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MINISTRY OF CORPORATE AFFAIRS

Right Of Persons Other Than Retiring Directors To Stand For Directorship - Refund Of Deposit Under Section 160 Of The Companies Act, 2013

The Ministry of Corporate Affairs (“MCA”) vide [Circular No. 38/2014](#) dated October 14, 2014 (“Circular”) has clarified to the companies registered under section 8 of the Companies Act, 2013 (“Companies Act”) (corresponding to the earlier section 25 of the Companies Act, 1956) regarding the manner of refund of the deposit of Rs. 1,00,000/- (Rupees One lakh) received under Section 160 (1) of the Companies Act in the event the depositor fails to acquire more than 25% (Twenty Five) of the valid votes.

The MCA has clarified in this respect that the Board of Directors of the section 8 companies at their discretion may decide whether the deposit made by the person who has failed to secure more than 25% (Twenty Five) of the valid votes should be forfeited or refunded.



Company Law Settlement Scheme, 2014 (CLSS-2014) – Clarification under section 164 (2) Of The Companies Act, 2013

Companies Act 2013



MCA vide [Circular No. 41/ 2014](#) provided for Clarification under section 164 (2) of the Company Law Settlement Scheme, 2014. Clarification was sought as to whether immunity from disqualification of directors as per Section 164 (2) of the Companies Act will be applicable to companies who have filed balance sheets and annual returns on or after April 1, 2014 but before CLSS -2014 coming into force from August 15, 2014.

MCA clarified that companies who have filed balance sheets and annual returns on or after April 1, 2014 but before CLSS -2014 coming into force shall be disqualified under Section 164(2)(a) of Companies Act only for prospective defaults, if any.

For further information, please visit the link provided herein.

THE RESERVE BANK OF INDIA

Know Your Customer (KYC) Norms – Clarification on Proof of address



The Reserve Bank of India (“RBI”) vide [Circular RBI/2014-15/273](#) (“KYC Circular”) provided for KYC norms for Clarification on proof of address.

RBI states that despite issuing clear instructions for requirement of one proof of address, current or permanent of customers, some banks are yet insisting on submission of current address of a customer, even though the customer has produced a proof of permanent address, which prevents customers and migrant workers from opening bank accounts. RBI requests banks to ensure that customers especially those who have already submitted permanent proof of address are not further asked to provide additional proof of service for current addresses.

For further information, please visit the link provided herein

Foreign Exchange Compounding Proceedings Rules, 2000 - Compounding of Contraventions under FEMA 1999

RBI vide its [Circular No. 36 A.P \(DIR Series\)](#) (“Compounding Circular”) has invited the attention of the banks towards the Foreign Exchange (Compounding Proceedings) Rules 2000, which were notified by the Government on May 3, 2000 G.S.R. No. 383 (E) and the amendments made therein from time to time.



Vide G.S.R. No. 383 (E) and the amendments made therein from time to time.

The powers pertaining to delay in submission of Form FC-TRS on transfer of shares from Resident to Non-Resident, Non – Resident to Resident and recording of transfer of shares by investee company in the absence of certified form FC-TRS have been delegated to the Regional Offices. The division pertaining to Liaison Office, Project Office and Branch Office (“**LO/PO/BO**”) are transferred to Foreign Exchange Department (“**FED**”), CO Cell of RBI at Delhi. The FED, CO Cell of RBI shall monitor all the contraventions relating to acquisition and transfer of immovable property outside India, acquisition and transfer of immovable property in India, contraventions relating to establishment of LO/PO/BO and the contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000.

The compounding for the contraventions under Foreign Exchange Management Act (“**FEMA**”) amounting to less than Rs. 1,00,000/- (Rupees One Lakh) that fall under the jurisdiction of Panaji and Kochi shall be compounded at their regional offices, however the contraventions that amount to more than Rs. 1,00,000/- (Rupees One Lakh) and which also falls under the jurisdiction of Panaji and Kochi shall be compounded at the FEMA Cell for Effective Implementation at Mumbai (“**CEFA**”).

The Compounding Circular also states that all other contraventions and applications shall be submitted to the CEFA, FED at Mumbai.

For further information, please visit the link provided herein

Usage of ATMs- Rationalisation of number of free transactions

RBI vide Circular No. [DPSS.CO.PD.No.659/02.10.002/2014-2015](#) (“**ATM Circular**”) dated October 10, 2014 invites attention towards rationalisation of number of free transactions

RBI draws attention towards the earlier Circular DPSS.CO.PD.No. 316/02.10.002/2014-2015 dated August 14, 2014 according to which the free ATM transactions for saving bank account customers “**SBAC**” was reduced from 5 (Five) to 3 (Three) transactions per month carried out at ATMs located in six metro centres (Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad)

RBI after receiving request for clarifications from stakeholders regarding the number of free transactions has vide this circular clarified that initially the banks were mandated not to charge fees for SBAC for 5(Five) ATM transactions carried out at other bank ATMS irrespective of the location. RBI vide this ATM Circular clarifies that 3 (Three) transactions per month would be free if carried out at other bank ATMs located in six metro centres (Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad) but in case of transactions carried out in six metro centres and other locations, the total number of free transactions would be 5 (Five) .

