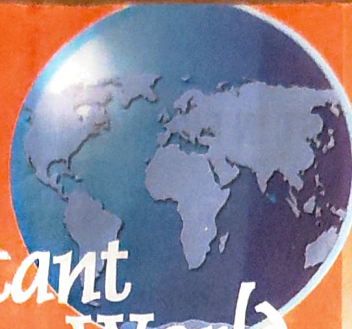


# The Chartered Accountant World



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**EDITORIAL** VINOD JAIN\*

## INDUSTRIAL GROWTH - REMOVING IMPEDIMENTS



The Government of India is keen to achieve a level of 12% cumulative industrial growth. The feasibility of the aforesaid target and its sustainability on year to year basis would depend upon the manner in which various impediments in the industrial growth are tackled effectively by the government the private sector and other stakeholders.

### Various Issues identified by the Industry

Amongst the numerous issues identified by industry, the following require immediate attention :

#### • Infrastructure

The growth of railways, roads, ports, power, telecommunication and other areas in infrastructure sector is crucial. The current Government spending on infrastructure is not even 10% of what is spent by China (About 100 billion \$ p.a.). At least 12% of GDP has to be invested in infrastructure by the Government, in addition to the investment to be made by the private sector. The Government is expressing its inability to allocate required resources. The annual budgetary figures indicated that currently more than 90% of annual tax revenue is being spent by the Government on interest and repayment of principal for domestic and international borrowings of the Government.

The Government needs a very comprehensive debt restructuring exercise including one time settlement, with a commitment of not to borrow further except under severe resource crunch. This can be achieved only with comprehensive reduction of revenue expenditure and unplanned expenditure by the Government. Simultaneously, it might be necessary for the Government to consider sourcing additional funds for infrastructure from deficit financing. The risk of a steep inflation could be managed by growth and additional supply of resources arising out of additional infrastructure.

The burden of a very large bureaucracy should be reduced by cutting the size of bureaucracy by at least 75%. The surplus human resources thus need available could be deputed for implementation of commercial infrastructure projects.

#### • Power Sector

The creation of additional capacities for generation, transmission and distribution of power is most crucial impediment in the industrial growth. The State Governments need to remove all obstacles in implementation of private sector projects, create a free market for power trading and give time bound real single window clearance. The Governments can also incubate power projects obtain all clearances and then make the projects available through transparent auction mechanism for Public-Private Partnership (PPP). This would be in addition to major investments to be made by public sector. Private sector investments can at best contribute 10% - 20% of required investment levels in view of long gestation period and financial risks.

#### • Funds Availability

Non-availability of risk capital as well as mandatory requirement of collateral securities by the banking sector, are major impediment in the growth of small and medium industrial enterprises. Financial Sector Reforms are required to channelise adequate resources towards industrial growth.

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### 1.0 RBI NORMS FORCE BANKS TO KEEP OFF VENTURE FUNDS

The high-return venture capital fund investment business is now virtually off for banks, following the Reserve Bank of India's (RBI's) recent guidelines. RBI has asked banks to include investment in venture funds as part of their parabanking activities exposure limit.

These investments would now be included as part of banks investments in other banks and their own subsidiaries.

### 2.0 MINING LEASES FOR INDIA INC SOON

Companies would soon be able to bid for mining leases in all major minerals. The Government is planning major reforms in the mining sector by which powers of the state will be reduced and mining leases will be granted through a process of competitive bidding.

The Prime Minister's office has asked mines and coal ministries to seek legal opinion on starting competitive bidding process for mining leases of all major minerals excluding petroleum and natural gas.

### 3.0 NEW SERVICE NORMS SET FOR BANKS

The following service norms has been set up for Banks by RBI:

- Display product terms & conditions, service charges;
- Acknowledge cash and cheque deposits;
- Not force customers to drop cheques in a box;
- Notify changes in service charges 30 days in advance;
- Compensate for losses for which customers are not responsible.

### 4.0 BANKS TRIM DISCOUNTS ON CORPORATE LOANS

Deposit rates after the hike in May month are in the 6.75-7.5% range at the long end (3-5 year tenures) and at the short end (15 days-1 year tenure), from 4% to 6% for both private and public sector banks.

