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AUGUST 2017

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*To succeed, your desire of success
Should be greater than your fear of failure.*

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(Knowledge Manager with Acquisory)



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AT A GLANCE

ACQUISORY NEWS CHRONICLE AUGUST 2017

ARTICLE

Companies (Amendment) Bill, 2017 –Simplification of procedures

The Companies (Amendment) Bill, 2017 first introduced in March 2016 in the Lok Sabha, the Bill seeks to make important changes to the Companies Act of 2013 in relation to the structuring, disclosure, and compliance requirements for companies. The Bill has now been approved by Lok Sabha in July 2017 and is awaited to be passed in Rajya Sabha.

Major amendments proposed in the Companies (Amendment) Bill, 2017- simplification of the private placement process, rationalization of provisions related to loan to directors, omission of provisions relating to forward dealing and insider trading, doing away with the requirement of approval of the Central Government for managerial remuneration above prescribed limits, aligning disclosure requirements in the prospectus with the regulations to be made by SEBI, providing for maintenance of register of significant beneficial owners and filing of returns in this regard to the ROC and removal of requirement for annual ratification of appointment or continuance of auditor.

Cash Transactions – New Curbs & Initiatives

The Government has taken several steps for discouraging cash transaction and promoting digital payments. Proposed Initiatives: -

Restriction on receiving Cash above Rs. 2 Lakhs [Section 269ST & 271DA of the Income Tax Act, 1961], Restriction on Capital Expenditure for Business in Cash above Rs. 10000/- [Section 32 of the Income Tax Act, 1961], Reduction in the limit of Cash Payment to Rs. 10000/- in a Day [Section 40A(3) & 40A(3A) of the Income Tax Act, 1961], Lower Presumptive Profit of 6% for Cheque/ Digital Receipts by small businesses [Section 44AD of the Income Tax Act, 1961] and restriction on Cash Donation above Rs. 2000/- received by Political Parties and Charitable Institutions.

LEGAL UPDATES

- **RBI Introduces ₹ 50 & ₹ 200 banknote in Mahatma Gandhi (New) Series**
- **Secretarial Standards revised for Meetings of the Board of Directors and General Meetings** - The revised SS-1 and SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and will supersede the text of earlier SS-1 and SS-2.
- **Distressed Assets takeover - SEBI norms relaxed** - SEBI has relaxed the norms for takeover of distressed companies. The relaxation in norms applies to the acquisition of shares by lenders pursuant to the conversion of their debt to equity. Investors who acquire major stakes in a company from lenders who had acquired stakes in distressed companies will be exempted from making the mandatory open offer.
- **Extension of Date - (a) Linking of Aadhaar with PAN and (b) Due date for filing Income Tax Returns and Tax Audit Reports.** The date for linking Aadhaar with PAN has been extended till 31st December, 2017; The 'due-date' for filing Income Tax Returns and various reports of audit prescribed under the Income-tax Act, 1961 has been extended to 31st October, 2017.
- **Extension of filing time period for FORM GSTR-6 (Return for Input Service Distributor)** - CBEC vide extends the time limit for furnishing the return by an Input Service Distributor for the month of July, 2017 it has been extended to 8th September, 2017 and for August, 2017 it has been extended to 23rd September, 2017.
- **New Consolidated FDI Policy 2017 to be effective from 28.08.2017** - Ministry of Commerce & Industry vide Press Release dated 28th July, 2017 has issued "Consolidated FDI Policy". This Circular will take effect from August 28, 2017.

AN OVERVIEW OF THE COMPANIES (AMENDMENT) BILL, 2017

As passed by the Lok Sabha on 27th July, 2017

Companies (Amendment) Bill 2017 – Simplification of Procedures

The Companies (Amendment) Bill, 2017 with amendments over the Companies (Amendment) Bill, 2016 has been passed by the Lok Sabha in July, 2017. These changes suppressed the relevant portion of the Companies Act, 2013.

The major amendments proposed include simplification of the private placement process, rationalization of provisions related to loan to directors, omission of provisions relating to forward dealing and insider trading, doing away with the requirement of approval of the Central Government for managerial remuneration above prescribed limits, aligning disclosure requirements in the prospectus with the regulations to be made by SEBI, providing for maintenance of register of significant beneficial owners and filing of returns in this regard to the ROC and removal of requirement for annual ratification of appointment or continuance of auditor.

The bill has total 93 Clauses by which 92 Amendments been carried out, includes Amendment of Existing Sections, Insertion of New Sections, Substitution of Existing Section with New Sections and Omission of Few Sections.



| Particulars | Sections under Companies Act, 2013 |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sections to be Amended | 2, 4, 7, 12, 21, 26, 35, 47, 53, 54, 62, 73, 74, 76A, 77, 78, 82, 89, 92, 94, 96, 100, 101, 110, 121, 123, 129, 130, 132, 134, 135, 136, 137, 139, 140, 141, 143, 147, 148, 149, 152, 153, 157, 160, 161, 164, 165, 167, 168, 173, 177, 178, 180, 184, 186, 188, 196, 197, 198, 200, 201, 2016, 223, 236, 247, 366, 374, 379, 384, 391, 403, 409, 410, 411, 412, 435, 438, 439, 440, 441, 447, 458. |
| Sections to be omitted | 93, 194 and 195 |
| Sections to be Inserted | <ul style="list-style-type: none"> • Section 3A- Members severally liable in certain cases, • section 446A- Factors for determining level of punishment. • section 446B – Lesser penalties for One Person Companies or small companies. |
| Sections to be substituted | <ul style="list-style-type: none"> • section 42 Issue of shares on private placement basis, • Section 90- Register of significant beneficial owners in a company. • section 185- Loans to directors, etc. • section 406- Provision relating to Nidhis and its application, etc. |

