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RESERVE BANK OF INDIA

Amendment to Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations ,2004.

RBI vide its Notification No.FEMA.359/2015-RB dated December 2, 2015, in exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 .

These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2015. They shall come into force from the date of their publication in the Official Gazette.

The proviso has been inserted after regulation 21(2) (ii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, which provides that the Reserve Bank may change / prescribe for the automatic as well as the approval route of FCCBs, any provision or proviso for issuance of FCCBs. The proviso reads as follows:-

"Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, change / prescribe for the automatic as well as the approval route of FCCBs, any provision or proviso for issuance of FCCBs."

Moreover, the proviso has been inserted after regulation 21(2) (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, which provides that the Reserve Bank may change / prescribe any provision or proviso for issuance of FCEBs. The proviso reads as under:-

"Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, change / prescribe any provision or proviso for issuance of FCEBs."

Amendment to Foreign Exchange Management (Manner of Receipt and Payment) Regulations ,2000.

RBI vide its Notification No.FEMA.357/2015-RB, dated December 7, 2015, in exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in partial modification of its Notification No. FEMA 14/2000-RB dated 3rd May, 2000, makes the following amendments to Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

These Regulations may be called the Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2015.They shall come into force on the date of their publication in the official Gazette.

In the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000, in the Regulation 5, after sub-regulation (2) (b) following has been added at (c), namely:

'Any other mode of payment in accordance with the directions issued by the Reserve Bank of India to authorised dealers from time to time.'

Regulation 5 deals with the "Manner of payment in Foreign Exchange". The regulation is as under:

1. *A payment in foreign exchange by an authorised dealer, whether by way of remittance from India or by way of reimbursement to his branch or correspondent outside India (other than Nepal and Bhutan) against payment for import into India, or against any other payment, shall be as mentioned below:*

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Group	*Manner of Payment*
1. *member countries in the Asian Clearing Union (except Nepal) namely, Bangladesh. Islamic Republic of Iran, Myanmar, Pakistan and Sri Lanka*	a. *payment for all eligible current transactions by debit to the Asian Clearing Union dollar account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the Asian Clearing Union dollar account of the authorised dealer maintained with the correspondent bank in the member country; and* b. *payment in any permitted currency in all other cases*
2. all countries other than those mentioned in (1).	a. *payment in rupees from the account of a bank situated in any country other than a member country of Asian Clearing Union or Nepal or Bhutan; or* b. *payment in any permitted currency*

[(1A) In respect of imports into India from Myanmar, payment may be made in any freely convertible currency or through the ACU mechanism to Myanmar.]

2. *In respect of import into India,*

a. *where the goods are shipped from a member country of Asian Clearing Union (other than Nepal) but the supplier is resident of a country other than a member country of Asian Clearing Union, payment may be made in a manner specified for countries in Group (2) of Regulation 5 ;*

b. *in all other cases, payment shall be made in a currency appropriate to the country of shipment of goods.*

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Amendment to Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.

- The Reserve bank of India vide it's Notification No.FEMA.358/2015-RB dated December 2, 2015 in exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), hereby makes the following amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
- These Regulations may be called the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2015.They shall come into force from the date of their publication in the Official Gazette

This proviso has been inserted in Schedule I, after paragraph 3 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, which provides that the Reserve Bank may, in consultation with the Government of India, prescribe for the automatic route *any provision or proviso regarding various parameters listed in paragraphs 1 to 3* in Schedule I *or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any or all of the existing proviso will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, prepayment, parking of ECB proceeds, reporting and drawal of loan,*

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refinancing, debt servicing, etc. The proviso reads as follows:

> *"4. Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, prescribe for the automatic route, any provision or proviso regarding various parameters listed in paragraphs 1 to 3 above of this Schedule or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any or all of the existing proviso will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, pre-payment, parking of ECB proceeds, reporting and drawal of loan, refinancing, debt servicing, etc."*