Besides, most of the banks that have tapped the bond markets for raising tier two capital have found price expectations high. Accordingly, most of the entrants have priced their issues at close to 9%. This has resulted in pushing up the weighted average cost of working funds.

The discounts on corporate loans have shrunk to 100-150 basis points below the BPL rates for AAA companies.

A major component of the term advances comes with covenants with 3 year reset clauses or are on floating rate loans. Many of these reset covenants are linked to Government security yields or to 364-day Treasury bill yields.

The 364-day TE-bill yield at the last auctions was close to 7.1 %. A year ago, when bankers were asset chasing, the 364-day T-billing rate was 5.6 %. For AAA corporate, the spreads were about 150 basis points over this benchmark. For long-duration project lending, the benchmarks used were the 10-year yield to maturity. This yield is currently close to 8 %.

### 5.0 PVT. PLAYERS MAY BE ALLOWED TO INVEST IN FOREST LANDS

The private sector may soon be able to invest in plantations that would help restore degraded forest area and in community land provided they share the benefits with stakeholders including local community and landowning agency.

The Ministry of Environment and Forests plans to send a proposal to the Union Cabinet soon that would allow this mechanism. The current policy doesn't allow private investors to set up plantations in forest land on lease. The proposal is being finalised with planning commission and the finance ministry.

### 6.0 LAND NORMS FOR SEZ

The board of approval at its last meeting settles following SEZ related land issues:

- Minimum land area to be 10 hectares for IT, biotech and gems and jewellery SEZs;
- Minimum built up area to be 1 lakh sq. metres for IT and 40,000 sq. metre for biotech;
- Minimum processing area for multi-product SEZs would be 35% of the built-up area with a minimum development area as 100 hectares while multi-services SEZs should have minimum area of 100 hectares.

### 7.0 CENTRE CLEARS 8% TAX FREE BONDS

Two years after the withdrawal of the highly popular tax-free Relief Bonds, investors will soon celebrate the return of a new high-return, tax-free instrument. The Center has given the go ahead to municipal bonds, better known as munis globally, that will offer 8% tax-free return and carry Central Government Guarantee. The rate of return on these tradable bonds of varying maturities would be equivalent to 11.4% taxable.

Till now only a few municipalities such as Ahmedabad and Nasik have floated bonds. At present, there is a cumulative ceiling on annual municipal bond issuances (of as low as Rs. 150-200 crore), and only select issues get a tax-free status. The Government has now done away with both these restrictions.

Through these bonds, the Government try to give a big boost to development of urban infrastructure. Some of these bonds will hit the market in the current fiscal.

To take advantage of the scheme, municipal corporations are working on switching over to an accrual-based system of accounting from the present cash based system. ICAI is already working on the draft norms for the new system, which the municipal bodies are expected to adopt soon.



## 8.0 RBI ADDS RIDERS ON BANK LOANS TO BUILDERS

In an apparent bid to tighten lending norms for the real estate sector, the Reserve Bank of India (RBI) has asked banks to incorporate Bureau of Indian Standards rules into their loan policies to ensure safety of buildings against natural disasters.

## 9.0 SUBMISSION OF MONTHLY RETURN OF NBFCs

NBFC's not accepting / holding public deposits and having assets size of Rs. 100 crore and above, are required to submit the monthly return in the revised format.

Accordingly, data submission in the old format will continue up to the month of June 2006. The first monthly return in the revised format will be required to be submitted for the month of July 2006.

## EXIM/ FEMA

### 1.0 GOVT. CUTS DUTIES ON SAFTA IMPORTS

The Government has effected the first tariff reduction under the agreed phased Trade Liberalisation Programme (TLP) of the agreement on South Asian Free Trade Area (SAFTA).

Accordingly, the Finance Ministry has with effect from July 1 reduced Customs duties on imports of items under nearly 380 tariff lines from Pakistan and Sri Lanka (non-least developed contracting States).

