



**Private Circulation Only*

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



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MCA UPDATES

A. Amendment to Definition of Related Party

- MCA vide draft published Notification dated 17th July, 2014 amended the definition of Related Party by modifying the existing Rule 3 of Chapter I on the Companies (Specification of Definitions Details) Rules, 2014 states as follows:
- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, **a Director or KMP** (Key Managerial Personnel) **of the holding company** or **his relative** with reference to a company, shall be deemed to be a related party.
- **Analysis**: MCA vide this notification has made the following amendment after the words 'a director' the words 'other than an independent director' was inserted. Which means only Non independent Director and his relatives are treated as Related Party.
- The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/NCARules_17072014.pdf

B. Related Party Transactions - Clarification

- MCA vide General Circular No.30 dated 17th July, 2014 provided clarifications on matters relating to Related Party Transactions.
- **Scope of second proviso to Section 188(1)**: Second Proviso to Section 188, states 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.

- **Non- Applicability of Section 188 for transactions arising out of corporate restructuring, amalgamations etc :**

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.

➤ Requirement of fresh approvals for past contracts under Section 188:

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.**

➤ The link of the notification is as below:

http://www.mca.gov.in/Ministry/pdf/Circular_No_30_17072014.pdf

C. Applications pending made under the Companies Act, 1956

➤ MCA vide Notification No. G.S.R. 506(E) dated 17th July 2014 has clarified that any application or forms filed with RoC or RD office under the Companies Act, 1956 and are pending for some **clarification or documents shall be disposed of in accordance with the Companies Act, 1956 only.**

➤ The link of the notification is as below:

<http://www.egazette.nic.in/WriteReadData/2014/160326.pdf>

D. Extension of validity of reserved names

MCA vide General Circular No. 31/2014 dated 19th July, 2014 has clarified that the applicants who had applied for reservation of names and whose application had expired on the date of issue the said circular are granted extension up to 18th August, 2014. Further, in case where names have been reserved and are yet to be used, the time period as indicated in the letters of intimations is allowed. All applicants are advised **to file relevant e-forms for incorporation of companies under the Companies Act, 2013** well before the validity period.

➤ The link of the notification is as below:

http://www.mca.gov.in/Ministry/pdf/Circular_No_31_19072014.pdf

E. Clarification on transitional period for resolutions passed under the Companies Act, 1956.

➤ It has been brought to the notice of the Government that many companies have passed resolutions during financial year 2013-14 under the relevant provisions of the Companies Act, 1956 (Old Act) which are/were at different stages of implementation after coming into force of corresponding provisions of the new Companies Act, 2013 (New Act). Ministry has received suggestions that while Section 6 of the General Clauses Act, 1897 protects the validity of such resolutions, it will be advisable if a suitable communication is also issued in the matter by the Ministry by way of abundant caution.

➤ MCA vide **Circular No. 32/2014 dated 23rd July, 2014** clarified that the resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the following conditions:

- a. That the implementation of the resolution actually commenced before 1st April, 2014 and
- b. That this transitional arrangement will be available up to expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later. It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.

➤ The link of the notification is as below:

http://www.mca.gov.in/Ministry/pdf/General_Circular_32-2014_23072014.pdf

F. MCA has Notification on July 24, 2014 suggesting Amendment in the Companies (Management and Administration) Rules, 2014.

- MCA vide Notification No. G.S.R. 537(E) dated 24th July 2014, amended the Companies (Management and Administration) Rules, 2014. The key highlights of the said notification are as follows:
- As per Section 89 of CA 2013 read with Rule 9 of Chapter 7, a beneficiary interest holder and the shareholder has to give declaration with RoC about their holdings as trustee or Beneficiary in various Forms namely MT 4, 5 and 6.

However as per the Notification dated 24th July 2014, MCA has given **exemption to a trust** which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI, shall **not be required to file such declaration**.

- As per section 93 read with Rule 13 of Chapter 7, every listed company was required to file with the Registrar, a return in Form No.MGT.10 along with the fee with respect to changes relating to either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders of the company in each case, within fifteen days of such change, **either value or volume of the shares**.

However as per published Notification dated 24th July 2014, MCA has deleted the last wording “Either value or volume of the shares and explanation to it.

