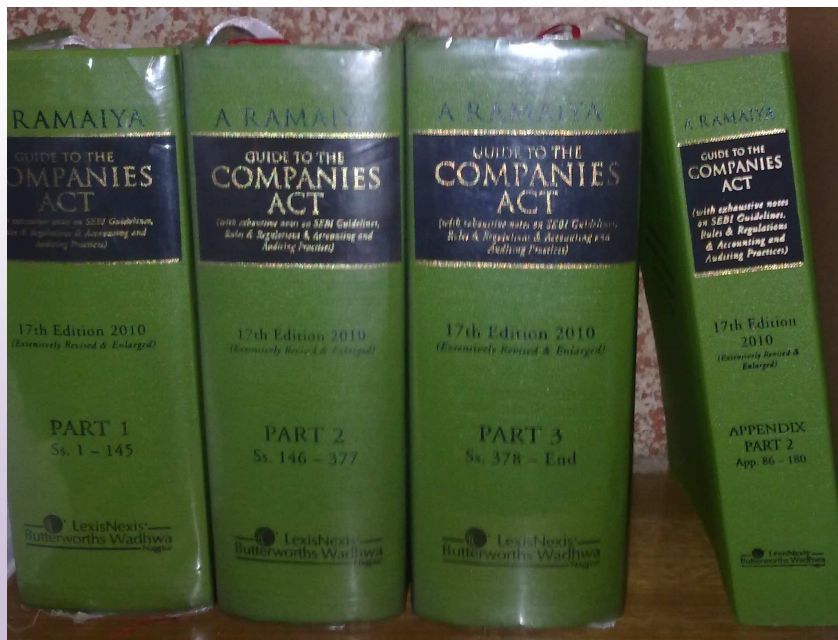


# SAMAGRATA

Providing you total updates on Corporate Laws



An initiative of Vinod Kothari & Company

## Kolkata

1012 Krishna  
224, AJC Bose Road  
Kolkata- 700 017  
Ph-91-33-22817715/ 1276/ 3742

## Mumbai Office

222, Ashoka Shopping Centre  
2<sup>nd</sup> Floor, LT Road  
Near GT Hospital  
Mumbai - 400 001

DECEMBER, 2011

## *In this Issue*

Sr.No.	Topic	Pg. no.
1.	Article : Companies Bill 2011- Highlights	3-7
2.	Presentation : Accounting Standard No. 29 : Provisions, Contingent Liabilities, Contingent Assets	8
3.	Update : Meetings through electronic mode and e-voting-Clarification	9
4.	Article on major amendments to ECB and FDI policy	10
5.	Article : RBI opens door for MFIs through ECB	11
6.	Quick note : circulars issued by MCA in December,2011	12-13
7.	Updates : RBI-ECB	14
8.	Students' Corner	15-16

Join our mailing list. Register at:  
[www.vinodkothari.com/maillinglist.htm](http://www.vinodkothari.com/maillinglist.htm)

**DECEMBER, 2011**

## **Samagrata:Your key to corporate law news and latest events**



We are pleased to present before you, another issue of **Samagrata**, a news letter on corporate law affairs and updates.

This issue contains article on Companies Bill, 2011; presentation on accounting standard no.29; articles on major MCA and ECB amendments.

As readers would note, our articles are highly timely, informative and articulate. **Samagrata**, the newsletter continues to bring you upto speed on what is happening in the corporate sector. So keep reading, preserving and circulating.

See the box on the left to join our group. We would be pleased to get feedback from you. If you have an item to contribute for the next issue, however small or large, do not hesitate to contact at [abhijit@vinodkothari.com](mailto:abhijit@vinodkothari.com). We would be obliged for your feedback.

**Please do ask your colleagues, friends to get themselves updated just as you and join our mailing list to receive copies of the Newsletter.**

**Abhijit Nagee**  
Editor

Email: [abhijit@vinodkothari.com](mailto:abhijit@vinodkothari.com)  
Contact: 91-33-22817715/ 1276

# The Companies Bill, 2011 Vis a Vis shareholders democracy and Corporate Regulations

## **Background:**

The Companies Act, 1956 regulates the range of activities, from birth to death of companies. Various regulations of Corporate Governance, responsibility and obligations towards stakeholders emerge from the Act. It acts as a statutory platform for functioning of the companies with transparency to protect the interest of the shareholders and also industry friendly regulations. However, in the light of expansion of Indian economy increasing the avenues for international business opportunities, need was felt to bring about some changes in the old reforms and regulations to keep it at par with other nationals. Aiding to such need, Mr. Salman Khurshid had introduced Companies Bill 2009 in Lok Sabha on 3<sup>rd</sup> August, 2009. Key objective of the bill was:

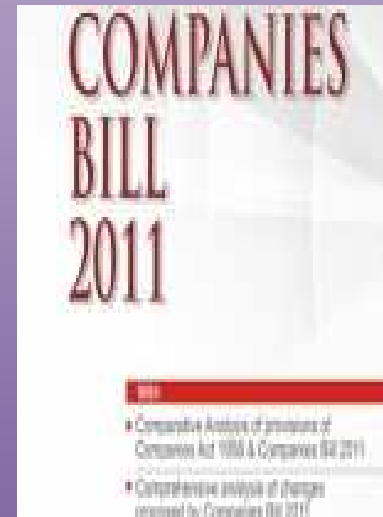
- ✚ To make the existing Companies Act, 1956 compact by deleting such provisions which have become redundant over a period of time, due to various changes in the regulatory norms both nationally and internationally.

However, the bill remained due for quite some time and thereafter large number of recommendations was received from various stakeholders. It was then decided to have a fresh legislation to be put in place. The Bill has lot of provisions which are welcomed open heartedly and is sure to bring about a change in the Indian Corporate Governance scenario. The said Bill promises greater shareholder democracy. Also, by deleting the redundant provisions, the Act surely becomes much more meaningful. The Bill aims at modernization of corporate regulation. Thereafter, the Bill was placed in the Lok Sabha on December 14, 2011 as Companies Bill, 2011 (“**the Bill**”). The Bill was cleared by the Cabinet on November 24 this year but the disruption protesting FDI in multi-brand retail led to the inordinate delay.

## **Highlights:**

- Rearrangement of sections, chapters making the Act much more reader friendly and compacting the existing Act; however, Rules yet to be prescribed;
- Regulatory framework on compromises and arrangements;

## ARTICLE

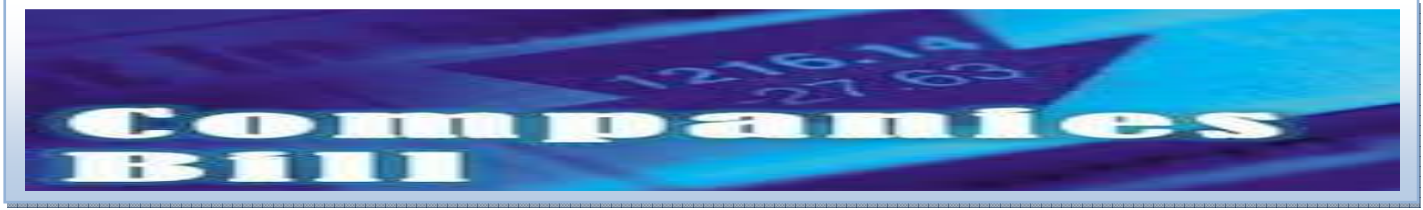


## Companies Bill 2011-Highlights

-by Aditi Jhunjunwala  
[aditi@vinodkothari.com](mailto:aditi@vinodkothari.com)



DECEMBER, 2011



- It proposes to introduce the concept of class action suits for the first time in India. That would empower investors to sue a company for 'oppression and mismanagement' and claim damages;
- Introduction of One Person Company concept;
- Many new definitions have been introduced and existing ones been amended such as- accounting standards, auditing standards, associate company, charge, company limited by shares, control, CEO, CFO, books of accounts, deposit, promoter, postal ballot, related party, small company etc. Change in the definition of Company, employee stock option etc.;
- Periodic rotation of Auditors after every 4 years;
- Shareholders' approval a must for inter-corporate loans;
- Introduction to Revival and Rehabilitation of sick companies in Chapter XIX- SICA to be repealed
- Concept of Registered Valuer introduced;
- Dissenting shareholders to be given exit option at the time of decision making of the company such as change in object clause, any new business proposal etc.;
- Among other things, it also proposes to tighten the laws for raising money from the public;
- The Bill also seeks to prohibit insider trading by company directors or key managerial personnel by treating such activities as a criminal offence;
- The Bill proposes that companies should earmark 2 per cent of the average profit of the preceding three years for corporate social responsibility (CSR) activities, and make a disclosure to shareholders about the policy adopted in the process; the same is not a mandatory requirement;
- Defining "Independent Directors" and "Interested Directors";
- Definition of "Associate companies" fixed at control of 20% share capital or business decisions under an agreement;
- Company Secretary included in definition of Key Managerial Personnel;
- The requirements of drawing the object clause of a company into main, ancillary and others are done away with;
- Provisions regarding the name approval now not in a separate section but clubbed together under incorporation;
- Additional documents to be filed by a public/private company in case of commencement of business;
- Share Transfer Agents, Registrars to an issue, CFO also included within the meaning of officer in default;
- Annual return of companies now to include addition data pertaining to:
  - Change in the promoters and KMPs alongwith directors
  - Meetings of members, Board along with attendance details
  - Remuneration of KMPs to be disclosed
  - Penalty or punishment imposed on the company, directors and/or officers and details of compounding and appeals (slight change from Companies Bill 2009)



