ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

ETERNITY:LAW APPRISE

*Private Circulation Only JUNE 2015

INSIDE THIS ISSUE:

THE SECURITIES AND EXCHANGE BOARD OF INDIA

Clarification on grant of registration as a Foreign Portfolio Investor (FPI) to Registered Foreign Venture Capital Investors (FVCI).

Security and exchange Board of India ("**SEBI**") vide its Circular CIR/IMD/FIIC/05/2015 dated June 12, 2015 clarified to any restrictions/ conditions on applicants, holding registration as a FVC, from obtaining registration as a FPI, as The SEBI (Foreign Portfolio Investors) Regulations, 2014 ("FPI Regulations") as well as the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") do not expressly prohibit FVCI from holding registration as a FPI.

It was clarified that a Designated Depository participant (DDP) may consider an applicant, holding FVCI registration, for grant of registration as an FPI subject to the following:

a. The applicant complies with the eligibility criteria as prescribed under the FPI Regulations;

INSIDE THIS ISSUE:

b. The funds raised, allocated and invested must be clearly segregated for both the registrations;

c. Separate accounts must be maintained with the custodian for execution of trades. However, such an applicant shall have same custodian for its activities as FPI and FVCI;

d. The securities held under FVCI and FPI registrations should be clearly segregated;

e. Reporting of transactions must be done separately according to the conditions applicable under the specific registration;

f. All the conditions applicable to the entity under the respective registrations must be complied with at the level of the segregated funds and activities with respect to the specific registrations;

g. The investment restrictions as applicable to FPI, in terms of Regulation 21 of FPI Regulations and SEBI Circular No. CIR/IMD/FIIC/20/2014 dated November 24, 2014 shall be applicable;

h. The applicant does not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1) (f) of FPI Regulations.

For further information, please visit the link provided herein

Requirements specified under SEBI (Share Based Employee Benefits) Regulations , 2014

SEBI vide Circular No. CIR/CFD/POLICY CELL/2/2015 dated June 16, 2015 provides for Requirements specified under SEBI (Share Based Employee Benefits) Regulations, 2014 ("SEBI Regulations, 2014")

SEBI Regulations, 2014 provides for certain process/ disclosures requirements to be specified by SEBI.

REQUIREMENTS UNDER SEBI REGULATIONS, 2014:-

1. Regulation 3(3) – Minimum Provisions in Trust Deed:- The Trust Deed shall include the following**:-**

   a. Details of the trust
   b. Power and duties of trustee (s)
   c. Provisions on dissolution of the trust
   d. Trust Deed shall provide that it is the duty of the trustees to act in interest of employees who are beneficiaries of the trust
   e. Other clauses necessary for safeguarding the interests of the beneficiaries

2. Regulations 5(3) – Terms and conditions of schemes to be formulated by the Compensation Committee

   The Compensation Committee is required to formulate the terms and conditions of the schemes which shall include the following provisions:-

   a. Quantum of option, share or benefit per employee and in aggregate under a scheme.

   b. Conditions under which shares or benefits as the case may be, may vest in employees and may lapse in case of termination of employment for misconduct and the period within which the employee can exercise options

c. The specified time within which the employee shall exercise the vested option in the event of termination or resignation and right of employee to exercise all the options

d. Grant , vesting and exercise of shares. Options in case of employed who are on long leave

e. Procedure for cashless exercise of options

3. Regulations 6(2)- contents of the explanatory statement to the notice and resolution for shareholding meeting

The Explanatory statement to the notice and the resolution pro posed to be passed for the schemes in general meeting shall include the following information:--

a. Brief description of the scheme

b. The total number of options, shares or benefits to be granted

c. Classes of employees entitled to participate and be beneficiaries in the scheme

d. Requirements of vesting and period of vesting and the maximum period within which the options/benefits shall be vested

e. Exercise price and period

f. The appraisal process for determining the eligibility of employees for the scheme

g. Maximum number of options , shares to be issued per employee and in aggregate

h. Whether the scheme is to be implemented and administered directly by the Company or trust and whether it involves the new issue of shares by the company or secondary acquisition by trust or both and the maximum percentage of secondary acquisition that can be made by the trust for the purpose of the scheme

i. the method which the company shall use to value its options

4. Regulation 10 (b) – Information required in the statement to be filed with stock exchange

Description of Schemes

a. Authorised and Issued Share Capital of the Company as on date of Institution of the scheme/ amendment of the scheme

b. Validity period of the scheme

c. Date of notice of AGM/EGM for approving/ amending the scheme for ap proving grants under regulation 6 (3) of SEBI Regulations, 2014

d. Identity of classes of persons eligible under the scheme

e. Total number of shares reserved under the scheme and number of shares entitled under the grant and the total number of grants to be made

f. Maximum number of shares to be granted per employee per grant

g. Lock-in period ,vesting period and exercise period under the scheme

h. Specified time period within which vested options are be exercised in the event of termination or resignation of an employee or in case of death of employee

i. Details of the variation made to the scheme along with the rationale there-for and details of the employees who are beneficiary of such variation.

5. Regulation 10 (c)- Format of notification for issue of shares

6. **Regulation 14 - Disclosures by the board of directors**

a. The board of directors shall disclose material change in the scheme and whether the scheme is in compliance with the regulations

b. Details related to Employee Stock Option Scheme ("ESOS")

c. A description of each ESOS including general terms and conditions of each ESOS including:-

d. Date of Shareholders approval

e. Total number of options approved under ESOS

f. Vesting requirements

g. Exercise price or pricing formula

h. Maximum term of options granted

i. Sources of shares

j. Variation in terms of options

k. Method used to account for ESOS- intrinsic or fair value

l. Option movement during the year ("ESOS")

m. Weighted average exercise prices and fair values of options shall be disclosed separately for options whose exercise price equals or exceeds or is less than the market price of the stick

n. Employee wise details
o. Details related to SAR (Stock Appreciation Right)
p. Details related to General Employee Benefit ("GEB") and Retirement Benefit Scheme ("RBS")

7. Regulation 14 - Disclosures Document

a. Statement of Risks
b. Information about the Company
c. Salient features of the Scheme

For further information, please visit the link provided herein

Ministry of Corporate Affairs

Clarification under section 74 which pertains to repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013.

The Ministry of Corporate Affairs ("**MCA**") vide General Circular No. 09/ 2015 dated June 18, 2015 has clarified under sub-section (4) of section 73 which deals with Prohibition on acceptance of deposits from public and subsection (2) of section 74 which deals with Repayment of deposits, etc., accepted before commencement of the Act.

Further clarification is also given regarding the explanation appearing below Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014. The conditions subject to which a company would be deemed to have complied with the requirements laid down in Section 7a(1)(b) of the Companies Act, 2013 which states that Companies can repay deposits accepted prior to 1st April, 2014 in accordance with the terms and conditions for which the deposits had been accepted. The circular also states that depositor can file application with the Company Law Board if the Company fails to repay deposits accepted by it. Company can also file for extension of time for repayment of deposits accepted before the commencement of the Act.

Further, the Registrar of Companies can prosecute against a Company if it fails to comply with the Rules as to repayment of deposits accepted under provision of the Companies Act 2013 as well as Companies Act 1956.

For further information, please visit the link provided herein

Exemptions to Section 8 companies (Non-Profit Organisations) from applicability of certain provisions of the Companies Act, 2013

MCA vide Notification dated June 5, 2015 granted exemptions to Section 8 companies (Non-Profit Organisations) from applicability of certain provisions of the Companies Act, 2013.