### 2.0 RBI TIGHTENS FOREX NORMS

The Reserve Bank of India has further tightened the anti-money laundering norms for all authorised entities dealing in

foreign exchange. All such entities, including authorised dealers and Authorised Money Changers (AMC) will now have to maintain proof of identification for higher value transactions for one year or more, depending on the value of the transaction.

In a circular issued recently, RBI in its amended instructions has mentioned that the photocopies of the identification document of those who encash foreign exchange between \$200 and \$2,000 or its equivalent should be maintained for one year and until completion of statutory audit. For amount higher than \$2,000 or its equivalent, the photocopies of the identification documents should be maintained for a minimum of five years.

*Contd. from page no. 1*

## IMPEDIMENTS TO INDUSTRIAL GROWTH ...

### • Skilled Manpower

The industry is facing an acute shortage of desired quality and quantity of skilled manpower. The privatisation of ITIs is a good proposal. The Government needs to spend substantial resources on vocational education. The Government should provide adequate fiscal incentives, including giving 150% weighted deductions on all contributions / capital expenditure in the field of vocational education and complete exemption from all taxes to persuade private sector to come forward and invest in education. Reforming the curricula and with added impetus on skill based academics from secondary school education onwards is the need of the hour and shall go a long way in harnessing youthful energies to greater national productivity.

### • Mining

The mining sector needs to be deregulated offering private sector participation in a transparent manner.

### • Indirect Taxes

The National VAT, to cover excise duty, service tax, State VAT and all other indirect taxes is to be brought in at the earliest. CST needs to be abolished on a fast track.

### • Labour Reforms

The labour laws need to be more flexible. At the same time the interests of labour is to be protected in a genuine manner. The complex labour laws should not be allowed to become impediment in the growth of employment opportunity. The industry has offered 100 days job guarantee scheme in lieu of liberal labour law regime.

### • Tax Incentive

The industrial growth needs to be incentivised by reduction of incidence of all indirect taxes (including Central and State) below 16%. The need and greed of the Government to levy more and more taxes has to be addressed very carefully, efficiently and effectively.

### • Long-term Debt Market

Long-term Debt Market is not only to be deepened but also new financial institutional framework is needed to generate long-term funds for infrastructure and industrial projects. The banks do not have an appetite and resources for such lending.

In case the aforesaid issues are addressed effectively by the Government and industrial sector jointly in a cohesive manner, the country can easily achieve the growth rate of 12% for the manufacturing sector and 10% for the overall industrial sector.

### • Core competencies

We urgently need to delve into the exercise of identifying our core competencies on macro level and leverage these towards achieving our industrial growth targets.

### • Integration of Rural economy with the mainstream industry

Rural economy's importance in national growth can never be undermined. Ethnic and cottage industry based in rural areas of the country must be encouraged to integrate on commercial concepts. Large scale replication of attractive and famous, ethnic and artistic works to make them available at every nook and corner of the world at rock bottom prices could be an alternate to this direction. Large and medium industries be approached through chambers of commerce and such other associations to find out ways to synergize their business models to encourage and integrate the rural and cottage industry.



## 1.0 INCOME TAX DECISIONS

**1.1 Right to refund of wrong deduction** Hon'ble Delhi High Court in the matter of Reiter India Pvt. Ltd. Vs. Addl. CIT held that where deduction is made from the salaries of the persons who were not liable to pay tax, the deductor assessee was entitled to refund of tax, wrongly deducted and deposited with the Government provided deductee has not claimed the benefit of TDS. [283 ITR 322]

**1.2 Where cash loans are genuine - no penalty u/s 271D** Where there is a reasonable explanation for acceptance of cash in violation of the requirement of Section 269SS, penalty u/s 271D is not exegible as was found in CIT Vs. Kundrathur Finance & Chit Co. [283 ITR 329] [Madrs].

**1.3 Writing off of Bad Debts** Hon'ble Mumbai Appellate Tribunal in the matter of DCIT Vs. Oman International Bank held that as per existing provisions of Section 36(1)(vii), after its amendment with effect from 1-4-1989, it is not obligatory on part of the assessee to prove that debt written off by him is indeed a bad debt for purpose of allowance under the aforesaid section. [100 ITR 285].

