



**Private Circulation Only*

Newsletter for October, 2015 By Amita Desai & Co.



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MCA UPDATES:

A. Limited Liability Partnership (Amendment) Rules, 2015

- The MCA vide notification dated October 15, 2015 has issued the Limited Liability Partnership (Amendment) Rules, 2015 which shall be effective from 19th October, 2015.
- The following were the amendments in the Limited Liability Partnership Rules, 2009:

1. for rule 33, the following rule shall be substituted, namely:-

“33. For the purposes of the proviso to sub-section (1) of section 58 of the Act, where the firm has been converted into limited liability partnership, an intimation of such conversion to the concerned Registrar of Firms shall be given in Form 14 within fifteen days of the date of registration of the Limited Liability Partnership.”

2. In rule 39, sub-rule (3) shall be omitted;

“Rule 39(3)- For the purpose of para 4 of the Third Schedule, the limited liability partnership shall inform the concerned Register of Companies about conversion of private company into limited liability partnership in **Form 14.**”

3. In rule 40, sub-rule (3) shall be omitted;

“Rule 40(3)- For the purpose of para 5 of the Fourth Schedule, the limited liability partnership shall inform the concerned Register of Companies about conversion of unlisted public company into limited liability partnership in **Form 14.**”

- Form 2, Form 4, Form 16, Form 19 and Form 30 are modified.
- The link of the above Notification is as follows:
http://www.mca.gov.in/Ministry/pdf/LLP_Notification_15102015.pdf

B. Relaxation of,additional fees and extension of last date of liling of AOC-4, AOC-4 XBRL and MGT-7 E-Forms under the Companies Act, 2013 - reg.

- The MCA vide Circular No. 14 dated October 28, 2015 has extended the time of filing of E-Forms AOC-4, AOC-4 XBRL and MGT-7 **upto November 30, 2015**, without any additional fees.
- The link of the above Circular is as follows:
http://www.mca.gov.in/Ministry/pdf/General_Circular_14-2015.pdf

Amita Desai & CO.



RBI UPDATES:

A. Non Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) – Directions – Modifications

- The Reserve Bank of India (RBI) vide Circular ; Reference No. RBI/2015-16/196 dated October 01, 2015 issued notification in reference to Non Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) – Directions – Modifications.
- In terms of extant instructions on pricing of credit by MFIs, the maximum variance between the minimum and maximum interest rate on loans cannot exceed 4 per cent.
- The National Scheduled Castes Finance & Development Corporation (NSFDC) under the Ministry of Social Justice & Empowerment, Government of India, has proposed to expand its outreach by channelizing funds through select NBFC-MFIs at lower rate of interest. The objective of NSFDC is to work for the economic empowerment of persons belonging to Scheduled Castes living below the Double Poverty Line.
- In order to enable NBFC-MFIs to act as channelizing agents of NSFDC, it has been decided that the condition relating to the maximum variance permitted shall not be applicable to loans extended by NBFC-MFIs against funding by NSFDC. The on-lending to individuals by NBFC-MFIs out of funds of NSFDC shall only be through direct credit to their accounts with banks. Further, NBFC-MFIs shall exclude borrowing from NSFDC in arriving at the average cost of funds of the company for the purpose of pricing of credit, other than to the beneficiaries targeted by NSFDC. For this, NBFC-MFIs shall maintain proper record of funds received from NSFDC and the lending out of those funds.
- Appropriate disclosures in this regard shall be made in the balance sheet of such NBFC-MFIs. The minimum disclosures should include quantum of funds received from NSFDC, cost of such funds, loans disbursed therefrom, rate of interest on such loans and the number of beneficiaries.