- Annual return to be signed by a director and a company secretary in whole time employment/practice
- In case of non-filing within due time, penalty is strict in comparison to the Act and now also includes imprisonment;
- Companies having money idle which is raised from public through prospectus in the form of deposits are not suppose to change their object clause unless resolved by a special resolution or an exit option is given to the dissenting shareholders; this clause is certainly a investor friendly clause
- Concept of video conferencing in case of board and general meetings
- Mandatory rotation of independent directors
- More Powers to Serious Fraud Investigation Office (SFIOs)

Few of the above highlights being dealt in details below:

#### **Regulations on Mergers and Acquisitions- Chapter XV- Section 230**

- The existing heading reads as “Arbitrations, Compromises, Arrangements and Reconstructions” whereas, the chapter in the Bill reads as “Compromises, Arrangements and Amalgamation”;
- The existing section 390 applies to companies liable to be wound up. The existing section 390 being excluded and part of it becomes part of explanation to section 230;
- Reduction of capital and corporate debt restructuring are also part of compromise and arrangements and are to be (consented by atleast 75% of the unsecured creditors) to be disclosed by the applicant(s) vide an affidavit at the time of making the application;
- Consolidation of provisions of section 393 into sub-section (3) of section 230. Thus, much more reader friendly and easy to understand at one go;
  - Sub-section (4) imposes restrictions on objections to be raised by creditor. It says that a creditor not holding less than 10% of the shareholding or 5% of the total outstanding debt as per last audited financial statements shall not be liable to raise any objection to the arrangement. It is the same as in Companies Bill 2009. This does sound a little absurd. Surely it could have been framed in a phased manner;
  - Compromise or arrangement now also includes buy back subject to fulfillment of conditions specified. Compromise or arrangement now also to include takeover offers;
  - Clause (f) of sub-section (3) of section 232 deals with investment of NRIs and treatment thereof in case of mergers/amalgamations. Where the share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order of the Tribunal;
  - Under the existing Act, all the powers in relation to a scheme of arrangement lies with the High Court which shall now vest with the Tribunal.

#### **Introduction of class action under Oppression and Mismanagement- Chapter XVI- section 245**

- First, rearrangements of provisions of existing sections 397, 398, 402 as 241 onwards in relation to oppression and mismanagement and also consolidation of the sections/sub-sections therein.

**DECEMBER, 2011**

## ARTICLE

- Companies Bill 2009 drew the minimum number of member/creditor to be one in case of a class action. This was certainly a threat to the Indian Companies where even a single shareholder could affect the day to day affairs of the company as at times undue harassment is caused by such shareholders in the practical scenario. The Bill amends such minimum number from 1 to minimum of 100 members and/or depositors or such percentage of paid up capital/no. of depositors as may be prescribed, whichever is less, in case of a company having share capital whereas in case of a company not having share capital, one fifth of its total no. of members; it excludes the term creditors and instead includes depositors.
- Conditions precedent to consideration of an application under class action are set out (earlier missing in Companies Bill 2009):
  - whether the member or depositor is acting in good faith in making the application for seeking an order;
  - any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1);
  - whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
  - any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;
  - where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
    - (i) authorised by the company before it occurs; or
    - (ii) ratified by the company after it occurs;
  - where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company
- Two class action applications for the same cause of action shall not be allowed; inserted newly and is sensible enough
- The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act; inserted newly.
- Provisions for also safeguarding the interests of the Company in case the application is found to be frivolous and vexatious in nature, then the Tribunal has the power to reject the application and impose cost of not exceeding rupees one lakh. This is certainly a boon regulation to companies in cases where such applications may practically be mischievous in nature.
- Though the minimum number of member/depositor for the application is 100, it may further be brought down as the number of members in case of a private company is 50 under the existing Act. The present Bill increases the number from 50 to 200, but not sure what is the rationale behind the same.
- Inclusion of depositors in case of class action is not justified. Depositors cannot be put on the same footing as the shareholders. If at all depositors are included, the same has to be restricted to the deposits and has to have a separate recovery process. However, specifications are needed in case of what will amount to act of mismanagement and/or how to ensure that members/depositors have acted in good faith.