**1.4 Deduction is allowed on Gross Income** where the business of the assessee is one and indivisible and there were common overhead expenses, it was not possible to bifurcate the expenses qua exempted and non-exempted activities, deduction is allowable on gross income and not net income held under CIT v. Jamnagar Jilla Sahakari Kharidvechan Sangh Ltd. (2006) 283 ITR 116 (Guj.).

**1.5 Deduction U/s. 35AB** Hon'ble Income Appellate Tribunal Pune Bench in the matter of Mercedes Benz India Limited Vs. CIT held that shares issued in consideration for acquisition of know-how was eligible for tax deduction u/s 35AB of the Income Tax Act.

(Source: Economic Times Delhi 27-6-06)

**1.6 Tribunal can't enhance Assessed Income** Tribunal cannot enhance income originally assessed except as provided in section 251 of the Income Tax Act.

*DCIT v. Maruti Udyog Ltd. (2006) 101 TTJ (Del.).*

**1.7 Speculation Income sec. 73 explanation** Loss suffered by dealer in shares from sale of shares applied for by a dealer and allotted to it in public issue is to be taken as a speculative loss within the meaning of explanation to section 73. The same way held under AMP Spg. & Wvg. Mills Pvt. Ltd. v. ITO (2006) ITD 142 (Ahd.).

## 2.0 COMPULSORY SCRUTINY OF STT & WT RETURNS

The Central Board of Direct Taxes (CBDT) has decided to examine all returns filed in respect of taxable securities transactions for the year 2004-05.

The tax department is also tightening the noose around evaders of wealth tax. In addition to issuing scrutiny guidelines for Securities Transaction Tax (STT), it has issued separate scrutiny guidelines for Wealth Tax (WT).

## 3.0 TIME BARRING CASES

The Policy in respect of issue of refunds of large amount shall continue to be that all large refunds (Rs. 1 crore and above in the case of Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad and Pune and Rs. 25 lakh and above for other stations) shall be issued by the assessing officers after obtaining prior administrative approval related to issuance of refund in a particular case.

The Commissioner of Income Tax would satisfy himself that there are no high demand scrutiny assessment in that case which can be quickly completed and the refund can be appropriated towards the demand.

## 4.0 54 EC INVESTMENT DATE EXTENDED BONDS

Central Board of Direct Taxes (CBDT) has extended the time period for making investment in 54EC bonds for those persons who could not avail of the benefit on account of non availability of the capital gain bonds or the effective time available for making the investment was less than six months because of non availability of these bonds. The limitation has been extended as under:

- (i) upto 30th September 2006 in case of persons where the long term capital asset was transferred between 29.09.2005 and 31.12.2005 (both dates inclusive);
- (ii) upto 31st December 2006 in case of persons where the long term capital asset was transferred between 01.01.2006 and 30.06.2006 (both dates inclusive);

Accordingly REC is coming out with the issue of bonds from 1st July 2006 and NHAI will be coming out with the issue of bonds from 20th July 2006 with overall ceiling of Rs. 4500 Crores and Rs. 1500 Crores respectively.

## 5.0 TAX HOLIDAY ENDS ON EXPIRY DATE

The Government has rejected a proposal to extend the tax holiday available to EOUs, STPs and EHTPs beyond 2009-10. In relation to exemption provisions as contained under Income Tax Act 1961, it has been clarified by the Government that:

- Tax holiday under section 10A and 10B till 2009- 2010 applicable to EOUs, STPs, EHTPs will not to be extended.
- Proposal to exempt EOUs from service tax and central sales tax has been rejected.
- Commerce Ministry reimburses CST to EOUs and upcoming scheme for refund of service tax on exports cited as reason for rejection.
- Decisions may stall expansion plans of EOUs.
- Future projects eye SEZs.



## 6.0 TIGHTER NORMS FOR DOUBLE PAN

Abetting issuance or use of more than one Permanent Account Number (PAN) may soon attract penal provisions. Finmin is considering an amendment to tighten penal provisions against use of duplicate PAN cards. It is also considering introduction of biometric or smart PAN cards and tighten KYC norms to prevent duplication.