- NBFC-MFIs shall inform the concerned Regional Office of the Reserve Bank of India of their appointment as a channelizing agent by NSFDC within one month from the date of such appointment.
- The link of the Circular is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NB278786998E9E468489E5802D10F2F58C.PDF>

B. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015

- The Reserve Bank of India (RBI) Notification No. FEMA.353/2015 RB dated October 6, 2015 issued notification in reference to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015.
- The link of the above Notification is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT353064C9A2A5EEC416C8CE134633B88ACEC.PDF>

C. Investment by Foreign Portfolio Investors (FPI) in Government Securities

- The Reserve Bank of India (RBI) vide Circular No. 19 dated October 6, 2015 issued circular in reference to Investment by Foreign Portfolio Investors (FPI) in Government Securities.
- Attention of Authorized Dealer Category-I (AD Category-I) banks is invited 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. The limits for investment by foreign portfolio investors (FPI) in Government securities were last increased to USD 30 billion vide A.P.(DIR Series) Circular No.111 dated June 12, 2013. Subsequently, the allocation of limits between long term investors and other FPIs was modified and the requirement of investment by FPIs in securities with minimum residual maturity of three years was put in place vide A.P. (DIR Series) Circular No.99 dated January 29, 2014 and A.P. (DIR Series) Circular No. 13 dated July 23, 2014.
- Attention of AD Category-I banks is also invited to para 30 of the Fourth Bi-monthly Monetary Policy Statement for the year 2015-16 issued on September 29, 2015, in terms of which a Medium Term Framework (MTF) for FPI limits in Government securities was announced to provide a more predictable regime. The features of the MTF are as under:

(i) The limits for FPI investment in debt securities will henceforth be announced/ fixed in Rupee terms.

(ii) The limits for FPI investment in the Central Government securities will be increased in phases to reach 5 per cent of the outstanding stock by March 2018. In aggregate terms, this is expected to open up room for additional investment of ` 1,200 billion in the limit for Central Government securities by March 2018 over and above the existing limit of 1,535 billion for all Government securities.

(iii) Additionally, there will be a separate limit for investment by all FPIs in the State Development Loans (SDLs), to be increased in phases to reach 2 per cent of the outstanding stock by March 2018. This would amount to an additional limit of about ` 500 billion by March 2018.

(iv) The effective increase in limits for the following two quarters will be announced every half year in March and September.

(v) The existing requirement of investments being made in G-sec (including SDLs) with a minimum residual maturity of three years will continue to apply to all categories of FPIs.

(vi) Aggregate FPI investments in any Central Government security would be capped at 20% of the outstanding stock of the security. Investments at existing levels in the Securities over this limit may continue but not get replenished through fresh purchases by FPIs till these falls below 20%.

- Accordingly, for the current financial year, it has been decided to enhance the limit for investment by FPIs in Government Securities in two tranches from October 12, 2015 and January 1, 2016 respectively as under:

	Central Government securities			State Development Loans	Aggregate
	For all FPIs	Additional for Long Term FPIs	Total	For all FPIs (including Long Term FPIs)	
Existing Limits	1244	291	1535	Nil	1535
Revised limits with effect from October 12, 2015	1299	366	1665	35	1700
Revised limits with effect from January 1, 2016	1354	441	1795	70	1865

- For the present, the security-wise limit for FPI investments will be monitored on a day-end basis and those Central Government securities in which aggregate investment by FPIs exceeds the prescribed threshold of 20% will be put in a negative investment list. No fresh investments by FPIs in these securities will be permitted till they are removed from the negative list. There will be no security-wise limit for SDLs for now.
- All other existing conditions, including investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, will continue to apply.
- Further operational guidelines relating to allocation and monitoring of limits will be issued by the Securities and Exchange Board of India (SEBI).
- The link of the Circular is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FP92CFEDED4B24242B65E44C749A4CA87.PDF>

D. Reporting requirement under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS)

- The Reserve Bank of India (RBI) vide Circular; Reference No. RBI/2015-16/205 dated October 15, 2015 issued notification in reference to Reporting requirement under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS).
- The link of the Circular is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/N2051AEA3F5BA3E84D2EB3F2626E37B45FA6.PDF>

E. Investments in Market Infrastructure Companies by State/Central Cooperative Banks

- The Reserve Bank of India (RBI) vide Circular; Reference No. RBI/2015-16/209 dated October 21, 2015 issued notification in reference to Investments in Market Infrastructure Companies by State/Central Cooperative Banks.
- As per circulars RPCD CO RF BC 65/07.02.03/2003-04 dated February 23, 2004 and RPCD CO RF BC 26/07.02.03/2005-06 dated August 04, 2005 in terms of which guidelines were issued to State Cooperative Banks/Central Cooperative Banks (StCBs/CCBs) for investment in Non-SLR securities.