AN OVERVIEW OF THE COMPANIES (AMENDMENT) BILL, 2017

As passed by the Lok Sabha on 27th July, 2017

Companies (Amendment) Bill 2017 - Simplification of Procedures

Overview of the Amendments

- ❑ The main object is to improve the ease of doing business so that people who want to start a business – even an one-man company (a startup) do not have to go through much formalities, disclosures or forms. So, the idea is to make the law simple so that only lawyers do not benefit and the companies also benefit.
- ❑ The major official amendments introduced include continuing with the provisions relating to layers of subsidiaries, continuing with the earlier provisions with respect of memorandum, making offence for contravention of provisions relating to deposits as non-compoundable, requiring attaching of financial statement of associate companies, stringent additional fees of Rs 100 per day in case of delay in filing of annual return and financial statement etc.
- ❑ The amendments proposed are expected to simplify disclosures and compliance requirements for companies. One example is doing away with requirement of Government approval for managerial remuneration and replacing it with the approval to a special resolution by shareholders in General Meeting; it is a good addition.
- ❑ The Bill has also suggested the simplification of the format of the Board's report and recommended avoidance of repetitive information. Requirement of filing and extract of annual return as part of the Board's report has been removed. And exemption has been provided for uploading individual financial statements of step-down foreign subsidiaries by a listed holding company, where consolidated financial statements have been prepared by foreign subsidiaries according to the laws of the relevant foreign country.

In the interest of transparency and fairness, guiding principle for determination of penalties have been introduced, such as the size of company, nature of business, injury of public interests etc. To encourage startups, the Amendment Bill proposes several incentives to startups and small companies. Pre-conditions for a company to be considered small have been relaxed and so has the format of Board's report, annual return for one per cent companies or small companies. The fine for non-filing of statutory and annual filings have been significantly reduced. They have been provided more avenues to raise a funds which is also a good thing for startups.

Effort has also been made to harmonise Companies Act & SEBI Act to remove ambiguities. The amendments are therefore doing away with dual requirements, especially in the context of several separate prescriptions for prospectus and contents of the Board's report. Probation of prohibition on forward dealings and insider trading has been omitted since these are relevant for listed entities and already regulated by SEBI so they have been omitted from Companies Act.

- ❑ Also, unlisted companies will now be allowed to convene annual general meetings at any place in India, not necessarily at the office. The Bill has empowered the Centre to exempt any class of foreign companies from applicability of registration and other requirements provided in the Act. The Bill attempts to address provisions that were criticised on the grounds of being erroneous relaxing the restrictions on number of layers of subsidiaries as a much-needed step towards giving company greater freedom in the way they structure themselves. This Amendment Bill will remove many ambiguities for the current law and streamline its provision with others relevant laws.
- ❑ The Supreme Court had nullified certain procedures to appoint technical members of NCLT. This Bill has modified the provision to bring it in line with the Supreme Court decision, which is a good thing.

AN OVERVIEW OF THE COMPANIES (AMENDMENT) BILL, 2017

As passed by the Lok Sabha on 27th July, 2017

Companies (Amendment) Bill 2017 - Simplification of Procedures

Conclusion

The developments so far represent a pendulum swing. The Act itself was criticized to be too onerous and in many ways complex to businesses. The CLC Report and the Amendment Bill sought to mitigate some of the rigour by making the provisions more business friendly. It is perhaps this tension between the somewhat opposing considerations that resulted in the Amendment Bill being held up for longer than expected. The Standing Committee report, the newer amendments proposed as well as the debates in the Lok Sabha indicate grave concern on the part of the various constituencies in whether the Amendment Bill will fail to act as a check and balance against corporate malfeasance which will have an adverse impact on investor protection. The complexities caused by further amendments to the Amendment Bill itself is suggestive of this tendency. In the end, it might be that the passage of the amendments will be the result of some form of compromises among stakeholders, much like the Act itself represents.

As good corporate governance is required in India, it is necessary to have proper regulation; freedom to grow, freedom to invest, freedom to attract investment. The intention of this Bill to improve the ease of doing business.

Cash Transactions – New Curbs & Initiatives

The Finance Act, 2017 has also made certain more amendments to push India towards “less cash” economy and to reduce generation and circulation of unaccounted money. Under the Income Tax Act, there are various provisions which restrict cash transactions by restriction through disallowance, higher taxation, penalties, reporting by Annual Information Report (AIR), withdrawal of benefits, providing incentives for noncash transaction, reporting in ITR forms etc. we discuss in this article, provisions, related to restriction of cash transactions under Income Tax Act, 1961 along with amendment made by Finance Act, 2017. Provisions may cause disallowance, penalty, higher taxation or selection of case through Computer Aided Scrutiny System (CAAS).

“Various legislative steps have been taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by promoting digital economy. “

- ✓ These prominently include placing restriction on cash transaction by introduction of New Sections 269ST & 271DA to the Income-tax Act. It has been provided that no person (other than those specified therein) shall receive an amount of two lakh rupees or more, (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.
- ✓ Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt. However, the said restriction is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank. It has also been decided that the restriction on cash transaction shall not apply to withdrawal of cash from a bank, co-operative bank or a post office savings bank. Necessary notification in this regard is being issued.
- ✓ It has also been provided that any capital expenditure in cash exceeding rupees ten thousand shall not be eligible for claiming depreciation allowance or investment-linked deduction. Similarly, the limit on revenue expenditure in cash has been reduced from Rs.20,000 to Rs.10,000.
- ✓ In order to promote digital payments in case of small unorganized businesses, the rate of presumptive taxation has been reduced from 8% to 6% for the amount of turnover realised through cheque/digital mode.



