Vol. 37 | Issue No. 1 | February 2011 | ₹10

EIRC NEWSLETTER

Eastern India Regional Council
of the Institute of Chartered Accountants of India

Team EIRC 2011-12

CHAIRMAN WRITES

Dear esteemed colleagues,

I am very grateful to the respected members of Eastern Region for electing me as the Chairman of Eastern India Regional Council and reposing faith in me to take the responsibility of this prestigious post. I understand that the expectations are high and I would try my level best to live up to your expectations. I sincerely hope, with the support, guidance and cooperation of my esteemed colleagues, I shall be able to continue the high standards set by my predecessors.

My heartfelt congratulations to the newly elected President CA G Ramaswamy and Vice-President CA Jaydeep Narendra Shah for this honorable post. I along with the members of our region look forward for a wonderful year ahead for the member of this esteemed profession under their guidance and support.

I would like to further congratulate all the office bearers of the Eastern India Regional Council who have assumed office with me on 24th February 2011. I would request all the members to actively participate in the activities of Institute. The efforts of our colleagues will go a long way in making our profession more rich and fruit bearing. So, kindly come forward with articles for the newsletter, be speakers in seminars, volunteer for organizing events, send suggestions for improvement, join us in making representation to the Government and other agencies etc.

ICAI Corporate Forum – A 3 days Corporate Conclave organized by Committee for Members in Industry and hosted by EIRC in Kolkata. After a long time event of such magnitude was organised in Eastern India. Many eminent speakers adorned this three day conclave which was followed by ICAI Annual Awards 2010 and Sonu Nigam live performance at Science City Auditorium attended by more than 2000 audience. We wish that ICAI will give us more opportunity to host such type of programmes in near future also.

A number of seminars took place in the month of February like Seminar on Investors' Awareness on 3rd February, IFRS on 10th February and Motivational Programme on 23rd February. All the seminars were held successfully attended by large number of participants. EIRC with EICASA also organized one day Indoor Games at YMCA on 13th February in which both by members and students took active part. The event was very successful and more such events are waiting in the near future.

Campus Placement Programmes is beginning from 15th of March. This is a very good opportunity for young and new Chartered Accountants which will help them to get placements in big companies.

Siliguri and Guwahati Branch of EIRC have been adjudged for Highly Commendable Performance by ICAI. My hearty wishes to them and I hope they continue their activities with great efforts so that they reach new heights of success. The Best Branch of EICASA was adjudged to EICASA of Guwahati Branch by ICAI. I would like to congratulate the Chairman and the entire team of EICASA for this achievement.

Before signing off, I wish you all a very Happy Holi!! I would always be looking forward for your unstinted support and cooperation in the future to achieve the objective of EIRC.

With regards,

CA Sushil Kr Goyal
Chairman, EIRC

On the Cover : In the Chair CA. Sushil Kr. Goyal, Chairman, EIRC and Standing (L-R) CA. Abhijit Bandyopadhyay, Council Member, ICAI, CA. Krishanu Bhattacharyya, Member, EIRC, CA. Subhash Chandra Saraf, Treasurer, EIRC, CA. Ranjeet Kumar Agarwal, Secretary, EIRC, CA. Prasun Kumar Bhattacharyya, Vice Chairman, EIRC, CA. Subodh Kumar Agrawal, Council Member, ICAI, CA. Pramod Dayal Rungta, Member, EIRC, CA. Sumantra Guha, Council Member, ICAI

CA. G. Ramaswamy *President, ICAI, 2011-2012*

CA. G. Ramaswamy has become the supreme torch-bearer of Indian accountancy profession as the President of Institute of Chartered Accountants of India (ICAI). A fellow member of the ICAI with more than 25 years of standing, he has been elected as the **President of ICAI for the year 2011-12 by the 21st Council of Institute on February 12, 2011.** Bestowed with exceptional organizational and administrative skills, he was serving a **Vice president of the ICAI for 2010-11.** He is also a fellow member of the Institute of Company Secretaries of India (ICSI).

Hailing from Coimbatore (Tamil Nadu), he has vast experience in the field of taxation, company law matters, audit and internal audit, management consultancy of more than two decades. He has the distinction of being the 1st nominated member of the Quality Review Board, an external body constituted under the Chartered Accountants (Amendment) Act, 2006 to act as an oversight body of the profession. He has also been nominated as Member of the 2nd Quality Review Board constituted by the Government of India.

He has been nominated Technical Advisor to IFAC Board and Technical Advisor to PAODC of IFAC. He has also crucial role as the Institute's Representative to the Committee on Harmonization of Fiscal & Tariff Regimes in SAFA Region for the year 2010-11. He was nominated as Vice Chairman in SAFA Centre of Excellence on Standards and Quality Control and as a member of SAFA task force. He was also the nominated member of SAFA Committee for improvement in Transparency, Accountability and Governance.

He also represents ICAI on a number of Governmental / other stakeholder committees/boards, including as member of National Advisory Committee on Accounting Standards (NACAS). He has also been nominated to the Standing Committee on TDS for the year 2011 for exchange of ideas on enhancing voluntary TDS/TCS compliance, strengthening partnership with tax practitioners, tax deductors/collectors and third party partners, and promoting education and awareness of TDS/TCS provisions amongst the deductors/collectors & tax payers besides minimizing scope for grievances.

CA. G. Ramaswamy began his illustrious inning in ICAI Council with his election in 2004, and has served the profession holding important positions in both Standing and Non Standing committees of the ICAI ever since. He served as member of all the standing committees of the ICAI viz. Disciplinary Committee (Old and new mechanism), Examination Committee, Finance Committee and Executive Committee. As Vice President of the ICAI, he was the Member ex-officio in all Non-standing Committees of ICAI and Joint Editor of The Chartered Accountant journal. He has also distinctly served as Convenor of 'Group for Codification of Regulations, Directions of the Council,' 'Information Technology Initiatives Group,' 'ICAI Study Group to recommend CPE credit requirements to CPEC,' 'ICAI Study group for Guidance Note and Model Code of Conduct for Independent Directors,' 'Professional Development Task Force,' and Dy. Convenor 'Infrastructure Acceleration Group'.

During his Council term 2007-10, he served as a member in Board of Discipline, ICAI-ICSI-ICWAI Co-ordination Committee, Committee on Ethical standards, Committee for Members in Industry, HR and Administration Committee, Committee of Direct and Indirect Taxes Committee for SMPs, Research Committee, Representation Committee, Committee on Insurance and Pension, etc. He also served as a member in International Affairs committee, FRRB, Editorial Board, Corporate and Allied Laws Committee, etc.

He had been a member of Southern India Regional Council (SIRC) of ICAI since 1994 and went on to become the Chairman of the SIRC for 1999-2000, during which period the SIRC bagged the best Regional Council award and Best Students Association award on all India basis. He was also the member of Body of Board of Governors of Institute of Internal Auditors, [IIA]-Chennai. Earlier, he was the Chairman of the Coimbatore Branch of the ICAI for 1988-89 and a member of the Managing Committee of the Coimbatore Branch of SIRC of ICAI for the period 1984-89. During 1994-95, he also served as Director, The Tamil Nadu Industrial Investment Corporation Ltd, an undertaking of Tamil Nadu Government.

CA. G. Ramaswamy is a prolific speaker and writer. He has represented ICAI at various international fora, including CAPA & SAFA, and has addressed a series of international conventions and seminars on the themes related to Governance & IFRS.

CA. Jaydeep Narendra Shah *Vice-President, ICAI, 2011-2012*

Shri Jaydeep Narendra Shah is the newly elected Vice-President of the Institute of Chartered Accountants of India. He was a Central Council Member and was re-elected to the Central Council of ICAI for the third term for the period from 2010 to 2013 after completion of 1st term from 2004-2007 and current 2nd term from 2007-2010.

ASSIGNMENTS HANDLED AT CENTRAL COUNCIL LEVEL OF ICAI

CA. J N Shah was the Chairman of Ethical Standard Board of ICAI. He was also the Chairman of Financial Reporting & Review Board of ICAI & Vice-Chairman of Capacity Building and Small & Medium Practioners Committee of ICAI, He also served as member of various committees of ICAI like Auditing and Assurance Standards Board, Professional Development Committee, Editorial Board, ICAI-ICWAI-ICSI Committee, Continuing Professional Education Committee, Committee for Financial Market and Investors Protection.

POSITION AS CHAIRMAN

He was Chairman Board of Studies of ICAI for 4 years. He was Chairman of the Committee for Commerce Education & Career counseling for 1 year. He was Chairman of the Ethical Standards Board for 1 year. Mr. Shah was the Chairman of the HR and Administration Committee for 1 year.

POSITION AS VICE-CHAIRMAN

He was Vice-chairman of the Committee for Financial Market and Investor Protection for 1 year. Mr. Shah was Vice-chairman of the Board of Studies for 1 year. He was Vice-chairman of the Peer Review Board for 1 year. Vice-chairman of the Committee on Information Technology for 1 year.

POSITION AS MEMBER

Mr. Jaydeep Shah was 43 times member of different committees during his first and second tenure as a Central Council Member

INTERNATIONAL ASSIGNMENTS & EXPOSURE

Mr. Jaydeep Shah has been appointed as the Techincal Advisor on Small and Medium Practitioners Committee of International Federation of Accountants covering 125 countries. Mr. Shah is appointed chairman of the South Asian Federation of Accountants Committee on Education, Training & CPD covering 8 professional bodies of 5 countries namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. He has been nominated on the International Innovative Committee. He has delivered a lecture on E-learning initiatives of ICAI at International Innovation Network, an international conference held in Hong Kong. He has delivered a lecture on Initiatives on Education for Chartered Accountancy Course at International Conference held at Dublin, Ireland. He has delivered lecture in the International Conference held at Nepal on Investment Strategies. He has also delivered lecture in the International Conference held at Nepal on Networking of firms.

OTHER ASSIGNMENTS

Mr. Shah is the nominee of the Institute on the Committee to Review SIDBI's lending to MSME sector He is director of the Accounting Research Foundation of the Institute of Chartered Accountants of India.

ACADEMIC TRACK RECORD

He has passed M.Com. from Nagpur University standing 1st in the order of Merit. He was awarded P. Satyanarayanan Gold Medal and Jawaharlal Nehru Memorial Award for Standing First in the order of merit in M.Com. He has passed B.Com. from Nagpur University Standing 8th in the order of Merit.

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CONTENTS

EIRC NEWSLETTER

The EIRC Newsletter seeks to enhance the proficiency and competitive advantage of its readers by providing articles from amongst its Members and other professionals. However the views expressed are the personal view of the author and not that of the EIRC. Many contemporary and relevant issues have been covered in this edition of the Newsletter.

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Website : www.eircicai.org

Branches

- Asansol
- Bhubaneswar
- Cuttack
- Durgapur
- Guwahati
- Rourkela
- Sambalpur
- Siliguri

Newsletter can be downloaded from the **EIRC website : www.eircicai.org**

Dear Students,

It is with utmost joy and pleasure that I address you today as Chairman of the Eastern India Chartered Accountants Students' Association (EICASA) for the year 2011-12.

While it has been an eventful journey from 1983-84 being the year that I had the privilege to serve as Vice-Chairman of the same body (EICASA),.the profound feeling of completeness dwells upon me as I sit to write the following few lines to you

I have sincerely believed in the saying, “Do what you believe in, believe in what you do”. I am sure most of you have taken up this course looking into the bright future that this wonderful profession holds for you.

Let me also take this opportunity to congratulate all of you who have successfully passed the PCC/ IPCC & Final Examinations and wish the best of luck to the students who will appear in May 2011.