- *Moreover, the proviso has been inserted* in Schedule II, after paragraph 5, of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, which provides that *the Reserve Bank may, in consultation with the Government of India, prescribe for the approval route, any provision or proviso regarding various parameters listed in paragraphs 1 to 5 of the Schedule II or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any or all of the existing provisions will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, pre-payment, parking of ECB proceeds, reporting and drawal of loan, refinancing, debt servicing, etc. The proviso reads as follows:*

  > *"6. Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, prescribe for the approval route, any provision or proviso regarding various parameters listed in paragraphs 1 to 5 above of this Schedule or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any*

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or all of the existing provisions will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, pre-payment, parking of ECB proceeds, reporting and drawal of loan, refinancing, debt servicing, etc"

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Security Exchange Board of India

System-driven Disclosures in Securities Market .

SEBI vide its circular CIR/CFD/DCR/17/2015 dated December 1, 2015 issued in exercise of powers conferred by section 11(1) 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 circular specifies the disclosure requirements relating to acquisition, sale and pledge of securities under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") in order to bring in transparency and promote orderly conduct in the market. Since the Stock Exchanges, Depositories and Registrar and Share Transfer Agents ("RTAs") have adopted advanced systems and technologies, it has been decided to explore the possibility of disclosing such information based on these systems.

1. Implementation in phases: Since the entire information as required under the current disclosure obligations is not available in the current systems (e.g. details of instruments other than equity shares, PACs etc.), the proposed system shall be implemented in phases. In the first phase, the systems shall disclose the changes in shareholding of promoter/promoter group of the listed entities. The disclosures in the first phase shall pertain to acquisition/disposal of equity shares by promoters/promoter group based on specified thresholds under the SAST Regulations and PIT Regulations and pledge of equity shares by promoters/promoter group under the SAST Regulations.
2. Initially, this system would run in parallel with the existing system i.e. the promoters/promoter group shall continue to comply with the disclosure obligations as applicable to them.

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3. Based on the experience gained in the first phase, subsequent phase(s) would be implemented to include the information for non-promoters and instruments other than equity shares.
4. The listed entities, RTAs, Depositories and Exchanges shall make necessary arrangements in their systems such that the first phase is implemented from January 01, 2016. 6.
5. The procedure required for implementation of the first phase is provided at Annexure - A. 7.
6. The disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges.
7. The Depositories and Exchanges shall prescribe the detailed modalities for uploading and exchange of data with RTAs in order to maintain uniformity and consistency of data

The circular also mentions the procedure for the implementation of the regulations:

1. The first step would be to build an accurate database of the existing holdings at ISIN level of all the promoters / promoter group. The listed company through its RTA will be required to provide to the depositories the information about promoters and promoter groups of the companies. The information provided by the listed company to the RTA must be authenticated and shall be provided within 15 days from the date of this circular. The information provided by the RTAs to the depositories shall be in the manner prescribed by depositories and must also include the PAN of the promoter/promoter group. In respect of PAN exempt entities, the account numbers will be provided.
2. Based on the PAN/account numbers, the depositories will tag such demat accounts in their depository systems at ISIN level as of the promoter/promoter group.

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3. In case of any subsequent changes in the promoter or promoter group of the listed company, the company through RTA shall provide the information of the new promoter(s) to the depositories.
4. In respect of the identified promoters and promoter groups for an ISIN, the respective depositories will generate the required information and send it to the RTAs on a daily basis at the end of each working day.
5. The RTAs will then aggregate the dematerialised shareholding data received from both the depositories and the physical shareholding of the promoter/ promoter group. Based on the defined criteria as per the regulations (For e.g., aggregate holding of a promoter across both depositories and physical shareholding exceed a specified percentage or value), the RTAs will generate reports and provide it to the respective stock exchange(s). The stock exchanges shall then disseminate the data on its website in accordance with the respective regulations.
6. The RTAs may then check the disclosures made by the promoter entities as per the current regulatory requirements and match the same with the disclosure generated by the systems so that any discrepancies may be found and necessary action taken for rectification of the same. The Promoters or members of the Promoter Group must also take up the issue of discrepancy with the respective Stock Exchanges which may then be communicated to the respective RTA.

