

- (a) The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens .
- (b) For cases where condition (a) above is not satisfied or if the investing company is owned **or** controlled by 'non resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment,

Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidy is owned by the holding company.

#### ILLUSTRATION

To illustrate, if the indirect foreign investment is being calculated for Company X which has investment through an investing Company Y having foreign investment, the following would be the method of calculation:

- (A) where Company Y has foreign investment less than 50%- Company X would not be taken as having any indirect foreign investment through Company Y.
- (B) where Company Y has foreign investment of say 75% and:
  - (i) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X;
  - (ii) Invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%
  - (iii) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company X would be computed in the ratio of 75: 25 in the total investment of Company Y in Company X.
  - (iv) The total foreign investment would be the sum total of direct and indirect foreign investment.
  - (v) The above methodology of calculation would apply at every stage of investment in Indian Companies and thus to each and every Indian Company.
  - (vi) **Additional conditions:**
    - (a) The full details about the foreign investment including ownership details etc. in Indian company(s) and information about the control of the company(s) would be furnished by the Company(s) to the Government of India at the time
    - (b) of seeking approval.
    - (c) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such *inter-se* agreements for determining ownership and control when considering the case for granting approval for foreign investment.
    - (d) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.
    - (e) In the I& B and Defence sectors where the sectoral cap is less than 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.
- (A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following:
  - (i) In the case of an individual shareholder,
    - (aa) The individual shareholder,
    - (bb) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
    - (cc) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
  - (ii) In the case of an Indian company,
    - (aa) The Indian company
    - (bb) A group of Indian companies under the same management and ownership control.
- (B) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

- (C) Provided that, in case of a combination of all or any of the entities mentioned in Sub- Clauses (i) and (ii) of clause 4.1.3(v)(d)(1) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.
  - (D) If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.
4. The above mentioned policy and the methodology would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statutes or rules there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the Insurance Sector which will continue to be governed by the relevant Regulation.
  5. Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009(date of issue of Press Note 2 of 2009) would not require any modification to conform to these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

#### **ENTRY ROUTES FOR INVESTMENT:**

1. Investments can be made by non-residents in the shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through two routes; the Automatic Route and the Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI or Government of India for the investment. Under the Government Route, prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required. Proposals for foreign investment under Government route as laid down in the FDI policy from time to time, are considered by the Foreign Investment Promotion Board (FIPB) in Department of Economic Affairs (DEA), Ministry of Finance.
2. Investment would be subject to the 'Existing Venture/ tie-up condition' as defined below:
3. With effect from January 12, 2005 the joint venture agreements are expected to include a 'conflict of interest' clause to determine/ safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the same field of economic activity. The policy is, however, expected to protect the interest of the joint venture partner where the agreement had been entered prior to January 12, 2005.
4. Where a foreign investor has an existing joint venture/ technology transfer/ trademark agreement in the same field, prior to January 12, 2005, the proposal for fresh investment/technology transfer/technology collaboration/trademark agreement in a new joint venture for technology transfer/ technology collaboration/trademark agreement would have to be under the Government approval route through FIPB/ Project Approval Board. The onus to provide requisite justification that the new tie-up would not jeopardize the existing joint venture or technology transfer/ trademark partner, would lie equally on the foreign investor/ technology supplier and the Indian partner.
5. The following investments, however, will be exempt from the requirement of Government approval even though the foreign investor may be having a joint venture or technology transfer/ trademark agreement in the same field:
  - (a) Investments to be made by Venture Capital Fund registered with the Securities and Exchange Board of India (SEBI); or
  - (b) Investments by Multinational Financial Institutions like Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Finance Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG) etc.; or
  - (c) where in the existing joint venture, investment by either of the parties is less than 3 per cent; or
  - (d) where the existing joint venture / collaboration is defunct or sick; or
  - (e) for issue of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer / trade mark agreement of the person to whom the shares are to be issued are also in the Information Technology sector or in the mining sector for same area/mineral.
6. For the purpose of 'same' field 4 digit NIC, 1987 Code will be relevant.

#### **Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities in sectors with caps**

In sectors with caps, including *inter-alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

- (i) An Indian company is being established with foreign investment and is owned by a nonresident entity or
- (ii) An Indian company is being established with foreign investment and is controlled by a non- resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a

non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
- (v) It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.
- (vi) It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

#### **CAPS ON INVESTMENTS**

Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as provided/permitted in the FDI policy. Thus while investment are prohibited in some sectors/activities, there are restrictions/conditions/caps on the investment in certain other sector/activities. The caps in various sector(s)/activity are detailed out in Chapter 5 of this circular.

#### **ENTRY CONDITIONS ON INVESTMENT**

Investments can be permitted to be made by non-residents in the capital of a resident entity in certain sectors/activity with entry conditions. These entry conditions would be applicable for investment only by non-resident entities. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this circular.

#### **OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS**

1. Besides the entry conditions on foreign investment, the investment/investors need to confirm to all relevant sectoral laws, regulations, rules etc.
2. The national security/internal security related conditions as contained in relevant statutes will also have to be complied with.
3. The State Governments/Union Territories have regulations in relations to the subjects in their legislative domain. These conditions also have to be met/complied with.

#### **DOWNSTREAM INVESTMENT BY INDIAN COMPANIES**

1. The Policy for downstream investment by Indian companies seeks to lay down and clarify about compliance with the Foreign investment norms on entry route, conditionalities and sectoral caps. The 'guiding principle' is that downstream investment by companies 'owned' or 'controlled' by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream investment in Para 4.1 as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.
2. The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Para 4.1 which enables determination of total foreign investment in any/all Indian Companies.
3. For the purpose of this chapter,
  - (i) 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors.
  - (ii) 'Downstream investment' means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Para 4.1. Para 4.1.3 provides the guidelines for calculation of indirect foreign investment with conditions specified in para 4.1.3 (v)(iv) 'Foreign Investment' would have the same meaning as in Para 4.1

#### **GUIDELINES FOR DOWNSTREAM INVESTMENT BY INVESTING INDIAN COMPANIES 'OWNED OR CONTROLLED BY NON RESIDENT ENTITIES' AS PER PARA 4.1**

- (i) The Policy on downstream investment comprises policy for (a) only operating companies (b) operating-cum-investing companies (c) only investing companies as below:
- (ii) Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.

- (iii) Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- (iv) Investing companies: Foreign Investment in Investing Companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment.
- (v) The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

For infusion of foreign investment into such companies which do not have any operations and also do not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

- (i) For Operating-cum- investing companies and investing companies (Para 4.6.4) and for companies as per para 4.6.5 above, downstream investments can be made subject to the following conditions:
- (ii) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
- (iii) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;
- (iv) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;
- (v) For the purpose of downstream investment, the operating cum investing companies and the investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

#### **GUIDELINES FOR CONSIDERATION OF FDI PROPOSALS BY FIPB:**

1. The following guidelines are laid down to enable the FIPB to consider the proposals for FDI and formulate its recommendations.
2. All applications should be put up before the FIPB by its Secretariat within 15 days and it should be ensured that comments of the administrative ministries are placed before the Board either prior to/or in the meeting of the Board.
3. Proposals should be considered by the Board keeping in view the time frame of thirty (30) days for communicating Government decision .
4. In cases in which either the proposal is not cleared or further information is required in order to obviate delays presentation by applicant in the meeting of the FIPB should be resorted to.
5. While considering cases and making recommendations, FIPB should keep in mind the sectoral requirements and the sectoral policies vis-à-vis the proposal (s).
6. FIPB would consider each proposal in its totality
7. The Board should examine the following while considering proposals submitted to it for consideration.
  - (i) whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;
  - (ii) whether the proposal involves any export projection and if so the items of export and the projected destinations.
  - (iii) Whether the proposal has any strategic or defence related considerations.
8. While considering proposals the following may be prioritised.
  - (i) Items falling in infrastructure sector.
  - (ii) Items which have an export potential.
  - (iii) Items which have large scale employment potential and especially for rural people.
  - (iv) Items which have a direct or backward linkage with agro business/farm sector.
  - (v) Items which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.
  - (vi) Proposals which result in induction of technology or infusion of capital.
9. The following should be especially considered during the scrutiny and consideration of proposals.
  - (i) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any)
  - (ii) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 76% or more) joint venture.
  - (iii) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.

- (iv) In the case of fresh induction offerings/NRI equity and/or in cases of enlargement of foreign/NRI equity, in existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.
  - (v) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement (i.e. whether by increase of paid up capital/authorized capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality.
  - (vi) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.
  - (vii) Whether the activity is an industrial or a service activity or a combination of both.
  - (viii) Whether the items of activity involves any restriction by way of reservation for the Micro & Small Enterprises sector.
  - (ix) Whether there are any sectoral restrictions on the activity
  - (x) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).
10. No condition specific to the letter of approval issued to a foreign investor would be changed or additional condition imposed subsequent to the issue of a letter of approval. This would not prohibit changes in general policies and, regulations applicable to the industrial sector.