## 7.0 PROCEDURE FOR SELECTION OF CASES DURING 'SCRUTINY' FOR FINANCIAL YEAR 2006-07.

In supercession of earlier Instructions on this subject, the CBDT hereby lays down the following procedure for selection of returns/cases for Scrutiny during the current financial year i.e. 2006-07.

- (a) All assessments pertaining to Survey, Search and Seizure cases.
- (b) All returns where deduction claimed under Chapter VIA of the I.T. Act is Rs. 10 lakh (Rs. 5 lakhs for non corporate) or above in stations other than 60 cities on computer network.
- (c) All returns where refund claimed is Rs. 5 lakh or above in stations other than 60 cities on computer network.
- (d) All cases in which the CIT (Appeals) or ITAT has confirmed an addition disallowance of Rs. 5 lakh or above in any preceding Assessment Year and identical issue is arising in the current year.
- (e) All Banks and Public Sector Undertakings

(f) All NSE-500 companies & BSE-A companies listed on Bombay Stock Exchange as on 31-3-06.

(g) All cases of companies liable to pay tax under section 115JB with book profit exceeding Rs. 50 lakh in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs. 25 lakh in other places.

(h) All cases of deduction under sections 10A and / or 10B of the I.T. Act with export turnover exceeding Rs. 10 crore for corporates and Rs. 5 crores for non corporates.

(i) All Non-Banking Financial Corporations (NBFCs) / Investment Companies having paid-up capital of more than Rs. 10 crore

(j) All cases of stockbrokers (including sub-brokers) where brokerage received is disclosed at Rs. 1 crore (Rs. 50 lakhs for non corporate) or above and total income declared is less than 10% of such brokerage or in which bad debts of Rs. 10 lakh (Rs. 5 lakhs for non corporates) or more have been claimed.

(k) All cases of contractors whose gross contractual receipts exceeds Rs. 2 crore (Rs. 1 crore for non corporate) in places other than 60 cities on computer network if total income declared is less than 5% of gross contractual receipts.

(l) All cases of builders following Project Completion Method.

(m) All cases in which fresh capital introduced during the year exceeds Rs. 1 crore in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs. 50 lakh (Rs. 10 lakh for non corporate) in other cities.

(n) All cases in which new loans introduced during the year exceed Rs. 1 crore in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad,

Bangalore and Ahmedabad and Rs. 50 lakh (Rs. 10 lakh for non corporate) in other cities.

(o) All cases in which deduction u/s 80IA(4), 80IAB, 80IC, 80JJA, 80JJAA, 80LA, 10(21), 10(22B), 10(23A) 10(23B), 10(23C), 10(23D)1, 10(23EA, 10(23FB), 10(23G), 10A, 10AA, 10B or 10BA of the I.T. Act is claimed for the first time.

(p) If a case has been assessed earlier u/s. 143(3) of IT Act for at least 2 assessment years and in each of the immediately preceding two years, total additions or disallowances made or sustained in appeal are less than Rs. 10 lakh in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and less than Rs. 2 lakh in other places, then such a case should be excluded from compulsory scrutiny except in cases involving substantial question of law.

(q) Cases where the CCIT / DGIT (International Taxation) / DGIT (Exemptions), on a matter having been brought to his notice by an authority below, is satisfied that the case needs to be taken up for scrutiny, then the said officer,) for reasons to be recorded in writing, may approve the selection of the case for scrutiny. However, selection of cases under this provision should be made keeping in view the following :

- Total number of cases selected for scrutiny during the year does not ordinarily exceed 2% of total number of returns filed / pending during the year; and
- At least 80% of all the cases picked up for scrutiny are assessed by 28.02.2007.

(r) In addition to above, selection of cases out of returns processed on AST will be made through a Computer Assisted Scrutiny System (CASS). Separate instructions in this regard will be issued by the DIT (Systems).



## CENTRAL EXCISE & SERVICE TAX

### 1.0 SIMPLER NORMS FOR EXPORT UNITS

The Central Board of Excise and Customs (CBEC) has introduced several simplified procedures for export oriented units (EOUs), including allowing import of goods without payment of duty on the basis of pre-authenticated procurement certificates to units with physical export turnover of Rs. 15 crore and above in the preceding financial year and a clean track record. Earlier, such procurement certificates issued by the jurisdictional office of CBEC were required.

