



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

March 14, 2007

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FORTHCOMING PROGRAMMES

- National Seminar on Corporate Compliance Management
(March 29, 2007)

PROGS

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NFCG

**NATIONAL FOUNDATION FOR
CORPORATE GOVERNANCE**

**NATIONAL SEMINAR ON
CORPORATE COMPLIANCE MANAGEMENT**
Organised by



The Institute of

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

Day & Date : *Thursday – March 29, 2007 • Time : 9.30 AM To 5.00 PM*

Venue : *Nepoleon Hall, Hotel Le Meridien, Janpath, New Delhi*

ABOUT THE SEMINAR

Corporate accountability is on everyone's mind today. Corporate executives face significant pressure to comply with a steady stream of complex regulations. An effective compliance management program that embeds a culture of compliance throughout the organisation can therefore be a business value enhancer offering positive benefits to business. A superior knowledge of the regulatory risks envisaged by the organisations and putting in place necessary measures to guard against those risks can provide a company with a competitive advantage.

In an effort to measure and control risk and compliance, organizations are looking for a structured approach that lets them quantify risk, establish risk appetite/tolerance, identify and prioritize controls and establish a system to meet a multitude of compliance obligations.

Corporate Compliance Management is a mechanism through which an organisation secures and ensures adherence to the applicable laws. This also forms an integral part of the CEO/CFO Certification, one of the cornerstones of Clause 49 of the Listing Agreement.

This focused attention on compliances with the spirit and details of laws casts upon Company Secretaries and other corporate professionals an onerous responsibility to guide the corporates adapting with compliance regimes, so as to ensure extended protection to investors, shareholders and other stakeholders.

It is in this context the Institute has decided to organise a National Seminar on Corporate Compliance Management sponsored by the National Foundation for Corporate Governance (NFCG) on March 29, 2007 at Hotel Le-Meridian, Janpath, New Delhi.

SEMINAR AGENDA

- ③ *Concept of Corporate Compliance Management: Need, Scope and Importance*
 - Origin & Significance
 - CE /CFO Certification under Clause 49
 - Risk of Non Compliances
 - Benefits & Beneficiaries
- ③ *Process of Corporate Compliance Management: Identification, evaluation and analysis of applicable laws and assessment of compliance status*
 - (a) Understanding the purpose and deciding the coverage
 - (b) Significant Compliances of various laws governing the activities of a corporate:
 - Company Law, including listing agreement

- Economic Laws
- Commercial Laws
- Labour Laws
- Environmental Laws etc.
- (c) Assigning Responsibility
- (d) Analysis , assessment and review
- ③ *Control, Due Diligence and Certification:*
 - (a) Establishing of controls and standards
 - Developing of internal Standard Operating Procedure
 - Adoption of Standards
 - (b) Systems and Tools for Streamlining Compliance Management by using Information Technology
 - (c) Compliance Audit and Self certification
 - In-house or
 - Through external experts like PCS
 - (d) Compliance disclosures and reporting
- ③ *Case Studies*

CHIEF GUEST

Shri Anurag Goel, Secretary, Ministry of Company Affairs has been requested to be the Chief Guest and inaugurate the National Seminar.

GUEST SPEAKERS

Shri Jyotin Mehta

General Manager & Company Secretary
ICICI Bank

Ms. Vijaya Sampath

General Counsel & Company Secretary
Bharti Tele-Ventures Ltd.

Shri Pavan Kumar Vijay

(Past President, The ICSI)
Managing Director
Corporate Professionals India Pvt. Ltd.

Dr. K S Ravichandran

Practising Company Secretary
S. Srinivasan & Co.

Dr. K R Chandratre

(Past President, The ICSI)
Practising Company Secretary

Shri Pashupati Kumar V.

Chief Financial Officer-Region 10
Deloitte Consulting India Private Limited

Shri Shujath Bin Ali

Asstt. Manager - Corporate Affairs & Legal
Deloitte Consulting India Private Limited

FEES

A nominal fee of Rs. 1000 will be charged per participant. (Free for Corporate Members of NIRC)

WHO SHOULD ATTEND

The programme will be of immense practical benefit to Company Secretaries both in practice and employment and other corporate professionals.

PROGRAMME CREDIT HOURS

Members of the Institute will be entitled to four programme credit hours

REGISTRATION

Request for registration alongwith fee by way of cheque/demand draft drawn in favour of " The Institute of Company Secretaries of India" may please be sent to Shri T R Mehta, Assistant Director, The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi-110003, Phone: 41504444, Fax:011-24626727, 24645045, E.mail: trmehta@icsi.edu

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MCA UPDATES

- **New Online Payment Process**

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Ministry of Company Affairs had started a new online payment process, which is user friendly and convenient. This process is effective from March 12, 2007.

The following information is being displayed on the website of Ministry of Company Affairs in this regard:

MCA makes Online Payment experience user friendly and convenient.
The new online payment process is effective **12th March 2007**.

IMPORTANT INFORMATION

Ensure that you get the payment receipt after you make an online payment. You may not get a receipt in case MCA does not receive a successful online confirmation from the bank. In such cases, simply verify the payment status before continuing to pay again.

1. Click on 'Track Payment status' link given on the home page. Enter the SRN details and find the payment status.
2. In case the payment status is PAID, **DO NOT PAY AGAIN**. Simply get the copy of receipt.
3. In case payment status is NOT PAID and the amount has been debited from your account; MCA shall issue the reversal advice to the concerned bank within 2 working days. You are advised to file again in such cases.

Just follow these simple instructions and get service delivery online.

Note : Online payment Terms & conditions are being revised. Watch out this space for further updates.

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SEBI UPDATES

- Views/Suggestions solicited on Proposed Changes in Clause 49
- Corporate Bond Market – Reporting Platform to also be set up by NSE

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Views/Suggestions solicited on Proposed Changes in Clause 49 of the Listing Agreement

SEBI has placed on its website the changes to Clause 49 of the Listing Agreement for Public Comments.

