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MINISTRY OF CORPORATE AFFAIRS

General Circular no. 30/2014: Clarification on Related Party Transactions

The Ministry of Corporate Affairs (“MCA”) vide this [General Circular no. 30/2014](#) dated July 17, 2014, provides for clarifications on related party transactions governed by Section 188 of the Companies Act, 2013. The following are the clarifications provided by the Circular:

1. Scope of second proviso to Section 188 (1)

The proviso provides that no member of a company shall vote on a special resolution to approve the contract or arrangement, if such a member is a related party.

This clarification provides for the term ‘related party’ to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.

2. Applicability of Section 188 to corporate restructuring, amalgamations etc.

As per this clarification, transactions arising out of compromises, arrangements and amalgamations governed by specific provisions of the Companies Act, 1956 (“1956 Act”) or Companies Act, 2013 (“2013 Act”), will not attract the requirements of Section 188 of the 2013 Act.

3. Requirements of fresh approvals for past contracts under Section 188

Contracts entered into by companies in compliance with Section 297 of the 1956 Act, having come into effect before the commencement of Section 188 of the 2013 Act, shall not require fresh approval under the said section, until the expiry of the original term of such contracts.

Any modification made to such contracts, on or after April 1, 2014, must comply with the requirements of Section 188 of the 2013 Act.

For further information, please visit the hyperlink provided herein.

General Circular no. 32/2014: Clarification on Transitional Period for Resolutions passed under Companies Act, 1956

The Ministry of Corporate Affairs (“MCA”) vide this [General Circular No. 32/2014](#) dated July 23, 2014, provides for clarification on transitional period for resolutions passed under the Companies Act, 1956 (“1956 Act”).

1. During the financial year 2013-14, many companies have passed resolutions under the provisions of the 1956 Act, that were at different stages of implementation after the enforcement of the corresponding provision of the Companies Act, 2013 (“2013 Act”). Pursuant to many suggestions received by the MCA, it has issued the current clarificatory Circular.
2. This Circular clarifies that resolutions passed by companies between September 1, 2013 to March 31, 2014, in accordance with the relevant applicable provisions of the 1956 Act, can be implemented as per the 1956 Act, notwithstanding the repeal of the relevant provisions subject to conditions that :-
 - Implementation of resolution commenced before April 1, 2014;
 - This transitional arrangement will be available upto expiry of 1 year from passing of resolution or 6 months from commencement of the corresponding provision in 2013 Act, whichever is later. Any amendment of the resolution must be as per the provisions of the New Act.

For further information, please visit the hyperlink provided herein.

Notification: Section 203 of Companies Act 2013

Section 203 of the Companies Act, 2013 (“the Act”), provides for the appointment of Key Managerial Personnel whereby every company which belongs to the prescribed class or classes of companies may appoint key managerial personnel.



The Ministry of Corporate Affairs (“MCA”) vide this [Notification dated July 25, 2014](#), classifies companies for the purpose of the second proviso to sub-section (1) of Section 203 of the Act.

It notifies that public companies having a paid-up share capital of ₹100 Crore or more and with an annual turnover of ₹1,000 crore or more, engaged in multiple businesses and having appointed a Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to Section 203 (1) of the Act.

The paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

For further information, please visit the hyperlink provided herein.



DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION

Press Note no. 5 of 2014: Streamlining the Procedure for Grant of Industrial License

Superseding all earlier Press notes, the Department of Industrial Policy and Promotion vide this [Press Note no. 5 of 2014](#), extends the validity of Industrial License from two years to three years. It applies to cases where license holders have not commenced production of the items within three years of issue of the license. This extension comes as a measure to smoothen the doing of business.

Guidelines for the extension of validity of Industrial Licenses are briefly mentioned hereunder:

1. An application must be made to the concerned Administrative Ministry for the extension of license, 60 days prior to the expiry of three years period, or as specified for commencement of commercial production. Justification for late applications shall have to be submitted along with the applications, along with the application, in cases where the applications are not received in time.
2. The application must have endorsements of particulars of any amendment such as change in name of the company, change in license capacity, part shifting, change in premises etc., if any.
3. Each application must require the comments of the Ministry of Home Affairs and the concerned State Government and thereafter be considered for extension of validity. The Ministry of Home Affairs may only be consulted in cases of change in Board of Directors or key personnel, and in cases of extension of validity of Industrial Licenses in the Defence and Explosive Sector.
4. The following requisites must be fulfilled by the applicant at the time of application for extension:
 - a. Land should have been acquired either under ownership or on lease for a minimum period of 30 years.



- b. The construction on the projects must have commenced.
 - c. Order for plant and machinery for the project should have been placed.
5. Cases involving transfer, suspension or cancellation of licenses in the intervening period shall not be considered for extension.
6. Licenses may be renewed for a period of two years. For Industrial licenses whose commercial production does not begin within a period of five years from the issue of license shall be treated as lapsed.
7. Grant of extension of Industrial License shall be with the approval of the concerned Joint Secretary of the Administrative Ministry without reference to the Licensing Committee.

For further information, please visit the link provided herein.

THE RESERVE BANK OF INDIA

Master Circular no. 4/2014-15: Acquisition and Transfer of Immovable Property in India by NRI, PIO & Foreign Nationals

This **Master Circular no. 4/2014-15** dated July 1, 2014 is a compilation of the regulatory framework and instructions issued by the Reserve Bank of India (“RBI”).

