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# NEWS CHRONICLE

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*We Think How Will It Be Achieved*

*We Think Risks / Problems*

*We Think Solutions*

*We Think Process*

*We Think About The Journey To Be Achievement*

*We Think About The Achievement*

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## Masala Bonds – A New-fangled way of raising money

A term which has recently gained momentum in the financial market is termed as Masala Bonds. They are the bonds issued outside India but denominated in Indian Rupees, rather than the local currency of that country. They are named after the Masala Spice, a mix of spices used in India. Unlike dollar bonds where the borrower takes the currency risk, masala bond investors have to bear the risk. The first Masala Bond was issued by the World Bank backed International Finance Corporation in November, 2014 when it raised Rupees 1000 crore bond to fund infrastructure projects in India. Later in August 2015 International Finance Corporation for the first time issued green masala bonds and raised Rupees 3.15 billion to be used for private sector investments that address climate change in India.

### About Masala Bonds

***“Masala Bond is a kind of financial instrument through which Indian entities can raise money from overseas Markets in rupee and not in foreign currency. Indian rupee denominated bonds issued in offshore Capital markets.”***



Masala Bond is a kind of financial instrument through which Indian entities can raise money from overseas markets in the rupee and not foreign currency. These are Indian rupee denominated bonds issued in offshore capital markets. The rupee denominated bond is an attempt to shield issuers from currency risk and instead transfer the risk to investors buying these bonds. In a way Masala Bonds is a step to help internationalize the Indian rupee. Investors in these bonds however will have a clear understanding and view on the Indian rupee risks. Therefore, stable Indian currency would be key to the success of these bonds.

The currency risk in the Masala Bonds lies in the hands of investors thus the investor demands a currency risk premium on the coupon and hence borrowing cost for Indian corporates through this route would be slightly higher.

However, it may still be cheaper if one considers the currency risk. Though raised in Indian currency, these bonds will be considered as part of foreign borrowing by Indian corporate and hence would have to follow the RBI norms in this regard. Under the automatic route, companies can raise as much as Rupees 50 billion per annum through Masala bonds.

## Pricing of Masala Bonds

There are two critical factors for the success of such bond : (a) coupon rate and (b) liquidity of Indian currency. India is rated BBB- by global ratings agencies—a notch above junk rating. Sovereign rating will influence pricing of these bonds. HDFC, for example, had recently borrowed in the domestic market through a three-year bond at 8.35%. HDFC expects to fix a coupon rate at least 10 basis points lower than the domestic rate for the masala bonds. It was observed that Indian banks were borrowing US dollar-denominated loan at under 4% in later half of 2015. If HDFC were able to issue masala bonds at 8.25%, it would imply a currency risk premium of above 4% per annum. Overseas investors are yet to decide their preferred coupon rate for the Indian masala bonds. Generally, given the view on Indian currency, investors are expecting a higher coupon from the issuers, which may make these bonds costly for Indian borrowers. This is the main reason holding back issue of masala bonds. If US Fed increases interest rate, that would make Indian masala bonds less attractive.



Allowing Indian firms to raise rupee-denominated loan from overseas market is a step towards full convertibility of Indian currency and the Indian central bank is supportive of this experiment. Despite initial glitches on pricing, masala bonds have potential to raise \$5 billion in next two years. British government is wooing masala bond issuers and would like to position London as the global hub for offshore rupee financing.

The success of masala bonds would demonstrate overseas investors' confidence on Indian currency. In other words, successful issue of these bonds by Indian corporate would imply faith on country's macroeconomic fundamentals and the central bank's role in currency management.

## *Regulatory Regime for Masala Bonds*

The Reserve Bank of India (RBI) has paved the way by permitting the issuance of rupee – denominated bonds as part of its Fourth bi-monthly Policy statement for the year 2015-16 on September 29, 2015. While the RBI pronounced on the issue from the perspective of foreign exchange regulation, particularly that governing external commercial borrowings (ECBs), several other issues remained, including whether the issuance of masala bonds were to comply with the provisions of company law as well as securities regulation. These issues have been clarified by the respective regulators more recently.

On August 3, 2016, the Ministry of Corporate Affairs (MCA) issued a Circular, which stated

that Chapter III of the Companies Act, 2013, which deals with prospectus and allotment of securities, and rule 18 of the Companies (Share Capital and Debentures) Rules, 2014, which deals with debentures, would not apply to the issue of rupee denominated bonds made exclusively to persons resident outside India in accordance with the applicable legal regime. Separately, on August 4, 2016, the Securities and Exchange Board of India (SEBI) issued a Circular, which laid down the corporate debt limit for all foreign investments in bonds issued by Indian companies, and also clarified that investments in rupee-denominated bonds shall not be treated as foreign portfolio investments (FPI), and hence will not fall within the regime that apply to them.

## *Why needed/Importance*

It was not due to a whim or loyalty to one's country that led to such a colourful christening for the local currency bonds. Masala bonds, if they take off is quite a significant advantage for the Indian economy. They are issued to foreign investors and settled in US dollars. Hence the currency risk lies with the investor and not the issuer, unlike external commercial borrowings (ECBs), where Indian companies raise money in foreign currency loans. While ECBs help companies take advantage of the

lower interest rates in international markets, the cost of hedging the currency risk can be significant. If unhedged, adverse exchange rate movements can come back to bite the borrower. But in the case of Masala bonds, the cost of borrowing can work out much lower.

Masala bonds can have implications for the rupee, interest rates and the economy as a whole.

## *Advantages & Disadvantages*

Competition from overseas markets may nudge the government and regulators to hasten the development of our domestic bond markets. A vibrant bond market can open up new avenues for bond investments by retail savers. If Masala bonds are eagerly lapped up by overseas investors, this can help prop up the rupee. The rising demand for Dim-sum bonds in 2011, for instance, promoted the use of the yuan in global trade and investment. Dim-sum bonds also provided investment avenues for yuan-holders outside of China. With talks of a full rupee convertibility back home, Masala bonds can help the rupee go global.

But these bonds can have bad after-effects too if companies decide to binge on them. As of December 2014, corporate overseas borrowings stood at \$171 billion. The recent turmoil in the rupee is already prompting caution on existing foreign loan exposure. Some reports estimate that Indian corporates, are likely to issue about \$6 billion worth of Masala bonds this fiscal. With our economy still on shaky ground, too much reliance on external debt (even in rupees) can weigh heavily on our rating by global agencies.

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## *The Maternity Benefit (Amendment) Bill, 2016 – A Transformation in the Labour Law*

The much awaited transformation in the Labour Law empowering women employment, the Maternity Benefit (Amendment) Bill was passed by Rajya Sabha on 11<sup>th</sup> August, 2016. While the bill is yet to be passed in Lok Sabha. The bill highlights the increasing the period of maternity leave from 12 to 26 weeks for Organized Formal Sectors.

The Bill amends the Maternity Benefit Act, 1961. The Act regulates the employment of women during the period of child birth, and provides maternity benefits. The Act applies to factory, mines, plantations, shops and other establishments. The Bill amends provisions related to the duration and applicability of maternity leave, and other facilities.

