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## **Newsletter for April 2014** **By Amita Desai & Co.**



*We love to serve and add value to business of our clients*



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## **MCA UPDATES**

### **A. Dissemination of Information with regards to provisions of the Companies Act, 2013 as notified till date vis- a- vis the corresponding provisions of the Companies Act, 1956**

- Ministry of Corporate Affairs (MCA) had notified 98 sections on September 12, 2013 and 183 sections were notified with effect from April 01, 2014 of the Companies Act, 2013.
- MCA vide its Circular No. 07/2014 dated April 01, 2014 stated that certain corresponding sections and parts of certain section of the Companies Act, 1956 shall continue in force.
- A table indicating the provision of Companies Act, 2013 so notified along with the corresponding provisions of the Companies Act, 1956 which shall remain in force is given by the MCA for dissemination for all stakeholders.
- Kindly refer to the link below for downloading the table issued by the MCA.

[http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_7\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_7_2014.pdf)

### **B. Commencement of provisions of the Companies Act, 2013 with regard to maintenance of books of accounts and preparations/ adoption/ filing of Annual Reports – Applicability with regard to relevant financial year**

- A number of provisions of the Companies Act, 2013 including those relating to maintenance of books of account, preparation, adoption & filing of financial statements (and documents required to be attached thereto), Auditors reports and the Board's report have been brought into force with effect from April 01, 2014.
- Provisions of Schedule II (useful lives to compute depreciation) and Schedule III (Format of financial statements) have also been brought into force from April 01, 2014. The relevant Rules pertaining to these provisions have also been notified by the MCA.
- MCA vide its Circular No 08/2014 dated April 04, 2014 has notified that the **financial statements** (and documents required to be attached thereto), **Auditor's report and Board's report in respect of financial years that commenced earlier than April 01, 2014 shall be governed by the relevant provisions/ Schedules/ Rules of the Companies Act, 1956** and that in respect of **Financial Year commencing on or after April 01, 2014 the provisions of the Companies Act, 2013 shall apply.**
- [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_8\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_8_2014.pdf)

## C. Availability of E-forms/Non-E-forms under the Companies Act, 2013

- In continuation of General Circular No. 6 of 2014 MCA vide its Circular No. 09 dated April 25, 2014 informed that w.e.f. April 28, 2014, 46 e-forms including 3 general e-forms will be available for filing by the stakeholders. The 3 general e-forms will be used for filing 17 forms which are not available as e-forms as on date.
- The stakeholders will fill the 17 forms physically and get it duly signed/certified by the professionals if applicable, as per the requirement of the forms and attaché these with the prescribed General e-forms, as mentioned in the table below. The arrangement will continue till the 17 forms are made available as e-forms.

Sr.No	General E-form	Form to be attached with General e-form	Subject /Purpose of the Form to be attached
1	GLN-2	PAS -2	Information Memorandum
2		PAS -4	Private Placement Offer letter
3		SH-9	Declaration of Solvency
4		DPT-1	Circular of Advertisement for Deposit
5		DPT-3	Return of Deposit
6		DPT-4	Return of Deposit existing at commencement
7		ADT-1	Notice of appointment of Auditor by Company
8		ADT-3	Notice of resignation by auditor
9		DIR-9	Report by company to ROC for DIN of existing Director
10		NDH-1	Return of Statutory Compliances by NIDHI Company
11		NDH-3	Half yearly Return by NIDHI Company
12	CG-1	DIR-10	Form of application for removal of Disqualification
13	RD -1	CHG-8	Application to CG for condonation of delay
14		MGT-3	Notice of situation or change of situation of registered office and verification
15		ADT-2	Application for removal of auditors
16		DIR-5	Application for surrender of DIN
17		NDH-2	Application for extension of time to RD