13th February 2011 was a memorable and historical day as both the members and students joined hands for the first time to participate in Indoor Games comprising of Table Tennis, Badminton, Carrom and Chess at the YMCA Chowringhee. The enthusiasm of the participants was infectious as well as invigorating. The real fun lay in not only organising it but active participation from all. Snapshots would be put up in the next edition of this newsletter

You would be glad to know that the next Campus Interview in Kolkata would be in March 2011. An interviewee has to complete his/her articles training as well as GMCS Classes on or before 30th April 2011 and can apply for membership of the Institute on or before 15th May, 2011.

The Examination Forms filing in PCC/IPCC & Final Courses are taking place and shall continue till 28th February 2011 (without late fee) and till 7th March 2011 (with late fee). The Examinees should apply within time. Needless to add, option of filing of forms online can also be taken advantage of.

You must be aware that the Virtual Classes for CPT & IPCC students have commenced from 1st February 2011.

Lecture Meeting at EIRC would be organised from March 2011. For the schedule, please refer to the EIRC Website and EIRC Notice Board after 5th March 2011.

Before I sign off I would just like to state that please do come up with your views/suggestions for improvement in EICASA activities which you may directly mail to the undersigned at chairmaneicasa@gmail.com

Looking forward to an interactive year.

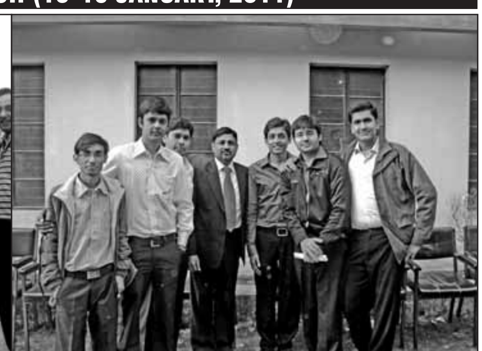
With Best Wishes,

CA Prasun Kr. Bhattacharyya

Chairman, EICASA

Vice-Chairman, EIRC

INDUSTRIAL VISIT CUM STUDY TOUR – HOSTED BY SILIGURI BRANCH (13-15 JANUARY, 2011)



FORTHCOMING PROGRAMMES

Day and Date	Programme	Speakers	Venue	Duration	Coordinator	CPE Hours	Delegate Fees
Wednesday 2nd March, 2011	Seminar on Union Budget, 2011	Eminent Speakers	Kalamandir	1.45 pm to 8.00 pm	EIRC	6	₹ 200
Thursday 10th March,2011	Teleconference on Finance Bill, 2011	Dr. Girish Ahuja & Others	R. Singhi Hall, EIRC Premises	11.00 am to 1.00 pm	CA. Ranjeet Kr. Agarwal	2	₹ 100
Saturday 12th March, 2011	Seminar on Bank Audit	Details inside at page 20	Royal Bengal Hall, City Centre, Salt Lake	9.30 am to 5.00pm	EIRC	6	₹ 800
Wednesday 16th March, 2011	*Companies Bill, 2009 Interactive Session	CA. Debashis Mitra Dr. Navrang Saini (RD,Eastern Region)	R. Singhi Hall, EIRC Premises	5.15 pm to 8.30 pm	CA. Prasun Kr. Bhattacharyya	3	₹ 150
Tuesday 22nd March, 2011	Auditing of Advances (Practical Aspects)	CA. Santanu Ghosh CA. Neena Maheshwari	R. Singhi Hall, EIRC Premises	5.15 pm to 8.30 pm	CA. P. D. Rungta	3	₹ 150
Tuesday 29th March, 2011	Teleconference on Bank Audit	CA. C V Sajan & Others	R. Singhi Hall, EIRC Premises	11.00 am to 1.00 pm	CA. Subhash Saraf	2	₹ 100
Monday 11th April, 2011	Journey for Middle Class to Millionaire	CA Lalit Pransukha	R. Singhi Hall, EIRC Premises	5.15 pm to 8.30 pm	CA. Ranjeet Kr. Agarwal	3	₹ 150

*Please send your queries with respect to the above subject at eircevents@icai.in

Significant Events

Friday 18th March, 2011	Holi/Doljatra Get-together	R. Singhi Hall, EIRC Premises	6.00 pm onwards	All members are welcome with their family

STUDY CIRCLE, CHAPTER AND STUDY GROUP OF EIRC PROGRAMMES IN RETROSPECT

B B D BAG CHARTERED ACCOUNTANTS STUDY CIRCLE - EIRC

The Study Circle organised a Seminar on Depreciation on Intangible Assets on 29th January 2011 from 4pm to 6pm. The speaker was CA Ashok Maheswari

DTPA CHARTERED ACCOUNTANTS STUDY CIRCLE - EIRC

The Study Circle organised a Seminar on Computer Software - Tally ERP 9 on 14th January 2011 at Income Tax Building, 3 Govt. Place (West)

The Study Circle organised a Seminar on Recent Development in IFRS & Opportunities for Professionals in IFRS on 18th January 2011 at Income Tax Building, 3 Govt. Place (West)

The Study Circle organised a Seminar on Penalties and Remedies under Corporate Laws on 27th January 2011 at Income Tax Building, 3 Govt. Place (West)

NAGAON CHARTERED ACCOUNTANTS STUDY GROUP -

The Study Group participated in a Teleconference on Company's Bill - 2009 on 31st January 2011

VIEWS EXCHANGE CHARTERED ACCOUNTANTS STUDY CIRCLE - EIRC

The Study Circle organised a Seminar on Company Law Provisions relating to vacation of Directors Office on 15th January 2011 from 3pm to 5pm. The speaker was CA B L Patni

VIP ROAD CHARTERED ACCOUNTANTS STUDY CIRCLE - EIRC

The Study Circle organised a Seminar on Journey from Middle Class to Millionaire on 16th January 2011

LIBRARY NEWS

STEPS TAKEN TOWARDS DIGITAL LIBRARY SYSTEM

For the benefit of members study the EIRC Library has installed the following databases in its Members' Library: -

1. TP Direct Tax Encyclopaedia – This package contains all SC/HC & ITAT decisions to date. Commentary on Income Tax with Procedural Aspects. Finance Acts from 1962 till date with many other features.
2. TP Company and corporate laws encyclopaedia – Total Cases on Company and other Laws with final section and subject index. Company acts, Company rules and many other important features.
3. TP Service taxes Encyclopaedia- All SC/HC & CESAT decisions to date. Totality to statutes to date. Service Tax Forms (All in Fill able Word Format).
4. CAPITALINE NEO – is the online database support for various sectors and Companies which includes twenty thousand listed and unlisted Companies. The Capitaline Neo includes Transfer pricing of Commodities. Capitaline Live Equity market quotes. F & O section for derivative markets, Live news and Corporate Events. Technical Charts with analysis tools and with many more features.

Please contact Library at 033 3021103/05 or mail eirc.library@icai.in.

Library Membership form is also available at eircicai.org.

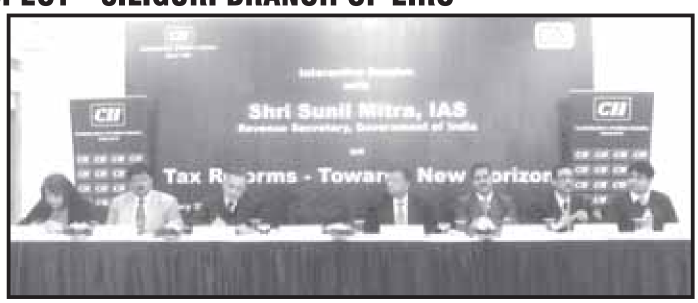
BRANCH PROGRAMMES IN RETROSPECT - SILIGURI BRANCH OF EIRC

The Branch organised the following programmes:

The Republic Day was celebrated by the Branch on 26th January 2011

Seminar on Motivation and Team Development . CA. Jitendra Mittal was the speaker

Seminar on Tax Reform - Towards New Horizon on 21st January 2011 at Hotel Sinclairs. The Speaker was Mr. Sunil Mitra, IAS, Revenue Secretary, Govt. of India



ICAI – ANNOUNCEMENT

The next Professional Competence Examination (PCE), Integrated Professional Competence Examination (IPCE) and Final Examinations of the Institute will be held from 2nd May 2011 to 16th May 2011. Notification and detailed announcement thereon have already been hosted on ICAI website **www.icai.org.**

Applications for admission to Professional Competence Examination (PCE), Integrated Professional Competence Examination (IPCE) and Final examination can be made either through the online mode at **http://icaiexam.icai.org** or through physical application forms, which are priced as follows:

PCE and IPCE examinations	Rs 100/- per form
Final examination	Rs 500/- per form

In order to encourage the student community to take to on-line applications, it has been decided to waive off the cost of application form (i. e, Rs.100/- or Rs 500/- as the case may be) in respect of candidates who fill in their forms online at **http://icaiexam.icai.org** and remit the examination fee online by using either VISA or Master credit/debit card.

Students may note the following:

Last date for submission of physical/on-line forms without late fee- 28.02.2011

Last date for submission of physical/on-line forms with late fee of Rs 500/- 07.03.2011

Students are advised to take advantage of the facility of making on-line applications and save on the cost of the exam form.

(Dr T. Paramasivan)
Sr Deputy Director(Exams)

MCA – ANNOUNCEMENT

General Circular No. 1/2011 F. No. 2/7/2010-CL V
Government of India Ministry of Corporate Affairs

Dated the 3 rd Feb, 2011

To All Regional Director, All Registrar of Companies.
Subject: Easy Exit Scheme , 2011

Sir,
In continuation to this Ministry's earlier circular no. 6/2010 dated 03.12.2010 on the subject cited above, it has been decided to extend the Scheme for another three months i.e. upto 30
th April, 2011. 2. All the terms of circular no. 6/2010 dated 03.12.2010 will remain the same.

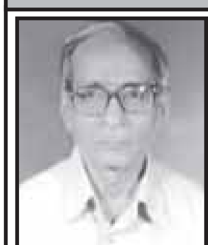
5 th Floor, 'A' Wing,
Shastri Bhavan, Dr. R.P. Road ,
New Delhi

Yours faithfully,
Monika Gupta
Assistant Director

CPE hours requirements for various categories of members of the Institute for the Block period of 3 years (01-01-2011 to 31-12-2013)

- **All the members who are holding Certificate of Practice (except those members who are residing abroad), unless exempted, are required to:**
  a) Complete at least 90 CPE credit hours in each rolling three-year period of which 60 CPE credit hours should be of structured learning.
  b) Complete minimum 20 CPE credit hours of structured learning in each year.
- **All the members who are not holding Certificate of Practice or are residing abroad (whether holding Certificate of Practice or not), unless exempted, are required to:**
  (a) Complete at least 45 CPE credit hours of structured/ unstructured learning in each rolling three-year period
  (b) Complete minimum 10 CPE credit hours of structured/ unstructured learning in each year.
- **All the members (above 60 years of age) who are holding Certificate of Practice, unless exempted, are required to:**
  a) Complete at least 70 CPE credit hours (structured/unstructured) in each rolling three-year period.
  b) Complete minimum 10 CPE credit hours of structured/ unstructured in the first year i.e. 2011
  c) Complete minimum 20 CPE credit hours of structured/ unstructured in the second and third year i.e. 2012 & 2013.
- **All the members (above 60 years of age) who are not holding Certificate of Practice are required to:**
  a) Complete at least 35 CPE credit hours (structured/unstructured) in each rolling three-year period.
  b) Complete minimum 5 CPE credit hours of structured/ unstructured in the first year i.e. 2011
  c) Complete minimum 10 CPE credit hours of structured/ unstructured in the second and third year i.e. 2012 & 2013.