### **Removal of names of companies from the Register of Companies- chapter XVIII- section 248**

- Earlier the heading was- Power of Registrar to strike defunct company off register (section 560)
- The provisions have been completely changed. The period for in-operation of the company set out as one year from incorporation or two years immediately preceding financial years (the same was one year in case of Companies Bill 2009); also to keep in mind whether the company has suo moto applied for status of a dormant company within the time prescribed;
- The provisions also include case where the subscribers to the MoA have not paid the subscription within 180 days from the incorporation of the company;

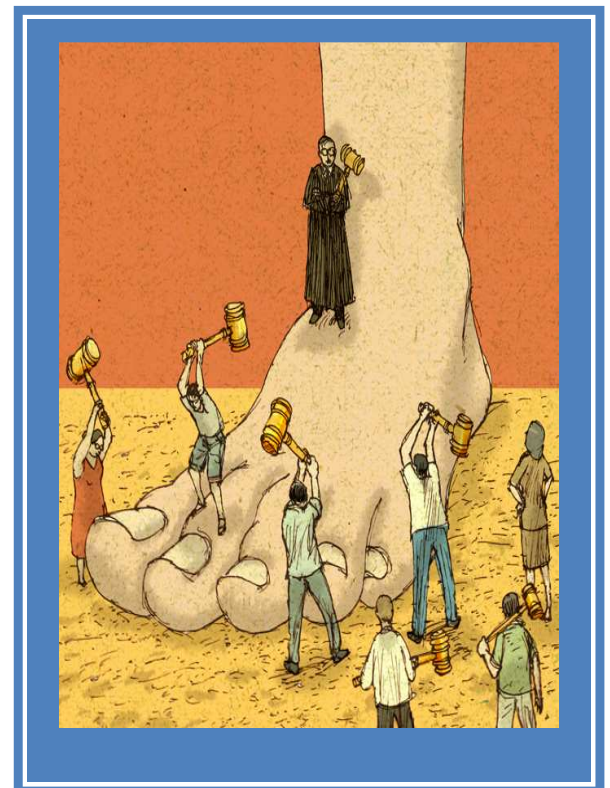
- A company may also, after extinguishment of all its liabilities, with a consent of atleast 75% of the members (of the paid-up share capital) vide special resolution file an application to the Registrar for removal of name of the company from the Register of Companies;
- Restrictions laid down in case of making application u/s 248 such as company not to make an application in case of change of its registered office in the previous three months; (these vary in comparison to Companies Bill 2009)

*You can also see a comprehensive analysis of amendments in light of Companies Bill 2009 with regard to the following:*

- ❖ **Meaning of “Associate”**
- ❖ **Meaning of “Interested Director”**
- ❖ **Meaning of “Net Worth”**
- ❖ **Meaning of “Private Company”**
- ❖ **Meaning of “relative”**
- ❖ **Meaning of “small company”**

Click on the following link to view the same:

<http://www.india-financing.com/Companies%20Bill%202011-highlights.pdf>



## Accounting Standard No. 29: Provisions, Contingent Liabilities, Contingent Assets

### IAS 37

#### •Deals with

- Distinction between liabilities, provisions and contingent liabilities
- When to make provision for a liability, when to book a contingent liability, when to take no action at all
- Gives several illustrations of situations about provisioning, contingent liability recognition

#### •Significant differences between IAS 37 and the present form of the AS

- For future liabilities, no present valuation is required under AS 29
- Required under IAS 37

This presentation covers the following topics in details:

- Distinction between liabilities, provisions and contingent liabilities
- Provisioning evidences
- Obligating event
- Estimation of liability to make provision
- Restructuring provision
- Main recognition requirements of the Accounting Standard for provisions and contingent liabilities