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Facility for Basic Services Demat Account (BSDA)

SEBI vide its Circular No. CIR/MRD/DP/ 20 /2015 dated December 11, 2015 in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market. The Circular deals with various facilities for Basic Services Demat Account (BSDA)

1. SEBI vide circular no. CIR/MRD/DP/22/2012 dated August 27, 2012 had introduced the facility of "Basic Services Demat Account" (BSDA) with limited services for eligible individuals with the objective of achieving wider financial inclusion and to encourage holding of demat accounts
2. Further, vide the aforesaid circular, the Depository Participants (DPs) were advised to provide an option to all the existing eligible individuals to convert their demat account into BSDA. So far, few demat accounts have actually been converted into BSDA during the last three years despite large number of demat accounts being eligible for conversion into BSDA.
3. In order to facilitate the eligible individuals to avail the benefits of BSDA, DPs are advised to convert all such eligible demat accounts into BSDA unless such Beneficial Owners (BOs) specifically opt to continue to avail the facility of a regular demat account.
4. The DPs shall assess the eligibility of the BOs at the end of the current billing cycle and convert eligible demat accounts into BSDA.
5. The Depositories are advised to:

a. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision as may be applicable / necessary; and

b. communicate to SEBI, the status of implementation of the provisions of this circular by the DPs in the Monthly Development Report.

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Outsourcing by Depositories

SEBI has vide circular CIR/MRD/DP/19/2015 dated December 9, 2015 in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Section 19 of the Depositories Act, 1996 in the interests of investors in securities and to promote the development of, and to regulate the securities market. This circular deals with outsourcing by depositories.

1. SEBI has vide circular CIR/MIRSD/24/2011 dated December 15, 2011 prescribed Guidelines on Outsourcing of Activities by Intermediaries. These guidelines list out certain principles for outsourcing to be followed by all the intermediaries registered with SEBI.
2. The Depository System Review Committee (DSRC) examined the outsourcing practice followed by the Depositories on various parameters. Based on recommendations by DSRC, the depositories are advised to ensure the following:

i. Depositories shall formulate and document an outsourcing policy duly approved by their Board based on the guidelines given below and the principles outlined in the SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

ii. Core activities of Depositories: Core and critical activities of depositories shall not be outsourced. The core activities of the depositories shall include but not limited to the following:

a. Processing of the applications for admission of Depository Participants (DPs), Issuers and Registrar & Transfer Agents (RTAs).
b. Facilitating Issuers/RTAs to execute Corporate Actions.
c. Allotting ISINs for securities.
d. Maintenance and safekeeping of Beneficial Owner's data.
e. Execution of settlement and other incidental activities for pay-in/ payout of securities.
f. Execution of transfer of securities and other transactions like pledge, freeze, etc.

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g. Provision of internet based facilities for access to demat accounts and submitting delivery instructions.

h. Ensuring continuous connectivity to DPs, RTAs, Clearing Corporations and other Depository.

i. Monitoring and redressal of investor grievances.

j. Inspection of DPs and RTAs.

k. Surveillance Functions.

l. Compliance Functions.

iii. Core IT (Information Technology) support infrastructure / activities for running the core activities of depositories shall not be outsourced to the extent possible.

iv. Due Diligence: The depositories shall conduct appropriate due diligence in selecting the third party to whom activity is proposed to be outsourced and ensure that only reputed entities having proven high delivery standards are selected.

v. Risk Management & Monitoring: Depositories shall ensure that outsourced activities are further outsourced downstream only with the prior consent of the depository and with appropriate safeguards including proper legal documentation/ agreement.

vi. Depositories shall ensure that risk impact analysis is undertaken before outsourcing any activity and appropriate risk mitigation measures like back up/ restoration system are in place.

vii. An effective monitoring of the entities selected for outsourcing shall be done to ensure that there is check on the activities of outsourced entity. Depositories shall strive to automate their processes and workflows to the extent possible which shall enable real time monitoring of outsourced activities.

viii. Audit: The outsourcing policy document shall act as a reference for audit of

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the outsourced activities. Audit of implementation of risk assessment and mitigation measures listed in the outsourcing policy document and outsourcing agreement/ service level agreements pertaining to IT systems shall be part of System Audit of Depositories.