The following sections of the companies act are not applicable to section 8 companies.

a. Section 2 (24) This means any person other than defined in Section 2(1) (c) of the Company Secretaries Act 1980 may be a secretary of such Company.
b. Section 2 (68) & (71) According to exemptions, requirement of minimum paid up share capital not apply to such Company.
c. Under Section 2 (96) a new proviso has been inserted which states that a Company in general meeting may make some directions for directors to decide time, date and place of next annual general meetings and directors shall follow these directions.
d. Section 118 which pertains to Minutes of Meeting shall not apply to a not for profit company as a whole except that minutes, may be recorded within thirty days of the conclusion of every meeting.
e. Section 136(1) which deals with the right of member to receive copies of Financial statements, the period for sending the financial statements to members before the annual general meeting has been reduced from twenty one days, to fourteen days.
f. Section 149 which deals with the Board of Directors, section 149 (1) and the first proviso to sub-section (1) will not be applicable which deals with the requirement of having board of directors and a specified minimum number of directors will not be applicable to such companies also, there will be no upper limit on the number of directors.
g. Section 149 (4) (5) (6) (7) (8) (9) (10) (11) (12) & (13) and section 150 and section 152(5) of the Act and proviso to it shall not apply to such Companies, all the provisions relating to the qualifications and appointment of Independent directors pursuant to the provisions of the new Act will not apply to such a company.

h. Section 160 which deals with the Right of persons other than retiring directors to stand for directorship will not apply to a not for profit company if its articles provide for election of directors by ballot if such election by ballot is not provided in the articles, Section 160 shall apply.

i. Section 165(1) will not apply to such Companies the said section deals with Number of Directorship, and states that no person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.

j. Section 173 of the Act which deals with Meetings of the Board states that such Companies shall hold one meeting with in every 6 calendar months, however for other Companies need to have atleast four Board Meetings in a year.

k. Section 174 (1) which deals with Quorum for meetings, Quorum requirements have been changed for such companies. Now the Quorum is either eight members or twenty five per cent of its total strength whichever is less. Minimum members present should not be less than two members.

l. Under Section 177 (4) the requirement of having an Independent Director in Audit Committee of such Company has been done away with.

m. Section 178 which deals with Nomination and Remuneration Committee and Stakeholders Relationship Committee will not apply to a not for profit company.

n. Section 179 which pertain to certain powers of the Board, the Board of such Companies can now by circulation instead of at a meeting, decide to borrow monies, to invest the funds of the company, to grant loans or give guarantee or provide security in respect of loans.

o. Section 184(2) which deals with Disclosures of Interest by Directors, will not apply to a not for profit company if the transaction with related party on the basis of terms and conditions of the contract or arrangement is less than Rs. 1,00,000/- (Rupees One Lakh Only).

p. Section 189 which deals with maintenance of Register of Contracts will not apply to such Companies if the transaction with a Related party is less than Rs. 1,00,000/- (Rupees One Lakh Only).

For further information, please visit the link provided herein

Exceptions/ modifications/ adaptions to some of the provisions of the Companies Act 2013 (Act 2013) for private companies

The Ministry of Corporate Affairs ("**MCA**") vide section 462(1) issued a notification dated June 5, 2015 which provides exceptions/ modifications/ adaptions to some of the provisions of the Companies Act 2013 (Act 2013) for private companies.

The key exceptions/ modifications/ adaptions made to the 2013 Act for private companies.

Sections and sub-sections that *would apply* to the private companies

1. Kinds of share capital
   Section 43 with respect to the kinds of share capital namely equity and preference shares will not apply to a private company if memorandum or articles of association of the private company provides that section 43 does not apply.
2. Voting Rights
   Section 47 provides voting rights attached to shares would not apply to a private company if memorandum or articles of association of the private company provides that section 47 does not apply.
3. Restrictions on purchase by company or giving of loans by it for purchase of its shares
   Section 67 provides certain restrictions on companies for purchase of shares or giving of loans by it for purchase of its shares.
4. The MCA notification provides certain exemptions for private companies to apply to this section provided that:

   - no other body corporate has invested any money
   - if the borrowings of such a company from the banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower, and
   - in case such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

5. Prohibitions on acceptance of deposits from public

- Clauses (a) to (e) of the Section 73 (2) deals with conditions to be fulfilled for accepting public deposits.
- The MCA notification provides that clause (a) to (e) of the Section 73 (2) will not apply to private companies.
- If they accepts from its members monies not exceeding one hundred percent of aggregate of the paid up share capital and free reserves and
- such company shall file the details of monies so accepted to the Registrar in such manner as may be specified

6. Management and administration

Following Sections will apply to private companies unless otherwise specified in respective Sections, or unless articles of the private company otherwise provides:

- Section 101 – notice of meeting
- Section 102 – statement to be annexed to notice
- Section 103 – quorum for meetings
- Section 104 – chairman of meetings
- Section 105 – proxies
- Section 106 – restrictions voting rights
- Section 107 – voting by show of hands
- Section 109 – demand for poll

7. Disclosure of interest by director

Section 184(2) provides for disclosure of interest by a director.

The MCA notification provides that section 184 (2) shall apply to private company with the exception that an interested director of a private company could participate in the Board meeting after disclosure of his interest.

8. Loans to directors, etc.

Section 185 seeks to provide the circumstances and manner that deals with loans to directors and companies in which directors are interested. This Section will not apply to private companies provided that:

- no other body corporate has invested any money
- if the borrowings of such a company from the banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower, and
- In case such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

Sections and sub-sections that would *not apply* to any private companies

9. As per the MCA notification certain sections/ sub- sections will not apply to a private company. They are as follows:

Related party transactions
Section 2(76) (ii) provides definition of a "related party". Section 188 requires that specified transactions with related parties that are not in the ordinary course of business and which are not at an arm's length would require consent of the Board of Directors of the Company.

The MCA has modified the definition of related party under section 2 (76) (ii) and kept the following parties outside the scope of the related party transactions under section 188:-

- A company which is a holding, subsidiary or an a association company of such company;
- A company which is a subsidiary of a holding company to which it is also a subsidiary.

Further, second proviso to Section 188(1) restricts a member to vote on a special resolution, or approve any contract or arrangement entered into by a company, if such a member is a related party. The second proviso to Section 188(1) will not apply to private companies.

Resolutions and agreements to be filed:-

Section 117 pertains to resolutions and agreements to be filed with the Registrar of Companies. Section 117(3) (g) states that resolutions passed in pursuance of Section 179(3), Powers of the Board, should follow the requirements of Section 117.

Private companies are no longer required to file with the Registrar of Companies resolution passed by the Board which are covered in Section 179(3) of the 2013 Act which are as follows:

a. To make calls on shareholders in respect of money unpaid on their shares
b. To authorise buy-back of securities under section 68
c. To issue securities, including debentures, whether in or outside India.
d. To borrow monies
e. To invest funds of the company
f. To grant loans or give guarantee or provide security in respect of loans
g. To approve financial statements and the Board's report
h. To diversify business of the company
i. To approve amalgamation, merger or reconstruction
j. To take over a company or acquire a controlling or substantial stake in another company,
k. Any other matter which may be prescribed.

- Appointment of directors to be voted individually
  Section 162 on the manner of appointing two or more persons as directors of a company by a single resolution will not apply to private companies.
- Restrictions on powers of Board
  Section 180 that provides with the restrictions on the powers of the Board. This Section would not apply to private companies.
- Appointment and remuneration of managerial personnel
  Section 196(4) and (5) will not apply to private companies.

Sections and sub-sections that are *amended* for private companies

- Further issue of share capital

  Section 62(1) deals with the rights issue. Section 62(1) (a) provides time limit for rights offer that is 'not less than 15 days and not exceeding 30 days' from the date of offer. It further states that offer not accepted within the specified time period would be deemed to have been declined.

  The MCA has now added a proviso to Section 62(a) (i) which requires that in case a private company wants to reduce the time period for rights issue less than a period prescribed in Section 62(1) (a) and Section 62 (2), it can do so 90 percent of the members of a private company have given their consent in writing or electronic mode.