#### **CONSTITUTION OF FIPB**

1. FIPB comprises of the following Core Group of Secretaries to the Government of India:
  - (i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson
  - (ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
  - (iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry
  - (iv) Secretary to Government, Economic Relations, Ministry of External Affairs
  - (v) Secretary to Government, Ministry of Overseas Indian Affairs.
2. The Board would be able to co-opt other Secretaries to the Central Government and top officials of financial institutions, banks and professional experts of Industry and Commerce, as and when necessary.

#### **APPROVAL LEVELS FOR CASES UNDER GOVERNMENT ROUTE**

1. The following approval levels shall operate for proposals involving FDI under the Government route i.e. requiring prior Government approval:
  - (i) The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.1200 crore.
  - (ii) The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of CCEA. The FIPB Secretariat in DEA will process the recommendations of FIPB to obtain the approval of Minister of Finance and CCEA.
  - (iii) The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Minister of Finance (in-charge of FIPB).

#### **CASES WHICH DO NOT REQUIRE FRESH APPROVAL**

Companies may not require fresh prior approval of the Government i.e. Minister in-charge of FIPB/CCEA for bringing in additional foreign investment into the same entity, in the following cases:

- (i) Cases of entities whose activities had earlier required prior approval of FIPB/CCFI/CCEA and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- (ii) Cases of entities whose activities had sectoral caps earlier and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment alongwith the initial/original investment does not exceed the sectoral caps; and

The cases of additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose.

## PART IV

### SUMMARY OF FOREIGN INVESTMENT AUTOMATIC VS APPROVAL ROUTES

[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]

| S.No. | Industry                                                                           | Automatic | Approval       | Conditions                                                                                                                                                                                                                            |
|-------|------------------------------------------------------------------------------------|-----------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Agriculture & Animal Husbandry                                                     | 100 %     | –              | Floriculture, Horticulture, Development of Seeds are under controlled by Agro and allied Sectors.                                                                                                                                     |
| 2     | Tea Plantation                                                                     | –         | 100 %          | Compulsory divestment of 26% equity of the company in the favour of an Indian partner/ within a period of 5 years.<br>Prior Approval of the State Government, for future land to change.                                              |
| 3     | Mining                                                                             | 100 %     | –              | Mining and Exploration Metal & non-metal ores including Diamond, Silver, Gold, and precious ores but excluding titanium bearing minerals and its ores. <b>(Development &amp; Regulation Act, 1957)</b>                                |
| 4     | Coal and Lignite                                                                   | 100 %     | –              | Captive consumption by power projects, iron and Steel and cement units & eligible activities permitted under and subject to provisions of Coal Mines <b>(Nationalization Act, 1973)</b>                                               |
| 5     | Manufacturer items reserved for production in Micro and Small Enterprises.(MSEs).  | –         | More than 24 % | Industrial undertaking shall under take to export a minimum of 50% of the new or additional Annual Production of the MSE reserved items to be achieved within period of 3 years.                                                      |
| 6     | Alcohol – Distillation & Brewing                                                   | 100 %     | –              | –                                                                                                                                                                                                                                     |
| 7     | Cigars & Cigarettes Manufacturer                                                   |           | 100 %          | Industrial Licence under the Industries <b>(Development &amp; Regulation Act, 1951)</b>                                                                                                                                               |
| 8     | Coffee & Rubber processing and warehousing                                         | 100 %     | –              | –                                                                                                                                                                                                                                     |
| 9     | Defence Industry                                                                   | –         | 26 %           | Licence Applications and Approval given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry in Consultation with Ministry of Defence. The Application should be an Indian Company / Partnership Firm. |
| 10    | Drugs and Pharmaceuticals including those involving use of recombinant technology. | 100 %     | –              | –                                                                                                                                                                                                                                     |
| 11    | Hazardous Chemicals                                                                | 100 %     | –              | Licence given by the Industries <b>(Development &amp; Regulation Act, 1951)</b>                                                                                                                                                       |
| 12    | Industrial Explosives                                                              | 100 %     | –              | Licence under the the Industries <b>(Development &amp; Regulation Act, 1951)</b> and regulations under the Explosives Act 1898.                                                                                                       |
| 13    | Power (Electric Generation, Transmission, Distribution & Trading.                  | 100 %     | –              | <b>Electricity Act, 2003.</b><br><b>Private Investment is prohibited and is reserved for Public Sector only.</b>                                                                                                                      |
| 14    | Advertising and Films                                                              | 100 %     | –              | Related Activities of Film Industries. <b>For Both 100 %</b>                                                                                                                                                                          |
| 15    | Civil Aiation Sector                                                               | –         | –              | It includes Airport Scheduled and Non-scheduled domestic passenger airlines. Aerodrome as defined in clause (2) of Section 2 of the Aircraft Act, 1934.                                                                               |
| 16    | Policy for FDI in Civil Aviation Sector                                            |           |                |                                                                                                                                                                                                                                       |
|       | (i) Airports:<br>(a) Greenfield Projects                                           | 100 %     | –              | –                                                                                                                                                                                                                                     |

| S.No. | Industry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Automatic    | Approval    | Conditions                                                                                                                                                                                                                                                                                                                                                                           |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | (b) Existing Projects                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>74 %</b>  |             | FDI allowed 100%. The Investment upto 74% is under the automatic route and beyond 74% under the Government.                                                                                                                                                                                                                                                                          |
|       | (i) Airports:<br>(a) Greenfield projects- FDI upto 100% is allowed under the automatic route.<br>(b) Existing projects- FDI upto 100% is allowed. The investment upto 74% is under the automatic route and beyond 74% under the Government route.<br>(ii) Air Transport Services:<br>(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non- Scheduled Airlines; Chartered Airlines; Cargo Airlines; helicopter and seaplane services.<br>(b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled, Non-Scheduled, and Chartered airlines.<br>(c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services. |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
| 17    | FDI ceilings in Air Transport Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
|       | (a) Scheduled Air Transport Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>100 %</b> | –           | FDI upto 49%. Investment by Non-resident Indian (NRI) upto 100%.                                                                                                                                                                                                                                                                                                                     |
|       | (b) Non-Scheduled Air Transport Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>49 %</b>  | –           | FDI upto 74% and Investment by Non-resident Indians (NRI) upto 100% allowed. FDI on the automatic route 49% and the Government route beyond 49% and upto 74%                                                                                                                                                                                                                         |
|       | (c) Helicopter Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>100 %</b> | –           | Required DGCA Approval.                                                                                                                                                                                                                                                                                                                                                              |
| 18    | FDI Ceilings in other services under Civil Aviation Sector                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
|       | (a) Ground Handling Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>49 %</b>  | –           | FDI upto 74% and Investment by Non-resident Indians (NRI) upto 100% allowed. FDI on the automatic route 49% and the Government route beyond 49% and upto 74%                                                                                                                                                                                                                         |
|       | (b) Maintenance and Repair Organisation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>100 %</b> | –           |                                                                                                                                                                                                                                                                                                                                                                                      |
| 19    | Asset Reconstruction Companies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
|       | (a) Asset Reconstruction Company (ARC)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | –            | <b>49 %</b> | Registered by the Reserve Bank of India (RBI) under the Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Persons outside India, other than Foreign Institutional Investors are not permitted in the Equity share capital of ARCs and FDI is restricted to 49% of the paid-up capital of the ARC |
|       | (b) SEBI can invest in the Security receipts issued by ARCs registered with RBI.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | –            | <b>49 %</b> | The Investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.                                                                                                                                                                                                                                                                                     |
|       | Individual Investment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | –            | –           | Any Individual Investment of more than 10% would be subject to provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets. Enforcement of Security Interest Act, 2002.                                                                                                                                                                                   |
| 20    | Banking Private Sector                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
|       | FDI Limit in Private Sector Banks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>49 %</b>  | –           | Under the Government route <b>Up to 74 %</b>                                                                                                                                                                                                                                                                                                                                         |
|       | The Aggregate foreign investment a private bank.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>74 %</b>  | –           | At least 26% of the paid up capital will have to held by the residents.                                                                                                                                                                                                                                                                                                              |
| 21    | Limits of Portfolio Investment Scheme through Stock Exchange for FIIs and NRIs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |              |             |                                                                                                                                                                                                                                                                                                                                                                                      |
|       | For Individuals FIIs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>10 %</b>  | –           | Restricted upto 10% of paid-up capital                                                                                                                                                                                                                                                                                                                                               |
|       | Aggregate Limit for FIIs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | –            | <b>24 %</b> | FIIs cannot exceed upto 24% of paid-up capital. It can be raised upto 49% of the total paid-up capital by the bank concerned.                                                                                                                                                                                                                                                        |
|       | FIIs Investment Limit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>49 %</b>  | –           | Within 49% of the total paid-up capital.                                                                                                                                                                                                                                                                                                                                             |