The acquisition of immovable property in India by Non-Resident Indians (“NRIs”), Persons of Indian Origin (“PIOs”) and Foreign Nationals of Non-Indian Origin is regulated by Section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA 21/2000-RB dated May 3, 2000.

The following is an insight to the Master Circular:

1. Acquisition and Transfer of Immovable property in India by:

A. NRI

i. Purchase and Transfer of Immovable Property

An NRI can acquire any immovable property by way of purchase in India other than agricultural land, plantation property and farm house.

An NRI may transfer any immovable property in India to a person resident in India. He may transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian Citizen resident outside India or a PIO resident outside India.

In addition to the above, this Master Circular also makes provisions for the mode of payment for acquisition of Immovable property by a NRI and further states that a NRI who has purchased residential or commercial property under general permission is not required to file any documents with the Reserve Bank.



B. PIO

i. Purchase and Transfer of Immovable Property

A PIO can acquire any immovable property by way of purchase in India other than agricultural land, plantation property and farm house.

A PIO may transfer any immovable property in India to the exclusion of agricultural land, plantation property and farm house, by way of sale to a person resident in India.

He may transfer any agricultural land, plantation property and farm house in India, by way of gift or sale to a person resident in India, who is a citizen of India.

Lastly, he may transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India, who is a citizen of India or to a Person of Indian Origin resident outside India.

In addition to the above, this Master Circular makes provisions for the mode of payment for acquisition of Immovable Property in India by a PIO and further states that a PIO who has purchased residential or commercial property under the general permission, is not required to file any documents with the Reserve Bank.

2. Acquisition of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals

Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, provides for purchase and sale of immovable property other than agricultural land, plantation property, farm house in India, by Foreign Embassy, Diplomat and Consulate General subject to certain provisions.



3. Acquisition of Immovable Property by person resident outside India for carrying on a permitted activity

A person resident outside India who has established a Branch, Office or other place of business, excluding a Liaison Office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may acquire immovable property in India necessary for or incidental to carrying on such activity subject to certain provisions.

He may also transfer immovable property acquired as above by way of mortgage to an Authorised Dealer as security for any borrowing.

4. Repatriation of Sale Proceeds of Immovable Property

A. Immovable property acquired by way of purchase

- i. Prior permission of the RBI is required for a person referred to in sub-section (5) of Section 6 of the Foreign Exchange Management Act, 1999 (“**FEMA**”) to repatriate outside India, the sale proceeds of any immovable property referred to in that sub-section.
- ii. For the sale of immovable property (except agricultural land, plantation property, farm house) in India, by a person resident outside India who is a citizen of India or a person of Indian origin, the Authorised Dealer may allow repatriation of the sale proceeds outside India, subject to the fulfilment of certain conditions such as acquisition of property to be in accordance with the provisions of the foreign exchange law at the time or the provisions of these Regulations, the conditions as to the amount to be repatriated and lastly, the restriction upto two properties in case of residential property.

B. Immovable property acquired by way of inheritance/legacy/out of Rupee Funds

- i. A NRI, PIO may remit an amount, not exceeding US \$ 1,000,000 (US Dollar One million only) per financial year out of the balances held in NRO accounts / sale proceeds of assets by way of purchase / the



assets in India acquired by him by way of inheritance / legacy / out of Rupee funds subject to certain conditions.

- ii. This Master Circular also makes provisions for remittance in cases of deeds of settlement made either by the parents or close relatives of an NRI or PIO as defined by the Companies Act, 1956.

5. Refund of Purchase Consideration

Refund of application, earnest money, purchase consideration made by the house building agencies, seller on account of non-allotment of flat, plot, cancellation of bookings, deals for purchase of residential, or commercial property, together with interest, if any, may be allowed by the Authorised Dealers subject to certain conditions.

6. Prohibition on acquisition or transfer of immovable property in India by citizens of other countries.

Prior permission of the RBI is required for the acquisition or transfer of immovable property in India, other than lease, not exceeding five years, for citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan.

7. Purchase of Immovable Property in India by a Foreign National of Non- Indian Origin resident outside India

- A. Lastly, the Master Circular makes provisions for the acquisition and transfer of immovable property by:
 - i. Foreign nationals of non-Indian origin resident outside India,
 - ii. Foreign nationals of non-Indian origin except citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, and
 - iii. Foreign nationals of non-Indian origin having acquired immovable property in India by way of Inheritance.

For further information, please visit the link provided herein.



Master Circular no. 6/2014-15: Miscellaneous Remittance Facilities for Indian Residents

The Reserve Bank of India (“RBI”) issued **Master Circular no. 6/2014-15** (“**Master Circular on Miscellaneous Remittances**”) dated July 1, 2014, whereby providing Miscellaneous Remittance Facilities for Residents in accordance with Section 5 of the Foreign Exchange Management Act, 1999 (“**FEMA**”).