We request you to send your views/suggestions on the proposed Changes latest by March 23 ,2007 at drs1@icsi.edu with a copy to sonia@icsi.edu so as to enable us to collate all views and thereafter finalise the views of the Institute for sending to SEBI.

PROPOSED CHANGES TO CLAUSE 49 OF THE LISTING AGREEMENT

The extant Clause 49 of the listing agreement, after taking into account the recommendations of the Narayana Murthy Committee came into effect on January 1, 2006. Since the coming into effect of the revised Clause 49, SEBI has received comments from various quarters - the public, the corporate and industry associations suggesting amendments to certain provisions of Clause 49. The various suggestions received along with SEBI's views were placed before the Primary Market Advisory Committee (PMAC) in their meeting held on December 4, 2006. After taking into account the views of the PMAC, the revised changes proposed to Clause 49 are placed herewith for public comments for a period of 21 days i.e. from 12/03/2007 to 02/04/2007.

Comments/suggestions on the same may be sent to Mr.Parag Basu, Deputy General Manager, Division of issues and listing, SEBI or to Mr Pradeep Ramakrishnan, Manager, Division of Issues & Listing or emailed to paragb@sebi.gov.in / pradeepr@sebi.gov.in or faxed to 91-22-26449016 on or before April 2, 2007.

SI no.	Existing provisions of Clause 49	Proposed amendments	Rationale for the proposed amendments
1.	Board composition and Disclosures: Clause 49.I.A.ii states that where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.	It is proposed that a provision be added stating that if the non-executive Chairman is a promoter or is related to promoters or persons occupying management positions at the Board level or at one level below the Board, he would not be treated as independent director and the company in such a case, would be required to have 50% independent directors on its Board.	SEBI is in receipt of views / representations that in certain companies the promoters or promoters of the promoter company or their close relatives designate themselves as non-executive Chairman of the listed company and hence, they cannot be considered truly "non-executive" in the sense of the term.

<p>2.</p>	<p>Relation between independent directors: There is no existing provision in Clause 49 which speaks about the relation amongst independent directors.</p>	<p>It is proposed to stipulate that companies shall disclose the relation between independent directors inter-se as well as other directors of the company not holding management position, in all documents where the details of the Board of directors are incorporated/ given for information of the public/ shareholders. It may not be possible to mandate a blanket provision that independent directors should not be related to each other.</p>	<p>Views/representations have been received by SEBI stating that some companies have independent directors who are related to each other. They further state that such practices are only technical compliance and do not uphold the spirit of the clause and hence such persons should not be considered independent.</p>
<p>3.</p>	<p>Time gap between the resignation /removal of an independent director and the appointment of another in his place: There is no existing provision on this issue which speaks about the time gap for the appointment of an independent director in case there is a resignation or removal of an existing one.</p>	<p>It is proposed to stipulate that an independent director who resigns or is removed from the Board shall be replaced by a new independent director within a time-gap of not more than 90 days from such resignation / removal. Without any time limit, a company may continue to remain non-compliant and may take a plea that it has not been able to find an independent director.</p>	<p>SEBI is in receipt of views / representations stating that there should be a time limit for the appointment of an independent director in case there is a resignation or removal of an existing one.</p>
<p>4.</p>	<p>Entry norms for independent directors in terms of age, qualifications and experience: There are no existing norms for independent directors in terms of age, qualifications and experience</p>	<p>It is proposed to stipulate that the minimum age of an independent director shall be atleast 21 years.</p> <p>It may not be possible to stipulate experience, maximum age or qualifications for an independent director since it would differ from company to company based on the line of activities it is engaged in. Further, the Companies</p>	<p>Views/representations received by SEBI state that there should be norms for independent directors in terms of age, qualifications and experience.</p>

		Act does not specify the experience/ qualifications/ age limit for a director.	
5.	<p>Nominee directors as independent directors:</p> <p>As per the provisions of Clause 49.I.A.iv, nominee directors of institutions are considered as independent directors; the word 'institution' has been defined for the purpose.</p>	<p>It is proposed to stipulate that nominee directors would not be considered as independent directors and consequently, the provision which allows nominee directors appointed by institutions to be considered as independent directors may be deleted.</p>	<p>SEBI has received views / representations stating that nominee directors basically represent interest of the institution which has nominated them, be it a lending or investing institution; as such, these directors should not be considered as independent directors. Further, SEBI has taken a view that Government nominees in Government companies would not be treated as independent directors since they have a material pecuniary relationship with the Government as they receive salary and other perks from the Government.</p>

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SEBI CIRCULAR

Satya Ranjan Prasad
Deputy General Manager
Phone: +91 22 2644 9470 Email: satyarp@sebi.gov.in

SEBI/CBM/BOND/1/2007/01/03
March 01, 2007

**The Managing Director / Executive Director / Administrator
Of All Stock Exchanges**

Dear Sirs,

Sub: Corporate Bond Market – Reporting Platform to also be set up by NSE

I. In order to implement the Union budget proposal on creation of a unified platform for trading of Corporate Bonds, SEBI vide circular No. SEBI/CFD/DIL/ BOND/1/2006/12/12 dated December 12, 2006 authorized Bombay Stock Exchange Limited (BSE) to set up and maintain a corporate bond reporting platform to capture all information related to trading in corporate bonds as accurately and as close to execution as possible.

II. It has now been decided that the National Stock Exchange of India Limited (NSE) may also set up and maintain a similar reporting platform for corporate bonds with immediate effect on terms and conditions laid out in the aforesaid SEBI circular.

III. For the purpose, the following shall be implemented with immediate effect:

1. Trades executed by the members of BSE or NSE shall be reported on the reporting platforms of their respective stock exchanges who would host such information on their websites. As regards Over the Counter (OTC) trades, the parties concerned shall have the freedom to report the deals on the platform of either BSE or NSE.

