E-NEWSLETTER August, 2013

CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

"ONE SHOULD NOT ABANDON ONE'S ACTION EVEN THOUGH IT MAY BE FLAWED, INDEED ALL UNDERTAKINGS ARE ENVELOPED IN FLAWS AS FIRE IS IN SMOKE."

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============================ FROM THE EDITOR ============================

CS Ankur Srivastava
Editor

Dear Professional Colleagues & Friends,

At the outset, I would like to congratulate all the stakeholders of Corporate World for the very soon Companies Act, 2013. Both the houses of Parliament have conveyed their assent on the Companies Bill 2012. Now only one signature of Hon'ble President of India will change the Companies Act, 1956 to a brand new, growth oriented and futuristic Company Law.

New Company Law aims to provide improved Corporate Governance norms, enhanced disclosures and transparency, increased accountability of the management and auditors, protection of the interest of investors, facilitation of Corporate Social Responsibility and wider role of Company Secretaries.

New Law will provide insertion of several new provisions. Concepts like Accounting Standards, Auditing Standards, Associate Company, CEO, CFO, Financial Statements, Independent Director, Interested Director, Key Managerial Personnel, Promoter, One Person Company, Small Company, etc. have been included in the Companies Act.

Thus, with the passing of new Company Law bundle of good opportunities will be generated for the professionals which will tremendously increase the scope with the enhanced involvement and responsibility to be shouldered by the professionals. Thus being a smart professional we need to grab the opportunity and reorient the line of actions to implement the new law which will satisfy the basic purpose of the new Company Law.

With this issue I would delightfully wish all of you Happy Independence Day. JAI HIND JAI BHARAT.

All the Best and keep contributing towards the betterment of our profession.

Happy Reading.

CS Ankur Srivastava
Editor

================================ **ARTICLE** ==================================

CREATION, MODIFICATION AND SATISFACTION OF CHARGE UNDER THE COMPANIES ACT 1956

CS N. Sridharan

All the companies borrow money for the purpose of its business. When they borrow money the lender normally insists for securities. The lender may be a Bank or a Company registered under the Companies Act 1956 or a Foreign Company or a Body Corporate.

Whenever any security is given for the purpose of obtaining loan a charge is created in favour of the lender. The loan may be borrowed by one charge holder or it may be from two charge holders or more as in case of consortium. Whenever any loan is taken on consortium, the Banks normally insists creation of charge separately in respect of all charge holders.

In accordance to Section 125 when a charge in respect of security on the company's property or undertaking if not created is void against the liquidator. In view of this the charge holder is to ensure registration of charge of the property provided as security for the loan given. In case if it is not done the charge holder looses his right to claim the sale proceeds of the property in case of default by the borrower. In other words, the charge holder who has given the money later but his charge is registered first will have priority over the other charge holders in case of settlement of loan by sale of property.

CHARGES TO BE REGISTERED UNDER SECTION 125(4) OF COMPANIES ACT 1956:

As per section 125(4) of the Companies Act 1956, the following charges are required to be filed with the Registrar of Companies (ROC).

1. a charge for the purpose of securing any issue of debentures;
2. a charge on uncalled share capital of the company;
3. a charge on any immovable property, wherever situate, or any interest therein;
4. a charge on any book debts of the company;
5. a charge, not being a pledge, on any movable property of the company;
6. a floating charge on the undertaking or any property of the company including stock in trade;
7. a charge on calls made but not paid;
8. a charge on a ship or any share in a ship;

Cont…

9. a charge on goodwill, on a patent or a license under a patent, on a trade mark, or on a copyright or a license under a copyright.

MODIFICATION OF CHARGE:

A modification of the loan amounts of charge and particulars of modification are required to be filed with Registrar of Companies (ROC) in Form 8. Once a new charge is registered charge id will be created. The same can be viewed through index of charges option in the MCA website.

The Form 8 has to be filed within 30 days from the date of creation of charge or modification of charge. Another 30 days is given as a grace period for the filing of Form 8 with additional fees. In other words, form 8 has to be filed within 60 days from the date of creation of Charge or modification of charge failing which application for Condonation of delay has to be made to the concerned Regional Director, department of company affairs.

FORM 8 AND ROC FILING:

The steps for filing form 8 is given below

1. Fill the CIN no or Foreign Company Registration no (FCRN) and click prefill option
2. To select whether creation of charge or modification of charge.
3. In case of modification, fill up the charge id
4. To fill up whether the charge is in favour of Asset Reconstruction Company or whether the charge is assigned based on an assigned agreement.
5. To click the type of charge

a. Uncalled Share Capital	g. Floating Charge
b. Immovable property	h. Calls made but not paid
c. Any interest in immovable property	i. Ship
d. Book debts	j. Good will
e. Movable property not being a pledge	k. Patent, license under patent
f. Trademark	l. Copyright or license under copyright
	m. Others

6. If the type of charge is others, the nature of charge has to be mentioned

Cont…

7. Whether Consortium of charge is involved
8. Whether joint charge is created

   In case of item no. 7 the particulars of other charge holder and in case of item no. 8 the particulars of joint charge holder/s should be given by way of attachment in Form 8

