



**Private Circulation Only*

Newsletter for December, 2014 **By Amita Desai & Co.**



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RBI UPDATES

A. Remittance of Assets – Submission of Auditor’s certificate

- RBI vide Circular No. 43 dated December 2, 2014 for the Remittance of Assets Submission of Auditor’s Certificate.
- Central Board of Direct Taxes (CBDT) has given the instruction regarding submission of certificates which has significant changes over the years. Also note that CBDT vide its notification dated September 2, 2013 has revised the instructions regarding furnishing of tax declarations and submission of Form 15CA and 15 CB.
- Accordingly, Reserve Bank of India has amended the Principal Regulations through the Foreign Exchange Management (Remittance of Assets) (Amendment) Regulations, 2014 notified vide Notification No. FEMA. 324/2014-RB dated October 31, 2014, c.f. G.S.R. No. 803 (E) dated November 14, 2014, with respect to submitting certificates on tax payments.
- Authorised Dealer banks may refer to the instructions contained in Circular No. 151 dated June 30, 2014. The conditions stipulated therein shall be complied with while making remittances. AD Category- I banks may bring the contents of the circular to the notice of their constituents concerned.
- The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/43SAC02122014.pdf>

B. Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions

- RBI vide Circular No. 45 dated December 8, 2014 for Foreign Direct Investment (FDI) in India – Review of FDI policy – Sector Specific conditions. Key highlights are as under:
- The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India has been updating/notifying the FDI policy through issue of Consolidated FDI Policy Circular. Accordingly, Government has notified the latest FDI policy changes vide Consolidated FDI Policy Circular of 2014 dated April 17, 2014 and the same is available at Government website www.dipp.gov.in.
- In order to bring uniformity in the sectoral classification/conditionality for FDI/foreign investment as notified under the Consolidated FDI Policy Circular with the FEMA Regulations, the position on Annex B of Schedule 1 to Notification No. FEMA. 20/2000-RB dated 3rd May 2000, as amended from time to time, has been revised by amending the notification.
- Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014 notified vide Notification No. FEMA. 312/2014-RB dated July 2, 2014, c.f. G.S.R. No. 798(E) dated November 13, 2014.
- Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.
- The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/45APDI081214.pdf>

C. Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions- Defense

- RBI vide Circular No. 46 dated December 8, 2014 for Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions- Defence. Key highlights are as under.
- Attention of Authorised Dealer Category – I (AD Category-I) banks has invited to Regulation 14 and Annex B of Schedule 1 to 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 26 per cent is permitted under Government route in Defence industry subject to license under the Industries (Development & Regulation) Act, 1951.

- **Proposals for FDI above 26 % would be subject to approval of Cabinet Committee on Security on case to case basis, where it is likely to result in access to modern and ‘state-of-art’ technology in the country.**
- The extant FDI policy for defence sector has since been reviewed. Department of Industrial Policy and Promotion (DIPP) has now provided a list of defence items as finalised by Department of Defence Production, Ministry of Defence and has clarified that items not in the list would not require industrial license for defence purposes. Dual use items, having military as well as civilian applications, other than those specially mentioned in the list, would also not require Industrial License from Defence angle. Department of Defence Production, Ministry of Defence, has finalised the ‘Security Manual for Licensed Defence Industry’.
- On review, effective from August 26, 2014, **foreign investment i.e. FDI, FIIs, RFPIs, NRIs, FVCIs and QFIs upto 49% under government route shall be permitted in defence sector** subject to the conditions specified in the Press Note 7 , 2014 Series dated August 26, 2014. Portfolio investment (RFPI/FII/NRI/QFI) and FVCI investment will not exceed 24% of the total equity of the investee company. **Portfolio investment will be under automatic route.**
- **The listed investee Company engaged in defence sector, in accordance with the guidance provided by the Press Note 7 (2014 Series) shall immediately allocate limits for portfolio investment for RFPI (including QFI and FII), NRI (not exceeding 10%) and FVCI within the default portfolio investment limit of 24% being permitted now and approach Reserve Bank, Central Office, Foreign Investment Division, Mumbai so that allocated limits can be monitored by the Reserve Bank.**
- Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2014 notified vide Notification No. FEMA. 319/2014-RB dated September 5, 2014, c.f. G.S.R. No. 799(E) dated November 13, 2014.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR46FDI081214.pdf>