The Master Circular on Miscellaneous Remittances provides *inter alia* for instructions on the following subjects:

1. Sale of Exchange
2. Medical Treatment
3. Cultural Tours
4. Private Visits
5. Business Visits
6. Period of surrender of foreign exchange
7. Unspent Foreign Exchange
8. Remittances for Tour Arrangements
9. Payment in Rupees
10. Issue of Guarantee- Import of services
11. Liberalised Remittance Scheme of USD 125,000 for Resident Individuals
12. Documentation
13. Endorsement on Passport
14. International Credit Cards
15. International Debit Cards
16. Store Value Cards/Charge Cards/Smart Cards
17. Redemption of Unutilised balance on prepaid travel cards
18. Acquisition of foreign securities under Employees Stock Option (ESOP)
19. Income tax clearance
20. Facility to grant loan to NRI/ PIO close relative under Liberalised Remittance Scheme

For further information, please visit the link provided herein



Master Circular no. 7/2014-15: Establishment of Liaison/Branch/Project Offices in India by Foreign Entities

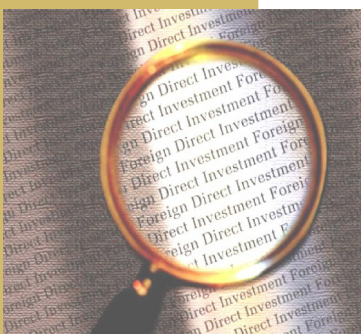
The Reserve Bank of India (“RBI”) issued **Master Circular no. 7/2014-15** (RBI/2014-2015/11) (“**Master Circular on Establishment of Liaison etc.**”) dated July 1, 2014, whereby providing for Establishment of Liaison, Branch, Project Offices in India by Foreign Entities.

1. This Master Circular on Establishment of Liaison etc. has provided for every foreign body corporate intending to open a Liaison Office (“LO”), Branch Office (“BO”) in India to obtain prior permission from the RBI.
2. The applications must be submitted in Form FNC and shall be considered by RBI under two routes:
 - a. **Automatic Route:** Whereby the foreign entity falls in the category of 100% Foreign Direct Investment (“FDI”) being allowed under the automatic route.
 - b. **Government Route:** Whereby the business of the foreign entity does not fall under the category of 100% FDI.

The additional criteria considered by RBI while granting permission for LO and BO are as under:

- a. In case of a BO there must be a past track record of profits in the immediately preceding five years in the home country.
- b. In case of a LO there must be a past track record of profits in the immediately preceding three years in the home country.

The Net Worth as per the last audited Balance Sheet or Account statement certified by a Registered Accountant or Practitioner must be not less than USD 100,000 or equivalent and USD 50,000 or equivalent for a BO and LO respectively.



3. The application forwarded through an Authorized Dealer (“AD”) Category –I to the Chief General Manager in charge must include the English version of the translation of the Certificate of Incorporation (“COI”) and Memorandum of Association (“MOA”) and Articles of Association (“AOA”) attested by the Indian Embassy and Notary in the country of registration along with the latest Audited balance Sheet of the entity. In case entities do not fulfil the eligibility criteria they can submit Letter of Comfort to the parent company provided the parent company fulfils the criteria. Proper due diligence in respect of the applicants background, KYC and nature and location of activity must be ascertained.

A. LIAISON OFFICE:

1. LO, also known as Representative Office, are permitted to undertake only liaison activities such as:
 - a. Communication between the Head Office in the foreign country and the parties in India. However, they may not earn any income in India. Their expenses are met through foreign remittances.
 - b. Collecting market information and providing the same to the Head Office.
 - c. Representing the parent or group companies in India.
 - d. Promoting technical and financial collaborations between the parent and group companies etc.
2. The LO of foreign insurance companies and banks have to obtain permission of the Insurance Regulatory and Development Authority (“IRDA”) and Department of Banking Operations and Development (“DBOD”) of the RBI. However, the LO’s of the Non-Banking Financial Companies (“NBFC”) and the ones involved in the construction and development sectors cannot be granted extension. Hence, they are converted either into Joint Ventures (“JV”) or Wholly Owned Subsidiary (“WOS”).



B. BRANCH OFFICES:

1. The foreign entities engaged in manufacturing or trading activities are allowed to set up BOs in India with the prior approval of the RBI. They may undertake the following activities:
 - a. Export/import of goods,
 - b. Rendering professional or consultancy services,
 - c. Carrying out research work, promotion of technical collaborations between the Indian companies and parent overseas group company,
 - d. Representing the foreign company as buying and selling agent in India,
 - e. Rendering services in IT and development of software in India,
 - f. Foreign airline and shipping company,
 - g. Rendering of technical support to products supplied by parent or group companies.

2. Retail trading activities, manufacturing or processing activities are not allowed for a branch office in India. The profits earned by the BO are freely remittable from India on payment of taxes.

C. BO IN SPECIAL ECONOMIC ZONE ("SEZ") AND FOREIGN BANKS:

1. RBI has granted permission for setting up of SEZ for undertaking manufacturing and service activities provided:
 - a. Units wherein 100% FDI is permissible
 - b. Units that comply with part XI of the Companies Act, 1956
 - c. Units that function on stand-alone basis.

2. In case of winding up, the remittances shall be proceeded by the AD-I bank along with the required documents. Though the Foreign Bank does not require any permission under FEMA for setting up of a BO, the permission has to be sought from DBOD of the RBI.



D. REPORTING BY THE BRANCH OFFICE/LIAISON OFFICE:

1. On becoming functional by setting up LO and BO, the new entities must notify the Director General of Police of the State of its functionality, within five working days.
2. Additionally, provisions have also been made for the filing of AACs and Audited Balance Sheets by BOs and LOs within stipulated time limits.
3. The AD-I bank shall scrutinize all the AAC received check if all the terms and conditions as stipulated by the RBI are complied with. In case of any discrepancies, the Auditor or the AD-I bank may report the same to the Regional office of the RBI.

