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Newsletter for February 2014 By Amita Desai & Co.



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Mumbai Off :

404 | Flyover Apt | Andheri Flyover,
Opp Telli Galli | Next to HUB Town
Andheri (East) | Mumbai - 400 069 | India

) Landline : +91-22- 2684-5920/21

) Fax : +91-22- 6678-7499

) Mobile : +91-982-017-7691

Hyderabad Off :

My Home Hub, 4th Floor, C Block, Madhupur,
Hi-Tech City, Hyderabad, AP 500 081



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MCA UPDATES

A. Use of word “National” in the names of Companies or Limited Liability Partnerships (LLPs).

- The Ministry of Corporate Affairs (MCA) has noted that the Companies / Limited Liability Partnerships are being registered with the word 'National' in their names. Therefore, MCA vide its Circular No.2/2014 dated 11th February, 2014 has intimated Companies/Limited Liability Partnerships (LLPs) for prohibiting the use of word “National” in their names unless it is a Government Company and the Central / State Government(s) has a stake in the Company.
- Similarly, the words like “Bank” and “Stock Exchange” or “Exchange” should be used by an entity only after obtaining a “No Objection Certificate” from Reserve Bank of India and Securities Exchange Board of India (SEBI) respectively.
- This norm should be stringently enforced by all Registrar of Companies (ROCs) while registering Companies under the law.
- http://www.mca.gov.in/Ministry/pdf/General_Circular_2_2014.pdf

B. Clarification with regard to Section 185 of the Companies Act, 2013.

- The Ministry of Corporate Affairs (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.
- http://www.mca.gov.in/Ministry/pdf/General_Circular_3_2014.pdf

C. Companies (Corporate Social Responsibility Policy) Rules, 2014.

- The Ministry of Corporate Affairs (MCA) vide its Notification dated February 27, 2014 has made rules for Section 135 of the Companies Act, 2013 relating to Corporate Social Responsibility (CSR). The rules shall be called as the “Companies (Corporate Social Responsibility Policy) Rules, 2014”. These rules shall come into force on the **1st day of April, 2014**.
- CSR will apply to every Company with a Net Worth of Rs. 500 crores or more, Turnover of Rs. 1000 crores or more or a Net Profit of Rs. 5 crores or more during any financial year.
- The amount on CSR to be spent has to be a ***minimum of 2% of “average net profit” of the Company made during the three immediately preceding the financial years***. The amount has to be spent on the 10 broad areas that result in social good as specified in Schedule VII of the Companies Act 2013.
- **“Net profit”** means the net profit of a company & as per its financial statement prepared in accordance with the applicable provisions of the Act , but shall not include the following namely :
 - i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise and
 - ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared & accordance with the provisions of the Companies Act 1956 shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

- The rules contains various aspects of Corporate Social Responsibility which are as follows:
 1. Definitions of terms like “CSR”, “CSR Policy”, “CSR Committee”, Net Profit.
 2. Constitution of CSR Committee in different classes of Companies like
 - For Listed Company
 - For Unlisted Public Company or a Private Company
 - For Foreign Company
 3. Duty of CSR Committee.
 4. Applicability of CSR to Companies.
 5. Various CSR Activities as mentioned in Schedule VII of the Companies Act, 2013.
 6. CSR Policy and CSR Expenditure.
 7. CSR Reporting (details of which are described in the Annexure to the said Notification)
 8. Display of CSR Activities on Company’s website.
- http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf





RBI UPDATES

A. Reporting under Foreign Direct Investment Scheme: Amendments in form FC-GPR.

- The Reserve Bank of India (RBI) vide its Circular No.102 dated February 11, 2014 invited the attention of the Authorised Dealer (AD-Category I) Banks to the provisions of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000.
- As per paragraph 9 (1) A of Schedule I of the FEMA Notification No. 20/2000-RB dated May 3, 2000, Indian companies are required to report the details of the amount of consideration received for issuing shares and convertible debentures under the Foreign Direct Investment (FDI) scheme to the Regional Office of the RBI in whose jurisdiction the Registered Office of the Company operates, within 30 days of receipt of the amount of consideration.
- As per paragraph Para 9 (1) B of Schedule I of the FEMA Notification No. 20/2000-RB dated May 3, 2000, the Companies are required to report the details of the issue of shares / convertible debentures in form FC-GPR, to the Regional Office concerned, within 30 days of issue of shares / convertible debentures.
- In order to have detailed information of FDI regarding Brownfield/Greenfield Investments and the date of incorporation of Investee Company, **Form FC-GPR has been revised by the RBI.**
- The aforesaid format of Form FC-GPR is placed as Annexure to the said Circular.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/102APD110214.pdf>

B. Foreign investment in India by SEBI registered FII, QFI and Long term investors in Corporate Debt.

- The Reserve Bank of India (RBI) vide its Circular No.104 dated February 14, 2014 invited the attention of the Authorised Dealer (AD-Category I) Banks to the Notification No. FEMA 20/2000-RB dated May 3, 2000 which notifies Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.
- As per the said notification, SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and Long Term Investors may purchase, on repatriation basis Government securities and Non Convertible Debentures (NCDs) / Bonds issued by an Indian Company.