D. Foreign Direct Investment (FDI) in India – Review of FDI policy – Sector Specific conditions- Railway Infrastructure

- RBI vide Circular No. 47 dated December 8, 2014 for Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions-Railway Infrastructure. Key highlights are as under.
- In terms of Annex A of Schedule 1 to the Notification *ibid*, Foreign Direct Investment (FDI) is prohibited in activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).
- The extant Foreign Direct Investment (FDI) policy for railways sector has since been reviewed. **Department of Industrial Policy and Promotion (DIPP) has now permitted 100% FDI in railway Infrastructure sector under automatic route subject to conditions.** Accordingly, it has been decided to permit FDI in the following activities of the Railway Transport sector:

“Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity to main railway line and (x) Mass Rapid Transport Systems. Further, FDI beyond 49 of the equity of the investee Company in sensitive areas from security point of view will be brought before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.”
- Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014 notified vide Notification No. FEMA.320/2014-RB dated September 5, 2014, c.f. G.S.R. No. 800(E) dated November 13, 2014.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/47APDRA081214.pdf>

E. Overseas Investments by Alternative Investment Funds (AIF)

- RBI vide Circular No. 48 dated December 9, 2014 for Overseas Investments by Alternative Investment Funds (AIF).
- It has been decided to permit an Indian Alternative Investment Fund (AIF), registered with Securities and Exchange Board of India (SEBI), to invest overseas in terms of the provisions issued under the A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively.

- Necessary amendments to the Notification ibid has been issued vide Notification No. FEMA.326/RB-2014 dated November 12, 2014 (copy enclosed) and effective from the date of publication in the Gazette i.e. November 21, 2014.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/48AIFAP091214.pdf>

F. Foreign Exchange Management (Deposit) Regulations, 2000 - Exemption thereof

- RBI vide Circular No. 51 dated December 17, 2014 for Foreign Exchange Management (Deposit) Regulations, 2000 - Exemption thereof.
- The attention of Authorised Dealer Category-I (AD Category-I) banks is invited to Regulation 4(5) of the Foreign Exchange Management (Deposit) Regulations, 2000, notified vide Notification No. FEMA 5/2000-RB dated May 3, 2000, as amended from time to time, in terms of which nothing contained in the regulations applies to the deposits held in accounts maintained with an authorised dealer by the United Nations Organization and its subsidiary/affiliate bodies in India, and its or their officials in India.
- It has been observed that Authorised Dealer banks are frequently coming across cases related to opening of accounts for multilateral organisations, of which India is a member nation.
- With the objective of bringing all the multilateral organisations at par, for opening of accounts in India, the extant instructions have been reviewed and it has been decided to include in the exemptions, laid down in Foreign Exchange Management (Deposit) Regulation, 2000, issued vide Notification No. FEMA 5/2000-RB dated May 3, 2000 (as amended from time to time), deposits held in accounts maintained with an authorised dealer by any multilateral organization of which India is a member nation, and its subsidiary/affiliate bodies in India, and its or their officials in India.
- It is informed that Reserve Bank has amended the Principal Regulations through the Foreign Exchange Management (Deposit) (Amendment) Regulations, 2014 notified vide Notification No. FEMA. 327/2014-RB dated November 24, 2014 c.f. G.S.R. No. 879(E) dated December 9, 2014.
- The link of the Circular is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR51NT171214.pdf>