3. The Depositories shall implement the provisions of this circular within three months from the date of this circular. The Depositories are advised to:

i. make amendments to the relevant Bye-Laws, Business Rules / Operating Instructions for the implementation of the above decision, as may be applicable/necessary

ii. disseminate the provisions of this circular on their website.

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Ministry of Corporate Affairs

Amendment to The Companies (Meetings of Board and its Powers) Rules,2014

The Central Government vide the Notification G.S.R (E) dated December 14, 2015, in exercise of the powers conferred under sections 173, 175, 177,l78, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013) makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules,2014.

- These rules may be called the Companies (Meetings of Board and its Powers) Second Amendments Rules, 2015.
- It shall come into force on the date of publication in the Official Gazette.
- After rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 the following rule shall be inserted which deals with all related party transactions requiring approval of the Audit Committee and the Audit Committee may give an omnibus approval for related party transactions proposed to be entered into by the company subjected to certain conditions. The rule reads as follows:

  "6A. Omnibus approval for related party transactions on annual basis: All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:

1. The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following namely:

a. Maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;

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b. The maximum value per transaction which can be allowed;

c. Extent and manner of disclosure to be made to the Audit Committee at the time of seeking omnibus approval;

d. Review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;

e. Transactions which cannot be subject to the omnibus approval by the Audit Committee.

2. The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval namely;

a. Repetitiveness of the transaction (in past or in future);

b. Justification for the need of the omnibus approval.

3. The Audit Committee shall satisfy itself on the need for the omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

4. The omnibus approval shall contain or indicate the following;

a. The name of related parties;

b. Nature and duration of the transactions;

c. Maximum amount of transaction that can be entered into;

d. The indicative base price or current contracted price and the formula for variation in the price, if any, and;

e. Any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transaction subject to their value not exceeding rupees one crore per transaction.

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5. Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.
6. Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.
7. Any other conditions as the Audit Committee may deem fit"

- Also Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014 shall be omitted.
- In rule 15, sub-rule (3) of the Companies (Meetings of Board and its Powers) Rules, 2014 , for the words "special resolution", whenever they occur, the word "resolution" shall be substituted.

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Amendment to Companies (Audit and Auditors) Rules, 2014.

The Central Government vide its notification G.S.R. 972(E) dated December, 2015, in exercise of the powers conferred by sub-section (12) of section 143 read with sub -section (1) of section 469 of the Companies Act, 2013 (18 of 2013), makes the following rules to amend the Companies (Audit and Auditors) Rules, 2014.

They shall come into force on the date of the publication in the Official Gazette.

For rule 13 of the Companies (Audit and Auditors) Rules, 2014, the following rule shall be substituted which deals with the performance of the duty of an auditor of a company to report to the Central Government, if he has any reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees. The rule also deals with the manner in which the auditor needs to report to the Central Government. The rule reads as follows:

"13. Reporting of frauds by auditor and other matters:

1. *If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.*
2. *The auditor shall report the matter to the Central Government as under:-*

a. *the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;*

b. *on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;*

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c. *in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;*

d. *the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;*

e. *the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and*

f. *the report shall be in the form of a statement as specified in Form ADT-4.*

3. *In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:*

a. *Nature of Fraud with description;*

b. *Approximate amount involved; and*

c. *Parties involved.*

4. *The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:*

a. *Nature of Fraud with description;*

b. *Approximate Amount involved;*

c. *Parties involved, if remedial action not taken; and*

d. *Remedial actions taken.*

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5. *The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively."*

In the Companies (Audit and Auditors) Rules, 2014 after rule 14 and before FORM NO.ADT-1, the word "Annexure" is to be inserted.