Click on the following link to see the presentation:

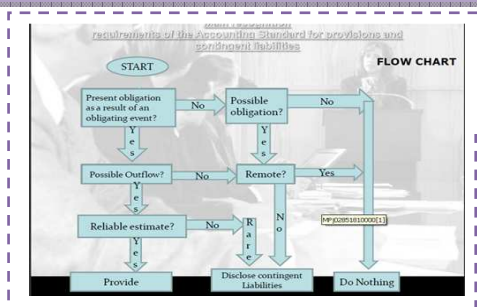
<http://www.india-financing.com/Accounting%20standard%20AS%2029%20provisions%20contingent%20liabilities%20contingent%20assets.pdf>



## Accounting Standard No. 29: Provisions, Contingent Liabilities, Contingent Assets

-By Vinod Kothari

[vinodkothari@vinodkothari.com](mailto:vinodkothari@vinodkothari.com)



Accounting standard no 29  
Provisions, contingent liabilities, contingent assets

Vinod Kothari  
<http://www.vinodkothari.com>  
1012 Krishna  
224 AJC Bose Road  
Kolkata - 700 017, India  
E-mail: [vinod@vinodkothari.com](mailto:vinod@vinodkothari.com)  
Phone 91-33-22817715/ 228113742/  
22811276  
Fax: 91-33- 22811276/ 22813742

DECEMBER, 2011

## Participation of shareholders and Directors in meetings through video conferencing

## ARTICLE

Ministry vide circular no. 35/2011 had brought about a clarification that meeting of shareholders to be held vide the mode of video conferencing shall be optional for the listed companies for financial year 2011-12, henceforth shall be mandatory.

In case of providing for electronic platform for e-voting only NSDL and CDSL were authorized to provide such facilities provided they take a certification from standard Testing and Quality Certification (STQC) Directorate.

In light of the provisions contained both the Companies Act, 1956 and proposed Companies Bill, 2011, Ministry has again come up with a clarification on December 27, 2011 vide Circular no. 72/2011. Provisions in both the Act and the Companies Bill, 2011 provide that the meeting of shareholders can be held physically and therefore, in light of the same clarification has been provided that holding meeting of shareholders vide video conferencing shall be optional for the subsequent years too.

Further, the requirement that e-voting would only be provided by NSDL and CDSL has also been amended to the effect that any agency can provide electronic platform provided it has received a certification from standard Testing and Quality Certification (STQC) Directorate, Department of Information Technology.

Click on the following link to read the entire article:

<http://www.india-financing.com/Note%20on%20clarification%20for%20video%20conferencing%20of%20meetings.pdf>

## Meetings through electronic mode and E-voting

-by Aditi Jhunjunwala  
[aditi@vinodkothari.com](mailto:aditi@vinodkothari.com)



DECEMBER, 2011

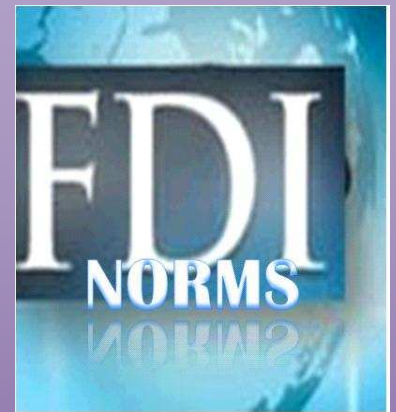
# Major amendments to ECB and FDI policy

The Reserve Bank of India (“RBI”) have been taking active steps to encourage greater foreign lending to the infrastructure sector and to allow Indian corporates borrow internationally on more favourable commercial terms than the significantly more expensive domestic debt. The RBI has also been concerned about the fact that most Indian banks have been nearing the limits which have been set on the amount that can be advanced to certain sectors and certain borrower groups. One of the steps which have been taken by the RBI is several amendments to the external commercial borrowing (“ECB”) regulations to give greater flexibility to Indian companies in the infrastructure sector to avail ECBs. Some of the steps taken by the RBI in this regard have been vide the following RBI circulars:

1. RBI Circular No. 11 dated September 7, 2011 to simplify the procedure in relation to approval of ECB.
2. RBI Circular No. 25 dated September 23, 2011 relaxing the ECB norms for the infrastructure sector.
3. RBI Circular No. 26 dated September 23, 2011 permitting bridge financing in the infrastructure sector.
4. RBI Circular No. 27 dated September 26, 2011 permitting bridge financing in the infrastructure sector.
5. RBI Circular No. 28 dated September 26, 2011 further clarification with regard to debt-equity ratio of infrastructure ratio of infrastructure companies.
6. RBI Circular No. 30 dated September 27, 2011 permitting Indian Infrastructure companies to avail ECBs in RMB under the approval route.

