



The Institute of

**Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

*Statutory body under an Act of Parliament*

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# CS UPDATE

## April 4, 2007

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# PROGRAMME CREDIT HOURS

- Programme Credit Hours to be secured by Members

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## **PROGRAMME CREDIT HOURS TO BE SECURED BY MEMBERS**

The Perspective Planning Group constituted by the Council had recommended compulsory attendance by members at Professional Development Programmes as a means of ensuring constant updation of knowledge and skills of members. The Council of the Institute, accordingly, formulated Guidelines for Compulsory Attendance of Professional Development Programmes by Members which hitherto required every member in practice of the Institute, to secure 6 Program Credit Hours (PCH) in a year or 20 Program Credit Hours in a block of 3 years by attendance of approved learning programs.

The Professional Development Committee in its 88<sup>th</sup> meeting held on February 16, 2007 discussed in detail again the need for regular attendance of professional development programmes by the members and decided to recommend to the Council to increase the requirement of obtaining programme credit hours by Practicing Company Secretaries to 12 programme credit hours in a year or 40 programme credit hours in a block of three years.

**The Council in its 172<sup>nd</sup> meeting held on March 16-17, 2007 considered the recommendation of the Professional Development Committee and decided to increase the requirement of obtaining programme credit hours by Practicing Company Secretaries to 12 programme credit hours in a year or 40 programme credit hours in a block of three years effective from 1<sup>st</sup> April, 2007.**

The requirement specified above does not apply to:

- (i) A member who has attained the age of 65 years.
- (ii) A member to whom the Professional Development Committee may in its absolute discretion grant partial/full exemption on account of facts and circumstances of the case which, in the opinion of the said Committee, prevents such member from compliance with these guidelines.

The Updated Guidelines for Compulsory Attendance of Professional Development Programmes by Members are available on the website of the Institute [www.icsi.edu](http://www.icsi.edu).

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# FORTHCOMING PROGRAMMES

- Full Day Programme on Compliance of Securities Laws by Capital Market Intermediaries

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The Institute of  
**Company Secretaries of India**

CENTRE FOR CORPORATE RESEARCH & TRAINING

Plot No 101, Sector 15, CBD Belapur, Navi Mumbai 400 614  
Phone : 022-27577814/15/16 Fax : 022- 27574384, E-Mail : [ccrt@vsnl.com](mailto:ccrt@vsnl.com)

Announces Full Day Program on  
***Compliance of Securities Laws by  
Capital Market Intermediaries***

**Venue: ICSI-CCRT Conference Hall, CBD Belapur, Navi  
Mumbai**

**OBJECTIVE**

The securities market has essentially three categories of participants viz. issuers of securities, investors in securities and the intermediaries. The regulators (SEBI, MCA, RBI etc.) develop fair market practices and regulate the conduct inter alia, of the intermediaries. To enable the various participants of the securities markets in general and company secretaries in particular to be aware of the regulatory framework for compliance by the capital market intermediaries i.e. brokers, mutual funds, merchant bankers, etc. ICSI-CCRT is organizing this full day program.

**COVERAGE**

Overview of the main regulatory framework governing the intermediaries like brokers, commodities brokers, merchant bankers, mutual funds, etc., in the securities market.

**WHO SHOULD ATTEND**

The Program is designed for Senior Executives in the Corporate Sector dealing with the Capital Market, Company Secretaries, Chartered Accountants, Cost Accountants, Advocates, Company Directors and other Professionals.

**FACULTY**

- **Shri J. Ravichandran**  
Director – National Stock Exchange of India Ltd.  
has agreed to inaugurate the Program and initiate the discussions
- Other eminent faculty include:  
**Sri V R Narasimhan**  
Chief Compliance Officer-Kotak Mahindra  
Asset Management Co. Ltd.  
**Sri Bhashyam Seshan,**  
Company Secretary, National Commodity  
and Derivatives Exchange Ltd.  
**Ms Smruti Jhaveri,**  
Vice President(Compliance)

Members  
attending the  
program would  
be entitled to  
**FOUR** program  
Credit hours as  
per Institute  
Guidelines