SEBI UPDATES

A. Modification to Offer for Sale (OFS) of Shares through stock exchange mechanism

- SEBI vide Circular No. 32 /2014 dated December 1, 2014 for Modification to Offer for Sale (OFS) of Shares through stock exchange mechanism.
- Comprehensive guidelines on sale of shares through Offer for Sale mechanism were issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified vide circulars dated CIR/MRD/DP/04/2013 dated January 25, 2013, CIR/MRD/DP/17/2013 dated May 30, 2013 and CIR/MRD/DP/ 24 /2014 dated August 08, 2014.
- To make it easier for retail investors to participate in OFS, it has been decided that seller may give an option to retail investors to place their bid at cut-off price in addition to placing price bids. In order to do so, following conditions shall be applicable to the OFS:

Where option for cut-off price is given,

- **Sellers shall mandatorily announce floor price latest by 5 pm on T-1 day to stock exchange.**
- **Exchanges will decide upon the quantity of shares eligible to be considered as retail bids, based upon the floor price declared by the seller.**
- **There shall be no indicative price for the retail portion of OFS.**
- **Retail investors may enter a price bid or opt for bidding at cut-off price.**
- **Margin for bids placed at cut-off price shall be at the floor price and for price bids at the value of the bid.**
- **Allocation to retail investors shall be made based on the cut-off price determined in the non-retail category.**
- **Seller may offer discount to retail investors on the said cut off price.**
- **Retail bids below the cut-off price shall be rejected. Retail bids at cut-off price shall be allocated on proportionate basis in case of over subscription.**
- **Any unsubscribed portion of retail category after allotment shall be eligible for allocation in the non-retail category.**

In partial modification to earlier circular, in respect of bids in the retail category, clearing corporation shall collect margin to the extent of 100% of order value in cash or cash equivalents. Pay-in and pay-out for retail bids shall take place as per normal secondary market transactions.

- Para 5 and para 6 of OFS circular dated July 18, 2012 and para 3.8 & 3.12 of OFS circular dated August 08, 2014 stand accordingly modified. All other conditions for sale of shares through OFS framework contained in the circulars CIR/MRD/DP/18/2012 dated July 18, 2012, CIR/MRD/DP/04/2013 dated January 25, 2013, CIR/MRD/DP/17/2013 dated May 30, 2013 and dated August 08, 2014 remain unchanged.
- Stock Exchanges are advised to take necessary steps and put in place necessary systems for implementation of above and make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision. and also bring the provisions of this circular to the notice of the member brokers of the stock exchange to also to disseminate the same on their website.
- The link of the Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1417587496337.pdf

B. Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure.

- SEBI vide Circular No. 33 /2014 dated December 9, 2014 for Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure.
- SEBI vide circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013 had permitted Mutual Fund Distributors to use recognized Stock Exchanges infrastructure to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients.
- **Paragraph 5 of the aforesaid circular is as under**
“The MF distributors shall not handle payout and pay in of funds as well as units on behalf of investor. The recognised stock exchange shall put necessary system in place to ensure that pay in will be directly received by recognised Clearing Corporation and payout will be directly made to investor account. In the same manner, units shall be credited and debited directly from the demat account of investors”.
- In this regard, in order to broad base the reach of this platform, it is decided to permit non- demat transactions also in the Mutual fund through stock exchange platform. The other provisions of the above mentioned circular remain unchanged.
- The link of the Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1418184464337.pdf

C. Redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform

- SEBI vide Circular No. 1 dated December 18, 2014 for Redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform. Key highlights are as under.
- SEBI launched a centralized web based complaints redress system 'SCORES' in June 2011. The purpose of SCORES is to provide a platform for aggrieved investors, whose grievances, pertaining to securities market, remain unresolved by the concerned listed Company or registered intermediary after a direct approach.
- SCORES also provides a platform, overseen by SEBI through which the investors can approach the concerned listed Company or SEBI registered intermediary in an endeavor towards speedy redressal of grievances of investors in the securities market. It would, however, be advisable that investors may initially take up their grievances for redressal with the concerned listed Company or registered intermediary, who are required to have designated persons/officials for handling issues relating to compliance and redressal of investor grievances.
- SEBI has issued various circulars/directions from time to time with respect to SCORES. In order to enable the users to have an access to all the applicable circulars/directions at one place, this Circular on SCORES consolidates the current provisions.
- **The salient features of SCORES are:**
 - I. **Centralised database of investor complaints.**
 - II. **Online movement of complaints to the concerned listed Company or SEBI registered intermediary.**
 - III. **Online upload of Action Taken Reports (ATRs) by the concerned listed Company or SEBI registered intermediary.**
 - IV. **Online viewing by investors of actions taken on the complaint and its current status.**
- The link of the Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1418897075639.pdf

