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SECURITIES AND EXCHANGE BOARD OF INDIA

SEBI : AMENDMENT TO SEBI MASTER CIRCULAR

The Securities and Exchange Board of India (**“SEBI”**) vide Circular no. CIR/MIRSD/1/2014 dated March 12, 2014 has made additions and modifications to SEBI Master Circular CIR/ISD/AML/3/2010 dated December 31, 2010 in view of the amendments made to the Prevention of Money-laundering Act, 2002 (“**PML Act**”) and Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (“**PML Rules**”).

Assertions to the master circular have been made with respect to Risk Assessment, Reliance on Third party to carry out Client Due Diligence, Record Keeping requirements, Appointment of Designated Director, etc.

The following is an insight to the modifications made to the Master Circular:

a. **Risk Assessment**

The abovementioned Circular, among other things, requires registered intermediaries to carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk with respect to its clients, countries or geographical areas, nature and volume of transactions, payment methods used by clients, etc. The risk assessment should consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied. The same must be documented, updated and made available to competent authorities and self- regulating bodies.

b. **Reliance on third party for carrying out Client Due Diligence (CDD)** Registered intermediaries may rely on a third party for identification and verification of not only the client identity but also that of the beneficial owner and determination of the acts of the client on behalf of the beneficial owner. Other measures for the regulation and supervision of the third party have also been included along with measures in place for compliance with CDD and record-keeping requirements in line with the obligations, under the PML Act. Such reliance would be subject to certain conditions mentioned in the circular.

c. **Record keeping requirements and monitoring of transactions** With respect to maintenance of records pertaining to transactions of clients that include client identification records, account files and business correspondence, shall now be maintained for a period of five years instead of the initial period of ten years. Additionally, it provides for records evidencing the identity of its clients and of the beneficial owners, as well as the account files and business correspondences to be maintained and preserved for a period of five years after the business relationship between a client and intermediary has ended or the account has been closed, whichever is later.

d. **Records of information reported to the Director, Financial Intelligence Unit – India (FIU-IND)**

An addition to Clause 8 the registered intermediaries shall maintain and pre serve the record of information related to transactions, either attempted or executed, which are reported to the Director, FIU-IND as required under the PML Rules, for a period of five years.

b. **Appointment of Designated Director**

Lastly, the said circular provides for the appointment of a Designated Director in addition to the existing requirement of a Principal Officer.

For further information, please click on the hyperlink provided herein.

SEBI:REPORTING OF OTC TRADES IN CORPORATE BONDS ON TRADE REPORTING PLATFORMS OF STOCK EXCHANGES

The Securities Exchange Board of India (**SEBI**), vide Circular no. CIR/MRD/DP/10/2014 dated March 21, 2014 has made amendments to the existing position of reporting of OTC Trades. Currently, OTC Trades in Corporate Bonds and Securitized Debt Instruments are being reported on Fixed Income Money Markets and Derivatives Association of India (**"FIMMDA"**) Trade Reporting and Confirmation Platform. As per the abovementioned Circular, the revised position of the same advises all entities regulated by the Reserve Bank of India (**RBI**), to report their secondary market OTC trades in Corporate Bonds and Securitized Debt Instruments only on any one of the reporting platform provided in the debt segment of stock exchanges viz. NSE, BSE and MCX-SX within 15 minutes of the trade.

Further, Stock Exchanges have been directed as under:

a. take necessary steps and put in place necessary systems for implementation of this circular;

b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision;

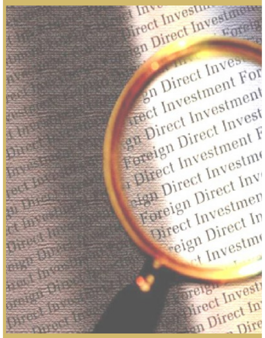
c. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.

This Circular shall come into effect from April 1, 2014.

MINISTRY OF CORPORATE AFFAIRS

Companies (Corporate Social Responsibility Policy) Rules, 2014 ("CSR Rules")

The Ministry of Corporate Affairs (**"MCA"**) has vide its Notification dated February 27, 2014 notified Section 135 and Schedule VII of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("**CSR Rules**") which shall be effective from April 1, 2014. Pursuant to this, the companies having at least Rs 1,000 crore of turnover or Rs 500 crore of net worth or Rs. 5 crore of net profit will have to spend 2% of their last three-year average annual net profit on CSR activities in each financial year with effect from April 1, 2014. The computation of net worth, turnover or net profit of a foreign company must be in accordance with the balance sheet and profit and loss accounts of the company.