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Edelweiss Securities

**Representatives of Merchant Bankers**

**Fees:** Rs. 900/- per Delegate for Members (ICSI/ICAI/ICWAI)

Rs.1200/- per Delegate for others

**ICSI-CCRT Annual Members Free of Charge**

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# MCA UPDATES

- **Important Information - Filing of DIN-1 and DIN-3**

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## IMPORTANT INFORMATION - Filing of DIN-1 and DIN-3

The last date for filing of DIN Form -1 and DIN Form -3 without payment of fee has been extended from March 31, 2007 to June 30, 2007

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**Special Economic Zones (Second  
Amendment) Rules, 2007**

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**SPECIAL ECONOMIC ZONES (SECOND AMENDMENT)  
RULES, 2007**

**NOTIFICATION NO. S.O. 393(E), DATED, 16-3-2007**

In exercise of the powers conferred by Section 55 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government hereby makes the following rules to amend the Special Economic Zones Rules, 2006, namely:

1. (1) These rules may be called the Special Economic Zones (Second Amendment) Rules, 2007.

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

2. In the Special Economic Zones Rules, 2006 (hereinafter referred to as the principal rules), in sub-rule (1) of rule 2, for clause (b), following shall be substituted:

"Advance Licence" means Advance Licence issued under the Duty Exemption and Remission Scheme of the Foreign Trade Policy and includes advance authorisation.

3. In the principal rules in rule 5, in sub-rule (2),—

(i) in clause (a), -

(A) the first proviso shall be deleted;

(B) the fourth proviso shall be deleted.

(ii) in clause (b), for the words "A Special Economic Zone for a specific sector or in a port or airport," the words "A Special Economic Zone for a specific sector or for one or more services or in a port or airport" shall be substituted;

(iii) after clause (c), the following clause shall be added, namely :—

"(d) If a Developer subsequent to approval or notification of a Special Economic Zone acquires more contiguous and vacant land which makes the total area available, including the area already notified as Special Economic Zone, more than the minimum area required for another class of SEZ, the Board may consider such cases on a case to case basis for allowing conversion to another class of Special Economic Zone by subsuming such already approved or notified Special Economic Zone."

4. In the principal rules, in rule 6,—

(i) for sub-rule (1), the following shall be substituted, namely :—

"(1) The Central Government shall, within a period of thirty days of the communication received by it under clause (a) or clause (b) of Sub-section (9) of Section 3 of the Act grant following approvals :—

(a) formal approval in the cases where land is in possession of the developer in Form-B to the person or the State Government concerned or in Form-C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incorporating additional conditions, if any, specified by the Board while approving the proposal;

(b) in-principle approval in other cases in Form-B 1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the Board while approving the proposal."

(ii) for sub-rule (2), the following shall be substituted, namely :—

"(2) (a) The letter of approval of a Developer granted under clause (a) of sub-rule (1) shall be valid for a period of three years within which time, effective steps shall be taken by the Developer to implement the approved proposal :

**Provided** that the Board may, on an application by the developer or co-developer, for reasons to be recorded in writing, extend the validity period for a further period not exceeding two years.

(b) The letter of approval of a Developer granted under clause (b) of sub-rule (1) shall be valid for a period of one year within which time, the Developer shall submit suitable proposal for formal approval in Form "A" as prescribed under the provisions of rule 3 :

**Provided** that the Board may, on an application by the developer or co-developer for reasons to be recorded in writing, extend the validity period for a further period, not exceeding two years, upon a request made in writing by the Developer or Co-developer."

**5.** In the principal rules, in rule 7,—

(i) for sub-rule (1), the following shall be substituted, namely :—

"(1) The Developer shall furnish to the Central Government, particulars required under Sub-section (1) of Section 4 with regard to the area referred to in Sub-section (2) or Sub-section (4) of Section 3, (hereinafter referred to as identified area), with a certificate from the concerned State Government or its authorized agency stating that the developer(s) have legal possession and irrevocable rights to develop the said area as SEZ and that the said area is free from all encumbrances :

**Provided** that where the Developer has leasehold rights over the identified area, the lease shall be for a period not less than twenty years."

(ii) in sub-rule (2), the words, brackets and figures "subject to third proviso to clause (a) of sub-rule (2) of rule 5" shall be deleted.