- ✓ Restriction on receipt of cash donation up to Rs. 2000 has been provided on political parties for availing exemption from Income-tax. Further, it has also mandated that any donation in cash exceeding Rs.2000 to a charitable institution shall not be allowed as a deduction under the Income-tax Act.

Cash Transactions – New Curbs & Initiatives

Measures taken under Income Tax Act, 1961 to discourage cash transactions

In order to achieve the mission of the Government to move towards a less cash economy and to reduce the generation and circulation of black money, the Government has taken many measures by amending the below mentioned provisions of Income Tax Act, 1961 through Finance Act, 2017 effective from 1 April 2017.

| | |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 13A | <p>To discourage cash transaction and to bring transparency in the source of funding to political parties, the following amendments have been made:</p> <p>No donation of Rs. 2,000 or more is received otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through electoral bonds (No cash donation exceeding Rs. 2,000/-)</p> <p>Income tax return to be filed u/s 139(1) – If return is not submitted (or if return is submitted belatedly), exemption u/s 13A will not be available.</p> |
| Section 35AD | <p>Finance Act, 2017 amended Section 35AD of the Act to provide that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.</p> |
| Section 40A(3)/(3A) | <p>No deduction is allowed for cash payments exceeding Rs. 20,000/- for expenditure or allowance claimed under business head. In case of payment made for plying, hiring or leasing goods carriages, the limit stands enhanced to Rs. 35,000/-. No Disallowance under Section 40A(3) and 40A(3A) is made in such cases and under such circumstances as prescribed under Rule 6DD of the Income Tax Rules, 1962, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors. Finance Act, 2017 reduced the limit of cash payment from present Rs. 20,000/- to Rs. 10,000/-.</p> |
| Section 43 | <p>The following amendments have been made to Section 43(1)</p> <p>Actual cost – Actual cost not to include cash payment exceeding Rs. 10,000. Section 43(1) is amended to provide that where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment or aggregate payment made to a person in a day, otherwise than by cheque or bank draft or electronic clearing system exceeds Rs. 10,000/-, such payment shall be ignored to determine the actual cost of such asset. It means no depreciation will be allowed on such payment.</p> |
| Section 80G | <p>Under the existing provisions of section 80G, deduction is not allowed in respect of donation made of any sum exceeding Rs. 10,000/-, if the same is not paid by any mode other than cash.</p> <p>In order to provide cash less economy and transparency, section 80G has been amended so as to provide that no deduction shall be allowed under the section 80G in respect of donation of any sum exceeding Rs. 2,000/- unless such sum is paid by any mode other than cash.</p> <p>In order to provide cash less economy and transparency, section 80G has been amended so as to provide that no deduction shall be allowed under the section 80G in respect of donation of any sum exceeding Rs. 2,000/- unless such sum is paid by any mode other than cash.</p> |



Cash Transactions – New Curbs & Initiatives

Section 269ST and 271DA

A new section 269ST has been introduced, no person (except banking company, Government, post office co-operative & other as may notify by Government) shall receive an amount of Rs. 2 lakh or more –

- (a) In aggregate from a person in a day;
- (b) In respect of single transaction; or
- (c) In respect of transactions relating to one event or occasion from a person

Contravention of above mentioned provision shall attract a penalty equivalent to the amount of such receipt under section 271DA unless such person proves that there were good and sufficient reasons for the contravention. Penalty under this section shall be imposed by the Joint Commissioner.

This section impacts the payee and not the payer. It is the payee or recipient who is made liable for violation of section 269ST in the form of penalty u/s 271D

Conclusion

It is suggested to incur the expenditure through digital way to contribute towards fulfillment of the mission of the Government of a less cash economy. Digital payments help in proper maintenance of books of accounts and help in timely compliances. If cash payment is compulsory then above mentioned provisions should be carefully considered to avoid any tax consequence.



RBI UPDATES

1. Risk Management and Interbank Dealings- Reports to the Reserve Bank

RBI vide Circular No. 3 dated 10th August, 2017 has made amendment to Master Directions on Risk Management and Inter Bank Dealings. Under the aforementioned master direction, the Head/Principal Office of AD Category-I banks are required to submit a statement in form BAL giving details of their holdings of all foreign currencies on fortnightly basis through Online Returns Filing System (ORFS) within seven calendar days from the close of the reporting period to which it relates. It has now been decided that w.e.f. August 16, 2017 (i.e. for the statement of first fortnight of August 2017) this statement may be submitted through the web portal at <https://bop.rbi.org.in> as per the format.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11087&Mode=0>

2. RBI Introduces ₹ 50 banknote in Mahatma Gandhi (New) Series

RBI vide Press Release dated 18th August, 2017 has announced that it will shortly issue ₹ 50 denomination banknotes in the Mahatma Gandhi (New) Series, bearing signature of Dr. Urjit R. Patel, Governor, Reserve Bank of India. The new denomination has motif of **Hampi with Chariot** on the reverse, depicting the country's cultural heritage. The base colour of the note is **Fluorescent Blue**. The note has other designs, geometric patterns aligning with the overall colour scheme, both at the obverse and reverse.

All the banknotes in the denomination of ₹ 50/- issued by the Reserve Bank in the earlier series will continue to be legal tender.

https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=41412

3. RBI Introduces ₹ 200 denomination banknote

Reserve Bank of India (RBI) vide Press Release dated 24th August, 2017 has announced the introduction of ₹ 200 denomination banknote w.e.f. 25th August, 2017.