- On a review of the guidelines, it has been decided to permit investment in shares of Market Infrastructure Companies (MICs) as under:
 - i. Investments made by StCBs/CCBs in MICs will be reckoned as Non-SLR investments;
 - ii. StCBs/CCBs are allowed to exceed the limit for investments in Non-SLR securities, if it becomes necessary to do so for acquiring membership of MICs;
 - iii. The MICs eligible for such investments by StCBs/CCBs are Clearing Corporation of India Ltd. (CCIL), National Payments Corporation of India (NPCI) and Society for World Wide Inter-Bank Financial Tele-Communication (SWIFT). The list of eligible MICs will be updated from time to time by the Reserve Bank of India.
- The link of the Circular is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/N2095B283FC2EBA9447DBA6D795A4FEA793A.PDF>

F. Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships

- The Reserve Bank of India (RBI) vide Circular No.22 dated October 21, 2015 issued circular in reference to Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships.
- Attention of Authorised Dealers Category – I (AD Category - I) banks is invited to A.P (DIR Series) Circular No. 145 dated June 18, 2014 prescribing the format for filing of FLA return by Indian companies.
- In order to capture the statistics relating to Foreign Direct Investments (FDI), both inward and outward, by Limited Liabilities Partnerships (LLPs) in India, it has been decided that henceforth, all LLPs that have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed in the A.P (DIR Series) Circular No. 145 dated June 18, 2014. Since, LLPs do not have 21-Digit CIN (Corporate Identity Number), they are advised to enter 'A99999AA9999LLP999999' against CIN in the FLA Return.
- The link of the above Circular is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/N21087350A25FE6345379E5159E8F83FA6B5.PDF>



SEBI UPDATES:

A. Format of uniform Listing Agreement

- SEBI vide circular dated October 13, 2015 issued Format of uniform Listing Agreement. The formats were annexed to the Circular.
- The link of the Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1444737188833.pdf

B. Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Seventh Amendment) Regulations, 2015

- SEBI vide notification dated October 27, 2015 issued the Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Seventh Amendment) Regulations, 2015 further amending the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The amendments shall be effective from December 1, 2015.
- The link of the notification is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446100080710.pdf

C. Disclosures in the Abridged Prospectus and Price Information of past issues handled by Merchant Bankers

- SEBI vide circular dated October 30, 2015 issued the Disclosures in the Abridged Prospectus and Price Information of past issues handled by Merchant Bankers with the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and the Companies Act, 2013.
- The link of the Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446196585797.pdf

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DIPP:

A. Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route

- DIPP vide Press note No. 11 has issued amendments to the Consolidated FDI Policy Circular of 2015 dated October 1, 2015 with reference to Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route.
- On review of the provisions of the extent FDI policy it is now decided to allow Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route. Accordingly, a new sub-para 6.2.18.8.3 in the paragraph 6.2.18.8 of the Consolidated FDI Policy Circular is added.
- The link of the Press Note is as follows:
http://dipp.nic.in/English/acts_rules/Press_Notes/pn11_2015.pdf