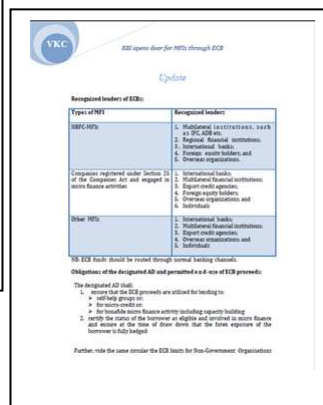
Click on the following link to read the entire article that summarizes the amendments in tabular format along with the old provisions:

<http://www.india-financing.com/Amendments%20to%20ECB%20anf%20FDI%20Policy.pdf>



## Amendments to ECB and FDI policy

- By Abhijit Nagee  
[abhijit@vinodkothari.com](mailto:abhijit@vinodkothari.com)



## RBI's directions to Micro finance industry in India under Foreign Exchange Management Act, 1999

The end of 2011 seems to be a good start for the Micro Finance Industry in India and all clouds seems to have been faded away as the Reserve Bank has finally taken up the task to emancipate the Micro Finance Industry by issuing directions in its favour with all its might. This time it has opened the ECB route where the MFIs have been permitted to raise ECB up to **USD 10 million** or equivalent during a financial year, under the Automatic Route.

The Reserve Bank of India ("**RBI**") on review of the existing ECB guidelines in consultation with the Government of India has issued directions under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and it has been decided vide Circular RBI/2011-12/304 A.P. (DIR Series) Circular No. 59 dated December 19, 2011 that MFIs may be permitted to raise ECB up to USD 10 million or equivalent during a financial year for permitted end uses, under the Automatic Route with immediate effect.

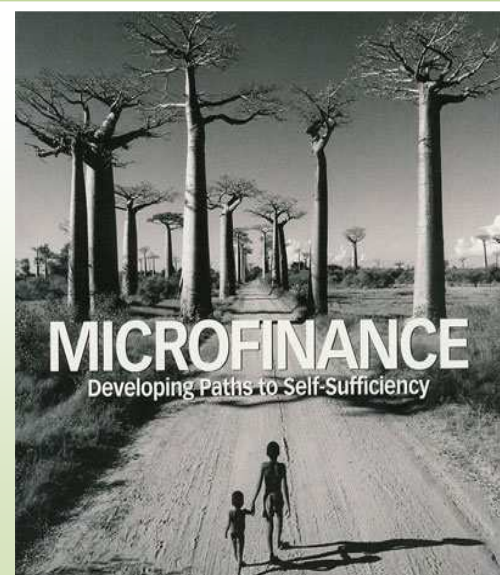
Click on the link below to read a note on RBI's guidelines on ECB for MFIs:

<http://www.india-financing.com/RBI%20opens%20door%20for%20MFIs%20through%20ECB.pdf>



## RBI opens door for MFIs through ECB

-by Abhijit Nagee  
[abhijit@vinodkothari.com](mailto:abhijit@vinodkothari.com)



## UPDATES

### 1. Allotment of Director's Identification Number (DIN) under Companies Act, 1956.

**General Circular No. 70/2011**

**Dated:** 15<sup>th</sup> December, 2011

**Reference:** In continuation to General Circulars No. 32/2011 dated 31.05.2011 and No.36/2011 dated 04.10.2011

**Amendment:** The Ministry has extended the time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details upto 29.02.2012.

### 2. Company Law Settlement Scheme, 2011

**General Circular No. 71/2011**

**Dated:** 15<sup>th</sup> December, 2011

**Reference:** In continuation to the Ministry's General Circulars No. 59/2011 dated 05.08.2011, No. 60/2011 dated 10.08.2011 and No. 65/2011 dated 04.10.2011

**Amendment:** Keeping all the terms and conditions of the previous circulars same, the Ministry has further extended the Company Law settlement Scheme till 15<sup>th</sup> January, 2012. It has also been clarified that it shall not be extended beyond 15.01.2012. Therefore, as on date the scheme is not in force but such an initiative is a welcome step to ensure compliances and we look forward to more of such schemes by the Ministry.