In the Form No.ADT-4 of the Companies (Audit and Auditors) Rules, 2014:

a. in line 3, for the word, figures and brackets "rule 13(4)", the word, figures, letter and brackets "rule 13(2)(f)" shall be substituted; and

b. in line 25, in item No. (10), for the word, figures and brackets "rule 13(1)", the word, figures, letter and brackets "rule 13(2)(a)" shall be substituted.

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Maharashtra Electricity Regulatory Commission.

Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015.

- MERC in exercise of the powers conferred by clause (h), (i), (j), (l), (m), (o), (y), (zd), (ze), (zf), (zg), (zh) and (zp) of sub-section (2) of Section 181 read with the proviso to sub-section (1) of Section 36, sub-clause (ii) of clause (d) of sub-section (2) of Section 39, second proviso to sub-clause (ii) of clause (d) of sub-section (2) of Section 39, sub-clause (ii) of clause (c) of Section 40, second proviso to sub-clause (ii) of clause (c) of Section 40, first proviso to Section 41, first proviso to Section 51, Section 61, sub-sections (2) and (5) of Section 62, sub-sections (1) and (3) of Section 64, Section 65 and clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, hereby makes the following Regulations called the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015.
- These Regulations shall be applicable to existing and future Generation Companies, Transmission Licensees, Distribution Licensees, Maharashtra State Load Despatch Centre (MSLDC), and their successors for determination of Aggregate Revenue Requirement, Tariff, and Fees and Charges of MSLDC in all matters covered under these Regulations from April 1st 2016 upto March 31st 2020.

Scope of Regulation:

i. For supply of electricity by a Generating Company, except from Renewable sources of energy, to a Distribution Licensee;

ii. For Intra-State transmission of electricity;

iii. For use of intervening transmission facilities;

iv. For Wheeling of electricity;

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v. For Retail supply of electricity ;

vi. For MSLDC, in terms of Fees and Charges ;

vii. For Surcharge in addition to the charges for wheeling under the first proviso to sub-section (*2*) of section 42 of the Act, in accordance with the Regulations of the Commission governing Distribution Open Access and Orders issued by the Commission ;

viii. For Additional surcharge on the charges for wheeling under sub-section (*4*) of Section 42 of the Act, in accordance with the Regulations of the Commission governing Distribution Open Access and Orders of the Commission :

Provided that the Commission shall determine such Tariff and Fees and Charges, having regard to the terms and conditions contained in **Parts E, F, G, H** and **I** of these Regulations, as may be applicable.

Petitions to be filed in the Control Period

a. Multi-Year Tariff Petition shall be filed by January 15, 2016

b. Mid-Term Review Petition shall be filed by November 30, 2017

c. True-up Petition for the second and third year of the Control Period shall be filed by November 30th, 2019

The Petitioner shall submit separate audited Accounting Statements along with the Petition for determination of Tariff or Fees and Charges and Truing-up under these Regulations.

Mid-term Review

The Generating Company or Licensee or MSLDC shall file a Petition for Mid-term Review and Truing-up of the Aggregate Revenue Requirement and Revenue for the Years 2015-16 and 2016-17, and provisional Truing-up for the Year 2017-18, by November 30, 2017

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Adherence to Tariff Order

1. No Tariff or part of any Tariff may ordinarily be amended more frequently than once in a year, except in respect of any changes expressly permitted under Z-factor Charge
2. If any Generating Company or Licensee recovers a price or charge exceeding the Tariff determined under Section 62 of the Act and in accordance with these Regulations, the excess amount shall be payable to the person who has paid such price or charge, along with interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period.
3. The Generating Company or Licensee shall submit periodic returns as may be required by the Commission, containing operational and cost data to enable it to monitor the implementation of its Order.

Approval of long-term/medium-term power purchase agreement/arrangement

Every long-term/medium-term agreement or arrangement for power procurement, including on a Standby basis, by a Distribution Licensee from a Generating Company or Licensee or from another source of supply, and any change to an existing agreement or arrangement shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall not be required for purchase of power from Renewable Energy sources at the generic/preferential tariff determined by the Commission for meeting its Renewable Purchase Obligation (RPO).