OBITUARY



CA. Rama Prasad Bhowmick
(M. No.-003502)
Left for heavenly abode on 1st January, 2011. We pray to the almighty 'may his soul rest in peace'.

CA. Krishna Mohan Mallik
(M. No.-007671)
Left for heavenly abode on 10th January, 2011. We pray to the almighty 'may his soul rest in peace'.

Service tax – huge victory for JetLite - CESTAT - 2010-TIOL-1715-CESTAT-DEL

By CA. Shivani Shah
shivanishah83@gmail.com

The former Sahara Airlines were to give extensive publicity to the Housing projects of Sahara Corpn and got paid. The Service Tax Department has demanded about 129 Crores with an equal penalty. While confirming the demand of service tax, the Commissioner held that the materials on record have established that Sahara Corporation had launched various housing and real estate projects and in that respect, the air travel passengers of Airlines were sought to be targeted as the potential customers and for that purpose, the Agreement dated 30.3.1995 was entered into between Sahara Corporation and the appellants in order to promote business of Sahara Corporation by the appellants and accordingly, the business activity of Sahara Corporation in relation to housing and real estate projects was sought to be promoted and publicized by printing logo of Sahara Corporation on the air tickets, boarding passes, baggage tags and publicity materials and advertisement in newspaper holding, etc. in consideration of the payment assured and paid by Sahara Corporation to the service provider at the rate fixed per passenger under the contract. It was also held that Sahara Corporation was engaged not only in the sale of immovable properties and construction of residential and commercial complexes but also in renting immovable properties and maintenance of properties and those activities clearly fall under the category of Business Auxiliary Services. It has been further held that the publicity agreed upon and provided by the appellants and their predecessors of Sahara Airlines Ltd. resulted into brand building of Sahara Corporation which promoted marketability of the services provided by Sahara Corporation by creating awareness by building brand value of the group.

The impugned order is sought to be challenged on several grounds.

- It is assailed on the ground that the findings arrived at by the Commissioner in the impugned order are beyond the scope of the show cause notice.
- Considering activity of the appellants in terms of the Agreement in question, the same being exclusively relating to display of logo, it cannot be said to have been covered by the definition of the business auxiliary service.
- The entries pertaining to the services of brand promotion and sale of space have been introduced in the Act subsequent to the relevant period, and hence the appellants could not be held to have rendered such service during the relevant period nor the services covered under the entries brought into force subsequent to expiry of the relevant period can be sought to be enforced for the period prior to the date of enforcement of such entries.
- The activity of the construction and sale of immovable property does not amount to "service" within the meaning of the said expression under the Act.
- The show cause notice issued was time barred.
- The chargeability of a particular activity should be specifically spelt out in the show cause notice and onus to establish the same squarely rests upon the Department. Neither the show cause notice satisfied the said requirements nor the Department discharged the burden relating to the said issue.
- The authority which had issued show cause notice lacked territorial jurisdiction to deal with the matters arising beyond the territory of Delhi and therefore, the show cause notice was without jurisdiction.
- Lastly, that the materials on record do not justify demand of interest and imposition of penalty.

The Tribunal dealt with the issue elaborately with the President writing the detailed order running into nearly 25,000 words, drawing liberally from a plethora of judgements.

The Tribunal considered the following issues

(i) What was the charge in the show cause notice and whether the impugned order travels beyond the scope of show cause notice? Simultaneously, it would also be necessary to consider whether the activity for which the appellants were charged was spelt out in the show cause notice and such charge against the appellants has been established by sufficient materials on record?

(ii) Whether the services rendered by the appellants to M/s. Sahara Corporation would fall under the category of "Business Auxiliary Services" within the meaning of the said expression under the said Act? As a corollary to this issue, it would be necessary to consider whether the display of logo by itself would amount to rendering services within the meaning of the expression "Business Auxiliary Services" under the said Act?

(iii) Whether the entries relating to brand promotion and sale of space having been introduced in the said Act subsequent to the relevant period, the appellant could be held to have rendered such services prior to the introduction of such entries in the said Act or whether such entries could be held to be forming part of the Business Auxiliary Services for the period prior to the introduction of such specific entries in the said Act?

(iv) Whether the authority who issued the show cause notice lacked territorial jurisdiction to deal with the matter?

(v) Whether the show cause notice was barred by limitation?

(vi) Whether the demand for interest is justified?

(vii) Whether the facts of the case warranted imposition of penalty?

The Tribunal noted,

Undoubtedly, there is no dispute about display of logo of Sahara Corporation by the appellants on various materials as enumerated in the contract. However, the question which calls for determination is whether such activity amounted to taxable service and whether it falls in the category of business auxiliary service within the meaning of the said expression under the said Act.

The Finance Act, 1994 does not define the term "Service". It merely describes the expression "Taxable Service". Section 65(19) of the said Act defines the "Business Auxiliary Services" and under clause (ii) thereof it provides that Business Auxiliary Service means, any service in relation to promotion or marketing of service provided by the client. Section 65(105)(zzb) defines the "Taxable Service" means, any service provided or to be provided to a client by any person in relation to Business Auxiliary Service.

Perusal of the provisions of law, would disclose that a person can be said to have rendered Business Auxiliary Service in terms of the provisions of law in force, on being established that he has rendered service in relation to either promotion or marketing of some service provided by the client. The fact, that the service provider has rendered the service of promotion or marketing of the service provided to others by the service recipient, has to be established before such person can be said to have rendered the taxable service which can be classified under the said clause. Unless the service recipient is shown to have been engaged in rendering some service to others and the service provider is shown to have rendered his service for promotion or marketing of such service provided by the service recipient to others, the question of creating liability under the said Act in terms of Section 65(19)(ii) read with 65(105)(zzb) of the said Act does not arise.

The Tribunal referred to several judgements of the Supreme Court and observed:

Plain reading of the decisions of the Apex Court would disclose that the Apex Court clearly brought out the difference between sale and services.

Besides it has been clearly clarified that the taxable event under the said Act is the rendition of service. It is on the activity conducted or service rendered by the service provider to its customer that attracts the provisions of the said Act. The tax under the Act cannot be levied on materials or on sale. Undoubtedly, in case of sale, if any services are rendered in the nature of processing fee or documentation charges, etc., that could form part of the services rendered and may constitute the value of taxable service on which the service tax may be leviable. In other words, **sale, by itself, of immovable property, either developed or undeveloped, or even alongwith construction therein, would not amount to rendering any service, either taxable or otherwise.**

It is, therefore, necessary for the department before classifying an activity of service provider to be taxable service, to establish the factum of rendering of any such service by the service recipient to others in the course of sale of the immovable property by such service recipient, and only then it could be said that the service provider had provided Business Auxiliary Service by promoting or marketing such services of the service recipient. Needless to say that to establish such facts, it is primarily necessary to have a clear charge in that regard with the factual foundation in the show cause notice to give proper and fair opportunity to the assessee to meet the case of the department and thereupon to establish such charge in the course of adjudication proceedings.

As far as the case in hand is concerned, the allegation or charge in that regard relates to the sale of immovable properties or the developed properties or the constructed project by Sahara Corporation. It does not relate to any service rendered by Sahara Corporation to others in relation to the sale of such properties or projects.

Being so, apart from traveling beyond the scope of the show cause notice, undoubtedly, the department has failed to produce any evidence regarding the basic ingredient of Section 65(19)(ii) of the said Act so as to justify classification of whatever activity carried out by the appellants in the form of display of logo being classifiable under the category of business auxiliary service.

The contention that the appellants have not produced any evidence to show that logo did not promote the business is totally devoid of substance in as much as that the burden to prove the classification and to bring the assessee within the net of tax primarily lies upon the department. **Failure of the department to establish the basic ingredient to prove the charge against the assessee can neither shift the burden, nor can give any advantage to the department.**

Another important point sought to be canvassed relates to the entry relating to sale of space or time for advertisement and a brand promotion under entry 65(105) (zzzzq) and 65 (105) (zzm). It is sought to be argued that **when a subsequent entry is enacted with specific and precise description of an activity without changing the existing entry, it is to be presumed that such existing entry did not cover the newly enacted entry or the activity covered by newly enacted entry.**

Evidently the new entry deals with a specific subject which relates to promotion of a brand even though the same may not directly have any link to the promotion of the service itself. Evidently, therefore, the original entry Business Auxiliary Service did not include the activity in the form of promotion of brand unconnected with the promotion of particular service as part of the activity under the said category.

In the case in hand, it cannot be disputed that the entry under Section 65(105)(zzzzq) was introduced pursuant to Finance Act, 2008 and w.e.f. 16.5.2008. Simultaneously it is to be noted that the clause under Section 65(105)(zzb) to the effect that the taxable service means any service provided or to be provided to a client by person in relation to Business Auxiliary Service was not disturbed. In other words, the entry relating to a contract or promotion and marketing of a brand including logo was introduced for the first time in the statute book w.e.f. 16.05.2008. While doing so, the earlier entry regarding Business Auxiliary Service was not disturbed in any manner. **Applying the settled principle of law that with the introduction of new entry without any bifurcation of the old entry and without disturbance of any old entry would disclose non inclusion of the subject of the new entry in the old existing entries to the matter in hand, it would be evidently clear that during the relevant period the activity of promotion or marketing of logo or a brand of service of the client was not forming part of the Business Auxiliary Service.**

It is settled law that the charge created by introducing a new entry and consequently taxability thereupon, the question of imposing the duty retrospectively does not arise. The statutory provision did not provide brand promotion to be a taxable service during the relevant period.

As regards the entry under Section 65(105)(zzzm) relating to sale of space, the same was introduced in the year 2006. However, there was no charge under the said entry against the appellants. It is not for this Tribunal to deal with the issue as to whether display of logo would fall in this category or not. It is neither the case of the department nor the records justify reference to the said entry to justify the claim of the department on that ground.

There can hardly be any quarrel about the proposition that introduction of specific entry does not mean that the subject covered by the specific entry was not covered by general entry prior to the introduction of specific entry. But that is not the case in the matter in hand. In our case, the earlier entry speaks of Business Auxiliary Services of the client, whereas the subsequent entry speaks of display of logo per se to be amounting to promotion and advertisement of the business activity of the client. In relation to the earlier entry, the activity conducted by the service provider should disclose promotion and marketing of the service rendered by the service recipient to the others and there must be tangible evidence to establish the same. In case of subsequent entry mere fact of display of logo of the service recipient would lead to presumption about promotion and advertisement of the business of the client. Such a presumption is not available in case of earlier entry.

It was for the department to establish the positive effects of display of logo and it was not for the assessee to prove the negative. **The burden to establish the charge was squarely upon the department which it failed to discharge.**

The Tribunal concluded that the adjudicating authority, did travel beyond the scope of the show cause notice while deciding the matter. The activity of the appellant having comprised of mere display of logo of Sahara Corporation on various items as agreed, and the entry relating to mere display of logo resulting in promotion and marketing of the business of the client having been introduced subsequent to the relevant period, it could not be said to have been part of Business Auxiliary Service during the relevant period and in any case the activity of Sahara Corporation being in the nature of sale of immovable properties either developed and/ or constructed or built premises therein did not amount to rendering "services" as such, either taxable or otherwise, to others, within the meaning of the expression used in the category of Business Auxiliary Service under the said Act, the said activity by the appellants does not fall within the category of Business Auxiliary Service under the said Act, and hence there was no liability upon the appellants to pay any service tax for such activity by them during the relevant period under the category of BAS of the said Act. The authority below clearly erred in imposing such liability upon the appellants.