9. The charge holder's detail has to be given. The charge holders name can be selected from the prescribed list. If the name of the charge holder is not given in the prescribed list 'others' can be selected.
10. If 'others' is selected enter CIN no if the charge holder is an Indian Company and click prefill button. The name, register offices address and email id of the charge holder will be prefilled by the system. If the charge holder is not an Indian Company the name, address and the email id of the charge holder can be typed and the CIN no is not mandatory.
11. The charge creation is based on the instruments. The nature of instrument like loan agreement, deed of hypothecation, deed of equitable mortgage, promissory note are to be mentioned
12. Date of instrument creation or modification of charge has to be mentioned
13. The details of amount secured have to be given in figures. It will be automatically prefilled in words. In case the amount secured is in foreign currency enter the rupee equivalent and the details of the foreign currency.
14. The rate of interest, terms of repayment, margin, extent and operation of charge has to be mentioned.
15. In case of acquisition of property is subject to charge, the date of acquisition, amount of charge, nature of agreement and particulars of property charged are to be given.
16. Short particulars of assets or property charged including complete address and the location of the property.
17. Whether any of the property or interest therein under reference is not registered in the name of the company. If yes is selected, in whose name it is registered to be mentioned.
18. Date of last modification prior to present modification to be mentioned
19. Particulars of present modification to be mentioned. Whatever particulars are given the same will be reflected in the certificate of the charge given by the registrar of companies (ROC).

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20. Attachments to form 8 are

    a. Instruments of creation or modification of charge,

    b. Particulars of all joint charge holders or Consortium holders,

    c. Optional attachments if any

<u>SATISFACTION OF CHARGE:</u>

In accordance with section 138 of Companies Act 1956, the company shall file particulars regarding satisfaction of charge ‘in full’ in Form 17. For this purpose a letter has to be obtained from the bank stating that the loan is satisfied in full detailing the amount of load and the date of satisfaction and the said letter will be attached as evidence of satisfaction.

“Only satisfaction in full need to be informed to the concerned ROC.”

<u>UPLOADING OF FORM 8 AND FORM 17:</u>

1. Form 8 or Form 17 has to be digitally signed by the director of the Company, by the charge holder and the practicing professional like, Practicing Company Secretary or Practicing Chartered Accountant or Practicing Cost Accountant.

2. The form 8 or Form 17 filing is under Straight through Process method. Therefore one has to be very careful before uploading the form as Form 8 filed once cannot be rectified easily and it may require another form 8 for modification.

3. Once the form is approved the registration of charge certificate will be generated and available and the approval email will go to the charge holder’s, Company’s and practicing profession’s email id.

4. The roll check for the banker’s digital signature is also mandatory. Some times while uploading the remarks will come that the banker’s digital signature is revoked. In that case it is to be ensure that the banker’s digital signature is roll checked or the uploading may be tried after some time as at times the website may not be working.

<u>OTHER POINTS RELATING TO CHARGES:</u>

1. In case of pledge Form 8 is not required to be filed. For example Car loan from bank. However, if the company is availing car loan from a bank, the bank may be interested to file Form 8 in view of the loan amount. This can be done at the instance of the company or of any interested person by filing Form 8 with prescribed fees.

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2. In case of any security is given by the public limited company to a private limited company in which a director of a public limited company is a director or a member in a private limited company sec. 295 of the companies act is attracted. Hence, care should be taken not to give security by a limited company to a private limited company.

3. Whenever loan is granted and agreements are entered the bank or lender is interested to file Form 8 even without the company's knowledge also the bank may file form 8 after taking the digital signature of the director. In case of satisfaction of loan the bank is least bothered to file Form 17 and it is only the company's duty to follow up and file Form 17.

4. In many cases there are number of redundant charges are appearing on the index of charges of the company. The company is required to obtain satisfaction letter from the bank and file Form 17 and remove the unnecessary charges from the MCA website.

5. A company wants to exist under Section 560 of the Companies Act, has to ensure that no charge is pending in the index of charges of MCA website.

6. The form 8 and Form 17 has to be signed by the Director, Company Secretary or Managing Director or the Manager of the Company or authorised representative in case of foreign company.

7. In case any charge is created or modified in favour of chargeholder by issue of debentures then Form 10 has to be filed with Registrar of Companies (ROC) in accordance with Section 125(4)(a) of the Companies Act 1956. In case repayment of loan and satisfaction of charges Form 17 has to be filed with ROC.

8. In case of paripasu charge, Form 8 has to be filed in respect of all the chargeholders.

9. In case of the Charge is created outside India, comprising solely property situated outside India, Form 8 shall be filed within 30 days from the date of receipt of the instrument creating or evidencing the charge by post.

10. When the charge is created in India, but comprises property situated outside India, the instrument creating the charge verified in the prescribed manner has to be filed with ROC.

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11. The bank or chargeholder normally requires search report to find out what are the charges the company has created. The search report has to be prepared based on Charge ID and forms relating to charge filed which is available in MCA website. The registered charge certificates are also available in the MCA website. But, in certain circumstances the Charge ID in MCA website may not contain all the charges. Hence, wherever the search report is relating to charges prior to the year 2006 then it is advisable to make physical inspection of documents at ROC and give the search report.

LATE FILING OF FORM 8, FORM 10 AND FORM 17 AND CONDONATION OF DELAY:

1. If there is a delay in filing Form 8 or Form 10 and Form 17 even if it is one day or one year a petition for Condonation of delay has to be filed with concerned Regional Director, Ministry of Corporate affairs. The due dates for filing the above forms are as follows:

a. Form 8 for creation or modification of charge - within 30 days from the date of creation or modification of charge. Another 30 days is given as a grace period for the filing of Form 8 with additional fees.
b. Form 10 for creation or modification of charge of issue of debentures - within 30 days from the date of creation or modification of charge. Another 30 days is given as a grace period for the filing of Form 10 with additional fees.
c. Form 17 for satisfaction of charge – within 30 days from the date of satisfaction of loan.

2. In case of delayed filing beyond the due date, 60 days from the date of creation of charge or 30 days from the date of satisfaction of charge the forms can be filed with one time payment of fees. However, a remark will appear in the challan that a delay of filing is of so many days and condonation of delay is required.