- In addition to filing of the 17 forms, stakeholders can also file application for seeking extension of date of AGM/ Accounting period by filing form GLN- 1.
- Documents in respect of companies under liquidation will also be allowed to file along with form GLN- 2. Documents in respect of particulars of person(s) or Directors charged or specified for the purpose of Section 2(60) of the Companies Act, 2013 will be allowed to file along with form GLN-3.
- Documents/forms for filing petitions to Central Government will be allowed to file with form RD-2.
- [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_9\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_9_2014.pdf)

## D. Amendment to The Companies ( Registration Offices and Fees) Rules, 2014

- MCA vide Notification dated April 28, 2014 made certain amendments to The Companies (Registration Offices and Fees) Rules, 2014. These rules shall come into force with effect from April 28, 2014.
- The following E-forms filed by Companies, other than one person companies and small companies, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole-time-practice namely –

Sr. No	Name of the Form	Subject /Purpose of the Form to be attached
1	INC- 21	Declaration of director at commencement of business
2	INC- 22	Notice of change in situation of registered office
3	INC- 28	True copy of order central government for change of registered office from one state to another to registrar
4	PAS - 3	Return of allotment
5	SH-7	Alternation of share capital
6	CHG-1	Registration or modification of charge other than debentures
7	CHG-4	Satisfaction of charge
8	CHG-9	Application for registration of creation ,modification of charge of debentures or ratification of particulars filed in respect of creation ,modification
9	MGT -14	Declaration by registered owner of shares who does not hold the beneficial interest in such shares
10	DIR-6	Intimation of changes in the particulars specified in DIN
11	DIR- 12	Particulars of first directors and their consent and Notice of resignation of director
12	MR-1	Filing return of appointment of managing director, whole time director ,manager ,chief executive officer, company secretary and chief financial officer
13	MR – 2	Application to the central government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to fix the remuneration
14	MSC- 1	Application to ROC for obtaining the status of dormant Company
15	MSC- 3	Return of dormant Companies
16	MSC- 4	Application for seeking status of active company
17	GLN- 3	Particulars of person(s) or Key managerial personnel charged or specified for the purpose of sub-clause (iii) or (iv) of clause 60 of Section 2
18	ADT – 1	Appointment of auditor
19	NDH – 1	Return of statutory compliances for Nidhi
20	NDH -2	Application for extension of time for Nidhi
21	NDH - 3	Filing of half yearly return by Nidhi Companies

➤ Other than the E-Forms mentioned above the following E-Forms filed by companies, other than one person companies and small companies, shall be pre- certified in the following manner, namely :

- GLN- 1 i.e. Filing for an application where no e-form is prescribed - optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole –time practice.
- DPT- 3 for Return of deposits requires certification by Auditors of the Company
- MGT – 10 for Changes in shareholding position of promoters and top ten shareholders requires certification by a Company Secretary in whole –time practice.
- AOC – 4 for Filling of financial statements of the Company requires certification by a Chartered Accountant in whole – time practice.
- DIR – 3 for making an Application for allotment of DIN shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole –time practice.

➤ [http://www.mca.gov.in/Ministry/pdf/NCARules\\_Amendment24.pdf](http://www.mca.gov.in/Ministry/pdf/NCARules_Amendment24.pdf)



## **RBI UPDATES**

### **A. Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999**

- RBI vide its Circular No 117 dated April 04, 2014 brought to the attention of all the Authorised Dealer Category - I (AD Category - I) banks to A.P. (DIR Series) Circular no. 57 dated December 13, 2011 and the Foreign Exchange (Compounding Proceedings) Rules, 2000 notified by the Government of India vide G.S.R.No.383(E) dated 3rd May 2000, as amended from time to time regarding delegation of powers to the Regional Offices of the Reserve Bank of India to compound the contraventions of FEMA.
- It has been decided by the RBI to delegate further powers to the Regional Offices of Reserve Bank of India. Accordingly, the powers to compound the following contraventions will now be vested with the Regional Offices:

<b>Sr. No</b>	<b>FEMA Regulation</b>	<b>Basic Description of Contravention</b>
1	Paragraph 9(1) (A) of Schedule I to FEMA 20/2000 –RB dated May 3, 2000	Delay in reporting inward remittance received for issue of shares.
2	Paragraph 9(1) (B) of Schedule I to FEMA 20/2000 –RB dated May 3, 2000	Delay in filing form FCGPR after issue of shares
3	Paragraph 8 of Schedule I to FEMA 20/2000 –RB dated May 3, 2000	Delay in issue of shares/ refund of share application money beyond 180 days, mode of receipt of funds, etc.
4	Paragraph 5 of Schedule I to FEMA 20/2000 –RB dated May 3, 2000	Violation of pricing guidelines for issue of shares
5	Regulation 2(ii) read with Regulation 5(1) of FEMA 20/2000 –RB dated May 3, 2000	Issue of ineligible instruments such as non-convertible debentures, partly paid – up shares, shares with optionality clause, etc.
6	Paragraph 2 or 3 of Schedule I to FEMA 20/2000 –RB dated May 3, 2000	Issue of shares without approval of RBI or FIPB respectively, wherever required.

- The above contraventions can be compounded by all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (Rs.1,00,00,000/-).
- The contraventions above Rupees one hundred lakh (Rs.1,00,00,000/-) under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

- Accordingly, applications for compounding related to the above mentioned contraventions may be submitted by the concerned entities to the respective Regional Offices under whose jurisdiction they fall. For all other contraventions, applications may continue to be submitted to CEFA, Foreign Exchange Department, 5th floor, Amar Building, Sir P.M. Road, Fort, Mumbai 400001.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/553APD04042014.pdf>

## B. Foreign investment in India in Government Securities

- RBI vide its Circular No. 118 dated April 07, 2014 brought to the attention of AD Category-I banks to A.P.(DIR Series) Circular No.94 dated April 1, 2013 read with A.P.(DIR Series) Circular No.111 dated June 12, 2013 and A.P.(DIR Series) Circular No.112 dated March 25, 2014, in terms of which the present limit for investment in Government Securities by SEBI registered FIIs, QFIs, long term investors and FPIs registered in accordance with SEBI guidelines stands at USD 30 billion.
- Out of the above limit, a sub-limit of USD 5.5 billion is available for investment in Treasury Bills (T-bills). Further, in terms of A.P. (DIR Series) Circular No.99 dated January 29, 2014, a sub-limit of USD 10 billion for investment in Government dated securities within the total limit of USD 30 billion is available to long term investors registered with SEBI – viz. Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds and foreign Central Banks.
- In order to encourage longer term flows, it has now been decided by the RBI that foreign investment by all eligible investors including RFPIs shall henceforth be permitted only in Government dated securities having residual maturity of one year and above and existing investments in T-bills and Government dated securities of less than one year residual maturity shall be allowed to taper off on maturity/ sale.
- The revised position in respect of the investment limit in Government dated securities is given below:

<b>Instruments</b>	<b>Limit</b>	<b>Eligible Investors</b>	<b>Remarks</b>
Government dated securities – Securities having residual maturity of one year and above.	USD 30 billion	RFPIs (including existing FIIs and QFIs) and Long term investors registered with SEBI – SWFs, Multilateral Agencies, Pension/ Insurance / Endowment Funds and foreign Central Banks.	Existing investment in T-bills and Government dated securities of less than one year residual maturity shall be allowed to taper off on maturity/sale. No fresh investment in T-bills and Government dated securities of less than one year residual maturity allowed.

- Necessary operational guidelines in this regard are issued by SEBI.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP07042014FS.pdf>



