

**INSIDE THIS
ISSUE:**

[MCA: Circular No. 43 of 2014](#) 1

[RBI: Review of NBFC - Factors \(Directions 2012\)](#) 2

[RBI: Revised regulatory framework for NBFC](#) 3

[RBI: External Commercial Borrowings policy](#) 4

[SEBI : conditions for issuance of off-shore derivative instruments](#) 6

[APTEL Judgment : Appeal No. 156 & 248 of 2013](#) 8

[HPERC: Petition No. 129 of 2013](#) 10

MINISTRY OF CORPORATE AFFAIRS

Issue of Foreign Currency Convertible Bonds and Foreign Currency Bonds

The Ministry of Corporate Affairs (“MCA”) vide circular [No.43/2014](#) invited attention towards issue of Foreign Currency Convertible Bonds (“FCCBs”) and Foreign Currency Bonds (“FCBs”).

The stakeholders have sought clarification from MCA regarding applicability of chapter III of the Companies Act, 2013 on the issue of FCCBs and FCBs by Indian Companies to persons residing outside India. After examination of the above clarification, it was said that the issue of FCCBs and FCBs by companies is regulated by Ministry of Finance “MOF” regulations contained in issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 (Scheme) and Reserve Bank of India (“RBI”) through its various directions/regulations.

It is further clarified that as per regulations of RBI the provisions of Chapter III of the Act shall not apply to issue of FCCBs & FCBs to person resident outside India.

For further information, please visit the link provided herein

THE RESERVE BANK OF INDIA



Review of the Non-Banking Financial Company – Factors (Reserve Bank) Directions, 2012

RBI vide its Circular No. [DNBR \(PD\) CC.No. 003/22.10.91/2014-15](#) dated November 10, 2014 has stated that in reference with its earlier circular DNBS (PD) CC. No. 297/ Factor / 22.10.91/ 2012-13 dated July 23, 2012 a Non-Banking Financial Company (“NBFC”) factor has to ensure that the financial assets of the NBFC factor in the factoring business should constitute at least 75% of the total assets and the income derived from factoring business should not be less than 75 % of the gross income.

On the representations received by RBI from the industry and in order to encourage the factoring sector in India it was decided that for an NBFC to register as NBFC factor, the financial assets in the business of factoring shall constitute at least 50% of the total assets and the income derived from the factoring business shall not be less than 50% of the gross income.

For further information, please visit the link provided herein

Revised Regulatory Framework for NBFC

RBI vide its Circular No. [DNBR \(PD\) CC.No.002/03.10.001/2014-15](#) dated November 10, 2014 has Revised Regulatory Framework for NBFC. The revision was sought to address the risks, regulatory gaps and arbitrage arising from different regulations both in the sector and with other financial institutions and also to simplify regulations to strengthen governance standards. The revised changes are as stated herein below:

- (1) Minimum Net Owned Funds of Rs. 200 Lakh
- (2) Deposit Acceptance
- (3) Systemic Significance
- (4) Multiple NBFCs
- (5) Prudential Norms
 - Prudential Regulations Applicable to Non-deposit taking NBFCs (“**NBFCs - ND**”) with Assets less than Rs. 500 crore
 - Prudential Regulations Applicable to Non-deposit taking systematically important NBFCs (“**NBFCs- ND- SI**”) (asset of Rs. 500 crore and above) and all Deposit Taking NBFCs (“**NBFCs-D**”)
- (6) Asset Classification
 - Lease Rental and Hire-Purchase Assets shall become Non-performing Assets (“**NPA**”)
 - Assets other than Lease Rental and Hire-Purchase Assets shall become NPA
 - For all loan and hire-purchase and lease assets, sub-standard asset would mean
 - For all loan and hire-purchase and lease assets, doubtful asset would mean:

- Provisioning for Standard Asset
- Credit / Investment Concentration Norms for AFCs