### 2.0 REVISION OF THRESHOLDS FOR FREQUENCY OF AUDIT

The Central Board of excise and customs (CBEC) has revised frequency norms of audit for central excise and service tax assesses

#### (a) Central Excise

S. No.	Quantum of annual total duty payment in (cash+CENVAT Credit)	Frequency of Audit
1	Units paying more than Rs. 3 crores	Every year
2	Units paying between Rs. 1 crore and Rs. 3 crores	Once every 2 years
3	Units paying between Rs. 50 lakhs and Rs. 1 crore	Once every 5 years
4	Units paying below Rs. 50 Lakhs	10% of the units every year

In respect of EOUs the Board has decided that about 500 EOUs should be audited mandatorily all over the country.

#### (b) Service Tax

S. No.	Quantum of annual total duty payment in (cash+CENVAT Credit)	Frequency of Audit
1	Tax payers paying more than Rs. 50 lakhs	Every year
2	Tax payers paying between Rs. 25 lakhs and Rs. 50 lakhs	Once in 2 years
3	Tax payers paying between Rs. 10 lakhs and Rs. 25 lakhs	Once in 5 years
4	Tax payers paying below Rs. 10 lakhs	2% of the total no. every year

The revised norms are applicable with immediate effect. (F.No. 381/145/2005 dated 06.06.2006)

## CAPITAL MARKET

### 1.0 SEBI TO VERIFY COMPOSITION OF COMPANY BOARDS

SEBI has indicated that it will look into the composition of board of directors of companies to assess the quality and independence of the independent directors.

### 2.0 TAKEOVER CODE AMENDED

SEBI has made the amendments to the Takeover Code and broadened the definition of promoter.

Following will be counted in the "promoter group":

#### In case of individual :

- The spouse of that person, or any parent, brother, sister, child of that person or his spouse.
- Any company in which 10% or more share capital held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one of his immediate relative is member or any company in which this company holds 10% or more shares.
- Any HUF or firm in which the aggregate share of the promoter and his immediate relative is equal to or more than 10% of the total.

#### In case of Body Corporate :

- A subsidiary or holding company of that body corporate.
- Any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter would justify as a promoter group.
- Any company in which a group of individuals or companies hold 20% or more of the equity capital in that company and also hold 20% or more of the equity capital of the target company, would qualify as part of the promoter group.

#### Definition of Individual Promoter has been altered to include;

- Any person who is in control of the target company, or
- Any person named as promoter in any offer document of the target company, or

- Named as promoter in any shareholding pattern filed by the target company with the stock exchanges according to the listing agreement.

Whichever is later.

#### Creeping Acquisition:

Notification also seeks to align the acquisition and takeover code with the recent changes to the listing agreement in relation to minimum public shareholding. The notification says no acquirer (including person acting in concert) who holds 55% or more but less than 75% of the shares or voting rights in a target company, shall acquire any additional shares or voting rights, unless he makes a public announcement (open offer) to acquire shares in accordance with these regulations. The limit of 75% will be raised to 90% in case of special categories permitted to have 10% public holding. This will prohibit creeping acquisitions within this band unless the promoters wish to go for public offer.

### 3.0 SPONSORSHIP OF ADR/GDR ALLOWED

The Government has recently announced that unlisted Indian companies would now be allowed to sponsor an issue of American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) with an overseas depository against the shares held by its shareholders.

Under a sponsored ADR / GDR programme, a majority shareholder in a company gets an opportunity to divest a portion of his holding in the overseas market through issuance of ADRs or GDRs. Such a window for divesting abroad is also made available to other shareholders in the company.

### 4.0 CLIENT DETAILS TO UPLOAD DAILY - NCDEX

The National Commodity & Derivative Exchange (NCDEX) has made it mandatory for the members, to upload client details on daily basis for the same day or at the most previous day trading beginning from July 1. Delay by the members to meet the requirement would attract penalty of Rs. 10 per day for each of the client details not submitted.





