BANKING LAW

GUIDELINES ON DEREGULATION OF SAVINGS BANK DEPOSIT INTEREST RATE

CIRCULAR DBOD.DIR.BC. 75/13.03.00/2011-12, DATED 25-1-2012

Please refer to our circular DBOD.Dir.BC. 42/13.03.00/2011-12, dated October 25, 2011.

2. Based on the references received from banks, we clarify that the revised guidelines issued *vide* our circular referred to above would be applicable to domestic savings bank deposits held by residents in India. Further, the interest rates applicable on the domestic savings deposit will be determined on the basis of end-of-day balance in the account. Accordingly, while calculating interest on domestic savings bank deposits, banks are required to apply the uniform rate set by them on end-of-day balance up to Rs. 1 lakh and for any end-of-day balance exceeding Rs.1 lakh, banks may apply the differential rate(s) as fixed by them.

3. Banks may ensure that interest rate is applied, as stated above, on the end-of-day balances of all domestic savings deposits accounts and no discrimination is made at any of its offices. Prior approval of the Board/Asset Liability Management Committee (if powers are delegated by the Board) may be obtained by a bank while fixing interest rates on such deposits.

4. All other instructions in this regard, as amended from time to time, will remain unchanged.

COMPANY LAW

COMPANY LAW BOARD (AMENDMENT) REGULATIONS, 2012 - AMENDMENT IN REGULATION 30

NOTIFICATION NO. G.S.R. 32(E)[F.NO.10/36/2001-CLB], DATED 18-1-2012

In exercise of the powers conferred by sub-section (5) and sub-section (6) of section 10E of the Companies Act, 1956 (1 of 1956), the Company Law Board hereby makes the following regulations further to amend the Company Law Board Regulations, 1991, namely:-

1. (1) These regulations may be called the Company Law Board (Amendment) Regulations, 2012.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Company Law Board Regulations, 1991, for regulation 30, the following shall be substituted, namely:-

   "30 Inspection of record and supply of certified copies - (1) The record of a pending case shall be open, as of right, to the inspection and supply of the certified copies thereof to the parties or their authorised representatives, on making an application in writing and on payment of a fee of fifty rupees per day for inspection of documents of a case and ten rupees per page for supply of certified copies of order or any other document respectively and the inspection of record shall be pre-requirement for supply of certified copy of a case.

   (2) The applicant shall distinctly specify in the application, the record of a case for which inspection or certified copies are desired and the application may either be presented at the filing counter or may be sent by post at the address of the concerned Company Law Board Bench along with the requisite fees.

   (3) A person, who is not a party to the proceedings, has, however, no right to inspect or to obtain certified copies of the records of a pending case except with the consent of the party who has filed the case or under the orders of the Bench.

   (4) The inspection of record shall not be permitted on the date fixed for its hearing without the order of the Bench.

   (5) After receipt of an application, the inspection shall be allowed within a period of two working days and certified copies shall be supplied within a period of three working days respectively.

SECTION 10E OF THE COMPANIES ACT, 1956 - BOARD OF COMPANY LAW ADMINISTRATION - CONSTITUTION OF - REVISION OF FEES PAYABLE IN TERMS OF REGULATIONS 29 & 30 OF THE CLB REGULATIONS, 1991

ORDER [FILE NO.10/36/2001-CLB], DATED 19-1-2012

The Company Law Board has revised the fees payable in terms of Regulations 29 and 30 of the Company Law Board Regulations, 1991 No. GSR 32(E), dated 18th January, 2012. The fee for inspection of documents of a case has been revised from ten rupees to fifty rupees per day. The fee for supply of certified copies of order or any other document has been revised from five rupees to ten rupees per page.

2. In view of the above the Company Law Board rescinds the Order No. l/10/88-CLV/CLB/Admn/90, dated 4th June, 1991. Such rescission shall not affect anything done or omitted to be done under the said Order before issue of this notification.

SECTION 233B OF THE COMPANIES ACT, 1956 - AUDIT OF COST ACCOUNTS IN CERTAIN CASES - ORDER UNDER SECTION 233B(1)

ORDER [F.NO. 52/26/CAB-2010], DATED 24-1-2012

In exercise of the powers conferred by sub-section (1) of section 233B of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that it is necessary to do so, hereby directs that all companies to which the Companies (Cost Accounting Records) Rules, 2011 apply, and which are engaged in the production, processing, manufacturing or mining of the following products/activities, including intermediate products and articles or allied products thereof, and wherein the aggregate value of the turnover made by the company from sale or supply of all its products/activities during the immediately preceding financial year exceeds hundred crore of rupees; or wherein the company's equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India, shall get its cost accounting records, in respect of each of its financial year commencing on or after the 1st day of April, 2012, audited by a cost auditor who shall be, either a cost accountant or a firm of cost accountants, holding valid certificate of practice under the provisions of Cost and Works Accountants Act, 1959 (23 of 1959).