2. BSE and NSE shall co-ordinate among themselves to ensure that the information reported with BSE and NSE is aggregated, checked for redundancy and disseminated on their websites in a homogenous manner.

3. Information disseminated on the websites of BSE and NSE shall display the following essential data: Issuer Name, Maturity Date, Current Coupon, Last Price Traded, Last Amount Traded, Last Yield (annualized) Traded, Weighted Average Yield Price, Total Amount Traded and the Rating of the Bond and any other additional information as the stock exchanges think fit.

4. Further, the following additional details shall be made available through a hyperlink: Ratings including the last change where possible, Call/ Put Option Dates, Record Date, Next Coupon Date, Step up Coupons, Day Count Convention, Floating Benchmark if applicable and the spread over the Benchmark and any other instrument specific material information.

5. The Fixed Income Money Market and Derivatives Association of India (FIMMDA) which at present is bringing out a daily valuation report of all Central Government Securities, had proposed setting up of a reporting platform for corporate bonds and also to provide similar value added dissemination on Corporate Bonds. Till such time that FIMMDA sets up such a platform, it shall disseminate information made available on bond trading by the two exchanges with appropriate value addition. In this regard, BSE and NSE are directed to extend their co-operation to FIMMDA.

IV. Applicability

1. The reporting shall be made for all trades in listed debt securities issued by all institutions such as Banks, Public Sector Undertakings, Municipal Corporations, bodies corporate and companies.
2. The reporting of trades in Corporate Bonds shall be made by all person(s) dealing in such corporate bonds irrespective of whether they are SEBI registered intermediaries or otherwise.
3. Pursuant to the launch of the corporate bond reporting platform at NSE, reporting may be made to either platform of BSE or NSE but not to both for the same transaction. Although, reporting may be done at either of the exchange platforms, BSE and NSE shall ensure that all the relevant details are disseminated by both the stock exchanges on their websites and shall ensure that there is no segregation of data between the exchanges on the basis of its reporting origin.

V. Direction to Stock Exchanges

All Stock Exchanges are directed to:

- a. Make necessary amendments to the listing agreement, bye- laws, rules and regulations for the implementation of the above decision immediately, as may be applicable and necessary.
- b. Bring the provisions of this circular to the notice of the entities in both equity and debt segments, member brokers, clearing members of the Exchange and also to disseminate the same on the website for easy access to the investors; and
- c. Communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report from the month of April, 2007.

VI. This circular is issued in exercise of powers conferred by sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The provisions of the earlier circulars No.SEBI/MRD/SE/AT/36/2003/30/09 dated September 30, 2003, Circular No.SEBI/MRD/SE/AT/46/2003 dated December 22, 2003 and circular No. SEBI/ CFD/DIL/BOND/1/2006/12/12 dated December 12, 2006 in so far as they are inconsistent with the provisions of the instant circular shall stand superceded.

VII. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

Satya Ranjan Prasad

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INDIRECT TAXES

CUSTOMS ACT

- Change in the rate of antidumping duty of NBR
- Continuation of Anti dumping duty for another one year on FSP
- Continuation of Anti dumping duty for another one year on PHPG Base
- Continuation of Anti dumping duty for another one year on PHPG Base from Singapore
- Imposition of Antidumping duty on Yarn
- Amendment in the Notifications earlier issued

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Customs Act

Notification No.11/2007-Customs

31st January 2007

Subject: Change in the rate of antidumping duty of NBR

Whereas in the matter of import of acrylonitrile butadiene rubber (hereinafter referred to as NBR), falling under Chapter 40 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, Korea RP and Germany (hereinafter referred to as the subject countries), the designated authority had notified its mid-term review findings published in Part I, Section 1 of the Gazette of India, vide notification No. 15/2/2004-DGAD dated the 6th June, 2005.

And whereas on the basis of the aforesaid mid-term review findings of the designated authority, the Central Government has imposed anti-dumping duty on import of NBR, originating in, or exported from the subject countries, vide notification No. 78/2005-Customs, dated the 1st September, 2005 [G.S.R. 554(E), dated the 1st September, 2005], published in part II, section 3, sub-section (i) of the Gazette of India, Extraordinary, dated the 1st September, 2005.

And whereas the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the Tribunal), in the matter of M/s. Apar Industries Ltd. and Others, in Appeals No.C/935/05-AD and No.C/68-69/06-AD, had vide its final order No. 37-39/06-AD dated the 22nd September, 2006, ordered that "the appeals filed by exporter/importer are allowed, subject to the direction that the impugned notification No.78/2005 dated 1st September, 2005, will be suitably amended by the Government of India by imposing the antidumping duty at the rate of US\$ 38.73 per MT on the subject goods imported from Korea Kumho Petrochemicals and the appeal filed by the domestic industry is dismissed".

And whereas the designated authority has accepted the above order of the Tribunal. Now, therefore, in exercise of the powers conferred by sub-section (1), read with sub-section (5) of section 9A of the said Customs Tariff Act and Rule 23 of the Customs Tariff (identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.78/2005-Customs, dated the 1st September, 2005, namely:-

In the said notification, in the Table, against S.No.1, for the entry in column (9), the entry "38.73" shall be substituted.

F.No.354/27/2005-TRU

(S. Bajaj)
Under Secretary to the Government of India

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TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE
GAZETTE OF INDIA, EXTRAORDINARY]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

NOTIFICATION No. 12 / 2007-Customs

New Delhi, the 6th February, 2007

Subject: Continuation of Anti dumping duty for another one year on FSP

G.S.R. (E). -Whereas, the designated authority vide notification No. 15/25/2006-DGAD, dated the 27th December, 2006, published in Part I, section 1 of the Gazette of India, Extraordinary, dated the 28th December, 2006, has initiated review, in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) and in pursuance of rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the said Rules), in the matter of continuation of anti-dumping duty on Flexible Slabstock Polyol (FSP), originating in, or exported from the United States of America, Japan, European Union and Singapore, imposed *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 120/2002-Customs, dated the 31st October, 2002, published in the Gazette of India *vide* number G.S.R.744 (E), dated the 31st October, 2002 and has requested for extension of anti-dumping duty for a period of one year from the date of its expiry, in terms of sub-section (5) of section 9A of the said Customs Tariff Act, pending the completion of the review;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Act and in pursuance of rule 23 of the said Rules, the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.