3. For condonation of delay petition has to be prepared containing the reasons for the delay and Form 61 has to be filed with ROC prescribed filing fees (Rs. 1000)

4. Form 24AAA has to be filed with Regional Director (RD) containing the petition and affidavits with the filing fees (Rs. 1000)

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5. After the petitions are filed with RD the order will be issued condoning the delay and in the order the amount of fees to be paid will also be mentioned (as may be decided by RD)

6. The order issued by RD has to be filed with ROC in Form 21 with prescribed filing fees.

7. Once the form 21 is filed the ROC will approve Form 8 or Form 10 or Form 17.

To conclude delay in filing of particulars of charges will attract cumbersome procedure for filing petition which will further delay the process; it is advisable to file the ROC forms in time.

Thanks and Regards:

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================================ ARTICLE ==================================

OVERVIEW OF LIMITED LIABILITY PARTNERSHIP

CS Shweta Sharma

With the growth of Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. In this background, a need was felt for a new corporate form that would provide an alternative to the traditional partnership which exposes its partners to unlimited personal liability and a statute based governance structure of limited liability companies. This Article is an effort to give brief introduction on meaning, definition as per LLP Act:-

Limited Liability Partnership [LLP] is viewed as an alternative corporate business vehicle that provides the benefits of the limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. LLP form is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

With this background, Limited Liability Partnership Act, 2008 [LLP Act] was enacted on January 7, 2009. Subsequently, Government of India [GOI] notified various provisions of LLP Act on 31st March 2009. Government of India has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act.

MEANING OF LIMITED LIABILITY PARTNERSHIP

A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.

NATURE OF LLP

- LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession.
- Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in a LLP.

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- In case if individual is a partner, he should not be found to be of unsound mind; or an undischarged insolvent; or a person who has applied to be adjudicated as insolvent and the application is pending

DESIGNATED PARTNERS [SECTION 7]

- LLP shall have at least two "designated partners" who are individuals and at least one of them shall be "resident in India". In case one or more of the partners of a LLP are bodies corporate at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as "designated partners"

  — "Resident in India" means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.

- Designated partner is responsible for compliance with the provisions of LLP Act.

- Designated Partner is required to obtain Designated Partner Identification Number [DPIN] from the Central Government.

- Application for allotment of DPIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.

INCORPORATION OF LLP [SECTIONS 11 TO 21]

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 1956. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, the documents for incorporation of LLP needs to be filed.

- Name of every LLP shall end with the words "Limited Liability Partnership" or "LLP".

- Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or any body corporate or trade mark, is not allowed.

- Any entity (body corporate/registered partnership firm) which has a name similar to the name of LLP which has been incorporated subsequently may seek change of name of such LLP through ROC within 24 months from date of registration of such LLP.

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- No person shall carry on business under any name/title which contains the words "Limited Liability Partnership" or "LLP" without duly incorporating it as LLP under the LLP Act.

- LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

FOREIGN LLP [SECTION 59 AND RULE 34]

- On establishment of a place of business in India, foreign LLP are required to file prescribed documents for registration with ROC within 30 days of the establishment in India.

- Any alteration in the constitution documents, overseas principle office address and partner of foreign LLP are required to be filed with the ROC in the prescribed form within 60 days of the close of the financial year.

- Any alteration in the certificate of registration of foreign LLP, authorized representative in India and principle place of business in India are required to be filed with the ROC in the prescribed form within 30 days of alteration.

- Foreign LLP ceasing to have a place of business in India, are required to give notice to ROC in the prescribed form within 30 days of its intention to close the place of business and from the date of such notice, the obligation of Foreign LLP to file any document with the ROC shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

LLP IN USA

A limited liability partnership (LLP) is a general partnership in which the individual liability of partners for partnership obligations is substantially limited. LLP were first designed in Texas to afford certain professionals limited liability. These professions originally included those such as physicians, architects, certified public accountants. Unlike partners in a general partnership, who are liable for all partnership obligations, partners in a limited liability partnership are not personally liable for partnership obligations unless the obligations are attributable to the fault of the partner.

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As for taxation, LLP's are a flow- through entity that does not pay federal income tax. Flow through Entity (FTE) is a entity where income flows through to investors or owners, that is the income of the entity is treated as the income of the investors or owners. Flow- through entitities are also known as pass through entities. Depending on the local tax regulations, this structure can avoid dividend tax and double taxation because only owners or investors are taxed on the revenue.

CONCLUSION

The passing of the Limited Liability Partnership Act, 2008 is recognition of the changing needs of the businesses in today's times. If it is implemented properly, the introduction of the LLP will provide a helpful new option for professional partnerships which are anxious about their exposure to liability. In view of the growth of Indian Service industry in recent times, LLPs would further contribute to the growth of the service industry and a large number of existing companies, public as well as private, are expected to convert into LLPs with a view to have access to the benefits of the LLP. The Government of India has made an endeavor to create a facilitating environment for entrepreneurs, service providers and professionals to meet the global competition; however it needs to be seen how far the change is useful.

Regards,

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EXCERPT OF QUOTES FROM "BHAGAVAD GITA"

Preface

The true character of 'Adyatma' gets enlightened & enhanced, not only by doing penance or charity but also by spending time on history. Many of us skip such colossal works in detail considering time as a factor – certainly time is worth & precious once you invest in it. Bearing in mind the paucity of time yet again, I had selected an excerpt of quotes for the well being of the society at large from the well celebrated epic in Indian History.

Introduction

*One of the finest that a human culture is gifted with is the work of "**Bhagavad Gita**". A Work that harmonizes diverse views of life and its inspirational and cultural touch is hard to overstate the importance and centrality.*

Gita is a small part of the epic "Mahabharata". Epics typically show and reflect values and define the characteristics of peoples and deals with fundamental human motives, frustrations, quandaries and joys.

