

# **Newsletter for March, 2016** **By Amita Desai & Co.**



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Inspirational Quotes





## MCA UPDATES:

### A. NOTICE INVITING COMMENTS ON THE DRAFT RULES FOR REVIVAL AND REHABILITATION OF SICK COMPANIES.

- Ministry of Corporate Affairs (“MCA”) had issued a Notice, on 2<sup>nd</sup> March, 2016, inviting comments on the draft Rules w.r.t. the revival and rehabilitation of sick companies’ related provisions under the Companies Act, 2013 and the same was placed at its website.
- MCA has invited suggestions/comments on the same along with the justification in brief which were to be given latest by 14<sup>th</sup> March, 2016 at the email id: [revival.rules@mca.gov.in](mailto:revival.rules@mca.gov.in)
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notice\\_Inviting\\_Comments\\_02032016.pdf](http://www.mca.gov.in/Ministry/pdf/Notice_Inviting_Comments_02032016.pdf)

### B. CHANGES IN SECTION 5 OF COMPETITION ACT 2002.

- The Central Government on the basis of the wholesale price index, the value of assets and the value of turnover, makes the changes by hundred per cent in Section 5 of the said Act.
- The Central Government, in public interest, hereby exempts the ‘Group’ exercising less than fifty per cent. of voting rights in other enterprise from the provisions of section 5 of the said Act for a period of five years.
- The Central Government, in public interest, hereby exempts an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India from the provisions of section 5 of the said Act for a period of five years.

**C. AMENDMENTS BY MINISTRY OF CORPORATE AFFAIRS (MCA) VIDE CIRCULAR DATED 10TH MARCH, 2016 ON COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014.**

- In Rule 17, of Buyback of Shares & Other Securities under Chapter IV of Share Capital & Debentures Rules, 2014 the following paragraph is inserted after Clause n sub clause iii

**Provided that where the audited accounts are more than six months old, the calculations with reference to buyback shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the Company.**

**D. DEBT TO CAPITAL AND FREE RESERVES RATIO FOR GOVERNMENT COMPANIES**

- The Government Companies which are engaged in Non Banking Finance Institution Activities and Housing Finance Activities have to maintain debt to capital and free reserves ratio as 6:1

**E. THE COMPANIES (AMENDMENT) BILL, 2016 PASSED IN LOK SABHA**

- The Companies (Amendment) Bill, 2016 was introduced in Lok Sabha by the Finance Minister, Mr. Arun Jaitley on 16<sup>th</sup> March, 2016.

Following are the key highlights of the Bill:

1. Wholly-Owned subsidiaries of foreign companies will be permitted to call their Extraordinary General Meeting outside India.
2. Annual General Meeting of the Unlisted Company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
3. Only Special resolution will be required in case the limit is exceeded for managerial remuneration under section 197. Central Government approval will not be required.
4. Companies will be permitted to give loan and provide guarantees to entities in which directors are interested on the basis of a shareholders' resolution.
5. Changes in shareholding of promoter and top 10 shareholders with Registrar of Companies under section 93 will be omitted.
6. Private Placement offer letter shall not carry any right of renunciation. Company shall not utilize the funds raised under private placement unless the Return of allotment is filed with Registrar of Companies. The E-form should be filed within 15 days from the Date of Allotment.

7. The Right issue letter of offer can now be dispatched by courier also.
8. The name approved the Registrar of Companies, will be valid for 20 days or such other date as may be prescribed from Date of Approval.
9. The Copy of Annual Return shall be uploaded on Company's website and the web link shall be mentioned in Directors Report.
10. The Consolidated financial accounts not required for joint venture.

The detailed amendments are covered under our Article of the month, the link of which is given below on page No. 15 of this newsletter.