The Reserve Bank of India will issue on August 25, 2017 ₹ 200 denomination banknotes in the Mahatma Gandhi (New) Series, bearing signature of Dr. Urjit R. Patel, Governor, Reserve Bank of India from select RBI offices, and some banks. The new denomination has Motif of Sanchi Stupa on the reverse, depicting the country's cultural heritage. The base colour of the note is Bright Yellow. The note has other designs, geometric patterns aligning with the overall colour scheme, both at the obverse and reverse.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=41460



MCA UPDATES

1. MCA invites comments on the Draft Companies (Cost Records and Audit) Amendment Rules, 2017.

MCA has Invited Comments on the Draft Companies (Cost Records and Audit) Amendment Rules, 2017. Pursuant to implementation of IndAS, the Companies (Cost Records and Audit) Rules, 2014 are to be amended to bring parity between financial records and cost records. Accordingly, the Draft Companies (Cost Records and Audit) Amendment Rules, 2017 have been placed on the Ministry's website suggestions/comments. In the New Rules, Form CRA-1 (Particulars relating to the Items of Costs to be included in the Books of Accounts) and Form CRA-3 (Form of the Cost Audit Report) is to be revised.

http://www.mca.gov.in/Ministry/pdf/draftRules_11082017.pdf

2. Meetings of the Board of Directors and General Meetings Secretarial Standards Revised

Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) were approved by the Central Government under Section 118(10) of the Companies Act, 2013 on 10th April, 2015 and were published in the Gazette of India Extraordinary Part III -Section 4 on 23rd April, 2015 vide ICSI Notification No. (1) SS of 2015, making them effective from 1st July, 2015. It has been decided to withdraw such notification w.e.f. 30th September, 2017 without affecting the enforceability of SS-1 and SS-2 during the period before such withdrawal.

Now, the Secretarial Standards have been revised by the ICSI and approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has been obtained for the revised SS-1 and SS-2 vide Ministry of Corporate Affairs letter No. 1/3/2014-CL.I dated 14th June, 2017.

The revised SS-1 and SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and will supersede the text of earlier SS-1 and SS-2."

3. MCA Notifies Provisions of sub-sections (8), (9) and sub-section (10) of section 212 of Companies Act, 2013 enforced w.e.f. 24th August, 2017

MCA notifies Provisions of sub-sections (8), (9) and sub-

section (10) of section 212 of Companies Act, 2013 enforced w.e.f. 24th August, 2017 S.O. 2751(E) dated 24th August 2017 issued by MCA In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 24th day of August, 2017 as the date on which the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the said Act shall come into effect.

4. NCLAT Amendment Rules Notified by MCA

MCA has notified the National Company Law Appellate Tribunal (Amendment) Rules, 2017 which shall come into force on the date of their publication in the official Gazette. Rule 63 of the Rules have been amended w.r.t Appearance of authorised representative before the NCLAT. Apart from the existing authorisation to representatives of the petitioners and respondents, provisions have been inserted for the Central Government, the Regional Director or the Registrar Companies or Official Liquidator which may authorise an officer or an Advocate represent in the proceedings before the Appellate Tribunal and the officer authorised by any of such agencies shall be an officer not below the rank of Junior Time Scale or company prosecutor.

http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017_25082017.pdf

5. MCA Notifies the Companies (Arrests in connection with Investigation by SFIO) Rules, 2017

The Serious Fraud Investigation Office (SFIO) now has powers to arrest people for violations of companies law, with the government notifying relevant provisions amid the crackdown on illicit fund flows. The ministry has notified the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 pertaining to arrests in connection with Investigation by the SFIO and they came into effect from August 24.



MCA UPDATES

The director as well as additional or assistant director level officials at the SFIO can arrest a person if they believe he or she is guilty of any offence with regard to the case being probed, the ministry said in a notification. According to the ministry, the reason for arrest should be recorded in writing, however, in case of an arrest being made by additional director or assistant director, the prior written approval of the director SFIO shall be obtained. The SFIO director would be the competent authority for all decisions pertaining to arrest. Further, the arrest of a person in connection with a government or a foreign company under investigation can be made by the SFIO only with prior written approval of the central government. Besides, such arrest should be intimated to the managing director or the person in-charge of the affairs of the government company.

<http://egazette.nic.in/WriteReadData/2017/178294.pdf>



SEBI UPDATES

1. Action against Exclusively Listed Companies and its Promoters/Directors pending Exit Offer to the Shareholders

SEBI vide Circular No. SEBI/HO/MRD/DSA/CIR/P/2017/92 dated 1st August, 2017 SEBI is going to initiate Action against Exclusively Listed Companies and its Promoters/ Directors pending Exit Offer to the Shareholders. SEBI vide circular dated October 10, 2016, provided options to ELCs on DB to raise capital for meeting the capital requirement for getting listed on the nationwide stock exchanges or to provide exit to investors. Further, ELCs were required to furnish the plan of action by January 09, 2017 to DSEs, which was subsequently extended till June 30, 2017. Therefore, Such ELCs and the Depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares and the corporate benefits such as dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters or directors of non-compliant ELC. Further, the non compliant ELC, its directors, its promoters and the companies which are promoted by any of them shall not be eligible to access the securities market for the purposes of raising capital and the promoters or directors of non-compliant ELC shall not be eligible to remain or become director of any listed company till the promoters of such non-compliant ELC provide an exit option to the public shareholders in compliance with SEBI circular dated October 10, 2016, as certified by the concerned Designated Stock Exchanges.