ARTICLE OF THE MONTH

EXEMPTIONS TO PRIVATE COMPANY

Sr. No.	Section	Particular	Effective from
1	2(68)	<p>Now there is no requirement of minimum paid up capital for incorporation of the Company.</p> <p>Minimum Paid up Capital for Companies i.e. 1 lakh for Private Company & 5 lakh for Public company has been removed.</p>	26th May, 2015
2	11	<p>Now the Company can commence its business without obtaining the Certificate of Commencement of Business.</p>	26th May, 2015
3	12 (3) (b) and 22 (2)	<p>There is no compulsion to adopt a Common Seal & hence it is optional to adopt the same.</p> <p>However the Company who has their Common Seal has to comply with provision of the Act in respect of the same.</p> <p>If Company has not adopted any common seal, it can give authority to any person, if the deed or authority is signed by two Directors or one Director and the Company Secretary.</p>	26th May, 2015
4	73 & 76	<p>If any company fails to repay its Deposits or Interest on Deposit then the company shall be liable to pay fine Not less than 1 Crore & not more than 10 Crore. Every officer shall be liable for a term of 7 years imprisonment or fine of not less than 25 lakh rupees & not more than 2 Crore rupees or both.</p>	26th May, 2015
5	76A	<p>Penalties for violation of provisions for accepting and repaying of Deposit and its Rules increased as follow :</p> <p>(i) On Company Rs.1 Crore to Rs.10 Crores</p> <p>(ii) On Officer in default either imprisonment of maximum 7 years or fine of any amount between Rs.25 Lac to Rs.2 Crores</p>	26th May, 2015
4	117 read with 399	<p>Any resolution which has been filed with registrar will not be available for inspection or copies of such resolution cannot be done.</p>	26th May, 2015
6	123	<p>No Dividend shall be declared unless unabsorbed losses & accumulated depreciation of previous year are set off against the profits of the company.</p>	26th May, 2015
7	124	<p>Any share in respect of which dividend is unclaimed for 7 years or more, <u>the shares and the dividend</u> will be transferred to Investor Education & protection Fund. If any amount is claimed in between the 7 years it will not be transferred to IEPF.</p>	26th May, 2015

		<u>It has been clarified that the shares for which any dividend is paid or claimed during 7 years, the shares shall not be transferred to IEPF</u>	
8	134	The Directors Report will include details of any fraud reported by Auditors other than those which are reportable to Government	26th May, 2015
9	143(12)	If the Auditor in the course of his performance of his duties has reason to believe that an offence of fraud has been committed which is more than limit prescribed under the rule (material) shall report it to the Central Government. If the same is less than the prescribed limit (not material) then the Auditor shall report it to the Board and audit committee and the same shall be reported in Directors Report.	26th May, 2015
10	177(4) (iv)	The Audit Committee may make omnibus approval for Related Party Transactions	26th May, 2015
11	185	Two proviso (c) and (d) are inserted after section 185 (i) providing that a) Holding company can provide loan or a guarantee or security to its Wholly Owned Subsidiary company without any approval and b) Holding company can provide a guarantee or security for the loan made by any bank or Financial Institutions to its Subsidiary ; Provided that the loan made under above both proviso (c) and (d) are utilized by subsidiary for its principle business activities.	26th May, 2015
12	188	No approval is required for related party transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval And the Ordinary Resolution will be required instead of Special Resolution, for company having more than 10 Cr paid up capital, for any transactions with related party are exceeding the threshold limit prescribed	26th May, 2015
13	2(76) & 188	The transaction entered into between Holding Company & Subsidiary Company will not be a related party transaction for the purposes of Section 188 and thus will be exempted.	26th May, 2015
14	188	As per the Notification, in case of related party transaction the interested member shall now be entitled to participate in the meeting.	26th May, 2015
15	43& 47	A private Company is exempt from Section 43(Kinds of Share Capital) and Section 47 (Voting Rights) but the MOA or AOA of the Company shall provide for the same.	5th June, 2015