E. CLOSURE OF BO/LO:

1. In the event of closure of the BO, LO the company must approach the AD-I Bank along with the documents as provided herein under:
 - a. Copy of the RBI permission obtained from the regulators for establishing LO/BO.
 - b. Auditors Certificate bearing the details in which the remittances was arrived and the statement of Assets and Liabilities and the manner of disposal of assets, liabilities that include the liabilities like gratuity and their benefits to employees, the income that has been earned from the sources outside India has remained unrepatriated to India.
 - c. NOC and Tax clearance certificate from the Income Tax Authority.
 - d. That no legal proceedings are pending in the courts of India.
 - e. Other Documents if any, specified by RBI while granting approval.
 - f. Report from Registrar of Companies for compliance with the Companies Act, 1956.

F. PROJECT OFFICE:

1. The RBI has granted permission to foreign entities to set up Project Offices (“PO”) in India on condition of having a secured contract from Indian Com-



pany on the grounds mentioned herein below:

- a. The project must be funded directly by way of inward remittance from abroad, or
- b. The project must be funded by a bilateral or multilateral International Financing Agency, or
- c. The project must have been cleared by an Appropriate Authority, or
- d. A company or any such entity in India awarding that the contract has been granted Term Loan by the Public Financial Institution (“PFI”) or bank in India for the project.

However, in the event that the criteria are not met, the foreign entity must approach the Central Office of RBI for approval.

G. OPENING OF FOREIGN CURRENCY ACCOUNT:

1. For the purposes of opening a foreign currency account, the AD-I banks may open a non-interest bearing foreign currency account for PO in India.

The same may be subject to the following conditions:

- a. PO established in India with prior approval of the RBI and such other approval from the concerned Project Sanctioning Authority concerned.
- b. The contract specifically provides for payment in foreign currency.
- c. Every PO is allowed to open two foreign currency accounts; one denominated in USD and the other in the home currency
- d. The debits from the account shall be for the purpose of payment of project related expenses and credits as foreign currency receipts
- e. The responsibility to check whether the debits and credits to these accounts are in accordance with the approved project expenditure shall be the responsibility of the AD-I bank and the accounts shall be under the scrutiny of the Concurrent Auditor.
- f. The closure of the foreign currency accounts shall be only at the



Completion of the project.

2. The intermittent remittances may be permitted by the AD-I banks during pending winding up/completion of project provided the following bonafides of the transaction are provided:
 - a. The PO must have submitted an Auditors/ Chartered Accountants Certificate to the effect of meeting the liabilities including Income tax etc.
 - b. The PO must have provided an undertaking that the remittance shall in no way affect the completion of the project and in case of any shortfall in the project, the same shall be met by inward remittances.
 - c. Inter project transfers shall include prior permission of the jurisdictional Regional Office of the RBI.

H. REPORTING REQUIERMENTS:

1. The new entities after becoming functional by setting up PO have to within five working days submit to the Director General of Police of the state that the office has been set up.
2. The foreign entity that has set up a PO in India must furnish its incorporation details to the Regional Office of RBI, through AD-I bank.

I. OTHER CONDITIONS APPLICABLE TO BO/PO/LO IN INDIA:

1. No citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau may, without the permission of the RBI, establish BO, PO, LO or other place of business. However, entities from Nepal are allowed for establishing LO in India. BO, POs are permitted to acquire immovable properties by purchasing their own or by carrying out activities. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not permitted to acquire immovable properties without RBI approval.
2. BO, LO, PO are permitted to open non-interest bearing INR current ac-



counts in India from their Authorized dealers.

3. Only assets can be acquired by the LO/BO/PO and no intangibles can be acquired from the foreign remittances. While transferring the assets, all applicable taxes have to be paid. Transfers shall be allowed from the AD-I bank when the foreign entity intends to close the operations in India and all credits to account on such transfer is permissible.
4. The BO's are permitted to remit outside India the profit after providing for the taxes along with the certified copy of the balance sheet and the profit and loss account of the relevant year along with the Chartered Accountant's certificate. A term deposit of not exceeding 6 months can be provided for by the AD-I Bank to the branch or the office only if the bank is satisfied that the deposit is out of surplus funds and that the funds will be utilized by the branch/office within a period of 3 months from its maturity.



For further information, please visit the link provided herein

Master Circular no. 8/2014-15: Remittance Facilities for Non-Resident Indians/Persons of Indian Origin/Foreign Nationals

The Reserve Bank of India ("RBI") issued **Master Circular no. 8/2014-15** ("**Master Circular on Remittance Facilities**") dated July 1, 2014, whereby providing Remittance Facilities for Non-Resident Indians ("**NRIs**"), Persons of Indian Origin ("**PIO**") and Foreign Nationals. It provides for a consolidation of existing instructions on this subject.

This Master Circular on Remittance facilities provide *inter alia* for instructions on the following subjects:

1. Remittance facilities for NRIs, PIOs and Foreign Nationals
2. Definition of NRI and PIO
3. Remittance of current income



4. Remittance of assets by a foreign national of non-Indian origin
5. Remittance of assets by NRI and PIO
6. Remittance of Salary
7. Repatriation of sale proceeds of residential property purchased by NRIs and PIO out of foreign exchange
8. Facilities for students
9. Income-tax clearance
10. International Credit Cards

For further information, please visit the link provided herein

Master Circular no. 9/2014/15: Compounding of Contraventions under FEMA, 1999

The Reserve Bank of India (“RBI”) vide this [Master Circular no 9/2014-15](#) dated July 1, 2014, provides for the consolidation of existing instructions on Compounding of Contraventions under the Foreign Exchange Management Act, 1999 (“**FEMA, 1999**”), whereby an applicant may seek the compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the Act.