The first three points for consideration as formulated above accordingly stand answered – in favour of the appellant. In view of conclusions as above, it is not necessary, rather it does not require the Tribunal to deal with other issues like absence of jurisdiction, bar of limitation, and liability for interest or penalty, since they do not arise in the facts and circumstances of the case as stated above. Thus, the appeal succeeds. ■

FAQs ON RESERVE BANK'S INSTRUCTIONS ON BANKING MATTERS

I. ADVANCES

1. **What is the meaning of the word 'Free' in the lending rate prescription?**

   Banks are free to fix Benchmark Prime Lending Rate (BPLR) for credit limits over Rs.2 lakh with the approval of their respective Boards. BPLR has to be declared and made uniformly applicable at all the branches. The banks may authorize their Asset-Liability Management Committee (ALCO) to fix interest rates on Deposits and Advances, subject to their reporting to the Board immediately thereafter. The banks should also declare the maximum spread over BPLR with the approval of the ALCO/Board for all advances.

2. **Whether banks can charge interest rate without reference to their own BPLR?**

   Yes. Banks are free to determine the rates of interest without reference to their BPLR and regardless of the size, in respect of following loans:

   (i) a. Loans for purchase of consumer durables.

   b. Loans to individuals against shares and debentures/ bonds

   c. Other non-priority sector personal loans including credit card dues.

   d. Advances/ overdrafts against domestic/ NRE/ FCNR(B) deposits with the bank, provided that the deposit/s stands/ stand either in the name(s) of the borrower himself/ borrowers themselves, or in the names of the borrower jointly with another person

   e. Finance granted to intermediary agencies (excluding those of housing) for on-lending to ultimate beneficiaries and agencies providing input support.

   f. Finance granted to housing finance intermediary agencies for on-lending to ultimate beneficiaries

   g. Discounting of Bills

   h. Loans/ Advances/ Cash Credit/ Overdrafts against commodities subject to Selective Credit Control

   (ii) Loans covered by participation in interest refinancing schemes of term lending institutions -

   Banks are free to charge rates as per stipulations of the refinancing agencies without reference to BPLR.

3. **Whether it is in order for banks to have multiple BPLRs?**

   No. Since all lending rates can be determined with reference to the Benchmark PLR by taking into account term premia and/or risk premia, there is no need for multiple BPLRs. These premia can be factored into the spread over or below the BPLR.

4. **Whether banks can grant fixed rate loans for purposes other than project finance?**

   Banks have the freedom to offer all loans at fixed or floating rates subject to conformity to their Asset Liability Management (ALM) Guidelines. Banks should use only external or market-based rupee benchmark interest rates for pricing of their floating rate loan products.

5. **Whether the revised BPLRs will be applicable to the existing advances?**

   Yes. Banks are required to invariably incorporate the following proviso in loan agreements in the case of all advances, including term loans, enabling banks to charge the applicable interest rate in conformity with the directives issued by RBI, except in case of Fixed Rate Loans -

   "Provided that the interest payable by the borrower shall be subject to the changes in interest rates made by the Reserve Bank from time to time".

6. **Whether banks may charge interest below BPLR on loans above Rs.2.00 lakh?**

   Yes. At present, loans up to Rs.2 lakh carry the prescription of not exceeding the Benchmark Prime Lending Rate (BPLR) and on the loans above Rs.2 lakh, banks are free to determine the rate of interest subject to BPLR and spread guidelines. Keeping in view the international practice and to provide operational flexibility to commercial banks in deciding their lending rate, banks may offer loans at below BPLR to exporters or other creditworthy borrowers including public enterprises on the basis of a transparent and objective policy approved by the respective Boards.

7. **Whether banks are permitted to charge interest below their declared BPLR under consortium arrangement to offer a rate comparable to that of the leader bank?**

   No. Banks need not charge a uniform rate of interest even under a consortium arrangement. Each member bank should charge rate of interest on the portion of the credit limits extended by them to the borrowers subject to their BPLR.

8. **What should be penal rate of interest?**

   With effect from October 10, 2000, banks have been given the freedom to formulate a transparent policy for charging penal interest with the approval of their Board of Directors. However, in the case of loans to borrowers under priority sector, no penal interest should be charged for loans up to Rs.25,000. Penal interest may be levied for reasons such as default in repayment, non-submission of financial statements, etc. However, the policy on penal interest should be governed by well-accepted principles of transparency, fairness, incentive to service the debt and genuine difficulties of customers.

9. **Consequent on the deregulation of interest rates on advances over Rs.2 lakh with effect from October 18, 1994, whether banks should pay DICGC Guarantee fees in respect of priority sector advances?**

   As regards DICGC Guarantee fees, banks have been given the discretion to absorb or to pass on the guarantee fees to the borrower in case of advances over Rs.25,000/- excluding advances to weaker sections. Banks should bear DICGC guarantee fees in respect of advances up to Rs.25,000/- and all advances to weaker sections.

10. **Whether interest on loans and advances could be charged at varying periods ranging from monthly rests to yearly rests?**

    With effect from April 1, 2002 banks have been charging interest on loans and advances at monthly rests except in the case of agricultural advances (including short term loans and other allied activities) where the existing practice continues.

11. **What rate of interest is chargeable on loans/ advances granted to Staff Members of the banks or Staff Members of Co-operative Credit Societies?**

The interest rate directives on advances granted by banks will not be applicable to loans or advances or other financial accommodation made or provided or renewed by a scheduled bank, inter alia, to its own employees. Where the advances are provided by banks to co-operative credit societies formed by the banks' staff members for lending to constituents (i.e. staff of the bank), the interest rate directives of RBI will not apply in case of such advances.

II. ADVANCES AGAINST SHARES AND DEBENTURES

1. **Whether banks can sanction loans against the equity shares of the banking company to its directors?**

   No.

2. **Whether any ceiling has been fixed on the bank's exposure to the capital market?**

   With effect from April 1, 2007 a bank's total exposure, including both fund based and non-fund based exposure, to the capital market in all forms covering its direct investment in equity shares, convertible bonds and debentures and units of equity oriented mutual funds; advances against shares to individuals for investment in equity shares (including IPOs), bonds and debentures, units of equity-oriented mutual funds and secured and unsecured advances to stockbrokers and guarantees issued on behalf of stockbrokers and market makers; all exposures to Venture Capital Funds (both registered and unregistered) should not exceed 40 per cent of its net worth, as on March 31 of the previous year. Within this overall ceiling, the bank's direct investment in shares, convertible bonds / debentures, units of equity-oriented mutual funds and all exposures to Venture Capital Funds (VCFs) [both registered and unregistered] should not exceed 20 per cent of its net worth. For computing the ceiling on exposure to capital market, the bank's direct investment in shares will be calculated at cost price of the shares.

   The aggregate exposure of a consolidated bank to capital markets (both fund based and non-fund based) should not exceed 40 per cent of its consolidated net worth as on March 31 of the previous year. Within this overall ceiling, the aggregate direct exposure by way of the consolidated bank's investment in shares, convertible bonds / debentures, units of equity-oriented mutual funds and all exposures to Venture Capital Funds (VCFs) [both registered and unregistered] should not exceed 20 per cent of its consolidated net worth.

3. **What is the definition of net worth of a bank?**

   Net worth would comprise of Paid-up capital plus Free Reserves including Share Premium but excluding Revaluation Reserves, plus Investment Fluctuation Reserve and credit balance in Profit & Loss account, less debit balance in Profit and Loss account, Accumulated Losses and Intangible Assets. No general or specific provisions should be included in computation of net worth. Infusion of capital through equity shares, either through domestic issues or overseas floats after the published balance sheet date, may also be taken into account for determining the ceiling on exposure to capital market.

4. **Whether banks can make short sales of shares?**

   No. Banks are prohibited from making any short sales of shares.

5. **Whether banks can invest in fixed deposits of non-financial companies?**

   There is no prohibition on banks' placing of funds with non-banking non-financial companies under their Public Deposit Schemes. However, investment in the Public Deposit Scheme of such companies should be classified by banks as loans/ advances in their balance sheet and returns submitted under the Banking Regulation Act, 1949 and the Reserve Bank of India Act 1934.

6. **What should be the method of valuation for advances against shares/ debentures/ bonds?**

   Shares/ debentures/ bonds accepted by banks as security for loans/ advances should be valued at the prevailing market prices.

7. **Whether banks can sanction bridge loans to companies?**

   Yes. Banks can sanction bridge loans to companies for a period not exceeding one year against the expected equity flows/ issues as also the expected proceeds of non-convertible Debentures, External Commercial Borrowings, Global Depository Receipts and/ or funds in the nature of Foreign Direct Investments, provided the bank is satisfied that the borrowing company has made firm arrangements for raising the aforesaid resources/ funds. Bridge loans extended by a bank will be included within the ceiling of 40% of net worth prescribed for banks' aggregate exposure to the capital market.

8. **What is the ceiling on the quantum of loans which can be sanctioned by banks to individuals against security of shares, debentures and PSU bonds, if held in physical form and in dematerialized form?**

   Loans/ advances granted to individuals against the security of shares, debentures and PSU bonds should not exceed Rs.10 lakh and Rs.20 lakh, if the securities are held in physical form and dematerialized form respectively. The maximum amount of finance that can be granted to an individual for subscribing to IPOs is Rs.10 lakh. However, the bank should not provide finance to companies for their investment in IPOs of other companies. Banks can grant advances to employees for purchasing shares of their own companies under Employees Stock Option Plan (ESOP) to the extent of 90% of purchase price of shares or Rs.20 lakh whichever is lower. NBFCs should not be provided finance for on-lending to individuals for subscribing to IPOs. Loans/ advances granted by a bank for subscribing to IPOs should be reckoned as an exposure to capital market.

9. **What is the margin stipulated for advances against shares held in physical form and dematerialised form?**

   A uniform margin of 50% has been stipulated for all advances against shares/ /financing of IPOs/issue of guarantees for capital market operations. Within this 50 percent margin, a minimum cash margin of 25 percent should be maintained in respect of guarantees issued by banks for capital market operations.

10. **Is any margin stipulated for banks' exposure to commodity markets?**

    The minimum margin of 50% and minimum cash margin of 25% (within the margin of 50%), as stipulated in the case of banks' exposure to capital markets, will also apply to guarantees issued by banks on behalf of commodity brokers in favour of the national level commodity exchanges, viz, National Commodity & Derivatives Exchange (NCDEX), Multi Commodity Exchange of India Limited (MCX) and National Multi-Commodity Exchange of India Limited (NMCEIL) in lieu of margin requirements. ■

(Source: rbi.org.in)

FAQs ON CORE INVESTMENT COMPANIES (CICs)

1. **Will existing Core Investment Companies (CICs) which had previously been exempted from registration and whose asset size is less than Rs. 100 crore again be required to submit application for exemption?**

   Ans: Existing CICs which have been exempted from registration in the past and have an asset size of less than Rs 100 crore are exempted from registration in terms of section 45NC of the RBI Act 1934, as stated in Notification No. DNBS.(PD) 220/CGM(US)-2011 dated January 5, 2011, and as such are not required to submit any application for exemption.

2. **Would existing CICs which had previously been exempted from registration and whose asset size is less than Rs. 100 crore be required to submit Statutory Auditor's Certificate with reference to position as on March 31 of each year to the effect that the company continues to comply with the earlier norms based on which it was treated as a 'Core Investment Company'.**

   Ans: No, Existing CICs which have been exempted from registration in the past and have an asset size of less than Rs 100 crore are exempted from registration as stated in Notification No. DNBS.(PD) 220/CGM(US)-2011 dated January 5, 2011. As such they are not required to submit any auditors certificate that they comply with the requirements of the Notification.