## C. Risk Management & Inter-Bank Dealings: Booking of Forward Contracts - Liberalisation

- With reference to paragraph 23 of the first Bi-Monthly Monetary Policy Statement, 2014-15 issued by the RBI, wherein, inter alia, it was proposed to allow all resident individuals, firms and companies with actual foreign exchange exposures to book foreign exchange derivative contracts up to US\$ 250,000 on declaration, subject to certain conditions.
- RBI vide its Circular No. 119 dated April 07, 2014 brought to the attention of Authorised Dealer Category-I (AD Category-I) banks to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No.FEMA.25/RB-2000 dated May 3, 2000) as amended from time to time and A.P. (DIR Series) Circular No.15 dated October 29, 2007 regarding liberalisation in respect of booking of forward contracts.
- As per the existing regulations resident individuals, who manage/ hedge their foreign exchange exposures arising out of actual or anticipated remittances, both inward and outward, are allowed to book forward contracts, without production of underlying documents, up to a limit of US\$ 100,000 based on self-declaration.
- With a view to further liberalising the existing facilities, it has now been decided by the RBI to allow **all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures to book foreign exchange forward contracts up to US\$ 250,000 on the basis of a simple declaration without any requirement of further documentation.**
- The existing facilities in terms of the aforementioned circular for Small and Medium Enterprises (SMEs) having direct and/ or indirect exposures to foreign exchange risk permitting them to book/ cancel/ roll over forward contracts without production of underlying documents to manage their exposures effectively subject to conditions specified therein shall remain unchanged.
- The revised reporting format as prescribed by the RBI is provided in the said Circular. All other conditions including tenor of the contracts as laid down in A.P. (DIR Series) Circular No.15 dated October 29, 2007 will apply mutatis mutandis.
- Kindly refer to the link below for downloading the reporting format issued by RBI.  
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AC119070414F.pdf>

## **D. Investment through Alternative Investment Funds – Clarification on Calculation of NOF of an NBFC**

- In terms of section 45 IA of the RBI Act, 1934, net owned funds (NOF) of an NBFC means-
  - a. the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting there from–
    - i. accumulated balance of loss;
    - ii. deferred revenue expenditure; and
    - iii. other intangible assets; and
  - b. further reduced by the amounts representing
    1. investments of such company in shares of–
      - i. its subsidiaries;
      - ii. companies in the same group;
      - iii. all other non-banking financial companies; and
    2. the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with,–
      - i. subsidiaries of such company; and
      - ii. companies in the same group,

to the extent such amount exceeds ten per cent of (a) above.

- It has been observed by the RBI that in certain cases an NBFC while arriving at the NOF figure did not reckon its investment in group companies on the ground that investments in the group companies were made by the Venture Capital Fund (VCF) sponsored by the NBFC, although, in term, the contribution to the funds held by the VCF had come primarily from the NBFC itself.
- A VCF or any such Alternative Investment Fund (AIF) means a pool of capital by investors and the investment made by such an AIF is done on behalf of the investors.
- Accordingly, it is clarified by the RBI that while arriving at the NOF figure, investment made by an NBFC in entities of the same group concerns shall be treated alike, whether the investment is made directly or through an AIF / VCF.
- When the funds in the VCF have come from the NBFC to the extent of 50% or more; or where the beneficial owner, in the case of Trusts is the NBFC, if 50% of the funds in the Trusts are from the concerned NBFC.
- “Beneficial ownership” would mean holding the power to make or influence decisions in the Trust and being the recipient of benefits arising out of the activities of the Trust.
- In other words, in arriving at the NOF, the substance would take precedence over form. NBFCs are advised to keep this principle in mind, while calculating their NOF.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/INT070414CIENG.pdf>

## E. External Commercial Borrowing (ECB) Policy – Review of all-in-cost ceiling

- RBI vide its Circular No. 121 dated April 10, 2014 brought to the attention of Authorised Dealer Category - I (AD Category - I) banks to A.P.(DIR Series) Circular no. 58 dated September 30, 2013 relating to the all-in-cost ceiling for ECB.
- It has been decided by the RBI that the all-in-cost ceiling as specified under paragraph 2 of A.P. (DIR Series) Circular No. 99 dated March 30, 2012, will continue to be applicable till June 30, 2014 and is subject to review thereafter.
- The all-in-cost ceiling which shall continue to be applicable is as follows:

Average Maturity Period	All-in-cost over 6 month LIBOR*
Three years and up to five years	350 bps
More than five years	500 bps
* for the respective currency of borrowing or applicable benchmark	

- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP121100414F.pdf>

## F. Foreign Direct Investment (FDI) in Limited Liability Partnership

- RBI vide its Circular No. 123 dated April 16, 2014 decided that **Limited Liability Partnership (LLP)** formed and registered under the Limited Liability Partnership Act, 2008 shall be **eligible to accept Foreign Direct Investment (FDI)** subject to certain conditions some of which are as follows:

### 1. Eligible Investors:

A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, the following persons shall not be eligible to invest in LLPs:

- a citizen/entity of Pakistan and Bangladesh or
- a SEBI registered Foreign Institutional Investor (FII) or
- a SEBI registered Foreign Venture Capital Investor (FVCI) or
- a SEBI registered Qualified Foreign Investor (QFI) or
- a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India(Foreign Portfolio Investors) Regulations, 2014 (RFPI).

### 2. Eligibility of LLP for accepting foreign Investment:

- An LLP, existing or new, operating in sectors/activities where 100% FDI is allowed under the automatic route of FDI Scheme would be eligible to receive FDI.

- ii. An LLP engaged in the following sectors/activities shall not be eligible to accept FDI:
- Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions or
  - Sectors eligible to accept less than 100% FDI under automatic route; or
  - Sectors eligible to accept FDI under Government Approval route; or
  - Agricultural/plantation activity and print media; or
  - Sectors not eligible to accept FDI i.e. any sector which is prohibited under the extant FDI policy as well as sectors/activities prohibited in terms of Regulation 4(b) to Notification No. FEMA. 1 / 2000-RB dated 3rd May 2000, as amended from time to time.

### 3. Entry Route:

Any FDI in a LLP shall require prior Government/FIPB approval. Any form of foreign investment in an LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval.

### 4. Downstream investment:

- An Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment), will be permitted to make downstream investment in an LLP only if both, the company as well as the LLP, are operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions. Onus shall be on the LLP accepting investment from the Indian Company registered under the provisions of the Companies Act, as applicable, to ensure compliance with downstream investment requirement as stated above.
- An LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.

### 5. Other Conditions:

- In case, an LLP with FDI, has a body corporate as a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the Limited Liability Partnership Act, 2008, such a body corporate should only be a company registered in India under the provisions of the Companies Act, as applicable and not any other body, such as an LLP or a Trust.
  - The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.
  - Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.
  - LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).
- The instructions issued in the said circular shall be effective from May 20, 2011. However, reporting requirement of FDI in LLP shall come into force from the date of issue of instructions by the Reserve Bank in this regard. The LLP which have received foreign investment in terms of FIPB approval between May 20, 2011 to the date of the said circular, shall comply with the reporting requirement in respect of FDI within 30 or 60 days, as applicable, from the date of this circular.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR1704214NT.pdf>

## **G.Foreign Direct Investment (FDI) in Pharmaceuticals sector – clarification**

- RBI vide its Circular No. 124 dated April 21, 2014 brought to the attention of Authorised Dealers Category – I (AD Category - I) banks to A.P. (DIR Series) Circular No.56 dated December 9, 2011 and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
- In terms of Schedule 1 to the Notification *ibid*, Foreign Direct Investment (FDI) up to 100 per cent is permitted under automatic route for greenfield investments and FDI up to 100 per cent is permitted under Government approval route for brownfield investments (i.e. investments in existing companies) in pharmaceuticals sector.
- The extant FDI policy for pharmaceutical sector has been reviewed, and it has now been decided by the RBI that that the existing policy would continue with the condition that ‘non-compete’ clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board (FIPB) of the Government of India.
- The said circular shall have immediate effect.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR124NT0414.pdf>