For further information, please visit the link provided herein

DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION, MINISTRY OF COMMERCE AND INDUSTRY, GOVT OF INDIA



Streamlining the Procedure For Grant of Industrial Licenses

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt of India (“DIPP”) vide its [Press Note No. 9 \(2014 Series\)](#) (“**Press Note**”) has streamlined the procedure for grant of Industrial Licenses by providing for the below mentioned amendments.

(1) Increasing the validity period of Industrial License

The Press Note No. 5 (2014 Series) dated July 2, 2014 has been replaced by providing for an extension of two years each in the case where the initial validity of the Industrial License is three years. Hence, allowing for a total period of seven years.

(2) Removal of stipulation of annual capacity in the Industrial License

The Press Note seeks to deregulate the annual capacity for defence items for Industrial License. In view of the above, the Licensee has to submit a half yearly production return to the DIPP and Department of Defence Production, Ministry of Defence in the format as prescribed.

(3) Sale of Defence items to Government entities without approval of Ministry of Defence

The Licensee, by the virtue of the Press Note is allowed to sell Defence items to the Government entities under the control of Ministry of Home



Affairs, State Governments, Public Sector Undertakings and other Defence Licensed Companies without taking any prior approval of the Department of Defence Production (“**DoDP**”). In the event the Licensee intends to sell the items to any other entity, prior permission of DoDP, Ministry of Defence is to be obtained.

For further information, please visit the link provided herein

THE MINISTRY OF HEALTH AND FAMILY WELFARE

Notification dated October 15, 2014

The Ministry of Health and Family Welfare (“**MHFW**”), Government of India, issued Notification dated October 15, 2014 (“**Notification**”) drawing attention towards plain package on Cigarette packets.

MHFW provides that the pictorial and textual statutory warning placed on the carton of the Cigarette packet should cover 85% of the display area of the package. This Notification has amended the Cigarettes and other Tobacco Products (Packaging and labelling Rules), 2008, which states that the pictorial warning must cover at least 60% of the area and 25% of the package area must be covered by textual warning. The Notification amends certain rules making it obligatory for publication of information such as name of the product & manufacturer /importer and other allied information. It is seen that with all such information being printed on the package there is no space left for display of brand.

The Allahabad High Court in a recent decision has allowed plain packaging as a an option which would help curb youth in the country from smoking.

The detailed amendments to Cigarettes and other Tobacco Products (Packaging and labelling Rules), 2008, can be obtained from the link herein below:-

<http://mohfw.nic.in/showfile.php?lid=2984>

ELECTRICITY

Order of the Hon'ble Appellate Tribunal for Electricity in the case no. 256 of 2013 of DAV College Managing Committee Vs. Delhi Electricity Regulatory Commission & Anr



Vide the Order dated October 8, 2014 in DAV College Managing Committee Vs. Delhi Electricity Regulatory Commission & Anr., the Hon'ble Appellate Tribunal for Electricity ("**Tribunal**") held that the Educational Institution run by the Private bodies and Societies on commercial basis for the purpose of earning profits cannot be treated at par with the Educational Institutions run by the Government of NCT of Delhi and Municipal Corporations of Delhi, for the purpose of tariff and hence should be treated as distinct and separate categories.

The Appellant is a Private Educational Institution running and managing over 720 Educational Institutions comprising of Public Schools, Colleges, Institutes of Professional Education and Research Institutes. The Appellant had challenged the tariff order dated July 31, 2013 of the Respondent No. 1 (viz. Delhi Electricity Regulatory Commission) in this Appeal and sought to be treated at par with the Governmental Educational Institutions thereby removing it from the Non-domestic category in which it was so pegged vide the Tariff Order. It was contended by the Appellant that even though the Section 62(3) of the Electricity Act, 2003 ("**EA,2003**") permits differentiation amongst the classes and categories of consumers, an Educational Institution is not a commercial service. Thus they are entitled to Domestic Tariff.



It was further contended by the Appellant that the applicability of domestic tariff to Government Educational Institutions is a direct violation of the Article 14 of the Constitution of India.

The Respondents opposed the contentions of the Appellant and submitted judgements in support of their opposition. The Respondent heavily relied on the Rajasthan Engineering College Society Vs. Rajasthan Electricity Regulatory Commission (Appeal no. 39 of 2012 dated 28.08.2012). The facts of the said Judgement were similar to the subject Appeal before the Hon'ble Tribunal. In the said Appeal No. 39 of 2012, the Hon'ble Tribunal had held that the survival of Government run institutes very often depends upon the budgetary provision and not upon private resources which are available to the institutes in the private sector. Right to Education under Article 21 and free and compulsory education upto the age of 14 years under Article 45 of the Constitution of India are obligation on the Institutions under the Government/s to be fulfilled. However, the private institutions are in no way bound by such obligations. Thus the restriction and differentiation is based on proper nexus.

The Hon'ble Tribunal also pointed out that a similar finding was rendered in another of its judgements in Appeal No. 88 of 2012 dated 20.05.2013 as well as Appeal No. 300 of 2013 dated 12.08.2014.

Hence, the Hon'ble Tribunal found no merit in the Appeal and dismissed the same.

For further information, please visit the link provided herein

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Warm Regards,
Dipali Sarvaiya Sheth
Founder
Eternity Legal



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