- As per Section 115 and Rule 23 of chapter 7, MCA vide Notification dated 24th July 2013, brought the Rules in line with Section 115, by altering the provisions in the Rules, for Special Notice to be given by the shareholders, holding not less than 1% of voting power or holding shares of value **not more than Rs.5 Lac**, by deleting the word **“not less than Rs.5 Lac”**.
- As per Section 120 read with Rule 27 of Chapter 7, MCA vide Notification dated 24th July 2014, brought the Rules in line with Section 120, by clarifying that every listed company or a company having not less than 1000 shareholders, debenture holders and other security holders, **may** maintain its records in electronic form by deleting the word **“shall”** from the Rules.
- The link of the notification is as below:
<http://www.egazette.nic.in/WriteReadData/2014/160392.pdf>

G. Amendment to the definition of Related Party

- 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.

- The link of the notification are as below:
http://www.mca.gov.in/Ministry/pdf/ROD_Fifth_2014.pdf
http://www.mca.gov.in/Ministry/pdf/ROD_Six_2014.pdf

F. Same person can be MD and CEO in certain Class of Companies

- Section 203 (1) read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 reads that every **listed company** and every other **public company** having a **paid-up share capital of Rs. 10 Crore or more** shall have the following whole-time key managerial personnel -
 - i. Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director;
 - ii. Company Secretary; and
 - iii. Chief Financial Officer.

1st proviso reads as follow:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the Managing Director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses:

2nd Proviso reads as follow:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

MCA vide Notification dated 25th July, 2014 notified class of companies covered under second proviso:

Public Companies having Paid-up Share Capital of Rs. 100 Crore or more and Annual Turnover of Rs. 1000 Crore or more, which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the Companies Act, 2013.

Explanation. - For the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

- **Thus now, Public Companies having Paid-up Share Capital of Rs. 100 Crore or more and Annual Turnover of Rs. 1000 Crore or more which are engaged in multiple businesses can appoint or reappoint an individual as the chairperson of the company, as well as the Managing Director or Chief Executive Officer of the company, if they have CEO for each such business.**
- The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/Notification_25072014_3.pdf

G.Appointment of Auditors by Comptroller and Auditor General of India to 'Deemed Government Companies'

- Doubts have been raised about applicability of sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), to 'deemed Government Companies' referred to in section 619B of the Companies Act, 1956 (Old Act) i.e. companies where ownership or control lies with two or more Government companies or corporations etc, in the manner detailed in section 619B ibid, Stakeholders have pointed out that the New Act does not contain specific provisions about 'deemed Government companies' on the lines of section 619 of the Old Act which states that C&AG shall have power to direct the manner in which the company's accounts shall be audited by the auditor appointed and also to conduct a supplementary or test audit of the company's accounts by such person or persons as he is authorize in this behalf by C&AG. Clarification has been sought whether, under the new Act, such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies.
- MCA vide Circular No. 33 dated 31st July, 2014 clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and **thus such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies.**
- Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act.
- It is hereby clarified that **such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation.** It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.
- The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/General_Circular_33-2014_31072014.pdf



RBI UPDATES

A. Master Circular on Import of Goods and Services

- RBI vide Master Circular No. 13/2014-2015 dated 1st July, 2014 issued a Master Circular on Import of Goods and Services.
- This Master Circular consolidates the existing instructions on the subject of "Import of Goods and Services" at one place. The list of underlying circulars consolidated in the master circular is furnished in Appendix of the same.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/22MA01072014F.pdf>

B. Master Circular on Establishment of Liaison / Branch / Project Offices in India by Foreign Entities

- RBI vide Master Circular No. 7/2014-2015 dated 1st July, 2014 issued a Master Circular on Establishment of Liaison / Branch / Project Offices in India by Foreign Entities.
- This Master Circular consolidates the existing instructions on the subject of "Establishment of Branch/Liaison/Project Offices in India by Foreign Entities" at one place. The list of underlying circulars/notifications consolidated in this Master Circular is furnished in the Appendix to the said circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/11ELB010714FL.pdf>

C. Master Circular on Exports of Goods and Services

- RBI vide Master Circular No. 14/2014-2015 dated 1st July, 2014 issued a Master Circular on Exports of Goods and Services.
- This Master Circular consolidates the existing instructions on the subject of "Export of Goods and Services from India" at one place. The list of underlying circulars/notifications consolidated in this Master Circular is furnished in Appendix of the said circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/05MEG01072014F.pdf>

D. Master Circular on Miscellaneous Remittances from India – Facilities for Residents

- RBI vide Master Circular No. 6/2014-2015 dated 1st July, 2014 issued a Master Circular on Miscellaneous Remittances from India – Facilities for Residents.
- This Master Circular consolidates the existing instructions on the subject of "Miscellaneous Remittances from India - Facilities for Residents" at one place. The list of underlying circulars/notifications consolidated in the Master Circular is furnished in Appendix-1 of the said circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/10MR010714FS.pdf>