3. **A single group is having under its fold four to five prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. In such a situation, which company among the group companies is required to seek registration as CIC with the Bank.**

   Ans: All companies in the group that are CICs would be regarded as CICs-ND-SI and would be required to obtain a Certificate of Registration from the Bank.

4. **A single group is having under its fold various prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. One of the entities has raised / holds public funds (one of the pre requisites for qualifying as a CIC-ND-SI). In such a situation, whether every CIC within the group or only the parent CIC or the specific entity that has raised/ holds public funds would be regarded as CIC-ND-SI, and thus would be required to seek registration as CIC-ND-SI with the Bank.**

   For Example: HCo is the parent group CIC holding 100 per cent equity capital of A, B and C, all of which are also CICs . In case C has accessed public funds, whether HCO as well as A, B and C must seek registration as CIC-ND-SI or will just C need registration?

   Ans: In such a case only C will be registered, provided C is not being funded by any of the other CICs either directly or indirectly.

5 **Whether the investment of a company in its subsidiary's subsidiary (step down subsidiary) will be taken into account for determining not less than ninety percent of its net assets.**

   Ans: All direct investments in group companies, as appearing in the CICs balance sheet will be taken into account for this purpose. Investments made by subsidiaries in step down subsidiaries or other entities will not be taken into account for computing 90 percent of net assets.

6. **Would Current Liabilities will also form part of Outside Liabilities? What will be the treatment of DTL, Advance Tax Due and Provision for Income Tax? Will they be Outside Liabilities?**

   Ans: Anything that has to be repaid will be an outside liability.

7. **In case an existing NBFC-ND-SI is converted into a CIC-ND-SI after fulfilling the stipulated criteria, will the existing COR continue or will a fresh application need to be made?**

   Ans: As there would be a separate application form for CICs-ND-SI, they would have to apply afresh.

8. **What items are included in the 10% of Net assets which CIC's/CIC's-ND-SI can hold outside the group?**

   Ans: These would include real estate or other fixed assets which are required for effective functioning of a company, but should not include other financial investments/loans in non group companies. It would however include investments in other group entities that are not companies eg: Trusts etc.

9. **Is there an enabling provision for use of statutory accounts based on some date other than 31st March, such as December 31st?**

   Ans: While such accounts could be taken into account in view of the fact that developments after balance sheet date are also taken into account, all NBFCs including CICs-ND-SI would mandatorily have to finalise their accounts as on March 31 of the year, and submit annual auditors certificate based on this figure.

10. **Whether investments in a group entity other than a Company, say partnership firms, LLPs, Trusts, Association of Persons, etc by CICs-ND-SI could be regarded as investments in Group Companies for the purpose of calculating 90% investment in Group Companies.**

    Ans: No, only investments in companies registered under Section 3 of the Companies Act 1956 would be regarded as investments in Group companies for the purpose of calculating 90% investment in Group companies. However, CICs/CICs ND SI can deploy balance 10% of their net assets in group entities other than a company.

11 **Are CICs-ND-SI exempt from the NBFC (Non Deposit holding) Prudential Norms Directions 2007?**

   Ans: No, they are only exempt from norms regarding submission of Statutory Auditor Certificate regarding continuance of business as NBFC, capital adequacy and concentration of credit / investments in group companies norms.

12. **Would CICs-ND-SI require NOC in terms of Regulation 7 of FEMA (Transfer or Issue of Any Foreign Security) Amendment Regulations Act 2004 in case they want to invest abroad?**

    Ans: Yes, as they are regulated by RBI, they would require NOC from Department of Non-Banking Supervision (DNBS).

13. **Do CICs which are exempt from registration, and investing overseas need NOC from DNBS?**

    Ans: No, they do not require NOC from DNBS for investing abroad.

14. Whether NBFCs already registered with the Bank as category "B" company whose asset size is below Rs. 100 crore, but fulfilling the CIC criteria, can seek voluntary deregistration (as such companies are not otherwise required to get registered with the Bank under the new norms)? If so, which source should be relied upon viz certificate from Statutory auditor or audited balance sheet for one year or more?

Ans: Yes, CICs presently registered with the Bank but fulfilling the criteria for exemption under Notification No 220 dated January 05, 2010 can seek voluntary deregistration. Both audited balance sheet and auditors certificate are required to be submitted for the purpose.

15. Whether CICs having asset size below Rs. 100 crore are regulated by the Reserve Bank?

Ans: CICs having asset size of below Rs 100 crore are exempted from registration from the Reserve Bank. They are exempt from all Directions/regulations/ instructions issued by the Bank from time to time.

16. As per the definition of CIC, only investment/loans/debt in group companies is eligible for computing 90% exposure? What treatment is to be given to company's investment in group's partnership concerns?

Ans: CICs can invest balance 10% of Net Assets in such concerns.

17 If a company is unlisted, would the terms of block deals apply? What is the minimum number/value of shares transferred for it to be defined as a block deal/block sale.

Ans: The term used in the CIC circulars is block sale and not block deal which has been defined by SEBI. In the context of the circular, a block sale would be a long term or strategic sale made for purposes of disinvestment or investment and not for short term trading. Unlike a block deal, there is no minimum number/value defined for the purpose.

18. Can CICs/CICs-ND-SI accept deposits?

Ans: No, CICs/ CICs-ND-SI cannot accept deposits. That is one of the eligibility criteria.

19. What does the term public funds include? Is it the same as public deposits?

Ans: Public funds are not the same as public deposits. Public funds include public deposits, inter-corporate deposits, bank finance and all funds received whether directly or indirectly from outside sources such as funds raised by issue of Commercial Papers, debentures etc. However, even though public funds include public deposits in the general course, it may be noted that CICs/CICs-ND-SI cannot accept public deposits.

20. What is a Group company?

Ans: For the purposes of determining whether a company is a CIC/CIC-ND-SI,'companies in the group' have been exhaustively defined in para 3(1) b of Notification No. DNBS. (PD) 219/CGM(US)-2011 dated January 5, 2011 as "an arrangement involving two or more entities related to each other through any of the following relationships, viz.,Subsidiary – parent (defined in terms of AS 21), Joint venture (defined in terms of AS 27), Associate (defined in terms of AS 23), Promoter-promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997] for listed companies, a related party (defined in terms of AS 18) Common brand name, and investment in equity shares of 20% and above)."

21. Is the definition of group company the same for CICs/ CICS-ND-SI as that for NBFCs?

Ans: No the definition is not the same for CICs / CICs-ND-SI and NBFCs. The definition of group company for the purpose of classifying a company as a CIC/ CICs-ND-SI is much more exhaustive and gives a benefit to the CICs/CICs-ND-SI.

22. How can a company register as a CIC-ND-SI?

Ans: The application form for CICs-ND-SI available on the Bank's website can be downloaded and filled in and submitted to the Regional Office of the DNBS in whose jurisdiction the Company is registered along with necessary supporting documents mentioned in the application form.

23. A CIC-ND-SI should have 90% investment within the group, and in terms of current exposure norms, NBFCs-ND-SI are permitted only 40% of both lending and investment within any group. Therefore, no NBFC as it stands, would be able to become a CIC without breaching the NOF, CRAR or Concentration Norms, since its entire business is in a subsidiary. However, an NBFC may voluntarily seek to become a CIC-ND-SI since it brings clarity to the holding structure in their organization. How would this issue be resolved? Could NBFCs-ND-SI be provided exemption from Capital adequacy/exposure norms during the transition period, just as unregistered CICs-ND-SI are given 6 months time.

Ans: The NBFC would have to apply to RBI with full details of the plan and exemptions could be considered on a selective basis on the merits of the case.

24. A company has investments in Group companies but does not meet the criteria of principal business as defined in terms of asset-income criteria to be as an NBFC. Can the company still be registered as a CIC or does it need to first register as an NBFC?

Ans: A CIC may not necessarily meet the income criteria as it may not be receiving sufficient dividends etc on its investments. It may take a conscious decision to plough back dividends. Therefor, it does not have to meet the principal business criteria to qualify as CIC.

25. If a company is a CIC but does not exactly meet the criteria specified, does the company need to register as NBFC?

Ans: A holding company not meeting the criteria for a CIC laid down in para 2 of Notification No DNBS. (PD) 219/CGM(US)-2011 dated January 5, 2011 would require to register as an NBFC. However, if such company wishes to register as CIC-ND-SI/ be exempted as CIC, it would have to apply to RBI with an action plan achievable within the specific period to reorganize its business as CIC. If it is not able to do so, it would need to comply with NBFC requirements and prudential norms.

26. Whether a Holding Company which is not able to comply with the CIC criteria (all four conditions), would still need to comply with NBFC requirements and prudential norms even in the event that it is not satisfying the asset-income criteria. (For example: the holding company owns 60 per cent equity in another group company. Therefore, it does not qualify as a CIC. Further, the income from financial assets is also less than 50 per cent of total income. Whether such a company would require compliance with NBFC norms).

Ans: Yes, Section 45 IA of the RBI Act states that a company requires a COR" to commence or carry on the business of NBFI". Therefore it requires the COR before it becomes NBFC.

27. A group would like to set up a CIC-ND-SI in the group to rationalize the set up. However, no company can commence the business of NBFI without COR from RBI. Therefore the proposed company would have to apply for COR before transferring shares from different companies to the CIC-ND-SI. But at that time the company would not be eligible in terms of the requirements, as it would not have 90% of net assets as investment in group companies. What should the company do?

Ans: The company would have to apply for COR to RBI, giving a business plan within a prescribed time period of one year in which it would achieve CIC-ND-SI status. In case the company is unable to do so, the exemptions would not apply and the company would have to comply with NBFC capital adequacy and exposure norms.■

(Source: rbi.org.in)

FAQs ON NBFCs

1. What is a Non-Banking Financial Company (NBFC)?

ANS: A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 and is engaged in the business of loans and advances, acquisition of shares/stock/bonds/debentures/securities issued by Government or local authority or other securities of like marketable nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, sale/purchase/construction of immovable property. A non-banking institution which is a company and which has its principal business of receiving deposits under any scheme or arrangement or any other manner, or lending in any manner is also a non-banking financial company (Residuary non-banking company).

2. NBFCs are doing functions similar to banks. What is difference between banks & NBFCs ?

ANS: NBFCs are doing functions akin to that of banks; however there are a few differences:

(i) an NBFC cannot accept demand deposits;

(ii) an NBFC is not a part of the payment and settlement system and as such an NBFC cannot issue cheques drawn on itself; and

(iii) deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available for NBFC depositors unlike in case of banks.

3. Is it necessary that every NBFC should be registered with RBI?

ANS: In terms of Section 45-IA of the RBI Act, 1934, it is mandatory that every NBFC should be registered with RBI to commence or carry on any business of non-banking financial institution as defined in clause (a) of Section 45 I of the RBI Act, 1934.

However, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. Venture Capital Fund/Merchant Banking companies/ Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982 or Housing Finance Companies regulated by National Housing Bank.

4. What are the different types of NBFCs registered with RBI?

ANS: Originally, NBFCs registered with RBI were classified as:

(i) equipment leasing company;

(ii) hire-purchase company;

(iii) loan company;

(iv) investment company.

However, with effect from December 6, 2006 the above NBFCs registered with RBI have been reclassified as

(i) Asset Finance Company (AFC)

(ii) Investment Company (IC)

(iii) Loan Company (LC)

AFC would be defined as any company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

The above type of companies may be further classified into those accepting deposits or those not accepting deposits.

5. Updated on February 10, 2009 What are the requirements / is the procedure for registration with RBI?

ANS: A company incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 should have a minimum net owned fund of Rs 25 lakh (raised to Rs 200 lakh w.e.f April 21, 1999).