#### **F. AMENDMENTS IN COMPANIES INCORPORATION RULES, 2014.**

- In Incorporation Rules, 2014 the form No. INC -11 has been introduced with respect to the format of Certificate of Incorporation.
- The link of the above Notification is as under:

[http://mca.gov.in/Ministry/pdf/Rules\\_23032016.pdf](http://mca.gov.in/Ministry/pdf/Rules_23032016.pdf)

#### **G. CENTRAL REGISTRATION CENTRE (CRC) FOR INCORPORATION OF COMPANIES.**

- The e-forms pertaining to Registration of Companies i.e. INC-2, INC -7 and INC -29 along with linked forms i.e. INC-22, DIR-12 and URC-1 having jurisdiction over Incorporation of Companies under the Companies Act, 2013 shall now be exercised by Registrar, CRC.
- The link of the above Notice is as under:  
[http://mca.gov.in/Ministry/pdf/Notification\\_23032016.pdf](http://mca.gov.in/Ministry/pdf/Notification_23032016.pdf)

#### **H. COMPANIES SHARE (CAPITAL AND DEBENTURE) RULES, 2016**

- MCA vide Notification dated 29<sup>th</sup> March, 2016 amended the Companies (Share Capital and Debentures) Second Amendment Rules, 2016 as follows:  
“Provided that where all members of a company agree, the offer for Buy-Back may remain open for a period less than Fifteen Days”
- According to this Amendment Offer Period for Buy-Back may remain open for a period less than **15 Days** , provided all the Members of the agree to it.

The link of the above notification is as under:

[http://mca.gov.in/Ministry/pdf/AmendmentRules\\_30032016.pdf](http://mca.gov.in/Ministry/pdf/AmendmentRules_30032016.pdf)

#### **I. COMPANIES (REMOVAL OF DIFFICULTIES) FIRST ORDER,2016**

- MCA issued Companies (Removal of Difficulties) First Order, 2016 on 29 March, 2016 which shall come into force 10th April 2016
- In the section 143 (D) of Companies Act, 2013 pertaining to Powers and Duties of Auditor the following proviso shall be inserted:-

- "Provided that until the National Financial Reporting Authority is constitute under section 132, the Central Government may hold consultation required under this sub section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of corporate Affairs and the committed shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers are also special invitees from the National Advisory Committee on Accounting Standards and the officer the Comptroller and Auditor- General.
- The link of the above Notice is as under:  
[http://mca.gov.in/Ministry/pdf/CoOrder\\_30032016\\_III.pdf](http://mca.gov.in/Ministry/pdf/CoOrder_30032016_III.pdf)

#### **J. COMPANIES (REMOVAL OF DIFFICULTIES)SECOND ORDER,2016**

- MCA issued Companies (Removal of Difficulties) second Order, 2016 on 29 March, 2016 which shall come into force 1st April 2016.
- In the section 133of Companies Act, 2013 pertaining to of Accounting Standards the following proviso shall be inserted:-
- "Provided that until the National Financial Reporting Authority is constitute under section 132, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI, constituted under section 3 of the Chartered Accountant Act, 1949 in consultation with and after examination of the recommendations made by National Advisory Committee on Account Standards constituted under section 210A of Companies Act, 1956
- The link of the above Notice is as under:  
[http://mca.gov.in/Ministry/pdf/CoOrder\\_30032016\\_II.pdf](http://mca.gov.in/Ministry/pdf/CoOrder_30032016_II.pdf)

#### **K. COMPANIES (AUDITORS REPORT) ORDER, 2016**

- Ministry of Corporate Affairs has issued Companies (Auditor's Report) Order 2016 on 29 March, 2016 comprising matters to be included in auditor's report and reasons to be stated for unfavorable or qualified answers.
- The link of the above Notice is as under:  
[http://mca.gov.in/Ministry/pdf/CoOrder\\_30032016.pdf](http://mca.gov.in/Ministry/pdf/CoOrder_30032016.pdf)