- RBI also invited the attention of the Authorised Dealer (AD-Category I) Banks with regards to the A.P (DIR Series) Circular No.94 dated April 1, 2013 in terms of which the present limit for investment by SEBI registered FIIs, QFIs and long term investors in Corporate debt stands at USD 51 billion.
- Out of the above limit of USD 51 billion, a sub-limit of USD 3.5 billion is available for investment by eligible investors in Commercial Paper (CP). This sub-limit is being presently utilised only to the extent of around 58% of the limit put in place by SEBI.
- To encourage Long Term Investors, RBI has decided, to reduce the existing Commercial Paper sub-limit of USD 3.5 billion by USD 1.5 billion to USD 2 billion with immediate effect. The balance USD 1.5 billion shall continue to be part of the total Corporate debt limit of USD 51 billion and will be available to eligible foreign investors for investment in Corporate debt.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/104APD140214.pdf>

C. External Commercial Borrowings (ECB) – Reporting arrangements

- The Reserve Bank of India (RBI) vide its Circular No.105 dated February 17, 2014 invited the attention of the Authorised Dealer (AD-Category I) Banks to the Notification No. FEMA 20/2000-RB dated May 3, 2000 which notifies the “Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000” and to the A.P (DIR Series) Circular No.60 dated January 31, 2004 which relates to the Reporting Arrangement for ECB.
- The format of ECB -2 Return has been modified to capture details of the financial hedges contracted by corporates, of their foreign currency exposure relating to ECB and their foreign currency earnings and expenditure.
- The reporting in the modified ECB-2 Return will be applicable from the return of the month April 2014 onwards.
- However there is no change in the reporting procedure and corporates raising ECB continue to submit ECB-2 Return on a monthly basis which is duly certified by the designated AD Category-I Bank to reach Department of Statistics and Information Management (DSIM) of Reserve Bank of India within seven working days from the close of month.
- The aforesaid format of ECB-2 Return is placed as an Annexure to the Circular.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/105AP170214F.pdf>

D. Foreign Direct Investment (FDI) into a Small Scale Industrial Undertakings (SSI) / Micro & Small Enterprises (MSE) and in Industrial Undertaking manufacturing items reserved for SSI/MSE.



- The Reserve Bank of India (RBI) vide its Circular No.107 dated February 20, 2014 invited the attention of the Authorised Dealer (AD-Category I) Banks to the Notification No. FEMA 20/2000-RB dated May 3, 2000 which notifies Schedule 1 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.
- As per the said notification, an Indian company which is a small scale industrial unit and which is not engaged in any activity or in manufacture of items included in Annexure A to the said notification may issue shares or convertible debentures to a person resident outside India, to the extent of 24% of its paid-up capital. Such Company may issue in excess of 24% of its capital provided:
 - (a) The Company has given up its small scale status,
 - (b) The Company is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and
 - (c) The Company complies with the ceilings specified in Annex B to the said Notification.
- With the promulgation of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, the policy for Foreign Direct Investment (FDI) in Small Scale Industrial unit and in a company which has de-registered its small scale industry status and is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, has been reviewed and it has been decided that;
 - (i) A Company which is reckoned as Micro and Small Enterprises (MSE) (earlier Small Scale Industries) in terms of MSMED Act, 2006 and not engaged in any activity/sector mentioned in Annex A to the said Notification, may issue shares or convertible debentures to a person resident outside India, subject to the limits prescribed in Annex B to the said Notification, in accordance with the entry routes specified therein and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.
 - (ii) Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for manufacture in the MSE sector may issue shares in excess of 24% of its paid up capital with prior approval of the Foreign Investment Promotion Board of the Government of India.
- <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOT107AP0214CI.pdf>



SEBI UPDATES

A. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2014.