### *Highlights of the Maternity Benefit (Amendment) Bill, 2016*

- Duration of Maternity Leave – The Act states that every woman will be entitled to maternity benefit of 12 weeks. The Bill increases duration to 26 weeks.
- Under the Act, the maternity benefit should not be availed before six weeks from the date of expected delivery, the bill changes to eight weeks.
- In case of a woman who has two or more children, the maternity benefit will continue to be 12 weeks, which cannot be availed before six weeks from the date of the expected delivery.
- Maternity leave for adoptive and commissioning mothers: The Bill introduces a provision to grant 12 weeks of maternity leave to: (i) a woman who legally adopts a child below three months of age; and (ii) a commissioning mother. A commissioning mother is defined as a biological mother who uses her egg to create an embryo implanted in another woman.
- The 12-week period of maternity benefit will be calculated from the date the child is handed over to the adoptive or commissioning mother.

**A Helping Hand**

**26 WEEKS** of maternity leave to working women

**BUT WOMEN** who already have two or more children will get only 12 weeks

**12 WEEKS** of leave to commissioning mothers

**FIRMS WITH 50** employees or more to have crèche arrangements

**AMENDMENTS WILL** help 1.8 m women in organised sector

**"Work from home"** for nursing mothers

**PROVISIONS** applicable to all establishments employing 10 or more people

Image-Source - [EconomicTimes](http://EconomicTimes)



- Option to work from home: The Bill introduces a provision that states that an employer may permit a woman to work from home. This would apply if the nature of work assigned to the woman permits her to work from home. This option can be availed of, after the period of maternity leave, for a duration that is mutually decided by the employer and the woman.
- Crèche facilities: The Bill introduces a provision which requires every establishment with 50 or more employees to provide crèche facilities within a prescribed distance. The woman will be allowed four visits to the crèche in a day. This will include her interval for rest.
- Informing women employees of the right to maternity leave: The Bill introduces a provision which requires every establishment to intimate a woman at the time of her appointment of the maternity benefits available to her. Such communication must be in writing and electronically.

### *Need for the Transformation in the Law*

With the rise of Nuclear family concept in India and with that the social and family support is decreasing for young parents. This has become one of the major reason why more and more young and progressive women have to give up their career, which in turn proves a huge loss to society. Thus, the government taking into consideration this fact has made provision to increase the maternity leave from 12 weeks to 26 weeks for all organized formal sectors covering women working in both public and private sectors.

However, one such drawback which can be seen is that the women in the Unorganized Sector won't be benefitted from Maternity Benefit Act Amendment Bill, 2016. So, the women who work from home (whether they are freelancers or work at small establishments like rolling bidis etc) and work without a fixed employer are left out. Yes, working women without fixed employer have been left out from the bill completely.

The amendment recognises the economic rationale of women's participation in India's economy. Innumerable studies have highlighted the importance of involving half of India's population in measurable economic activities. Today, women contribute only 17 percent to India's GDP against a global average of 37 percent (source: McKinsey). Countries like Norway, Sweden or Denmark, that have one of the world's highest median per capita income, also have the highest female labour participation rate, higher than 70 percent. If India can increase its women participation in labour force by 10 percentage points by 2025, it could increase its GDP by 16 percent (source: Catalyst). A study by Booz and Company estimates that if men and women in India were to be equally employed, its GDP could go up by 27 percent. For a family, double income helps them to fulfil their economics needs and social aspirations while single women need it as a cushion against economic adversity. Therefore, household bound non-employed women who are finding it difficult to work are an economic concern that needs to be fixed.

## *Other Major Amendments and their impact*

For a Mother of Two, the Maternity Leave remains 12 weeks – Its sheer discrimination for the third child. 26 weeks isn't for the mother of two or more. So, a mother of two will only have 12 weeks leave. So, while, the maternity benefit amendment bill 2016 favors the first and second child. Yes, the child will face discrimination and will also be deprived of dietetic benefits of breastfeeding. The mother can avail the leave only before six weeks of the expected delivery.

Surrogate Mothers and Mothers Who Adopt Will Get 12 Weeks of Maternity Leave - This amended bill also introduces maternity leave of 12 weeks for commissioning and adoptive mothers. Commissioning mothers are biological mothers who use surrogacy method for childbirth and adoptive mothers who legally adopt a baby below 3 months of age. Though the bill is a progressive bill, but it is still a question as to why the 26-week leave is not slated for mothers who have children through surrogacy and adoption.

Option to Work From Home Post the Maternity Leave - Post the 26-week maternity leave, the bill introduces a provision where the employer may permit "Work from Home" for the new mother. This would apply to only those whose nature of work allows them to work from home. The duration of "Work from Home" is something that the employer and employee can decide mutually.

The Maternity Benefit Act Amendment Bill 2016 Also Introduces Crèche Facilities - Organizations with more than 50 women employees will have to provide crèche facilities within a prescribed distance according to the amended Maternity Benefit Act. Mothers will be allowed 4 visits in a day to the crèche including her break time.

## *Impact of Amended Bill for India*

Labour Ministry officials said that these changes in the maternity leave are aimed at helping mothers devote more time towards the health and care of their child and to increase the number of women in India's workforce. Our country has a very low labor force participation rate for women which has been on the decline for over a decade – in 2005, it was 37% but this fell to 29% in 2010 and today it stands at 22.5%.

These figures are particularly alarming as the downward spiral has continued despite India's rapid economic growth. While the declining female participation is highest in rural population, it is also present in urban population across all age groups and levels of education. Ironically, the gap between male and female labor force participation is evident in the Rajya Sabha where only 31 of the 244 members are women.

As the amendment goes beyond economics, it can be termed "historic". It is a long overdue recognition of the aspirations of innumerable Indian women who aspire to attain their rightful place in India's economic growth, without requiring to compromise on their role as mother and nurturer.

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## LEGAL UPDATES

## CORPORATE

## RBI



### 1. Dishonour of cheques – Modification in procedure

*Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/33 DBR.No.Leg.BC.3/09.07.005/2016-17 dated 4<sup>th</sup> August, 2016 has made modification in the procedure related to dishonour of Cheques.* In the previous instructions issued by RBI wherein banks were advised to introduce a condition for operation of accounts with cheque facility that in the event of dishonour of a cheque valuing rupees one crore and above drawn on a particular account of the drawer on four occasions during the financial year for want of sufficient funds in the account, no fresh cheque book would be issued. Also, the bank may consider closing current account at its discretion.

The above instructions have been reviewed and it has now been decided to leave it to the discretion of the banks to determine their response to dishonour of cheques of the account holders. Banks should put in place an appropriate policy approved by the Board or its Committee taking into consideration the need to prevent misuse of the cheque drawing

facility and avoid penalising customers for unintended dishonour of cheques.

### 2. Implementation of Indian Accounting Standards (Ind AS)

*Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/34 RBI/2016-17/DBR.FID.No. 1/01.02.000/2016-17 dated 4<sup>th</sup> August, 2016 has announced the implementation of Indian Accounting Standards (Ind AS) to All-India Term Lending and Refinancing Institutions (AIFIs) (Exim Bank, NABARD, NHB and SIDBI). They shall follow the Indian Accounting Standards as notified under the Companies (Indian Accounting Standards) Rules, 2015, subject to any guideline or direction issued by the Reserve Bank in this regard.*

AIFIs shall comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning from April 1, 2018 onwards, with comparatives for the periods ending March 31, 2018 or thereafter. Ind AS shall be applicable to both standalone financial statements and consolidated financial statements. “Comparatives” shall mean comparative figures for the preceding accounting period.