120/2002 -Customs, dated the 31st October, 2002, published in the Official Gazette *vide* number G.S.R.744 (E), dated the 31st October, 2002, namely: -

In the said notification, after paragraph 2, the following paragraph shall be inserted, namely: -

“3. This notification shall remain in force upto and inclusive of the 10th day of February, 2008, unless the notification is revoked earlier”.

[F.No.354/221/2001-TRU (Pt-I)]

S.Bajaj
Under Secretary to the Government of India

Note: The principal [Notification No. 120/2002-Customs](#), dated the 31st October, 2002, was amended *vide* [Notification No. 93/2006-Customs](#), dated the 7th September, 2006, published in the Gazette of India *vide* number G.S.R.539 (E), dated the 7th September, 2006.

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Notification No.13/2007-Customs

Dated: February 14, 2007

Subject: Continuation of Anti dumping duty for another one year on PHPG Base

Whereas, the designated authority vide notification No.15/31/2006-DGAD, dated the 6th December 2006, published in Part I, section 1 of the Gazette of India, Extraordinary, dated the 6th December 2006, has initiated review, in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) and in pursuance of rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the said Rules), in the matter of continuation of anti-dumping duty on D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base), originating in, or exported from People Republic of China, imposed vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No.122/2002-Customs, dated 31st October, 2002, published in the Gazette of India vide number G.S.R. 746(E), dated the 31st October, 2002 and has requested for extension of antidumping duty for a period of one year from the date of its expiry, in terms of sub-section (5) of section 9A of the said Customs Tariff Act, pending the completion of the review;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Act and in pursuance of rule 23 of the said Rules, the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), Notification No. 122/2002 - Customs, dated the 31st October, 2002, published in the Official Gazette vide number G.S.R. 746(E), dated the 31st October, 2002, namely:-

In the said notification, after paragraph 2, the following paragraph shall be inserted, namely:-

"3. This notification shall remain in force upto and inclusive of the 14th day of February, 2008, unless the notification is revoked earlier".

F.No.354/226/2001-TRU (Pt-I)

(S. Bajaj)
Under Secretary to the Government of India

Note: The principal [Notification No.122/2002-Customs](#), dated the 31st October, 2002, was amended vide [Notification No.101/2006-Customs](#), dated the 29th September, 2006, published in the Gazette of India vide number G.S.R. 604(E), dated the 29th September, 2006.

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Notification No.14/2007 - Customs

Dated: February 14, 2007

Subject: Continuation of Anti dumping duty for another one year on PHPG Base from Singapore

Whereas, the designated authority vide notification No.15/31/2006-DGAD, dated the 6th December, 2006, published in Part I, section 1 of the Gazette of India, Extraordinary, dated the 6th December, 2006, has initiated review, in terms of sub-section (5) or section 9A of the Customs Tariff Act, 1975 (51 of 1975) and in pursuance of rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the said Rules), in the matter of continuation of anti-dumping duty on D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base), originating in, or exported from Singapore, leviable under notification of the Government of India in the Ministry of Finance (Department of Revenue). No. 100/2006-Customs, dated 29th September, 2006, published in the Gazette of India vide number G.S.R. 603(E), dated the 29th September, 2006 and has requested for extension of antidumping duty for a period of one year from the date of its expiry, in terms of sub-section (5) of section 9A of the said Customs Tariff Act, pending the completion of the review;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Act and in pursuance of rule 23 of the said Rules, the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No, 100/2006- Customs, dated the 29th September, 2006, published in the Official Gazette vide number G.S.R. 603(E), dated the 29th September, 2006, namely:-

In the said notification, after paragraph 2, the following paragraph shall be inserted, namely:-

"3. This notification shall remain in force upto and inclusive of the 14th day of February, 2008, unless the notification is revoked earlier".

F.No.354/226/2001-TRU (Pt-I)

(S. Bajaj)
Under Secretary to the Government of India

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[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA,
EXTRAORDINARY, DATED THE 20TH FEBRUARY 2007]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 20th February 2007

Notification No 15/2007 -CUSTOMS

Subject: Imposition of Antidumping duty on Yarn

G.S.R.... (E). - Whereas, in the matter of import of fully drawn yarn or fully oriented yarn or spin drawn yarn or flat yarn of polyester (non-textured and non-POY) and other yarns (hereinafter referred to as the subject goods) falling under tariff items 5402 44 00 or 5402 47 00 (since substituted for the erstwhile tariff item 5402 43 00) of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported, from Indonesia, Republic of Korea, Malaysia and Chinese Taipei (hereinafter referred to as the subject countries), the designated authority in its preliminary findings *vide* notification No. 14/3/2005-DGAD, dated the 3rd July, 2006, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 3rd July, 2006, had come to the conclusion that –

- (i) the subject goods originating in or exported, from subject countries have been exported to India below their normal values;
 - (ii) the domestic industry has suffered material injury;
 - (iii) the injury has been caused to the domestic industry by dumped imports of subject goods originating in, or exported, from the subject countries;
- and had recommended imposition of provisional anti-dumping duty on imports of the subject goods of all grades, originating in, or exported, from the subject countries;

And whereas on the basis of the aforesaid findings of the designated authority, the Central Government had imposed provisional anti-dumping duty on the subject goods, *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue), No.82/2006–Customs, dated the 21st August, 2006, published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 21st August, 2006 *vide* G.S.R. No. 495(E), dated the 21st August, 2006;

