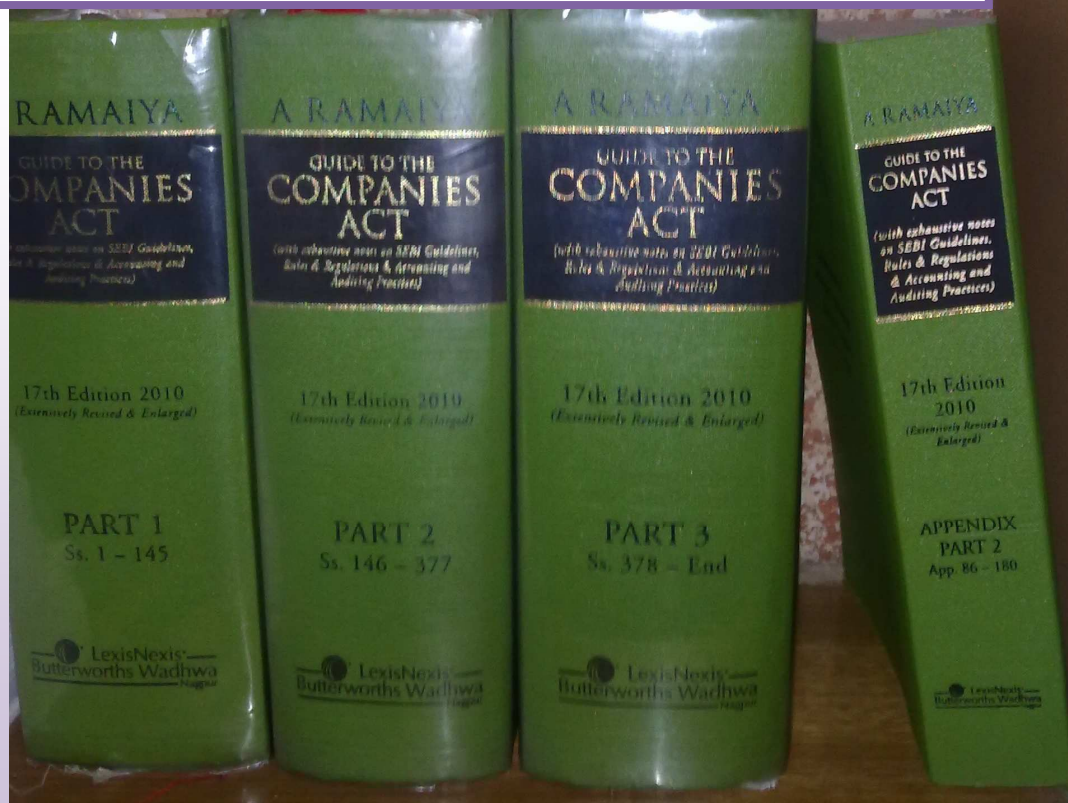


SAMAGRATA

Providing you total updates on Corporate



An initiative of Vinod Kothari & Company

OCTOBER, 2011

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OCTOBER, 2011

Samagrata: Your key to corporate law news and latest events



Here we are again, with the third issue of **Samagrata**, a news letter on corporate law affairs and updates.

This issue contains important aspects on the Private Equity Investment; Significant Aspects of Corporate Laws; Tax Accounting standards (TAS) and some very important updates on Corporate law.

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. 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

Aspects of Private Equity Investment for its growing as an industry in India in these days

The Private Equity International, 2011 issue, reveals that the world's 50 largest private equity direct investment programs have raised in excess of US\$325 billion since 2006. In line with the global trend, private equity (PE) investments in India is also getting popular and is an increasingly important source of funding now-a-days. PE investments into India have risen by around 22 per cent in 2011 till date over the corresponding period of last year, to \$7,160 million (Rs 32,220 crore), and the number of deals rose by around nine per cent. According to data compiled by Venture Intelligence, from January to August (till date), PE firms had invested this amount across 246 deals, compared to \$5,831 mn (Rs 26,235 crore), across 226 deals in the same period in 2010.

“The fundamentals look auspicious for PE in India to continue to grow and evolve in 2011 and beyond. Short-term nervousness in the capital markets in 2011 and high-priced corporate debt are expected to keep valuations down. That is likely to help open interesting deal-making opportunities.”

- What is PE and how does the whole network works?
 - What are the different forms of PE?
 - What is a PE Agreement and how does it look like?
 - What are the ways of making investment?
 - What are the rights of the promoters and the company?
- This article answers all the above questions on in the most effective manner.