<https://www.rbi.org.in/Scripts/NotificationUse.aspx?Id=10542&Mode=0>

### **3. Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016**

*Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/38 Master Direction DNBR.PD.002/03.10.119/2016-17 dated 25<sup>th</sup> August, 2016 has issued Master Direction on Non-Banking Financial Companies Acceptance of Public Deposits. The directions have been issued for the purpose of enabling the Reserve Bank to regulate the credit system to the advantage of the country. Thus in supersession of the earlier directions, the Reserve Bank of India has issued the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 (the Directions) applicable to every non-banking financial company.*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10563&Mode=0>

### **4. Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016**

*Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/39 Master Direction DNBR. PD. 003/03.10.119/2016-17 dated 25<sup>th</sup> August, 2016 has issued the Master Direction on Core Investment Companies. The Directions shall be called Core Investment Companies (Reserve Bank) Directions, 2016 and shall apply to every Core Investment Company (CIC), a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies certain conditions as on the date of the last audited balance sheet.*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10564&Mode=0>

### **5. Master Direction - Exemptions from the provisions of RBI Act, 1934**

Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/40 Master Direction DNBR.PD. 001/03.10.119/2016-17 dated 25<sup>th</sup> August, 2016 has set out Master Direction for certain exemptions from the provisions of RBI Act, 1934.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10565&Mode=0>

### **6. Master Direction - Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 2016**

Reserve Bank of India (RBI) vide Notification No. RBI/DNBR/2016-17/41 Master Direction DNBR. PD. 005/03.10.119/2016-17 dated 25<sup>th</sup> August, 2016 has issued Master Direction on Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 2016.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10566&Mode=0>

### **7. Partial Credit Enhancement (PCE) to Corporate Bonds**

*Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/43 DBR.BP.BC.No.5/21.04.142/2016-17 dated 25<sup>th</sup> August, 2016 has enhanced the aggregate exposure limit from the banking system to 50 percent of the bond issue size, with a limit up to 20 percent of the bond issue size for an individual bank.*

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10571&Mode=0>

### ***8. Guidelines on Enhancing Credit Supply for Large Borrowers through Market Mechanism***

*Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/50 DBR.BP.BC.No.8/21.01.003/2016-17 dated 25<sup>th</sup> August, 2016 has issued guidelines on Enhancing Credit Supply for Large Borrowers through Market Mechanism.* In order to mitigate the risk of high exposure of banking system to any single borrower, RBI notified the prudential norms on enhancing credit supply to large borrowers through market mechanism. As per the norms, which will come into effect from April 1, 2017, incremental exposure of banking system to a specified borrower beyond normally permitted lending limit (NPLL) will be deemed to carry higher risk which will be recognised by way of additional provisioning and higher risk weights. Specified borrower shall mean a borrower with an aggregate of the fund-based credit limits (ASCL) of more than Rs 25,000 crore at any time during 2017-18, Rs 15,000 crore at any time during 2018-19 and Rs 10,000 crore at any time from April 1, 2019, onwards. The final guidelines have been prepared after receiving the comments on the Discussion Paper that proposed a framework for addressing the concentration risk of the banking system arising from its exposures towards a single counter party.

<https://www.rbi.org.in/Scripts/NotificationUse.aspx?Id=10574&Mode=0>



MCA



**1. Issuance of rupee bonds to Overseas investors by Indian Companies – Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013**

*Ministry of Corporate Affairs (MCA) vide Circular No. 9 dated 3<sup>rd</sup> August, 2016 has provided clarification with regard to applicability of provisions of Chapter III of the Companies Act, 2013 and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 to issue of rupee bonds by Indian Companies exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions.*

It is clarified that unless otherwise provided in the circular / directions / regulations issued by Reserve Bank of India, provisions of Chapter III of the Act and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions as stated above.

[http://www.mca.gov.in/Ministry/pdf/GeneralCircular09\\_03082016.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular09_03082016.pdf)

**2. Amendment to AOC-4(XBRL) for filing Annual Financial Statements**

AOC-4 (XBRL) for filing Annual Financial Statements is being amended to include mandatory CSR / CARO related details. The revised AOC-4 (XBRL) eForm along with updated C&I Taxonomy is likely to be available on MCA portal in September 2016. Stakeholders are requested to refer General Circular 08, dated 29 July 2016 regarding waiver of Additional Fee and plan accordingly. Upon implementation of the revised AOC-4 (XBRL) eform, the updated C&I Taxonomy 2016 will be used for filing annual financial statements in respect of financial years commencing on or after 01.04.2014.

**3. Amendment to Companies (Share Capital and Debentures) Rules, 2014**

Ministry of Corporate Affairs (MCA) vide Notification dated 12<sup>th</sup> August, 2016 has made amendment to Companies (Share Capital and Debentures) Rules, 2014, these rules shall be called the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016. The amendment has been made with regard to rupee denominated bonds, these bonds shall not be treated as Debentures.

*In the Companies (Share Capital and Debentures) Rules, 2014, in rule 18, after Sub-rule (10), the following sub-rule shall be inserted, namely:-*

*“(11) Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.”.*



#### **4. Government notifies 12 Provisions of Insolvency and Bankruptcy Code, 2016**

Ministry of Corporate Affairs (MCA) vide Notification dated 19<sup>th</sup> August, 2016 has notified the provisions of the following sections of Insolvency and Bankruptcy Code, 2016 that shall come into force w.e.f. 19<sup>th</sup> August, 2016–

- (1) section 3 - Definitions
  - (i) clause (1); - Board
  - (ii) clause (5); - Chairperson
  - (iii) clause (22); - Notification
  - (iv) clause (26); - prescribed
  - (v) clause (28); - regulations
  - (vi) clause (37); - words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.
- (2) section 221; - Grants by Central Government
- (3) section 222; - Boards' Fund
- (4) section 225; - Power of Central Government to issue directions
- (5) section 226; - Power of Central Government to supersede Board
- (6) section 230; - Delegation
- (7) section 232; - Members, officers and employees of the Board to the public servants
- (8) section 233; - Protection of action taken in good faith
- (9) sub-section (1) and clause (zd) of sub-section (2) of section 239; - the salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members of the Board under sub-section (5) of

Section 189

(10) sub-section (1) and clause (zt) of sub-section (2) of section 240; - the appointment of other officers and employees under sub-section (2), and the salaries and allowances payable to, and other terms and conditions of service of, such officers and employees of the Board under sub-section (3), of section 194;

(11) section 241; - Rules and regulations to be laid before parliament.

(12) section 242 – Power to remove difficulties

#### **5. MCA has released the old Annual Filing Form**

i.e; Form 23AC (Form for filing balance sheet and other documents with the Registrar), Form 23ACA (Form for filing Profit and Loss account and other documents with the Registrar), Form 23AC-XBRL (Form for filing XBRL document in respect of balance sheet and other documents with the Registrar), Form 66 (Form for submission of compliance certificate with the Registrar), Form 20B (Form for filing annual return by a company having a share capital with the Registrar), Form 21A (Particulars of annual return for the company not having share capital) on its website. MCA has also provided a separate link at the same page for uploading the said forms.

#### **6. MCA has notified the revised Annual Filing Forms**

i.e Form AOC-4 (Form for filing financial statement and other documents with the Registrar), Form AOC-4 CFS (Form for filing consolidated financial statements and other documents with the Registrar), Form DIR-12 (Particulars of appointment of Directors and the key managerial personnel and the changes among them), Form FC-2 (Return of alteration in the documents filed for registration by foreign company) and Form MGT-15 (Form for filing Report on Annual General Meeting) w.e.f 24th August 2016.