And whereas the designated authority in its final findings *vide* notification No.14/3/2005 -DGAD, dated the 26th December, 2006, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 27th December, 2006, read with amendment No.14/3/2005-DGAD, dated 24th January, 2007, published in the Gazette of India, Extraordinary, Part I, section 1, dated the 24th January, 2007, has extended the scope of subject goods to include Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester falling under tariff item 5402 44 00 or 5402 46 00 of the First Schedule of the said Customs Tariff Act, has come to the conclusion that –

- (i) subject goods originating in, or exported from, subject countries have been exported to India below their normal value;
- (ii) the domestic industry has suffered material injury;

(iii) the injury has been caused to the domestic industry by dumped imports of subject goods originating in, or exported from, the subject countries;

And whereas, M/s H.K. Corporation, Republic of Korea, have furnished the price undertaking under rule 15 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, so as not to export subject goods below such price and the designated authority has accepted the price undertaking for specified product specifications as per the terms and conditions set out in the said undertaking;

And whereas the designated authority has recommended the imposition of definitive anti-dumping duty on imports of the subject goods originating in, or exported from, the subject countries, in order to remove the injury to the domestic industry;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9A of the said Customs Tariff Act, read with sub-section (5) of the said section 9A and rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid final findings of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table I below, falling under tariff item of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4), originating in the country as specified in the corresponding entry in column (5), and produced by the producers as specified in the corresponding entry in column (7), when exported from the country as specified in the corresponding entry in column (6), by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty equal to the amount as specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10) of the said Table I.

Table I.

S.N o.	Tariff headings	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester	Any	Indonesia	Any	M/s P.T. Mutu Gading Tekstil, Indonesia	M/s P.T. Mutu Gading Tekstil, Indonesia	Nil	MT	US \$
2	5402 44 00, 5404	Fully Drawn or Fully	Any	Indonesia	Any	M/s P.T. Mutu Gading	Any other than	490	MT	US \$

	46 00 or 5402 47 00	Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er				Tekstil, Indonesi a	above			
3	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Indon esia	Any	Any other than above	Any	49 0	MT	US \$
4	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Any other than Subje ct Count ries	Indon esia	Any	Any	49 0	MT	US \$
5	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Repub lic of Korea	Any	M/s H.K. Corpora tion, Korea	Any other than above	58 8	MT	US \$
6	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Repub lic of Korea	Any	M/s Hyosun g Corpora tion, Korea	M/s Hyosun g Corpora tion, Korea	64	MT	US \$
7	5402	Fully	Any	Repub	Any	M/s	Any	58	MT	US

	44 00, 5404 46 00 or 5402 47 00	Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er		lic of Korea		Hyosun g Corpora tion, Korea	other than above	8		\$
8	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Repub lic of Korea	Any	M/s Saeahan Industie s Inc, Korea	M/s Saeahan Industie s Inc, Korea	Nil	MT	US \$
9	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Repub lic of Korea	Any	M/s Saeahan Industie s Inc, Korea	Any other than above	58 8	MT	US \$
10	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Repub lic of Korea	Any	M/s Huvis Corpora tion, Korea	M/s Huvis Corpora tion, Korea	Nil	MT	US \$
11	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat	Any	Repub lic of Korea	Any	M/s Huvis Corpora tion, Korea	Any other than above	58 8	MT	US \$

		Yarn of Polyester								
12	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester	Any	Republic of Korea	Any	Any other than the Korean producers named above	Any	588	MT	US \$
13	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester	Any	Any other than Subject Countries	Republic of Korea	Any	Any	588	MT	US \$
14	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester	Any	Malaysia	Any	M/s Hyalon Corporation.	M/s Hyalon Corporation.	163	MT	US \$
15	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester Polyester	Any	Malaysia	Any	M/s Hyalon Corporation.	Any other than above	456	MT	US \$
16	5402 44 00, 5404	Fully Drawn or Fully	Any	Malaysia	Any	Any other than	Any	456	MT	US \$

	46 00 or 5402 47 00	Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er				above				
17	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Any other than Subje ct Count ries	Malay sia	Any	Any	45 6	MT	US \$
18	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Chine se Taipei	Any	M/s Nan Ya Plastics Corpora tion	M/s Nan Ya Plastics Corpora tion	40	MT	US \$
19	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Chine se Taipei	Any	M/s Nan Ya Plastics Corpora tion	Any other than above	39 0	MT	US \$
20	5402 44 00, 5404 46 00 or 5402 47 00	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er	Any	Chine se Taipei	Any	Any other than above	Any	39 0	MT	US \$
21	5402	Fully	Any	Any	Chine	Any	Any	39	MT	US

44 00, 5404 46 00 or 5402 47 00	Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyest er		other than Subje ct Count ries	se Taipei			0		\$
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Provided that no anti-dumping duty shall be imposed on subject goods produced and exported by M/s H.K. Corporation, Republic of Korea, the product specification of which is specified in column (2) of Table II below, when imported into India, if the free on board (FOB) Korea price of such imported goods is equal to or higher than the price specified in the corresponding entry in column (3) of the said Table II:

Table II.

S.No	Product specification.	Price (in US\$ per kg).
(1)	(2)	(3)
1	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester 75/36 SBR	1.40
2	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester 75/36 SD	1.46
3	Fully Drawn or Fully Printed Yarn or Spin Draw Yarn or Flat Yarn of Polyester 75/72 SD	1.46

Provided further that if M/s H.K. Corporation, Republic of Korea, export goods other than those specified in Table II, such products shall attract the applicable anti-dumping duty as specified in Table I.

2. The anti-dumping duty imposed under this notification shall be levied with effect from the date of imposition of the provisional anti-dumping duty, i.e. the 21st August, 2006, and shall be paid in Indian currency.