- The Securities and Exchange Board of India (SEBI) vide its Notification No. LAD-NRO/GN/2013-14/44/226 dated February 4, 2014 issued regulations called as SEBI(Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2014 in order to further amend the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- The amended Regulations shall come into force on the date of their publication in the Official Gazette.
- Regulation 26, sub-regulation (7) of the existing SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which states that, no issuer shall make an initial public offer, unless as on the date of registering prospectus or red herring prospectus with the Registrar of Companies has obtained grading for the initial public offer from at least one credit rating agency registered with the Board has been revised as follows:

"(7) An issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registered with the Board."

- http://www.sebi.gov.in/cms/sebi_data/attachdocs/1391509221289.pdf

B. Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) Investments in Commercial Papers.



- The Securities and Exchange Board of India (SEBI) vide its Circular CIR/IMD/FIIC/6/2013 dated April 01, 2013 SEBI had permitted FIIs and QFIs to invest upto US\$ 3.5 billion in Commercial Papers within the Corporate Debt limit of US\$ 51 billion.
- However, The Reserve Bank of India has reduced the existing sub-limit for FII/QFI investment in Commercial Papers from USD 3.5 billion to USD 2 billion.

- Accordingly, the SEBI vide its Circular CIR/IMD/FIIC/4/2014 dated February 14, 2014 made partial modification in Para 4 of the SEBI circular CIR/IMD/FIIC/6/2013 stating that, eligible investors shall be permitted to invest upto US\$ 2 billion in Commercial Papers within the Corporate Debt limit of US\$ 51 billion.
- This circular shall come into effect immediately.
- The table summarizing the Corporate debt limit category is as follows:

Type of Instrument	Cap (US\$ bn)	Cap (INR Crore)	Eligible Investors	Remarks
Corporate Debt	51	244,323	FIIIs and QFIs	Eligible investors may invest in Commercial Papers only upto US\$ 2 billion and upto US\$5 billion in Credit Enhanced Bonds within the limit of US\$51 billion

- http://www.sebi.gov.in/cms/sebi_data/attachdocs/1392383298231.pdf

C. SEBI Board Meeting.



- SEBI vide its Press Release No. 12/2014 dated February 14, 2014 accepted the proposal to amend the Listing Agreement with respect to Corporate Governance norms for Listed Companies and has also made amendment to SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011.
- To align the provisions of the existing Listing Agreement with the provisions of the newly enacted Companies Act, 2013 and to provide additional requirements to strengthen the corporate governance framework for listed companies in India, following are some of the proposals approved by the SEBI:
 - i. Exclusion of nominee Director from the definition of Independent Director.
 - ii. Compulsory whistle blower mechanism.
 - iii. Expanded role of Audit Committee.
 - iv. At least one woman director on the Board of the Company.

- v. The maximum number of Boards an independent director can serve on listed companies be restricted to 7 and 3 in case the person is serving as a whole time director in a listed company.
 - vi. To restrict the total tenure of an Independent Director to 2 terms of 5 years. However, if a person who has already served as an Independent Director for 5 years or more in a listed company as on the date on which the amendment to Listing Agreement becomes effective, he shall be eligible for appointment for one more term of 5 years.
- SEBI Board has also approved a Long Term Policy for Mutual Funds in India. The recommendations of long term policy has been bifurcated in two buckets namely:
- Tax Incentive Related Proposals
 - Non-Tax Incentive Related Proposals.
- As per the existing SEBI{KYC (Know Your Client) Registration Agency} Regulations, 2011, there is an option available to the SEBI registered intermediary that he may access the centralized SEBI (KYC Registration Agency) system ('KRA system') in case of a client who is already KYC compliant or carry out a fresh KYC process.
- Looking at the successful working of the KRA system, SEBI has approved the amendment to KRA Regulations and the option of taking fresh KYC has been done away with. However the intermediary can undertake enhanced KYC measures commensurate with the risk profile of its clients.
- The above mentioned amendments shall be applicable to all listed companies with effect from **October 01, 2014**.
- http://www.sebi.gov.in/cms/sebi_data/pdffiles/27383_t.pdf



DIPP UPDATES

A. Policy on Foreign Investment in the Insurance Sector.



- The Department of Industrial policy & Promotion (DIPP) vide its Press Note No. 2 (2014 Series) has issued amendment in paragraph 6.2.17.7 of the ‘Consolidated FDI Policy’ relating to the Policy on Foreign Investment in the Insurance Sector.
- The Following are the amendments made in Paragraph 6.2.17.7 of the ‘Consolidated FDI Policy’ :

Sr.No	Sector/Activity	% of FDI Cap/Equity	Entry Route
6.2.17.7.1	(i)Insurance Company (ii)Insurance Brokers (iii)Third Party Administrators (iv)Surveyors and Loss Assessors	26%(FDI+FII+NRI)	Automatic