**7. MCA has notified the much awaited IEPF forms,** that is, Form IEPF - 1 (Statement of amounts credited to Investor Education and Protection Fund), Form IEPF - 2 (Statement of unclaimed or unpaid amounts), Form IEPF - 3 (Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund), Form IEPF - 4 (Statement of shares transferred to the Investor Education and Protection Fund), Form IEPF - 5 (Application to the Authority for an order for payment of dividend etc. out of the Fund), Form IEPF - 6 (Statement of shares and unclaimed or unpaid amounts to be transferred to the Investor Education and Protection Fund); are likely to be available on the IEPF portal w.e.f 25th August, 2016.

## SEBI



### ***1. Foreign Investment in Rupee denominated bonds issued overseas by Indian Corporates***

*Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/FPIC/CIR/P/2016/67 dated 4<sup>th</sup> August, 2016 has redefined the procedure with regard to Foreign Investment in Rupee denominated bonds issued overseas by Indian Corporates.*

Foreign investments in Overseas Rupee denominated bonds shall now be reckoned against the Combined Corporate debt limit of INR 244,323 cr. However, these investments shall not be treated as FPI investments and hence shall not be under the purview of the SEBI (Foreign Portfolio Investor), Regulations, 2014.

Accordingly, the INR 244,323 cr Corporate debt limit for FPIs shall be redefined as the Combined Corporate debt limit for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates.

[http://www.sebi.gov.in/cms/sebi\\_data/attach\\_docs/1470299109414.pdf](http://www.sebi.gov.in/cms/sebi_data/attach_docs/1470299109414.pdf)

### ***2. FAQs on Delisting***

Securities Exchange Board of India (SEBI) has issued the Frequently Asked Questions (FAQs) on SEBI (Delisting of Equity Shares) Regulations, 2009.

SEBI clarified that in case an eligible seller does not receive the tender/offer form, he can participate in the delisting by providing the application in writing on plain paper, signed by the eligible seller, stating his name and address, number of equity shares held as on the record date, client ID number, DP name/ID, beneficiary account number and number of equity shares tendered for the delisting offer, by introducing the issue in the FAQs on SEBI (Delisting Of Equity Shares) Regulations, 2009 on 5th August, 2016. Further, it has also been clarified that an eligible seller can tender its Equity Shares for delisting in the tender offer method through their respective stock broker by indicating the details of equity shares to be tendered under the delisting offer, during the normal trading hours of secondary market and in case the Equity Shares are held in physical form, Eligible sellers shall approach their respective stock broker along with the complete set of documents, as stated in public announcement / letter of offer, for verification procedures.

[http://www.sebi.gov.in/cms/sebi\\_data/attach\\_docs/1461232028476.pdf](http://www.sebi.gov.in/cms/sebi_data/attach_docs/1461232028476.pdf)

### **3. Discussion paper on 'Strengthening of the Regulatory framework for Algorithmic Trading & Co-location'**

SEBI has proposed a new framework for super-fast algorithm (algo) trading by suggesting random 'speed bumps' and separate queues for algo and non-algotrades by releasing a Discussion Paper 'Strengthening of the Regulatory framework for Algorithmic Trading & Co-location'. Algorithmic trading or 'algo' in market parlance refers to orders generated at a super-fast speed by use of advanced mathematical models that involve automated execution of trade, while co-location involves setting up servers on the exchange premises. SEBI has proposed to introduce resting time for order, random delays and random speed bumps, separate queues for co-location and non-co-location orders for strengthening the regulatory framework for algo trading and Co-location facility. SEBI has sought public comments on the proposal till August 31 and final guidelines would be put in place after taking into account views of all the stakeholders. The move is expected "to discourage latency sensitive strategies as such delays would affect HFT (High Frequency Trade) but would not deter non-algo order flow for which delay in milliseconds is insignificant.

### **4. SEBI introduces e-payment facility for payment of penalties, disgorgement amounts, etc.**

*Securities Exchange Board of India (SEBI) vide Press Release No. 131/2016 dated 9th August, 2016 has introduced e-payment facility for payment of penalties, disgorgement amounts, etc.*

All payees are advised to henceforth,

forward the details and confirmation of the payments so made, to the concerned dealing department of SEBI for their records as per the format provided.

<http://203.199.247.102/sebiweb/home/detail/34399/yes/PR-SEBI-introduces-e-payment-facility-for-payment-of-penalties-disgorgement-amounts-etc->

### **5. Revised Formats for Financial Results and Implementation of Ind AS by listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares**

*Securities Exchange Board of India (SEBI) vide Circular No. CIR/IMD/DF1/69/2016 dated 10th August, 2016 has revised the format for Financial Results and Implementation of Ind AS by listed entities which have listed their debt securities and/or non – cumulative redeemable preference shares ('listed entities').*

The circular has been issued in continuation with the earlier Circular of SEBI dated 5th July, 2016. The existing formats shall continue till the period ending on or before 31st December, 2016 and for the period ending after December 31, 2016, the disclosure of half yearly and annual financial results, i.e. the Balance Sheet and the Statement of Profit and Loss, shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in Schedule III to the Companies Act, 2013. However, Banking Companies and Insurance Companies shall follow the formats as prescribed under their respective Acts/Regulations as specified by their Regulators.

Listed entities, adopting the Indian Accounting Standards (hereinafter referred as 'Ind AS') in terms of Ind AS Rules, while publishing the half yearly/annual financial results under Regulation 52 (1) of the Listing Regulations, shall ensure that the comparative financial results, filed along with the said half yearly/annual financial results, are also Ind AS compliant. However, some relaxations have been provided to the listed entities for the first half year of the adoption of Ind AS.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1470830193897.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1470830193897.pdf)

#### **6. Prudential limits in sector exposure for Housing Finance Companies**

*Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2016/68 dated 10th August, 2016 has modified the prudential limits in sector exposure for Housing Finance Companies (HFCs).*

Presently, the guidelines for sectoral exposure in debt oriented mutual fund schemes put a limit of 25% at the sector level and an additional exposure not exceeding 5% (over and above the limit of 25%) in financial services sector only to HFCs. In light of the role of HFCs especially in affordable housing space, it has now been decided to increase additional exposure limits provided for HFCs in financial services sector from 5% to 10%.

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1470825723028.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1470825723028.pdf)

#### **7. Frequently Asked Questions (FAQs) on SEBI (Alternative Investment Funds) Regulations, 2012**

Securities Exchange Board of India (SEBI) vide Press Release dated 18<sup>th</sup> August, 2016 has issued the Frequently Asked Questions (FAQs) on SEBI (Alternative Investment Funds) Regulations, 2012. These FAQs are prepared with a view to guide market participants on SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations").

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1471519155273.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1471519155273.pdf)



**TAXATION**



services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

[http://finmin.nic.in/press\\_room/2016/GST\\_FAO.pdf](http://finmin.nic.in/press_room/2016/GST_FAO.pdf)

**1. GST Bill passed in Rajya Sabha**

The much awaited GST Bill has finally been passed by Rajya Sabha, with the Government successfully stitching together a political consensus on the GST Bill, to pave the way for much-awaited roll out of the landmark tax reform that will create a common market of 1.25 billion people. GST, is the biggest indirect tax reform since independence, is aimed at dismantling Inter-State barriers to trade in goods and services by subsuming a slew of around 17 indirect taxes viz. Excise Duty, Service Tax, VAT, CST, Luxury tax, Entertainment Tax, Entry Tax, Octroi, etc.

**2. Frequently Asked Questions (FAQs) on Goods and Services Tax (GST)**

Ministry of Finance, vide Press Release dated 3<sup>rd</sup> August, 2016 has issued the Frequently Asked Questions (FAQs) on Goods and Services Tax (GST).

Question 1. What is GST? How does it work?