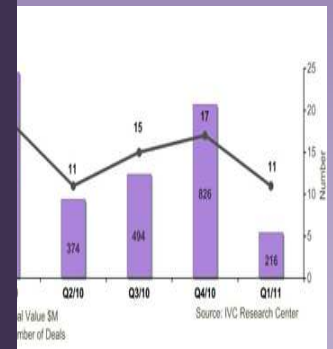
To read the article click on the link below:
<http://www.india-financing.com/Private%20equity%20investment-significant%20aspects%20of%20corporate%20laws-in%20template.pdf>

OCTOBER, 2011



Private Equity Investment: Significant Aspects of Corporate Laws

-by Nidhi Ladha
nidhi.ladha@vinodkothari.com



Presentation on provisions of the Competition Act relating to business combinations

The Competition Act 2002 [as amended by Competition (Amendment) Act, 2007] overrides the erstwhile MRTP Act and codifies a present-day competition law. It provides for mainly 4 areas:

- (1) prohibits anticompetitive agreements
- (2) prohibits abuse of dominant position
- (3) regulates combinations that cause or are likely to cause an appreciable adverse effect on competition.
- (4) gives the Commission the responsibility of undertaking competition advocacy, awareness and training about

This presentation covers the following topics in details:

- Recently enforced provision on combination in the Act
- Recent notifications
- Regulation of combinations
- Procedure for investigation by CCI
- Procedure for issuing orders
- New CCI Regulation for Combination

Click on the following link to see the presentation:
<http://www.india-financing.com/Competition%20Act-Effect%20on%20Business%20combinations%20Vinod%20Kothari.pdf>



HIGHLIGHTS



Competition Commission of India

**A Quick Guide for
Consumers**

The Competition Act and Business Combinations

- Vinod Kothari

vinod@vinodkothari.com

&

Nidhi Ladha

nidhiladha@vinodkothari.com



OCTOBER, 2011

Discussion on recent SEBI regulations on structured products having embedded derivatives

Section 18A of Securities Contract (Regulation) Act, 1956 provides that no derivative transaction in India is legal unless it is expressly authorised/regulated and is traded on recognized stock exchanges, settled on the clearing house of the recognized stock exchange. The issuance and trading in equity-linked debt instruments were containing embedded derivatives and thus, were clearly in conflict with the law. Further, In view of the said section 18A of SCRA, a doubt was raised about the legality of OTC derivatives such as forward rate agreements and interest rate swaps permitted under RBI guidelines issued in July 1999.

To clear this ambiguity, suitable amendments were made in RBI Act effective from January, 2007. Section 45V of RBI Act, 1934 lays down that notwithstanding anything contained in SCRA or any other law for the time being in force, transactions in such derivatives, as may be specified by RBI from time to time, **shall be valid, if** at least one of the parties to the transaction is RBI, a scheduled bank or such other agency falling under the regulatory purview of RBI under the RBI Act, the Banking Regulation Act, 1949, the Foreign Exchange Management Act, 1999, or any other Act or instrument having the force of law, as may be specified by RBI from time to time. It also provides that transactions in such derivatives, as had been specified by RBI from time to time, shall be deemed always to have been valid.

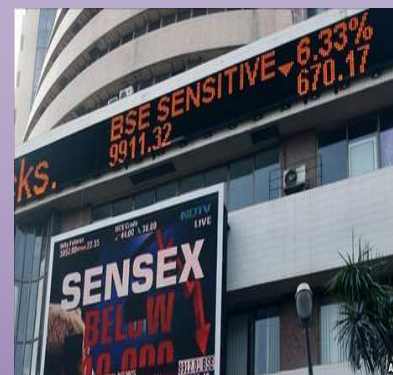
Previously, SEBI had prescribed initial and continuous disclosure norms applicable to issue and listing of debt securities. But, it has been observed that a variety of hybrid securities that combine features of plain vanilla debt securities and exchange traded derivatives are being issued through private placements and listed on stock exchanges. The so-called equity linked debt instruments in India are nothing but fully funded equity linked swaps, where returns from equity/indices were being reflected on debt instruments and any contract in such securities amounts to a derivative contract.