The instructions provided by the Master Circular are summarised herein below:

1. General

- a. Section 13 of FEMA, 1999, provides for the penalties for persons in contravention of the provisions of the Act, or any rule, regulations, notification, direction or order issued in the exercise of the powers under this Act, or in contravention of the conditions subject to which an authorisation is issued by the RBI.



Section 15 of FEMA, 1999 provides for the power to permit compounding of contraventions by the Compounding Authority (“CA”).

As per Rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the CA is empowered to compound contraventions with regard to the sum involved in such contravention.

- b. The responsibility of administering compounding of contravention, except contraventions under Section 3(a) of FEMA, 1999, has been placed with the RBI by the Government of India, in consultation with RBI. In the light of the above, Foreign Exchange (Compounding Proceedings) Rules, 2000 have been framed empowering the RBI to compound contraventions under FEMA, 1999.

B. Compounding Powers

- a. This Master Circular empowers the RBI with the compounding of contraventions of all the Sections of FEMA, 1999, to the exception of Section 3 (1) of the Act. It also empowers the Directorate of Enforcement (“DoE”) to exercise powers of compounding under Section 3(a) of FEMA, 1999 which primarily deals with Hawala transactions.

C. Delegation of Powers

- a. For the facilitation of operational convenience, all Regional Offices of the RBI (except Kochi and Panaji) are delegated the power to compound the following contraventions of FEMA, 1999, without any limit on the amount of contravention:
 - i. Delay in reporting inward remittance received for issue of shares.
 - ii. Delay in filing form FC(GPR) after issue of shares.
 - iii. Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
 - iv. Violation of pricing guidelines for issue of shares.
 - v. Issue of ineligible instruments such as non- convertible debentures, partly paid shares, shares with optionality clause, etc.



- vi. Issue of shares without approval of RBI or FIPB respectively, wherever required.
- b. Regional Offices of Kochi and Panaji are empowered to compound contraventions subject to a ceiling on the amount on the contraventions.

4. Process of Compounding

- a. An application for compounding of contravention under FEMA, 1999 may be submitted to the CA in the format provided in the Foreign Exchange (Compounding Proceedings) Rules, 2000. The same may be done either through a memorandum or suo motu on becoming aware of the contravention.
- b. The applicant must also furnish details of other documents relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment etc. and other such documents as applicable, for the furtherance of completing the compounding process within the time frame.
- c. All applications for compounding of contraventions of the particulars as mentioned in the Circular may be submitted by the companies/individuals directly to the concerned Regional Office along with the requisite prescribed fee.
- d. On receipt of the application for compounding, the CA is to conclude the proceedings and issue an order within 180 days from the date of the receipt of the completed application for compounding, subject to a call for additional information, record or any other relevant document to be submitted within a period specified by the CA. Non-submission of such information or documents may result in rejection of the application.
- e. The applications will be examined in terms of sub-rule (1) of Rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000.
- f. The compounding application may be disposed of either by issuance of a Compounding Order specifying the provisions of FEMA, 1999 or any other rule, regulation, notification, direction or order, or where there is further



investigation required, RBI may refer the same to the DoE pursuing necessary action.

5. Scope and Manner of Compounding

- a. This Circular lays down the indicative factors which are taken into consideration for passing of the Compounding Order and for arriving at the quantum of sum on payment of which contravention shall be compounded.

6. Issue of the Compounding Order

- a. The Applicant is given an opportunity of personal hearing for further submissions of supporting documents within a specified period. The contravener or its authorized representative can choose not to appear in person or make any submissions before the CA for personal hearing. The CA will proceed with the processing of the compounding application on the basis of information and documents available in the application for compounding.

7. Post-compounding procedure

- a. The Circular makes provisions for the means of payment of the sum for which the contravention is compounded as specified in the Order.
- b. Failure to pay the same within the specified time shall be deemed as against the applicant, as never having made an application for compounding of any contravention.

8. Pre-requisites for Compounding process

- a. In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded.
- b. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was pre-



viously compounded shall be deemed to be a first contravention.

- c. This Circular also highlights miscellaneous provisions for cases of compounding of contraventions such as requirement of obtaining approvals from the Government, return of applications etc.

For further information, please visit the link provided herein.

Master Circular no. 13/2014-15: Import of Goods and Services

The Reserve Bank of India (“RBI”) issued **Master Circular no. 13/2014-15** (RBI/2014-15/4) (“**Master Circular on Import**”) dated July 1, 2014, whereby providing a consolidation of existing instructions on the Export of Goods and Services from India.