## **SEBI UPDATES**

### **A. Corporate Governance in listed entities - Amendments to Clauses 35B and 49 of the Equity Listing Agreement**

- With reference to the master circular No. SEBI/CFD/DIL/CG/2004/12/10 dated October 29, 2004 on Clause 49 of the Equity Listing Agreement, SEBI vide its Circular No CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 amended Clause 35B and Clause 49 of the Listing Agreement.
- The Companies Act, 2013 was enacted on August 30, 2013 which provides for a major overhaul in the Corporate Governance norms for all companies. The rules pertaining to Corporate Governance were notified on March 27, 2014. The requirements under the Companies Act, 2013 and the rules notified there under would be applicable for every company or a class of companies (both listed and unlisted) as may be provided therein.
- Hence, it was decided by the SEBI to review the provisions of the Listing Agreement and align the same with the provisions of the Companies Act, 2013, adopt best practices on corporate governance and to make the corporate governance framework more effective.
- **The revised Clause 49 would be applicable to all listed companies with effect from October 01, 2014.** However, the provisions of Clause 49(VI)(C) i.e. constitution of a Risk Management Committee shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year.
- The provisions of Clause 49(VII) i.e. with respect to the Related Party Transactions shall be applicable to all prospective transactions. **All existing material related party contracts or arrangements as on the date of this circular which are likely to continue beyond March 31, 2015 shall be placed for approval of the shareholders in the first General Meeting subsequent to October 01, 2014. However, a company may choose to get such contracts approved by the shareholders even before October 01, 2014.**
- For other listed entities which are not companies, but body corporate or are subject to regulations under other statutes (e.g. banks, financial institutions, insurance companies etc.), the Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities. **The Clause 49 is not applicable to Mutual Funds.**
- The revised Clause 35B would be applicable to all listed companies and the modalities would be governed by the provisions of Companies (Management and Administration) Rules, 2014. Circular No. CIR/CFD/DIL/6/2012 dated July 13, 2012 stands amended to that extent.
- [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1397734478112.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1397734478112.pdf)

## B. Change in investment conditions / restrictions for FII/QFI investments in government debt securities

- Pursuant to the announcements made in the First Bi-monthly Monetary Policy Statement, 2014- 15 dated April 1, 2014 by the Reserve Bank of India (RBI), SEBI vide its Circular No 8/2014 dated April 07, 2014 issued operational guidelines having immediate effect, for changes in investment conditions / restrictions for FII/QFI investments in government debt securities.
- **FII/QFI shall henceforth be permitted to invest only in dated government securities having residual maturity of one year or above.**
- Existing FII/QFI investments in T-Bills shall be allowed to taper off on maturity/sale. No further purchases in T-Bills shall be permitted. The investment limits vacated at the shorter end shall be available at longer maturities.
- **The overall Government Debt investment limit for FIIs/QFIs shall remain unchanged at US\$ 30 billion.**
- Accordingly the FII/QFI debt investment limits are as follows:

Sr. No	Type of Instrument	Cap (USD billion)	Cap (INR Crore)	Remarks
1	Government Debt	20	99,546	Available on demand. Eligible investors may invest only in dated securities of residual maturity of one year and above, and existing investment in Treasury Bills will be allowed to taper off on maturity/sale
2	Government Debt	10	54,023	Available on demand for FIIs registered with SEBI as Sovereign Wealth Funds, Multilateral Agencies, Endowment funds, Insurance Funds, Pension Funds and Foreign Central Banks. Eligible investors may invest only in dated securities of residual maturity of one year and above
3	Corporate Debt	51	244,323	Available on demand. Eligible investors may invest in Commercial Papers only up to US\$ 2 billion within the limit of US\$ 51 billion.

- [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1396874476837.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1396874476837.pdf)



## **DIPP UPDATES**

### **A. Consolidated Foreign Direct Investment Policy**

- The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum.
- The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000).
- The present consolidation subsumes and supersedes all Press Notes/ Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on April 16, 2014 and reflects the FDI Policy as on April 17, 2014.
- This Circular accordingly will take effect from April 17, 2014 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.
- [http://dipp.nic.in/English/Policies/FDI\\_Circular\\_2014.pdf](http://dipp.nic.in/English/Policies/FDI_Circular_2014.pdf)