ARTICLE OF THE MONTH

SIGNIFICANT CHANGES DURING THE YEAR IN COMPANIES ACT 2013

We are please to bring your attention to the Key highlights and analysis of Companies Act, 2013. This is brings out the significant changes proposed by the 2013 Act as compared to the 1956 Act. It is pertinent to note that for the complete understanding of the implications of various sections of the 2013 Act, the related Rules will need to be read with. The 2013 Act introduces significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. Also, new concepts such as one-person company, small companies, dormant company, class action suits, registered valuers and corporate social responsibility have been included.

1. **Immediate Changes in letterhead, bills or other official communications**, as if full name, address of its registered office, Corporate Identity Number (21 digit number allotted by Government), Telephone number, fax number, Email id, website address if any.
2. **One Person Company (OPC)**: It's a Private Company having only one Member and at least One Director. No compulsion to hold AGM. Conversion of existing private Companies with paid-up capital up to **Rs 50 Lacs and turnover up to Rs 2 Crores into OPC is permitted.**
3. **Woman Director**: Every Listed Company/Public Company with paid up capital of Rs 100 Crores or more / Public Company **with turnover of Rs 300 Crores or more** shall have at least one Woman Director.
4. **Resident Director**: Every Company must have a **director who stayed in India for a total period of 182 days or more in previous calendar year.**
5. **Accounting Year**: Every Company shall follow **uniform accounting year** i.e. 1st April -31st March.
6. **Loans to director**: The Company **CANNOT** advance any kind of loan / guarantee / security to any director, Director of holding company, his partner, his relative, Firm in which he or his relative is partner, private limited in which he is director or member or any bodies corporate **whose 25% or more of total voting power or board of Directors is controlled by him.**
7. **Articles of Association**: In the next General Meeting, it is desirable to **adopt Table F** as standard set of Articles of Association of the Company with relevant changes to suite the requirements of the company. Further, every copy of Memorandum and Articles issued to members should contain a copy of all resolutions / agreements that are required to be filed with the Registrar.

8. **Disqualification of director:** All existing directors must have Directors Identification Number (DIN) allotted by central government. Directors who already have DIN need not take any action. Directors not having DIN should initiate the process of getting DIN allotted to him and inform companies. The Company, in turn, has to inform registrar.
9. **Financial year:** Under the new Act, all companies have to follow a uniform Financial Year i.e. from 1st April to 31st March. Those companies which follow a different financial year have to align their accounting year to 1st April to 31st March **within 2 years**. It is desirable to do the same as early as possible since most the compliances are on financial year basis under the new Companies Act.
10. **Appointment of Statutory Auditors:** Every Listed Company can appoint **an individual auditor for 5 years and a firm of auditors for 10 years**. This period of 5 / 10 years commences from the date of their appointment. Therefore, those companies have reappointed their statutory auditors for more than 5 / 10 years, have to appoint another auditor in Annual General Meeting for year 2014.

❖ **Loan to Directors- Section 185 of Companies Act 2013:**

- ✚ Section 185 of the Companies Act, 2013 which has been notified on **12th September 2013** corresponds to section 295 of the Companies Act, 1956 which deals in loan to directors. This section is more restrictive than that of old Companies Act, 1956. Section 185 prohibits any Company from giving loans, guarantees and securities in favor of its directors or to any other person in whom the director is interested in.
- ✚ This section applies to **both private and public Companies**.
- ✚ **No company can directly or “indirectly” advance loan to its “directors” or to “other persons in whom directors are interested.”**
- ✚ Indirect lending means that the company does not give a loan to director through the agency of one or more intermediaries. But, this word of ‘indirect’ cannot be read by converting what is not a loan into a loan.
- ✚ Definition of loan is not mentioned in the companies act. Therefore in layman language, it can be said that all transactions where sum of money is given to a person to be returned with or without interest can be termed as loan,
- ✚ But advance is not covered in the definition of loan as it is a kind of pre-payment. For e.g. if the company gives advance to a person against purchase of materials, this will not be treated as loan,
- ✚ Share Application money received is also not covered in the definition of Loans.