| S.No. | Industry                                                                                               | Automatic | Approval | Conditions                                                                                                                                                                                     |
|-------|--------------------------------------------------------------------------------------------------------|-----------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | NRIs Individual                                                                                        | 5 %       | –        | Restricted upto 5% of the total paid-up capital.                                                                                                                                               |
|       | Both repatriation and non repatriation                                                                 | 10 %      | –        | Limit cannot exceed 10% of the paid-up capital,                                                                                                                                                |
|       | NRI Investment both repatriation & non-repatriation                                                    | 24 %      | –        | Allowed upto 24% for both. Basis provided by the banking company a special resolution.                                                                                                         |
|       | Transfer of shares under FDI from residents to non-residents.                                          |           |          | Required approval of RBI & FIPB                                                                                                                                                                |
|       | RBI guide to purchase or otherwise share of the private bank.                                          | -         | 5 %      | Any person owning or controlling 5% or more of the paid up capital of the private bank will apply to foreign investors.                                                                        |
| 22    | Subsidiary by foreign Banks                                                                            |           |          |                                                                                                                                                                                                |
|       | Foreign banks will be permitted to either have branches or subsidiaries but not both.                  |           |          |                                                                                                                                                                                                |
|       | Foreign banks allowed for supervisory authority in the home country                                    | –         | 100 %    | Wholly-owned subsidiary in India.                                                                                                                                                              |
| 23    | Banking Public Sector                                                                                  |           |          |                                                                                                                                                                                                |
|       | FDI and Portfolio Investment in Nationalised banks.                                                    | –         | 20 %     | Government route as per section 3(2D) of the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970/80. same is applicable for SBI.                                               |
| 24    | Broadcasting                                                                                           |           |          |                                                                                                                                                                                                |
|       | Terrestrial Broadcasting FM (FM Radio)- FDI, NRI and PIO & Portfolio Invest.                           | –         | 20 %     | Approved by the Government. Terms & conditions as specified from time to time by Ministry of Information and Broadcasting. Permission for FM Radio Stations.                                   |
| 25    | Cable Network – FDI, NRI and PIO & Portfolio Invest.                                                   | –         | 49 %     | Cables Television Network Rules, 1994. Terms & conditions as specified from time to time by Ministry of Information and Broadcasting.                                                          |
| 26    | Direct to Home – FDI, NRI and PIO & Portfolio Invest.                                                  | –         | 49 %     | FDI will not exceed 20%.                                                                                                                                                                       |
| 27    | Headend-In-The-Sky (HITS) Broadcasting Service                                                         |           |          |                                                                                                                                                                                                |
|       | Total direct & Indirect foreign Investment, Portfolio.                                                 | 49 %      | -        | FDI will not exceed 74%.                                                                                                                                                                       |
| 28    | Setting up Hardware facilities                                                                         |           |          |                                                                                                                                                                                                |
|       | FDI policy in the up-linking of TV Channels.                                                           |           |          |                                                                                                                                                                                                |
|       | (a) Foreign Investment of FDI & FII                                                                    | –         | 49 %     |                                                                                                                                                                                                |
|       | (b) FDI allowed                                                                                        | –         | 100 %    | Non-news & Current Affairs of TV Channel.                                                                                                                                                      |
|       | (c) Foreign Investment of FDI & FII                                                                    | –         | 26 %     | The portfolio Investment from FII/ NRI shall not be "persons acting in concert" with FDI Investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997. |
| 29    | Business Services                                                                                      |           |          |                                                                                                                                                                                                |
|       | FDI allowed in Data Processing Software development and Computer consultancy Services.                 | 100 %     | –        | No Restriction under the Government route.                                                                                                                                                     |
| 30    | (i)Commodity Exchanges – Stock Exchanges are infrastructure companies in the commodity futures market. | –         | –        | Future trading in commodities are regulated under the Forward Contracts Regulation Act, 1952.                                                                                                  |
| 31    | Policy for Foreign Investment in Commodity Exchanges                                                   |           |          |                                                                                                                                                                                                |
|       | Foreign Investment                                                                                     | –         | 49 %     | Under Government route                                                                                                                                                                         |
|       | Foreign Direct Investment                                                                              | 26 %      | –        | Under FDI Scheme Incorporated as Schedule 1 under regulation 5(1) of the Foreign Exchange Management.(Transfer or Issue of                                                                     |

| S.No. | Industry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Automatic | Approval | Conditions                                                                                                                                                                                                            |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |           |          | Security by a Person Resident Outside India) Regulations, 2000 (FEMA Regulations)                                                                                                                                     |
|       | FII and Portfolio Investment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 23 %      | –        | Under the Portfolio Investment Incorporated as Schedule 2 under Regulation 5(2) of the FEMA Regulations.                                                                                                              |
|       | No Foreign Investor / Entity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |           |          | Persons acting in concert, will hold more than 5% of the equity in these companies.                                                                                                                                   |
| 32    | Construction and Maintenance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |           |          |                                                                                                                                                                                                                       |
|       | (a) FDI is allowed to Invest Construction & Maintenance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 100 %     | –        | Roads, rail-beds, tunnels, pipelines, ropeways, runways, waterways & water reservoirs, hydroelectric projects, power plants and Industrial plants.                                                                    |
|       | (b) FDI is allowed to Invest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 100 %     | –        | Roads and Highways offered on BOT basis including collection of toll.                                                                                                                                                 |
|       | (c) FDI Investment in Construction and Maintenance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 100 %     | –        | Rural Drinking Water Supply Projects, Package Water Treatment Plants, Rain and Rain water Harvesting Structures.                                                                                                      |
| 33    | Ports and Harbours                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 100 %     | –        | Would not apply the para 32(a), (b), (c).                                                                                                                                                                             |
| 34    | Development of Townships, Housing Build-up Infrastructure and Construction development projects.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |           |          |                                                                                                                                                                                                                       |
|       | FDI is allowed to Invest (Subject to prescribed conditions)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 100 %     | –        |                                                                                                                                                                                                                       |
| 35    | Courier services for carrying packages, parcels, and other items which do not come within the ambit of the Indian Post Office Act, 1998.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |           |          |                                                                                                                                                                                                                       |
|       | FDI Invest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | –         | 100 %    | This will be subject to existing Law i.e. Indian Post Office Act 1898 and exclusion of activity relating to the distribution of letters.                                                                              |
| 36    | Credit Information Companies (CIC)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |           |          |                                                                                                                                                                                                                       |
|       | Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |           |          |                                                                                                                                                                                                                       |
|       | FDI and FII Invest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | –         | 49 %     | Permitted under the Government route, subject to regulatory clearance from RBI.                                                                                                                                       |
|       | 1. Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.<br>2. Such FII Investment would be permitted subject to the conditions that:<br>(a) No single entity should directly or indirectly hold more than 10% equity.<br>(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and<br>(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding. |           |          |                                                                                                                                                                                                                       |
| 37    | Health and Medical Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 100 %     | –        | Allowed Automatic Route.                                                                                                                                                                                              |
| 38    | Hotel and Tourism related Industry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |           |          |                                                                                                                                                                                                                       |
|       | FDI allowed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 100 %     | –        |                                                                                                                                                                                                                       |
|       | The terms hotels include restaurants, beach resorts and other tourism complexes providing accommodation and / or catering and food facilities to tourists. The term tourism related industry includes;<br>(i) Travel agencies, tour operating agencies and tourist transport agencies<br>(ii) Units providing facilities for cultural, adventure and wildlife experience to tourists<br>(iii) Surface, air and water transport facilities for tourists<br>(iv) Convention/seminar units and organizations                                                                                                |           |          |                                                                                                                                                                                                                       |
| 39    | Industrial Parks-both setting up and already established Industrial Parks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |           |          |                                                                                                                                                                                                                       |
|       | FDI permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 100 %     | –        | Automatic route in Industrial Parks.                                                                                                                                                                                  |
|       | FDI allowed in Construction development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 100 %     | –        | Construction development projects, etc. prescribing therein, inter-alia, the conditions for minimum capitalization, minimum area requirements and lock-in of original investment as per para 34 above.                |
| 40    | Insurance – FDI                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 26 %      | –        | In the insurance sector, as prescribed in the Insurance Act, 1999, is allowed under the automatic route. This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the |