## 5.0 GUIDELINES FOR REAL ESTATE MUTUAL FUNDS APPROVED BY SEBI

SEBI has approved the guidelines for Real Estate Mutual Funds (REMFs). The structure of the REMFs, initially, shall be close ended. The units of REMFs shall be compulsorily listed on the stock exchanges and NAV of the scheme shall be declared daily.

The REMFs shall appoint custodian who shall be registered with SEBI and shall safe keep the title of real estate properties held by the REMFs.

## 6.0 SEBI AMENDED MUTUAL FUNDS REGULATIONS

SEBI has recently amended the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and the highlights of the same are as follows:

- A mutual fund may enter into derivatives transactions in a recognized stock exchange.
- No entry load shall be charged by any close-ended scheme
- A mutual fund repurchases units in a close-ended scheme, which fulfills the conditions mentioned shall deduct an amount representing proportionate initial issue expenses or part thereof remaining unamortized, from the repurchase proceeds. The amount recovered shall be credited to the unamortized initial issue expenses of the scheme.
- Initial expenses of launching a close-ended scheme shall not exceed 6 % (six per cent) of initial resources raised under that scheme."

## 7.0 VCF HOLDING FREE FROM LOCK-IN

SEBI also decided that the shareholding of Venture Capital Funds (VCFs) and Foreign Venture Capital Investors (FVCIs) held in a company prior to making an Initial Public Offering (IPO), would be exempt from lock-in requirements only if the shares are held by them for a period of at least one year at the time of filing of draft prospectus with SEBI.

## CORPORATE LAWS

### 1.0 GOVT. PLANS OMBUDSMAN FOR TELECOM SECTOR

The government has given in principle approval to set up ombudsman, for settlement of grievances and disputes of Telecom Subscribers. Presently, call dropping and wrong billing are the two main problems that customer face.

### 2.0 CASE LAWS

**2.1 HILLCREST REALTY SDN.BHD v. HOTEL QUEEN ROAD (P) LTD. [(2006) 72 CLA 245 (CLB)] :** Companies Act, 1956-Sections 3(1)(iii) and 3(1)(iv)(c) - Private company subsidiary of a public company-Whether it losses its basic characteristics of a private company -Held, No.

**2.2 HARDY OIL (P) LTD. v. SEBI [(2006) 68 SCL 287(SAT)] :** SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 1997 - Regulation 10 - Acquisition of shares more than 15% - Acquirer indirectly acquired 26% shares of the target company by acquiring the shareholder company - Public announcement made after the completion of acquisition -Whether violates Regulation 10 of the Takeover Code - Held, No.

**2.3 SEBI v. SHRIRAM MUTUAL FUND [(2006) 68 SCL 216 (SC)] :** SEBI Act, 1992 read with SEBI (Mutual Funds) Regulations, 1996 - Defaults committed by mutual fund - SEBI imposed penalty - Tribunal set aside the order on the ground of lack of mens rea - Whether mens rea is a sine qua non for imposing penalty for defaults committed under the Regulations/ Act - Held, No.

## AUDIT

### 1.0 UTILIZATION OF FLOATING PROVISIONS BY BANKS

Reserve Bank of India (RBI) has directed all Scheduled Commercial Banks not to utilize the floating provisions for making specific provisions in respect of NPAs or for making regulatory provisions for standard assets. RBI has clarified that the floating provisions can only be used for contingencies under extraordinary circumstances for making specific provisions in impaired accounts after obtaining board's approval and with prior permission of RBI.

Floating provisions cannot be reversed by credit to the P & L Account. Pending utilization as mentioned above, floating provisions can be netted off from gross NPAs to arrive at disclosure of net NPAs. Alternatively, these can be treated as part of Tier II capital within the overall ceiling of 25% of total risk-weighted assets.

Disclosures on Floating Provisions to be made in "Notes to accounts" to the Balance Sheet on (i) Opening balance of floating provisions; (ii) Additions made during the year; (iii) Amount withdrawn during the year; (iv) Closing balance of Floating Provisions.