E. Master Circular on Direct Investment by Residents in Joint Venture (JV) /Wholly Owned Subsidiary (WOS) Abroad

- RBI vide Master Circular No. 11/2014-2015 dated 1st July, 2014 issued a Master Circular on Direct Investment by Residents in Joint Venture (JV) /Wholly Owned Subsidiary (WOS) Abroad.
- This Master Circular consolidates the existing instructions on the subject of "Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad" at one place. The list of underlying circulars /notifications is furnished in the Appendix of the said master circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/02MDI010714FL.pdf>

F. Master Circular on Compounding of Contraventions under FEMA, 1999

- RBI vide Master Circular No. 9/2014-2015 dated 1st July, 2014 issued a Master on Compounding of Contraventions under FEMA, 1999.
- This Master Circular consolidates the existing instructions on the subject of "Compounding of Contraventions under FEMA, 1999" at one place. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix of the said master circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/01FEMACC010714.pdf>

G. Master Circulars - Miscellaneous Instructions to all Non-Banking Financial Companies

- RBI vide Circular No. 392/03.02.001/2014-15 dated 1st July, 2014 issued a Master on Miscellaneous Instructions to all Non-Banking Financial Companies.
- In order to have all current instructions in one place, RBI has issued master circulars to NBFCs on various subjects. A consolidated list of all such instructions is enclosed for ready reference in the said master circular.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/52MBFC010714F.pdf>

H. Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI) – Restoration of Limit

- RBI vide Circular No. 1 dated 3rd July, 2014 decided to restore the limit of Overseas Direct Investments (ODI)/ Financial Commitment (FC) to be undertaken by an Indian Party under the automatic route to the limit prevailing, as per the extant FEMA provisions, prior to August 14, 2013. It has, however, been decided by the RBI that **any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).**
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/01APR030714F.pdf>

I. Issue of Partly Paid Shares and Warrants by Indian Company to Foreign Investors

- RBI vide Circular No. 3 dated 14th July, 2014 brought to the attention of Authorized Dealers Category –I (AD Category-I) banks to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (principal Regulations) notified by the Reserve Bank of India vide Notification No.FEMA.20/2000-RB dated 3rd May 2000, in terms of which only equity shares and compulsorily and mandatorily convertible preference shares/debentures are recognized as Foreign Direct Investment (FDI) compliant instruments.

Further, equity shares or compulsorily and mandatorily convertible preference shares/debentures containing an optionality clause but without any option/ right to exit at an assured price have also been recognized as FDI compliant instruments.

- The key highlights of the said circular are as follows:

Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be eligible instruments for the purpose of FDI and foreign portfolio investment (FPI) by Foreign Institutional Investors (FIIs)/Registered Foreign Portfolio Investors (RFPIs) subject to compliance with FDI and FPI schemes.

The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months.

- The pricing of the warrants and price/ conversion formula shall be determined upfront and 25% of the consideration amount shall also be received upfront. The balance consideration towards fully paid up equity shares shall be received within a period of 18 months; The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant FEMA Regulations and pricing guidelines stipulated by RBI from time to time. Thus, **Investee Company shall be free to receive consideration more than the pre-agreed price.**
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/03NPR30714FS.pdf>

J. Foreign Direct Investment (FDI) in India -Issue/Transfer of Shares or Convertible Debentures- Revised pricing guidelines

- RBI vide Circular No. 4 dated 15th July, 2014 reviewed the extant pricing guidelines in respect of transfer/issue of shares and for exit from investment in equity shares with or without optionality clauses of listed/unlisted Indian companies , to provide greater freedom and flexibility to the parties concerned under the FDI framework.
- The key highlights of the said circular are as follows:
- In case of listed companies:
 - a. The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures shall be as per the SEBI guidelines;
 - b. The pricing guidelines for FDI instruments with optionality clauses shall continue to be in accordance with A.P. (DIR Series) Circular No. 86 dated January 9, 2014, i.e., the non-resident investor shall be eligible to exit at the market price prevailing on the recognized stock exchanges subject to lock-in period as stipulated, without any assured return.
- In case of unlisted companies:
 - a. The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures with or without optionality clauses shall be at a price worked out as per any internationally accepted pricing methodology on arm's length basis. Thus, the guiding principle will be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at a fair price computed as above at the time of exit subject to lock-in period requirement as applicable in terms of A.P. (DIR Series) Circular No. 86 dated January 9, 2014.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/04APDIR150714.pdf>