S no.	*Name of the Industry*	*Relevant Chapter Heading of the Central Excise Tariff Act, 1985*
1.	Jute, cotton, silk, woolen or blended fibers/textiles	Chapters 50 to 63
2.	Edible oil seeds and Oils (incl. vanaspati)	Chapters 12 and 15
3.	Packaged food products	Chapters 2 to 25 (except Chapters 5, 6, 14, 23 and 24)
4.	Organic & Inorganic Chemicals	Chapters 28, 29, 32, 38 and 39
5.	Coal & Lignite	Chapter 27
6.	Mining & Metallurgy of ferrous & non-ferrous metals	Chapters 26 and 74 to 83 (except Chapters 76 and 77)
7.	Tractors & other motor vehicles (incl. automotive components)	Chapters 84, 85 and 87
8.	Plantation Products	Chapters 8, 9, 21 and 40
9.	Engineering machinery (incl. electrical & electronic products)	Chapters 84 and 85

Notes:

(*a*) Intermediate or final products and articles or allied products of above industries if included under any other Chapter of the Central Excise Tariff Act, 1985 not mentioned above shall also be covered under these orders.

(*b*) Items falling under above Chapter references exclude those products that have been already covered *vide* cost audit orders dated 2nd May 2011 and 30th June 2011.

(*c*) Products falling under above Chapter references are to be considered against the respective industry as applicable.

2. Every company to which these orders apply shall follow the revised procedure for appointment of cost auditor as laid down *vide* Ministry of Corporate Affairs' General Circular No. 15/2011 dated 11th April 2011.

3. The audit shall be conducted in such manner as will enable the cost auditor to prepare the report in accordance with the Companies (Cost Audit Report) Rules, 2011 published *vide* G.S.R. 430(E) dated 3rd June 2011. The report of the cost auditor shall be forwarded to the Central Government in the prescribed format within the time stipulated under the said Rules.

4. In view of issue of industry specific cost audit orders, all company specific cost audit orders issued to the individual companies prior to 31st March, 2011 directing them to get their cost records audited for the products/activities specified in such orders stand withdrawn with effect from the financial year commencing on or after the 1st day of April, 2012.

5. All companies who were earlier issued company specific orders prior to 31st March, 2011 but are later covered either by this industry specific order and/or by earlier similar orders dated 2nd May 2011 or 30th June 2011 [subject to their meeting with the qualifying criteria mentioned therein] shall now comply with the industry specific orders, as applicable, replacing the earlier company specific order.

6. All companies wherein this industry specific cost audit order and the similar orders issued on 2nd May 2011 and 30th June 2011 are not applicable but their products/activities were covered under the company specific cost audit orders issued prior to 31st March 2011 shall comply with the said company specific orders before their withdrawal becomes effective *i.e.* for all financial years prior to the financial year commencing on or after the 1st day of April, 2012.

7. If a company contravenes any provisions of these orders, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of section 209 of the Companies Act, 1956, shall be punishable as provided under sub-section (2) of section 642 read with sub-section (11) of section 233B of the Companies Act, 1956 (1 of 1956).

8. These orders are subject to clarifications issued *vide* Ministry of Corporate Affairs' General Circular Nos. 67/2011 and /2011, both dated November 30, 2011.

INSURANCE LAW

AML/CFT GUIDELINES

CIRCULAR NO. IRDA/F&I/CIR/AML/028/01/2012, DATED 27-1-2012

Attention is drawn to clause 3.1.1 (*xiv*) of the Master Circular 2010 on AML/CFT guidelines which reads as under:

> "Insurance companies are required to conduct detailed due diligence while taking insurance risk exposure to individuals/entities connected with countries identified by FATF as having deficiencies in their AML/CFT regime ..... Insurance companies have been advised further that while using the FATF Public Statements being circulated through the insurance councils, insurers should go beyond the FATF statements and consider publicly available information when identifying countries which do not or insufficiently apply the FATF Recommendations".

2. In continuation of the aforesaid stipulations, insurance companies are hereby directed to apply similar measures on countries considered as high risk from terrorist financing or money laundering perspective based on prior experiences, transaction history or other factors (*e.g.*, legal considerations, or allegations of official corruption).

3. The above requirement shall be implemented with immediate effect. Insurance companies are also advised to amend their AML/CFT policy suitably.

SEBI

SEBI BOARD MEETING - AMENDMENT PROPOSED IN SEBI (MUTUAL FUND) REGULATIONS, 1996 AND (PORTFOLIO MANAGERS) REGULATIONS, 1993, ETC.