- Section 62(1) (b) deals with the situation when the company proposes to increase its subscribed capital by the issue of further shares to its employees under the scheme of employee's stock options. Currently, the 2013 Act requires that such offer is subject to, inter alia, special resolution being passed by the company.

  MCA vide its notification has modified Section 62(1) (b) and provides that the private companies passing of an ordinary resolution would be sufficient.

- Eligibility/ qualification/ disqualification of auditors

  Section 141 (3) (g) currently states that a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditors, if such person or partner is at the date of such appointment or reappointment holding appointment as auditors of more than 20 companies.

  The MCA has now modified the limit of 20 companies and has excluded following companies for calculating limit of 20 companies:

  One person companies
  Dormant companies
  Small companies
  Private companies

For further information, please visit the link provided herein

Exemptions to Nidhi Companies from applicability of certain provisions of the Companies Act, 2013

MCA vide Notification dated June 5, 2015 granted exemptions to Nidhi Companies from applicability of certain provisions of the Companies Act, 2013 ("Act").

The following sections of the Act are not applicable to companies:

- Under Section 42 which deals with Offer or invitation for subscription of securities on private placement, now such Companies can make Private Placement from any number of persons and accept the subscription money in cash and private placement can be made to any person without recording names.
- Section 47(1) that deals with Voting Rights of member on resolution, now no member of a Nidhi Company shall exercise his Voting right on poll in excess of five percent of total voting rights of equity shareholders.
- Section 62 which deals with further issue of Share Capital will not apply to such Companies.
- Section 67(1) which is pertaining to Restrictions on purchase by company or giving of loans by it for purchase of its shares will not apply to such Company.
- Section 123 which deals with Declaration of Dividend, section 123(1) will apply to such Companies which provides that if the dividend is not claimed within 30 days from the date of declaration of the dividend, such dividend payable in cash may be paid by crediting the same to the account of the member.
- Under Section 127 which pertains to Punishment for failure to distribute dividends, where the dividend payable to a member is one hundred rupees or less, the declaration of dividend shall be announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
- Under Section 136(1) which deals with Right of member to get copies of audited financial statement, such Companies are not required to send copies and instead can opt for intimation by way of Public Notice in local

language newspaper circulating in the place where the Registered office of the Company is situated and in such notice details of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are to be affixed on the Notice Board of the company and a member is entitled to vote either in person or through proxy such method can be opted by the Company for those members who individually or jointly holds shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital whichever is less.

- Section 160 which is pertaining to Right of persons other than retiring directors to stand for directorship the deposit amount along with the Proposal of candidature has been reduced to Rs.10,000/-(Rupees Ten Thousand Only) for such Companies.
- Section 185 which deals with Loans to Directors will not apply to such Company if the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note. If Director is not a member, Section 185 will apply.
- Under Section 197 which deals with Managerial Remuneration, in Case of Nidhi Companies, the remuneration of a director who is neither managing director nor whole – time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197 and approval shall not be required if such Company.:-
    - does not have a managing director or a whole-time director or a manager;
    - the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten percent of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and
    - a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.
    -
- Section 403 which deals with Fees for filing will apply with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 will be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.

For further information, please visit the link provided herein

Exemption to Government Companies

MCA vide notification dated June 05, 2015 provides for certain exemptions to Government Companies. The Central Government in supersession of notifications issued under Section 620 of the Companies Act, 1956 notified exemptions to be enjoyed by the Government Companies effective 5th June, 2015.

The following exemptions are notified in the Companies Act, 2013:-

a. Section 4– Name of Company

Section 4(1)(a)- In the case of a public limited company, or the last words "Private Limited" in the case of a private limited company' shall be omitted.

b. Section 56– Transfer and Transmission of Securities

Section 56(1) - After the proviso to sub – section (1) of Section 56 two provisos shall be inserted.

The provisions of this sub-section, in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond.

The provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.

c. Section 89 - Declaration in respect of beneficial interest in any share and Section 90 – Investigation of beneficial ownership of shares in certain cases- Section 89 and 90 shall not apply to Government Companies.

d. Section 96- Annual General Meeting

in Section 96 (2) the words- "some other place within the city, town or village In which the registered office of the Company is situate shall be replaced by "such other place as the Central Government may approve in this behalf"

e. Section 123– Declaration of Dividend

Section 123 (1) - Second proviso to sub – section 123(1) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Government or by the Central Government and one or more State Government.

Further Sub – section (4) of Section 123 shall also not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Government or by the Central Government and one or more State Government.

f. Section 129 – Financial Statement

This provision shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the Government Companies engaged in defence production.

g. Section 134 – Directors Report

Section 134 (3)(e) shall not apply to Government Companies

Section 134(3)(p)- Shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government as per its own evaluation methodology.

h. Section 149 – Board of Directors

Section 149(1)(b) – shall not apply to Government Companies. Consequently, there is no maximum number of directors in case of Government Companies. However, by virtue of second proviso, there is still requirement of Women Directors

Section 149 (6)(a)- In section 149, in sub section (6), in clause (a), for the word "Board"', the words "Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the State Government" shall be substituted

Section 149(6)(c) – shall not apply to Government Companies.

i. Section 152- Appointment of Directors

Section 152(5)- Section 152 dealing with consent of directors shall not apply in case of a Government Company where such director is appointed by the Central Government or State Government as the case may be

j. Section 152(6) and 152(7) ,Section 160 (Right of persons other than retiring directors to stand for directorship) Section 162 (Appointment of directors to be voted individually), Section 163- (Option to adopt principle of proportional representation for appointment of directors) shall not apply to –

(a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

(b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company

k. Section 164 – Disqualifications for appointment of director

Section 164 (2) shall not apply to Government Companies

l. Section 170 (Register of Directors) and Section 171 (Member's right to inspect)

Section 170 and 171 shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.

m. Section 177 – Audit Committee

Section 177 In clause (i) of sub section (4) of the section I 77, for the words "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted

n. Section 178- and Renumeration Committee

Section 178 (2)(3)(4) shall not apply to Government Company except with regard to appointment of 'senior management' and other employees.

O. Section 185 – Loan to Directors

Section 185 shall not apply to Government Company in case the company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.

p. Section 186- Loans and Investment by Company

Section 186 shall not apply to:-

(a) a Government company engaged in defence production;

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central

Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

q. Section 188 – Related Party Transactions

First and second proviso to sub –section (1) of Section 188 shall not ap ply to –

(a) a Government company in respect of contacts or arrangements entered into by it with any other Government Company;

(b) a Government Company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

r. Section 196- Appointment of managing director, whole time director or manager and Section 197- Managerial Renumeration

Section 196 and Section 197 shall not apply to Government Companies

s. Section 203 – Appointment of Key Managerial Personnel

Section 203(1)(2)(3)(4) shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole – time director of the Government Company."

t. Section 439- offence to be non-cognizable

In Section 439(2) the words, "the Registrar, a shareholder of the Co-pany or of shall be omitted.

For further information, please visit the link provided herein

Review of FDI on Investments by Non Resident Indian ("NRI"), Persons of Indian Origin ("PIOs") and Overseas Citizens of India ("OCIs")

DIPP vide Press Note No. 7 (2015 Series) dated June 3, 2015 provides for Review of FDI on Investments by NRI, PIOs and OCIs. The Government of Indian has amended certain Paragraphs of 'Consolidated FDI Policy Circular 2015' which was effective from May 12, 2015. These amendments are effective from June 18, 2015. Paragraph 2.1.27 of the said FDI Policy Circular, 2015 is amended as follows;

> *'Non – Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of Section 7 (a) of the Citizenship Act, 1955. PIOs cardholders registered as such under Notification No. 26011/4/98 F.I dated August 19, 2002, issued by the Central Government are deemed to be OCIs cardholders.*

The words NRI/ PIO appearing in the FDI Policy Circular of 2015 would have the same meaning as provided above.