#### **L. COMPANIES (ACCOUNTING STANDARD) AMENDMENT RULES 2016 AND INDIAN ACCOUNTING STANDARDS**

- Ministry of Corporate Affairs has issued Companies (Accounting Standard) Amendment Rules 2016
- Accounting Standards 2, 4, 10, 13, 14, 21, and 29 are notified with the said aforesaid notification on March 30, 2016
- Ministry has also issued Indian Accounting Standards particularly for NBFCs.
- The link of the above Notice is as under:  
[http://mca.gov.in/Ministry/pdf/Notification\\_30032016.pdf](http://mca.gov.in/Ministry/pdf/Notification_30032016.pdf)



### **RBI UPDATES:**

#### **A. CIRCULAR NO 53 GRANT OF EDF WAIVER FOR EXPORT OF GOODS FREE OF COST:**

- Reserve Bank of India has issued Circular no 53 dated March 3, 2016 pertaining to EDF (Export Declaration From) Waiver for export of freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years, whichever is **higher**.
- Government of India vide amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is **lower**.
- The link of the above Circular is as under:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP538D9C23E7B6DD430E87CDA74147B58A2C.PDF>

#### **B. MASTER DIRECTION - RESERVE BANK OF INDIA (INTEREST RATE ON DEPOSITS) DIRECTIONS, 2016:**

- In the Public Interest Reserve Bank has issued Master Direction for Interest Rate on Deposits on March 3, 2016.



- The issued Master Direction provides broad framework for payment of Interest on deposits held by every Scheduled Commercial Bank, licensed to operate in India by Reserve Bank of India. These directions shall not be applicable to operations of foreign branches of Indian banks.
- The link of the above Circular is as under:  
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/19MD136AF73A742648C4B28FDEADCBA16D23.PDF>

**C. MASTER DIRECTION - RESERVE BANK OF INDIA (INTEREST RATE ON ADVANCES) DIRECTIONS, 2016:**

- RBI has issued Master Directions comprising comprehensive policy for Interest Rate on Advances
- Master Direction provides broad framework for Interest on advances held by every Scheduled Commercial Bank, licensed to operate in India by Reserve Bank of India. These directions shall not be applicable to operations of foreign branches of Indian banks.
- The link of the above Circular is as under:  
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD20D6FC6F31E8E5458F9E0411F433B7D40A.PDF>

**D. REPORT OF THE COMMITTEE TO RECOMMEND MEASURES FOR CURBING MIS-SELLING AND RATIONALISING DISTRIBUTION INCENTIVES IN FINANCIAL PRODUCTS:**

- With press note dated March 4, 2016 RBI has issued report comprising recommendations for curbing mis-selling and rationalizing distribution incentives in financial products
- The Committee which submitted its report on August 10, 2015 has made a number of recommendations on the incentive structure in distribution of financial products

**FRAMEWORK FOR REVIVAL AND REHABILITATION OF MICRO, SMALL AND MEDIUM ENTERPRISES (MSMEs):**

- In order to make it compatible with the existing regulatory guidelines on 'Income Recognition, Asset Classification and provisioning pertaining to Advances' issued to banks by RBI. Hence new frame work for revival and rehabilitation of MSMEs has been introduced.
- The link of the above circular is as under:  
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/CIR338345B61192D8848019ADCFF5930EDA6A5.PDF>

**E. CIRCULAR NO.55 INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN GOVERNMENT SECURITIES:**



- Reserve Bank of India has issued Circular No.55 dated 29<sup>th</sup> March, 2016 pertaining to Investment by Foreign Portfolio Investors 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 in terms of the Medium Term Framework (MTF) announced vide [A.P. \(DIR Series\) Circular No 19 dated October 6, 2015](#)
- As announced in the MTF, the limits for investment by FPIs in Central Government Securities for the next half year are proposed to be increased in two tranches, i.e., by Rs. 105 billion from April 4, 2016 and by Rs.100 billion from July 5, 2016 respectively.
- The link of the above circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10313&Mode=0>

#### **F. FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY PERSON RESIDENT OUTSIDE INDIA (FIFTH AMENDMENT) REGULATIONS,2016**