| S.No. | Industry                                                                                                                                                                                                                                                                             | Automatic | Approval | Conditions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                                                                                                                                                                                                                                                                                      |           |          | Insurance Regulatory & Development Authority of undertaking insurance activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 41    | Infrastructure Company in the Securities Market:<br>Foreign Investment is permitted in infrastructure companies in Securities Markets, namely, Stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations and subject to the following conditions. |           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|       | FDI Invest                                                                                                                                                                                                                                                                           | –         | 26 %     | There is a composite ceiling of 49 per cent for Foreign Investment, with a FDI limit of 26%. FDI allowed under the Government route.                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|       | FII Invest                                                                                                                                                                                                                                                                           | –         | 23 %     | FDI can invest only through purchases in the secondary market.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 42    | Non-Banking Finance Companies (NBFC)                                                                                                                                                                                                                                                 |           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|       | Foreign Investment in NBFC.                                                                                                                                                                                                                                                          | 100 %     | –        | (i) Merchant Banking<br>(ii) Under Writing<br>(iii) Portfolio Management Services<br>(iv) Investment Advisory Services<br>(v) Financial Consultancy.<br>(vi) Stock Broking<br>(vii) Asset Management<br>(viii) Venture Capital<br>(ix) Custodian Services<br>(x) Forex Broking<br>(xi) Credit Rating Agencies<br>(xii) Leasing & Finance<br>(xiii) Housing Finance<br>(xiv) Forex Broking<br>(xvi) Money Changing Business<br>(xvii) Micro Credit<br>(xviii) Rural Credit                                                                                                                  |
| 43    | Venture Capital Fund (VCF)                                                                                                                                                                                                                                                           | 100 %     | -        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 44    | Petroleum & Natural Gas Sector                                                                                                                                                                                                                                                       |           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|       | FDI Invest                                                                                                                                                                                                                                                                           | 100 %     | –        | The Automatic route is permitted in exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products, actual trading and marketing of petroleum products, petroleum product pipelines, natural gas/LNG pipelines, market study and formulation and Petroleum refining in the private sector. This will be subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies. |
|       | FDI – Public sector                                                                                                                                                                                                                                                                  | –         | 49 %     | Under the Government route in petroleum refining by the Public Sector Undertaking (PSU). This should not involve any divestment or dilution of domestic equity in the existing PSUs.                                                                                                                                                                                                                                                                                                                                                                                                       |
| 45    | Print Media                                                                                                                                                                                                                                                                          |           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|       | Publishing of Newspapers and periodicals dealing with news and current affairs - FDI Investment by NRIs/ PIOs /FII.                                                                                                                                                                  | –         | 26 %     | Under the Government route                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|       | Publication of Indian editions of Foreign magazines dealing with news and current affairs:                                                                                                                                                                                           |           |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|       | Foreign investment, including FDI and investment by NRIs/ PIOs/ FII.                                                                                                                                                                                                                 | –         | 26 %     | (i) Magazines for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis,                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| S.No. | Industry                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Automatic    | Approval     | Conditions                                                                                                                                                                                                                                                                             |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |              |              | containing public news or comments on public news.<br>(ii) Foreign investment would also be subject to the Guidelines for publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008. |
|       | Publishing/ printing of Scientific and Technical Magazines/specially journals/ periodicals – FDI permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | –            | <b>100 %</b> | This will also be subject to compliance with the legal frame work as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.                                                                                                    |
|       | Publication of facsimile edition of foreign newspapers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |              |              |                                                                                                                                                                                                                                                                                        |
|       | FDI Invest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | –            | <b>100 %</b> | Facsimile edition of foreign news papers provided the FDI is by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.                                                                                                           |
| 46    | Research Development Services – FDI Permitted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>100 %</b> | –            | Basic research and setting of R&D/ academic institutions which would award degrees/ diplomas/ certificates.                                                                                                                                                                            |
| 47    | Security Agencies in Private Sector                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | –            | <b>49 %</b>  | Regulated as per 'Private Security Agencies (Regulation Act, 2005' regulates the operations of private security agencies.                                                                                                                                                              |
| 48    | Satellites – Establishment and operation:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | –            | <b>74 %</b>  | This will be subject to the sectoral guidelines of Department of Space/ISRO.                                                                                                                                                                                                           |
| 49    | Storage and Warehouse Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>100 %</b> | –            | Storage and Warehousing including warehousing of Agriculture products with refrigeration (Cold storage).                                                                                                                                                                               |
| 50    | Telecommunication services –                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>49 %</b>  | –            | Overall 74%                                                                                                                                                                                                                                                                            |
|       | (i) FDI upto 74% is allowed in following activities.<br>(a) ISP with gateways<br>(b) ISP's not providing gateways i.e. without gate-ways (both for satellite and marine cables)<br>Note: The new guidelines of August 24, 2007 Department of Telecommunications provide for news ISP license with FDI upto 74%.<br>(c) Radio paging<br>(d) End-to-End bandwidth<br>(ii) FDI upto 49% would be allowed under the automatic route and above that under the Government route.<br>(iii) This will be subject to licensing and security requirements notified by the Department of Telecommunications.<br>(i) FDI upto 100% is allowed for the following activities.<br>(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I)<br>(b) Electronic Mail<br>(c) Voice Mail<br>(ii) The investment upto 49% is under the automatic route and beyond 49% under the Government route.<br>(iii) This will be subject to the condition that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.<br>(iv) This will be subject to licensing and security requirements notified by the Department of Telecommunications. |              |              |                                                                                                                                                                                                                                                                                        |
| 52    | Trading (Cash and Carry)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>100 %</b> | –            | For the Trading companies.                                                                                                                                                                                                                                                             |
| 53    | Single Brand Products                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | –            | <b>51 %</b>  | Application to be processed by Department of Industrial Policy and Promotion                                                                                                                                                                                                           |
| 54    | Transport and Transport Support Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>100 %</b> | –            | Automatic route                                                                                                                                                                                                                                                                        |

**PART V**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997**  
**[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]**

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**Offer Size**

The Regulations currently require that on acquisitions resulting in triggering regulations 10, 11 and 12, the acquirer is mandatorily required to make an open offer for a minimum of 20 % of the voting capital (reckoned as on the fifteenth day after closure of the offer).

**Minimum Public Shareholding Requirements**

The Takeover Regulations currently provide that if the acquisition made pursuant to an open offer results in the public shareholding in the target company falling below the minimum level required as per the listing agreement, the acquirer shall take necessary steps to facilitate compliance with the relevant provisions thereof, within the time period specified therein.

**Thresholds for Open Offers - Initial Threshold**

The Takeover Regulations currently provide that if an acquirer acquires or agrees to acquire shares or voting rights such that his voting rights exceed 15 % of the voting capital of the target company, he is required to make an open offer.

**Creeping Acquisitions**

The Takeover Regulations currently provide that if an acquirer already holds more than 15 % but less than 55 %, he may acquire additional shares carrying not more than five % of voting rights within a financial year without having to make an open offer.

Further, where the holding is above 55 % but less than 75 %, a one-time allowance to increase their shareholding by 5 % through market purchases or pursuant to a Buy back by the target company, without having to make an open offer, has been permitted since October 28, 2008 provided that post acquisition holding of acquirer does not go beyond 75 %.

**Voluntary Offers**

Currently, the Takeover Regulations provide for consolidation of shareholding by an acquirer who is desirous of maximizing his shareholding without breaching the minimum public shareholding requirements. The offer size for an open offer under this provision is the lower of 20 % or the maximum permissible acquisition without breaching the minimum public shareholding requirement.

**Control**

The Takeover Regulations currently provide for inclusive definition of —control. It is provided under the Takeover Regulations that control shall include the right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholder agreements or voting agreements or in any other manner.

**Offer Price**

The Takeover Regulations currently provide the parameters to be considered for determining the minimum offer price depending on whether or not the shares of the target company are —frequently traded (shares which have annualized trading volume of 5 % or more of the listed share capital during a period of 6 calendar months preceding the month in which the public announcement is made). Such parameters for frequently traded shares include the price under the agreement for acquisition that attracted the open offer,

any price paid by the acquirer or persons acting in concert during a 26-week period preceding the public announcement (termed as the —look back period), and the historical market average price of the shares for a proximate past period.

For infrequently traded shares, the Takeover Regulations require the computation of the offer price on the basis of financial parameters such as return on net worth, industry priceearnings multiples and the like, apart from any price actually paid by the acquirer or persons acting in concert during the look back period, or in the transaction that triggers the open offer obligation.

The Takeover Regulations also require addition to the open offer price, of any amount paid towards non-compete fee in excess of 25 % of the open offer price.

**Indirect Acquisitions - Trigger for indirect acquisitions**

The Takeover Regulations currently provide that acquirer has to make an open offer for shares of the target company when there is direct or indirect change of control of the target company irrespective of any direct acquisition of shares of the target company. The regulations also provide for deferment of open offer obligations till consummation of the original transaction.

**Timing and Offer Price**

The Takeover Regulations currently provide that in case of indirect acquisition of shares or change of control, a public announcement may be made by the acquirer at any time from the date of the initial announcement of the intention to acquire or entering in to the acquisition agreement, until completion of three months after the consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company.