New Paragraph 3.6.2 (vii) was added which was as follows;

> *Investment by NRI under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents.*

For further information, please visit the link provided herein

Department of Industrial Policy & Promotion

Review of the investment limit for cases requiring prior approval of the Foreign Investment Promotion Board ("FIPB")/ Cabinet Committee on Economic Affairs ("CCEA").

Department of Industrial Policy & Promotion("**DIPP**") vide Press Note No. 6 (2015 Series) dated June 3, 2015 provides for review of the investment limit for cases requiring prior approval of the Foreign Investment Promotion Board ("**FIPB**")/ Cabinet Committee on Economic Affairs ("**CCEA**"). Government of India amended investment limit for cases requiring prior approval of the FIPB/ CCEA which will be effective from June 18, 2015, vide paragraph 5.2 of 'Consolidated FDI Policy Circular 2015' which was effective from May 12, 2015. The amendment has been reproduced herein below;

5.2.1. The Minister of finance who is in- charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow was upto Rs. 2000crore is now changed to Rs. 3000 Crore.

5.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 2000 Crore is now changed to Rs. 3000 Crore which would be placed for consideration of Cabinet Committee on Economic Affairs (**CCEA**)

And a new Clause5.2.4 was added which is as follow;

> *5.2.4 The FIPB Secretariat in Department of Economics Affairs will process the recommendations of FIPB to obtain the approval of Minister of Finance and CCEA.*

Central Drugs Standards Control Organization Directorate General of Health Services Ministry of Health & Family Welfare

Improve the regulatory compliance of drugs which are imported in the Country

Central Drugs Standards Control Organization Directorate General of Health Ministry of Health & Family Welfare("**CDSCO**") vide Notice dated June 4, 2015 stated that under Schedule D(1) of Drugs & Cosmetics Rules, 1945 and in order to improve the regulatory compliance of drugs which are imported in the country. The said notice was issued to observe the compliance for patient safety

a. An importer of such medicines will have to form time to time report in order to take an administrative action due to adverse reaction viz. market withdrawal regulatory restriction, or cancellation of authorization and/or "not of standard quality report" of any drug pertaining to the Registration Certificate declared by any Regulatory Authority of any country where the drug is marketed/sold or distributed.

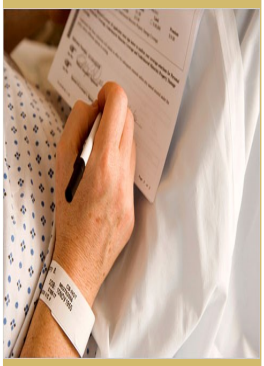
b. Thereafter, the despatch and marketing of the drug in such cases shall be stopped immediately and the licensing authority shall be informed immediately.

c. Action will be taken to stop the marketing of drug shall be taken as per the directions of the licensing authority.

d. In such cases, action equivalent to that taken with reference to the concerned drug(s) in the country of origin or in the country of marketing will be followed in India also, in consultation with the licensing authority.

e. The licensing authority may direct any further modification to this course of action, including the withdrawal of the drug from Indian market within 48 hours' time period

Medical Device and Diagnostic Division of CDSCO provided a pre- screening checklist



CDSCO provided the following pre- screening checklist:

A.1. Pre-Screening checklist for acceptability of applications for Grant of Registration Certificate/Re-Registration Certificate in Form-41 for Medical Devices;

A.2. Pre-Screening checklist for acceptability of applications for Grant of Import License in Form-10 for notified medical devices /In-vitro Diagnostics;

A.3. Pre-Screening checklist for acceptability of applications for Grant of Test License in Form-11 for small quantity of medical devices;

A.4. Pre-Screening checklist for acceptability of applications for application pertaining to grant of permission to import or manufacture new medical device going to be introduced for the first time in the country for sale or to undertake clinical trials;

A.5. Pre-Screening checklist for acceptability of applications for Extension in shelf life of the already Registered Product;

A.6. Pre-Screening checklist for acceptability of applications for Additional Indication of the already Registered Product;

A.7. Pre-Screening checklist for acceptability of applications for further Clarification in respect of the Product;

B.1. Pre Screening checklist for acceptability of applications for Grant of Registration Certificate/Re-Registration Certificate of Notified in vitro Diagnostic Kits/Reagents in Form 41;

B.2. Pre-Screening checklist for acceptability of applications for Grant of Import License in Form-10 for Non-notified in vitro Diagnostic Kits;

B.3. Pre-Screening checklist for acceptability of applications for Grant of Test License in Form-11 for invitro diagnostic Kits/reagents.

For further information, please visit the link provided herein

A survey to evaluate the quality of drugs.

The Ministry of Health and Family Welfare Directorate General of Health Services Central Drugs Standard Control Organization, ("**Ministry**") vide Circular F.No.D. 21013/27/2015-DC on June 17, 2015 has conducted a survey to evaluate the quality of drugs.

Ministry stated that to evaluate the quality of drugs imported, manufactured and marketed in India, a exercise has been conducted by survey sampling in which 50, 000 drugs samples have been drawn for testing for assessing the extent of spurious and Not of Standard Quality ("NSQ") drugs from across the country under the supervision of Director I/c, NIB, Noida.

The Ministry may depute 75 Drug Inspectors to Noida for the period 11.04.2015 to 30.04.15, to accomplish the humongous task of physical examination and more Drug Inspectors may also be appointed in future to elicit the veracity of information relating to such drug samples

For further information, please visit the link provided herein

The Reserve Bank of India

Liberalised Remittance scheme for resident Individuals- increase in the limit from UDS 125,000 to USD 250,000 and rationalisation of current account transaction

Reserve Bank of India ("**RBI**") vide A.P. (DIR Series) Circular No. 106 dated June 01, 2015 provides for liberalised Remittance scheme ("**LRS**") for resident Individuals and increase in limit. This circular provides for the following changes in the liberalization and rationalization of the existing guidelines :-

1. Limit and Facilities under LRS:-

a. AD banks may allow remittances upto USD 250,000 by a resident individual for a financial year for any permitted current or capital account transaction. If amount has been already remitted under the LRS, then limit for such individual would be reduced from the present USD 250,000 for the financial year.

b. The capital account transactions permitted under the LRS are:-

- Opening foreign currency abroad with a bank
- Purchase of property abroad
- Making investments abroad
- Setting up wholly owned subsidiaries and joint venture abroad
- Extending loans including loans in Indian rupees to non-resident Indians

c. For release of exchange/ remittances for current account transactions shall now be subsumed as per the overall limit of USD 250,000. However for certain items as mentioned in the schedule, individuals may avail of exchange facility for an amount in excess of the overall limit of USD 250, 000, prescribed under the LRS, if it is so required.

d. The LRS cannot be used for making remittance for any prohibited or illegal activities.

2. Remittance Procedure:-

a. Requirements to be complied with by the remitter

The individual making remittance should furnish application along with declaration that the funds belong to remitter and will not be used for prohibited purposes to full-fledged money changer ("FFMC"). Foreign exchange purchased from FFMC should be reckoned with overall LRS limit USD 250,000.

2. Requirements to be complied with by the Authorised Persons

AD banks and FFMCs are required to ensure that the "Know Your Customer" guidelines and Anti-Money Laundering Rules in force have been complied with while allowing the

2. Requirements to be complied with by the Authorised Dealers

- Banks should not extend funded or non-funded facilities to resident Individuals to facilitate capital account remittances under the LRS
- Applicant should have a bank account for one prior to remittance for capital account transaction and in case of new customer, due diligence should be carried out.
- Foreign exchange of USD 250,000 shall not be used for remittance to countries notified as non-cooperative countries and territories by the Financial Action Task Force ("FATF") and communicated by RBI to all concerned

3. Reporting of the transaction

Authorised Dealers may monthly furnish information on the number of applicants and total amount remitted under LRS to RBI through online return filing system only.