- RBI vide Notification number FEMA.366/2016-RB has issued fifth amendment on Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India),which is as follows.
- Government of India opened FDI under following sector upto 49% under Automatic route;
  - Insurance Company
  - Insurance Brokers
  - Third Party Administrators
  - Surveyors and Loss Assessors
  - Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)
- The Link of the above notification is provided as Under;  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10315&Mode=0>

#### **G. EXTERNAL COMMERCIAL BORROWINGS (ECB) – REVISED FRAMEWORK.**

- RBI vide Circular number 56 issued Revised Framework on External Commercial borrowing.
- Through this Circular RBI invites attention of Authorized Dealer Category-I (AD Category-I) banks on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.
- The Link of the above notification is provided as Under;  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10314&Mode=0>



## SEBI UPDATES:

### A. BRIGHTLINE TESTS FOR ACQUISITION OF 'CONTROL' UNDER SEBI TAKEOVER REGULATIONS:

- SEBI vide its circular dated 15<sup>th</sup> February, 2016 modified the SEBI guidelines dated 18<sup>th</sup> July, 2012 on sale of shares through Offer for sale mechanism. The revised guidelines has streamlined the process of Offer For Sale (OFS) with an objective to encourage greater participation of all investor including retail investors and the Stock Exchanges are advised to implement the same on or before 01<sup>st</sup> March, 2016.
- As per the Circular, the seller shall notify its intention for sale of shares latest by 5 p.m. on T-1 day. Non-Retail Investors shall place their bids on T day and the Retail Investors shall bid on T+1 day. Settlements for bids received on T+1 day shall take place on T+3 days. Unsubscribed portion of the shares reserved for Retail Investors shall be allocated to non-retail bidders.
- The link of the above Circular is as under:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1455542994394.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1455542994394.pdf)

### B. SEBI (INTERNATIONAL FINANCIAL SERVICES CENTRES) GUIDELINES, 2015

- All recognized associations (commodity derivatives exchanges) under the Forward Contracts (Regulation) Act, 1952 ('FCRA') are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956 ('SCRA').
- The SCRA Act, 1956 had been amended by including the word "commodity derivatives" in securities. Clause 7 of IFSC Guidelines, 2015 provides that "Such other securities as may be specified by the Board. Accordingly Commodity Derivatives shall be eligible for trading.

### C. CIRCULAR ON MUTUAL FUNDS (MF).

- SEBI vide its notification dated 18<sup>th</sup> March, 2016 had amended the Consolidated Account Statement (CAS) to be issued to investors in accordance with Regulation

36(4) of SEBI (Mutual Funds) Regulations, 1996 and made it more comprehensive to increase transparency of information to investors.

- SEBI vide its notification dated 18<sup>th</sup> March, 2016 had amended the Mutual Fund Scheme and additional disclosures were prescribed to be included in the offer documents i.e Scheme Information Document (SID) / Key Information Memorandum (KIM) of Mutual Fund” scheme (for existing scheme / new scheme, as applicable). It is further stated that the offered documents related to Mutual Fund Scheme managed by Asset Management Company (AMC) shall also be made available on MFs / AMCs website.
- To promote transparency in remuneration policies disclosures pertaining to the remuneration in the particular financial year shall be displayed on MF/AMC website under separate head “Remuneration”
- In order to ensure that MFs / AMCs are able to carry out their own credit assessment of assets and reduce reliance on credit rating agencies, all MFs/ AMCs are required to have an appropriate policy and system in place to conduct an in-house credit risk assessment / due diligence before investing in fixed income products.
- As per notification Mutual funds are allowed to deploy Net Fund Offer (NFO) proceeds in Collateralized Borrowing And Lending Obligations (CBLO) before the closure of NFO period. The AMC shall not charge any advisory fees on the same. Further, the appreciation received from investment in CBLO shall be passed on to investors.
- Soft-dollar arrangement refers to an arrangement between AMCs and brokers in which the AMC executes trades through a particular broker and in turn the broker may provide benefits such as free research, hardware, software or even non-research-related services, etc., to the AMC.
- The SEBI vide its notification dated that the Monthly Cumulative Report (MCR) shall be submitted to SEBI by 3<sup>rd</sup> working day of each month, instead of 3<sup>rd</sup> calendar day of each month.
- The link of the above Circular is as under:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1458300086490.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1458300086490.pdf)