http://www.sebi.gov.in/legal/circulars/aug-2017/action-against-exclusively-listed-companies-and-its-promoters-directors-pending-exit-offer-to-the-shareholders_35498.html

2. Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions, debt securities, etc

SEBI vide Circular No.: CIR/CFD/CMD/93/2017 dated 4th August, 2017 has made amendments in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The amendment is made to enhance the transparency as earlier there was no specific disclosures are required in certain matter such as delay in payment of the Interest/ principal amount with respect to the loans etc. Now, the listed Entity shall make Disclosure of defaults made on payment of Interest/ repayment

of principal amount on loans from Banks/Financial Institutions etc. The circular shall be applicable to all listed entities which have listed any of the specified securities (equity and convertible securities). The disclosures shall be made to the stock exchanges when the entity has defaulted in payment of interest / installment obligations on debt securities (including commercial paper), MTNs, FCCBs, Loans from banks and financial institutions, ECBs etc. The entities shall make disclosures within one working day from the date of default at the first instance of default in the prescribed format. This circular shall come into effect with effect from October 1, 2017. This is to enable listed companies to put appropriate systems in place for prompt submission of disclosures as stipulated in this circular.

http://www.sebi.gov.in/legal/circulars/aug-2017/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-debt-securities-etc_35538.html

3. Online Registration Mechanism for Custodian of Securities

SEBI has issued Circular to announce Online Registration Mechanism for Custodian of Securities. It has now been decided to operationalize SEBI Intermediary Portal for the applicants to submit the applications for registration as a Custodian of Securities under the provisions of SEBI (Custodian of Securities) Regulations, 1996 (hereinafter referred to as 'Custodian Regulations') online. All applicants desirous of seeking registration as a Custodian of Securities are now required to submit their applications online only, through SEBI Intermediary Portal. The Custodian of Securities seeking approval as Designated Depository Participant (DDP) in terms of Regulation 11 of SEBI (FPI) Regulations, 2014 shall also apply through this portal. The aforesaid online registration system for Custodians of



SEBI UPDATES

Securities and approval as DDP has been made operational with immediate effect.

http://www.sebi.gov.in/legal/circulars/aug-2017/online-registration-mechanism-for-custodian-of-securities_35582.html

4. SEBI directions w.r.t. listed Shell Companies

SEBI vide its letter has forwarded a list of 331 shell companies as identified by Ministry of Corporate Affairs and has directed the Exchanges to identify the companies listed on their trading platform and initiate measures. Trading in all such listed securities shall be placed in Stage VI of the Graded Surveillance Measure (GSM) with immediate effect. If any listed company out of the said list is already identified under any stage of GSM, it shall also be moved to GSM stage VI directly. Under the stage VI of GSM framework, trading in these identified securities shall be permitted only once a month under trade to trade category. Further, any upward price movement in these securities shall not be permitted beyond the last traded price and additional surveillance deposit of 200 % of trade value shall be collected from the Buyers which shall be retained with Exchanges for a period for five months. The shares held by the promoters and directors in such listed companies shall be allowed to be transferred by depositories only upon verification by concerned exchanges and they shall not be allowed to transact in the security except to buy securities in the said listed company until verification of credential / fundamental by Exchanges is completed. Exchanges shall initiate a process of verifying the credentials / fundamentals of such companies. Exchanges shall appoint an independent auditor to conduct audit of such listed companies and if necessary, even conduct forensic audit of these companies to verify its credentials/fundamentals. On verification, if Exchanges do not find appropriate credentials / fundamentals about existence of the company, Exchanges shall initiate the proceeding for compulsory delisting against the company, and the said company shall not be permitted to deal in any security on exchange platform and its holding in any depository account shall be frozen till such delisting process is completed.

<http://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20170807-31>

5. SEBI notifies relaxation of norms for acquisition of distressed companies

SEBI vide Notification dated 14th August, 2017 has notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017. Securities and Exchange Board of India (SEBI) has relaxed the norms for takeover of distressed companies.

The relaxation in norms applies to the acquisition of shares by lenders pursuant to the conversion of their debt as part of debt restructuring as per Reserve Bank of India's (RBI) guidelines. Investors who acquire major stakes in a company from lenders who had acquired stakes in distressed companies will be exempted from making the mandatory open offer as it would reduce funds available for investment in the company.

However, the relaxations are subject to certain conditions like approval by the shareholders of the companies by special resolution and lock-in of their shareholding for a minimum period of three years.

Further, the acquisitions are pursuant to resolution under the Insolvency and Bankruptcy Code, 2016.

http://www.sebi.gov.in/legal/regulations/aug-2017/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2017_35634.html

6. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017

SEBI vide Notification dated 14th August, 2017 has notified the SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017.

http://www.sebi.gov.in/legal/regulations/aug-2017/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2017_35635.html

7. Online Registration Mechanism for Securities Market Intermediaries

SEBI vide Press Release 53/2017 dated 16th August, 2017 has prescribed the Online Registration Mechanism for Securities Market Intermediaries. The SEBI online dedicated portal



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for registration is operational for all intermediaries which includes Stock Brokers, Sub-brokers, Depository Participants, Mutual Funds, Merchant Bankers, Underwriters, Registrar to an Issue and Share Transfer Agents, Debenture Trustees, Bankers to an Issue, Credit Rating Agencies, Investment Advisors, Research Analysts, Portfolio Managers, Venture Capital Funds, Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvITs), Alternative investment Funds (AIFs), Custodians and Collective Investment Schemes (CIS).