4. Facilities for persons other than Individual

As mentioned in Annex 1, persons other than Individual can make remittance for:-

- Donations for educational institutions
- Commissions to agents abroad for sale of residential flats/commercial plots in India
- Remittances for consultancy services
- Remittances for reimbursement of pre-incorporation expenses within the limit and conditions laid down therein.
- While making the above remittances, such persons shall submit to the concerned AD branch a declaration to the effect that the limits and conditions relating to the remittances have been complied with.
- All other terms and conditions for making overseas remittances shall remain unchanged.

For further information, please visit the link provided herein

Final guidelines for 6 year and 13 year Interest Rate Futures (IRF)

RBI vide Press Release: 2014-2015/2643 dated June 12, 2015 issued Final guidelines for 6 year and 13 year cash settled IRF on GOI Securities with residual maturity of 4- 8 years and 11- 15 years respectively. It also expanded the residual maturity for the existing 10-year cash settled IRF from 9-11 years to 8-11 years. This was in order to provide market participants greater choice and flexibility to hedge their interest rate risk across different tenors.

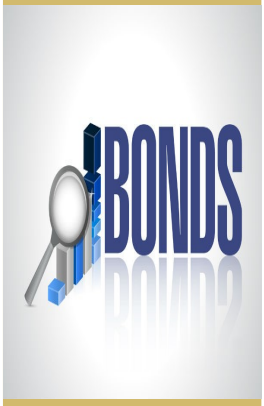
For further information, please visit the link provided herein

Basel Committee- Basel III implementation assessments of India

The RBI vide Press Release 2014-2015/2668 dated June 16, 2015 where The Basel Committee on Banking Supervision ("**BCBS"**) under the aegis of the Bank for International Settlements assessed reports on the implementation of the Basel risk-based capital framework and the Liquidity Coverage Ratio ("**LCR**") for India as part of the ongoing Regulatory Consistency Assessment Program ("**RCAP**") for its member jurisdictions. The assessment has rated the standards adopted by the RBI with regard to risk-based capital requirements as 'Compliant' with the minimum Basel capital standards. LCR requirements have been assessed as 'Largely Compliant' with the minimum Basel liquidity standards. The two components of the LCR framework, viz. the LCR standard and the LCR disclosure requirements, are assessed as 'largely compliant' and 'compliant' with the Basel standard, respectively. The RBI believes that the .

RCAP reports bring in transparency about the national adoption and impl mentation of Basel standards and promote an international level playing field

For further information, please visit the link provided herein



Issue of Long Term Bonds by banks for Financing of Infrastructure and Affordable Housing – Cross Holding

RBI vide Circular RBI/2014-15/618 DBR.BP.BC.No.98/08.12.014/2014-15 dated June 01, 2015 have made reference to RBI's Circular dated July 15, 2014 and Circular dated November 27, 2014, where RBI allowed banks to issue long term bonds, with exemptions from certain regulatory preemptions, for their financing of infrastructure and affordable housing loans, also RBI extended loans to individuals against such long-term bonds issued by them.

The RBI reviewed the terms mentioned in Paragraph 13 of the Circular dated July 15. 2014, and it was decided that banks can invest in the long term bonds issued by other banks under the provisions of the above-mentioned circular dated July 15, 2014.

In order to prevent double counting of regulatory exceptions on CRR and SLR to encourage investment of long term bonds for lending to infrastructure projects and affordable housing, such investments will be subject to the conditions provided herein below:

- Banks' investment in such bonds will not be treated as 'assets with the banking system in India' for the purpose of calculation of NDTL.

- Such investments are not to be held under HTM category.
- An investing bank's investment in a specific issue of such bonds will be capped at 2% of the investing bank's Tier 1 Capital or 5% of the issue size, whichever is lower.
- An investing bank's aggregate holding in such bonds will be capped at 10% of its total Non-SLR investments.
- Not more than 20% of the primary issue size of such bond issuance can be allotted to banks.
- Banks cannot hold their own bonds.

For further information, please visit the link provided herein

Amendment to Prevention of Money Laundering (Maintenance of Records) Rules, 2005 – additional documents for the limited purpose of 'proof of address'

The RBI vide its Notification dated June 11, 2015 provided for certain additional documents which can be provided for a limited purpose of "proof of address". The RBI has referred to the circular dated July 15, 2014 [with reference to Rule 14(i) and proviso to Rule 2(d)] , where the Government has amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 & has provided additional relaxations for the purpose of proof of address in addition to the relaxations in proof of identity under "simplified measures". The circular has set out specified additional documents which shall be deemed to be Officially Valid Documents ("OVDs") under the same:-

- Utility bill which is not more than two months old of any service provider;
- Property or Municipal Tax receipt;
- Bank account or Post Office savings bank account statement;
- Pension or family pension payment orders issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
- Letter of allotment of accommodation from employer issued by State or Central Government departments, statutory or regulatory bodies, public sector undertakings, scheduled commercial banks, financial institutions and listed companies. Similarly, leave and license agreements with such employers allotting official accommodation; and
- Documents issued by Government departments of foreign jurisdictions and letter issued by Foreign Embassy or Mission in India.

However, the specified additional documents shall be held valid in cases of "low risk" customers only, for the limited purpose of proof of address.

For further information, please visit the link provided herein

Rationalisation under Liberalised Remittance Scheme (LRS) for Current and Capital Account Transactions

1. RBI vide circular No. 106 dated June 1, 2015 for rationalisation under LRS for currents & capital account transactions

   The circular dealt with two main aspects, that is:-

- LRS for resident individuals increasing the limit from USD 1,25,000 to USD 2,50,000 as also rationalisation of current account transactions.
- Remittance facilities for persons other than individuals.

The circular states that the American Depositary Banks may allow remittances by resident individuals' upto an increased limit of USD 2,50,000 per financial year for any permitted transaction, current as well as capital, or both. However, if any individual has remitted an amount already under the LRS, then the applicable limit for the same shall be reduced from the present bar of USD 2,50,000 for the financial year by the amount already remitted.

The permissible capital account transactions by an individual under LRS are:

- opening of foreign currency account abroad with a bank;
- purchase of property abroad;
- making investments abroad;
- setting up Wholly owned subsidiaries and Joint Ventures abroad;
- extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

The remittance procedure, including the detailed requirements to be complied with, by Authorised persons as well as Authorised Dealers has been set out in length in the circular above mentioned.

2. Amendments to the Foreign Exchange Management Act, 1999 vide circular dated May 26, 2015:-

Necessary amendments to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, (Notification No. FEMA 1/2000-RB dated May 3, 2000) have been notified vide GSR No. 426 (E) dated May 26, 2015 and GSR No.425 (E) dated May 26, 2015 respectively.

Vide its notification dated May 26, 2015 the Ministry has made certain amendments to the FEMA 1999:

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the specified purposes mentioned below shall require prior approval of the Reserve Bank of India:

a. Private visits to any country (except Nepal and Bhutan)
b. Gift or donation.
c. Going abroad for employment
d. Emigration
e. Maintenance of close relatives abroad
f. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
g. Expenses in connection with medical treatment abroad
h. Studies abroad
i. Any other current account transaction

3. The following transactions shall require prior approval of RBI:-

a. Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-

- creation of Chairs in reputed educational institutes,
- contribution to funds (not being an investment fund) promoted by educational institutes;
- Contribution to a technical institution or body or association in the field of activity of the donor Company.

b. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more,

b. Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
c. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

For further information, please visit the link provided herein

Master Circular – "Infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011".