#### **D. SEBI’s DISCUSSION PAPER ON “BRIGHTLINE TESTS FOR ACQUISITION OF ‘CONTROL’ UNDER SEBI TAKEOVER REGULATIONS”**

- On 12<sup>th</sup> March, 2016, SEBI has released a discussion paper to lay down a bright line test for the acquisition of “control” under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Code”). The purpose of this is to lay down an objective test, which will lead to predictability and consistency in the regime regarding the acquisition of control as per the Takeover Code.
- Further, SEBI lists out the definitions of control as laid down in various legislation such as the Companies Act, 2013 (“Companies Act”), the Insurance Act, 1938 (as amended by the Insurance Laws (Amendment) Act, 2015), the Foreign Direct Investment (FDI) policy for the current year and the Competition Act, 2002 (“Competition Act”). It further states due to the fact that multiple sectoral regulators have varying definitions of control creating confusion, and so

SEBI came up with an objective test to ascertain when someone is in control of a company.

- The discussion paper also examines the definition of control in international scenario. Keeping all this in view, SEBI has devised two options to identify bright lines for control namely:

Option 1: Framework for Protective Rights and

Option 2: Adopting a numerical threshold

- The link of the above Circular is as under:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1457945258522.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1457945258522.pdf)

## **E. CIRCULAR ON CYBER SECURITY FRAMEWORK**

- On 29<sup>th</sup> March, 2016 Sebi issued circular in exercise of the powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

- The circular shall be applicable for Exchanges with effect from January 01, 2017.

- The link of the above Circular is as under:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1459250540053.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1459250540053.pdf)



## **DIPP UPDATES:**

### **A. REVIEW OF FOREIGN DIRECT INVESTMENT (FDI) POLICY ON INSURANCE SECTOR**

- Department of Industrial Policy and Promotion (DIPP) Vide Press Note No1 dated 23<sup>rd</sup> March, 2016 issued Press note on Foreign Direct Investment (FDI) on Insurance Sector.
- The Government of India has Liberalized Foreign Direct Investment Policy on Insurance Sector upto 49% under Automatic Route.
- FDI in Insurance Sector above 49% is under Approval Route.

- The link of the above Press Note is as follows:  
[http://dipp.nic.in/English/acts\\_rules/Press\\_Notes/pn1\\_2016.pdf](http://dipp.nic.in/English/acts_rules/Press_Notes/pn1_2016.pdf)

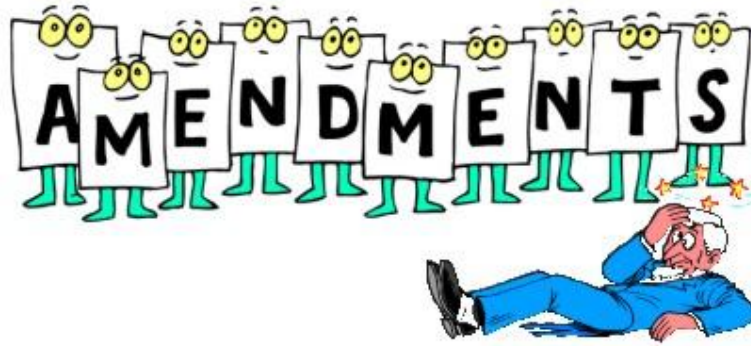
## **B. REVIEW OF FOREIGN DIRECT INVESTMENT(FDI) POLICY ON PENSION SECTOR.**

- Department of Industrial Policy and Promotion (DIPP) Vide Press Note No 2 Dated 23<sup>rd</sup> March, 2016 issued Press note on Foreign Direct Investment (FDI) on Pension Sector.
- The Government of India has Liberalized Foreign Direct Investment Policy on Pension Sector upto 49% under Automatic Route.
- FDI in Pension Sector above 49% is under Approval Route.
- The link of the above Press Note is as follows:  
[http://dipp.nic.in/English/acts\\_rules/Press\\_Notes/pn2\\_2016.pdf](http://dipp.nic.in/English/acts_rules/Press_Notes/pn2_2016.pdf)