(7) Corporate Governance and Disclosure norms for NBFCs

(8) Disclosures in Financial Statements – Notes to Account

(9) Off-Site Reporting

(10) Exemptions

For further information, please visit the link provided herein

EXTERNAL COMMERCIAL BORROWINGS POLICY

RBI vide circular No. [A.P.\(DIR Series\) Circular No.39](#), dated November 21,2014 has brought attention towards the policy of External Commercial Borrowings (“ECB”)

RBI states that presently ECB borrowers are required to bring ECB proceeds in India for Rupee expenditure for permitted end uses for immediate credit to Rupee accounts with AD Category – I banks in India.

In order to bring flexibility to ECB borrowers, RBI permits AD-1 category banks to allow eligible ECB borrowers to park ECB proceeds under the under Government route & automatic route with AD-1 category banks for a period of six (6) months pending utilisation for permitted end uses.





This facility shall have the following conditions :-

- The applicable guidelines on eligible borrower, recognised lender, average maturity period, all-in-cost, permitted end uses, etc. should be complied with.
- No charge in any form should be created on such term deposits i.e. to say that the deposits should be kept unencumbered during their currency.
- Term deposits should be exclusively in the name of the borrower.
- Term deposits can be liquidated as and when required

For further information, please visit the link provided herein

THE SECURITY AND EXCHANGE BOARD OF INDIA



Conditions for issuance of Offshore Derivative Instruments under SEBI (Foreign Portfolio Investor) Regula- tions, 2014

1. The Security and Exchange Board of India (“SEBI”) vide circular no. [CIR/IMD/FIIC/20 /2014](#) dated November 14,2014 provided for the Conditions for issuance of Offshore Derivative Instruments under SEBI (Foreign Portfolio Investor) Regulations, 2014 (“SEBI-FPI Regulations”).
2. SEBI decided to align the applicable eligibility and investment norms between Foreign Portfolio Investor (“FPI”) regime and subscription through the Offshore Derivative Instruments (“ODI”) route. To this it was clarified that :-
 - 1) ODIs should be issued by FPI only to subscribers who meet the criteria for eligibility as per Regulation 4 of the SEBI-FPI Regulations. Registration cannot be granted unless:-
 - a. the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Commission’s Multilateral or bilateral Memorandum of Understanding ;

- b. the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
 - C. the applicant is not resident in a country identified in the public statement of Financial Action Task Force as a jurisdiction either having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies or that has not made sufficient progress in addressing the deficiencies
- 2) ODIs shall be issued by FPI only to those subscribers which do not have opaque structures.
- 3) Regulation 21(7) of SEBI-FPI Regulations, deals with investment restrictions, according to which :-
- a. These investment restrictions shall apply to ODI subscribers similarly with FPIs.
 - b. Further, the FPI investment and positions held as ODI subscriber will be clubbed together with reference to the said investment restrictions.

For further information, please visit the link provided herein

ELECTRICITY

Order of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 156 & 248 of 2013 of Simran Wind Project Private Limited and others Vs. Central Electricity Regulatory Commission & Ors and IL&FS Renewable Energy Limited Vs. Central Electricity Regulatory Commission & Ors

Vide the order dated [November 28, 2014](#) in Appeal Nos. 156 & 248 of 2013 of Simran Wind Project Private Limited & ors. Vs. Central Electricity Regulatory Commission (“**CERC**”) & Ors and IL&FS renewable energy limited Vs. CERC & Ors, wherein it was simultaneously held that, any beneficial legislation that needs to be interpreted and applied keeping in mind the object to be achieved does not nullify the basic intent of legislation. Similarly the Renewable Energy Certificates (“**REC**”) mechanism was used for promotion of renewable energy and hence the regulation is to be interpreted with that objective only.

The Appellants in the case no. 156 of 2013 engaged in the business of generation and supply of electricity through renewable energy sources, namely wind energy had challenged the Order dated 07.05.2013 of the Hon'ble CERC rejecting the Petition filed by the Appellants, the wind energy generators seeking for REC from the commercial operation date of the generating stations.