This Master Circular on Import provides for the instructions on the following subjects:

1. Introduction
2. General Guidelines for Imports:
 - a. General Guidelines
 - b. Form A-1
 - c. Import Licenses
 - d. Obligation of Purchaser of Foreign Exchange
 - e. Time Limit for Settlement of Import Payments
 - f. Import of Foreign Exchange / Indian Rupees
 - g. Third Party Payment for Import Transactions
3. Operational Guidelines for Imports:
 - a. Advance Remittance
 - b. Interest on Import Bills



- c. Remittances against Replacement Import
- d. Guarantee for Replacement Import
- e. Import of Equipment by Business Process Outsourcing (“BPO”) Companies for their overseas sites
- f. Receipt of Import Bills/Documents by the Importer Directly from overseas suppliers
- g. Evidence of Import
- h. Issue of acknowledgement
- i. Verification & Preservation
- j. Follow up for Import Evidence
- k. Issue of Bank Guarantee
- l. Import of Gold
- m. Import of other Precious Metals
- n. Import Factoring
- o. Merchanting Trade

For further information, please visit the link provided herein.

Master Circular no. 14/2014-15: Export of Goods and Services

The Reserve Bank of India (“RBI”) issued **Master Circular no. 14/2014-15** (RBI/2014-15/5) (“**Master Circular on Export**”) dated July 1, 2014, whereby providing a consolidation of existing instructions on the Export of Goods and Services from India.

This Master Circular on Export provides *inter alia* for instructions on the following subjects:

1. General Guidelines for Exports
 - a. Exemption from declarations





- b. Manner of receipt and payment
- c. Realisation and Repatriation of Export Proceeds
- d. Foreign Currency Account
- e. Diamond Dollar Account
- f. Exchange Earners' Foreign Currency Account
- g. Setting up of Offices Abroad and Acquisition of Immovable Property for Overseas Office
- h. Advance Payments against Exports
- i. EDF/SDF Approval for Trade Fair/Exhibitions abroad
- j. EDF/SDF approval for Export of Goods for re-imports
- k. Part Drawings /Undrawn Balances
- l. Consignment Exports
- m. Opening / Hiring of Ware houses abroad
- n. Direct dispatch of documents by the exporter
- o. Invoicing of Software Exports
- p. Short Shipments and Shut out Shipments
- q. Counter-Trade Arrangement
- r. Export of Goods on Lease, Hire, etc.
- s. Export on Elongated Credit Terms
- t. Export of goods by Special Economic Zones ("SEZ")
- u. Project Exports and Service Exports
- v. Export of Currency
- w. Forfaiting
- x. Exports to neighbouring countries by Road, Rail or River
- y. Border Trade with Myanmar
- z. Repayment of State Credits
- aa. Counter –Trade Arrangements with Romania

2. Operational Guidelines for AD Category -1 Banks

- a. Operational Guidelines for AD Category – I banks
- b. Citing of Specific Identification Numbers
- c. EDF/SDF/SOFTEX procedure



- d. EDF Form (Erstwhile GR and PP Form)
- e. Mid-Sea Trans-Shipment of catch by Deep Sea Fishing Vessels
- f. SDF
- g. SOFTEX Forms
- h. Random verification
- i. Certification for EEFC Credits
- j. Consolidation of Air Cargo/ Sea Cargo
- k. Delay in submission of shipping documents by exporters
- l. Check-list for Scrutiny of Forms
- m. Return of Documents to Exporters
- n. Handing Over Negotiable Copy of Bill of Lading to Master of Vessel/
Trade
- o. Representative
- p. Export Bills Register
- q. Follow-up of Overdue Bills
- r. Reduction in Invoice Value on Account of Prepayment of Usance Bills
- s. Reduction in Invoice Value in other cases
- t. Export Claims
- u. Change of buyer/consignee
- v. Extension of Time
- w. Write-off of export bills
- x. Write off in cases of Payment of Claims by ECGC and private insurance
- y. Companies regulated by Insurance Regulatory and Development Authority ("**IRDA**")
- z. Write-off - Relaxation
- aa. Shipment Lost in Transit
- bb. 'Netting off' of export receivables against import payments – Units in
Special Economic Zones.
- cc. Set-off of export receivables against import payables
- dd. Agency Commission on Exports
- ee. Refund of Export Proceeds
- ff. Exporters' Caution List

For any further information please, visit the link provided herein.



Master Circular no. 38/2014-15: Directions on NBFCs

The Reserve Bank of India (“RBI”) issued Master Circular no. DNBS.(PD) CC.No. 395/03.10.38/2014-15 (RBI/2014-15/43) (“**Master Circular on NBFC-MFI**”) dated July 1, 2014, whereby issuing directions to Non-Banking Financial Company - Micro Finance Institutions (“**NBFC-MFI**”).

1. The NBFC-MFI has been defined as a non-deposit taking NBFC which is other than a company that falls under Section 25 of the Companies Act, 1956 (subject to fulfilment of conditions mentioned therein).
2. The RBI, vide this Master Circular on NBFC-MFI, provides for a Regulatory framework for NBFC –MFIs, laying down Entry Point Norms for Existing NBFCs as well as New Companies.
3. Furthermore, provisions have also been made for Capital Adequacy Norms, Asset Classification and Provisioning Norms such as:
 - a. Every new NBFC-MFI must maintain a capital adequacy ratio Of Tier I and Tier II Capital which shall not, at any time, be less than 15% of the aggregate risk weighted assets. The total of the Tier II capital shall not exceed 100% of Tier I Capital.
 - b. With effect from April 1, 2013, all NBFC-MFIs must adopt asset classification and provisioning norms as given in the Non-Banking Financial (Non-Deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.
 - c. This Master Circular on NBFC-MFI also makes provisions for transparency in Interest providing inter alia, for the following:
 - i. The pricing of the loan shall including three components namely, interest charge, processing charge and insurance premium including the administrative charges thereof.
 - ii. No penalty on delayed payments.