Additional power procurement

The Distribution Licensee may undertake additional power procurement during the year, over and above the power procurement plan for the Control Period approved by the Commission, in accordance with this Regulation.

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i. Where there has been an unanticipated increase in the demand for electricity or a shortfall or failure in the supply of electricity from any approved source of supply during the Year, the Distribution Licensee may enter into additional agreement or arrangement for procurement of power.

ii. Any variation, during the first or second block of six months of a Year, in the quantum or cost of power procured, including from a source other than a previously approved source, that is expected to be in excess of five per cent of that approved by the Commission, shall require its prior approval :

Provided that the **five per cent** limit shall not apply to variation in the cost of power procured on account of changes in the price of fuel for own generation or the fixed or variable cost of power purchase that is allowed to be recovered in accordance with Regulation 10.

Capital Cost and capital structure

Capital cost for a capital investment Project shall include:

a. the expenditure incurred or projected to be incurred, including interest during construction and financing charges, as admitted by the Commission after prudence check ;

b. capitalised initial spares subject to the ceiling rates specified in this Regulation ;

c. expenses incurred by the Licensee on obtaining right of way, as admitted by the Commission after prudence check ;

d. additional capitalisation determined under Regulation 24 ;

e. any gain or loss on account of foreign exchange rate variation pertaining to the loan amount availed up to the date of commercial operation, as admitted by the Commission after prudence check

The capital cost may include initial spares capitalised as a percentage of the Plant and Machinery cost up to the cut-off date, subject to the following ceiling norms :

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a. Coal based/lignite fired Generating Stations : 4.0%

b. Gas turbine/combined cycle Generating Stations : 4.0%

c. Hydel Generating Stations, including pumped storage hydel generating Stations

d. Transmission System and Distribution System : 4.0%

i. Transmission Line and Distribution Line - 1.0%

ii. Transmission Sub-Station and Distribution Sub-Station (green-field) : 4.0

iii. Transmission Sub-Station (brown-field) : 6.0%

iv. Series compensation devices and HVDC Sub-Station : 4.0%

v. Gas Insulated Sub-Station (GIS) : 5.0%

vi. Communication System : 3.5%

Debt-equity ratio

For a capital investment Scheme declared under commercial operation on or after April 1, 2016, debt-equity ratio as on the date of commercial operation shall be 70:30 of the amount of capital cost approved by the Commission under Regulation 23, provided that if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan for the Generating Company or Licensee or MSLDC for determination of Tariff.

Return on Equity

Return on equity for a Generating Company shall be allowed on the equity capital determined in accordance with Regulation 26 for the assets put to use, at the rate of 15.5 per cent per annum in Indian Rupee terms.

Foreign Exchange Rate Variation

The Generating Company or Licensee may hedge foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired for the generating Station or the transmission system or distribution system, in part or in full at its discretion.

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Contribution to Contingency Reserves

Where the Licensee has made a contribution to the Contingency Reserve, a sum not less than 0.25 per cent and not more than 0.5 per cent of the original cost of fixed assets shall be allowed annually towards such contribution in the calculation of Aggregate Revenue Requirement.

Delayed Payment Charge and Interest on Delayed Payment

In case the payment of bills of generation Tariff or transmission charges or MSLDC Fees and Charges by the Beneficiary is delayed beyond a period of 30 days from the date of billing, Delayed Payment Charge at the rate of 1.25% per month on the billed amount shall be levied for the period of delay by the Generating Company or the Transmission Licensee or MSLDC, as the case may be, notwithstanding anything to the contrary as may have been stipulated in the Agreement or Arrangement with the Beneficiaries.

Generation

The clauses specified under this Part of the Regulation shall apply to the determination of Tariff for supply of electricity to a Distribution Licensee from conventional sources of generation and hydel generating stations of capacity exceeding 25 MW

Components of Tariff

The Tariff for sale of electricity from a thermal power Generating Station shall comprise two parts, namely, Annual Fixed Charge and Energy Charge.

The Tariff for sale of electricity from a hydel Generating Station shall comprise two parts, namely, Capacity Charge and Energy Charge.