RBI vide Circular No. DNBR (PD) CC No. 039/03.01.001/2014-15 dated June 11, 2015 provides for Master Circular on infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011. ("**IDFNFC Directions 2011**"). The IDFNFC Directions, 2011 provides as follows:-

1. The IDFNFC Directions, 2011 shall apply to every infrastructure Debt Fund-Non-Banking Financial Company ("**IDF-NBFC**").
2. The IDFNFC Directions, 2011 provides for the following definitions:-
   a) Concessionaire means a party who has entered into an agreement called Concession Agreement.
   b) IDF-NBFC which means a non-deposit NBFC that has net owned fund of Rs. 300 crores or more.
   c) Project Authority which means a authority constituted for development of Infrastructure.
   d) Triparte Agreement which means agreement between three parties

3. IDFNFC Directions, 2011 states that IDF-NBFC shall have a minimum credit rating grade 'A' of CRISIL or equivalent rating issued by other accredited rating agencies such as FITCH, CARE and ICRA and a minimum CRAR of 15% and tier II Capital of IDF-NBFC shall not exceed tier 1
4. IDFNFC Directions, 2011 states that IDF-BBFCs can invest in post commencement operations date ("**COD**") infrastructure projects Such as Public Private Partnership ("**PPP**") projects and non –PPP projects, which have completed at least one year of satisfactory commercial operation.
5. The PPP and post COD infrastructure projects, which have completed at least one year of satisfactory commercial operation and are a party to a Tripartite agreement with the Concessionaire and project authority for ensuring a compulsory buyout with termination payment shall have a maximum exposure of 50 percent of its total Capital Funds and additional 10 percent can be taken as per discretion of IDF-NBFCs board. An additional 15 percent may be given by RBI upon receipt of application from an IDF-NBFC.
6. IDFNFC Directions, 2011 states that for computing capital adequacy of IDF -NBFC:-
   a. All assets covering PPP and post COD infrastructure projects existing in over a year of commercial opeartion shall be assigned a risk weigh of 50 percent
   b. All other assets shall be risk weighted as per the extant regulations given in the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015.
7. All other prudential norms given in the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 shall be applicable to IDF-NBFCs.

Subscription to chit funds by Non-Resident Indian on non-repatriation basis

RBI vide Circular No. A.P (DIR Series) Circular No.107 dated June 11, 2015 provides for subscription to chit funds by Non-Resident Indian on non-repatriation basis.

The Government of India has reviewed the guidelines for subscription to the chit funds and accordingly has permitted Non-Resident Indians ("**NRIs**") to subscribe chit funds, without limit, on non-repatriation basis subject to the following conditions:-

a) Registrar of Chits or an officer authorised by State Government as per the Chit Fund Act may permit chit fund to accept subscription from NRIs on repatriation basis

b) The Subscription from NRI shall be done through normal banking channel, including a account maintained with a bank in India

RBI has issued the above directions under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

For further information, please visit the link provided herein

Master Circular - Non- Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015

The Reserve Bank of India vide its Master Circular No. RBI/2014-15/630 dated June 03, 2015 updated Non- Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015. Accordingly, following Directions has been revised:

- The provisions of these Directions, shall apply to every non-banking financial company not accepting/ holding public deposits which is non-systematically important as defined in Systemically important non-deposit taking non-banking financial company of these directions.
- The Directions except the provision 15 consisting requirement of submission of a certificate from Statutory Auditor to the Bank shall not apply to non-banking financial company having asset size of less than Rs. 500 crore Provided that, it does not accept/ hold any public funds.
- These Directions, expect the provisions consisting in Paragraph 26 in regards to the communication of Information with respect to change of address, directors, auditors, etc. to be submitted to the Regional Office of the Department of Non- Banking Supervision of the Reserve Bank of India shall not apply to non-banking financial company being a Government company as defined under clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013) and not accepting / holding public deposit.
- These Directions shall not apply to a non-banking financial company being a Core Investment Company referred to in the Core Investment Companies (Reserve Bank) Directions, 2011 (CIC Directions), which is not a

systemically important Core Investment Company as defined in clause (h) of sub-paragraph (1) of paragraph 3 of the CIC Directions.

- The provisions of Paragraph 15, 16 and 17 of these Directions shall not apply to a Systemically Important Core Investment Company (between asset size Rs. 100 crore and Rs. 500 crore) as defined in clause (h) of sub-paragraph (1) of paragraph 3 of the CIC Directions.

- The provisions of paragraph 8, 9 and 17 of these Directions shall not apply to an NBFC-MFI as defined in the Non-Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011.

For further information, please visit the link provided herein .

Master Circular - Systematically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015

The Reserve Bank of India ("RBI") vide its Master Circular No. RBI/2014-15/629 dated June 11, 2015 updated Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015. Accordingly, following Directions has been revised:

- The provisions of these Directions shall apply to every non- banking financial company not accepting/ holding public deposits and having an asset size of Rs. 500 crore and above as per the last audited balance sheet.

- These Directions, except the provisions of paragraph 25 consisting for Information with respect to change of address, directors,

auditors, etc. to be submitted shall not to a non-banking financial company being a Government company as defined under clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013) and not accepting / holding public deposit.

- The provisions of paragraphs 15, 16 and 24 of these Directions shall not apply to a Systemically Important Core Investment Company as defined in the Core Investment Companies (Reserve Bank) Directions, 2011.
- The provisions of paragraphs 8, 9 and 24 of these Directions shall not apply to an Non-Banking Financial Companies-MFI as defined in the Non-Banking Financial Company- Micro Finance Institutions (Reserve Bank) Directions, 2011.

Master Circular- Corporate Governance (Reserve Bank) Directions, 2015 for Non-Banking Financial Companies

Reserve Bank of India ("RBI") vide its Master Circular RBI/2014-15/632 dated June 03, 2015 updated Corporate Governance (Reserve Bank) Directions, 2015 for Non-Banking Financial Companies ("NBFCs") read along with the Revised Regulatory Framework for NBFCs. Accordingly, the following Directions have been revised :-

- The provisions of these Directions shall not apply to a Systematic Important Core Investment Company as defined in the Core Investment Companies (Reserve Bank) Directions, 2011.
- NBFCs shall furnish to the RBI a quarterly statement on change of Directors certified by the auditors and a certificate from the Managing Director that fit and proper criteria in selection of directors have been followed. The statement must reach the Regional Office concerned of the RBI within 15 days of the close of the quarter.

- It is clarified that the quarterly statements can be certified by the Managing Director, except that the statement pertaining to the quarter ended March 31 need to be necessarily certified by the auditors.

- The age limit of 35 to 70 years of age prescribed for the independent/ non- executive directors in terms of the Fit and Proper criteria for directors of NBFC has been done away with and provisions of Companies Act, 2013 in this regard shall apply.

- NBFCs shall communicate outcome of Board deliberations to Directors and concerned personnel and prepare and circulate minutes of the meeting of Board to Directors in a timely manner and to the extent possible within 2 (two) business days of the date of conclusion of the Board meeting. It is clarified that circulation within 2 (two) days is not mandatory and provisions in Companies Act, 2013 in this regard shall apply.

For further information, please visit the link provided herein .

Order of the High Court of Delhi in in CS (OS) No. 1472 of 2013 in Interim Application No. 11760.2013 of Industria De Diseno textile SA V/s Oriental Cusines Private Limited & ors & Anr

Vide the Order dated May 19, 2015 in CS (OS) No. 1472 of 2013 in Interim Application ("IA") No. 11760.2013 of Industria De Diseno textile SA ("**Plaintiff**") V/s Oriental Cusines Private Limited & ors & Anr("**Defendant's**") , the Hon'ble Delhi High Court was pleased to grant an ad interim injunction restraining the Defendants from the use of the Plaintiff's mark ZARA as part of the Defendant's own mark Zara Tapas Bar.