Explanation. - For the purposes of this notification, "rate of exchange" applicable for the purposes of calculation of anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers under sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act, 1962 (52 of 1962) and the relevant date for determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

[F.No.354/80/2006-TRU]

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY.

GOVERNMENT OF INDIA
MINISTRTY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, dated the 21st February, 2007.

Notification No.16 /2007 -Customs

Subject: Amendment in the Notifications earlier issued

G.S.R.98 (E). – In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table given below shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table.

TABLE

Sr. No.	Notification No. and Date	Amendment
(1)	(2)	(3)
1.	113/2003-CUSTOMS, dated the 22 nd July, 2003	In the said notification,- (1) in paragraph 1, for the words “ Foreign Trade Policy” the words , figures and brackets “the Special Economic Zones Act,2005 (28 of 2005) and the Special Economic Zones Rules, 2006” shall be substituted. (2) for the <i>Explanation</i> , the following Explanation shall be substituted, namely:- “ <i>Explanation.</i> – For the purpose of this notification ‘Special Economic Zone’ means Special Economic Zone as notified under section 4 of the Special Economic Zones Act, 2005(28 of 2005).”.

2	45/2005-CUSTOMS, dated the 16 th May,2005	In the said notification,- (i) for the words and figures “ the Foreign Trade Policy 2004-2009”, the words and figures “the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006” shall be substituted ; (ii) after the proviso the following proviso shall be inserted, namely:- “ Provided further that no such exemption shall be applicable to the following goods, namely: - (a) Microprocessor for computer, other than mother boards; (b) Floppy disc drive; (c) Hard disc drive; (d) CD-ROM drive; (e) DVD Drive; (f) USB Flash memory; (g) Combo drive (h) Cellular Phones, and (i) Radio trunking terminals.”. (iii) in the <i>Explanation</i> , for the words, figures, and bracket “section 76 A of the Customs Act, 1962(52 of 1962)”, the words , figure and bracket “ section 4 of the Special Economic Zones Act,2005(28 of 2005)” shall be substituted .
3	20/2006-Customs dated the 1 st March, 2006	In the said notification, in the Table, S.No 7 and the entries relating thereto shall be omitted.

[F.No. 305/2/2007-FTT]

ANUPAM PRAKASH,
Under Secretary to the Government of India.

Note:

1. [Notification No. 113/2003-CUSTOMS](#), dated the 22nd July, 2003 was published in the Gazette of India vide G.S.R572 (E), dated the 22nd July, 2003 and was amended by the following notifications-

- (1) [No. 129/2003- CUSTOMS](#), dated the 14th August, 2003 [G.S.R. 669 (E), dated the 14th August, 2003]
- (2) [No. 151/2003- Customs](#), dated the 14th October, 2003 [G.S.R. 813 (E), dated the 14th October, 2003]

- (3) [No.169/2003- CUSTOMS](#), dated the 29th November, 2003 [G.S.R. 916 (E), dated the 29th November, 2003]
 - (4) [No. 180/2003- CUSTOMS](#), dated the 31st December, 2003 [G.S.R. 980 (E), dated the 31st December, 2003]
 - (5) [No. 45 /2004- CUSTOMS](#), dated the 28th February, 2004 [G.S.R. 164 (E), dated the 28th February, 2004]
 - (6) [No. 50/2004- CUSTOMS](#), dated the 31st March, 2004 [G.S.R. 244 (E), dated the 31st March, 2004]
 - (7) [No. 58/2004- CUSTOMS](#), dated the 30th April, 2004 [G.S.R. 298 (E), dated the 30th April, 2004]
 - (8) [No.87/2004-CUSTOMS](#) dated the 6th September, 2004 [G.S.R.566 (E), dated the 6th September, 2004].
2. [Notification No. 45/2005-CUSTOMS](#) dated the 16th May, 2005 was published in the Gazette of India vide [G.S.R.318 (E), dated the 16th May, 2005].
 3. [Notification No. 20/2006-Customs](#), dated the 1st March, 2006 was published in the Gazette of India vide G.S.R 92 (E), dated the 1st March, 2006 and was amended by the following notifications-
 - (1) [No24/2006-CUSTOMS](#), dated the 6th March 2006 [G.S.R.140 (E), dated the 6th March, 2004].
 - (2) [No29/2006-CUSTOMS](#), dated the 20th March, 2006 [G.S.R.170 (E), dated the 20th March, 2006]
 - (3) [No79/2006-CUSTOMS](#), dated the 8th August, 2006 [G.S.R.467 (E), dated the 8th August, 2006]
 - (4) [No139/2006-CUSTOMS](#), dated the 30th December, 2006 [G.S.R.800 (E), dated the 30th December, 2006]

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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART-II, SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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New Delhi, the 22nd February, 2007.

NOTIFICATION No.17 / 2007-Customs

G.S.R. (E) In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.75/2005–Customs, dated the 22nd July, 2005, G.S.R. 500(E) dated the 22nd July, 2005, namely: -

In the said notification, -

- (i) at Serial number 1610, in column (2), for the existing entry, the entry “8443 19 10”, shall be substituted;
- (ii) at Serial number 1611, in column (2), for the existing entry, the entry “8443 19 20”, shall be substituted;
- (iii) at Serial number 1612, in column (2), for the existing entry, the entry “8443 19 30”, shall be substituted;

2. This notification shall come into force on the date of its publication in the Official Gazette.

[F.No.528/5/2006-Cus(TU)]

Anupam Prakash,
Under Secretary to the Government of India.

Note: The principal notification No. 75/2005-Customs, dated the 22nd July, 2005, was published in the Gazette of India, Extraordinary, vide G.S.R.500(E), dated the 22nd July, 2005 and was subsequently amended by notifications No.38/2006- Customs dated the 28th April 2006 and No. 137/2006-Customs, dated the 30th December 2006 vide [G.S.R. No.798(E), dated the 30th December 2006.