Answer: GST is one indirect tax for the whole nation, which will make India one unified common market.

GST is a single tax on the supply of goods and

**3. Signing of Bilateral Advance Pricing Agreement by CBDT**

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Press Release dated 4th August, 2016 has informed that they have entered into a Bilateral Advance Pricing Agreement (APA) on 2nd August, 2016 with the Indian subsidiary of a Japanese trading company. This is the first Bilateral Advance Pricing agreement with a Japanese company having a “Rollback” provision in it. Overall, it is fourth bilateral APA signed by CBDT. Signing of this bilateral APA is an important step towards ascertaining certainty in transfer pricing matters of multinational company cases and dispute resolution.

The APA Scheme was introduced in the Income-tax Act in 2012 and the “Rollback” provisions were introduced in 2014. The scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance.

The progress of the APA Scheme strengthens the Government’s mission of fostering a non-adversarial tax regime.



The CBDT expects more APAs to be concluded and signed in the near future.

#### ***4. CBDT - Cost Accountant (s) eligible to be e-Return Intermediary***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 66/2016 dated 9<sup>th</sup> August, 2016 has now allowed Cost Accountant (s) to be eligible to be e-Return intermediary under section 139 of the Income Tax Act, 1961.

<http://www.incometaxindia.gov.in/communications/notification/notification662016.pdf>

#### ***5. Amendment of the Income-tax Rules-seeking PAN details of trustees and others in case of registration of trusts***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 67/2016 dated 9<sup>th</sup> August, 2016 has mandated to provide Permanent Account Number (PAN) of authors/founders/trustees/managers in Form 10A.

<http://www.incometaxindia.gov.in/communications/notification/notification672016.pdf>

#### ***6. CBDT notifies Revised DTAA / Convention with Mauritius***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 68/2016 dated 10<sup>th</sup> August, 2016 has notified the revised Double Taxation Avoidance Agreement (DTAA) with Mauritius.

<http://www.incometaxindia.gov.in/communications/notification/notification682016.pdf>

#### ***7. Revision of format of Form 3 of Income Declaration Scheme 2016***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 70/2016 dated 12<sup>th</sup> August, 2016 has revised the format of Form 3 “Intimation of Payment Under Sub-Section (1) of Section 187 of The Finance Act, 2016 In Respect of the Income Declaration Scheme, 2016”.

<http://www.incometaxindia.gov.in/communications/notification/notification702016.pdf>

#### ***8. Due date for Acknowledgement of Declarations under Income Declaration Scheme, 2016***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Instruction No. F.No.142/8/2016-TPL dated 12<sup>th</sup> August, 2016 has issued order under section 119 of the Income Tax Act, 1961 with regard to the due date for providing acknowledgement in Form 2 to be issued by the Principal Commissioner/Commissioner to the declarant within 15 days from the end of the month in which the declaration has been furnished. Hence, the acknowledgment in Form-2 for the declaration filed in the month of July, 2016 which was required to be issued by 15<sup>th</sup> August, 2016 has been extended to 30<sup>th</sup> August, 2016.

<http://www.incometaxindia.gov.in/news/order-under-section-119-income-tax-act-12-08-2016.pdf>

## 9. Premature Closure of PPF Account

Ministry of Finance vide Press Release dated 12<sup>th</sup> August, 2016 has allowed premature closure of Public Provident Fund (PPF) Account.

The Government has allowed premature closure of the PPF account in extreme circumstances like life threatening disease treatment or for children's higher education

The PPF account can be closed prematurely after completion of five financial years for the treatment of serious ailments or life threatening diseases of the account holder, spouse or dependent children or parents and for higher education of the account holder or the minor account holder. Such premature closure of PPF accounts shall be subject to deduction of such amount which shall be equivalent to one percent less interest on the interest rates as applicable" from time to time. Further, the Government is empowered to relax rules in exceptional circumstances.

## 10. Fifth set of Frequently Asked Questions (FAQs) providing clarification on various issues under the Income Declaration Scheme 2016 issued

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 29 dated 18<sup>th</sup> August, 2016 has provided the fifth set of Frequently Asked Questions (FAQs) providing clarification on various issues under the Income Declaration Scheme.

Some of the important issues clarified therein are as under:

Where loans, creditors, advances received, share capital, payables etc. are disclosed in the audited balance sheet but are fictitious in nature and cannot be directly linked to acquisition of a particular asset, then such fictitious liabilities can be disclosed under the

Scheme as such without linking the same with the investment in any specific asset.

- i) The income declared under the Scheme for an earlier assessment year can be taken into account to explain the related transactions of the subsequent assessment years in assessment proceedings pending before the Assessing Officer provided there is a nexus between the two.
- ii) No adverse action shall be taken against the declarant by FIU or the income-tax department solely on the basis of cash deposits made in banks consequent to the declaration made under the Scheme.
- iii) The period of holding of assets declared under the Scheme shall be taken on the basis of the actual date of acquisition of such asset and not from 1.6.2016 as clarified earlier.

[http://www.incometaxindia.gov.in/communications/circular/circular29\\_14072016.pdf](http://www.incometaxindia.gov.in/communications/circular/circular29_14072016.pdf)

## 11. Amendment of Rules under Income Declaration Scheme, 2016 providing an option to the declarant the fair market value of immovable property acquired through Registered Deed

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 74 dated 17<sup>th</sup> August, 2016 has made amendment to Income Declaration Scheme Rules, 2016. The Rules have been amended to provide that where acquisition of an immovable property is evidenced by a registered deed, an option shall be available with the declarant to declare the fair market value of such property by applying the cost inflation index to stamp duty value of the property.

### ***12. Approval of Eligible Projects or Schemes under Section 35AC of the Income Tax Act, 1961***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Press Release dated 19<sup>th</sup> August, 2016 has provided that the requests received after 31st December, 2016 for the grant/modification/extension of approval beyond 31st March, 2017 under Section 35AC of the Income-Tax Act shall not be considered/entertained by the National Committee.

Section 35AC of the Income Tax Act 1961, inter alia provides for a deduction in computing the business income of an assessee, of the amount paid by him to a Public Sector company or a local authority or to an association or institution approved by the National Committee for carrying-out any eligible project or scheme.

Section 35AC of the Income Tax Act, as amended by the Finance Act, 2016, provides that no deduction under this Section shall be allowed in respect of any assessment year commencing on or after 1st April, 2018. Accordingly, the benefit of deduction under Section 35AC of the I.T. Act is available only up to previous year ending 31-03-2017 (Assessment Year 2017-18) in respect of the payments made to association or institution already approved by the National Committee for carrying-out any eligible project or scheme.

### ***13. Release of New updated Version of Income Tax Return Statistics for Assessment Year 2012-13***

Central Board of Direct Taxes (CBDT) had proactively released data relating to direct tax collections, PAN allocation and distribution of income in the returns for AY 2012-13 earlier in

April, 2016.

A new version of the income distribution data for AY 2012-13 has now been placed in public domain and is available at [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in). Version 2.0 of the tax return data includes additional tables containing distribution of gross total income in respect of different types of taxpayers e.g. individuals, HUF, firms, companies, association of persons, etc.

In addition to the additional information provided in respect of gross total income, the new version also takes care of internal inconsistencies in the data set released earlier which had crept in due to data quality issues in some of the returns of income received from the taxpayers.

### ***14. CBDT notifies classes of buyers to whom TCS provisions shall not apply***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 75/2016 dated 19<sup>th</sup> August, 2016 has made amendment to Income Tax Rules, 1962. These rules may be called Income Tax (21<sup>st</sup> Amendment) Rules, 2016.