The Takeover Regulations currently do not differentiate between open offers arising due to direct acquisitions vis-à-vis indirect acquisitions for computation of offer price and the same offer price formula prescribed for direct acquisitions is used for indirect acquisitions as well, and the practice is to compute the offer price as of the date of the announcement of primary acquisition and as of the date of the public announcement for the target company, whichever is higher.

#### **Withdrawal of open offer**

The Takeover Regulations currently provide that no open offer, once made, shall be withdrawn except under the following circumstances:

- (a) the statutory approval(s) required have been refused;
- (b) the sole acquirer, being a natural person, has died;
- (c) such circumstances as in the opinion of SEBI merits withdrawal

#### **Competing Offers**

The Takeover Regulations currently provide the opportunity to any person other than the acquirer to make a competing offer within 21 days of the public announcement of the first offer. The Takeover Regulations also provide that any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him shall be at least equal to the holding of the first bidder including the number of shares for which the present offer by the first bidder has been made.

#### **Obligations of the Target Company- *Material Actions***

The Takeover Regulations currently provide that the target company shall not, during the offer period sell, transfer, encumber or otherwise dispose of assets of the company or its subsidiaries or enter into any material contracts.

#### **Composition of the Board**

The Takeover Regulations currently provide that till the offer formalities are completed, the target company shall be precluded from inducting any person or person nominated by the acquirer or belonging to his group into the board of the target company other than in cases, where acquirer deposits full consideration in an escrow account.

#### **Timelines for the Open Offer process**

The Committee discussed the current timelines for an open offer under the existing Takeover Regulations and reviewed the same with a view to shorten the timelines.

#### **Mode of Payment**

The Takeover Regulations currently provide that offer consideration shall be payable either (a) by way of cash; (b) by issue, exchange and, or transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum "A" grade rating from a credit rating agency registered with the Board; or (d) a combination of clause (a), (b) or (c).

#### **Exemptions from open offer obligations**

The Takeover Regulations currently provide for fourteen categories of transactions which are exempted from the requirement to make an open offer subject to satisfying the conditions specified therein, if any, without the need to seek SEBI's approval for the same. Further, for the transactions that are not covered in the aforesaid fourteen categories, an application can be made for seeking exemption from SEBI. Such applications are referred to a takeover panel for its recommendations. SEBI considers the recommendations received and passes an appropriate order.

#### **Recommendation by the independent directors of the Target Company**

The Takeover Regulations currently provide that the board of directors of the target company may, if they so desire, send their unbiased comments and recommendations on the offer(s) to the shareholders, keeping in mind the fiduciary responsibility of the directors to the shareholders.

#### **Obligations of the Acquirer - Disposal of assets of the Target Company**

The Takeover Regulations currently provide that where the acquirer has not stated his intention to dispose of or otherwise encumber any assets of the target company except in the ordinary course of business of the target company, the acquirer shall be debarred from disposing of or otherwise encumbering the assets of the target company for a period of 2 years from the date of closure of the public offer.

#### **Obligations of the Merchant Banker**

The Takeover Regulations currently provide that the merchant banker shall ensure compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard and provide other specific obligations under Regulations 24 of the current Takeover Regulations.

#### **Disclosure Obligations**

The current Takeover Regulations obligate any acquirer who crosses the specified thresholds to disclose at every stage his aggregate shareholding or voting right to the company concerned and to the stock exchanges where shares of the company are listed. It also obligates a promoter / majority shareholder to annually disclose to the company and the concerned stock exchange regarding the number and percentage of shares or voting rights held by him along with PACs.

## PART VI

### SECURITIES AND EXCHANGE BOARD OF INDIA

(EMPLOYEE STOCK OPTION SCHEME AND EMPLOYEE STOCK PURCHASE SCHEME) GUIDELINES, 1999  
[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]

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#### Important Definitions

**"Employee Stock Option"** means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.

**"Employee Stock Option Scheme (ESOS)"** means a scheme under which a company grants employee stock option. **"employee stock purchase scheme (ESPS)"** means a scheme under which the company offers shares to employees as part of a public issue or otherwise. This guideline is studied under two headings. Part A deals with the regulation of ESOS whereas Part B deals with the regulation of ESPS.

Part A: ESOS (Employee Stock Option Scheme)

#### Salient Features of the Employee Stock Option Scheme

The salient features of the employee stock option scheme of the company includes the conditions regarding vesting, exercise, adjustment for corporate actions, and forfeiture of vested options. If the option administrator (whether the company itself or an outside securities firm appointed for this purpose) provides advisory services to the option grantees in connection with the exercise of options or sale of resulting shares, such advice must be accompanied by an appropriate disclosure of concentration and other risks. The option administrator should conform to the code of conduct appropriate for such fiduciary relationships.

#### Eligibility to participate in ESOS:

An employee shall be eligible to participate in ESOS of the company. The term employee as per this guidelines includes a permanent employee of the company working in India or out of India; or a director of the company, whether a whole time director or not; or an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company.

But where such employee is a director nominated by an institution as its representative on the Board of Directors of the company –

(i) the contract/ agreement entered into between the institution nominating its employee as the director of a company and the director so appointed shall, inter-alia, specify the following:

(a) whether options granted by the company under its ESOS can be accepted by him in his capacity as director of the company;

(b) that options, if granted to the director, shall not be renounced in favour of the nominating institution; and

(c) the conditions subject to which fees, commissions, ESOSs, other incentives, etc. can be accepted by the director from the company.

(ii) the institution nominating its employee as a director of a company shall file a copy of the contract/ agreement with the said company, which shall, in turn, file the copy with all the stock exchanges on which its shares are listed.

(iii) the director so appointed shall furnish a copy of the contract/ agreement at the first Board meeting of the company attended by him after his nomination.

#### Exceptions:-

There are certain exceptions to the above provision where an employee is not eligible to participate on the ESOS-

1. An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESOS.

2. A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

#### Compensation Committee:

The Compensation Committee shall be a Committee of the Board of directors constituted by company to formulate the detailed terms and conditions of the ESOS for its administration and superintendence. The Compensation Committee shall frame suitable policies and systems to ensure that there is no violation of;

(a) Securities and Exchange Board of India (Insider Trading) Regulations, 1992; and

(b) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, by any employee.

#### Shareholder approval:

No employees to the company can be accessible to draw the benefit of the ESOS unless the shareholders of the company approve ESOS by passing a special resolution in the general meeting. The proposed resolution and the explanatory statement of notice shall contain the following particulars–

- Number of options to be granted
- Identification of classes of employees to participate
- Requirements and period of vesting
- Exercise price, exercise period, and process of exercise
- Appraisal process for determining the employees eligibility
- Maximum number of options to be issued per employee
- Method which company will use to value its options

In certain situations approval of shareholders shall be obtained by the company through the passing of separate resolution.

**Variation of terms of ESOS:**

The company shall not vary the terms of the ESOS in any manner, which may be unfavorable to the interests of the employees. However, the company may by special resolution in a general meeting vary the terms of ESOS offered pursuant to an earlier resolution of a general body but which have not yet exercised by the employee provided such variation is not prejudicial to the interests of the option holders.

**Lock-in period and rights of the option-holder:**

There shall be a minimum lock-in period of one year between the grant of options and vesting of option.

The employee (Option holder) shall not have-

- right to receive any dividend, or
- to vote, or
- to enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued on exercise of option.

**Consequence of failure to exercise option:**

The amount payable by the employee, if any, at the time of grant of option;-

(a) may be forfeited by the company if the option is not exercised by the employee within the exercise period; or

(b) the amount may be refunded to the employee if the option are not vested due to nonfulfillment of condition relating to vesting of option as per the ESOS.

**Non transferability of option:**

Option granted to an employee shall not be transferable to any person.

- The option granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
- In the event of the death of employee while in employment, all the option granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
- In case the employee suffers a permanent incapacity while in employment, all the option granted to him as on the date of permanent incapacitation, shall vest in him on that day.
- In the event of resignation or termination of the employee, all options not vested as on that day shall expire.
- The options granted to a director, who is an employee of an institution and has been nominated by the said institution, shall not be renounced in favour of the institution nominating him.

**Disclosure in the Directors' Report:**

The Board of Directors, shall disclose the relevant details of the ESOS either in the Directors' Report or in the annexure to the Directors' Report. Such details may include-

- (a) options granted;
- (b) the pricing formula;
- (c) options vested;
- (d) options exercised;
- (e) the total number of shares arising as a result of exercise of option;
- (f) options lapsed;
- (g) variation of terms of options;
- (h) money realised by exercise of options;
- (i) total number of options in force;
- (j) employee wise details of options granted to:-
  - senior managerial personnel;
  - any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year.
  - identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;
- (k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance Accounting Standard (AS) 20 'Earnings Per Share'.
- (l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have

been recognized if it had used the fair value of the options, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.

(m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.