The Plaintiff is the owner of the world famous trademark Zara and is an internationally owned Company established originally in Spain, and engaged in manufacture, design and sale of fashion and lifestyle products. Plaintiff operates by virtue of joint venture with Trent Limited of Tata Group under the name inditex Trent Retail India Private Limited in India.

The Defendant is a leading chain of restaurants and was running a Spanish restaurant by the name of Zara Tapas Bar in Chennai and Kolkata in 2003, but prior to 2003 the Plaintiff had already opened its stores in 44 countries with a turn over 3 billion Euros. The Plaintiff therefore sought an ad interim injunction against the Defendant to prevent them from infringing, passing off and diluting its trademark by freely trading on Zara's reputation and goodwill.

The Plaintiff contended that the name Tapas is name attributed to snacks in Spanish and has no connection with the use of ZARA as Zara has no connection with Spanish culture. The Plaintiff states that Zara word has been used with generic extensions to trade on popularity and goodwill of the Plaintiff's trademark and

and therefore prayed for injunctions restraining the use of word Zara in the defendant's trademark, to be passed in favour of the Plaintiff:

The Defendant on the other hand contended that the Plaintiff had concealed the fact from the court that there are several parties in India and abroad using the trademark Zara or Zara formative marks, coexisting with Plaintiffs Zara trademark which has been challenged under several jurisdictions. The Defendant further contended that there was a delay by the Plaintiff in filing the suit which ought to have been filed much earlier as the defendant had obtained a bar license in 2002, with advertisements being put up from 2003 and the trademark application being published in 2005.

The following main issues were raised by the Hon'ble Delhi High Court

a. Whether there is any deceptive similarity between mark ZARA of the Plaintiff and ZARA TAPAS BAR of the Defendants;

The Hon'ble Delhi High Court stated that Defendants were attempting to project through their website that they were offering Spanish –styled products and and services under the name Zara and also stated that they were not using the mark per Zara se but were using only Zara Tapas Bar, which differentiates their mark form the Plaintiff. It was stated by Hon'ble Delhi High Court that screen shots from the Defendant's account revealed that the word Zara unwarrantedly prominent, while TAPAS BAR was barely legible. Hence it was acknowledged by the Hon'ble Delhi Court that there did exist deceptive similarity between the two marks.

b. Whether the adoption of the mark ZARA TAPAS BAR was dishonest or fraudulent or it is an honest adoption and Defendant no.1 is entitled to concurrent user of the mark;

The Hon'ble Delhi High Court, stated that if the Defendants did not want to ride on the Plaintiff's reputation, they would have not used the word ZARA prominently in the words ZARA TAPAS BAR or ZARA, the Tapas Bar and Restaurant".

c. Whether the mark ZARA is used by many entities and has become publici juris;

The Court stated that while the Plaintiff established its mark's protection in several international jurisdictions, it was unfortunate that the defendant had to rely on third party registrations – most of which were frivolous, irrelevant and bore little or no connection/similarity to the plaintiff's ZARA mark.

d. **Whether there is a great delay in filing the suit and whether it amounts to acquiescence on the part of the Plaintiff;**

The Hon'ble Delhi High Court stated that there were settlement talks between the Plaintiff and the Defendant since February 2011 and suit was filed in 2013, but the three year delay cannot amount to acquiescence and hence the Plaintiff cannot be disentitled from seeking relief through an ad interim injunction if there is a case on merits.

e. Whether there is suppression/concealment of material facts so as to disentitle the Plaintiff to the discretionary relief of injunction

The Hon'ble Delhi High Court stated that while seeking ad interim injunction , full disclosure of facts must be made but in this case since it is before the court and the case is being heard on its merits, a

misstatement of certain facts unless mala fide, will not invalidate the Plaintiff's right to seek the relief of injunction.

f. **Whether the Plaintiff's mark ZARA is a well-known trademark and had trans-border reputation or in the alternative the Defendants are entitled to use the mark ZARA TAPAS BAR in relation to class 25 or for that matter hospitality restaurant business co-extensive with the Plaintiff.**

The Hon'ble Delhi High Court stated that there existed no ZARA store in India until 2010, but it had been registered under Class 25 since 1993, and had also been getting fabrication work done from various exporters in India, and acknowledged ZARA's trans-border reputation.

The Court therefore held that the defendant's mark, ZARA TAPAS BAR had been adopted dishonestly and fraudulently, and that irreparable loss would be caused to the plaintiff's mark if it is not protected and the defendant is permitted to carry on business under the ZARA TAP-AS BAR name. Accordingly, an *ad interim* injunction was granted in favour of the plaintiff.

For further information, please visit the link provided herein .

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Order of the National Consumer Disputes Redressal Commission *in Consumer CaseNos.427,428,430,432–440,453–456, 465-468,474,475,490,502 of 2014 (Satish Kumar Pandey & Ors. V/s Unitech Limited)*

Vide Order dated June 8, 2015 in *Consumer Case Nos.* 427,428,430,432–440,453–456, 465-468,474,475,490,502 of 2014 *of Satish Kumar Pandey & Ors. V/s Unitech Limite*d, where the Complainants had filed this complaint on other party as the terms that was agreed between them about the possession of the apartments which was to be delivered to them within 36 months form the date of their respective agreement had already elapsed two (2) years ago. The National Consumer Disputes Redressal Commission (NCDRC) has directed the following:-;

- The opposite party shall deliver the possession of the flats to the complainants on or before February 28, 2016 to between February 28, 2018 as it was stipulated in the opposite parties letter dated May 27, 2015;
- Further the Hon'ble NCDRC directed that the opposite party shall pay to the original allottees and to those who acquired the allotment by way of repurchase, within one year of the date of the initial Agreement of their

respective flats, compensation in the form of simple interest at the rate of 12% per annum with effect from thirty six (36) months from the date of the initial Agreement till the date possession is delivered to them.

- Further the Hon'ble NCDRC directed Such of the complainants, who acquired allotment of the flat by way of repurchase more than one year after the date of the initial allotment of their respective flats, shall be paid compensation by way of simple interest at the rate of 12% per annum, with effect from thirty six (36) months from the date of repurchase by them, till possession is delivered to them. They will also be paid compensation at the rate of Rs.5/- per square foot of the super area of their respective flat for the period between thirty six (36) months from the date of the initial Buyers Agreement of their respective flats and thirty six (36) months from the date of repurchase of the flat by them.
- Further it was directed that the increase in service tax with effect from June 1, 2015 shall be borne by the opposite party.
- Also, if the opposite party fails to deliver possession by the last date stipulated in its letter dated May 27, 2015, then it shall pay compensation to all the complainants in the form of simple interest at the rate of 18% per annum, for each day there is delay, beyond the date stipulated in the said letter dated May 27, 2015, in delivering possession to the complainants.

For further information, please visit the link provided herein .

Andhra Pradesh Electricity Regulatory Commission

Order dated June 5, 2015 in O.P.No. 19 of 2014 Southern Power Distribution Company of Andhra Pradesh Limited, Eastern Power Distribution Company of Andhra Pradesh Limited v/s NIL

Vide order dated June 5, 2015 the Hon'ble Andhra Pradesh Electricity Regulatory Commission ("**APERC**") pronounced order in O.P No. 19 of 2014.

Interim Application ("**IA**") No. 12 of 2015 was filed for permitting the Petitioner No. 2 and 4 to pursue the original petition and delete Petition No. 1 and 3 in view of re-organization of the State and the provisions of A.P. Reorganization Act, 2014 and this was allowed by the Hon'ble APERC as there was no objection from Petitioner Nos. 1 and 3. There the Petition was restricted only to Petitioner .