Such companies are required to constitute a Corporate Social Responsibility Committee ("**CSR Committee**") of the Board. The Committee must consist of 3 or more Directors of which at least one must be an Independent Director. The functions of the CSR Committee include formulation and recommendation of Corporate Social Responsibility Policy ("**CSR Policy**") to the Board which includes the activities to be undertaken by the Company, recommendation of the amount of CSR expenditure, and monitoring the CSR Policy of the Company on a periodic basis. Only those activities notified by the Government will be considered as eligible for the purpose of spending. Such activities include promoting preventive health care and sanitation, eradicating hunger, poverty and malnutrition, setting up homes and hostels for women and orphans and livelihood enhancement projects. If the Company fails to utilize such amount, the Board must specify and give reasons for such non-utilization in its report made under Section 134.

The CSR activities will have to be carried out within India. All companies including foreign companies registered in India will have to comply with these requirements.

Notification of Companies Act, 2013

The Ministry of Corporate Affairs (**"MCA"**) vide its Notification dated March 26, 2014, has notified that about 180 sections of the Companies Act, 2013 shall come into force w.e.f. April 1, 2014. .

To view the particulars of the sections that shall come into force starting April, please visit the link provided herein.

Clarification of Section 185 of Companies Act, 2013: Circular no. 3/2014

The Ministry of Corporate Affairs **("MCA")** vide Circular no. 3/2014, dated February 14, 2014, clarifies the position of section 185 of the 2013 Act with reference to Section 372A of the 1956 Act**.** The issue regarding the applicability of Section 372A of 1956 Act in relation to Section 185 of 2013 Act.

Section 372A of the 1956 Act deals with specific exemptions of any loans made, any guarantee given or security provided or any investment made by a holding company to its wholly owned subsidiary whereas, Section 185 of 2013 Act prohibits guarantee given or any security provided by a holding company in respect of loan taken by its subsidiary company except in the ordinary course of business.

However, the ministry in order to have consonance to the applicability of Section 372A of the 1956 Act till Section 185 of 2013 Act is notified, clarified that any guarantee given or security provided by a holding company towards the loans availed from bank or financial institution, except 8(d) of the Section 372A of the 1956 Act be applicable till Section 186 of the 2013 Act is notified. However, the applicability of the same shall be to the cases wherein the loans obtained are exclusively used by the subsidiary for its principal business activities.

Clarification of Section 180 of Companies Act, 2013: Circular no. 04 /2014

The Ministry of Corporate Affairs **("MCA")** vide Circular no. 04/2014 dated March 25, 2014 has made a clarification with regard to Section 180 of the Companies Act, 2013 **("2013 Act")**. The MCA, on scrutiny, has clarified that the resolution passed under Section 293 of the Companies Act, 1956 **("1956 Act")** prior to September 12, 2013 in respect of borrowings, creation of security on assets of the company will be regarded as sufficient compliance of the requirements of section 180 of 2013 Act for a period of one year from the date of notification of Section 180 of the 2013 Act.

ELECTRICITY

Paschim Gujarat Vij Company Limited vs. Rolex Rings Private Limited & Others

In the matter of Paschim Gujarat Vij Company Limited ("**Appellant**") vs. Rolex Rings Private Limited ("**Respondent**") & Others in Appeal no. 48 of 2013 before the Appellate Tribunal for Electricity ("**APTEL**") vide Order dated March 25, 2014.

Paschim Gujarat Vij Company Limited, the Appellant, is the Distribution Licensee of electricity in the State of Gujarat whereas; the Respondent consumer has an existing connection of 66KV EHV from the Appellant Distribution Licensee. The connection being used towards supply of power to their manufacturing facility at Gujarat. The Respondent in order to expand one of their manufacturing units, planned to extend power from one of their existing unit to the other two by laying underground cables which passed through the public road owned by Gram Panchayat. Relevant permissions were sought from the Gram Panchayat and the Chief Electrical Inspector. The grievance arose when the Respondent before obtaining sanctions from the Distribution Licensee, laid underground cables which was found on conducting inspection by the Appellants vigilance team. On being denied the permission and on disconnection of the power, the Respondent approached the State Commission.