(n) A description of the method and significant assumptions used during the year to estimate the fair values of options: risk-free interest rate,

- expected life,
- expected volatility,
- expected dividends, and
- the price of the underlying share in market at the time of option grant.

### **Accounting Policies**

Every company that has passed a special resolution in the general meeting for an ESOS of these guidelines, shall comply with the accounting policies specified in Schedule I.

### **Certificate from Auditors:**

In the case of every company that has passed a special resolution for an ESOS in the general meeting, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme has been implemented in accordance with these guidelines and in accordance with the resolution of the company in the general meeting.

## **PART B: ESPS (EMPLOYEES STOCK PURCHASE SCHEME)**

### **Eligibility to participate in ESPS:**

An employee shall be eligible to participate in the ESPS. The term 'Employee' includes a permanent employee of the company working in India or out of India; or a director of the company, whether a whole time director or not; or an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company. Following are the employees' who shall not be eligible to participate -

- An employee who is a promoter or belongs to the promoter group.
- A director who either by himself or through his relatives or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company .

### **Shareholder Approval:**

No ESPS shall be offered to employees of the company unless the shareholders of the company approve ESPS by passing special resolution in the meeting of the general body of the shareholders. The special resolution shall state that the company shall conform to the accounting policies given in the guidelines.

The explanatory statement to the notice shall specify:

- (a) the price of the shares and also the number of shares to be offered to each employee.
- (b) the appraisal process for determining the eligibility of employee for ESPS.
- (c) Total number of shares to be issued.

Approval of shareholders by way of separate resolution in the general meeting shall also be obtained by the company in cases, as to allotment of shares to employees of subsidiary or holding company and, allotment of shares to identified employees.

### **Pricing and Lock-in:**

The company shall have the freedom to determine price of shares to be issued under an ESPS, subjected to the approval of the shareholders by passing special resolution in the meeting of the general body of the shareholders.

Shares issued under an ESPS shall be locked in for a minimum period of one year from the date of allotment.

If the ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employee pursuant to ESPS shall not be subject to any lock-in.

### **Disclosure and Accounting Policies:**

The Directors' Report or Annexure thereto shall contain the following disclosures:

- (a) the details of the number of shares issued in ESPS;
- (b) the price at which such shares are issued;
- (c) employee-wise details of the shares issued to;
  - senior managerial personnel;
  - any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;
  - identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;
- (d) diluted Earning Per Share (EPS) pursuant to issuance of shares under ESPS; and
- (e) consideration received against the issuance of shares.

**Listing:**

The shares arising pursuant to an ESOS and shares issued under an ESOS shall be listed immediately upon exercise in any recognized stock exchange where the securities of the company are listed subject to compliance of the following:

(a) The ESOS/ESOS is in accordance with these Guidelines.

(b) In case of an ESOS the company has also filed with the concerned stock exchanges, before the exercise of option, a statement as per Schedule V and has obtained in principle approval from such Stock Exchanges.

(c) As and when ESOS/ ESOS are exercised the company has notified the concerned Stock Exchanges as per the statement as per Schedule VI of this Guidelines.

For listing of shares issued pursuant to ESOS or ESOS the company shall obtain the in principle approval from Stock Exchanges where it proposes to list the said shares.

The listed companies shall file the ESOS or ESOS Schemes through EDIFAR filing.

The Company shall appoint a registered Merchant Banker for the implementation of ESOS and ESOS as per these guidelines till the stage of framing the ESOS/ESOS and obtaining in principle approval from the stock exchanges.

## **PART VII**

### **SECURITIES AND EXCHANGE BOARD OF INDIA**

#### **(PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992**

**[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]**

**Who is an insider?**

As per the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, “insider” means any **person who**, (i) **is or was connected with the company** or is **deemed to have been connected with the company** and is reasonably expected to have access to unpublished **price sensitive information** in respect of securities of a company, or (ii) has received or has had access to such **unpublished price sensitive information**. Here the

“**connected person**” means any person who— (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act, or (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

**“person is deemed to be a connected person”, if such person—**

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or (ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official

of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorized by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.

**What is price sensitive information?**

“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation.—The following shall be deemed to be price sensitive information :—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;

(vii) and significant changes in policies, plans or operations of the company.

**“Unpublished information”** means information which is not published by the company or its agents and is not specific in nature. This may include Speculative reports in print or electronic media.

#### **PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING**

Regulation 3 of the SEBI (Prohibition of Insider Trading Regulations, 1992) lays down the rule as to the **prohibition on dealing, communicating or counseling on matters relating to insider trading.**

No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities : Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law. Regulation 3A says that no company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

#### **INVESTIGATION IN THE MATTER OF INSIDER TRADING**

Regulation 4A to Regulation 10 lays down the procedure for the Investigation in the case of Insider Trading.

##### **(I) Power to make inquiries and inspection.**

(1) If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (j) of sub-section (2) of section 11 as deemed fit, to form a *prima facie* opinion as to whether there is any violation of these regulations.

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of sub-section (2) of section 11 for the purpose of sub- regulation (1). [Regulation 4A]

##### **(II) Board's right to investigate.**

Where the Board, is of *prima facie* opinion that it is necessary to investigate and inspect the books of account, either records and documents of an insider or any other person mentioned in clause (j) of sub-section (1) of section 11 of the Act for any of the purposes specified in sub- regulation (2), it may appoint an investigating authority for the said purpose.

The purpose referred to above is :

(a) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading; and

(b) to investigate *suo-motu* upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations. [Regulation 5]

##### **(III) Procedure for investigation.**

Before undertaking any investigation, the Board shall give a reasonable notice to insider for that purpose. [Regulation 6]

##### **(IV) Obligations of insider on investigation by the Board.**

It shall be the duty of every insider, who is being investigated or any other person mentioned in clause (j) of sub-section (1) of section 11 of the Act to produce to the investigating authority such books, accounts and other documents in his custody or control and furnish the authority with the statements and information relating to the transactions in securities market within such time as the said authority may require.

The insider or any other person mentioned in clause (j) of sub-section (2) of section 11 of the Act shall allow the investigating authority to have reasonable access to the premises occupied by such insider and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which in the opinion of the investigating authority are relevant. The investigating authority, in the course of investigation, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the insider or any other person mentioned in clause (j) of sub-section (2) of section 11 of the Act. It shall be the duty of every director, proprietor, partner, officer and employee of the insider to give to the investigating authority all assistance in connection with the investigation, which the insider or any other person mentioned in clause (j) of subsection (2) of section 11 of the Act may be reasonably expected to give. [Regulation 7]

##### **(V) Appointment of Auditor.**

The Board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act, Provided that, the auditor so appointed shall have the same powers of the inspecting authority in regulation 5 and the insider shall have the obligations specified in regulation 7. [Regulation 10]

## **FRAMING OF POLICIES ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING**

Regulations 12 to 14 of the SEBI (prohibition of the Insider Trading) Regulation, 1992 lays down rules as to framing of the corporate disclosures policies and the code of internal procedure and conduct for the prevention of the Insider trading by any Company.

### **Code of internal procedures and conduct for listed companies and other entities.**

All listed companies and organisations associated with securities markets including:

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
- (b) the self-regulatory organizations recognised or authorised by the Board;
- (c) the recognised stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same. *[Regulation 12]*

### **Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies – *[Regulation 13]***

#### **(I) Initial Disclosure**

- (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.
- (2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

#### **(II) Continual disclosure**

- (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds 2% of total shareholding or voting rights in the company.
- (4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub- regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.
- (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :
  - (a) the receipts of intimation of allotment of shares, or
  - (b) the acquisition or sale of shares or voting rights, as the case may be.

### **Disclosure by company to stock exchanges.**

- (6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule

### **III. E-filing.**

- (7) The disclosures required under this regulation may also be made through electronic filing in accordance with the system devised by the stock exchange.

### **Action in case of default**

Without prejudice to the directions under regulation 11, if any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11B, 11D, Chapter VIA and Section 24 of the Act. *[Regulation 14]*

### **Appeal to the Securities Appellate Tribunal**

Any person aggrieved by an order of the Board under these regulations may prefer an appeal to the Securities Appellate Tribunal. *[Regulation 15]*

## PART VIII

### CORPORATE AFFAIRS STANDARDS

[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]

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#### BUSINESS VALUATION PRACTISE STANDARDS

##### Introduction

Business valuation is a complex process and it involves a multitude of factors ranging from financial matters to historical perspectives. It is a broad and technically challenging discipline. The valuation is performed in a variety of contexts and for a variety of purposes. **The word value means different things to different people and the result will not be the same, should the context change.** A valuation is not an exact science. The value is subjective term and can have a different connotation. Valuation involves use of professional judgement, knowledge of business, analysis of facts, interpretations and used of different methods and procedures, which may result into different value in each given situation. This implies that the business value must be measured and defined by a 'standard of value' that is relevant, meaningful and reliable.