- ✚ Company cannot give any guarantee or provide any security in connection with any loan taken by him or such other person,

Now, this is restrict a very common situation of holding company that used to give guarantee of its subsidiary company, so that the later could avail bank funding and loans (if holding company and subsidiary company have common directors), But, it is to be taken into consideration that here guarantee or security is covered but not letter of comfort. The basic difference between guarantee and letter of comfort is that in case of guarantee, guarantor undertakes the liability of principal debtor, whereas in letter of comfort, guarantor does not undertake any liability of principal debtor but instead introduces him to the third party.

- ✚ Also, company cannot give loan which is represented under the head '**book debts**' to directors or persons in whom directors are interested, i.e. if a company advances a loan/ sum of money to directors and shows the same under the head of 'book debts', i.e. director is debtor from whom company has to receive money is also prohibited. It is to be noted that Section 296 of Companies Act, 1956 considered a book debt as loan for the purpose of Section 295. Time for repayment & other terms & conditions should be considered to consider any debt as a loan.

- ✚ Loan given before 12.08.2013 is not covered under this section as the act says "no company shall 'advance' any loan or 'give' any guarantee or 'provide' any security....." which is in future tense and therefore the section applies prospectively. But, the same loan should not be renewed or altered.

- ✚ Company shall maintain a register in **Form MBP 2** and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid in chronological order in respect of each such transaction within **seven days** of making such loan or giving guarantee or providing security or making acquisition. The entries in register is to be signed and authenticated by the company secretary employed in the company or by any other person authorised by the Board for the purpose.

- ✚ **Penalty:**

- Lender Company : **Fine Rs. 5 lakhs to Rs. 25 lakhs &**
- Receiver: Director or other person to whom any loan is advanced or guarantee or security is given - **Imprisonment upto 6 months or fine Rs. 5 lakhs to Rs. 25 Lakhs, or both.** i.e. both receiver and lending company is covered here.

Now the term, "to any other person in whom director is interested"

- Individual** : Director of lending co., or holding co. or any partner or relative of any "such director";
- Firm**: in which any such director or relative is a partner;
- Private Limited Company**: of which such director is a director or member; (it is to be seen that in case of companies, relative of director is not covered),

- d) **Body Corporate** at a general meeting of which at least 25 % of voting power may be exercised or “**controlled**” by such director, or by two or more such directors, together; (it is to be seen that in case of companies, relative of director is not covered),

Meaning of word “control”: “Control” has been defined u/s 2(g) of Companies Act, 2013 as to include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

- e) Body Corporate Board, Managing Director or manager, whereof is accustomed to act in accordance with the directions or instructions of Board, or of any director or directors, of lending company.