# **Related Party Transaction** **(as per Companies Act 2013)**

- Companies Act, 2013 (CA 2013) has unveiled a new era in the Indian Corporate Sector which places more reliance on disclosure norms rather than on approvals. One such area is “related party transactions. While the Companies Act, 1956 warranted approval of Central Government for related party transaction by large cap companies, Companies Act, 2013 calls for larger disclosures with members’ approval.
- Section 188 of the Companies Act, 2013 combines the erstwhile Sections 297 and 314 of the Companies Act, 1956 which deal with related party transactions and holding of office or place of profit respectively.
- As per CA 2013, disclosure of Related Party Transaction (RPT) and taking approvals for such transaction is one such area which is intended to prevent Directors, Key Managerial Personnel from taking undue advantage of their position for their personal benefit and ensure transparency in dealing of the Company.
- As per Section 2(76) of CA,2013 **“Related Party”** means
  - i. Director or his relative;
  - ii. Key Managerial Personnel or his relative;
  - iii. Firm, in which a Director, Manager or his relative is a partner;
  - iv. Private Company in which a director or manager is a member or director;
  - v. Public company in which a director or manager is a director or holds along with his relatives more than 2 % of its paid-up share capital;
  - vi. Any body corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions of a Director or Manager;
  - vii. Any person on whose advice, directions or instructions a Director or Manager is accustomed to act;
  - viii. Any company which is:
    - a. holding, subsidiary or an associate company of such company; or
    - b. subsidiary of a holding company to which it is also a subsidiary;
- Approvals are not necessary for any transactions entered into by the Company in its ordinary course of business other than those which are not on an arm length’s basis.
- Consent of Board of Director is required to enter into any contract or arrangement with the related party with respect to following transaction and the same has to be passed in a board meeting and not by way of circular resolution . Further any Director who is interested in such contract or arrangement either directly or indirectly shall not remain present at the meeting during discussions on the subject matter.
  - i. Sale , purchase or supply of any goods or materials;
  - ii. Availing or rendering of any services ;
  - iii. Buying, selling etc. property of any kind ;
  - iv. Leasing of any kind of property;
  - v. Appointment of any agent for purchase or sale of goods, materials , services or property ;
  - vi. Underwriting the subscription of any securities or derivatives;
  - vii. Related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company.

- Prior approval of the members in general meeting by **special resolution** is required :
  - i. By the Company having paid up capital of INR 10 Crore or more,  
Or
  - ii. for the following transactions :
    - a) Sale, Purchase or Supply of any goods or materials directly or through appointment of agents exceeding 25 % of the annual turnover;
    - b) Selling or Disposing of, or Buying, property directly or through appointment of agents exceeding 10 % of net worth;
    - c) Leasing of Property exceeding 10 % of the net worth;
    - d) Availing or rendering of any services directly or through appointment of agents exceeding 10 % of the net worth;
    - e) Appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding INR 2,50,000;
    - f) Remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding 1 % of the net worth;
- Special Resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary (WOS) and holding company.
- In General Meeting, the Member who is a related party is barred from casting his vote on special resolution for approval of the contract or arrangement.
- Details of every contract or arrangement shall be referred to in the Board's Report along with the justification.
- Any contract or arrangement entered by a Director or any other Employee without complying with the provision and if it is not ratified by the approving authority, such contract or arrangement shall be voidable at the option of the Board. The Directors concerned shall indemnify the Company against any loss incurred by it.
- Penalties are prescribed for Director or other employee of a company who had entered into or authorised the contract or arrangement in violation of the provision . The penalties for a Listed is fine or imprisonment which may extend to one year and fine of Rs.25,000 to 5 Lac and the penalties for unlisted company is only fine from Rs.25,000 to Rs.5 Lac.

## INSPIRATIONAL QUOTES

*“Life’s challenges are not supposed to paralyze you, they’re supposed to help you discover who you are.”*

*- Bernice Johnson Reagon*

**MOTIVATION**  
is what gets you started.  
**HABIT** is what  
keeps you  
going.



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