In the Income-tax Rules, 1962 (hereafter referred to as the said rules), after rule 37CA and before 37D, the following rule shall be inserted, namely:—

“Class or classes of buyers to whom provisions of sub-section (1D) of section 206C shall not apply.

37CB. (1) The provisions of sub- section (1D) of section 206C in relation to sale of any goods (other than bullion or jewellery) or providing any service shall not apply to the following class or classes of buyers , namely:—

- (i) Government;
  - (ii) embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State;
  - (iii) institutions notified under United Nations (Privileges and Immunities) Act, 1947".
- <http://www.incometaxindia.gov.in/communications/notification/notification752016.pdf>

***15. Notification of Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and for the encouragement of mutual trade and investment between India and Mauritius - Source based capital gain taxation under revised DTAA with Mauritius***

Ministry of Finance vide Press Release dated 29<sup>th</sup> August, 2016 has issued notification with regard to Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius WHICH was signed by both countries on 10th May, 2016. After completion of internal procedures by both countries, the Protocol entered into force in India on 19th July, 2016 and has been notified in the Official Gazette on 11th August, 2016.

The protocol provides for source based taxation of capital gains arising from alienation of shares acquired on or after 1st April, 2017 in a company resident in India with effect from financial year 2017-18. Simultaneously, investments made before 1st April, 2017 have been grandfathered and will not be subject to capital gains taxation in India. Where such capital gains arise during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India. Taxation in India at full domestic tax rate will

take place from financial year 2019-20 onwards.

***16. CBDT signs 20 Unilateral Advance Pricing Agreements with Indian taxpayers***

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Press Release dated 30<sup>th</sup> August, 2016 has entered into twenty (20) Unilateral Advance Pricing Agreements (APAs) with Indian taxpayers. Many of these agreements also have a "Rollback" provision in them.

The APA Scheme was introduced in the Income-tax Act in 2012 and the Rollback provisions were introduced in 2014. The scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for the maximum of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years. Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs) and that has resulted in more than 700 applications (both unilateral and bilateral) having been filed in just four years.

The 20 APAs signed in these two days pertain to various sectors of the economy like Information Technology, Banking & Finance, Insurance, Human Resources, Pharmaceutical, Solar Energy, Oil & Gas, Foods & Beverages, Telecommunications and NGO. The international transactions covered in these agreements include Software Development Services, IT enabled services, Investment Advisory Services, KPO services, Contract manufacture, Contract R&D services, Import of components, Support services, Export of goods, Management services,



Brand Royalty, Technical services, Engineering design services, Selling & Marketing services, Network operation & maintenance services, General & Administration services, HR consultancy services, etc.

**16. Extension of date of filing return in J&K to 30.09.2016**

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide order No. F. No. 225/195/2016/ITA.II dated 26<sup>th</sup> August, 2016 has extended the 'due-date' for filing Return of Income from 31st August, 2016 to 30th September, 2016 for the state of Jammu & Kashmir.

**17. Extension of Due Date for filing of online DVAT return for Q1 of 2016-17**

Department of Trade and Taxes vide Circular No. 13 dated 31<sup>st</sup> August, 2016 has extended the due date for filing online DVAT return for the first quarter of 2016-17 to 10<sup>th</sup> September, 2016.

**18. CBDT Extends due date for quarterly furnishing of Form 15G/15H**

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 10/2016 dated 31<sup>st</sup> August, 2016 has extended the due date for quarterly furnishing of Form 15G/15H.

[http://www.incometaxindia.gov.in/communications/notification/notification\\_10\\_dgit\\_regarding\\_extn\\_of\\_due\\_date15gh.pdf](http://www.incometaxindia.gov.in/communications/notification/notification_10_dgit_regarding_extn_of_due_date15gh.pdf)

S.No.	Scenarios	Original Due Date	Extended Due Date
1.	Form 15G/H received during the period from 01.10.2015 to 31.03.2016	30.06.2016	31.10.2016
2.	Form 15G/15H declarations received during the period from 01.04.2016 to 30.06.2016	15.07.2016	31.10.2016
3.	Form 15G/15H declarations received during the period from 01.07.2016 to 30.09.2016	15.10.2016	31.12.2016

## SERVICE TAX

### **1. Service Tax on freight forwarders on transportation of goods from India**

Ministry of Finance, Central Board of Excise and Customs (CBEC) vide Circular no. 197/7/2016 – Service Tax dated 12<sup>th</sup> August, 2016 has clarified that when the freight forwarders act as agent of an airline/carrier/ocean liner, the service of transportation is provided by the airline/carrier/ocean liner and the freight forwarder is merely an agent and the service of the freight forwarder will be subjected to tax while the service of actual transportation will not be liable for service tax under Rule 10 of Place of Provision of Services Rules, 2012.

However, if a freight forwarder act as a principal will not be liable to pay service tax when the destination of goods is from a place in India to a place outside India.

<http://www.cbec.gov.in/resources//htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-197-2016.pdf>

### **2. Service Tax Liability in case of hiring of goods without the transfer of the right to use goods**

Ministry of Finance, Central Board of Excise and Customs (CBEC) vide Circular No. 198/8/2016 – Service Tax dated 17<sup>th</sup> August, 2016 has provided that there shall be service tax liability in case of hiring of goods without the transfer of the right to use goods.

The government has provided the criteria to be followed and applied in case involving hiring, leasing or licensing of goods. The terms of the contract must be studied carefully vis-à-vis the criteria laid down by the Supreme Court in order to determine whether

service tax liability will arise in a given case. The Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India, reported in 2006(2) STR 161 SC, has laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely-

There must be goods available for delivery;  
There must be consensus *ad idem* as to the identity of the goods

The transferee should have a legal right to use the goods – consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;

For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute – viz a “transfer of the right” to use and not merely a license to use the goods;

Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

<http://www.cbec.gov.in/resources//htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-198-2016.pdf>



## OTHERS

### ***1. Draft Sale Agreement- Real Estate Regulation & Development Act 2016***

The Ministry of Housing & Urban Poverty Alleviation vide Notification No. O-17034/18/2009-H (Vol. X) / FTS No. 16083 dated 2nd August, 2016 has provided under Section 13(2) of the Real Estate Act, 2016 read with Section 84(2)(h) the preparation of an 'Agreement for Sale' vide Rules by the 'appropriate Government'. Ministry of Housing & Urban Poverty Alleviation being the appropriate Government for Union Territories without Legislature (Chandigarh, Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli and Lakshadweep), has prepared the draft Rules for 'Agreement for Sale' under the Real Estate (Regulation and Development) Act, 2016.

The draft Rules for Agreement for Sale are uploaded on the Ministry's website and public comments are sought on the same by maximum 17th August, 2016.

[http://mhupa.gov.in/writereaddata/Draft\\_Agreement\\_for\\_Sale\\_Real\\_Estate\\_Act\\_2016.pdf](http://mhupa.gov.in/writereaddata/Draft_Agreement_for_Sale_Real_Estate_Act_2016.pdf)

### ***2. IRDAI Issues Guidelines for Share Acquisition in Insurance Companies***

Insurance Regulatory and Development Authority of India (IRDAI) has issued guidelines for acquisition of shares in listed insurance companies under which the acquirer will be required to adhere to the fit and proper criteria and seek regulator's nod for owning voting rights beyond 5 per cent.