16	62(1)	<p>A Private Company can issue further shares to its existing shareholders by letter of offer. The offer must be accepted within 15 – 30 days.</p> <p>However, as per the notification; if the 90% of the share holders agree in writing or in electronic mode the limit of 15-30 days and dispatch of notice 3 days prior to opening the issue will not apply.</p>	5th June, 2015
17	62(2)	Now there is no need of passing special resolution to issue shares under Employees stock option.	5th June, 2015
18	67	<p>There was a Restriction on purchase by company or giving of loans by it for purchase of its own shares.</p> <p>The Section is now not applicable to Private company if following conditions:</p> <ol style="list-style-type: none"> 1. No other company has invested in share capital of such private company. 2. If such private company has borrowings from banks or financial institution or anybody corporate less than twice its paid up share capital or 50 crores whichever is lower. 3. No default is subsisting in repayment of borrowings at the time of making transactions under this section. 	5th June, 2015
19	73	Private company can accept deposit upto 100% of its paid up share capital and the Compliances under section 73(2) (a) to (e) shall not apply to a private company.	5th June, 2015
20	101- 107 & 109	<p>The new Exemption provides that the Private limited companies can formulate their own regulations in respect of section 101 to 107 & 109 of the Companies Act, 2013. They can get exemption from Notice, Quorum, Chairman, proxies, voting rights, postal ballot, etc if Articles contain specific rules.</p> <p>This will impact private companies to a great extent as now the Articles will have superseding effect on the Act and the provisions in the articles will be the governing factor.</p>	5th June, 2015
21	117	<p>Clause (g) of sub-section (3) of section I17 relating to Resolutions and agreement to be filed with the ROC with regard to resolution passed in pursuance of the powers to be exercised by the Board of Directors at the meeting of the Board shall not apply to Private Limited Companies.</p> <p>Therefore the filing of Form MGT 14 is exempted to Private Limited Companies for the matters specified under Section 179(3)(c).</p>	5th June, 2015
22	141	<p>Under Section 141, a Auditor will be disqualified to act as such if he has been Auditor for more than 20 companies. Now after Amendment the following companies will not be taken into account for calculation of limit of 20 Companies:</p> <ol style="list-style-type: none"> 1. One Person companies. 2. Dormant Companies. 3. Small Companies. 	5th June, 2015

		4. Private companies having paid up share capital less than 100 Crore.	
23	160	A Person other than Retiring Director could be appointed as director of the Company in terms of Section 160 of the Act, but now there is no requirement for a notice & a Deposit of Rs 1,00,000 for private Companies.	5th June, 2015
24	162	After the notification, now private companies can appoint two or more Directors can be appointed by a single proposal. There is no need to move motion before such proposal & the Company can directly go ahead.	5th June, 2015
25	180	Section 180 with respect to restrictions on powers of Board has now been removed & now the Board need not take permission of members of the Company in respect of: (i). selling, leasing or disposing of whole of the undertaking of the Company (ii). to invest otherwise in the trust securities the amount of compensation received by it as a result of any merger or amalgamation. (iii). to borrow money exceeding paid up share capital and free reserves apart from temporary loans. (iv). to remit, or give time for the repayment of, any debt due from a director	5th June, 2015
26	184	Section 184 provides that Interested directors shall not participate in the meeting. After amendment Interested Directors can participate in the meeting after disclosure of his interest. But his vote will not be counted for such contracts in which he is interested.	5th June, 2015
27	185	Private Limited Companies can now provide loans to directors, directly or indirectly if the following conditions are satisfied: 1. No other company has invested in share capital of such private company. 2. If such private company has borrowings from banks or financial institution or anybody corporate less than twice its paid up share capital or 50 crores whichever is lower. 3. No default is subsisting in repayment of borrowings at the time of making transactions under this section	5th June, 2015
28	196	Now private Limited Companies can appoint Managing Director, Whole Time Director or Manager without the approval of the shareholders in the general meeting of the Company. Further, there is no remuneration limits for such appointment and Schedule V (Appointment & Remuneration of Managerial Personnel) is not applicable to the Company.	5th June, 2015

INSPIRATIONAL QUOTES

“Nothing is IMPOSSIBLE,
the word itself says,
I’M POSSIBLE!”

- Audrey Hepburn

“DON’T WAIT FOR THE
PERFECT MOMENT,
TAKE THE MOMENT
AND MAKE IT
PERFECT.”

ZOEY SAYWARD

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