(iii) in sub-rule (2), the following proviso shall be inserted:

**"Provided** that the Board may relax any or all of the conditions, except the condition regarding identified area to be a vacant land, specified in this sub-rule on a case to case basis on merits for reasons to be recorded in writing and with such conditions as the Board may decide."

6. In the principal rules, in rule 11,—

(i) for sub-rule (2), following shall be substituted, namely:—

"(2) The processing area and Free Trade and Warehousing Zone shall have specified entry and exit points and be fully secured by taking such measures as approved by the Board of Approval."

(ii) in sub-rule (5), for the words, "the lease period shall be co-terminus with the validity of Letter of Approval", the following shall be substituted, namely :—

"the lease period shall not be less than five years but notwithstanding any other condition in the lease deed, the lease rights would cease to exist in case of the expiry or cancellation of the Letter of Approval."

(iii) in sub-rule (10), for the second proviso, following shall be substituted :—

"Provided further that infrastructure for business or social purposes in the Special Economic Zone, as may be approved by the Board, shall be eligible for exemptions, concessions, drawback and any such infrastructure created in addition or in excess thereof shall not be eligible for any exemptions, concessions and drawback."

7. In the principal rules, in rule 27, after sub-rule (1), the following provisos shall be inserted:

**"Provided** that exemptions from payment of duty, taxes or cess, drawbacks and concessions on all types of goods and services, required for setting up and maintenance of the factory building, allowed to a unit shall also be available to the contractors appointed by such unit and all the documents in such cases shall

bear the name of the unit along with the contractor and these shall be filed jointly in the name of the unit and the contractor :

**Provided further** that the unit shall be responsible and liable for proper utilization of such goods and services in all cases."

8. In the principal rules, in rule 41, after sub-rule (2), the following sub-rule shall be inserted:

"(3) A Developer or a co-developer or on their behalf their contractor, as the case may be, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the Domestic Tariff Area or a unit in the same or another Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee."

9. In the Principal rules, in rule 42, after sub-rule (4), the following sub-rule shall be inserted:

"(5) The Developer or a co-developer or on their behalf their contractor, as the case may be, shall follow the same procedure for sub-contracting in Domestic Tariff Area or in a Unit in other Special Economic Zones or in a Export Oriented Unit or in an Electronic Hardware Technology Park Unit or a Software Technology Park Unit as prescribed for sub-contracting by SEZ Units in sub-rule (1) above :

Provided that the Bank Guarantee to cover the duty foregone on the materials being sent for subcontracting shall apply only in case of temporary removal of goods by the contractor."

10. In the principal rules,—

(i) in Form-A, after point No. VI, the following shall be inserted:—

"VIA. Foreign Direct Investment (FDI)

(a) Extent of FDI (if any) in million U.S. Dollars

(b) Source of FDI (Country and Company details may be provided)";

(ii) in Form-A, at the end, the following shall be deleted, namely :—

"Note : Furnish 25 copies of the application with project report"

11. In the principal rules, in Form A, after the "Undertaking", the following shall be added, namely :—

## **"Check List**

- (1) Name of the Developer.
- (2) Proposed area of the location of the SEZ.
- (3) Status of recommendation of the proposal by the State Government (if available).
- (4) Whether proposal is for formal or in-principle approval? (In case land is in possession of the promoter, it is considered for formal approval).
- (5) Is it a multi-product SEZ?
- (6) If it is a sector specific SEZ, the sector is.
- (7) Whether it meets the area requirements?
- (8) Area of the SEZ (in hectares).
- (9) Whether Form-A has been filed?
- (10) Whether undertaking and affidavit has been submitted?
- (11) Whether project report has been submitted?
- (12) Whether land is owned/leased and is in possession of the Developer?
- (13) Does the proposal meet the area requirements of the Rules?
- (14) Whether the land has existing structures or is vacant ?
- (15) Whether the land is contiguous?
- (16) Projected investment in the project.
- (17) Projected exports from the project.
- (18) Projected employment from the project.
- (19) Share Capital and Reserves of the Developer Company.
- (20) Source of funds for the project.
- (21) Net worth of the Applicant (including Group companies) duly supported by Audited Accounts of the Developer for last 3 Years (for all the constituents in case the Developer is a SPV). If the company is a new company, audited accounts of Flagship Company/promoters may be provided.
- (22) Extent of FDI (if any) in million U.S. Dollars.
  - (1) (23) Source of FDI (Country and Company details may be provided).
  - (2) (24) Whether provisions contained in the Press Note No. 5 (2005 Series), issued by the Ministry of Commerce and Industry have been followed in respect of Telecom/IT SEZ development?"
- 12.** In the principal rules, in Form-B, in the first line, for the word "EPZ", the word "SEZ" shall be substituted;
- 13.** In the principal rules, after Form-B, the following form shall be inserted, namely:—