[https://www.irdai.gov.in/ADMINCMS/cms/w/hatsNew\\_Layout.aspx?page=PageNo2922&f](https://www.irdai.gov.in/ADMINCMS/cms/w/hatsNew_Layout.aspx?page=PageNo2922&f)

### ***lag=1***

### ***3. Amendments to the Maternity Benefit Act, 1961***

The Union Cabinet vide Press Release dated 10th August, 2016, has given its ex-post facto approval for amendments to the Maternity Benefit Act, 1961 by introducing the Maternity Benefit (Amendment) Bill, 2016 in Parliament.

The maternity benefit Act 1961 protects the employment of women during the time of her maternity and entitles her of a 'maternity benefit' - i.e. full paid absence from work - to take care for her child. The act is applicable to all establishments employing 10 or more persons. The amendments will help 1.8 million (approx.) women workforce in organised sector.

The amendments to Maternity Benefit Act, 1961 are as follows:

- Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.
- 12 weeks Maternity Benefit to a 'Commissioning mother' and 'Adopting mother'.
- Facilitate 'Work from home'.
- Mandatory provision of Creche in respect of establishment having 50 or more employees.

**Justification:**

- Maternal care to the Child during early childhood - crucial for growth and development of the child.
- The 44th, 45th and 46th Indian Labour Conference recommended enhancement of Maternity Benefits to 24 weeks.
- Ministry of Women & Child Development proposed to enhance Maternity Benefit to 8 months.
- In Tripartite consultations, all stake holders, in general supported the amendment proposal.

***4. The Factories (Amendment) Bill, 2016***

The Union Cabinet vide Press Release dated 10<sup>th</sup> August, 2016 has given its ex-post facto approval for amendment of Section 64 and section 65 and consequential amendment of section 115 of the Factories Act, 1948 by introducing the Factories (Amendment) Bill, 2016 in the Parliament.

The approved amendments will give boost to the manufacturing sector and facilitate ease of doing business with an aim to enhance employment opportunities.

These amendments relate to increase in overtime hours from the existing 50 hours per quarter to 100 hours (Section 64) and existing 75 hours per quarter to 125 hours (Section 65).

***5. Cabinet approves foreign investment in other Financial Services sector***

The Union Cabinet vide Press Release dated 10th August, 2016 has given its approval to

amend regulation for foreign investment in the Non- Banking Finance Companies (NBFCs).

The amendment in the existing Foreign Exchange Management (Transfer or Issue of Security by the Person Resident Outside India) regulations on Non- Banking Finance Companies (NBFCs) will enable inflow of foreign investment in "Other Financial Services" on automatic route provided such services are regulated by any financial sector regulators (RBI, SEBI, PFRDA etc.) / Government Agencies. Foreign investment in "Other Financial Services", which are not regulated by any regulators / Government Agency, can be made on approval route.

Further, minimum capitalisation norms as mandated under FDI policy have been eliminated as most of the regulators have already fixed minimum capitalisation norms. This will induce FDI and spurt economic activities. It will cover whole India and is not limited to any State/Districts.

***6. Setting up of Technology Acquisition and Development Fund***

Ministry of Commerce & Industry vide Press Release dated 10th August, 2016 has notified the Scheme for Technology Acquisition and Development Fund (TADF) under the National Manufacturing Policy (NMP) to provide funding support to SMEs for the acquisition and development of clean and green technology. The Scheme is applicable to all existing and new Micro, Small and Medium Enterprises (MSMEs) including those in the National Investment and Manufacturing Zones (NIMZs) in respect of their investments made after notification of the Scheme.

The fund provides subsidy of upto 10% of capital expenditure incurred on new plant and machinery (on procuring plant and machinery) for manufacturing units for controlling pollution, reducing energy consumption and for water conservation, subject to a maximum of Rs. 50 lakhs.

The incentives consist of:

i. Five percent interest reimbursement of the nominal interest charged by lending agency;

ii. Ten percent capital subsidy;

iii. 25% grant to SMEs for expenditure

incurred on Environmental and Water audits subject to a maximum of Rs. 1 lakh in NIMZs;

iv. Units practicing zero water discharge are eligible for 10% onetime capital subsidy on the relevant equipment/systems subject to actual usage for one year and third party certification; and

v. Access to the patent pool and/or part reimbursement of technology acquisition costs upto a maximum of Rs.20 lakhs for acquiring appropriate technologies patented upto a maximum of 5 years generally, prior to the date of submission of the project.

### ***7. Mandatory Deposits of EPF contribution through Internet Banking***

Employees' Provident Fund Organisation, Ministry of Labour & Employment vide Circular dated 16<sup>th</sup> August, 2016 has made mandatory for the Employers to Deposit the EPF Contribution through Internet Banking.

### ***8. Revision of Basic Minimum Wages for Central Sphere Workers***

Ministry of Labour & Employment vide Press Release dated 30<sup>th</sup> August, 2016 has revised the Basic Minimum wages to Rs.350/- Per Day for Unskilled Non-Agricultural Workers for 'C' Category Areas.

Other amendments that have been made are –

Bonus Act to be implemented strictly. The Central Government to pay Bonus for the years 2014-15 and 2015-16 based on revised norms.

The Central Government to take necessary steps to resolve the cases pending in High Courts/Supreme Court with regard to payment of Bonus.

Mandatory registration of the contract workers and their staffing agencies as per law.

Advisories to be issued to all the States Governments to ensure that registration of Trade Unions takes place within 45 days.

### ***9. Cabinet approves simplification and liberalisation of the Foreign Direct Investment Policy, 2016 in various sectors***

Cabinet vide Press Release dated 31<sup>st</sup> August, 2016 has given ex-post facto approval for the FDI policy amendments announced by the Government on 20<sup>th</sup> June, 2016. The FDI policy amendments are meant to liberalise and simplify the FDI policy so as to provide ease of doing business in the country leading to larger FDI inflows contributing to growth of investment, incomes and employment.

The scheme is expected to encourage foreign investment in India and facilitate Make in India Programme. Under the Scheme, suitable provisions will be incorporated in the Visa Manual to provide for the grant of PRS to foreign investors.

The PRS will be granted for a period of 10 years with multiple entry. This can be reviewed for another 10 years if the PRS holder has not come to adverse notice. The scheme will be applicable only to foreign investors fulfilling the prescribed eligibility conditions, his/her spouse and dependents. In order to avail this scheme, the foreign investor will have to invest a minimum of Rs. 10 crores to be brought within 18 months or Rs.25 crores to be brought within 36 months. Further, the foreign investment should result in generating employment to at least 20 resident Indians every financial year.

Permanent Residency Status will be granted for a period of 10 years initially with multiple entry facility, which can be renewed for another 10 years. PRS will serve as a multiple entry visa without any stay stipulation and PRS holders will be exempted from the registration requirements. PRS holders will be allowed to purchase one residential property for dwelling purpose. The spouse/ dependents of the PRS holder will be allowed to take up employment in private sector (in relaxation to salary stipulations for Employment Visa) and undertake studies in India.

### ***10. E Carts and E Rickshaws freed from permit requirements***

The Ministry of Road Transport and Highways vide Press Release dated 31<sup>st</sup> August, 2016 has announced that they have issued a gazette notification that serves to free e rickshaws and

e carts from permit requirements. According to the notification, the provisions of the sub-section (1) of section 66 of the Motor Vehicles Act, 1988 will not apply to e-carts and e-rickshaws (as defined in section 2A of the said Act,) that are used for carrying goods or passengers with personal luggage. This means that vehicles that are registered as e carts or e – rickshaws will not require any permits. State Governments can however impose restrictions under appropriate traffic laws on plying of these vehicles in specific areas or specific roads.