The Appellants (Respondents before the State Commission), aggrieved by the order of the State Commission appealed to APTEL. The two points of consideration that arose before the Hon'ble APTEL are as follows:

a. Can the State Commission permit a consumer or direct the Distribution Licensee to permit its consumer to lay down underground cable from one parcel of land to the other parcel of land owned by the consumer intervened by a public road in order to extend the power supply received from the Distribution licensee at one parcel of land?

b. Can the consumer avail a single electric connection for two adjoining premises owned by it if the two premises are separated by a public road?

The Hon'ble APTEL on perusal of the State Commission's order and on the basis of their findings on the considerations before them, held that,

a. The State Commission has jurisdiction to act on the issues pertaining to the interpretation of the provisions of the Act and the Regulations. Two parcels of land owned by a consumer which are not contiguous and are separated by a public road or street have to be treated as two premises and the consumer cannot extend the electric supply from an existing connection in a premises intervened by a public road or street to the other premises by laying down a cable across the street. But, in case of a private road within the premises owned by the consumer then the consumer can extend the power supply from one part of the premises to the other part of the same premises across the road.

b. For laying down of the cable or electric line across the street by the Distribution Licensee, the procedure laid down in the Electricity Act, 2003 has to be followed for extending power supply from the existing connection of the consumer in one premises to another premises held by the same owner and also the purpose of the use of power should be same.

c. However, in cases where providing new connection to the premises of a consumer involves enormous cost and time in either laying down of a new line and/ or setting up of a new sub- station, then, the Distribution Licensee can consider to extend power from one premises to the other provided, it is technically feasible and the purpose of supply is the same.

Interim Order in Case No. 38 of 2014

The Hon'ble Maharashtra Electricity Regulatory Commission ("Commission") vide its Order dated March 3, 2014 in Case No. 38 of 2014 dealing with the truing up for FY 2011-12 & FY 2012-13, granted an interim financial relief under Section 94(2) of the Electricity Act 2003, to the state utility Maharashtra State Electricity Distribution Company Limited ("MSEDCL") by allowing the recovery of Rs. 5,022 Crores (Rs. 4000 crores towards revenue and Rs. 1,022 crores toward the carrying costs) being the revenue gaps, by way of Additional Energy Charges. Originally MSEDCL had submitted a proposal for the grant of Rs. 9,312 Crores based on its computations and submissions made regarding its financially critical situation with respect to the matter in the subject case.

The Hon'ble Commission held a public hearing in this matter on February 28, 2014. After the invitation of objections from various segments of the stakeholder, the Hon'ble Commission considering the submission of the MSEDCL decided to grant aforementioned amount as the Additional Charges and decided that the interim relief provided shall come into force with effect from the energy bills being issued by MSEDCL from March 1, 2014. The Hon'ble Commission has also decided that the period of recovery for the same shall be twelve (12) months, i.e. up to February 28, 2015.

Meanwhile the Hon'ble Commission has directed the MSEDCL to submit a detailed roadmap to complete the metering of the unmetered agricultural consumers within sixty (60) days of the Order. Further the Hon'ble Commission regarding the division wise losses directed MSEDCL as follows:

"To undertake detailed study of division wise losses and prepare a milestone based action plan for reducing the losses in all divisions where the losses are higher than 20%. This shall be submitted to the Commission within sixty (60) days from the date of this Order. Information related to division wise losses shall be uploaded on its website on quarterly basis."

INTELLECTUAL PROPERTY

The Patent Amendment Rules, 2014

The Department of Industrial Policy and Promotion, Ministry Commerce & Industry, Government of India (**DIPP**) vide its Notification dated February 28, 2014 has laid down the salient features of the Patent Amendment Rules, 2014 which was published by the Government of India on February 28, 2014, effective from the date of publication.

The current amendment brings about a change in respect of fees and mode of filing.

The **salient** features of the amended rules are:

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1. A third category of applicant for patents has been included in addition to the already existing categories of natural persons and large Entities, namely the 'small Entity'.
2. There has been an increase in basic filing fees where, for a natural person it costs Rs. 1600 while for a large entity it shall cost about Rs. 8000. The fees for the newly included category shall lie between that of natural persons and large entities.
3. Furthermore, an additional ten percent on the fees shall be payable for applications of patents made in the physical or hard copy form. Thus, providing for two different fee structures in respect of electronic filing and physical filing of applications.
4. In case of small entities, every document for which a fee has been specified must be accompanied with Form-28.
5. Lastly, in case an application processed by a small entity whether fully or partially transferred to a person other than a natural person, the difference, if any, between the scale of fees charged from a small entity and those charged from the person other than a natural person except, small entity shall be paid by the new applicant with the request for transfer.