The Petitioner requested for amendment of the provisions of the Regulation 1 of 2012 made by the Hon'ble APERC by taking non-conventional energy generation for the FY 2012-13 as the base with 0.5 % increase per annum for control period and reduction in the limit of percentage of energy to be procured from non-conventional energy sources. The Primary ground of such amendment is the capacity for which power purchase agreements were entered into by the Petitioner and the quantities were inadequate to meet the prescribed NCE purchase obligation.

The objector (Indian Wind Turbine Manufactures Association) stated that the Regulations of Central Electricity Regulatory Commission and APERC were violated and the reliefs sought are against the deliberations and decision of Forum of regulators, National action pan and national targets for renewable purchase obligation ("**RPO**"). Green Energy association stated that if RPO is interfered with, it will affect all renewable energy generators and will contrary to various orders of the Appellate Tribunal for Electricity ("**APTEL**").

The Renewable Energy Stakeholders Forum ("**RESF**") stated that not purchasing renewable energy certificates to meet the required RPO will kill the objective of Renewable Energy Certificates ("REC") mechanism and will be contrary to giving a uniform RPO throughout the country by National Tariff policy.

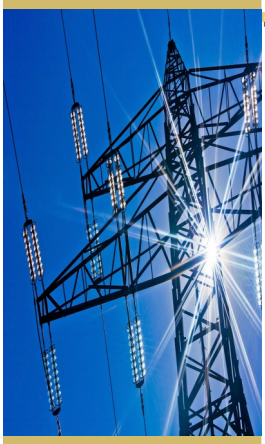
RSEF also referred to Annual Revenue Requirement ("**ARR**") filing of the Petitioner which projected that distribution companies can easily meet RPO for all financial years by

purchasing the same REC without financial burden as RPO compliance for two years is 2.39% and 4.82% only of the energy required. The non- compliance with the RPO creates a national hurdle and the association supported the same by various statistical details mentioned in their objection, having referred to rulings of the other State Electricity Regulatory Commissions

Further Sri P. Shiva Rao, learned Standing Counsel, who in all fairness submitted that the position of the Petitioners is better by today in complying with the RPO within a reasonable short time in tune with the regulations in force. It is also stated that mandatory compliance of regulations will be brought to the notice of the Commission soon and subject to the same, the petitioners should fail. Therefore the Petition is dismissed.

For further information, please visit the link provided herein .

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION



Implementation of Appellate Tribunal's Judgment dated 22 August, 2014 in Appeal No. 295 of 2013 filed by Tata Motors Ltd. challenging the Commission's Order dated 5 September, 2013 in Case No. 95 of 2013.

Vide order dated June 26, 2015 the Hon'ble Maharashtra Electricity Regulatory Commission ("MERC") in Case No. 192 of 2014, provides for Implementation of Appellate Tribunal for Electricity ("APTEL") Judgment dated 22 August, 2014 in Appeal No. 295 of 2013 filed by Tata Motors Ltd. challenging the Commission's Order dated 5 September, 2013 in Case No. 95 of 2013.

MERC vide order dated September 05, 2015 in Case No. 95 of 2013 allowing Maharashtra State Electricity Distribution Co. Ltd. ("MSEDCL") to recover two additional charges from consumers in form of Additional Energy Charge 1 and Additional Energy Charge 2 ("AEC 1 & AEC 2") over and above the then prevailing tariff applicable as per order dated August 16, 2012 as per the table given below:-

Sr. No.	Additional Energy charge	Amount in (Rs. Crore)
A	Lump sum additional amount approved after review of truing up for MSPGCL's Generating Stations for FY 2010-11	143.12
B	Impact of approved provisional Fixed Cost of Khaperkheda Unit 5 (upto March 2013)	524.86

C	Impact of approved provisional Fixed Cost of Bhusawal Unit 4 962.65	407.15
D	Impact of transmission tariff payable from April 2013 to August 2013	962.65
Total AEC – 1 (Total amount to be recovered in Six months)		2037.78
E	Incremental amount towards power purchase cost of Bhusawal Unit No.4	42.86
F	F Incremental amount towards transmission cost	192.53
Total AEC-2 (Amount to be recovered monthly till MYT Order)		235.39

Further aggrieved by this order,` Appeal No. 295 of 2013, was filed by Tata Motors Limited ("TML") before the Hon'ble Appellate Tribunal for Electricity ("APTEL"). Vide its order dated August 22, 2014, the Hon'ble APTEL was pleased to remand the matter back to MERC, giving an opportunity to parties as per Section 64 o of the Electricity Act, 2003 and then pronounce final order. The Commission therefore pronounced its final order in the above captioned matter on June 26, 2015. After the order dated August 22, 2014, MSEDCL filed Miscellaneous Application dated November 03, 2014 for early disposal.

TML states that AEC allowed to be levied by MSEDCL shall be revalidated for allowance of excess fixed charges.

The MERC in its judgement dated June 26, 2015 pronounced that cost components of AEC-1 and AEC 2 were approved by MERC in orders following sue regulatory process, but MSEDCL was not allowed to recover these cost component from its consumers in those orders.

MERC has scrutinised the rate at which AEC-1 and AEC-2 were applied by MSEDCL. The total category-wise AEC charged by MSEDCL is less than the amount of costs allowed to be recovered and the category-wise rates levied are also lower than if

the principles had been correctly applied. Hence, the question of allowing carrying cost for over recovery does not arise. However MSEDCL shall review the refunds made by it and make remaining refunds due to consumers in the next billing cycle. Under-recovery of the costs by MSEDCL will be dealt with in its MYT Petition in Case No. 121 of 2014.

The Petition therefore stands disposed off.

For further information, please visit the link provided herein .

Central Electricity Regulatory Commission

Regulations to amend the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010

Vide draft **notification No. L-1/12/2010-CERC dated June 26, 2015** **the** Central Electricity Regulatory Commission ("CERC") has made the following regulations to amend the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010("the Principal Regulations")

The said regulations will be called Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fifth Amendment) Regulations, 2015 and shall come to force with effect from the date of their publication in the Official Gazette.

Further the Second, third, fourth, fifth and sixth proviso including the explanation under sub-clause (c) of Clause (1) of Regulation 5 of the Principal Regulations is deleted and The following provisos is added after the first proviso under sub-clause (c) of Clause (1) of Regulation 5 of the Principal Regulations::-

"Provided further that a renewable energy generator selling electricity component to third party through open access, shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such generator has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefit or concessional cross subsidy surcharge:

Provided also that if such a renewable energy generator forgoes on its own, the benefits of concessional/ promotional transmission or wheeling charges or banking facility benefit or concessional cross subsidy surcharge, it shall become eligible for participating in the REC scheme only after the date of forgoing such benefits:

Provided also that if any dispute arises as to whether a renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision. 2

Explanation: For the purpose of this Regulation, the expression „banking facility benefit" shall mean only such banking facility whereby any renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours."

Also, a new clause is inserted after Clause (IA) which is as follows;

"(IB) A Captive Generating Plant (CGP) based on renewable energy sources and a renewable energy generating plant not fulfilling the conditions of CGP as prescribed in Electricity Rules, 2005 but having self consumption shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption."

For further information, please visit the link provided herein .

Dear Readers,

If you are interested in receiving updates only in respect of specific area of law, do write to us. Also, in case you do not wish to receive our monthly update, please send us email on legalupdates@eternitylegal.com with the subject as "Unsubscribe".

Warm Regards,

Dipali Sarvaiya Sheth

Founder

Eternity Legal

ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

1207, Dalamal Tower, Free Press Journal Road,

Nariman Point, Mumbai– 400 021

Email: contact@eternitylegal.com | Tel no.: +91 22 67479001

Website: www.eternitylegal.com