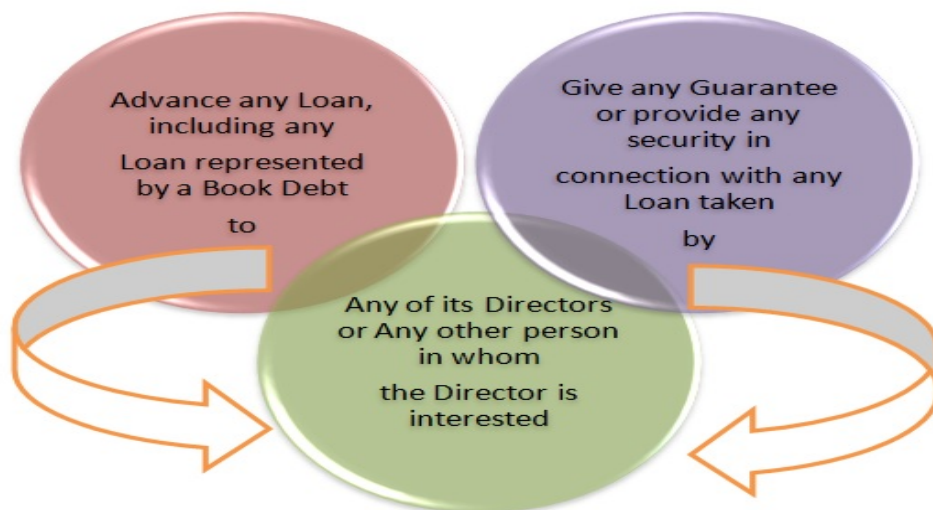
 **Exceptions to section 185:**

- a) the giving of any loan to a managing or whole-time director—
i. as a part of the conditions of service extended by the company to all its employees; or
ii. pursuant to any scheme approved by the members by a special resolution; or
- b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Ordinary Course means that its usual business is to lend & accept loans & deposits from people. It has 2 tests:

- i. If the company is engaged in lending activities regularly
ii. Lend not only to directors/directors’ entities but also to “arms’ length parties/unrelated parties”. Arms length means to give loan to reasonable parties or at reasonable interest rate at which two or more rational people will give their consent.

It is to be noted here that a company is said to be engaged in ordinary course of lending even if its 10% networth has been advanced as loan or even 10% revenue comes from lending activities and principal business of lending when its 50% networth has been advanced as loan or its more than 50% revenue comes from lending activities. Section 185 exempts even those company who are engaged in ordinary course of action.



Amendment by MCA on section 185

➤ MCA vide its **Circular No. 03/2014 dated 14th February, 2014** has made certain clarification with respect to the applicability of Section 185 of the Companies Act, 2013 with reference to loans made, guarantee given or security provided under Section 372A of the Company Act, 1956. MCA had received a number of representations on the applicability of Section 185 of the Companies Act, 2013 with reference to loans made, guarantee given or security provided under Section 372A of the Company Act, 1956.

According to Section 372A of the Companies Act, 1956 any loans made, any guarantee given or security provided or any investment made by the holding Company to its wholly owned subsidiary is exempted. Whereas Section 185 of the Companies Act, 2013 prohibits guarantee given or any security provided by the holding Company in respect of any loan taken by its subsidiary Company except in the ordinary course of business.

In order to maintain harmony, **it is clarified that any guarantee given or security provided by a holding Company in respect of loans made by a bank or financial institution to its subsidiary Company shall be exempted as provided in clause (d) of sub-section (8) of section 372A of the Companies Act, 1956 shall be applicable till section 186 of the Companies Act, 2013 is notified.** This clarification will be applicable to cases where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

❖ Related party transactions (RPT) (Section 188) of Companies Act 2013:

Most of the provisions under Section 188 of 2013 Act are quite similar to the requirements under sections 297 and 314 of the 1956 Act. Some of key changes envisaged in the 2013 Act include the following:

- ✚ Need for central government approval has been done away with.
- ✚ The 2013 Act has widened the ambit of transactions such as leasing of property of any kind, appointment of any agent for purchase and sale of goods, material, services or property.
- ✚ Cash at prevailing market price has now been substituted with 'Arm's Length Transaction' which has been defined in the section.
- ✚ Transactions entered into with related parties now to be included in the Board's Report along with justification for entering into such contracts and arrangements.
- ✚ Penalty for contravention of the provisions of section 297 was covered in general provisions in the 1956 Act. However, this is now covered specifically in the section itself which now extends to imprisonment.
- ✚ MCA vide Circulars 30 dated 17th July 2014 clarified that no member of the Company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the Company, if such member is a related party.
- ✚ MCA vide the said circular has now clarified that “**related party**” referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.
- ✚ Thus, the term “**related party**” in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.
- ✚ MCA has clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956(Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.
- ✚ Contracts entered into by Companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