Philip Morris Products S.A & Anr vs. Sameer and Ors. [CS(OS) 1723/2010 and I.A. 11288/2010]

Philip Morris Products S.A ("**Plaintiff**") filed the current petition on discovering that Sameer and Others ("**Defendants**") were selling, stocking and distributing counterfeit cigarettes under the name "Marlboro" (the Plaintiff's duly registered product), as well as grey market versions of the same. An ex parte interim injunction was ordered against the Defendants and the infringing goods found from the search of the Defendant's premises were ordered to be seized.

On perusal, there were two issues that arose before the Hon'ble Delhi High Court. The first, relating to counterfeiting of the products used by the Defendants which were under the Plaintiff's trademark and infringing the Plaintiff's trademark and trying to pass off their product as that of the Plaintiff's. Secondly, on the point of grey market versions of cigarettes, the Plaintiff contended that these versions of cigarettes were neither intended to be sold in India nor were the Defendants authorized to sell these cigarettes. Thus, the import and sale of the products in India, being unauthorized, amounted to an infringement under Section 29(1) read with section 29(6) of the Trademark Act, 1999.

On scrutiny of the instant matter, the Hon'ble Delhi High Court, relying on and upholding the international exhaustion principle held that, once goods have been lawfully purchased i.e. purchased in accordance with the laws of the country of purchase, the sale of such goods in India would not infringe the registered trademark in India. However, it is on the importer to prove that the goods had been lawfully acquired. The relevant portion of the judgment in this regard is as follows:

"4. … The importer/defendant has to prove that the impugned goods, bearing a particular trademark, were placed in any market worldwide by the registered proprietor of the said trademark or with its consent and thereafter, the defendant lawfully acquired them therefrom."

The Defendants in the instant matter raised no defence and were unable to prove that the impugned cigarettes were lawfully acquired.

In light of these circumstances the Hon'ble Delhi High Court held that, the sale of the impugned cigarettes by the Defendants amounts to infringement. The Hon'ble Delhi High Court permanently restrained the Defendants from using the trademark "Marlboro" for cigarettes sold by them and awarded nominal damages.premise and are the basic elements of the electricity supply chain where electricity is generated. Thus, the start-up power consumption by such power plants used for starting of the power plant auxiliaries so that the electricity generation can be started should be treated as Industrial purpose only. Therefore, the Hon'ble MERC, on perusal of Article 11.9 of the executed PPA, directed MSEDCL to apply the tariff of Industrial category to the start-up power consumption of the Petitioner's generating plant and also revise the earlier energy bills to that effect and credit the excess collected amount in the upcoming bills of the Petitioner.

Vijay Alcohols and Allied Industries Ltd. Vs Brihan Karan Sugar Syndicate Pvt. Ltd. In Appeal from Order no. 9 of 2013

The present appeal has been filed by Vijay Alcohols and Allied Industries ("**Appellant**"), before the Hon'ble High Court of Bombay seeking vacation of temporary injunction that was granted by the Court of District Judge, Amalner, in favor of Brihan Karan Sugar Syndicate Private Limited ("**Respondent**").

The Appellant and Respondent are manufacturers of country liquor sold by the name 'Nimbula Punch' and 'Tango Punch' respectively. This suit pending before the District Judge was filed by the Appellant for permanent injunction, damages, accounts and other reliefs for infringement of copyright under the Copyright Act, 1957 and for passing off under the Trade Marks Act, 1999.

The question before this Hon'ble High Court was whether the District Judge exercised its discretion arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. While deciding on this question, the Hon'ble Court relied greatly on the judgment *of* ***Cadila***

Health Care Ltd. vs Cadila Pharmaceuticals Ltd. which held that, "what has to be seen in the case of a passing off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion."

After perusal of the case, the Court reasoned that, despite the dissimilarities present in the label, the consumer base and similarities in the label need to be considered while determining the question of deceptive similarity. It further reasoned that what must be considered is that the product is consumed by the lower strata of society with an imperfect memory and if without keeping the labels side by side, there is likelihood of the purchaser getting confused. Hence, held that the labels are deceptively similar.

Conclusively, the Hon'ble High Court decided in favour of the respondents and concluded that, there had been no illegality in the exercise of discretion by the Trial Court and that it had aptly concluded that the balance of convenience lay in the favour of the respondents. The injunction was therefore not vacated. Additionally, the Court has also directed that the final disposal of the suit be carried out expeditiously by the Trial Court.

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