## Ruling on Shareholder Rights to Inspect Company Records

### Brief

The Mumbai Bench of the Company Law Board ('CLB'), through its order dated April 16, 2015 in the case of *Mr. Anil Kumar Poddar v. Bonanza Industries Limited*, dismissed the application of a shareholder who demanded copies of records of a company and sought inspection of the register, minutes, annual returns, and the like, on the ground that such an application was *mala fide* and frivolous.

### Facts of the Case

In the present case, the applicant is a professional shareholder named Mr. Anil Kumar Poddar (hereinafter referred to as the '**Applicant**') who holds 5 to 10 shares in various listed companies and, exercising shareholders' rights, demands copies of the company records, registers, minutes, etc. Bonanza Industries Limited is the company against whom the present application has been filed (hereinafter referred to as the '**Defendant**'), which states that the shareholder complaint is a vexatious one and that the shareholder harbours *mala fide* intention in his acts.

While responding to the application, that the Defendant submitted that the Applicant holds a very nominal or negligible shareholding in various listed companies spread all across the country. Being a shareholder, the Applicant has various rights, which include right to obtain copies of records being maintained by the companies and to seek inspection thereof. The Applicant has adopted a *modus operandi* to slap notices under section 20 of the Companies Act, 2013 (hereinafter referred to as the "Act") to the companies seeking various records, including minutes, registers, annual returns and financials of the companies against payment of charges for providing such records. However, the intention has never been that of a genuine shareholder who is being concerned of the performance of the company as his shareholding of 5-10 shares in each company shows a contrasting picture. For this purpose the Defendant cited the case of *Reliance Industries Ltd, and Ors. v. Anil Kumar Poddar*, in which the Bench of the CLB had observed that the Applicant approached with unclean hands and as a black mailer seeking finance in cash/cheque, therefore making it an application filed with ulterior motive, which was consequently was rejected. The Defendant submitted that the Applicant also gave warning that non-fulfillment of his demands may lead to dire consequences.

### CLB's Findings

The Hon'ble Bench observed the case in light of approximately 150 other such applications which were filed by the Applicant and were pending before the Bench. The Bench also considered the ruling pronounced by the Calcutta High Court in the matter of *Phillips Carbon Black Limited & Ors. V. Anil Kumar Poddar & Anr.*, where the Applicant was barred from exercising his rights as a shareholder along with his accomplices. The Bench reiterated that to prevent the abuse of the process of the Court, the CLB is entitled to pass such orders as may be necessary having regard to the facts of the case, and since the information demanded by the



Applicant is available in public domain as it is a matter common knowledge that the statutory records of all companies are available on MCA portal, hence the Bench concluded that the Applicant is in the habit of making such frivolous applications and is apparently not a *bona fide* applicant.

### Provisions of Law

Section 20, which deals with the mode of service of documents to and by the company, reads as follows:

20

(1) *Xxx*

(2) *Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:*

***Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.***

*Xxx*

### Arguments by both the Parties

#### ***Petitioner***

It was argued by the Applicant who appeared in person before the Hon'ble Bench that the Defendant has made wrong allegations of harassing the management through unfair means just to malign the image of the Applicant and hence the intentions of the Defendant are *mala fide*. He demanded inspection of the records of the company and the copies of such records in his capacity as a shareholder, as such right is vested in him by the statute.

#### ***Defendant***

However, counsel representing the Defendant argued that the shareholder holds only 10 shares in the Defendant and has been harassing the company and the management by illegally demanding copies of the records of the Company, despite the fact that the records which he demands can easily be obtained through the portal of the Ministry of Corporate Affairs, website of the stock exchange where the shares of the company are listed or even on the Company's website. Attention was drawn by the Defendant towards the fact the Applicant had filed 14 more applications against different companies, which were enlisted for hearing on the same day of this hearing, to bring to light the fact that the acts of the Applicant are frivolous in nature and hold no substance. Hence, the Defendant made a request that the application be quashed by the Bench.



## Judgment of CLB, Mumbai

The CLB Bench of Mumbai observed that the Applicant is in the habit of making such applications. Acknowledging the Defendant's submission regarding the availability of records of companies on various websites of regulators and records of the Registrar of Companies ("RoC") and yet the act of the Applicant filing such applications makes him appear to be a non-*bona fide* applicant. The Bench dismissed the application stating - "*the rights of inspection of documents should be exercised in good faith and taking into consideration the company's best interest.*" It therefore advised the Applicant from resisting himself from filing such frivolous and *mala fide* applications. However, the Bench also observed that pursuant to the powers vested by the CLB Regulations upon it, it is not competent to pass an order for investigation into charges levelled by the Company.

## Analysis

Shareholders' rights have been now discussed in length and at par at various forums. However, it was in the year 1930 in the matter of *Johnson Ranch Royalty v. Hickey* that the shareholders' rights were magnified. In that case, it was held that the fundamental principle is that the shareholders own the corporation, including all property possessed by the corporation, including all the information and all the records. Those in charge of the corporation are merely the agents of the stockholders who are the real owners, and the owners are entitled to information as to the manner in which the corporate business is conducted. While the corporation holds the legal title to its property, the stockholders are deemed the real and beneficial owners thereof and, as such, are entitled to information concerning the management of the property and business they have confided to the officers and directors of the corporation as their agents. A stockholder's assertion of right to inspect the corporation's books and records is sometimes said to be one merely for the inspection of what is his own. Further, it was declared in the same case that the right to inspect corporate books and records exists so that the shareholder may "ascertain whether the affairs of the corporation are properly conducted and that he may vote intelligently on questions of corporate policy and management."

The intent of introducing the concept of demanding inspection and copies of records of the company was to facilitate more transparency and governance in the interest of the shareholders where a matter may affect their rights. The same was also introduced to give shareholders control over the company as its their money which is invested in the company and they should have right to obtain information on how their investment is being channelized by the company so as to see if they will get their desired returns from the company or not. However, on the contrary, a ruling pronounced in *Guthrie v. Harkness*, 199 U.S. 148 (1905) by the United States Supreme Court noted that courts will not compel the inspection of a bank's books under all circumstances. "In issuing the writ of mandamus the court will exercise a sound discretion, and grant the right under proper safeguards to protect the interests of all concerned. The writ should not be granted for speculative purposes, or to gratify idle curiosity, or to aid a blackmailer, but it may not be denied to the stockholder who seeks the information for legitimate purposes." Though the ruling was pronounced for inspection of a bank's records, but the intent is to safeguard the records from going into wrong hands.

However, vexatious shareholders have been misusing the rights, which could create unnecessary problems for the companies. The Act missed out on the provisions which could require that a shareholder hold a minimum number shares before exercising the shareholders' right for inspection of documents and other similar rights. In their absence, such rights could be misused by some shareholders to make vexatious demands without legitimacy, including before the judicial platforms and drag companies into unnecessary litigation.

### Impact of Judgement

This order of CLB will send out a strong message of good corporate governance to the stakeholders and try to curb the fraudulent and *mala fide* practices being conducted by vexatious shareholders who will also look before they leap. The judgement will surely create an awareness in the corporate world for companies to know and learn the way to tackle such claims and for the investors to equally learn about their rights which are meant to be used in the best interest of the company and the shareholders at large instead of using them for their personal interest or maliciously. Since we are in an era of digitalization, inspection of records and registers shall only be exercised when there is utmost need and matters are serious in nature, so as to avoid the wastage of time and efforts of both the company as well as the shareholders.

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