http://www.sebi.gov.in/media/press-releases/aug-2017/online-registration-mechanism-for-securities-market-intermediaries_35638.html

8. SEBI issues Press Release in respect to Curbing misuse of bulk SMS in the Securities Market

SEBI has issued a Press Release in respect to Curbing misuse of bulk SMS in the Securities Market. In view of the detrimental effect of fraudulent bulk SMSs on the integrity of markets and confidence of investors, SEBI sought the attention of Telecom Regulatory Authority of India (TRAI) which has been entrusted with regulation of the telecommunication services so as to protect the interest of the consumers of telecommunications service and the public at large. TRAI and SEBI collaborated closely to review the existing regulatory framework and industry practices to help in reducing the vulnerability of securities market to manipulation through misuse of mass communication device like bulk SMS. TRAI has issued directions to all Access Providers to follow certain operational guidelines for SMSs relating to investment advice/stock tips using the bulk SMS channel. SEBI believes that these directions will go a long way to curb the dissemination of fraudulent and misleading information through the bulk SMS channel.

http://www.sebi.gov.in/media/press-releases/aug-2017/curbing-misuse-of-bulk-sms-in-the-securities-market_35642.html

9. Clarification on Exchange Traded Option contracts on EUR-INR, GBP-INR and JPY-INR currency pairs

SEBI vide Circular No. SEBI/HO/MRD/DP/CIR/P/2017/98

dated 31st August, 2017 provides clarification on Exchange Traded Option Contracts on EUR-INR, GBP-INR and JPY-INR currency pairs. The Clarification has been issued in order to bring uniformity in the computation and relaxation of dynamic price bands.

Stock exchanges shall implement a dynamic price band mechanism based on theoretical price of contracts to determine price bands for currency options. Stock exchanges shall implement uniform mechanism for computation and relaxation of dynamic price bands for currency options contracts.

http://www.sebi.gov.in/legal/circulars/aug-2017/clarification-on-exchange-traded-option-contracts-on-eur-inr-gbp-inr-and-jpy-inr-currency-pairs_35781.html



TAXATION UPDATES

1. Decisions taken on Services at 20th GST Council Meeting on 5 August, 2017

GST Council at its 20th GST Council Meeting held on Saturday has taken various decisions w.r.t the tax rates on various products. The council has decided to cut the tax rate for job work for the entire value chain of textiles sector to 5 per cent along with reduction in rate for tractor parts to 18 per cent from 28 per cent. Also, the Council gave in-principle approval to the e-way bill rules, which envisage a technology-driven tracking of movement of goods worth more than Rs 50,000 and for sale beyond 10 km in distance. The e-way bill rules are likely to come into force from October 1. The GST rate for government work contracts, for both central and state governments, was also cut to 12 per cent with input tax credit from the earlier decided rate of 18 per cent. Under the proposed e-way bill rules, the exempted goods under GST will be kept outside its purview. The permits thus issued would be valid for one day for movement of goods for 100 km and in same proportion for following days. The Council also gave in-principle approval to anti-profiteering measures and proposal to set up a Screening Committee in 15 days to see if tax reductions after implementation of GST have been passed on to consumers. The Council also decided to exempt import of goods and services related to FIFA Under-17 World Cup, which will be hosted by India. For agriculture services, tax rate of post-harvest and storage has been brought down to 12 per cent from 18 per cent. Also, tax rate for entry into planetariums has been reduced to 18 per cent from 28 per cent. In case of “rent a cab service”, GST rate will be 12 per cent without input tax credit and 5 per cent with input tax credit.

<http://www.cbec.gov.in/resources/htdocs-cbec/gst/Decisions-in-20th%20-GST-council-meeting.pdf>

2. Leviability of IGST on High Sea Sales of imported goods and point of collection thereof

CBEC has clarified the Leviability of IGST on High Sea Sales of imported goods and point of collection. The issue has been examined in the Board. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who

buys the goods from the original importer during the said sale. In the past, CBEC has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation. GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

<http://www.cbec.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2017/circ33-2017cs.pdf>

3. CBEC notifies date for filing GST monthly returns

CBEC has issued the notifications for extending the due dates for filing of monthly returns GSTR-1 (Outward supplies of taxable goods and/or services), GSTR-2 (Inward supplies of taxable goods and/or services) and GSTR-3 (Monthly return) for first two months i.e July & August. Earlier, CBEC had only issued a press release announcing the extension of dates. The due date for Form GSTR 3B has also been notified. GSTR-3B is a simple return that the assessee needs to file in the first two months (July & August) instead of the normal GSTR-1,2 &3. The due dates for filing GSTR-3B are 20 August (for July) and 20 September (for August). GSTR -3B is now available for filing on the GST portal for filing. Further, Form GSTR -1 is to be filed by September 5 (for July) and September 20 (for August); Form GSTR - 2 is to be filed by September 10 (for July) and September 25 (for August); Form GSTR - 3 is not required to be filed for the months of July and August. Further, no late fee or penalty shall be levied in case



TAXATION UPDATES

of delayed return filing for these two months.

<http://www.cbec.gov.in/resources/htdocs-cbec/gst/notfctn-21-central-tax-english.pdf>

<http://www.cbec.gov.in/resources/htdocs-cbec/gst/notfctn-20-central-tax-english.pdf>

<http://www.cbec.gov.in/resources/htdocs-cbec/gst/notfctn-19-central-tax-english.pdf>

4. GST – Clarification on issues related to furnishing of Bond/Letter of Undertaking for Exports

Ministry of Finance has provided ‘Clarification on issues related to furnishing of Bond/Letter of Undertaking for Exports. The notification has clarified the issues w.r.t Eligibility to export under LUT (Letter of Undertaking), Time for acceptance of LUT/Bond (Letter of Undertaking), Transactions with EOUs, Forward inward remittance in Indian Rupee, Bank guarantee, Jurisdictional officer, Documents for LUT, Applicability of circulars on Bond/LUTs. Further, the said circular is applicable to any export made on or after the 1st July 2017.