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FEMA UPDATES

- Liberalisation of Export and Import procedures

[HOME](#)



A. P. (Dir Series) Circular No. 33
February 28, 2007

To,
All Category - I Authorised Dealer Banks

Madam / Sir,

Liberalisation of Export and Import procedures

As announced in the Mid-term Review of Annual Policy for the Year 2006-07 (para 93), the Reserve Bank constituted an Internal Task Force to review the exchange and payments regime. The Task Force has suggested some rationalisation and procedural simplification in areas related to trade. Accordingly, in order to facilitate external trade and provide greater flexibility to the Authorised Dealer Category – I (AD Category - I) banks, the following relaxations have been made in the areas of exports and imports and foreign currency accounts:

A. EXPORTS

I. Extension of Time for Realisation of Export Proceeds

In terms of A. P. (DIR Series) Circular No. 20 dated January 28, 2002, read with A. P. (DIR Series) Circular No. 31 dated April 21, 2006, AD Category – I banks have been delegated powers to extend the period of realisation of export proceeds in certain cases beyond six months, upto a period of three months at a time, where the invoice value of the export does not exceed USD one million or its equivalent. It has now been decided to authorise AD Category - I banks to allow further extension of time and also to remove the ceiling of USD one million on the invoice value.

Accordingly, AD Category I banks may now extend the period of realization of export proceeds, beyond six months from the date of export, **up to a period of six months, at a time, irrespective of the invoice value of the export** subject to the following conditions :

- (a) The export transactions covered by the invoices are not under investigation by Enforcement Directorate / Central Bureau of Investigation or other investigating agencies,
- (b) The AD Category - I bank is satisfied that the exporter has not been able to realise export proceeds for reasons beyond his control,
- (c) The exporter submits a declaration that the export proceeds will be realised during the extended period,
- (d) While considering extension beyond one year from the date of export, the total outstanding of the exporter does not exceed USD one million or 10 per

cent of the average export realisations during the preceding three financial years, whichever is higher,

(e) The date up to which extension has been granted is indicated in the 'Remarks' column of the XOS statement as hitherto, In cases where the exporter has filed suits abroad against the buyer, extension may be granted irrespective of the amount involved / outstanding.

Cases which are not covered by the above instructions would require prior approval from the Regional Office of the Reserve Bank.

II. Write-off of Unrealised Export bills

In terms of A. P. (DIR Series) Circular No. 30 dated April 4, 2001 read with A. P. (DIR Series) Circular No. 40 dated December 5, 2003, Status Holder exporters are permitted to write-off outstanding bills upto an annual limit of 5 per cent of their average annual realisations during the preceding three calendar years, subject to certain conditions. Furthermore, all exporters, including Status Holder exporters, are allowed to write off 10 per cent of the export proceeds due during the calendar year, subject to certain conditions. With a view to rationalise the existing facility, it has been decided that Status Holder exporters may write-off outstanding export dues to the extent of (i) 5 per cent of their average annual realisation during the preceding three financial years **or** (ii) 10 per cent of the export proceeds due during the financial year, **whichever is higher**.

III. Repatriation of Funds in Case of On-site Software Contracts

In terms of A. P. (DIR Series) Circular No. 54 dated June 29, 2002, the overseas office / branch of software exporter company / firm is obliged to repatriate to India 100 per cent of the contract value of each off-site contract and at least 30 per cent of the contract value of each on-site contract. In order to increase the competitiveness in the Indian IT Sector, the requirement of repatriation of 30 per cent of the contract value in respect of on-site contracts by software exporter company / firm has been dispensed with. The company should, however, repatriate the profits of on-site contract after the completion of the said contract.

IV. Reduction in Invoice Value

In terms of para C.12 of A. P. (DIR Series) circular No. 12 dated September 9, 2000 read with A. P. (DIR Series) Circular No. 40 dated December 5, 2003, AD Category - I banks are allowed to approve reduction in the invoice value upto 10 per cent of the invoice subject to conditions mentioned therein. Further, in terms of para C.14 of A. P. (DIR Series) Circular No. 12 dated September 9, 2000, prior approval of Reserve Bank is not required if, after goods have been shipped, they are to be transferred to a buyer other than the original buyer in the event of default by the latter, provided the reduction in value, if any, involved does not exceed 10 per cent and the realisation of export proceeds is not delayed beyond the period of six months from the date of export. It has been decided to allow reduction in value up to 25 per cent of the invoice. Accordingly, AD Category – I banks may allow reduction in the invoice value upto 25 per cent of the invoice subject to the conditions mentioned in A. P. (DIR Series) Circular No. 12 dated September 9, 2000.

B. IMPORTS**Import Bills – Credit Report on the Overseas Supplier**

In terms of para A 12 (ii) of A. P. (DIR Series) Circular No. 106 dated June 19, 2003 read with A. P. (DIR Series) Circular No. 66 dated February 6, 2004, AD Category - I banks are required to obtain credit report on the overseas supplier from their banker / reputed credit agency before processing import bills received directly at the request of importer clients from the overseas supplier. Henceforth, credit report on the overseas supplier (where the import documents are received directly) need not be obtained in cases where the invoice value does not exceed USD 100,000, provided that the AD Category - I bank is satisfied about the bonafides of the transaction and track record of the importer constituent.

C. GENERAL**Different Time Base Prescribed in RBI Directives**

In the various Directions / Circulars / Notifications issued under FEMA from time to time, Reserve Bank has prescribed different time frames viz. calendar year, financial year, previous year, etc., for considering eligibility for various trade related facilities. **To simplify matters, henceforth, 'financial year' (April to March) is to be reckoned as time base for all transactions pertaining to trade related issues. To mitigate the mismatch in the time period due to change of time base from calendar / previous year to financial year, AD Category – I bank may, up to March 31, 2007 only, reckon the time base which is beneficial to its constituent/s.**

2. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

3. The directions in this circular have been issued under Sections 10 (4) and 11 (1) of the Foreign Exchange Management Act 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(M. Sebastian)

Chief General Manager

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CASE LAW

- Registrar of Companies vs. Kamal Infosys Ltd.