- iii. No security deposit or margin to be collected from the borrower
- iv. There should be a standard form of loan agreement, etc.
- d. Furthermore, provisions have also been made for Multiple Lending, Over-borrowing and Ghost Borrowers.
- e. Ensuring compliance with conditionalities has been given equal importance by way of the following provisions:
 - i. Every NBFC-MFI must be a member of at least one Credit Information Company (“CIC”) as provided under the CIC Regulation Act, 2005.
 - ii. Provide accurate and timely data and ensure compliance with the certain conditions pertaining to the membership of SHG/ JLG, levels of indebtedness and sources of borrowing.
- f. As regards Non-Coercive Methods of Recovery, the Master Circular on NBFC-MFI also provides for a Code of Conduct that must be followed by all NBFC-MFI for recruitment, training and supervision of field staff. The Code of Conduct must, inter alia, include the Guidelines of Fair Practices issued to the NBFCs.
- g. With respect to Corporate Governance, the Master Circular on Corporate Governance must be made applicable to NBFC-MFIs.
- h. Lastly, this Master Circular on NBFC-MFI makes it mandatory for every NBFC to provide a Statutory Auditors Certificate (“SAC”) at the end of every financial year. It is also mandatory for NBFC-MFI to become a member of at least one Self –Regulatory Organization (“SRO”) which is recognized by the Reserve Bank.

For further information, please visit the link provided herein.



Circular no. 4: Issue/Transfer of Shares or Convertible Debenture

The Reserve Bank of India (“RBI”) vide [Circular no. 4 of 2014 \(RBI/2014-15/129\)](#) dated July 15, 2014, provides for Issue and Transfer of Shares or Convertible Debentures - Revised pricing guidelines.

The existing pricing guidelines in respect of transfer, issue of shares and for exit from investment in equity shares with or without optionality clauses of listed/unlisted Indian companies have been reviewed to facilitate greater freedom and flexibility to the parties concerned under the FDI framework. This FDI Circular provides for new pricing guidelines.

The following are a gist of the new pricing guidelines:

1. Listed Companies

- a. The Securities and Exchange Board of India Guidelines (“SEBI Guidelines”) shall govern the issue and transfer of shares including:
 - i. Compulsorily convertible preference shares and
 - ii. Compulsorily convertible debentures.
- b. The Foreign Direct Investment (“FDI”) instruments with optionality clauses shall continue to be governed by the pricing guidelines in accordance with Circular no. 86 dated January 9, 2014.

2. Unlisted Companies

- a. Internationally accepted pricing methodology shall now be used for the issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures, with or without optionality clauses. Hence, non-resident investors are not guaranteed any assured exit price at the time of making such investments. They shall exit at a fair price at the time of exit, subject to the requirement of an applicable lock-in period.

3. An Indian company taking on record any transfer by sale, of its shares or convertible debentures from a resident to a non-resident and vice versa, shall disclose the required particulars of the same in its balance sheet for the financial year in which



such transaction took place.

4. This FDI Circular also provides for a tabular comparison between existing and revised provisions for the following:
 - a. Issue of Shares to Non-Residents,
 - b. Transfer by Resident to Non-Resident, and
 - c. Transfer by Non-resident.
5. These directions shall come into effect from the date of the publication of the relative Notification in the Official Gazette.

For further information, please visit the link provided herein.

RBI Circular on Issue of Long Term Bonds by Banks

Pursuant to the Union Budget 2014-2015, presented on July 10, 2014, the Reserve Bank of India (“RBI”) has with a view to aid infrastructure companies and affordable-housing projects, issued norms for long term bonds by banks, vide this [Circular no. DBOD.BP.BC.No.25 / 08.12.014 / 2014-15](#) dated July 15, 2014.

Banks can now issue long term bonds with a minimum maturity of seven years to raise resources for lending to long term projects in infrastructure sub-sectors and affordable housing.

The norms issued by RBI vide this Circular are summarised herein below:

1. Type of bond

The instrument shall be fully paid, redeemable and unsecured, and would rank pari-passu along with other uninsured, unsecured creditors.

2. Currency of issue

The bonds are to be denominated in Indian Rupee.



3. Maturity period

The minimum maturity period for long term bonds shall be seven years.

4. Amount

There will be no restriction on the quantum of such bonds to be issued by banks. Only Bonds that are used to incrementally finance long term projects in infrastructure and loans for affordable housing will have regulatory incentives.

However, if the same are acquired from other banks and financial institutions, prior approval of RBI will be necessary for it to be reckoned for regulatory services.

5. Credit eligible for regulatory services

Provisions are also made for the method of computation of the eligible credit to infrastructure and affordable housing.

6. Compliance with reserve requirements

These bonds will not be subject to Cash Reserve Ratio (“CRR”) and Statutory Liquidity Ratio (“SLR”) as a consequence to being exempted from computation of Net Demand and Time Liabilities (“NDTL”). However, the exemption will be applicable subject to a ceiling of the eligible credit provided for in the Circular.

The method of computation of the same has been provided in the Circular.

7. Priority Sector Lending Norms

The method of computation has also been provided for eligible bonds for Adjusted Net Bank Credit (“ANBC”) for the purpose of Priority Sector Lending (“PSL”).