<http://www.cbec.gov.in/resources/htdocs-cbec/gst/circularno-5-gst.pdf>

5. Cabinet approves procedure and mechanism for Strategic Disinvestment

Ministry of Finance has approved the proposal of Department of Investment and public Asset Management (DIPAM) for the strategic disinvestment of the following:

- (i) For setting up an Alternative Mechanism (AM) consisting of the Finance Minister, Minister for Road Transport & Highways and Minister of Administrative Department, to decide on the matters relating to terms and conditions of the sale from the stage of inviting of Express of Interests (Eols) till inviting of financial bid; and
- (ii) For empowering the Core Group of Secretaries (CGD) to take policy decisions with regard to procedural issues and to consider deviations as necessary from time to time for effective implementation of decisions of CCEA.

The approval will help in speedy completion of strategic disinvestment transactions.

6. GST Return Filing Date Extended for Taxpayers Availing Input Tax Credit

Central Government has extended due date for filing of Goods and Services Tax (GST) return for taxpayers who want to avail the transitional input tax credit. The deadline for filing the "Form 3B" has been extended till August 28, 2017.

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=170061>

7. Last Date for Payment of Gst and Filing of Return For July 2017 Extended By 5 Days

Ministry of Finance vide Press Release dated 19th August, 2017 has taken a decision to extend the last date for payment of the GST for the month of July 2017 to 25th August, 2017.

It has been specified that for those tax payers, who do not want to avail of transitional credit in TRANS1 this month, the date for return filing will be 25th August 2017. And for those who want to fill up TRANS1 this month, the last date for filing of returns will be 28th August 2017, as announced earlier. In order not to face any last moment technological difficulty in submission of return, all tax payers are requested to kindly file their return well before 25th / 28th of August 2017 and not wait for the last date.

8. CBDT amends Income Tax Rules to revise Form 29B – Accountant’s report on Computation of book profit u/s 115JB

CBDT has notified Income-tax (22nd Amendment), Rules, 2017 dated 18th August, 2017 to revise the Form 29B i.e accountant’s report on computation of book profits u/s 115JB, consequent to Finance Act, 2017 amendment in Sec. 115JB (providing a framework for Ind-AS regime). Changes include modification to Part A and introduction of new part B and part C in Annexure to Form 29B seeking various details regarding the amount required to be increased or decreased in accordance with amended Sec. 115JB (2A)/(2C) applicable to companies preparing financial statements under Ind AS; Revised Form also requires disclosure of whether the accounting year followed is same as relevant previous year; Where the accounting year is different, the new form requires



TAXATION UPDATES

accountant to state whether profit and loss statement for computing book profit u/s 115JB is prepared following same accounting policies/accounting standards/depreciation rates as adopted for preparing accounts "for the respective parts of the financial year laid or to be laid before the company at its annual general meeting" and extent and nature of variations if any.

http://www.incometaxindia.gov.in/communications/notification/notification80_2017.pdf

9. CGST/ITGST/UTGST: ECommerce to pay GST on services provided by way of house-keeping

Ministry of Finance vide Notification dated 22nd August, 2017 it has now been inserted to make E-Commerce responsible for payment of GST on services provided by way of housekeeping such as plumbing, carpentering etc. except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

10. CGST/UTGST/ITGST: GST RCM provisions amended & explanation for LLP inserted

Ministry of Finance vide Notification dated 22nd August, 2017 has now inserted the Reverse Charge Mechanism provisions for Goods Transport Agency (GTA) and LLP shall also be considered partnership firm or firm for the purpose of GST.

11. CGST/UTGST/ITGST- Reduction in rate on specified supplies of Works Contract Services etc

Ministry of Finance vide Notification dated 22nd August, 2017 has made amendment w.r.t. reduce CGST /UTGST/ITGST rate on specified supplies of Works Contract Services, job work for textile & textile products, printing service of books, newspapers etc, admission to planetarium, and, also to provide option to GTA & transport of passengers by motorcab service providers to avail full ITC & discharge CGST @ 6%.

12. DVAT – Time limit for filing of Online return for the first quarter extended

Department of Trade and Taxes has extended the time limit for filing of online return for first quarter of 2017-18. The Department has extended the last date for filing of online return for first quarter of 2017-18 in form DVAT-16, DVAT-17 & DVAT-48 upto 01st September, 2017. The Dealers filing the returns through digital signature need not file hard copy of the Return/Form in DVAT-56.

13. Prevention of Money-laundering (Maintenance of Records) Rules, 2005

Ministry of Finance has notified further amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, which may be called the Prevention of Money-laundering (Maintenance of Records) Third Amendment Rules, 2017 which shall come into force on the date of their publication in the Official Gazette. New proviso in rule 2(1)(fb)(iii), has been inserted, namely:-“Provided that this limit on balance shall not be considered while making deposits through government grants, welfare benefits and payment against procurement”.

<http://www.egazette.nic.in/WriteReadData/2017/178197.pdf>

14. #GST: E-Commerce Operators Providing House-keeping Services Are Liable to Pay GST

Central Government has notified that E-Commerce Operators would be liable to pay Goods and Services Tax (GST) for providing house-keeping services under the new tax regime.