### 3. Green Initiatives in the Corporate governance - Further Clarification regarding participation by shareholders or Directors in meetings under the Companies Act, 1956 through electronic mode-authorization regarding e-voting.

**General Circular No. 72/2011**

**Dated:** 27<sup>th</sup> December, 2011

**Reference:** Ministry's General Circulars No. 35/2011 dated 06.06.2011, No. 60/2011 dated 10.08.2011 and No. 65/2011 dated 04.10.2011

**Amendment:** for e-voting in General Meetings, any agency providing electronic platform for e-voting is required to obtain certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi. It has further been clarified that the Ministry shall not authorize any agency for the purpose of providing video conferencing facilities by the Corporate Sector.



**Quick notes on  
circulars issued by  
MCA in  
December, 2011**



**DECEMBER, 2011**

# UPDATES

## 4. Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011.

**Notification dated:** 14<sup>th</sup> December, 2011

**Amendment:** The Ministry has made amendments with regard to the following:

- (i) preferential allotment definition substituted;
- (ii) Provisions with regard to Special Resolution-authorization by Articles of Association and provisions with regard to time period;
- (iii) Insertion of Invitation and allotment of securities rules as rule 8 after rule 7 of the Unlisted Public Companies Rules.

Click on the following to view an article on the amendment:

<http://www.india-financing.com/Note%20on%20preferential%20allotment%20of%20shares.pdf>

## 5. Alteration in the Schedule XIV

**Notification date:** 14th December, 2011

**Amendment:** Substitution in Schedule XIV to the Companies Act, 1956, under the heading "II PLANT AND MACHINERY", under item (ii) relating to special rates, in sub-item B.7.

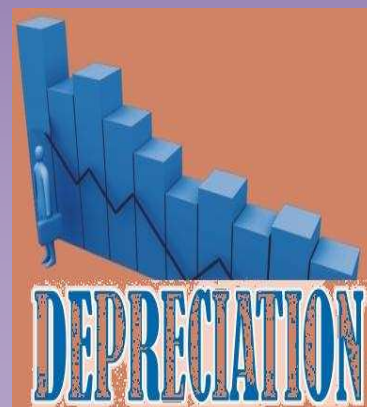
The following entries to be substituted respectively:

Schedule XIV  
Rates of depreciation

Name of assets	Single Shift		Double Shift		Triple Shift	
	W.D.V.	S.L.M	W.D.V.	S.L.M	W.D.V.	S.L.M
1	2	3	4	5	6	7
7. Mineral oil Concerns Field operations (above ground) portable boilers, drilling tools, well-head tanks, etc. (NESD)	30 per cent	11.31 per cent	-	-	-	-
7A. Rigs (NESD)	10 per cent	3.34 per cent	-	-	-	-



A private placement of shares or of convertible securities by a listed company is generally known by name of preferential allotment. A listed company going for preferential allotment has to comply with the requirements contained in Chapter XIII of SEBI (DIP) Guidelines pertaining to preferential allotment in SEBI (DIP) guidelines which interalia include pricing, disclosures in notice etc, in addition to the requirements specified in the Companies Act.



DECEMBER, 2011

## UPDATES

**External Commercial Borrowings (ECB) for Micro Finance Institutions (MFIs) and Non-Government Organizations (NGOs) - engaged in micro finance activities under Automatic Route**

**Circular No:** Circular No. 59 RBI/2011-12/304 A.P. (DIR Series)

**Date:** December 19, 2011

**Amendment:** RBI on review of the existing ECB policy has decided to permit MFIs to raise ECB up to USD 10 million or equivalent during a financial year for permitted end-uses, under the Automatic Route. Detailed guidelines on ECB for MFIs with necessary safeguards can be read on the following link:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/59APDMFI191211.pdf>



**External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) - hedging facilities for non-resident entities**

**Circular No:** Circular No.63 RBI/2011-12/326 A. P. (DIR Series)

**Date:** December 29, 2011

**Amendment:** RBI has decided to allow non-residents to hedge their currency risk in respect of ECBs denominated in Indian Rupees, with AD Category I banks in India. The details regarding this can be read on the following link:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APD63BINR291211.pdf>