The basic theme being '<u>Dharma</u>" (Way we should act because of 'Who and What' we are) Often termed as 'Golden words' these classic referrals were delivered by the '<u>Supreme Almighty</u>' to the '<u>Supreme Archer</u>'

Excerpts

'Supreme God (The Ocean) is "Paramatma"; normal human (Drop of Water) is 'Atma'

Each Drop of Water ultimately falls in the Ocean – Each drop is not aware of the senses & activities of the other drops, but certainly guided and monitored by the Ocean. So it is better not hassle oneself with too much propositions while performing his/her duties

'It is our responsibility to do the duty, but not to expect the fruits of its action'
'Perform your duties equipoise abandoning all attachment to success or failures '

The human being should never fail in discharging their duties, but what stop them in discharging are the expected results. One should bear in mind that once the drop of water falls, it becomes the duty of the ocean to guide its trail

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‘Blazing fire turns the firewood into ashes; similarly knowledge is converted into ashes when mixed with the unwarranted material desires’

One should able to differentiate between “What is obligatory” & “What is not obligatory” When you think of buying luxurious things observing humans in higher comfort is obnoxious that thinking about human without basic necessities - definitely changes your attitude

‘One who is in knowledge of the absolute truth does not engage himself in the senses and gratification’

Work for devotion certainly fetch rewards than working towards fruitful results

“It is better to live your own destiny imperfectly than to live an imitation of somebody else's life with perfection.”

Replication certainly yields eternal satisfaction which is no longer permanent, but once replicated it is highly impracticable to get back into your originality - which is a void

“Freedom from activity is never achieved by abstaining from action. Nobody can become perfect by merely ceasing to act. In fact, nobody can ever rest from his activity even for a moment. All are helplessly forced to act

By forcing to act, one gets experienced by getting a sense of participation to be aware of the demons and angels out of it.

A man, who renounces certain physical actions but still lets his mind dwell on the objects of his sensual aspirations, is deceiving himself. He can only be called a hypocrite. The truly admirable man controls his senses by the power of his will. All his actions will be disinterested.

Attachment towards Material needs may certainly glitter but certainly will not obviate oneself in pushing towards anguish, lust and greed which is unwarranted

“The nonpermanent appearance of happiness and distress, and their disappearance in due course, are like the appearance and disappearance of winter and summer seasons.

One must learn to abide in accepting things as it occurs without getting disturbed. One who has the ability to let off the hatred and treats with kindness and compassion is always serene, unmoved by pain or unaffected by pleasure. Self’s Senses when conditioned by attraction to the pleasant and aversion to the unpleasant are definitely obstacles in achieving heights

Cont…

============================= **MOTIVATIONAL**==============================

“Delusion arises from anger.

Quite often one finds mind is bewildered by delusion. Once it is confused - reasoning is destroyed endangering thinking process

“Thinking about sense-objects will attach you to sense-objects “

Once you get attached – You become addicted. Restrain from being addicted as it can confuse your mind, Mind once confused you tend to forget the lesson of experience and in turn you lose your discrimination and ultimately lose your life purposes.

“It is true that the mind is restless and difficult to control. But it can be conquered”

through regular practice and detachment – one can reap all the benefits but with lack of self-control it is difficult to progress.

***Finally**, the soul who meditates on the Self is content to serve the Self and rests satisfied within the Self; there remains nothing more for him to accomplish.*

Conclusion

Wherever there is firm belief in oneself, and wherever there is true devotion in performing his/her duties selfless, there will always certainly be opulence, victory, extraordinary power, and morality.

Post Script

Set yourself a schedule for reading the Gita, and get a notebook in which you record your reactions to various passages as you read and contemplate them. If you fall behind in your reading or note taking at any time, don’t be discouraged and don’t give up.

Verse 48 says “One should not abandon one’s action even though it may be flawed. Indeed all undertakings are enveloped in flaws as fire is in smoke.”

Keep at it... TRY!!!

Thanks and Regards:
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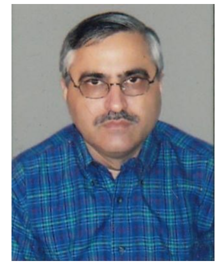