**"Form-B1**

No. F. .... -SEZ  
Government of India  
MINISTRY OF COMMERCE AND INDUSTRY  
(Department of Commerce)  
(SEZ Section)

Dated, the .....

To .....

.....

.....

Subject: Setting up of a ..... Special Economic Zone at  
..... by M/s. .... Reg.

Reference: Your application dated .....

Sir (s),

With reference to your above mentioned application, Government of India is pleased to grant "in-principle" approval to your proposal for development, operation and maintenance of a Special Economic Zone (SEZ), as per details given below: -

I. Proposal and project details :- To set up a ..... Special Economic Zone over an area of ..... hectares .....by M/s.....

## II General Conditions:

(i) This "in-principle" approval is valid for a period of one year within which time the applicant shall submit suitable proposal for formal approval in Form "A" as prescribed under the provisions of Rule 3 of the SEZ Rules 2006, along with proof of land possession/lease hold rights, updated Project Report and Check List. Fifteen copies of the application and other enclosures prescribed shall be submitted to the Director (SEZ), Department of Commerce, Udyog Bhavan, New Delhi-110011 directly or through the State Government concerned. The applicant should be in possession of the identified area either by way of ownership or by way of lease hold rights valid for twenty years or more on the date of application.

(ii) The Developer shall obtain the required approval from various statutory authorities under relevant statutes and regulations of the Government of India and the State Government and local bodies.

(iii) The Developer shall make adequate provision for rehabilitation of the displaced persons as per the RR policy of the State Government.

(iv) The project shall be implemented and operated in terms of the Special Economic Zones Act, 2005 and the rules and orders made thereunder.

(v) The Developer shall conform to the environmental requirements.

(vi) The Developer shall abide by the local laws, rules, regulations or bye-laws in regard to area planning, sewerage disposal, pollution control, labour laws and the like as may be locally applicable.

(vii) The Developer shall raise the required funds for the project, External commercial borrowing, if any, will be as per the guidelines of the Ministry of Finance, Department of Economic Affairs, Government of India, New Delhi.

(viii) The Developer shall obtain the approval of Board for specific activities proposed to be undertaken for development, operation and maintenance of Special Economic Zone.

(ix) Any request for extension, for a period not exceeding two years, may be submitted with valid reasons and details of



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steps taken for implementation, which may be considered by the Board, on merits. Such request shall be submitted to the Government two months before expiry of the approval period.

2. This approval shall be also subject to other conditions as prescribed by the Board.

3. The Developer may convey acceptance of all the terms and conditions indicated above within thirty days from the date of issue of this letter. All future correspondence may be addressed to the Director (SEZ), Department of Commerce, Udyog Bhavan, New Delhi-110011.

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# CASE LAW

- **UII Vs. KOPRAN LTD. & ORS. (In the Company Law Board, Principal Bench, New Delhi)**

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**UOI Vs. KOPRAN LTD. & ORS.**

**(In the Company Law Board, Principal Bench, New Delhi)**

**(2007) 67 (I) CC (Comp. Sec.) 468 (Rep.) (CLB-Del)**

Decided on: 22 February, 2006

**Relevant Section: 388B of the Companies Act, 1956**

**FACTS:**

This is a reference to the Company Law Board by the Union of India under Section 388B of the Companies Act, 1956 stating that in the opinion of the Union of India there are circumstances suggesting that the respondents are or have been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out their obligations and functions under the law or breach of trust or that the business of the company is not or has not been conducted by the respondents in accordance with sound business principles or prudent commercial practices.