## **C. FOREIGN DIRECT INVESTMENT(FDI) ON E-COMMERCE:**

- Department of Industrial Policy and Promotion issued Press Note No 3 dated 29<sup>th</sup> March, 2016 on Guidelines for FDI on E-Commerce.
- To clarify the FDI policy , DIPP vide Press Note No.3 had defines various Terms like (i) E-commerce, (ii) Ecommerceentity (iii) Inventory based model of e-commerce and (iv) marketplace based model of e-commerce.
- Detailed notification is covered under Article of the month segment
- The link of the above Pres Note is as under:  
[http://dipp.nic.in/English/acts\\_rules/Press\\_Notes/pn3\\_2016.pdf](http://dipp.nic.in/English/acts_rules/Press_Notes/pn3_2016.pdf)

## ARTICLE OF THE MONTH



### THE COMPANIES AMMENDMENT BILL, 2016

The Companies (Amendment) Bill, 2016 was introduced in Lok Sabha by the Finance Minister, Mr. Arun Jaitley on 16<sup>th</sup> March, 2016 to amend the Companies Act, 2013 (the Act), proposing nearly 100 amendments for the ease of doing business. Most of the amendments proposed in the Bill are to implement the recommendations of the Company Law Committee, which was appointed in response to thousands of complaints that the 2013 Act was unduly restrictive and counter-productive.

#### **Our Observations**

- The newly introduced Company's Amendment Bill is expected to address the difficulties in implementation owing to stringency of compliance requirements and rectify omissions and inconsistencies in the Act; the Bill proposes over 70 amendments;
- Various definitions like the definition of associate company, cost accountant, debentures, financial year, holding company, key managerial personnel, net worth, related party, small company, subsidiary company and turnover which were not clear have been amended to remove the ambiguities, making it more precise and also the definition of interested director is proposed to be omitted;
- The Bill also intends to simplify and fast track various procedures including the procedure for company registration in India, easing out the procedural difficulties and delay in incorporation;
- Various statutory and cumbersome requirements are proposed to be dropped out. For eg: statutory requirement of obtaining DIN is proposed to be dispensed off and to have another universally accepted identification number as may be prescribed by the Government;
- Various lacunas in the Companies Act, 2013 have been attempted to address in the Companies Amendment Bill, 2016. For e.g. In the definition of Independent Director, the words "pecuniary interest" is proposed to be substituted by "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed";



- Duplication of compliances required according to different regulatory authorities has been streamlined and accordingly the same has been eliminated. For eg: the requirement for intimating the change in promoter's and top ten shareholders shareholding in Form MGT-10 is proposed to be dispensed with as the same is required to be intimated with the Stock Exchanges/SEBI thus avoiding duplication of compliances;
- The Bill also seeks to simplify private placement process, remove restrictions on layers of subsidiaries and investment companies, amend CSR provisions to bring greater clarity and exempt certain class of foreign entities from the compliance regime under the Act;
- One of the shortcomings of the Bill is that it rewrites the entire section 42; it in fact bars the use of money until the return of allotment has been filed with the Registrar of Companies. It is curious to notice that the use of the money has been linked with filing of a document, for which the time allowed is as much as 60 days for allotment, and 15 days for filing the return. More often than not, the amount received in private placement is large, and companies cannot afford to keep the amount idle even for a day. The only relief in the private placement provisions seems to be that the amount of penalty for contravention has been limited to Rs 2 crores, which was earlier seemingly extending to the entire amount raised by private placement;
- It is also proposed in the Bill that in case a company has made a default in repayment of deposits and a period of five years has elapsed since the date of making the default good, then such company can accept the deposits further. Through this change a fair chance is being proposed to be given to the Companies whose intention were not mala fide in the past;
- Restrictions on items not to be transacted through video conferencing are proposed to be dispensed off and the same can be transacted through video conferencing provided there is physical quorum at the venue of the meeting. This was earlier restricted in entirety as participation through VC was not allowed for the restricted items under the proviso to 173 (2).