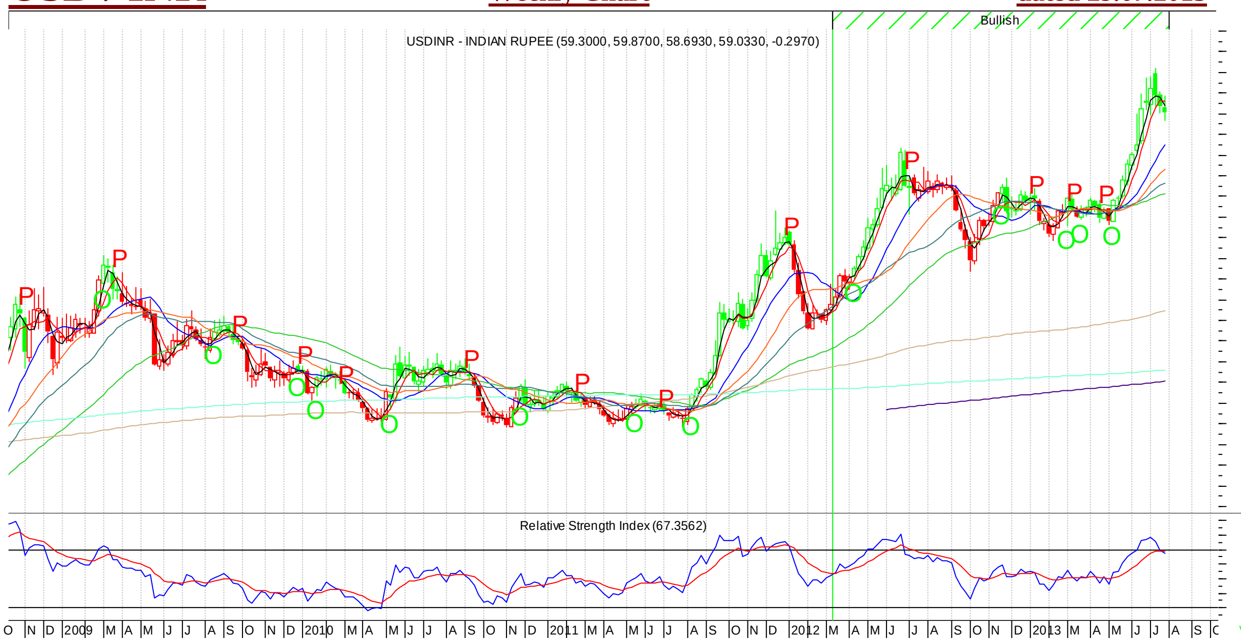
CMA D.S. Kapoor

Hello Dear Friends,

Greetings of the Day..!

It is my pleasure to share with you all, my weekly USD/INR hedging guide aimed at providing guidance to Importers and Exporters to hedge their forex exposure.

USD / INR **Weekly Chart** **dated 29.07.2013**



Last week, it opened at 59.3000, high / low at 59.8700 / 58.6930, and closed at 59.0330 as against earlier week's closing at 59.3300.

Last week, we were of the view that Rupee appreciation should continue and once 58.95 is broken decisively, the currency should move down towards our next target zone of 58.65 – 58.50; and further on achieving of these levels, there was likelihood of technical bounce from these levels. We had also informed that the crossover signal on daily charts had given clear reversal indication on 16th July itself about forthcoming strength in Rupee. We had also informed about the then positioning of various moving averages favouring Rupee strengthening.

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========================= **FOREX HEDGING GUIDE**=========================

During the week, after opening at 59.30 on 22nd, it went up to 59.87, from where it started correcting and came down to 58.6930 and finally, after a bit of retracement, closed at 59.0330 on 26th. The movements, thus, have been on the expected lines, as it came down very close to our level of 58.65, from where technical bounce also happened. Rates have now touched five weeks low at 58.6930 during the week and presently are near to the major support level of 58.42. Further, 3WMA (59.41) has also gone below 5WMA (59.59) indicating weakness and this has happened after 11 weeks. Both these levels are likely to be the major resistances on any possible retracement in near future. Rates are already running below 5WMA (59.59) since last two weeks. It may be noted here that the weekly crossover signals have not yet given sell signal. Please also note that around 58.30, retracement to the extent of 38.2% from the top would also be completing, hence there is likelihood of support buying to emerge there. The important support role likely to be played during July - Sept quarter should be by 50DMA (presently at 58.42) / 3QMA (presently at 57.61) / 5MMA (presently at 56.61).

This week, we expect Rupee appreciation to continue and the currency should move down towards our next target zone of 58.65 – 58.30; though all along with volatility. Since 58.30 is 38.2% Fibonacci Retracement point, caution is advisable for possible technical bounce at / around this point. We expect the bottom to be in place in between 58.30 to 57.75 in the current ongoing down trend.

Importers are advised to hedge short term payables within 58.90 – 58.75 and part of medium term payables within 58.65 – 58.40. Hedging of long term payables should still be postponed at the moment.

Exporters are advised to continue covering receivables above 59.00 levels.

Major Resistances : 59.20 / 59.40 / 59.55
Major Supports : 58.90 / 58.65 / 58.30

Regards,

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================================ **UPDATES** ================================

Ministry of Corporate Affairs
Government of India

Important Notice
Stakeholders may kindly note that requests for extension of last date for payment of stamp duty beyond the expiry date would not be entertained by MCA w.e.f. 01.10.2013. Stakeholders are requested to make payment of stamp duty within the expiry date to avoid inconvenience.

NEW COMPANIES BILL PASSED NEW

The Rajya Sabha has passed the much-awaited Companies Bill, replacing the decades old Companies Act, 1956. The Bill had been passed by the Lok Sabha in December last year. Here are the top 10 facts about the Bill:

1. Now that both houses of Parliament have passed the Bill, it will go to President Pranab Mukherjee for his assent before it becomes law, following which the Ministry of Corporate Affairs will issue a notification.
2. The new rules make the earmarking of funds by companies for corporate social responsibility (CSR) spending mandatory. Companies are required to spend at least 2 per cent of their net profit on CSR. The companies will also have to give preference to the local areas of their operation for such spending. If they are unable to meet CSR norms, they will have to give explanations and may even face penalty.
3. To help in curbing a major source of corporate delinquency, the Bill introduces punishment for falsely inducing a person to enter into any agreement with bank or financial institution, with a view to obtaining credit facilities.
4. The new legislation has more provisions to guard the interests of employees. It mandates payment of two years' salary to employees in case a company shuts operations.

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5. The appointment of auditors for five years shall be subject to ratification by members at every annual general meeting. Also, the limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as 20.
6. Independent directors shall be excluded for the purpose of computing "one-third of retiring directors". Inclusion of female director in the Board.
7. The maximum number of directors in a private company has been increased from 12 to 15, which can be increased further by special resolution.
8. The financial year of any company can end only on March 31 and the only exception is for companies which are holding/subsidiary of a foreign entity requiring consolidation outside India.
9. It also makes auditors subject to criminal liability if they knowingly or recklessly omit certain information from their reports.
10. The Bill has a provision that keeps tabs on exorbitant remunerations for the board of directors and other executives of the companies. This will protect the interest of shareholders as well as employees.