PRESS RELEASE NO. 15/2012, DATED 28-1-2012

The SEBI Board met in New Delhi today and took the following decisions:

1. Reservation to Holders of Convertible Debt Securities in Rights/Bonus Issues

On the issue of reservation to convertible debt holders in rights/bonus issues, it has been decided to clarify that reservation shall be available only to compulsorily convertible debt holders, since conversion in such cases is not at the option of the holders of these instruments.

2. Waiver of Certain Requirements Relating to Preferential Allotment to Insurance Companies and Mutual Funds

It has been decided to exempt Insurance Companies and Mutual Funds which are broad based investment vehicles representing the interests of the public at large from the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations relating to sale and lock-in of their pre-preferential shareholding in the issuer company. Presently, SEBI (ICDR) Regulations preclude companies from issuing preferential allotment to entities who have sold any of their holdings during the six month period prior to relevant date. Further, allottees in preferential allotment are required to lock-in their entire pre-preferential holdings for a period of six months from date of preferential allotment. The lock-in on shares allotted in preferential issue *per se*, however, would remain unchanged.

3. Amendment to SEBI (Mutual Fund) Regulations, 1996

a. Amendment relating to Advertisement Code

- In order to provide flexibility to Asset Management Companies (AMCs) in issuing true and fair advertisements with meaningful disclosure to investors, the Sixth Schedule of SEBI (Mutual Fund) Regulations, 1996 and various circulars issued from time to time on Advertisement Code shall be amended and made principle based as far as possible.
- AMCs shall be responsible for the accuracy, truthfulness, fairness of the advertisement.
- The definition of advertisement shall be broadened to include all forms of communication that may influence investment decisions of any investor.

b. Amendment relating to Investment Valuation Norms

In order to provide for fair valuation of securities/assets of Mutual Fund schemes, the following proposed changes in the SEBI (Mutual Fund) Regulations, 1996 are approved by the Board:

- AMC shall ensure fair treatment to all investors *i.e.,* to existing investors as well as to investors seeking to purchase or redeem units of Mutual Funds at all point of time in all schemes.
- In case debt and money market securities are not traded on a particular valuation day then valuation through amortization basis shall be restricted to securities having residual maturity of up to 60 days (currently 91 days), provided such valuation shall be reflective of the realizable value/ fair value of the securities.

4. Amendment to SEBI (Portfolio Managers) Regulations, 1993

The Board decided to amend the SEBI (Portfolio Managers) Regulations, 1993 to give effect, *inter alia*, to the following:

- To enhance the minimum investment amount per client from Rs.5 lakh to Rs.25 lakh.
- To ensure segregation of holdings in individual demat accounts in respect of unlisted securities also.

The proposed amendment would be applicable on prospective basis for new clients and for fresh investments by existing clients.

ELIGIBILITY CRITERIA FOR QUALIFIED DEPOSITORY PARTICIPANT

CIRCULAR NO. IMD/FII&C/4/2012, DATED 25-1-2012

Vide SEBI circulars IMD/DF/14/2011 and IMD/FII&C/3/2012 dated August 9, 2011 and January 13, 2012 respectively, Qualified Foreign Investors (QFI) were allowed to invest in schemes of Indian mutual funds and Indian equity shares subject to terms and conditions mentioned therein, including opening a demat account with qualified Depository Participant. The eligibility criteria for a SEBI registered Depository Participant (DP) to act as qualified Depository Participant were provided in the aforementioned circulars.

2. On a review, it has been decided to amend the eligibility criteria for a SEBI registered DP to act as a qualified Depository Participant. The revised eligibility criteria to act as qualified Depository Participants are as follows:

To become a qualified Depository Participant, a SEBI registered DP shall fulfil the following:

2.1. DP shall have net worth of Rs. 50 crore or more;

2.2. DP shall be either a clearing bank or clearing member of any of the clearing corporations;

2.3. DP shall have appropriate arrangements for receipt and remittance of money with a designated Authorised Dealer (AD) Category-I bank;

2.4. DP shall demonstrate that it has systems and procedures to comply with the FATF Standards, Prevention of Money Laundering (PML) Act, Rules and SEBI circulars issued from time to time; and

2.5. DP shall obtain prior approval of SEBI before commencing the activities relating to opening of accounts of QFI.

The eligibility criteria for qualified Depository Participant as contained in SEBI circulars dated August 9, 2011 and January 13, 2012 stands amended as above.

3. In order to maintain consistency in the maximum retention period of QFI's fund in the single rupee pool bank account for investments/ re-investment out of redemption or dividend in schemes of Indian mutual funds *vis-à-vis* equity shares, it has been decided to amend clause(s) 4.7.5 and 4.7.7 of circular IMD/DF/14/2011 dated August 9, 2011.