This article talks about the eligibility norms, safeguards for issue to retail investors, provisions with regard to appointment of independent valuation agency, disclosure requirements and so on. Click on the following link to read the entire article:

<http://www.india-financing.com/Note%20on%20guidelines%20on%20issue%20and%20listing%20of%20equity%20linked%20debt%20securities.pdf>

OCTOBER, 2011

ARTICLE



Listing of equity linked/market linked securities – SEBI tightens it a bit more

-by Nidhi Ladha
nidhiladha@vinodkothari.com



Article on the new accounting standards for Tax purposes and major recommendations of the Accounting Standard Committee

Well, the ramp was crowded enough already - we had the ASs applicable to such companies as are not covered by Ind ASs, Ind ASs for companies covered by the same, IFRSs for companies with international exposure, US GAAPs for companies with Nasdaq listing, and now we have one more baby on the ramp - accounting standards for tax purposes.

It is not that tax accounting standards are new. Pursuant to sec 145 of the Income Tax Act, the CBDT had earlier come with two Accounting Standards relating to disclosure of accounting policies and disclosure of prior period and extraordinary items and changes in accounting policies. The reason for introduction of these accounting standards was that there is flexibility in the standards issued by the ICAI which makes it possible for an assessee to avoid the payment of correct taxes by following a particular system. Hence, it was decided to standardize one or more of the alternatives in various standards so that income for tax purpose can be computed precisely and objectively.

Initially, a committee was formed by Central Government in July 2002 for formulation of ASs under the IT Act. However, the committee, after understanding the impracticality in maintaining two sets of books, one as per AS and other as per TAS, recommended that the ASs issued by ICAI should be notified under the Act without any modifications and the Act should be accordingly amended to prevent any scope for tax evasion by adopting the AS as it is. However, these recommendations were not implemented because of several reasons – one among others was the continuous revision of the ASs by ICAI requiring simultaneous amendments in the Act.

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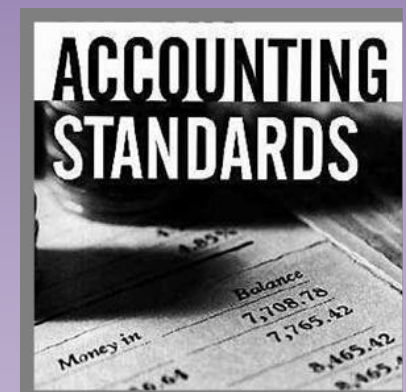
ARTICLE



Tax Accounting Standards (TAS): the new baby on the ramp

- By Nidhi Jain

nidhijain@vinodkothari.com



ARTICLE

CBDT constituted a new Accounting Standard Committee comprising of departmental officers and professionals vide Order No. 134/48/2010-SO (TPL) dated 20th December 2010. The main purpose for forming this committee was –

- to harmonize the ASs issued by ICAI with the tax laws.
- to suggest method for determination of book profit for calculating Minimum Alternate Tax (MAT) in case of companies migrating to IFRS (IND AS).
- to suggest appropriate amendments to the Act in view of transition to IFRS (IND AS) regime.

The major recommendations of the committee considering the above purposes are as follows:

- separate Accounting Standards should be notified under Section 145(2) of the Act to ensure harmony with the provisions of the Act, to be termed as “Tax Accounting Standards” (TAS).
- the TAS notified under the Act should be made applicable only to the computation of taxable income and a taxpayer should not be required to maintain books of account on the basis of TAS.
- the TAS are based on the mercantile system of accounting, and hence should be applicable to all tax payers who follow the mercantile system of accounting, and should not be applicable to taxpayers who follow the cash basis of accounting.
- in case of conflict, the provisions of the Act shall prevail over the TAS.
- a reconciliation between the income as per the financial statements and the income computed as per the TAS should be presented, to determine the starting point for computation of income under the head “Profits and gains of business or profession” and “Income from other sources”, since presently the computations are based on the income as per the financial statements.

Presently the committee has issued drafts of two TASs: one on Construction Contracts and the other on Government Grants, and it is kept open for comments/ suggestions.

Comments:

So, the happiness among the tax payers that existed for a long time since 2002 will not be there anymore once the TAS are finalized and implemented. However, the role of professionals will be widened once more to prepare the computation of income as per the new baby.

ARTICLE

Article discussing some of the ways for putting an end to a company

There a number of ways available for putting an end to a company. However, the best option for the dissolution of a company is a matter of facts and circumstances and varies from company to company, case to case. To give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry had issued a number if circulars and modified the existing route through e-form – 61 and new Guidelines vide **General Circular No. 36/2011 dated 07.06.2011** called Fast Track Exit (FTE) effective from 3rd July, 2011were prescribed.