**For Comparative Analysis on the Companies Amendment Bill, 2016 please refer to the below attached file.**



CA 2013 Vs CLC Vs  
CA 2016.xlsx

### **CONCLUSION:**

The Ministry of Corporate Affairs in consultation with the Central Government of India, has introduced the Companies Amendment Bill, 2016 intending to increase the flexibility and removing the ambiguities in the Act and providing a conducive and attractive environment for setting up business in India with lesser compliances.



The Bill has been placed in Lok Sabha and is awaited for the assent of the both the houses of the Parliament and will be enforced after the assent of the President of India.

## **FOREIGN DIRECT INVESTMENT NORMS IN E MARKET PLACE**

The Department of Industrial Policy & Promotion ("DIPP") had issued Press Note No.3 ( 2016 series) on March 29, 2016 ("Press Note") which clarifies certain norms of Foreign Direct Investment (FDI) in e –commerce market place.

It was contained in the FDI policy that 100% FDI is allowed under automatic route in Business to Business (B2B) e –commerce but no FDI is allowed in Business to Consumer (B2C) e-commerce.

However, FDI in B2C e commerce is permitted in the following circumstances:

1. A manufacturer is permitted to sell its products manufactured in India through e commerce retails
2. A single brand retail trading entity operating through Brick and Mortar stores is permitted to undertake retail trading through e-commerce and
3. An Indian manufacturer is permitted to sell its own single brand products through e- commerce retail.

To clarify the FDI policy , DIPP vide Press Note No.3 had defines various Terms like (i) E-commerce, (ii) Ecommerce entity (iii) Inventory based model of e-commerce and (iv) marketplace based model of e-commerce.

In the **definition of E- commerce**, DIPP has clarified it as buying and selling of goods and services including digital products over digital and electronic network

In the **definition of E- commerce entity** DIPP has covered foreign companies not having any office or branch in India but having e-commerce business. This may cover many foreign companies and a question may be raised whether DIPP has jurisdiction over such foreign companies.

In the **definition of Inventory based model of e-commerce**, DIPP has clarified it as inventory based e-commerce activities where the inventory is owned and sold to consumer by e commerce entity

In the **definition of Market Place based model of e-commerce**, DIPP has clarified it as providing information based platform by an e-commerce entity on a digital or electronic network to act as a facilitator between a buyer and seller.

**DIPP further clarified that:**

100% Foreign Direct Investment ("FDI") is **allowed** in a "market place model" of e-commerce under the automatic route and FDI is **not allowed** in an "inventory based model" of e-commerce.

**DIPP also stipulates conditions to be complied by E-commerce entities receiving foreign investment, which are as follows:**

1. Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis. ( **This as come as clarification** )
2. E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services. ( **Foreign companies and FDI is welcome for IT and other support services to sellers** )
3. E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model. ( **Once it is inventory based model it does not remain under automatic route** )
4. An e-commerce entity will not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies. ( **This will make the e-commerce activity of an entity as market place and boost to Indian sellers** )
5. In marketplace model goods, services made available for sale electronically on website should clearly provide name, address and other contact details if the sellers . Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of Seller. ( **This will ensure that the seller and facilitator are different** )
6. In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India. ( **This may be a big clarification and relief to the promoters and other stakeholders** )
7. In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller. ( **This will make clear that seller has complete control on price, post sale services etc. the policy on market place with respect to all should be clear** )
8. E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. ( **This will enable to have distinction between the seller and facilitator e-commerce entity** )