================================ **UPDATES** ================================

BUSINESS RESPONSIBILITY REPORTS - FREQUENTLY ASKED QUESTIONS (FAQs)

SEBI has, vide circular dated August 13, 2012, mandated inclusion of Business Responsibility Report (BRR) as a part of the Annual Report for top 100 listed entities. The said reporting requirement is in line with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs)' notified by Ministry of Corporate Affairs, Government of India, in July, 2011.

Listed below are Frequently Asked Questions (FAQs) regarding the aforesaid circular of SEBI on Business Responsibility Report. The FAQs have been developed in co-ordination with the Indian Institute of Corporate Affairs (IICA) to ensure that they are in line with the intent of NVGs.

1. What is Business Responsibility Report?

Business Responsibility Report is a disclosure of adoption of responsible business practices by a listed company to all its stakeholders. This is important considering the fact that these companies have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive disclosures on a regular basis.

SEBI has prescribed a format for 'Business Responsibility Report' as a mandatory requirement for top 100 listed companies by SEBI's Circular dated August 13, 2012. Other companies are encouraged to use the Business Responsibility Report for making disclosures to their stakeholders. Business Responsibility Report must be submitted as a part of the Annual Report.

2. How does Business Responsibility Report help companies to make disclosures on adoption of responsible business practices or otherwise to the stakeholders?

A Business Responsibility Report contains a standardized format for companies to report the actions undertaken by them towards adoption of responsible business practices. Business Responsibility Report has been designed to provide basic information about the company, information related to its performance and processes, and information on principles and core elements of the Business Responsibility Reporting.

The prescribed format of a Business Responsibility Report also provides a set of generic reasons which the company can use for explaining their inability to adopt the business responsibility policy.

Further, Business Responsibility Report has been designed as a tool to help companies understand the principles and core elements of responsible business practices and start implementing improvements which reflect their adoption in the manner the company undertakes its business.

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3. How should a listed company, which is not among the top 100, report as per Business Responsibility Report?

The top 100 listed companies are mandatorily required to furnish the Business Responsibility Report to the Stock Exchange where they are listed and publish the report on their websites. Other listed companies are encouraged to follow guidelines and formats provided in SEBI's Circular by including the Business Responsibility Report in their Annual Report and publishing the same on the company's website.

4. Whether Business Responsibility Reporting applies to financial services company?

Business Responsibility Reporting is applicable to all types of companies including manufacturing, services etc. The principles of Business Responsibility Reporting are generic in nature and are applicable to all the companies.

5. How should the Business Responsibility Report be prepared by the holding and subsidiary companies where one of them is listed but may or may not be among the top 100?

The holding company and the subsidiary company are required to prepare separate Business Responsibility Reports. As stipulated in the Circular issued by SEBI, the requirement of including a Business responsibility Report is mandatory for the top 100 listed Companies. Thus, any Company, Holding or Subsidiary, which falls among the top 100 listed Companies, has to mandatorily furnish a Business Responsibility Report.

6. How does an MNC which has its subsidiary in India and which produces a single Global Reporting Initiative ("GRI") report, or an Indian listed company that already publishes a GRI report for its operations, report its Business Responsibility Report? Does it make a separate Business Responsibility Report or can it provide a linkage of the Business Responsibility Report to the GRI report?

In case of an MNC which has its subsidiary in India and which produces a single Global Reporting Initiative ("GRI") report, the subsidiary is required to prepare its separate Business Responsibility Report highlighting the responsible business practices it has put in place in India.

In case of an Indian listed company that already publishes a GRI report for its operations, Clause 5 of the SEBI Circular says that those listed entities which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines

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But they need to only furnish the same to their stakeholders along with the details of the framework under which their Business Responsibility Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports. Sections D and E of the Business Responsibility Report provide the minimum set of questions on which such mapping must necessarily be done. Clauses A, B and C of the Business Responsibility Report contain generic questions which may easily be filled out by companies.

7. Is there any penalty, existing or proposed, if a company listed among top 100 companies on NSE or BSE fails to file a Business Responsibility Report?

SEBI views Business Responsibility Report as an enabling instrument for listed Companies to integrate Environmental, Social and Governance (“ESG”) parameters into their core business practices.

Failure to provide Business Responsibility Report will be construed as non-compliance with Clause-55 of Equity Listing Agreement.

8. Whether the Business Responsibility Report has to only cover the disclosure format contained in Annexure 1 of SEBI Circular No. CIR/CFD/DIL/8/2012 on "Business Responsibility Reports" dated August 13, 2012, or it also has to respond on the Principles contained in Annexure 2?

Companies are expected to disclose information on responsible business practices in accordance with formats specified in Annexure 1. Whereas, Annexure 2 details the principles to assess compliance with Environmental, Social and Governance norms which may be referred to while preparing information under Annexure 1.

Companies are free to furnish additional information which may not be covered under specific Business Responsibility Report questions but may be relevant for Business Responsibility reporting.

9. Can the Business Responsibility Report be in a format different from the one provided in the Circular?

The format has been provided to capture information in a comparable manner which is important to be adhered to. Companies are advised to follow the format so that the reports of various companies are comparable to each other. Companies may, however, add tables, graphs etc. to capture the data that enhance the quality of information.

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10. Does Business Responsibility Report have to be a part of the annual report, or can it form a separate document with the flexibility to be released earlier or later than the annual report?