The company is required to submit its application online by accessing RBI's secured website https://secweb.rbi.org.in/COSMOS/rbilogin.do (the applicant companies do not need to log on to the COSMOS application and hence user ids for these companies are not required). The company has to click on “CLICK” for Company Registration on the login page. A window showing the Excel application forms available for download would be displayed. The company can then download suitable application form (i.e. NBFC or SC/RC) from the above website, key in the data and upload the application form. The company may note to indicate the name of the correct Regional Office in the field “C-8” of the “Annx-Identification Particulars” worksheet of the Excel application form. The company would then get a Company Application Reference Number for the CoR application filed on-line. Thereafter, the company has to submit the hard copy of the application form (indicating the Company Application Reference Number of its on-line application), along with the supporting documents, to the concerned Regional Office. The company can then check the status of the application based on the acknowledgement number. The Bank would issue Certificate of Registration after satisfying itself that the conditions as enumerated in Section 45-IA of the RBI Act, 1934 are satisfied.

6. Where can one find list of Registered NBFCs and instructions issued to NBFCs?

ANS: The list of registered NBFCs is available on the web site of Reserve Bank of India and can be viewed at www.rbi.org.in. The instructions issued to NBFCs from time to time are also hosted at the above site. Besides, instructions are also issued through Official Gazette notifications. Press Release is also issued to draw attention of the public/NBFCs.

7. Can all NBFCs accept deposits and what are the requirements for accepting Public Deposits?

ANS: All NBFCs are not entitled to accept public deposits. Only those NBFCs holding a valid Certificate of Registration with authorisation to accept Public Deposits can accept/hold public deposits. NBFCs authorised to accept/hold public deposits besides having minimum stipulated Net Owned Fund (NOF) should also comply with the Directions such as investing part of the funds in liquid assets, maintain reserves, rating etc. issued by the Bank.

8. Is there any ceiling on acceptance of Public Deposits? What is the rate of interest and period of deposit which NBFCs can accept?

ANS: Yes, there is a ceiling on acceptance of Public Deposits. An NBFC maintaining required NOF/Capital to Risk Assets Ratio (CRAR) and complying with the prudential norms can accept public deposits as follows:

NBFC having NOF ≤ 200 lakh.

- AFC* maintaining CRAR of 15% without credit rating (1.5 times of NOF or Rs 10 crore whichever is less)
- AFC with CRAR of 12% and having minimum investment grade credit rating (4 times of NOF)

- LC/IC** with CRAR of 15% and having minimum investment grade credit rating (1.5 times of NOF)

* AFC = Asset Finance Company

** LC/IC = Loan company/Investment Company

As has been notified on June 17, 2008 the ceiling on level of public deposits for NBFCs accepting deposits but not having minimum Net Owned Fund of Rs 200 lakh is revised as under:

NBFC having NOF > 25L < 200 L

- AFCs maintaining CRAR of 15% without credit rating (Equal to NOF)

  AFCs with CRAR of 12% and having minimum investment grade credit rating (1.5 times of NOF)

- LCs/ICs with CRAR of 15% and having minimum investment grade credit rating (Equal to NOF)

Presently, the maximum rate of interest an NBFC can offer is 12.5%. The interest may be paid or compounded at rests not shorter than monthly rests.

The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.

The RNBCs have different norms for acceptance of deposits which are explained elsewhere in this booklet.

9. What are the salient features of NBFCs regulations which the depositor may note at the times of investment?

ANS: Some of the important regulations relating to acceptance of deposits by NBFCs are as under:

i. The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.

ii. NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time. The present ceiling is 12.5 per cent per annum. The interest may be paid or compounded at rests not shorter than monthly rests.

iii. NBFCs cannot offer gifts/incentives or any other additional benefit to the depositors.

iv. NBFCs (except certain AFCs) should have minimum investment grade credit rating.

v. The deposits with NBFCs are not insured.

vi. The repayment of deposits by NBFCs is not guaranteed by RBI.

vii. Certain mandatory disclosures are to be made about the company in the Application Form issued by the company soliciting deposits.

10. What is 'deposit' and 'public deposit'? Is it defined anywhere?

ANS: The term 'deposit' is defined under Section 45 I(bb) of the RBI Act, 1934. 'Deposit' includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form but does not include:

- amount raised by way of share capital, or contributed as capital by partners of a firm;
- amount received from scheduled bank, co-operative bank, a banking company, State Financial Corporation, IDBI or any other institution specified by RBI;
- amount received in ordinary course of business by way of security deposit, dealership deposit, earnest money, advance against orders for goods, properties or services;
- amount received by a registered money lender other than a body corporate;
- amount received by way of subscriptions in respect of a 'Chit'.

Paragraph 2(1)(xii) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 defines a ' public deposit' as a 'deposit' as defined under Section 45 I(bb) of the RBI Act, 1934 and further excludes the following:

- amount received from the Central/State Government or any other source where repayment is guaranteed by Central/State Government or any amount received from local authority or foreign government or any foreign citizen/authority/person;
- any amount received from financial institutions;
- any amount received from other company as inter-corporate deposit;
- amount received by way of subscriptions to shares, stock, bonds or debentures pending allotment or by way of calls in advance if such amount is not repayable to the members under the articles of association of the company;
- amount received from shareholders by private company;
- amount received from directors or relative of the director of an NBFC;
- amount raised by issue of bonds or debentures secured by mortgage of any immovable property or other asset of the company subject to conditions;
- the amount brought in by the promoters by way of unsecured loan;
- amount received from a mutual fund;
- any amount received as hybrid debt or subordinated debt;
- any amount received by issuance of Commercial Paper.

Thus, the directions exclude from the definition of public deposit, amount raised from certain set of informed lenders who can make independent decision.

11. Are Secured debentures treated as Public Deposit? If not who regulates them?

ANS: Debentures secured by the mortgage of any immovable property or other asset of the company, if the amount raised does not exceed the market value of the said immovable property or other asset, are excluded from the definition of 'Public Deposit' in terms of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998. Secured debentures are debt instruments and are regulated by Securities & Exchange Board of India.

12. Whether NBFCs can accept deposits from NRIs?

ANS: Effective from April 24, 2004, NBFCs cannot accept deposits from NRIs except deposits by debit to NRO account of NRI provided such amount does not represent inward remittance or transfer from NRE/FCNR (B) account. However, the existing NRI deposits can be renewed.

13 Is nomination facility available to the Depositors of NBFCs?

ANS: Yes, nomination facility is available to the depositors of NBFCs. The Rules for nomination facility are provided for in section 45QB of the Reserve Bank of India Act, 1934. Non-Banking Financial Companies have been advised to adopt the Banking Companies (Nomination) Rules, 1985 made under Section 45ZA of the Banking Regulation Act, 1949. Accordingly, depositor/s of NBFCs are permitted to nominate one person to whom the NBFC can return the deposit in the event of the death of the depositor/s. NBFCs are advised to accept nominations made by the depositors in the form similar to one specified under the said rules, viz Form DA 1 for the purpose of nomination, and Form DA2 and DA3 for cancellation of nomination and change of nomination respectively.

14. What else should a depositor bear in mind while depositing money with NBFCs?

ANS: While making deposits with an NBFC, the following aspects should be borne in mind:

(i) Public deposits are unsecured.

(ii) A proper deposit receipt which should, besides the name of the depositor/s, state the date of deposit, the amount in words and figures, rate of interest payable and the date of maturity. Depositor/s should insist on the above and also ensure that the receipt is duly signed by an officer authorised by the company in that behalf.

(iii) The Reserve Bank of India does not accept any responsibility or guarantee about the present position as to the financial soundness of the company or for the correctness of any of the statements or representations made or opinions expressed by the company and for repayment of deposits/discharge of the liabilities by the company.

15. It is said that rating of NBFCs is necessary before it accepts deposit? Is it true? Who rates them?

ANS: An unrated NBFC, except certain Asset Finance companies (AFC), cannot accept public deposits. An exception is made in case of unrated AFC companies with CRAR of 15% which can accept public deposit without having a credit rating upto a certain ceiling depending upon its Net Owned Funds (c.f Ans to Q 8). AN NBFC may get itself rated by any of the four rating agencies namely, CRISIL, CARE, ICRA and FITCH Ratings India Pvt. Ltd.

16. What are the symbols of minimum investment grade rating of different companies?

ANS: The symbols of minimum investment grade rating of the Credit rating agencies are:

Name of rating agencies (Nomenclature of minimum investment grade credit rating (MIGR))

CRISIL (FA- (FA MINUS))

ICRA (MA- (MA MINUS))

CARE (CARE BBB (FD))

FITCH Ratings India Pvt. Ltd. (tA-(ind)(FD))

It may be added that A- is not equivalent to A, AA- is not equivalent to AA and AAA- is not equivalent to AAA.

17. Can an NBFC which is yet to be rated accept public deposit?

ANS: No, an NBFC cannot accept deposit without rating (except an Asset Finance Company complying with prudential norms and having CRAR of 15%, as explained above at Ans. to Q 8).

18. When a company's rating is downgraded, does it have to bring down its level of public deposits immediately or over a period of time?

ANS: If rating of an NBFC is downgraded to below minimum investment grade rating, it has to stop accepting public deposit, report the position within fifteen working days to the RBI and reduce within three years from the date of such downgrading of credit rating, the amount of excess public deposit to nil or to the appropriate extent permissible under paragraph 4(4) of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998.

19. In case an NBFC defaults in repayment of deposit what course of action can be taken by depositors?

ANS: If an NBFC defaults in repayment of deposit, the depositor can approach Company Law Board or Consumer Forum or file a civil suit in a court of law to recover the deposits.

20. What is the role of Company Law Board in protecting the interest of depositors? How one can approach it?

ANS: Where an NBFC fails to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board (CLB) either on its own motion or on an application from the depositor, directs by order the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

As explained above, the depositor can approach CLB by mailing an application in prescribed form to the appropriate bench of the Company Law Board according to its territorial jurisdiction alongwith the prescribed fee.

QUES 21. Can you give the addresses of the various benches of the Company Law Board (CLB) indicating their respective jurisdiction?

ANS 21. The details of addresses and territorial jurisdiction of the bench officers of CLB are as under:

Sr.No.	Addresses	Territorial Jurisdiction
1.	Bench Officer, Company Law Board,Northern Region Bench,Shastri Bhavan, 'A' Wing, 5th Floor,Dr. Rajendra Prasad Road, New Delhi 110 001.	Uttar Pradesh, Jammu & Kashmir, Punjab, Himachal Pradesh, Rajasthan, Haryana and Union Territories of Chandigarh and Delhi
2.	Bench Officer, Company Law Board,Southern Region Bench,Shastri Bhavan, 'A' Wing, 5th Floor,Block 8, No 26, Haddows Road,Chennai 600 006.	Tamil Nadu, Andhra Pradesh, Kerala, Karnataka, Union Territories of Amindivi, Minicoy and Lakshadweep Islands and Pondicherry
3.	Bench Officer, Company Law Board,Western Region Bench,2nd Floor, N.T.C. House,15, Narottam Morarjee Marg,Ballard Estate,Mumbai-400 038.	Maharashtra, Gujarat, Madhya Pradesh, Goa and Union Territories of Dadra & Nagar Haveli, Daman and Diu.
4.	Bench Officer, Company Law Board,Eastern Region Bench,9, Old Post Office Street,6th Floor,Kolkata 700 001.	West Bengal, Orissa, Bihar, Assam, Tripura, Manipur, Nagaland, Meghalaya, Arunachal Pradesh, Mizoram, Union Territories of Andaman and Nicobar Islands.
5.	Bench Officer, Company Law Board,Principal Bench at New Delhi, Shastri Bhavan, 'A' Wing, 5th Floor, Dr. Rajendra Prasad Road, New Delhi 110 001.	All Principal Bench matters all over India.