In this backdrop, considering the growing need, variety and complexity involved in the valuation exercises, **ICAI has decided to develop Business Valuation Practice Standards (BVPS)** which would establish uniform principles, practices and procedures for Valuers performing valuation services.

##### Purpose of the Standard

The rising demand for valuation services has given new avenues for the finance professionals. Going forward more and more professional would be engaged in performing valuation services. Recognizing these facts the ICAI has developed this Business Valuation Practise Standard for the following purposes:

- Provide guidance to the Valuers in performing valuation services
- Define general valuation concepts, principles, approaches and methods
- Define basis of valuation and premise of valuation
- Set out a code of conduct

##### Objective of the Standard

The objective is to provide common standards for business valuers who are performing business valuation engagements. Business valuations methods and procedures followed in estimating values vary however, they require similar principles whatever their purpose may be. Therefore, the overall objective is to develop a common standard whereby all types of valuations are covered under one head and a consistent and prudent approach is followed. In particular, the objectives of the BVPS are:

- To promote 'best practices' and fairness in valuation services
- To promote credibility, relevancy & transparency of valuation information.
- To enhance quality, consistency, comparability and uniformity of valuation practice
- To cover valuation of all assets, liabilities and businesses (cash flows)
- To enhance reliance on the valuation amongst stakeholder
- To improve corporate governance
- To improve public confidence in valuation
- To improve market efficiency

##### Scope of the Standard

Valuers in India, while performing valuation a engagement, shall follow the requirements of this Standard. Initially the requirement of this standard shall be recommendatory in nature and shall become mandatory from a date to be notified by the Council of ICAI. Valuers outside of India may follow the requirements of this Standard while performing valuation engagement to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations prevalent in that country . ICAI may adopt changes to the Standard to keep in tune with changing business scenarios and requirements and issue interpretations of the Standard to assist the valuers in the in the application of the Standard as and when considered necessary.

##### Exceptions from the Standard

This Standard is not applicable when:

- (i) Estimation of value is part of an attest engagement like audit, review, compilation engagement etc. (But the Valuers are encouraged to keep in view the standards in these cases also.)
- (ii) When mechanical computations are carried out that do not rise to the level of an engagement to estimate value; that is, when the Valuer does not apply valuation approaches and methods and does not use professional judgment.

- (iii) Engagements are exclusively for the purpose of determining economic damages (for example, lost profits) unless those determinations include an engagement to estimate value.
- (iv) The value of a subject interest is provided to the Valuer by the client or a third party, and the Valuer does not apply valuation approaches and methods, as discussed in this Standard.
- (v) It is not practical or not reasonable to obtain or use relevant information; as a result, the Valuer is unable to apply valuation approaches and methods that are described in this Standard

#### **Jurisdictional Exception**

Any part of this Standard is in contradiction with any published governmental, judicial, or accounting authority, or such authority specifies valuation procedures, then the Valuer should follow the applicable published authority or stated procedures with respect to that part applicable to the valuation in which the Valuer is engaged. The other parts of this Standard shall continue to apply.

#### **General and Ethical Standards**

This Standard describes the following basic principles which govern the valuer's professional responsibilities and which shall be complied with whenever an engagement to estimate value is carried out.

- (i) Professional competence
- (ii) Professional due care
- (iii) Independence
- (iv) Financial Interest
- (v) Integrity & objectivity
- (vi) Confidentiality
- (vii) Skills and Competence
- (viii) Understandings and Communications with Clients
- (ix) Planning and Supervision
- (x) Sufficient Relevant Data
- (xi) Remuneration

#### **Valuation Services**

There are broadly two types of engagements to estimate value—a **valuation engagement** and a **calculation engagement**. The valuation engagement requires more procedures than does the calculation engagement. The valuation engagement results in a conclusion of value.

The calculation engagement results in a calculated value. The type of engagement is established in the understanding with the client per Terms of Engagement.

#### **Overall Engagement Considerations**

- (i) Terms of engagement (TOE)
- (ii) Understanding the Nature And Risks Of The Valuation Services
- (iii) Assumptions and Limiting conditions
- (iv) Scope Restrictions or Limitations
- (v) Hypothetical Conditions
- (vi) Using work of expert

#### **Valuation Methodology**

In performing a valuation engagement, the Valuer should:

- Define the Standard and Premise of Value
- Analyze the subject interest and collect the necessary Information
- Adjust the Financial Statement appropriately
- Consider and apply appropriate valuation approaches and methods
- Valuation adjustments
- Conclusion of value
- Subsequent Events
- Prepare and maintain appropriate documentation

#### **Reporting Standards**

##### **For a Valuation Engagement**

**Detailed Report:** This report may be used to communicate the results of a valuation engagement (conclusion of value) in detail.

**Summary Report:** This report may be used to communicate the results of a valuation engagement (conclusion of value) in an abridged form.

For a valuation engagement, the determination of whether to prepare a detailed report or a summary report is based on the level of reporting detail agreed to by the Valuer and the client.

#### **For a Calculation Engagement**

**Calculation Report:** This type of report should be used only to communicate the results of a calculation engagement (calculated value); it should not be used to communicate the results of a valuation engagement (conclusion of value)

#### **Effective Date**

This Standard applies to engagements to estimate value accepted on or after the first day of April 2010. Earlier application of the Standard by the Valuers is encouraged.

## **CORPORATE AFFAIRS STANDARD ON AUDITOR'S APPOINTMENT, RETIREMENT AND REMOVAL**

The following is the CORPORATE AFFAIRS STANDARD – (CAS) – issued by the Council of the Institute of Chartered Accountants of India on "Auditor's Appointment, Retirement and Removal". The standard deals with the legal, regulatory and ethical issues arising from the appointment, retirement and removal of auditor under the Companies Act, 1956.

### **INTRODUCTION**

The purpose of this Standard is to provide guidance when an auditor is appointed or re-appointed or when an auditor resigns, is removed or retires pursuant to sections 224 to 226 of the Companies Act, 1956. This standard deals with the responsibilities of the newly appointed auditor including the First auditor and the resigning, removed or retiring auditor with respect to requirements and compliances under the Companies Act, 1956 in conjunction with the relevant ethical requirements of Institute of Chartered Accountants of India (ICAI).

### **APPOINTMENT OF FIRST AUDITORS UNDER SECTION 224(5)**

**(i) Appointment of first auditors and fixation of remuneration** – Pursuant to sub-section(5) of section 224 of the Companies Act, the first Auditor or Auditors of a company have to be appointed by the Board of Directors within one month of the date of registration of the company and the Auditor or Auditors so appointed shall hold office until the conclusion of the first Annual General Meeting of the company. The remuneration payable to the Auditor(s) is also, accordingly, fixed by the Board of Directors for the initial year.

**(ii) Filling up of vacancy in the office of first auditor.** – If, due to any reason whatsoever, there arises a vacancy in the office of the first Auditor of the company, the Board may again appoint another, Auditor or Auditors of a company to hold office until the conclusion of the first Annual General Meeting and fix remuneration therefore.

**(iii) On failure of Board to appoint first auditor – Auditor to be appointed by company general meeting.**– If the Board, in either or the above cases, fails to exercise its power, the company in the General Meeting has to appoint the first Auditor or Auditors by an ordinary resolution. The first Auditor so appointed should be intimated with seven days of his appointment and then the Auditor must inform the Registrar in Form No.23B\* about his accepting or refusing the appointment within one month of the receipt of intimation of his appointment.

**(iv) On failure of general meeting to appoint auditor vacancy to be filled in by Central Government.** – The residual power to appoint an Auditor in the even of a failure to appoint Auditors by the general body lies with the Central Government, who may appoint a person to fill in the vacancy

### **RE-APPOINTMENT OF THE RETIRING AUDITOR UNDER SECTION 224**

**(i) Intimation within seven days** – The auditors so appointed should be intimated within seven days of the appointment.

**(ii) Written Certificate** – Before appointing the auditors a written certificate should be obtained from the proposed auditors to the effect that the said appointment if made will be in accordance with the limits specified in sub- section (1B) of section 224 of the Act.

### **FILING UP OF CASUAL VACANCY IN THE OFFICE OF AUDITORS UNDER SECTION 224**

**(i) Board's power.**–The board of directors of a company has the power to fill up any casual vacancy in the office of an auditor except casual vacancy caused by resignation of an auditor.

**(ii) Intimation within seven days.** – The auditors so appointed should be intimated within seven days of the appointment.

**Written Certificate.** – Before appointing the auditors a written certificate should be obtained from the proposed auditors to the effect that the said appointment if made will be in accordance with the limits specified in sub-section (1B) of section 224 of the Act.