As per paragraph 5(a) of the SEBI Circular dated August 13, 2012, the requirement to include Business Responsibility Report as a part of the Annual Report is mandatory for top 100 listed Companies based on market capitalisation at BSE and NSE as on March 31, 2012. However, those listed Companies, which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks, need not prepare a separate report for the purpose of the Circular but only have to furnish the same to their stakeholders along with the details of the framework under which their Business Responsibility Report has been prepared and a mapping of the principles contained in the SEBI Circular to the disclosures made in their sustainability reports.

In case the company is not providing full Business Responsibility Report and is providing only the mapping of BRR in Annual Report, it is expected to ensure that such mapping is carried out to the reports (which may be released earlier or later than the Annual Report) that are drawn over same reporting period.

Companies may provide full Business Responsibility Report as a part of their Annual Report or as a green initiative, host the Business Responsibility Report on their website and provide appropriate reference to the same in the Annual Report. Companies may also provide guidance on how a shareholder may request physical copy of the Business Responsibility Report from the company, if so desired.

If the company provides the Annual Report mentioning that company publishes the sustainability report under GRI framework along with a mapping as per the SEBI Circular and Clause 55 of Listing Agreement and indicates that the sustainability report would be available on its website providing website link for the same, it would be treated as sufficient compliance of the clause 5(a) of the Circular dated August 13, 2012.

11. Does the Business Responsibility Report have to be submitted to any regulatory authorities, or only uploading on the company's own website is sufficient?

Business Responsibility Report has to be furnished to the Stock Exchange where it is listed in electronic format.

12. Principle 1: If a company's policy on bribery, ethics and corruption extends to some or all of the indicated entities, how should a company report?

The company may specify the list of entities to which the company's policy is applicable along with the Business Responsibility Report.

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13. Principle 2: The Business Responsibility Report reporting format requires that a company lists and provides details of up to three products/services whose design is aligned with Principle 2; How does a company report if it does not have any such products or has less than three products that it can report on? How does a company report if it has more than three products that it can report on?

The Business Responsibility Report asks for “up to 3 of your products or services”. Thus, three is only an upper limit. In case a company has less than three such products/services, it may report on the products/services it is having as on the date of reporting.

If the company has more than 3 products or services that can be reported, the company may report on top 3 products or services based on their contribution to company's turnover.

14. Principle 2: What is “sustainable sourcing”?

“Sustainable Sourcing” essentially refers to ensuring that a company’s social and environmental performance extends to its supply chain. The company is expected to list all the activities that it is undertaking and processes it has established to encourage that its supply chain also embrace sustainability. More specifically:

- The report should indicate what proportion of its inputs (by quantity or value) are sourced from suppliers who are either covered by the company’s sustainable sourcing programmes and/or are certified to be compliant with social and environmental standards such as SA 8000, ISO 14001, OHSAS 18001 or relevant labels like Rainforest Alliance, Rugmark, RSPO etc.
- Transportation refers to initiatives taken relating to transportation of inputs e.g. use of rail, use of CNG trucks, safety training of drivers (especially relevant to transportation of hazardous material) etc.

15. Principle 2: What is the meaning of “local” in reference to procurement of goods and services?

"Local" would mean sourcing from the nearest possible place where goods of comparable quality are available. This would mean, same village/ town/ state/ country as the context might require. Further, only the producer will be considered as source, and not wholesaler or retailer.

16. Principle 2: What is the meaning of “small” in reference to procurement of goods and services?

“Small” would typically mean one where the owner herself or himself is a worker and includes informal and/or producers such as self-help groups and home-based workers as well as producer-owned entities such as cooperatives, producer companies.

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Apart from providers of goods, procurement of services such as landscaping, janitorial, security, taxis etc. may also be reported.

17. Principle 2: How does a company report on mechanisms to recycle products and waste? How does a company report on 'percentage' of recycling of products and waste?

The company has to describe what mechanism it has in place to recycle its products (including packaging) after consumption as well as for all wastes emerging out of its manufacturing process -– solid, liquid and gas.
It has to report what percentage of its product & packaging are recyclable. It further has to report what percentage of waste produced is recycled. These percentages are to be calculated in terms of weight and not in terms of value.

18. Principle 4: How does a company identify "vulnerable and marginalized" stakeholders?

"Vulnerable and Marginalized" stakeholders may be defined as "Group of individuals who are unable to realize their rights or enjoy opportunities due to adverse physical, mental, social, economic, cultural, political, geographic or health circumstances". These groups in India include the following:

- Women and girls
- People with disabilities
- Children
- Tribals
- Migrants, migrant workers

19. Principle 4: How does a company report if it has mapped all the stakeholders but has no formal mechanism to engage with them?

Companies are encouraged to set up and continually improve on mechanisms of engagement with the stakeholders in a systematic manner. The company can explain what steps it plans to take in making such continual improvements on any of the principles.

20. Principle 8: What is meant by impact assessment and how can a company do it?

Impact refers to measurable and sustainable change as a result of a company's programs/initiatives/projects. Ideally impact assessment methodologies establish a baseline and measure change against that.

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21. Principle 8: What is meant by 'successful adoption' of the community development initiative by the community?

Community development initiative refers to a community taking initiative for development on any environmental, social or governance front.

Successful adoption means the extent of contribution of its resources, such as, human economic, know-how etc., towards ESG initiative.

22. Principle 9: Does a company need to report on cases decided or pending or filed in any of the judicial and quasi judicial authorities?

All cases filed have to be reported.