22. We hear that in a number of cases official liquidators have been appointed on the defaulting NBFCs. What is their role and how one can approach them?

ANS: Official Liquidator is appointed by the court after giving the company reasonable opportunity of being heard in a winding up petition. The liquidator performs duties of winding up and such duties in reference thereto as the court may impose.

Where the court has appointed an official liquidator or provisional liquidator, he becomes custodian of the property of the company and runs the day-to-day affairs of the company. He has to draw up a statement of affairs of the company in prescribed form containing particulars of assets of the company, its debts and liabilities, names/residences/occupations of its creditors, the debts due to the company and such other information as may be prescribed. The scheme is drawn up by the liquidator and same is put up to the court for approval. The liquidator realizes the assets of the company and arranges to repay the creditors according to the scheme approved by the court. The liquidator generally inserts advertisement in the newspaper inviting claims from depositors/investors in compliance with court orders. Therefore, the investors/ depositors should file the claims within due time as per such notices of the liquidator. The Reserve Bank also provides assistance to the depositors in furnishing addresses of the official liquidator.

23. Consumer Court play useful role in attending to depositors problems. Can one approach Consumer Forum, Civil Court, CLB simultaneously?

ANS:. Yes, a depositor can approach any or all of the redressal authorities i.e consumer forum, court or CLB.

24. Is there an Ombudsman for hearing complaints against NBFCs?

ANS: No, there is no Ombudsman for hearing complaints against NBFCs. However, in respect of credit card operations of an NBFC, if a complainant does not get satisfactory response from the NBFC within a maximum period of thirty (30) days from the date of lodging the complaint, the customer will have the option to approach the Office of the concerned Banking Ombudsman for redressal of his grievance/s.

25. What are various prudential regulations applicable to NBFCs?

ANS: The Bank has issued detailed directions on prudential norms, vide Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998. The directions interalia, prescribe guidelines on income recognition, asset classification and provisioning requirements applicable to NBFCs, exposure norms, constitution of audit committee, disclosures in the balance sheet, requirement of capital adequacy, restrictions on investments in land and building and unquoted shares.

26. Please explain the terms 'owned fund' and 'net owned fund' in relation to NBFCs?

ANS: 'Owned Fund' means aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom accumulated balance of loss, deferred revenue expenditure and other intangible assets.

'Net Owned Fund' is the amount as arrived at above minus the amount of investments of such company in shares of its subsidiaries, companies in the same group and all other NBFCs and the book value of debentures, bonds, outstanding loans and advances made to and deposits with subsidiaries and companies in the same group, to the extent it exceeds 10% of the owned fund.

27. What are the responsibilities of the NBFCs accepting/holding public deposits with regard to submission of Returns and other information to RBI?

ANS: The NBFCs accepting public deposits should furnish to RBI

i. Audited balance sheet of each financial year and an audited profit and loss account in respect of that year as passed in the annual general meeting together with a copy of the report of the Board of Directors and a copy of the report and the notes on accounts furnished by its Auditors;
ii. Statutory Annual Return on deposits-NBS1;
iii. Certificate from the Auditors that the company is in a position to repay the deposits as and when the claims arise;
iv. Quarterly Return on liquid assets;
v. Half-yearly Return on prudential norms;
vi. Half-yearly ALM Returns by companies having public deposits of Rs. 20 crore and above or with assets of Rs. 100 crore and above irrespective of the size of deposits ;
vii. Monthly return on exposure to capital market by companies having public deposits of Rs. 50 crore and above; and
viii. A copy of the Credit Rating obtained once a year along with one of the Half-yearly Returns on prudential norms as at (v) above.

28. What are the documents or the compliance required to be submitted to the Reserve Bank of India by the NBFCs not accepting/holding public deposits?

ANS: The NBFCs having assets of Rs. 100 crore and above but not accepting public deposits are required to submit a Monthly Return on important financial parameters of the company. All companies not accepting public deposits have to pass a board resolution to the effect that they have neither accepted public deposit nor would accept any public deposit during the year.

However, all the NBFCs (other than those exempted) are required to be registered with RBI and also make sure that they continue to be eligible to retain the Registration. Further, all NBFCs (including non-deposit taking) should submit a certificate from their Statutory Auditors every year to the effect that they continue to undertake the business of NBFI requiring holding of CoR under Section 45-IA of the RBI Act, 1934.

RBI has powers to cause Inspection of the books of any company and call for any other information about its business activities. For this purpose, the NBFC is required to furnish the information in respect of any change in the composition of its Board of Directors, address of the company and its Directors and the name/s and official designations of its principal officers and the name and office address of its Auditors. With effect from April 1, 2007, non-deposit taking NBFCs with assets of Rs 100 crore and above were advised to maintain minimum CRAR of 10% and also comply with single/group exposure norms. The companies have to achieve CRAR of 12% by March 31, 2009 and 15% by March 31, 2010.

29. The NBFCs have been made liable to pay interest on the overdue matured deposits if the company has not been able to repay the matured public deposits on receipt of a claim from the depositor. Please elaborate the provisions.

ANS: As per Reserve Bank's Directions, overdue interest is payable to the depositors in case the company has delayed the repayment of matured deposits, and such interest is payable from the date of receipt of such claim by the company or the date of maturity of the deposit whichever is later, till the date of actual payment. If the depositor has lodged his claim after the date of maturity, the company would be liable to pay interest for the period from the date of claim till the date of repayment. For the period between the date of maturity and the date of claim it is the discretion of the company to pay interest.

30. Can a company pre-pay its public deposits?

ANS: AN NBFC accepts deposits under a mutual contract with its depositors. In case a depositor requests for pre-mature payment, Reserve Bank of India has prescribed Regulations for such an eventuality in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 wherein it is specified that NBFCs cannot grant any loan against a public deposit or make premature repayment of a public deposit within a period of three months (lock-in period) from the date of its acceptance. However, in the event of death of a depositor, the company may, even within the lock-in period, repay the deposit at the request of the joint holders with survivor clause / nominee / legal heir only against submission of relevant proof, to the satisfaction of the company.

An NBFC subject to above provisions, which is not a problem company, may permit after the lock–in period, premature repayment of a public deposit at its sole discretion, at the rate of interest prescribed by the Bank.

A problem NBFC is prohibited from making premature repayment of any deposits or granting any loan against public deposit/deposits, as the case may be. The prohibition shall not, however, apply in the case of death of depositor or repayment of tiny deposits i.e. up to Rs. 10000/- subject to lock in period of 3 months in the latter case.

31. What is the liquid asset requirement for the deposit taking companies? Where these assets are kept? Do depositors have any claims on them?

ANS: In terms of Section 45-IB of the RBI Act, 1934, the minimum level of liquid asset to be maintained by NBFCs is 15 per cent of public deposits outstanding as on the last working day of the second preceding quarter. Of the 15%, NBFCs are required to invest not less than ten percent in approved securities and the remaining 5% can be in unencumbered term deposits with any scheduled commercial bank. Thus, the liquid assets may consist of Government securities, Government guaranteed bonds and term deposits with any scheduled commercial bank.

The investment in Government securities should be in dematerialised form which can be maintained in Constituents' Subsidiary General Ledger (CSGL) Account with a scheduled commercial bank (SCB) / Stock Holding Corporation of India Limited (SHICL). In case of Government guaranteed bonds the same may be kept in dematerialised form with SCB/SHCIL or in a dematerialised account with depositories [National Securities Depository Ltd. (NSDL)/Central Depository Services (India) Ltd. (CDSL)] through a depository participant registered with Securities & Exchange Board of India (SEBI). However in case there are Government bonds which are in physical form the same may be kept in safe custody of SCB/SHCIL.

NBFCs have been directed to maintain the mandated liquid asset securities in a dematerialised form with the entities stated above at a place where the registered office of the company is situated. However, if an NBFC intends to entrust the securities at a place other than the place at which its registered office is located, it may do so after obtaining the permission of RBI in writing. It may be noted that liquid assets in approved securities will have to be maintained in dematerialised form only.

The liquid assets maintained as above are to be utilised for payment of claims of depositors. However, deposit being unsecured in nature, depositors do not have direct claim on liquid assets.

32. Please tell us something about the companies which are NBFCs, but are exempted from registration?

ANS: Housing Finance Companies, Merchant Banking Companies, Stock Exchanges, Companies engaged in the business of stock-broking/sub-broking, Venture Capital Fund Companies, Nidhi Companies, Insurance companies and Chit Fund Companies are NBFCs but they have been exempted from the requirement of registration under Section 45-IA of the RBI Act, 1934 subject to certain conditions.

Housing Finance Companies are regulated by National Housing Bank, Merchant Banker/Venture Capital Fund Company/stock-exchanges/stock brokers/sub-brokers are regulated by Securities and Exchange Board of India, and Insurance companies are regulated by Insurance Regulatory and Development Authority. Similarly, Chit Fund Companies are regulated by the respective State Governments and Nidhi Companies are regulated by Ministry of Corporate Affairs, Government of India.

It may also be mentioned that Mortgage Guarantee Companies have been notified as Non-Banking Financial Companies under Section 45 I(f)(iii) of the RBI Act, 1934.

33. There are some entities (not companies) which carry on activities like that of NBFCs. Are they allowed to take deposits? Who regulates them?

ANS: Any person who is an individual or a firm or unincorporated association of individuals cannot accept deposits except by way of loan from relatives, if his/its business wholly or partly includes loan, investment, hire-purchase or leasing activity or principal business is that of receiving of deposits under any scheme or arrangement or in any manner or lending in any manner.

34. What is a Residuary Non-Banking Company (RNBC)? In what way it is different from other NBFCs?

ANS: Residuary Non-Banking Company is a class of NBFC which is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner and not being Investment, Asset Financing, Loan Company. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of these companies is different from those of NBFCs in terms of method of mobilisation of deposits and requirement of deployment of depositors' funds as per Directions. Besides, Prudential Norms Directions are applicable to these companies also.

35. We understand that there is no ceiling on raising of deposits by RNBCs, then how safe is deposit with them?

ANS: It is true that there is no ceiling on raising of deposits by RNBCs but every RNBC has to ensure that the amounts deposited and investments made by the company are not less than the aggregate amount of liabilities to the depositors.

To secure the interest of depositor, such companies are required to invest in a portfolio comprising of highly liquid and secure instruments viz. Central/State Government securities, fixed deposits with scheduled commercial banks (SCB), Certificate of deposits of SCB/FIs, units of Mutual Funds, etc.

36. Can RNBC forfeit deposit if deposit installments are not paid regularly or discontinued?

ANS: No Residuary Non-Banking Company shall forfeit any amount deposited by the depositor, or any interest, premium, bonus or other advantage accrued thereon.

37. Please tell us something on rate of interest payable by RNBCs on deposits and maturity period of deposits?

ANS: The amount payable by way of interest, premium, bonus or other advantage, by whatever name called by a RNBC in respect of deposits received shall not be less than the amount calculated at the rate of 5% (to be compounded annually) on the amount deposited in lump sum or at monthly or longer intervals; and at the rate of 3.5% (to be compounded annually) on the amount deposited under daily deposit scheme. Further, a RNBC can accept deposits for a minimum period of 12 months and maximum period of 84 months from the date of receipt of such deposit. They cannot accept deposits repayable on demand.■

(Source: rbi.org.in)

CONGRATULATIONS TO THE WINNERS FOR THE YEAR 2010 !!