**ISSUES:**

1. Central Government alleged that **the act of respondent-company was sheer mismanagement** as it granted a loan of huge sum to a company, which belonged to a group who was involved in stock scam.
2. Central Government alleged that respondent had granted a loan of substantial amount **without adequate security** and this act of respondent-company had put it in loss. Therefore, the act of respondent-company could not be treated as sound and prudent and was an act of mismanagement/siphoning of funds.
3. The reference has been made with a request that the CLB may enquire into the case and record a decision as to **whether the respondents are fit and proper persons** to hold the office of MD or directors(s) or any other office connected with the conduct and management of the company.
4. The respondent-company raised preliminary objection that **the reference was barred by limitation** as the cause of action in its case arose long prior to the presentation of said reference. The acts alleged pertained to 2000-01 whereas the reference was filed much after 3 years of knowledge and hence barred *inter alia* by limitation.
5. Respondents contended that reference was not maintainable on the ground that it was based on the same allegations and the parties being same as arranged in earlier application attracting **the principles of res judicata**.

HELD:

1. The Board of directors cannot be accused of mismanagement for having taken a commercial decision just because a part of the amount loaned by the company *bona fide*, has not yet come back to the company. There are no allegations in the petition that any of the directors is guilty of misappropriation or Siphoning off of funds. The allegations of the petitioner that the respondent directors are endangering the shareholders' interest and that the directors had acted negligently are totally misplaced and wrong. The matter regarding loan of Rs. 78 crore to Classic Credit Ltd. has also been examined and found that the company had not violated any provisions of the Act in lending this amount to Classic Credit. Also the company had not violated any of the provisions of the Act in lending this amount.
2. It is not agreeable that when the amount was so large, the company should have asked for adequate security from Classic Credit but the mere failure to do so cannot be in any way considered to be a willful act of mismanagement especially considering the fact that the company had received back Rs. 50 crore within a period of three days. According to the company, the bouncing of cheque for Rs. 20 crore was on account of detection of the stock market scam and consequent freezing of bank accounts of Classic Credit, while according to the petitioner, Classic Credit had gone broke and had no funds to meet this liability. In either event, even if the company had taken security, it might not have been able to enforce the same.
3. Petitioner failed to make a case under section 397 of the Act. On the same facts, the ingredients of section 388B have not been substantiated. There is not sufficient and proper material for this Board to hold that the loan to Classic Credit Ltd. was an act clearly suggesting that the respondents in the conduct and management of the affairs of the company are guilty of fraud, misfeasance, persistent negligence and further that the respondents have not conducted the affairs of the company in accordance with sound business principles and prudent commercial practices. In lending the amount of Rs. 78 crore, the act of the Board could at best be declared as an action of commercial mismanagement or an unwise decision. It is not the petitioner's case that this decision of the Board of directors was not within the legitimate powers of the Board or that the Board had violated any provision of law. The petitioner has not established that by the single act of lending money and violating the provisions of certain sections of the Act in the year 2000-01 the company is being managed in a manner prejudicial to the interest of the company or to the public interest and that it amounts to fraud misfeasance, persistent negligence and further that the respondents have not conducted the affairs of the company in accordance with sound business principles and prudent commercial practices warranting removal of the MD and directors of the company. On the facts of the case, the MD and the directors of the company cannot be held to be unfit and improper persons to hold the office of MD/directors or any other connected with the conduct and management of the company.

4. Under the provisions of the Act, the CLB is a court in a restricted sense. Under section 10(4C) of the Act, the CLB would have powers under the Code of Civil Procedure only in respect of the matters specified in sub-sections (4C), (a) to (f), of section 10E. The CLB is a *quasi-judicial* authority to be guided by the principles of natural justice in the exercise of its powers and discharge of its functions under the Act and it shall act in its discretion. On the plea of application of the Limitation Act to the proceedings before the CLB has been consistently held by the CLB that the Limitation Act as applied by the civil court is not applicable to the proceedings before the CLB, a *quasi-judicial* authority and not a court in the strict sense of the term. However, this does not preclude CLB from rejecting/dismissing petitions on account of delay/latches in appropriate cases. In the present case there is no hesitation in rejecting the respondents plea of action being barred by limitation.
5. Central Government argued that though the basis of earlier application was same but the action and relief sought therein were different and present reference was sought for removal of Board of Directors under section 388B whereas the earlier applications sought relief under sections 397/398, 401 and 408. It was held that Principles of *res-judicata* was not applicable.

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