareholders.

The disclosure would include information such as the basis of valuation, nature of consideration, mode of payment and other details that may be useful to the investor to make an informed decision.



# GLIMPSES



## RELEASE OF 175<sup>TH</sup> ISSUE OF THE CHARTERED ACCOUNTANT WORLD

DECEMBER 4, 2003

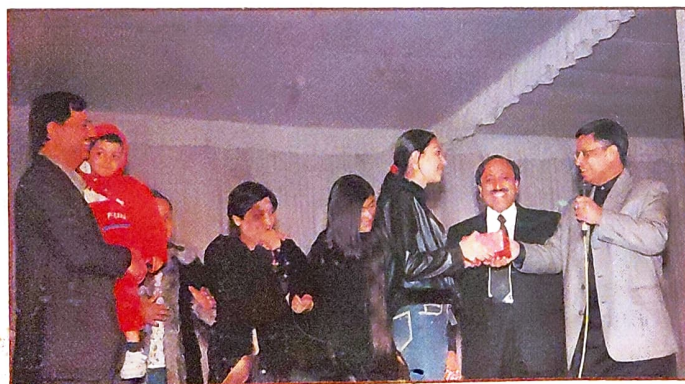


(L-R) Mr. Anil Sharma, FCA, Member, National Council, AICAS, Mr. M.M.K. Sardana, Secretary, DCA, Government of India, Mr. Naveen Jain, FCA, Chairman, CFO World, Mr. Sunil Khemka, FCA, Vice Chairman, CFO World and Mr. Shiv Mittal, FCA, Member, National Council, AICAS

(L-R) Mr. Shailen Gupta, Director-Finance, Expeditors, Mr. Rajan Chhibba, MD, Intrin Business Associates, Mr. Naveen Jain, Chairman, CFO World and Director - Operational Control, The Oberoi Group, Mr. S.N. Rai, GM, LG Electronics and Mr. A.S. Raju, Maruti Udyog Ltd.



CFO World Meeting  
on  
SUPPLY CHAIN MANAGEMENT



Prize distributed to the CFO World members and their families at the occasion of New Year get-together organised by CFO World

If undelivered, please return to :

All India Chartered Accountants' Society  
4696, Brij Bhawan 21A, Ansari Road,  
Darya Ganj, New Delhi - 110 002

Editor: Mr. Pankaj Gupta, LL.B, ACS Published & Printed at New Delhi by Satish Chandra, Administrative Officer, on behalf of All India Chartered Accountants' Society, Brij Bhawan, 21A, Ansari Road, Darya Ganj, New Delhi - 110 002 Phone : 23265320, 23288101 E-mail: aicas@vsnl.net Printed at Sham Nath Marg, Delhi-110054.

"The Chartered Accountant World" is published monthly, and non-receipt of any issue should be notified within that month. Views expressed by contributors are their own and not necessarily those of the society and its editorial advisory board shall not be responsible for any action taken on the basis of reliance upon the contents of this "Journal". All rights reserved. No part of the journal may be reproduced or copied in any form by any person without the prior written permission of the society.

4696,  
No. 7,  
Instability  
Jences  
society.