- The conditions permitting FDI in Insurance Sector has been revised as follows under paragraph 6.2.17.7.2:
 1. FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route.
 2. This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.
 3. The Provisions of Paragraph 6.2.17.2.2(4)(i) (c) &(e) of the ‘Consolidated FDI Policy’ relating to the “Banking –Private Sector” for making application to RBI in consultation of Insurance Regulatory and Development Authority in order to ensure that 26% limit of foreign shareholding is not breached shall be applicable in respect of bank promoted insurance companies.
 4. The definitions of above mentioned Sector/Activity are defined in the said Circular.
- http://dipp.nic.in/English/acts_rules/Press_Notes/pn2_2014.pdf

ONE PERSON COMPANY

“I worship individuals for their highest possibilities as individuals and I loathe humanity for its failure to live up to these possibilities”

➤ Individual entrepreneurs doing business as sole proprietors will now be able to avail the benefits of limited liability without a second person to form a company as the Companies Act, 2013 proposes the concept of “One Person Company” (“OPC”).

➤ One Person Company is defined in Section 2(62) of The Companies Act, 2013, which reads as follows:

‘One Person Company means a company which has only one member’.

➤ Section 3 of the Companies Act, 2013 classifies OPC as a Private Company for all the legal purposes with only one member. All the provisions related to the private company are applicable to an OPC, unless otherwise expressly excluded.

➤ **Characteristics of OPC:**

- OPC may be registered as a private company with one member and at least one director.
- Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as nominee director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.
- Letters ‘OPC’ to be suffixed with the name of OPCs to distinguish it from other companies.

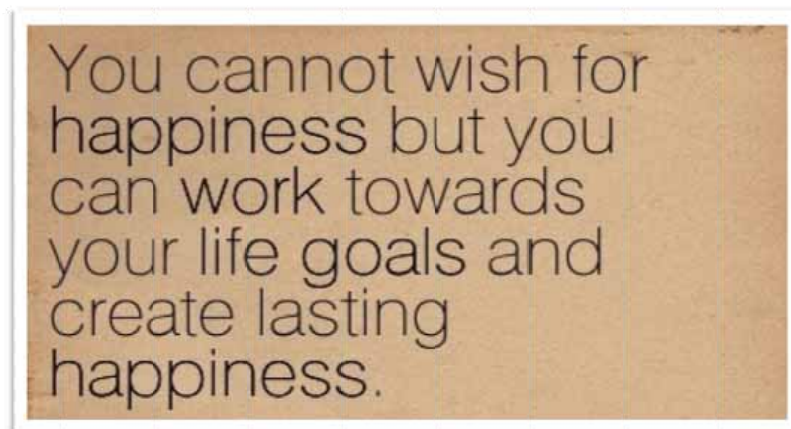
➤ **Advantages of OPC:**

- OPC should have minimum one Resident Director and maximum 15 Directors.
- Where an OPC has only 1 Director, the date on which the resolution is signed and dated by such director is considered as the date of the board meeting.
- Provisions of Board Meeting, Extra Ordinary Meeting, Quorum and Interested Director shall not apply to OPC.
- OPC need not hold an Annual General Meeting (AGM). All provisions regarding AGM like notice period, explanatory statement, proxies do not apply to the OPC.
- The Annual Returns of the OPC have to be signed by the Company Secretary and where there is no Company Secretary, by the Director of the Company.
- There is no need to conduct a meeting if the number of Directors is only one but in case of more than one Director atleast one board meeting in each half of the calendar year is required to be conducted and the gap between the two such meetings should be not less than 90 days.
- Financial Statements shall be signed by only one director and are to be filed with ROC within 180 days from the end of Financial Year.

➤ **Conclusion:**

One Person Company (OPC) is a next generation business structure allowing corporate entity status to a **SINGLE MAN FIRM**. Converting a sole proprietary concern into an OPC will help carrying on the business with limited liability. If the conditions under the tax laws are satisfied, such conversion from sole proprietorship to an OPC may be tax neutral.

INSPIRATIONAL QUOTES



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Amita Desai & Co. Company Secretaries

Mumbai Off :

404 | Flyover Apt | Andheri Flyover,
Opp Telli Galli | Next to Hub Town
Andheri (East) | Mumbai - 400 069 | India

) Landline : +91-22- 2684-5920/21

) Fax : +91-22- 6678-7499

) Mobile : +91-982-017-7691

Hyderabad Off :

My Home Hub, 4th Floor, C Block, Madhupur,
Hi-Tech City, Hyderabad, AP 500 081

Chief Editor: Mrs. Amita Desai
Editor: Ms. Neha Pokhrana
Ms. Winnie Santwani