- ✚ **MCA by issuing Order No. S.O. 1820(E) dated 9th July and Order No. S.O. 1894 (E) dated 24th July, 2014 amended the definition of Related Party.**
- ✚ Section 2(76) of the Companies Act, 2013 which defines the term ‘Related Party’ shall now be read as follows with the changes suggested on 9th and 24th July 2014 : **“related party”**, with reference to a company, means—
- ✚ **Section 2 (76) (v) now reads: A public Company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital.**
- ✚ Now with this amendment, all transactions will be considered as Related Party Transaction, if a Company enters into a transaction with other Company in which a director or manager is a director and he holds along with his relatives, more than 2% of the paid-up share capital of the other company.
- ✚ **Section 2 (76) (iv) now reads: A private Company in which a Director or Manager or his relative is a member or director.**
- ✚ **Now with this amendment, all transactions will be considered as Related Party Transaction, between any Company with another private Company in which either Director or Manager or his relatives are Director or member.**
- ✚ MCA vide Notification G. S.R. 590 (E) dated 14th July 2014 for amending the threshold limits for entering into transactions with related parties.
- ✚ **Prior approval of Members by means of Special Resolution not required now for Company having paid up share capital of Rs. 10 Crore or More**
- ✚ Earlier, proviso (1) of Section 188 of the Companies Act, 2013 read with Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014 states that a Company having **paid-up share capital which is equal to or exceeds Rs.10 Crore**, or transactions for value of threshold limit mentioned in the Rules required (i) approval of Board of Directors and (ii) prior approval of members by means of a special resolution before entering into any related party transactions. **However, as per the Notification dated 14th August, 2014, the above mentioned threshold limit of Rs. 10 Crore of the paid-up share capital, is withdrawn.**
- ✚ Therefore, now if the Company intends to enter into a Related Party Transaction then in addition to the approval of the Board of Directors of the Company, prior approval of members by means of a special resolution must also be sought for entering into transactions for the below mentioned threshold limits of transactions only, **disregard of Companies paid up share capital :**
- ✚ Sale, purchase or supply of any goods or materials directly or through appointment of agents **exceeding 10% of the turnover of the Company or Rs. 100 Crore, whichever is lower.**
- ✚ Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents **exceeding 10% of Net Worth of the Company or Rs. 100 Crore whichever is lower.**

- ✚ Leasing of Property of any **kind exceeding 10% of the Net Worth** or **10% of turnover of the Company** or **Rs. 100 Crore** whichever is lower.
- ✚ Availing or rendering of any service directly or through appointment of agents **exceeding 10% of the turnover of the Company** or **Rs. 50 Crore**, whichever is lower.

The limits specified in (i) to (iv) above shall apply for transaction(s) to be entered into either individually or taken together with the previous transactions during a financial year.

- ✚ Appointment to any office or Place of Profit in the Company, its Subsidiary Company or Associate Company at a **monthly remuneration exceeding Rs. 2.5 Lakhs.**
- ✚ Remuneration for underwriting the subscription of any Securities or Derivatives thereof of the Company **exceeding 1% of the Net Worth.**

The Turnover or Net Worth referred in (i) to (vi) above shall be computed on the basis of the Audited Financial Statements of the preceding financial year.

In case of a wholly owned subsidiary, the special resolution passed by the holding Company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding Company.

YEAR END MESSAGE FOR LEADERS

-----By Prof. Michael Roberto

The holiday season and the end of the year have arrived.

Leaders should take this opportunity to reflect back on the work that their organizations have done over the past twelve months.

- ✓ What were the significant accomplishments?
- ✓ What key goals were achieved?
- ✓ What lessons did the organization learn, perhaps even from some failures that took place?
- ✓ What will be the key priorities in the year ahead?

Each leader should take the time to answer these questions in a thoughtful letter to the members of their organization, or perhaps in a brief recorded video.

Such a message helps celebrate the accomplishments, and it offers the opportunity to share the credit for the success of the past year.

Moreover, leaders can recognize key individuals or teams publicly.