15. #GST: Govt Clarifies Applicability of GST on Selling of Space for ads in Print Media

Govt has clarified that selling of space for ads in print media is leviable to GST @ 5%, if ad agency works on principal to principal basis. If ad agency sells space for ads as an agent of newspaper on commission basis, it would be liable to pay GST@ 18% on sale commission it receives from Newspaper.



TAXATION UPDATES

16. CBDT extends date for (a) Linking of Aadhaar with PAN and (b) Due date for filing Income Tax Returns and Tax Audit Reports.

Ministry of Finance vide Press Release dated 31st August, 2017 has extended the date in the following cases:-

- i. Aadhaar was to be linked with PAN by 31st August, 2017. The date for linking Aadhaar with PAN has been extended till 31st December, 2017;
- ii. The 'due-date' for filing Income Tax Returns and various reports of audit prescribed under the Income-tax Act, 1961 has been extended from 30th September, 2017 to 31st October, 2017 for all taxpayers who were liable to file their Income Tax Returns by 30th September, 2017.

17. Cabinet approves promulgation of the Goods and Services Tax (Compensation to States) Ordinance, 2017

Ministry of Finance vide Press Release dated 30th August, 2017 has given its approval to the proposal of the Finance Ministry to promulgate an ordinance to suitably amend the Goods and Services Tax (Compensation to States) Act, 2017.

The approval would allow to increase the maximum rate at which the Compensation Cess can be levied from 15% to 25% on:

- a) motor vehicles for transport of not more than thirteen persons, including the driver [falling under sub-headings 870210, 8702 20, 8702 30 or 8702 90]; and
- b) motor vehicles falling under headings 8703.

18. Extension of time period for filing of details in FORM GSTR-6 (Return for Input Service Distributor)

CBEC vide Notification dated 28th August, 2017 hereby extends the time limit for furnishing the return by an Input Service Distributor under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the month of July, 2017 it has been extended to 8th September, 2017 and for August, 2017 it has been extended to 23rd September, 2017.

19. Extension of time period for filing of details in FORM GSTR-5A for month of July

CBEC vide Notification dated 28th August, 2017 hereby extends the time limit for furnishing the return for the month of July, 2017, by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till 15th day of September, 2017.



OTHER UPDATES

1. Cabinet approves MoU between India and Sweden on IPRs

Cabinet has approved the MoU between India and Sweden on cooperation in the field of Intellectual Property (IPRs). The MoU establishes a wide ranging and flexible mechanism through which both countries can exchange best practices and work together on training programs and technical exchanges to raise awareness on IPRs and better protect intellectual property rights.

The MoU will enable India to exchange experiences in the innovation and IP ecosystems that will substantially benefit entrepreneurs, investors and businesses on both sides. The exchange of best practices between the two countries will lead to improved protection and awareness about India's range of Intellectual creations which are as diverse as its-people. It will be a landmark step forward in India's journey towards becoming a major player in global Innovation and will further the objectives of National IPR Policy, 2016.

Features:

A Joint Coordination Committee (JCC) with members from both sides will be formed to decide cooperation activities to be taken under the MoU in following areas:

- a) Exchange of best practices, experiences and knowledge on IP awareness among the public, businesses and educational institutions of both countries;
- b) Collaboration in training programmes, exchange of experts, technical exchanges and outreach activities;
- c) Exchange and dissemination of best practices, experiences and knowledge on IP with the industry, universities, R & D organisations and Small and Medium Enterprises (SMEs) through participation in programs and events in the matter, organized singly or jointly by the Parties;
- d) Exchange of information and best practices for disposal of applications for patents, trademarks, industrial designs, copyrights and Geographical Indications, as also the protection, enforcement and use of IP rights;
- e) Cooperation in the development of automation and implementation of modernization projects, new documentation and information systems in IP and procedures for management of IP;
- f) Cooperation to understand how Traditional Knowledge is

protected; and the exchange of best practices, including traditional knowledge related databases and awareness raising of existing IP systems;

- g) Exchange of information and best practices regarding Intellectual Property law infringements in the digital environment, especially regarding Copyright issues; and
- h) Other cooperation activities as may be decided by the Parties with mutual understanding.

2. Consolidated FDI Policy 2017 released effective from 28.08.2017

Ministry of Commerce & Industry vide Press Release dated 28th July, 2017 has issued "Consolidated FDI Policy". This Circular will take effect from August 28, 2017.

http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf

Glossary

| | |
|-------|-----------------------------------------|
| CBDT | Central Board of Direct Taxes |
| CBEC | Central Board of Excise & Customs |
| CGST | Central Goods and Service Tax |
| DB | Dissemination Board |
| DSEs | Designated Stock Exchanges |
| ECB | External Commercial Borrowings |
| ELCs | Exclusively Listed Companies |
| FCCB | Foreign Currency Convertible Bond |
| FDI | Foreign direct investment |
| GST | Goods and Services Tax |
| IGST | Integrated Goods and Services Tax |
| ITC | Input tax Credit |
| ITR | Income Tax Return |
| MCA | Medium Term Notes |
| MTN | Ministry of Corporate Affairs |
| NCLAT | National Company Law Appellate Tribunal |
| NCLT | National Company Law Tribunal |
| PAN | Permanent Account Number |
| RBI | Reserve Bank Of India |
| ROC | Registrar of Companies |
| SEBI | Securities and Exchange Board of India |
| SFIO | Serious Fraud Investigation Office |
| TRAI | Telecom Regulatory Authority of India |
| UTGST | Union Territory Goods and Service Tax |



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