K. Liberalized Remittance Scheme (LRS) for resident individuals- Increase in the limit from USD 75,000 to USD 125,000

- RBI vide Circular No. 5 dated 17th July, 2014 brought to the attention of Authorized Dealer Category-I (AD Category-I) banks to the guidelines regarding the Liberalized Remittance Scheme (LRS) for Resident Individuals (the Scheme).
- It was decided by the RBI vide A.P.(DIR Series) Circular No. 138 dated June 3, 2014, to increase the limit to USD 125,000 per financial year (April-March) from USD 75,000. Accordingly, AD Category –I banks have been allowed to remit up to USD 125,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both. Further, **it is clarified that the Scheme can now be used for acquisition of immovable property outside India.**
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C132FD170714F.pdf>

L. Foreign Direct Investment – Reporting under FDI Scheme

- RBI vide Circular No. 6 dated 18th July, 2014 issued a circular stating the reporting to be made to RBI under the FDI scheme.
- As per the extant guidelines, Indian companies are required to report the details of the issue of shares, convertible debentures, partly paid shares and warrants in form FC-GPR, to the Regional Office concerned, within 30 days of issue of shares/ convertible debentures. In terms of Para 10 of the Schedule ibid, transfer of shares, convertible debentures, partly paid shares and warrants by way of sale from a person resident in India to a person resident outside India or vice versa, are required to be reported by the transferor/ transferee resident in India to the AD Bank in form FCTRS, within 60 days from the date of receipt or payment of the amount of consideration. Indian companies are required to report the NIC Codes in the FCGPR and FCTRS forms as per the NIC 2008 version, henceforth.
- It has also been decided by the RBI to introduce a uniform State and District code list for reporting of details of foreign direct investment by Indian companies in Form FCGPR. The list can be accessed on the RBI website (www.rbi.org.in – FEMA – State and District Code List)
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AD06180714FC.pdf>

M. Foreign investment in India by SEBI registered Long term investors in Government dated Securities

- RBI vide Circular No. 13 dated 23rd July, 2014 brought to the attention of Authorized Dealer Category-I (AD Category-I) banks to Schedule 5 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 which SEBI registered Foreign Institutional Investors (FIIs), SEBI registered Qualified Foreign Investors (QFIs) and long term investors registered with SEBI may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs) /bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time.
- Attention of AD Category-I banks is also invited to A.P. (DIR Series) Circular No.99 dated January 29, 2014 in terms of which the present limit for investments by FIIs, QFIs and long term investors in Government securities stands at USD 30 billion, out of which a sub-limit of USD 10 billion is available for investment by long term investors in Government dated securities.
- On a review, it has been decided by the RBI to enhance the investment limit in government securities available to FIIs/ QFIs/ FPIs by USD 5 billion by correspondingly reducing the amount available to long term investor from USD 10 billion to USD 5 billion within the overall limit of USD 30 billion.
- The incremental investment limit of USD 5 billion shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FII/ QFI/ FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years.
- It is, however, clarified that there will be no lock-in period and FIIs/QFIs/FPIs shall be free to sell the securities (including that are presently held with less than three years of residual maturity) to the domestic investors.
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/13APR230714F.pdf>

N. Export of Goods and Services – Project Exports

- RBI vide Circular No. 11 dated 22nd July, 2014 decided to further liberalize and simplify the procedure under Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, it has been decided by RBI as follows:
- i. The structure of Working Group (consisting of representatives from Exim bank, ECGC & RBI), which has hitherto been permitted to consider project exports and deferred service exports proposals for contracts exceeding USD 100 Million in value will now be dispensed with. The AD banks / Exim Bank can now consider awarding post-award approvals without any monetary limit and permit subsequent changes in the terms of post award approval within the relevant FEMA guidelines / regulations. Project and service exporters may accordingly approach AD banks / Exim Bank based on their commercial judgment. The respective AD bank / Exim Bank should monitor the projects for which post-award approval has been granted by them; and
 - ii. The stipulation of time limit of 30 days for the exporter undertaking Project Exports and Service contracts abroad to submit form DPX1/ PEX-1 /TCS-1 to the Approving Authority (AA) for seeking post award approval will not apply henceforth
- The link of the notification is as below:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C141ED210714F.pdf>

O. External Commercial Borrowing (ECB) Policy — Review of all-in-cost ceiling

- RBI vide Circular No. 17 dated 28th July, 2014, decided that the all-in-cost ceiling as specified under paragraph 2 of A.P. (DIR Series) Circular No. 99 dated March 30, 2012 as detailed below will continue to be applicable till December 31, 2014 and is subject to review thereafter. All other aspects of ECB policy remain unchanged.