Norms of operation for Thermal Generating Stations

Target Availability for full recovery of Annual Fixed Charges shall be **85 per cent for all thermal Generating Stations**, except those covered under Regulation 44.2.

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Target Availability for full recovery of Annual Fixed Charges for the following Generating Stations of Maharashtra State Power Generation Company Ltd. (MSPGCL) shall be:

Particulars	Target Availability (%)
Koradi TPS	72.00
Khaperkheda TPS	85.00
Chandrapur TPS	80.00
Nashik TPS	80.00
Bhusawal TPS excluding Unit No. 4 and 5	80.00
Parli TPS excluding Unit No. 6 and 7	80.00

Provided that the Commission may revise the Availability norms for these Generating Stations in case any Renovation and Modernisation is undertaken.

Computation and Payment of Capacity Charges, Energy Charges and Lease Rent for Hydro Generating Stations

The Annual Fixed Charges of a Hydro Generating Station shall be computed on annual basis, based on norms specified under these Regulations, and recovered on monthly basis under Capacity Charge (inclusive of incentive) and Energy Charge, which shall be payable by the Beneficiaries in proportion to their respective share in the capacity of the Generating Station.

Transmission

Components of Tariff

The transmission charges for access to and use of the intra-State transmission system shall comprise any of the following components or a combination of the following components:

a. transmission system access charges ;

b. annual transmission charges

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c. per unit charges for energy transmitted ;

d. reactive energy charges.

Petition for determination of Provisional Tariff

A new Transmission Licensee shall file the Petition for determination of provisional Tariff, six months prior to the anticipated date of commercial operation of the transmission assets.

Norms for operation

Target availability for the Transmission Licensee shall be as under—

a. For full recovery of Annual Transmission Charges—

i. AC system : 98 per cent ;

ii. HVDC bi-pole links and HVDC back-to-back stations : 95 per cent ;

b. For Incentive consideration:

i. AC system : 99 per cent ;

ii. HVDC bi-pole links and HVDC back-to-back stations : 96 per cent ;

Note 1.—Recovery of annual transmission charges below the level of target availability shall be on pro-rata basis, and at zero availability, no transmission charges shall be payable.

Note 2.—The target availability shall be computed in accordance with procedure provided in the **Annexure-II** to the Regulations and be certified by MSLDC.

Income from Other Business

Where the Transmission Licensee has engaged in any Other Business under **Section 41** of the Act for optimum utilisation of its assets, an amount equal to **two-thirds** of the revenues from such Other Business after deduction of all direct and indirect costs attributed to such other Business shall be deducted from the Aggregate Revenue Requirement in calculating the Annual Transmission Charges of the Transmission Licensee.

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Grant Of Subsidies By State Government

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the Tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the Distribution Licensee/person affected by the grant of subsidy in the manner specified in this Regulation, with prior intimation to the Commission.

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Order of the Maharashtra Electricity Regulatory Commission in CASE No.56 of 2011 of Lloyds Metals & Energy Ltd v/s Maharashtra State Electricity Distribution Co. Ltd and Tata Power Company Ltd and Reliance Infrastructure Ltd and B.E.S.T Undertaking

- The Hon'ble Commission vide order dated December 17, 2015 had pronounced order in the case M/s. Lloyds Metals & Energy Ltd. (**"LMEL"**) versus Maharashtra State Electricity Distribution Company Limited and Ors. LMEL had commissioned a 30 MW capacity Cogeneration Power Plant based on industrial waste heat generated by its sponge iron Plant at Ghugus in Chandrapur District, Maharashtra in October, 2010. LMEL submitted that such Plants should, therefore, be welcomed on energy efficiency grounds, and also since such Plants prevent environmental pollution and avoid burning of coal to produce an equivalent quantum of electricity. LMEL filed a Petition on 29 March, 2011 citing these statutory provisions and seeking determination of tariff for supply of electricity from its industrial waste heat recovery Co-generation power Plant to Distribution Licensees in Maharashtra, and for fixation of Purchase Obligation for electricity produced from such Plants.