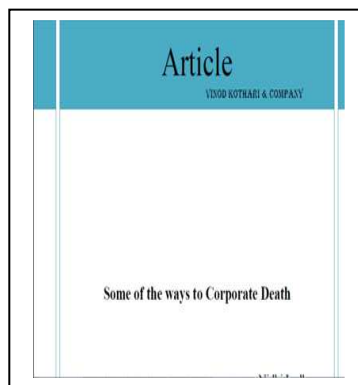
Click on the link below to read a guidance note and a detailed analysis of some of the options available for putting an end to a company.

<http://www.india-financing.com/Some%20of%20the%20ways%20to%20corporate%20death-nidhi%20ladha%20and%20nidhi%20jain--in%20template.pdf>



Some of the ways to Corporate Death

-by Nidhi Ladha
nidhiladha@vinodkothari.com
&
Nidhi Jain
nidhijain@vinodkothari.com



Ways of corporate death	
Article	
creditors	
3. If winding up continues for more than one year, general meeting to be called	Within 3 months of the end of the FY
4. Liquidator to file statements in prescribed format together with audit report twice in a year if liquidation not completed in one year	
5. Realising of all assets and paying of all debts and distributing the surplus, if any, among the members	
6. As soon as the affairs are fully wound up, liquidator to prepare the accounts in specified format and get the same audited	
7. Liquidator to call the final general	Notice to be published not less

OCTOBER, 2011

UPDATE



IASB proposes amendment to the accounting for government loans in IFRS 1

The International Accounting Standards Board has proposed amendment to the accounting for government loans in IFRS 1 on 20th October, 2011 by issuing an Exposure draft – Government loans. The proposed amendment sets out how a first-time adopter would account for a government loan with a below-market rate of interest when they transition to IFRSs.

This amendment would provide relief to first-time adopters when applying IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance* and would add an exception to the retrospective application of IFRSs.

IAS 20 requires entities to measure government loans with a below-market rate of interest at fair value on initial recognition. A first-time adopter applying IAS 20 retrospectively to existing government loans at the date of transition to IFRSs would be required to identify a fair value at an earlier date. However, if an entity obtained the information necessary to apply these requirements to a government loan as a result of a past transaction at the time of initially accounting for that loan, then it may choose to apply paragraph 10A of IAS 20 retrospectively to that loan.

The IASB after considering the comments on the exposure draft Government Loans (Proposed amendments to IFRS 1) will decide whether to proceed with an amendment.

Anticipated milestones of the proposed amendment:



OCTOBER, 2011

UPDATES

Amendment to FDI Policy

The Department of Industrial Policy and Promotion has issued the new consolidated Foreign Direct Investment (FDI) Policy to be effective from 1st October, 2011. Some of the significant changes in the Policy document are:

1. In the definitions chapter (*Chapter 2*), the concepts of entities owned and controlled by non-residents have been deleted. This is likely to result in confusion because the phrases are used in Chapter 4 regulating the calculation of foreign investment.
2. Prohibition on Options- para 3.3.2.I
 - a. Only equity shares and fully, compulsorily and mandatorily convertible debentures / preference shares would qualify as eligible instruments for FDI.
 - b. No company shall issue equity, CCD, CCP with an in-built option. The same shall be considered as a loan otherwise and the company will have to comply with extant ECB Guidelines. However the same is unclear whether option is restricted to mean call/put option or extends to right of first offer/refusal options.
 - c. Equity instruments issued / transferred to non-residents having in built options or supported by options sold by third parties would lose their equity character and would need to comply with the External Commercial Borrowing guidelines.
 - d. Further, by way of a corrigendum which was issued on October 31, 2011 to the FDI Policy issued on September 30, 2011 ("FDI Policy"), the Department of Industrial Policy and Promotion ("DIPP"), an instrumentality of the Ministry of Commerce and Industry, deleted the contentious Clause 3.3.2.1 of the FDI Policy.
3. Conversion of advances into equity

Application is to be made to FIPB for conversion of imported capital goods/pre operative expenses into equity to be made within 180 days of shipment of capital goods or retention of advances against equity.