Source: BSE

NEWS FROM ICSI

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

UDAAN

UP STATE STUDENT'S CONFERENCE

Dear Students,

We are pleased to inform you that the Northern India Regional Council of the Institute of Company Secretariesof India is organizing a U.P. STATE STUDENT'S CONFERENCE (hosted by Kanpur Chapter) on the theme "UDAAN" Lead the Corporate World through Corporate Governance and Ethics, on 17th & 18th August, 2013 at Lajpat Bhawan, Moti Jheel, Kanpur

Participation Fee:

STUDENTS	**600/-**
PDP STUDENTS	**1000/- (16 PDP Hrs. Allowed)**

The participation/ delegate fees may be deposited through Cash /DD in favour of Kanpur Chapter of NIRC of ICSI, payable at Kanpur. However, as seats are limited, registration is on 'first come first serve' basis. Please confirm your participation at the earliest. For any further details/clarification, you may contact Mr. Santosh Srivastava @ 9450154662.

For Kanpur Chapter of NIRC of ICSI

(CS Hemant Sajnani)
Chairman

Note:-Two SIP days will be allowed in the conference for 16th, 17th & 18th SIP Students only.)

The detailed programme of the above U.P. State Students' Conference is given below:

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The application form is given hereunder which may be filled and deposit at Kanpur Chapter of NIRC of ICSI along with requisite fee.

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UP STATE LEVEL STUDENT CONFERENCE

REGISTRATION FORM

NAME OF THE STUDENT ……………………………………………………………………

REGISTRATION NUMBER ……………………………………..……………

DATE OF BIRTH ……………………………………………………...

FATHER'S NAME ……………………………………….…………...

RECENT COLOURED PHOTOGRAPH

CONTACT NUMBER (A)…………………………………………………

(B)…………………………………………………

E-MAIL ADDRESS ………………………………………………………………………….

RESIDENTIAL ADDRESS …………………………………………………………………………..

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PLACE ……………………………………… PIN ……………………………………

STAGE OF COMPANY SECRETARYSHIP COURSE

(a) FOUNDATION PROGRAMME ☐

(b) EXECUTIVE PROGRAMME ☐

(c) PROFESSIONAL PROGRAMME ☐

PAYMENT MADE IN CASH/ DD, NAME OF BANK ……………………………………………
BRANCH ……………………………………………………DD NO……………………………
DATE…………………… OF AMOUNT…………INR.

APPLICANT'S SIGNATURE

THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

14th ALL INDIA STUDENTS CONFERENCE - 2013

NIRC of ICSI is organizing 14th All India Students' Conference on the following theme:

"Company Secretary- Imparting wisdom, empowering lives"

(PDP Hours : 08)

On

Saturday, 7th September 2013

From 9.00 AM onwards

At

Manekshaw Centre
Khyber Lines, Delhi Cantonment
New Delhi

Delegate Fee :

Rs 600/- per student (for non-residential)

Rs 1600/- per student (Residential – on twin sharing basis)

Rs 1300/- per student (Residential – on triple sharing basis)

For further details, please visit http://www.icsi.edu/niro

Or

contact :

Northern India Regional Council of
The Institute of Company Secretaries of India
4, Prasad Nagar Institutional Area
Near Rajendra Place
New Delhi- 110005
Tel : 011- 49343000
e-mail : niro@icsi.edu

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ANNOUNCEMENT

The Council of the Institute has approved the following decisions pertaining to training of the students of the Company Secretaryship Course.:

A) 15 months training with Law Firms, Consultancy Firms, Financial Institutions :

The Council of the Institute has allowed imparting 15 months training by Law Firms, Consultancy Firms and Financial Institutions. Earlier they were allowed to impart training for 6 months only. Further the Council has removed the criteria of standing, minimum number of partners and fixed assets for registration of Law Firms and Consultancy Firms and approved the revised guidelines for registration of Law Firms, Consultancy Firms, Financial Institutions for imparting 15 months training which is available at training link on the website of the Institute www.icsi.edu.

B) Removal of requirement of remitting fee of ` 50/-with Apprenticeship Agreement by the Practicing Company Secretaries:

The Council has removed the requirement of remitting a fee of ` 50/- by the PCS towards registration of apprenticeship training of the students.

C) 15 days with any one specialized agency:

The Council has also allowed undergoing training of 15 days with any one specialised agency as prescribed under Regulation 50 (b) of the Company Secretaries Regulations, 1982, with the broking firms/ companies, Law firms, Universities (recognized by UGC), Merchant Bankers, Mutual Funds, Insurance Companies, SMEs, Industry Associations/ Chambers of Commerce, all Ministries, SEBI, IRDA, TRAI, CCI, Courts, Tribunals and other quasi-judicial bodies

========================== NEWS FROM ICWAI ==========================

The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)

PARTIAL MODIFICATION IN THE PRACTICAL TRAINING SCHEME

On the recommendations of the Training & Educational Facilities Committee in its 188th Meeting dated 11/05/2013 and after consideration of all related aspects, the Council in tis 280th Meeting on 20/05/2013 has authorized the Chairman, T&EF Committee to modify the existing Practical Training Scheme of the Institute to the following extent:

The students who are desirous of appearing for final Examinations from Dec, 2013 to Dec, 2014 but are neither employed nor under training as indicated in Appendix A to the practical training scheme, to become eligible For final examination, shall enroll for I-CMA Training (I-CMAT) module of the Institute and at least complete 100 hours of Training to make an application to appear in the final examination.

Students for being eligible to make an application to appear in the final examination must

(a) complete at least 6 months of Practical Training in any one or more of the organization specified in Appendix A, and in areas as specified in Appendix B; **(or)**

(b) must have an experience of at least 6 months in any one or more of the organization specified in Appendix A, and in areas as specified in Appendix B ,

If not able to fulfill (a) and (b) above, student must

(c) enroll for the I- CMA Training Module as indicated in Appendix C. This I-CMA Training Module will be available till Dec 2014 final examination only. The students who are appearing for final examination from June 2015 or further will have to complete either (a) or (b).

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