People want to be recognized for their efforts, and simply paying bonuses for good work does not buy employee engagement. Public praise and recognition goes a long way. The message also offers an opportunity to show that the leaders of the organization are reflecting on lessons learned, and it provides the forum to encourage all employees to learn from their successes and failures of the past year.

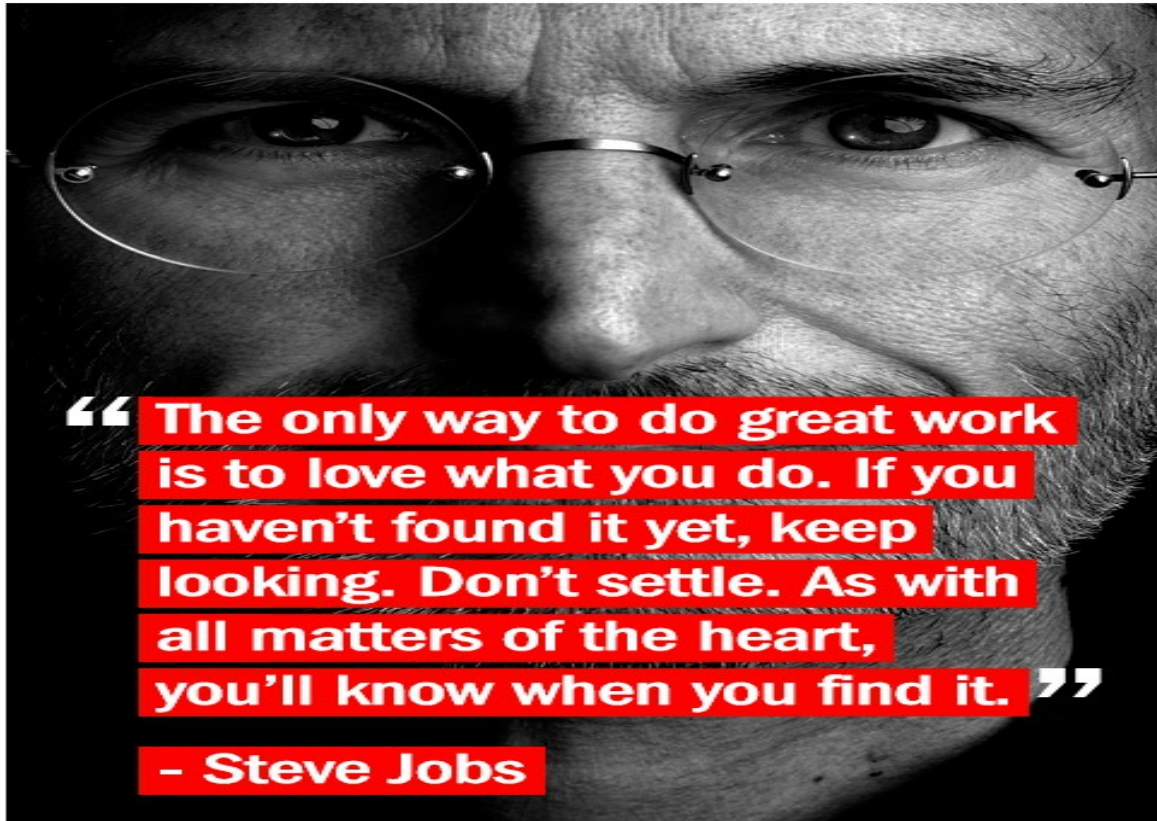
Finally, leaders have a chance to build alignment, to get everyone on the same page regarding the goals and objectives for the year ahead. How should the leader close such a message? Yes, you want to thank everyone for their hard work and wish them a happy holiday season.

However, leaders also should take the time to ask for feedback and input. They should encourage employees to send them questions or comments in response to this year-end message.

Leaders need to make this communication a two-way street, not a one-way broadcast.

That final step will further enhance employee engagement, and it might yield some terrific ideas on how to improve the organization

INSPIRATIONAL QUOTES



“ The only way to do great work is to love what you do. If you haven’t found it yet, keep looking. Don’t settle. As with all matters of the heart, you’ll know when you find it. ”

- Steve Jobs



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