9. Guidelines on cash and carry wholesale trading of the FDI Policy will apply to B2B e-commerce. (**DIPP has not varied any terms of instant FDI policy for cash and carry wholesale trading**)

DIPP had also clarified that subject to the conditions of FDI Policy on service sector and applicable laws/ regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

Anish Basu Roy, co-founder, Shotang, a B2B cloud marketplace, said “I think it’s a step in the right direction. FDI Investments in the ecommerce marketplace model stand to eventually benefit thousands of small businesses and suppliers through better market access and world-class technology. At Shotang, we firmly believe in leveraging on the power of the marketplace model.”

**Conclusion:**

Clarification like this from DIPP gives much needed clarity in this sector for the investor to take decision without any ambiguity. There was lot of confusion going on that the current FDI policy had no clarity on the issue of foreign equity in e-commerce where the sales were made directly to customers that is B2C which is not otherwise allowed.

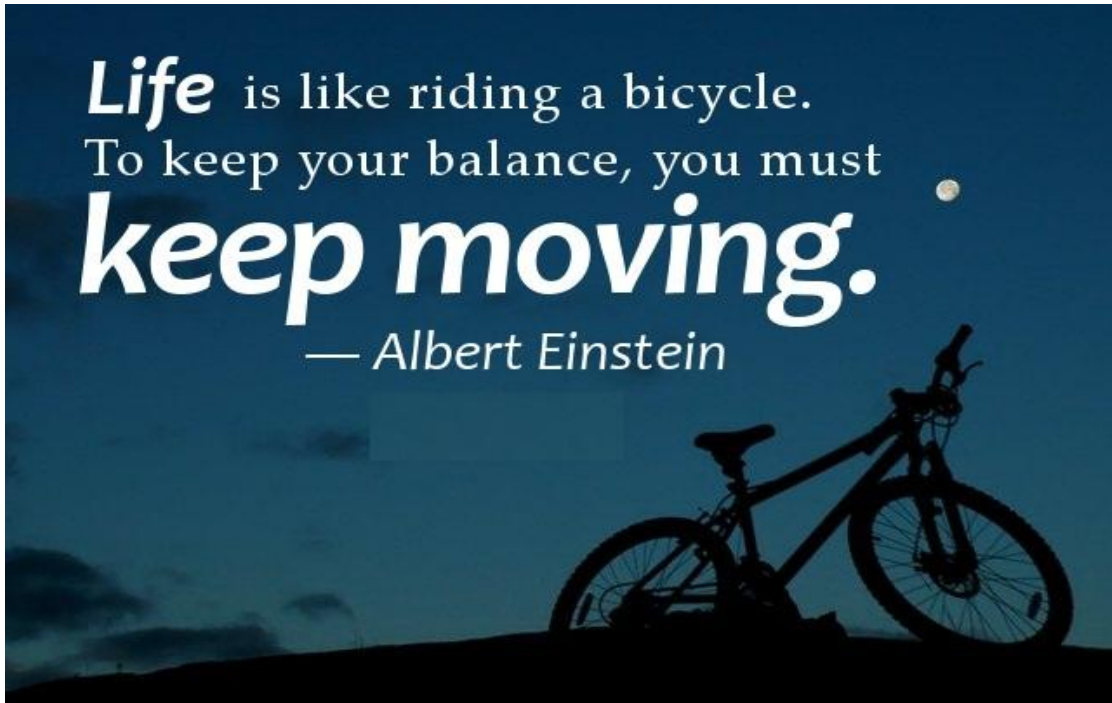
Further DIPP has also made it clear that FDI is welcome for only purely market place model and seller has full right to provide its price, discount or after sales services and guarantee or warranty of products sold by seller .

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## INSPIRATIONAL QUOTES

*Life* is like riding a bicycle.  
To keep your balance, you must  
**keep moving.**

— Albert Einstein



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

ZOEY SAYWARD