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	

- The link of the notification is as below
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C153F280714F.pdf>

SEBI UPDATES



A. Change in Government Debt Investment Limits

- The present debt investment limits available for FPI investments in Government securities (G-Secs) include a USD 20 billion limit for all FPIs and another USD 10 billion limit for Long Term FPIs. While the USD 20 billion limit has been fully utilized, the USD 10 billion limit has been utilized only up to 22.86%.
- Therefore, in partial modification of Para 5 of the SEBI circular CIR/IMD/FIIC/8/2014 dated 7th April, 2014, it has been decided by SEBI vide Circular No. CIR/IMD/FIIC/ 17/2014 dated 23rd July, 2014 to enhance the investment limit in government securities available to all FPIs by USD 5 billion by correspondingly reducing the amount available to long term FPIs from USD 10 billion to USD 5 billion within the overall limit of USD 30 billion.
- The incremental investment limit of USD 5 billion (Rs. 24,886 Crore) shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years. It is, however, clarified that there will be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years of residual maturity) to the domestic investors.
- The Government debt investment limit shall now be as follows :

Sr. No.	Type of limit	Cap (US\$ Bn)	Cap (INR Crore)	Eligible Investors	Remarks
1	Government Debt	25	124,432	FPIs	Available on demand. The incremental investment limit of USD 5 billion (INR 24,886cr) shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FII/QFI/FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years.

- The link of the notification is as below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1406122737412.pdf

ARTICLE OF THE MONTH

PROPOSED EXEMPTIONS FOR PRIVATE LIMITED COMPANIES

MCA has laid down the copy of draft Notification under Section 462 of Companies Act 2013 (“the Act”) providing necessary exemptions to Private Company from the provision of the Act. As per the provisions of section 462 of the Act, the copy of proposed notification, shall be laid before each house of parliament, while it is in session for a total period of 30 days which may be comprised of one session or in two or more session and if before the expiry of the session immediately following the session or the successive sessions aforesaid if both the Houses agree then only the same be applicable or notified.

The details of exemptions provided in comparison to their status under the draft notification issued for public comments is detailed below:

Kinds of Share Capital and Voting Rights on such shares:

It is proposed that the provisions with respect to Section 43 and Section 47 of the Act for kinds of share capital and voting rights shall not apply to a private limited company. **Our analysis is that a private limited company can now issue share capital with or without voting rights.**

Further Issue of Share Capital:

If a private limited company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered first to the persons who on the date of offer are members of the company in proportion, to the paid-up share capital on those shares held by them, by sending a letter of offer. **The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than seven days and not exceeding fifteen days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined by the existing members.** Such notice shall be dispatched three days prior to the date of opening of the offer either by means of a speed post, registered post or through electronic mode to the existing members.

The private limited companies may further issue their shares to employees under a scheme of employees’ stock option, by passing of an ordinary resolution and subject to the fulfillment of the conditions prescribed under the Act.

Prohibition on Acceptance of Deposits from Public:

As per the existing provisions of the Section 73(2) of the Act, a Company can take loans from its individual members on the fulfillment of the certain conditions some of which are as follows:

- a. passing resolution in general meeting and fulfilling of RBI guidelines
- b. filing a copy of the circular along with such statement with the RoC
- c. issuance of circular to members
- d. obtaining credit rating
- e. keeping liquid deposits
- f. providing deposit insurance (Deposit Repayment Reserves)
- g. such other rules as may be prescribed.

It is proposed that the above mentioned conditions shall not apply to private limited companies having members less than or equal to 50, if such companies accept monies from their members not exceeding 25% of the aggregate paid up capital and free reserves or 100% of paid up capital whichever is more, they shall inform the RoC in the prescribed manner of such monies accepted.

Lesser compliances to be followed for General Meetings

The provisions of section 101 to 107 and section 109 (detailed as below) of the Act, states the compliances which are required for conducting general meetings by the Companies including private limited companies.