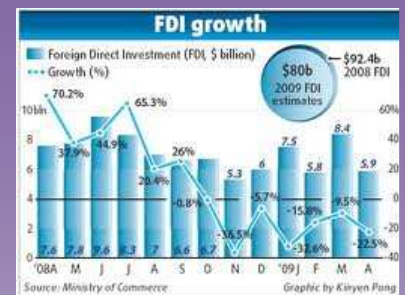
OCTOBER, 2011

FCCB's
BUYBACK



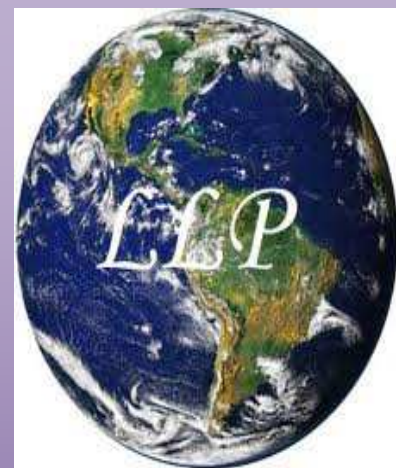
FDI policy revised

-by Abhijit Nagee

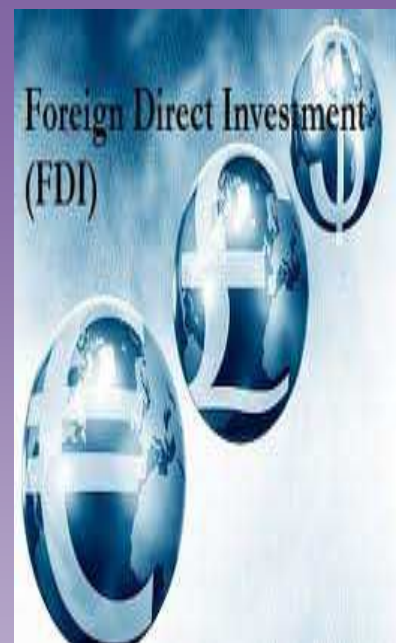


UPDATES

4. Recent amendments are also included such as -
 - a) Allowing FDI in LLPs subject to conditions listed in para 3.2.5 of the Policy
 - b) Allowing pledge of an Indian Company's shares by its resident promoters for securing ECB, or by a non-resident shareholder in favour of an AD Bank in India, or even in favour of an overseas bank for credit facilities extended to the non-resident investor / its overseas group companies subject to certain conditions.
 - c) Clarification that for the purpose of minimum capitalization-share premium to be included when received by a company against issue of shares.
5. Changes to the sectoral policy:
 - a. Construction and development activities in the education sector and to old age homes, exempted from the conditions applicable to FDI in construction and development projects in the real estate.
 - b. Agriculture activities included in 100% automatic route within permitted activities in agriculture.
 - c. Basic and applied R&D on biotechnology pharmaceutical / life sciences included within the scope of "industrial activity" under industrial parks for which 100% FDI under automatic route is allowed.
 - d. Foreign investment up to 26% allowed in terrestrial broadcasting / FM radio as compared with the earlier limit of 20%.



“Listing a company on the stock exchange opens up new avenues of opportunity”



OCTOBER, 2011

UPDATES

1. Circulars on registration of Companies or LLPs which have one of their objectives to do business of architect

The Ministry upon receiving a number of representations to the effect that the RoC and the Registrar of LLPs are incorporating Companies and LLPs in contravention to the provisions of the Architect Act, 1972, has directed vide **General Circular No. 17/165/2011 dated 10th October, 2011** that incorporation of Companies/LLPs where one of the objects of such entities is to carry on business of architect shall not be proceeded with till further order as the matter is under examination in consultation with the Department of Legal affairs and is pending for finalization of view of the Central Government.

2. Circulars on Company Law Settlement Scheme, 2011

In continuation to the Ministry's General Circular No. 59/2011 dated 05.08.2011, regarding filing of statutory documents by Companies and further Corrigendum to Company Law Settlement Scheme, 2011 vide General Circular No. 60/2011 dated 10.08.2011, regarding filing of annual accounts by a foreign company, it has been stated by the Ministry vide **General Circular No. 65/2011 dated 4th October, 2011** that the scheme which was originally valid till 31st October has now been extended upto 15th December, 2011, all the terms and conditions of the General Circulars No. 59/2011 and No. 60/2011 remaining same.

3. Circulars on allotment of Director's Identification Number (DIN) under Companies Act, 1956

The Ministry vide **General Circular No. 66/2011 dated 4th October, 2011** has extended the time for filing DIN-4 by DIN holders for furnishing the PAN and to update PAN details till 15th December, 2011.

This has been issued in continuation to General Circular No. 32/2011 dated 31.05.2011 whereby the Ministry had issued instructions with regard to the above mentioned subject matter.