8. Miscellaneous requirements

Lastly, the Circular makes provisions for other requirements such as rate of interest, method of issue, cross-holding, reporting requirements, review, housing loans eligible under priority sector lending etc.

For further information, please visit the hyperlink provided herein.



ELECTRICITY

APTEL: Ajmer Vidyut Vitaran Nigam Ltd & Ors. Vs. Central Electricity Regulatory Commission and Ors

The current Interim Application **IA no. 172 of 2014 in Appeal no. 91 of 2014**, have been filed by the Applicants seeking the stay of Impugned Orders passed by the Central Electricity Regulatory Commission (“**CERC**”) granting compensatory tariff to power plants of Coastal Gujarat Power Ltd. and Adani Power Ltd (“**the Respondent Generating Companies**”). This came as a consequence to a Regulation by the Indonesian Government which wedged the price of imported coal from Indonesia which was used at these power plants.

The Appeals were filed by Ajmer Vidyut Vitaran Nigam Ltd and Ors. (“**Appellants**”) as a result of the Order of Hon’ble CERC dated February 21, 2014, pursuant to the Report of a Commission set up by Hon’ble CERC comprising of the Appellants, the Respondent Generating Companies and independent experts. The Hon’ble CERC, by its order allowed compensatory tariff to be paid by the Appellants to the Respondent Generating Companies thereby vitiating the tariff decided upon under the competitive bidding process under Section 63 of the Electricity Act, 2003 (“**the Act**”); acting retrospectively.

The Appeal is a consequence of the Hon’ble CERC Order dated February 21, 2014 on the grounds that the same have been passed without jurisdiction and contradictory to the provisions of the Electricity Act. It is during the pendency of these Appeals the present Interim Applications, seeking for the stay of the operation of the said Order dated July 21, 2014, have been filed.

From an array of issues raised by the Appellants, the Hon’ble Appellate Tribunal for Electricity (“**APTEL**”) considered it important to highlight the main issue to be dealt with as regards this Interim Application. The main issue being Regulatory Jurisdiction of CERC, i.e. for the lack of applicability of “Force Majeure” and “Change in Law”, Hon’ble CERC cannot alter the Tariff adopted under Section 63 of the Act in the name of compensatory tariff, thereby affecting the competitive bidding process.



The Hon'ble APTEL observed that there is no prima facie case for its intervention at the interim stage to grant the stay of the Order. Although during the pendency of the appeals, it was pertinent to ensure that generation of power at these power plants is not affected due to financial constraints.

However, on account of the burden that the Appellants have to bear for the payment of arrears ordered to be paid by the Hon'ble CERC, Hon'ble APTEL granted partial stay.

Consequently, posting the main Appeals for hearing on August 19, 2014, the Hon'ble APTEL passed the following Interim Order:

- a. The Appellants is directed to make current payments in accordance with the Order of the Hon'ble Commission. Arrears from March 2014 to May 2014 to be paid in six equal installments from end of July 2014 onwards.
- b. The Generating Company is directed to keep an account of the amount received by them from the Applicants as compensatory tariff, subject to the outcome of the Appeals.
- c. The retrospective direction ordered by the Hon'ble CERC need not be complied with pending disposal and outcome of the Appeals.

For further information, please visit the link provided herein.

MERC: Maharashtra State Electricity Distribution Company Limited vs. Kalika Steel & Alloys Pvt Ltd. and Ors

In the matter of Maharashtra State Electricity Distribution Company Limited vs. Kalika Steel and Alloys Pvt Ltd and Ors. dated July 17, 2014 in **Case no. 105 of 2013** before the Maharashtra Electricity Regulatory Commission ("**MERC**")

Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**") has filed the present petition for review of the MERC Order dated July 16, 2013 in Case no. 88 of 2012 ("**Original Petition**") filed by Kalika Steel & Alloys Pvt Ltd ("**Respondents**"). The Hon'ble MERC, in the Original Petition, ruled in favour of the present Respondents and ordered MSEDCL to refund to the Respondents the amount of difference between the tariff



charged (continuous supply) and the tariff applicable (non-continuous supply) with interest at the applicable bank interest rate on account of interrupted supply of electricity by way of outage, tripping and load shedding. It is pertinent to note that the Respondents are consumers of MSEDCL under the HT-1 Continuous Supply category requiring continuous and uninterrupted power supply.

In this present Review Petition filed by MSEDCL, Hon'ble MERC considered the heavy financial burden on MSEDCL on account of the refund payable by it coupled with interest and the prospect of other consumers demanding similar refunds in the future, and held that MSEDCL must reimburse the Respondents the amount of actual loss suffered by them. However, the delay in filing the Original Petition by the present Respondents has led to increased financial burden on MSEDCL. Hence, Hon'ble MERC has held that MSEDCL must refund the amount in full, without any interest, and the same shall be adjusted in 12 monthly instalments.

MERC Issues Distribution Open Access Regulations, 2014

The Hon'ble Maharashtra Electricity Regulatory Commission ("MERC") vide Notification dated June 25, 2014, introduced the new Distribution Open Access Regulations, 2014 ("2014 Regulations") containing certain sweeping changes. The 2014 Regulations repeal the erstwhile MERC (Distribution Open Access) Regulations, 2005.

To receive a brief analysis prepared by us on the 2014 Regulations, please send us an email on the email id provided on the last page of Eternity: Law Apprise.



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