**DECEMBER, 2011**

# **STUDENTS' CORNER**

## **Quick guide to ECBs**

There are various terms connected with funding from overseas and one needs to understand them clearly:

- **ECBs:** borrowings from overseas, with a minimum maturity of 3 years
  - Includes:
    - optionally convertible debentures, non convertible bonds, FCCBs, FCEBs, securitized instruments, financial leases
  - Excludes:
    - trade credit – supplier and buyers' credit, as per discussion below
    - compulsorily convertible debentures, compulsorily convertible preference shares, equity investments
  
- **key facts about ECBs:**
  - permitted currently only for capital expenditure
    - not permitted for working capital or general corporate expenditure
    - may be used for repayment of existing foreign credits
  - permitted only from recognised lenders
    - Permitted recognized lenders are:
      - International banks
      - International Capital Markets
      - Multilateral financial institutions/regional financial institutions and Government owned development financial institutions
      - Export credit agencies
      - Suppliers of equipments
      - Foreign collaborators
      - Foreign equity holders
  
- **key restrictions:**
  - The amount of ECBs that may be raised, and the minimum average maturity conditions, are as follows:

<b>Maturity</b>	<b>Hotels, Hospitals and Software Corporates sectors</b>	<b>Other Corporates</b>
Maturity of less than 3 years	Not counted as ECB – may be under trade credit	Not counted as ECB – may be under trade credit
Average minimum maturity of upto 3 years	Upto USD 20 million	Upto USD 20 million
Average minimum maturity of 5 years	Upto USD 100 million	Upto USD 750 million

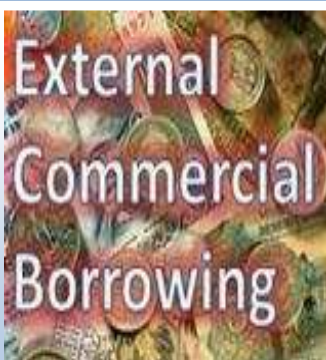
- **What if the funding is on fixed interest basis:**
  - the above spreads are added to swap rates. (swap rates: the rates at which floating interest rates are transformed into fixed interest rates)
- **Trade credit**
  - **Supplier's credit:** – Suppliers' credit relates to credit for imports into India extended by the overseas supplier.
  - **Buyer's credit:** – loans for payment of imports into India arranged by the importer from a bank or financial institution outside India for maturity of less than three years.
  - **Can supplier's/buyer's credit be used for raw material imports?**
    - Trade credits for imports into India up to USD 20 million per import transaction is permissible under the current Foreign Trade Policy of the DGFT with a maturity period up to one year(1 year)
    - For import of capital goods as classified by DGFT, trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years is permissible.

## FAQs

1. **Can I use overseas funding for working capital?**  
Only FDI can be used for working capital
2. **In FDI, can I give a buyback clause to overseas investors?**  
Currently, RBI is objecting to buyback clauses with fixed IRR to investors. This is taken as in-substance borrowing. Please check with one our consultants for further advice on this.
3. **Can entities in financial sector raise ECBs?**
  - under automatic route, the answer is no. on case by case basis, approvals may be obtained, but the chances are not bright
  - exceptions are in case of infrastructure companies

## Why is ECB attractive?

- **The key issue is interest rate differentials.**
- **Of course, added to the cost of ECB is the cost of hedging**
- **As per interest rate parity theory, interest rate differentials in countries are neutralised by exchange rates. However, this is not true in practice. therefore, even after considering the cost of hedging, it may be beneficial for entities to borrow in ECBs**





**Kolkata Office**

**1012 Krishna**

**224 AJC Bose Road**

**Kolkata –700017**

**India**

**Ph: 91-33-22817715/ 1276/ 3742**

**Mumbai Office**

**222, Ashoka Shopping Centre**

**2<sup>nd</sup> Floor, LT Road**

**Near GT Hospital**

**Mumbai- 400 001**

**Mail to: [nidhi@vinodkothari.com](mailto:nidhi@vinodkothari.com);**

**[vinod@vinodkothari.com](mailto:vinod@vinodkothari.com)**

**Our Website:**

**[www.vinodkothari.com](http://www.vinodkothari.com)**

Click on the following link to see other articles  
and presentations on corporate laws

**[http://www.india-  
financing.com/staffpublications\\_corplaw.htm](http://www.india-financing.com/staffpublications_corplaw.htm)**