(Source: DBOD.NO.BPBC.89/21.04.048/2005-06, dt. 22.07.06)

### 2.0 FOREIGN CURRENCY SWAP ACCOUNTING

With regard to swaps already entered into, banks are advised to follow the following procedure for accounting of gains / losses arising out of swap ;

- The gains / losses arising out of such swap transactions should be computed separately.
- Losses, if any, should be fully provided for;
- Gains should be taken to a special reserve through Profit & Loss Account;
- Any draw done from such reserve should be made only for meeting future losses arising out of swap transaction concerned.



## ICAI NEWS

## 1.0 DISCLOSURE NORMS FOR EXCISE DUTY REVISED

The ICAI has now revised its disclosure norms to clarify that the amount of excise duty to be disclosed as deduction from turnover should be total excise duty for the year except the excise duty related to the difference between the closing stock and opening stock, which is to be recognized separately in the profit and loss statements. An explanatory note in the notes to accounts has also been mandated to explain the nature of the two amounts of excise duty.

As per the revised norms (revised Accounting Standards Interpretation-14), two amounts of excise duty would be appearing in the profit and loss account- one as a deduction from the turnover and the other as a separate item in the P/L account.

## 2.0 BAR ON BONUS ISSUES FROM REVALUATION RESERVES

A guidance note issued by the ICAI states that bonus shares couldn't be issued through capitalisation of revaluation reserves.

### 3.0 HIGHLIGHTS OF THE REVISED CHARTERED ACCOUNTANCY COURSE

We give below the highlights of the proposed scheme of Chartered Accountancy Course in terms of the Draft Chartered Accountants Regulations, 2006 amending the Chartered Accountants Regulations, 1988.

<b>Existing scheme of education and training -5 year + 3 months duration</b>	<b>Proposed scheme of education and training - 4 year duration</b>
<b>Professional Education-I (PE-I)</b> 10 months of theoretical education after plus 2 pass	⇒ <b>Common Proficiency Test (CPT)</b> – Registration on passing 10th standard. Appearance in CPT after appearing in plus 2 examination. ⇒ Conduct of CPT – every 3 months.
<b>Professional Education-II (PE-II)</b> 10 months of theoretical education (on passing of PE-I/ After passing Graduation).	<b>Professional Competence Examination (PCE)</b> – ⇒ CPT and plus 2 pass ⇒ Commencement of articles for 3.5 years duration. ⇒ Can appear for PCE, on Concurrent theoretical education.
<b>Compulsory Computer Training</b> During PE-I or PE-II before registration as articles.	Completion of requisite duration of IT Training before being eligible to appear in PCE.
<b>Article training-cum-final-course</b> 3 years (Articles joining only after passing PE-II).	Final course registration only after passing PCE.
<b>First appearance in Final examination</b> – During last 6 months of training only.	First appearance in Final examination only on completion of 3.5 years articleship.
<b>Course on General Management and Communication Skills</b> – On completion of 2 years of articles but before becoming a member.	Commencement of General Management and Communication Skills (GMCS) Course after 18 months of practical training, and completion before seeking membership.

#### 4.0 RELAXATION FOR EXISTING CA STUDENTS

The Draft Regulations provide that candidates who register for articleship under the existing scheme of 3 years duration of articles and appear as per existing syllabus for Final Course will be eligible to appear in the Final examination during last one year of practical training (instead of last six months of training) so long as Final Examination held under the existing syllabus only. In other words, if such a candidate does not pass the Final Examination under the existing syllabus and consequently appear in the Final Examination under new syllabus he is eligible to appear during the last 6 months of practical training only.

## INSURANCE

## 1.0 CLARIFICATION ON FUND MANAGEMENT

Insurance Companies have been again told by Insurance Regulatory Development Authority (IRDA) not to outsource any fund management related service to Asset Management Companies (AMCs). Some insurers continue to avail of the services of AMCs which is the core function of insurers and should be conducted in-house by insurance companies.

## 2.0 NEW INSTRUMENTS IN APPROVED INVESTMENT CATEGORY

IRDA has to draw up plan to facilitate automatic inclusion of new investment or hedging instruments in the 'approved category' once they become popular / matured' and fit for insurance companies.

3.0 Private Importation (RLO-12) डाक शुल्क TARIFFING  
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