- Section 101 – Notice of General Meeting
- Section 102- Explanatory Statement to be annexed to the Notice.
- Section 103 – Quorum for the meeting
- Section 104 – Chairman of the meeting
- Section 105 – Proxies
- Section 106 - Restriction on voting rights
- Section 107 – Voting by show of hands
- Section 109 – Demand for Poll

It is proposed that complying with the above mentioned sections, shall be exempt to private limited companies, unless otherwise specified in these respective sections or unless the articles of private limited companies otherwise provides.

Appointment of a person as auditor

It is proposed that private limited companies can appoint a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, even if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies.

Right of persons other than retiring directors to stand for directorship

In case a person other than a retiring director, intends to be appointed as a director, then such person or a member intending to propose him as a director, should forward an application not less than fourteen days before the general meeting along with the payment of Rs. One Lakhs or such higher amount as may be prescribed as a deposit, to the registered office of the concerned company. The Company shall inform its members of the candidature of a person for the office of director in such manner as prescribed under rules. On successful appointment or if he obtains more than 25% of the valid votes such amount would be refunded to him. These provisions shall not apply to a private limited company.

Thus now it is proposed that, a private limited company can appoint a person as a director without complying with the provisions with respect to the receiving of the notice fourteen days prior to the date of the general meeting by a person or a member signifying his candidature as a director, along with the deposit of Rs. One Lakh or such higher amount as may be prescribed.

Appointment of directors to be voted individually

The existing section 162 of the Act, seeks to provide that at a general meeting of a company, a motion for the appointment of two or more persons as directors by single resolution shall not be moved unless a proposal to such a motion has been first agreed to at the meeting without any vote being cast against it. A resolution if moved in contravention to this section shall be void, whether or not any objection was taken when it was moved.

It is proposed that these provisions shall not be applicable to a private limited company. Thus, a private limited company can now move a motion for the appointment of two or more persons as directors by single resolution, and such resolution shall not be void.

Restrictions on the powers of the Board

The existing provisions of Section 180 of the Act, requires that the Board of Directors of a Company, including a private company shall exercise certain powers only with the consent of the company by way of passing of a special resolution some of which are as follows –

- i. For sale or lease or dispose of the whole or substantially whole of undertaking.
- ii. To approve limit of borrowing and total loan to be taken from Financial Institutions/ Bank.
- iii. To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation.
- iv. To remit or give time for the repayment of any debt due from a director.

It is proposed that, the Board of Directors of a private limited company having members less than or equal to 50 can exercise the above mentioned powers without passing of a special resolution.

Loan to Directors

As per the existing provisions of Section 185 of the Act, a company including a private limited company shall not directly or indirectly make any loan including book debt or give any guarantee or provide any security to its directors or to any other person in whom the director is interested.

However, as per Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014, any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted; and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section. Provided that such loans made the Company are utilized by the subsidiary company for its principle business activities.

It is proposed that, the provisions of Section 185 shall not apply to the following private limited companies –

- a) **Which have borrowings from banks or financial institutions or any body corporate not more than twice of their paid up share capital or Rs. 50 Crore whichever is lower; and**
- b) **In whose share capital no other body corporate has invested any money.**

Related Party Transactions

It is proposed that the provisions with respect to Section 188 of the Act for Related Party Transactions shall not apply to a private limited company. **Thus, private limited companies can now enter into a contract or arrangement with the related party without following the stringent procedures mentioned in the Act and the rules prescribed thereunder.**

Appointment of Managing Director, Whole –Time Director or Manager

It is proposed that a private limited company can appoint a managing director, whole-time director or manager by specifying the terms and conditions of such appointment and remuneration payable only at the Board Meeting without taking approval of the members at a general meeting or Central Government, if required. **He can also be appointed as a Managing Director, Whole –Time Director or Manager without ratification of his appointment by a resolution at the next general meeting of the company.**

Appointment of Key Managerial Personnel

Section 203 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that only listed companies and every other public company having a share capital of Rs. 10 Crore or more shall appoint whole time key managerial personnel –

- i. managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- ii. company secretary; and
- iii. Chief Financial Officer

However, vide Notification No. G.S.R. 390 (E) dated June 9, 2014, A company other than a company covered under rule 8 which has a paid up share capital of Rs. 5 Crore or more shall have a whole-time company secretary.

Thus now, a private limited company having a paid up share capital of Rs. 5 Crore or more shall have a whole-time company secretary.

It is proposed that in a private limited company, a person appointed as whole-time key managerial personnel of one company can hold office of whole-time key managerial personnel in more than one company at the same time. **However, this is not the intention of law and the same is likely to be modified.**

INSPIRATIONAL QUOTES



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