#### **REMOVAL OF AUDITOR APPOINTED IN A GENERAL MEETING UNDER SECTION 224**

**(i) Removal of Auditor.**-Sub-section (7) of section 224 makes special provision for the removal of the auditors before the expiry of their term in General Meeting after obtaining the previous approval of the Central Government in that behalf. This provision has been made to meet a situation where an existing Auditor is unable to fulfil his duties for any reason or is unsuitable for continuing in his appointment.

**(ii) Application for removal of auditor to Central Government.**- The application for removal of Auditor of the Company before the expiry of his terms of office must be addressed to the Regional Director concerned to whom the power of Central Government has been delegated. There is no prescribed format of this application. The application should set out in detail the reasons for the proposed removal of the Auditor's and it must be accompanied by the following documents.-

(a) A copy each of the Memorandum and Articles of Association of the Company.

(b) Proof of deposit of requisite fee.

The Regional Director may generally obtain an explanation from the concerned auditor about his views on the matter and may also afford an opportunity of being heard personally.

**(iv) Forwarding of application.**- A copy of the application should be delivered to the concerned Registrar of Companies electronically.

#### **APPOINTMENT AS AUDITOR OF A PERSON OTHER THAN RETIRING AUDITOR UNDER SECTION 225**

**(i) Special Notice.** – Special notice is required for a resolution at an Annual General Meeting appointing as auditor a person other than a retiring auditor.

**(ii) Notice to retiring auditor.**- On receipt of notice of the resolution, the Company must send forthwith a copy thereof to the retiring auditor.

**(iii) Mode of sending Special Notice.**- The copy of the special notice under section 225(2) of the Companies Act, 1956 should be sent to the retiring auditors by Registered A.D. Post.

**(iv)** Auditors representation should be sent to all the members and auditors be informed that they are entitled to be orally heard.

**(v)** Read the representation of retiring auditors if any at the meeting.

**(vi)** Shareholders present at the general meeting to orally hear the retiring auditors.

**(vii)** To put the resolution to vote.

### **CORPORATE AFFAIRS STANDARD (CAS) Certification under MCA 21**

#### **Objective**

The objective of this Corporate Affairs Standard is to establish standard and provide guidance on the practices and procedures to be followed when an engagement to certify various eForms under MCA21 is undertaken.

#### **Scope**

MCA21 is an e-Governance Project implemented by Ministry of Corporate Affairs (MCA) under National e-Governance Plan of the Government of India. It facilitates e-filing of various forms and applications under the Companies Act, 1956 and the Rules and Regulations thereunder. MCA21 envisages easy and secure online access to all the services being provided by the Ministry of Corporate Affairs including registration, annual filing of documents and other event based statutory filing by the corporate and public access to corporate information through a portal.

Most of the eForms require the authentication by a responsible officer of a company for proper filing/submission. Authentication of documents by the third party, such as bankers, may also be required in some cases. In certain cases a certificate, amongst others, from a Chartered Accountant in whole- time practice is also required to authenticate the particulars contained in the e-Forms. Details of such e-forms and nature of certification are given in the APPENDIX. While certifying various e-Forms under MCA21, the practices and procedures laid down by this CAS may be followed.

#### **Important definitions**

An "e-Form" represents a document in electronic format for filing with MCA authorities through the internet for various compliances under the Act, prescribed by the Central Government through Companies (Central government's) General Rules and forms, 1956. An e-Form contains a number of mandatory fields which are required to be filled- in. It may require certain mandatory attachments to be filed along with it.

"Corporate Identity Number (CIN)" is a unique identification for an Indian company under MCA21.

"Foreign Company Registration Number (FCRN)" is a unique identification for a foreign company under MCA21.

"Responsible Officer" in relation to a company means any one of the following:

(a) a director of the company,

- (b) manager or secretary of the company,
- (c) any other officer or employee of the company, who may from time to time be recognized or declared by the Central Government to be a responsible officer of the company within the meaning and purposes of the Rules.

### **Concepts and principles**

Managements' responsibility for conducting its business implicitly requires it to take reasonable steps to ensure the compliance of various provisions under the Companies Act, 1956 relating to maintenance of books of accounts and other records, statutory records, passing of resolution by the competent authority such as Board of Directors and members of the company and minutes of such meetings.

The Chartered Accountant's responsibility in certifying various forms under MCA21 relate to verification and certification of facts. Such certification is neither an audit nor an expression of opinion on records of the company.

### **Procedures and evidence**

#### **Terms of engagement**

When a Chartered Accountant in whole-time practice is asked to certify forms under MCA 21, he may take an engagement letter from the client having clear reference to client's responsibility to provide the information, documentary evidence and maintenance of records.

The letter may also contain the basis on which fee is to be computed and the billing arrangement.

The Chartered Accountant may accept the assignment to certify E Forms 22, 23B and 35A only if he is also the statutory auditor of the company as those forms are to be certified by the auditor of the company only. Authorisation Letters shall be required to be obtained from all the promoters for authentication of eForm 1. In case the promoters include a company, a certified copy of the Board Resolution passed in this regard shall also be obtained. In case of return, particulars or application being filed on behalf of an existing company, it may be ensured that proper resolution authorising to sign and submit is passed at a properly convened meeting of the Board of Directors of the company. Certified copy of the same may be obtained from the company.

#### **Know your client (KYC) Norms**

Sufficient documentary evidence may be obtained for establishing the identity of the client and its address. Original documents of all the photocopies produced may be verified. Personal meeting may be held with all the persons in whose behalf content of various forms are being certified. In the case of a foreign promoter/director, identity and address proofs of the person(s), duly authenticated by an official of Indian embassy of that country, may be obtained.

In case of any doubt regarding the identity of the persons concerned, further enquiries may be made or further documentary evidence may be insisted upon. Even after further enquiry doubts persist, he may refuse to take up the assignment.

KYC norms may be reapplied in case there are any material changes in ownership and/or control of the client entity.

#### **Documentation**

When a Chartered Accountant in whole-time practice is asked to certify forms under MCA 21, he may document matters which are important in providing evidence that due care was taken in verification of facts.

The Chartered Accountant may obtain representations from the client where consider appropriate and should evaluate whether the representations made by the client appear reasonable and consistence with other evidence obtained.

All the documentary evidence obtained in the course of certification along with copies of other important records of a client such as Memorandum of Association and Articles of Association, list of present directors, location of registered and other offices may be kept in a separate file.

In the case of formation of a new company, subscription clause may be filled in and signed by the subscribers to the Memorandum in the presence of the chartered accountant and a written confirmation from the proposed directors may be obtained from them that they are not disqualified to be appointed as director of a company. In case, promoters are located outside India, subscription clause and confirmation letter mentioned above may be accepted if that is duly notarized and authenticated by an official of Indian Embassy in that country where the promoters are residents.

A Digital Signature Register for may be maintained to keep the record of particulars of document/form /return certified for a particular client, date and time of such certification.

The digital signature may be obtained from the authorised and accredited agency only and may be kept in safe custody.

Copies of all the eForms certified by the Chartered Accountant should be stored in computer and backup of such information should be taken on periodical basis.

The Chartered Accountant may adopt reasonable procedure for custody and confidentiality of the working papers and should retain them for a period of time sufficient to meet the need of his practice and satisfy any pertinent legal or professional requirements of record retention.

**Evaluation process**

While verifying documentary evidences and evaluating results thereof, the Chartered Accountant may consider the risk of material misstatement in them resulting from fraud and error. It may be ensured that the legal process required to be performed before filing the related e- Form has been completed. For example, in case of change in location of registered office from one state to other, process as per section 17 of the Act has been carried out. It may be ensured that the eForm being filed is duly authorized to be filed by the Board of Directors of the company and the person filing the eForm has been duly authorised by the board of Directors of the company. Due care may be taken in case it appears to be any dispute amongst the members of the Board of Directors or members of the client company and ensure that eForm is being filed with either unanimous consent of all the parties or after going through all the due process as provided in the Act.

The Chartered Accountant may obtain a general knowledge of the business and operations of the client and perform reasonable verification to ensure that the company is complying with laws and regulations applicable to that company.

The forms may be filled in and report may be prepared with due professional care by persons who have adequate training, experience and competence in computer software application.

It may be ensured that Ministry of Corporate Affairs instructions for filling the respective forms have been followed strictly and all the required attachments are enclosed with the respective E Forms.

**Certification**

It may be reviewed and assessed from the documentary evidence produced, explanation and information given and enquiries made whether the information required to be certified is true and correct.

If required, independent enquiry may be made to verify the facts and figures provided by the client.

Only after such review and assessment, the Chartered Accountant may affix his digital signature on the document for its authentication.

**Confidentiality**

The Chartered Accountant may respect the confidentiality of information acquired in the course of his work and may not disclose any such information to a third party without the specific authority or unless there is legal or professional duty to disclose.

**Effecting date**

This Corporate Affairs Standard shall become operative from the date of its announcement by the Council of the Institute of Chartered Accountants of India.