The Appellants in the Appeal No. 248 of 2013 were the wind energy generators. The Appellants had challenged the said Order of the Hon'ble CERC dated 15.07.2013 wherein the Petition filed by the Appellants requesting the Respondents to consider the commissioning date ("**DOC**") of generating station as the effective date for issuance of REC was rejected

It was further held that, the generator, who fulfils the substantive conditions of sale of electricity at Average Power Purchase Cost ("**APPC rate**"), not taking promotional concessional measures etc., is entitled to claim RECs from the DOC and that the fulfilment doesn't happen from the date of registration but when there is generation of electricity.

Even though in the recently amended REC regulation the Hon'ble CERC has specified that, the renewable generating plant would be eligible for issuance of certificate from the DOC or from the date of registration whichever is later, the following amendment would have prospective effect from the date of notification i.e. 10.7.2013.

Thus, the Appellants would be entitled to the REC from the DOC of the respective renewable energy projects subject to Regulation 7(1) of the REC Regulations. The said Order was set aside and Respondent was directed to issue the REC to the Appellants.

For further information, please visit the link provided herein

Order of the Himachal Pradesh Electricity Regulatory Commission in the Petition No. 129/2013 of M/s Ujaas Energy Limited v/s the H.P. State Electricity Board Ltd. and others



Vide order dated [November 10, 2014](#) in Petition No. 129 of 2013 in M/s Ujaas energy limited. v/s the Himachal Pradesh State Electricity Board Ltd. (“**HPSEBL**”) and others, the Hon’ble Himachal Pradesh Electricity Regulatory Commission (“**HPERC**”) held that default on the part of the obligated entity to fulfil the HPERC (Renewable Power Purchase Obligation and its Compliance) Regulations, 2010 (“**RPPO Regulations**”) are dealt with in regulation 9 of the RPPO Regulations , wherein the State Commission is empowered to direct the distribution licensees/other obligated entities to deposit the amount, as may be determined by the State Commission on the basis of the shortfall in RPPO energy and forbearance price decided by the Central Commission, which shall be utilized by the State Commission, partly for purchase of REC and partly for development of transmission infrastructure for evacuation of power from renewable sources of energy into a separate fund .

In the present case the Hon’ble HPERC has issued the RPPO Regulations specifying the minimum percentage of the total consumption, for RPPO for Non-solar and Solar energy for the distribution licensee, as well as the captive and open access users/consumers, and providing that the RECs issued under the CERC (Terms and Conditions for recognition and , and issuance of REC for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as



("the CERC Regulations") shall be the valid instruments for the discharge of the mandatory obligation and non-fulfilment of the same would be liable to pay compensation as per Regulation 9 of the RPPO obligations .

Thus, the Hon'ble HPERC held that once a default in terms of the RPPO Regulations is established, the payment of compensation under regulation 9 would follow, but the Hon'ble HPERC can award the compensation only after taking into consideration all the relevant circumstances explained by the person concerned before deciding the necessity to make direction under regulation 9.

Further, the Hon'ble Commission held that, the Respondent should deposit the compensation amount of Rs.17.23 Crores in a separate fund to be created by the HPSEBL in its account as RPPO Compensation Fund for non-compliance of RPPO in 2013-14. The Hon'ble HPERC further directed that this amount shall be utilised as HPSEBL's share in project financing (10% share) to create sub-transmission infrastructure (11 kV and 33kV) during the next two years, and that the HPSEBL will deposit Rs.5.00 Crores this year which will be provided by the Hon'ble HPERC in the true up order for FY 2013-14 and balance amount will be provisioned in the ARR of the FY 2015-16. This fund will be treated as grant/consumer contribution and, therefore, will not be admissible for depreciation and any other interest/return.

For further information, please visit the link provided herein

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