Click on the following link to read a consolidated note on all the Circulars issued by the Ministry since January 2011:

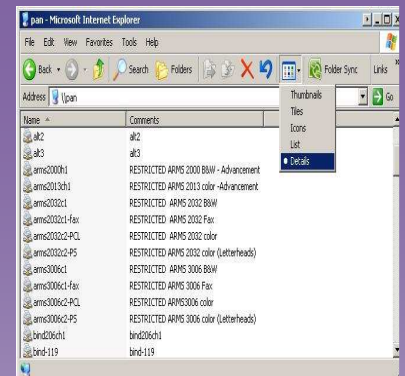
[http://www.india-financing.com/Consolidated Note on the Circulars of Ministry issued since January 2011 till 25th September, 2011--By VK & Co.pdf](http://www.india-financing.com/Consolidated%20Note%20on%20the%20Circulars%20of%20Ministry%20issued%20since%20January%202011%20till%2025th%20September,%202011--By%20VK%20&%20Co.pdf)

OCTOBER, 2011



Quick note on circulars issued by MCA in October, 2011

-Consolidated by Abhijit Nagee



SEBI- Amendments to the Listing Agreement

-Consolidated by Abhijit Nagee

With an objective to enhance the quality of disclosures made by listed entities, certain amendments to the Equity Listing Agreement were made by SEBI vide CIRCULAR CIR/CFD/DIL/7/2011 October 05, 2011.

Amendments to Clause 41

1. Disclosure of quarterly financial results:
 - i) listed entities shall disclose figures in respect of immediately preceding quarter as well in addition to the existing requirements.
 - ii) Listed entities shall also submit the last quarter results along with the audited annual results.
2. Submission of financial results:
 - i) Submission of unaudited results by listed entities shall be accompanied by the limited review report of the auditors.

To be effective from quarter/financial year ending on December 31, 2011

Amendments to Clause 32 - Mode of Supplying Annual Reports to Shareholders

In line with the green initiative by the Ministry of Corporate Affairs, SEBI in amendment to its circular no. SEBI/CFD/DIL/LA/2/2007/26/4 dated April 26, 2007 stated -

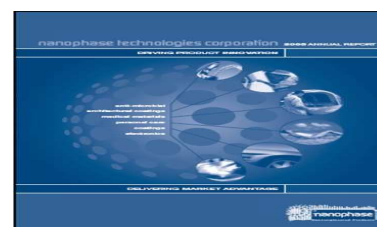
- a. Listed Companies shall supply full annual reports vide email to shareholders having registered their email ids
- b. Hard copies of full Annual Reports(AR) to shareholders who request for the same
- c. Hard copy of abridged ARs to others

To be effective from quarter/financial year ending on December 31, 2011

UPDATES



Amendments to the Equity Listing Agreement



OCTOBER, 2011

UPDATES

Amendments to the Equity Listing Agreement: cont..

Insertion of Clause 35A - Disclosure of voting results by listed entities

Disclosure of voting results (poll, postal ballot/e-voting) in prescribed format of listed entities to be intimated to stock exchanges and be available on their websites within 48hours from the conclusion of the shareholders' meeting. Initially the same shall be applicable to top 500 listed companies based on market capitalization computed as on the date of this circular, i.e. Oct 5, 2011

Applicable for all meetings of which notices will be sent on or after Jan, 1, 2012



“Listing on the stock exchange can increase funding to invest in the company”



OCTOBER, 2011

UNDERSTANDING COMPANY LAW

BENEFITS AND DRAWBACKS OF LISTING YOUR COMPANY

Going public is not an easy task. In deciding whether to seek a listing, a company should consider the alternative financing needs available and the benefits versus the drawbacks of listings.

Benefits	Drawbacks
Creating a market for the company's shares;	Increasing accountability to public shareholders
Enhancing the status and financial standing of the company;	Need to maintain dividend and profit growth trends
Increasing public awareness and public interest in the company and its products;	Becoming more vulnerable to an unwelcome takeover
Providing the company with an opportunity to implement share option schemes for their employees;	Need to observe and adhere strictly to the rules and regulations by governing bodies
Accessing to additional fund raising in the future by means of new issues of shares or other securities;	Increasing costs in complying with higher level of reporting requirements
Facilitating acquisition opportunities by use of the company's shares; and	As the owner or major shareholder of a private company, it is important to outweigh the benefits and costs of listing in the light of the plans and goals that have been set for the company.
Offering existing shareholders a ready means of realising their investments.	Suffering a loss of privacy as a result of media interest



Click on the following link to see other articles and presentations on corporate laws
http://www.india-financing.com/staffpublications_corplaw.htm