EIRC BRANCH AWARDS 2010

- **Siliguri Branch**
  (Best Branch)
- **Guwahati Branch**
  (Second Best Branch)
- **Bhubaneswar Branch**
  (Highly Commendable Performance)
- **Cuttack Branch**
  (Commendable Performance)

EIRC STUDY CIRCLE AWARDS 2010

- **DTPA Chartered Accountants Study Circle**
  (Best Study Circle)
- **Views Exchange Chartered Accountants Study Circle**
  (Second Best Study Circle)
- **Accountants Library Chartered Accountants Study Circle**
  (Highly Commendable Performance)
- **VIP Road Chartered Accountants Study Circle**
  (Commendable Performance)

ICAI AWARDS 2010

- **Guwahati Branch**
  (Highly Commendable Performance in Medium Size Branch)
- **Siliguri Branch**
  (Highly Commendable Performance in Small Size Branch)
- **Guwahati Branch of EICASA**
  (Shield for Best Branch of Students' Association of EICASA)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
EASTERN INDIA REGIONAL COUNCIL
SEMINAR ON BANK AUDIT
Date : Saturday, 12th March, 2011
Venue : Royal Bengal Room, City Centre, Salt Lake, Kolkata

PROGRAMME

INAUGURAL SESSION	**10.00 AM to 11.00 AM**
Welcome Address :	CA. Sushil Kr. Goyal Chairman, EIRC of ICAI
Special Address :	CA. Sumantra Guha, Council Member, ICAI
Chief Guest :	CA. Amarjit Chopra, Past President, ICAI
FIRST TECHNICAL SESSION	**11.00 AM to 1.30 PM**
Chairman :	CA. Dipankar Chatterji, Former Council Member, ICAI
Topics	**Speakers**
1. Practical Approach to Bank Branch Audit	CA. Abhijit Bandyopadhyay Council Member, ICAI
2. Basel II – Auditors' Perspective	CA. Pankaj Dhanuka, ICICI Bank Ltd.
LUNCH	**1.30 PM to 2.15 PM**
SECOND TECHNICAL SESSION	**2.15 PM to 3.45 PM**
Chairman :	CA. Amitav Kothari, Former Council Member, ICAI
Topics	**Speakers**
1. Banker's Expectations towards the Auditor	CA. Sunit Sarkar General Manager Regional Head-ICG IDBI Bank Ltd.
2. Prudential Norms	CA. Subodh Kr. Agrawal Council Member, ICAI
THIRD TECHNICAL SESSION	**3.45 PM to 5.15 PM**
Chairman :	CA. Santanu Ghosh
Topics	**Speakers**
1. LFAR	:
2. Tax Audit in Banks	: CA. Sanjay Bhattacharyya

Central Council Members from Eastern Region in ICAI Committees – 2011-12

CA. Subodh Kr. Agrawal

Chairman

- Ethical Standards Board

Members

- Committee for Members in Industry
- Direct Taxes Committee
- Financial Reporting Review Board
- Editorial Board
- Committee on Economic & Commercial Laws and Trade
- Committee on Public Finance & Govt. Accounting
- Audit Committee
- Committee for Members in Entrepreneurship & Public Services
- Public Interest Advisory Committee
- IFRS Implementation Committee
- Committee for Cooperatives And NGO Sectors

CA. Abhijit Bandyopadhyay

Chairman

- Auditing & Assurance Standards Board
- Financial Reporting Review Board

Members

- International Affairs Committee
- Accounting Standards Board
- Board of Studies
- Committee on Information Technology
- ICAI-ICWAI-ICSI Committee
- Committee on Economic & Commercial Laws and Trade
- Committee on Public Finance & Govt. Accounting
- Committee on Management Accounting
- IFRS Implementation Committee
- Committee for Cooperatives And NGO Sectors

CA. Sumantra Guha

Chairman

- Continuing Professional Education Committee

Vice-Chairman

- Professional Development Committee

Members

- Disciplinary Committee
- International Affairs Committee
- Accounting Standards Board
- Auditing & Assurance Standards Board
- Direct Taxes Committee
- Editorial Board
- Committee on Capacity Building of C.A. Firms & SMEs
- Committee for Members in Entrepreneurship & Public Services
- Committee of Cooperatives & NGO Sectors
- Public Interest Advisory Committee

EIRC wishes all its Members and Students a

Happy Holi

Get-together

on 18th March 2011, 6 pm onwards
at R. Singhi Hall, EIRC Premises.

All members are welcome with their family & friends.

New President, Vice President and Imm. Past President with EIRC Members at New Delhi on 12th February 2011

(L-R) - CA. Sumantra Guha, Council Member, ICAI, CA. Ranjeet Agarwal, Treasurer, EIRC, CA. Jaydeep N Shah, Vice President, ICAI, CA. G Ramaswamy, President, ICAI, CA. Amarjit Chopra, Imm. Past President, ICAI, CA. Subhash Ch Saraf, Member, EIRC, CA. Sushil Kr Goyal, Vice Chairman, EIRC, CA. Abhijit Bandyopadhyay, Council Member, ICAI

Republic Day Celebration - 26th January 2011

Chairman, EIRC unfurling the national flag on the Republic day

Seminar on IFRS at Sundarbans

23 & 24.01.11 - Seminar on IFRS at Sundarbans

Corporate Conclave from 28th to 30th January 2011 : Day-I

Releasing the Official Souvenir - (L-R) CA. Krishanu Bhattacharyya, Chairman, EIRC, CA. Sumantra Guha, Council Member, ICAI, CA. Subodh Kumar Agrawal, Chairman, CMII, ICAI, CA. Pankaj Tyagee, Council Member, ICAI

Lighting the Inaugural Lamp - (L-R) CA. Ranjeet Kumar Agarwal, Treasurer, EIRC, CA. Sushil Kumar Goyal, Vice Chairman, EIRC, CA. Pramod Dayal Rungta, Member, EIRC, CA. Subhash Chandra Saraf, Member, EIRC, CA. Krishanu Bhattacharyya, Chairman, EIRC, CA. Subodh Kumar Agrawal, Council Member, ICAI, CA. Pankaj Tyagee, Council Member, ICAI, CA. Sumantra Guha, Council Member, ICAI

Inaugural Session - (L-R) CA. Pankaj Tyagee, Council Member, ICAI, CA. Krishanu Bhattacharyya, Chairman, EIRC, CA. Sumantra Guha, Council Member, ICAI, CA. Subodh Kumar Agrawal, Chairman, CMII, ICAI, CA. Sushil Kumar Goyal, Vice Chairman, EIRC

(L-R) CA. Prasun Kumar Bhattacharyya, Secretary, EIRC, CA. Dilip B Desai, CA. Charanjot Singh Nanda, Council Member, ICAI, CA. Pinakin Desai, CA. Ranjeet Kumar Agarwal, Treasurer, EIRC

(L-R) CA. Pramod Dayal Rungta, Member, EIRC, CA. D K Vyas, CA. Jaydeep N Shah, Council Member, ICAI, CA. S B Zaware, Council Member, ICAI, CA. Girish Ahuja, Mr. Nirmal Jain, CA. Ranjeet Kumar Agarwal, Treasurer, EIRC

(L-R) CA. Pramod Dayal Rungta, Member, EIRC, CA. D K Vyas, CA. Jaydeep N Shah, Council Member, ICAI, CA. S B Zaware, Council Member, ICAI, CA. Girish Ahuja, CA. R K Adukia, Council Member, ICAI, CA. Ranjeet Kumar Agarwal, Treasurer, EIRC

Corporate Conclave from 28th to 30th January 2011 : Day-II

Lighting the Inaugural Lamp - (L-R) CA. Ranjeet Kumar Agarwal, Treasurer, EIRC, CA. Gul Teckchandani, CA. R S Adukia, Council Member, ICAI, CA. S B Zaware, Council Member, ICAI, CA. Sushil Kumar Goyal, Vice Chairman, EIRC, CA. Subodh Kumar Agrawal, Chairman, CMII, ICAI, CA. Vinod Jain, Council Member, ICAI, CA. Pankaj I Jain, Council Member, ICAI, CA. R K Agarwal, CA. Jayant K Gokhale, Council Member, ICAI, CA. B L Mittal

Inaugural Session - (L -R) CA. Subodh Kumar Agrawal, Chairman, CMII, ICAI, CA. Jayant K Gokhale, Council Member, ICAI, CA. Pankaj I Jain, Council Member, ICAI, CA. Vinod Jain, Council Member, ICAI, CA. R K Adukia, Council Member, ICAI, CA. Sushil Kumar Goyal, Vice Chairman, EIRC

CA. Ranjeet Kumar Agarwal, Treasurer, EIRC, CA. B L Mittal, CA. Rajendra Kumar, Council Member, ICAI, CA. R K Agarwal, CA. Gul Teckchandani, CA. Rahul Arora

CA. Pramod Dayal Rungta, Member, EIRC, CA. Atul Bhede, Council Member, ICAI, CA. Vinod Jain, Council Member, ICAI, CA. Charanjot Singh Nanda, Council Member, ICAI, CA. Y S Deosthalee, CA. S P Tulsyan

The above mentioned office bearers are for the year 2010-11

Lighting the Inaugural Lamp - (L-R) CA. Ranjeet Kumar Agarwal, Treasurer, EIRC, CA. K Raghu, Council Member, ICAI, CA. Abhijit Bandyopadhyay, Council Member, ICAI, CA. Arun Jagatramka, CA. Prasun Kumar Bhattacharyya, Secretary, EIRC, CA. Sushil Kumar Goyal, Vice Chairman, EIRC, CA. Bhavna Doshi, Council Member, ICAI

(L-R) CA. Bhavna Doshi, Council Member, ICAI, CA. Ravindra Holani, Council Member, ICAI, CA. Charanjit Attra, CA. Prasun Kumar Bhattacharyya, Secretary, EIRC

(L-R) CA. Amarjit Chopra, President, ICAI, CA. Devaraja Reddy, Council Member, ICAI, CA. G Ramaswamy, Vice President, ICAI, CA. Manoj Fadnis, Council Member, ICAI, CA. P R Ramesh, CA. Prasun Kumar Bhattacharyya, Secretary, EIRC

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(L-R) - CA. M. Devaraja Reddy & CA. Sumantra Guha, Central Council Members, ICAI, CA. Amarjit Chopra, President, ICAI, CA. Vinod Jain, Central Council Member, ICAI , CA. Krishanu Bhattacharyya, Chairman, EIRC presenting the membership Certificate to a member

(L-R) Mr. Jackie Shroff, CA. Amarjit Chopra, President, ICAI, CA. G Ramaswamy, Vice President, ICAI, Mrs. Rachana Banerjee, Ms. Varsha Priyadarshini

The President, Vice President and Central & Regional Council Members of ICAI alongwith the invitees

Mr. Sovon Chatterjee, Mayor, Kolkata Municipal Corporation with the President and Vice President of ICAI

Mr. Prabhu Chawla being felicitated by CA. Sumantra Guha, Council Member, ICAI.

Mr. Jackie Shroff being felicitated by CA. Abhijit Bandopadhyay, Council Member, ICAI.

The above mentioned office bearers are for the year 2010-11

RN 27144/75 Registered KOL RMS / 227 / 2010-2012

ICAI Awards 2010 (30.01.2011) Cultural Programme

Seminar on IFRS on (L to B - CA Prasun Kr. Bhattacharyya, Secretary, EIRC(2010-11) and CA Kanchan Mukherjee.

International Study Tour to HongKong -14th to 19th February,2011.

Programme on Motivation- CA. Vinod Agarwal

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