- In its Interim Order dated 29 December, 2011, the Commission stated that:

  The methodology for promoting fossil fuel based co-generation needs to be formulated and alternative methodology for encouraging such co-generation (such as PAT scheme) should also be given consideration. The Commission had emphasised upon the need to prepare a draft policy paper on fossil fuel based co-generation projects and the necessity for it to deliberate on the issue in its meetings.

  The Commission directed the Petitioner to implead Ministry of New and Renewable Energy Sources (MNRE) as a necessary party to its Petition so that the views of MNRE could be obtained and the Commission would be able to align its actions with those charted out by MNRE on "national" basis at "generic" level, instead of taking ad-hoc decisions valid only for the present case.

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The matter also needs to be discussed in the Forum of Regulators (FOR) in order to form an efficient methodology for evaluations of operations of such Plants on some common basis. The Commission observed that approaching the State Regulatory Commission by individual co-generators as above would involve a rigorous exercise in each case, wasteful in time and resources of several agencies, organisations and individuals as the process would involve sifting of tremendous amount of data and sometimes doing repetitive work.

The Commission is not in a position to determine or approve the tariff of co-generation Plants in the State on individual case to case basis, till the normative parameters as above are established by the Central Electricity Authority.

- In its Interim Order dated 29 December, 2011, the Commission declined to determine the tariff for LMEL's or other such Plants or enable sale of electricity to Distribution Licensees against the purchase obligation under Section 86 (1) (e) of the EA, 2003. The Commission stated that it is not in a position to determine or approve the tariff of such Cogeneration Plants on an individual basis till normative parameters are established by the Central Electricity Authority (CEA).
- LMEL filed an Appeal (No. 53 of 2012) before the Appellate Tribunal for Electricity (ATE) against this Interim Order. In its Judgment dated 2 December, 2013, the ATE rejected the main prayer of LMEL for fastening Distribution Licensees with procurement of power generated from fossil fuel-based Co-generation Plants against purchase obligations. Final Order in Case No. 56 of 2011 Page 4 of 5 However, the ATE stated that fossil fuel-based Co-generation needs to be encouraged in the interest of energy efficiency and grid security by other measures such as facilitating the sale of electricity from such sources, grid connectivity, etc.
- Considering the above ATE Judgment, LMEL filed an 'addendum Petition' before the Commission (numbered as Case No. 220 of 2014).
- At the hearing of Case No. 220 of 2014 on 3 September, 2015, the Commission asked LMEL why its Petition should be treated as an addendum to the Petition in Case No. 56 of 2011 as the prayers are entirely different. In response, LMEL submitted that it would withdraw its earlier Petition in Case No. 56 of 2011.

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- A hearing was held in the present Case on 3 November, 2015. The Parties were informed of the Commission's decision to constitute a two-Member Bench to hear and decide the Case. As recorded in the Daily Order, the Parties gave their consent to further hearing of the matter being in continuance of the earlier proceedings. LMEL submitted that the present Case may be disposed of in the light of the ATE Judgment dated 2 December, 2013 in Appeal No. 53 of 2012, with which MSEDCL (the Respondent present) agreed.

- **<u>Commission's Analysis and Ruling:-</u>**

1. **The ATE had dismissed Appeal No. 53 of 2012, filed by LMEL against the Commission's Interim Order dated 29 December, 2011, holding it to be "devoid of any merit".**
2. **LMEL filed an 'addendum Petition' with prayers different from those in the present Case and which is being dealt with by the Commission as Case No. 220 of 2014.**
3. **The underlying issues in both Cases are similar, and Case No. 220 of 2014 is being proceeded with separately in the light of the directions as mentioned in this order and in the context of the ATE's observations. The Commission also noted the submission made by LMEL at the hearing on 3 November, 2015. In this background, the Commission considers that no useful purpose would be served by prolonging the present proceedings, and that it would be appropriate to close this Case.**

The Petition of M/s Lloyds Metals and Energy Ltd. in Case No. 56 of 2011 stands disposed of accordingly.

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Warm Regards,

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