4. Accordingly, the maximum retention period of QFI's funds in the single rupee pooled account with the qualified depository participant as envisaged in clause(s) 4.7.5 and 4.7.7 of circular dated August 9, 2011 stands revised to **five working days** (including the date of receipt of foreign inward remittance through normal banking channels from the designated overseas bank account of the QFI into the single rupee pool bank account) for both investment as well as re-investment out of redemption proceeds in schemes of Indian mutual funds.

5. Further, in partial amendment to clause 4.7.8, it has been decided to allow credit of dividend payments to QFIs on account of investment in schemes of Indian mutual funds held by them to the single rupee pool bank account subject to the condition that in case dividend payments are credited to the single rupee pool bank account, they shall be remitted to the designated overseas bank accounts of the QFIs within **five working days** (including the day of credit of such funds to the single rupee pool bank account). Within these five working days, the dividend payments can be also utilized for fresh purchases in schemes of Indian mutual funds, if so instructed by the QFI

This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market

FEMA

EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY - INFRASTRUCTURE FINANCE COMPANIES (IFCs)

A.P. (DIR SERIES 2011-12) CIRCULAR NO. 70, DATED 25-1-2012

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 5 dated August 1, 2005, amended from time to time and A. P. (DIR Series) Circular No. 51 dated May 11, 2010 relating to External Commercial Borrowings (ECBs). As per the extant guidelines, Non-Banking Finance Companies (NBFCs) categorized as Infrastructure Finance Companies (IFCs) by the Reserve Bank and complying with the norms prescribed in the DNBS Circular DNBS.PD.CC.No.168/03.02.089/2009-10 dated February 12, 2010 are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds under the automatic route. ECBs by IFCs above 50 per cent of their owned funds are being considered under the approval route. The permitted end-use should be for on-lending to the infrastructure sector, as defined under the extant ECB policy. IFCs should also hedge their currency risk in full.

2. It has now been decided that the designated AD Category – I banks should certify the leverage ratio (*i.e.* outside liabilities/owned funds) of IFCs desirous of availing ECBs under the approval route while forwarding such proposals to the Reserve Bank of India.

3. All other aspects of the ECB policy, such as eligible borrower, recognised lender, maximum permissible limit under the automatic route, average maturity, all-in-cost, end-use, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged.

4. AD Category **-** I banks may bring the contents of this circular to the notice of their constituents and customers.

5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

EXTERNAL COMMERCIAL BORROWINGS - SIMPLIFICATION OF PROCEDURE

A.P. (DIR SERIES 2011-12) CIRCULAR NO. 69, DATED 25-1-2012

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, notified *vide* Notification No. FEMA 3/2000-RB, dated May 3, 2000 and the A.P. (DIR Series) Circular No. 5, dated August 1, 2005 relating to the External Commercial Borrowings (ECB), as amended from time to time.

2. As per the extant ECB procedures any request for cancellation of Loan Registration Number (LRN) given by the Department of Statistics and Information Management (DSIM), Reserve Bank of India or change in permissible end-use for an existing ECB is required to be referred by the AD Category-I bank to the Foreign Exchange Department, Central Office, Reserve Bank of India for necessary approval.

3. As a measure of simplification of the existing procedures, it has been decided to delegate powers to the designated AD category-I banks to approve the following requests from the ECB borrowers, subject to specified conditions:

(*a*) Cancellation of LRN

The designated AD Category-I bank may directly approach DSIM for cancellation of LRN for ECBs availed, both under the automatic and approval routes, subject to fulfilment of the following conditions:-

(*i*) no draw down for the said LRN has taken place; and

(*ii*) the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.

(*b*) Change in the end-use of ECB proceeds

The designated AD Category-I bank may approve requests from ECB borrowers for change in end-use in respect of ECBs availed under the automatic route, subject to the following conditions:-

(*i*) the proposed end-use is permissible under the automatic route as per the extant ECB guidelines;

(*ii*) there is no change in the other terms and conditions of the ECB;

(*iii*) the ECB is in compliance with the extant guidelines; and

(*iv*) the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.

The AD Category–I bank shall continue to monitor the utilization of end-use proceeds and changes in the end-use should be promptly reported to DSIM, RBI in Form 83. However, change in the end-use of ECBs availed under the approval route will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India, as hitherto.

4. The above modifications to the ECB guidelines will come into force with immediate effect. All other aspects of the ECB policy, such as, USD 750 million limit per company per financial year under the automatic route, eligible borrower, recognized lender, end-use, all-in-cost ceiling, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged.

5. AD Category–I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.