[HOME](#)



March 14, 2007

CASE LAW:

Registrar of Companies
vs.
Kamal Infosys Ltd.

Decided on: MARCH 14,2005
Decided by HIGH COURT OF ALLAHABAD

FACTS

Some companies and their directors were being prosecuted after investigation made by the C.B.I. for cheating several investors, banks and financial institutions through forgery, corruption and illegal means. Company petitions were filed by the Registrar of the Companies before this Court and the same were advertised in accordance with Rule 24 of the Companies (Court) Rules, 1959 and notices were issued to the respondents. Appointment of the Official Liquidator of the Company was also made and further directions had been issued to him. However, the said orders have subsequently been kept in abeyance. Consequently, the petitioner-ROC filed petitions for winding-up of those companies, including respondent No. 1, having its registered office at Lucknow. The respondent raised a preliminary objection regarding the jurisdiction of the Allahabad High Court to entertain the said petitions. The Single Judge of the High Court, while noticing that the issue of jurisdiction of the Allahabad High Court and its Lucknow Bench had been considered several times, referred the matter to the Division Bench.

HELD

Learned Senior Counsel, appearing for the Companies has submitted that the Hon'ble Apex Court has considered the issue of jurisdiction of the Allahabad High Court and its Lucknow Bench in a large number of cases, and it has always been held that the jurisdiction will depend upon the cause of action arising, partly or fully, within the respective territorial jurisdiction of the High Court and its Bench. The jurisdiction of the Lucknow Bench in Company matters had been excluded by Notification dated 15.7.1949 issued by the Hon'ble Chief Justice under the second proviso to Clause 14 of the United Provinces High Courts (Amalgamation) Order, 1948 (hereinafter called the Amalgamation Order). However, the same stood restored vide Notification dated 5.8.1975. Thus, the objections of the Companies should be allowed and the matter should be transferred to the Lucknow Bench for further proceedings till the winding up proceedings are completed.

As per the provisions of section 10, the jurisdiction in company matters lies with the High Court where the company has its registered office. Therefore, as all the companies were registered at Lucknow, the cases could have been filed only before the Lucknow Bench in ordinary circumstances. Subsection (3) further provides that for the purpose of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months, immediately preceding the presentation of the petition for 'winding-up'. The Hon'ble Supreme Court in

Hanuman Prasad Gupta v. Hiralal, AIR 1971 SC 206; and H.S. Jaya Ram v. Indian Credit and Investment Corporation of India Ltd., AIR 2000 SC 579, while dealing with company matters, held that the jurisdiction of the Court is to be determined only by examining the territorial jurisdiction of the Court where the Registered Office of the Company is situated.

The ROC and Official Liquidator had fairly conceded that the cause of action, either fully or partly, had not arisen within the territorial jurisdiction of the Allahabad High Court, but had arisen only within the territorial jurisdiction of the Lucknow Bench. However, the matter required to be examined, in the light of the notifications issued by the Chief Justice from time-to-time in exercise of the power under clause 14 of the Amalgamation Order, excluding or including the jurisdiction of the Lucknow Bench in the company matters.

The first proviso of the said Order enables the Chief Justice to fix the territorial jurisdiction of the Lucknow Bench. However, the second proviso confers the power to take away the jurisdiction of the Lucknow Bench in any case or class of cases arising in the said area, and to confer the same upon the Allahabad High Court. A large number of notifications have been issued in exercise of the power under the Amalgamation Order, particularly notifications dated 26-7-1948, 15-7-1949, 2-7-1954, 5-8-1975, 4-1-2003 and 14-1-2003. The issue of question of jurisdiction of the Lucknow Bench and the Allahabad High Court has been considered time and again by the Apex Court, as well as by the Allahabad High Court.

The jurisdiction of the Lucknow Bench of the Allahabad High Court would depend in whose jurisdiction the cause of action had arisen, partly or fully, and in case it had arisen partly within the territorial jurisdiction of the both, the litigant had a right to choose the forum of his choice. However, it remained undisputed that in a matter like the instant one, the Bench, within whose jurisdiction the company had its registered office, would have the jurisdiction to entertain the petition, unless the jurisdiction of the Lucknow Bench would stand excluded by issuing a notification, in exercise of the power under the second proviso to clause 14 of the Amalgamation Order. Thus, the said notifications required examination.

The Chief Justice, in exercise of his powers under the second proviso to clause 14 of the Amalgamation Order, by notification dated 15-7-1949, had withdrawn the jurisdiction of the Lucknow Bench to deal with the matters under the Act; but by notification dated 5-8-1975, the Chief Justice conferred the said jurisdiction under the Act upon the Lucknow Bench, up to the stage of winding-up.

In company matters, that Court has the jurisdiction in whose territorial jurisdiction, the company has the registered office. It is so necessary also for the reason that directors of a company may be prosecuted at hundreds of places, as in a given case, shareholders of the company may file complaints at different places throughout India, Section 10(3) clarifies the necessity further, as the company may change the location of its registered office. In the instant case, the registered office of the company was at Lucknow. The jurisdiction of the Lucknow Bench in company matters, ousted by the notification dated 15-7-1949, had been restored vide notification dated 5-8-1975, and subsequent thereto, the case was required to be decided by that Court. That position was crystal-clear from the notifications dated 5-8-1975, 4-1-2003 and 14-1-2003. The petitions

March 14, 2007

required to be returned to the petitioners, to be presented before the Lucknow Bench.

Consequently, the petition was not maintainable before the Allahabad High Court, as the registered office of the company was situated within the territorial jurisdiction of the Lucknow Bench.

[2007] 74 SCL 68 (ALL.)

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