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Following notification were issued by Reserve Bank of India, Department of Industrial Policy & Promotion and Ministry of Finance

News Alert on RBI, IPR. Insolvency code, Highlights of Ease of doing Business

Following four notifications were issued

1. Parliament passed the Insolvency and Bankruptcy Code
2. RBI/2015-16/397---- Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines
3. National IPR Policy issued by Government of India, Ministry of Commerce and Industry Department of Industrial Policy & Promotion
4. Achievements and highlights of Ease of doing Business issued by Department Of Industrial Policy & Promotion

1. New reform by Government of India for legal and institutional machinery for dealing with debt default “Insolvency and Bankruptcy Code, 2016”

On 12th May, 2016, Rajya Sabha passed the major economic reform Bill moved by the Government i.e., Insolvency and Bankruptcy Code, 2016“.

➤ **Introduction:**

In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards. The recovery action by creditors, either through the Contract Act Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms.

➤ **Objective:**

The objective of the new law is to **promote entrepreneurship, availability of credit, and balance the interests of all stakeholders** by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

➤ **Salient features of the law are as follows:**

1. Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.

2. Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
3. Debt Recovery Tribunal and National Company Law Tribunal to act as Adjudicating Authority and deal with the cases related to insolvency, liquidation and bankruptcy process in respect of individuals and unlimited partnership firms and in respect of companies and limited liabilities entities respectively.
4. Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
5. Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals.
6. Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
7. Enabling provisions to deal with cross border insolvency.

For details code please refer the below mentioned link:

http://finmin.nic.in/press_room/2016/InsolvencyBankruptcyCode2016.pdf

2. Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines

On 12th May, 2016, RBI had issued procedural guidelines for Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities.

The Procedure for Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities are as follows:

➤ Eligibility criteria for Applications from persons resident outside India

- i. AD Category-I may consider such applications bank as per the guidelines issued by the Reserve Bank of India, whose principal business falls under sectors where 100 % FDI in terms of FEMA Notification No. 20/2000-RB dated May 3, 2000.
- ii. Prior approval of Reserve Bank of India in the following cases
 - a. the applicant is a citizen of or is registered/incorporated in Pakistan
 - b. the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands

- c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.
 - d. The applicant is a Non-Government Organisation (NGO), a Non-Profit Organisation, or a Body/ Agency/ Department of a foreign government.
- iii. The non-resident entity desirous of establishing a BO/LO in India should have a financially sound track record as provided in Regulation 4 (a) of the Notification.
- iv. An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) [as provided in Regulation 4. a. of the Notification] from its parent/group company satisfies the prescribed criteria for net worth and profit.

➤ **Procedure for applying**

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC along with the prescribed documents mentioned in the Form and the LOC, wherever applicable, Then AD Category-I bank will conformity with the FEMA Regulations and Directions in and in compliance with the extant KYC norms, grant approval to the foreign entity for establishing BO/LO/PO in India.

➤ **Issuance of UIN by Reserve Bank of India**

All foreign entities which have been granted permission for establishing BO/LO in India on Reserve Bank's website, the AD Category-I bank shall before issuing the approval letter to the applicant forward a copy of the Form FNC to RBI for allotment of Unique Identification Number (UIN) to each BO/LO. After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

➤ **Validity of LO and PO**

The validity of an LO is generally for three years for all entities and two years for Non-Banking Finance Companies (NBFCs) and entities engaged in construction and development sectors.

➤ **Other conditions**

- a. An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up.
- b. The BO/LO/PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse.

For details code please refer the below mentioned link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10398&Mode=0>

3. National Intellectual Property Rights Policy

On May 12, 2016 Finance Minister Mr. Arun Jaitley released the Nation's first policy on Intellectual property Right.

In India, Intellectual property is regulated by several laws, rules and regulations under the jurisdiction of different Ministries/ Departments. A number of authorities and offices administer the laws. The legal provisions need to be implemented harmoniously so as to avoid conflict, overlap or inconsistencies among them.

➤ Executive Summary

Creativity and innovation have been a constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India. India has a TRIPS compliant, robust, equitable and dynamic IPR regime.

An all-encompassing IPR Policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development.

➤ Vision Statement

In India, where creativity and innovation are stimulated by Intellectual Property for the benefit of all; where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared

➤ Mission Statement

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- i. foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- ii. focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

The Policy lays down **seven objectives** which are elaborated with steps to be undertaken by the identified nodal Ministry/ department. The Objectives are briefly mentioned below.

➤ Objective 1: IPR Awareness: Outreach and Promotion

To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society

The steps to be taken towards attaining this objective are outlined below:

- i. Adopt the national slogan "Creative India; Innovative India" and launch an associated campaign on electronic, print and social media, including by linking the campaign with other national initiatives such as "Make in India", "Digital India", "Skill India", "Start Up India", "Smart Cities" and other new initiatives in the future;
- ii. Create a systematic campaign for promotion of India's IP strengths by conveying to all stakeholders the value and benefits of IP by Customizing programs for specific needs of industries, MSMEs, start-ups, R&D institutions, science and technology institutes etc.
- iii. Create awareness programs specifically targeting industry and R&D entities, both private and public by Providing scientists/ researchers; Engaging public funded research organizations; Encourage multi-national corporations and other large corporate entities.
- iv. Create well-publicized events and ongoing programs to emphasize the importance of IP by Partnering with industry bodies, large corporations and institutions; Setting up India's 'Hall of Fame' to celebrate IP innovators and creators.
- v. Create suitable course materials for Educational institutions at all levels to emphasize the importance of IP rights; Online and distance learning programs

➤ **Objective 2: Generation of IPRs**

The steps to be taken towards attaining this objective are outlined below:

- i. Use the campaign "Creative India; Innovative India" to propagate the value of creativity and innovation
- ii. Carry out a comprehensive IP audit or base line survey in various sectors in cooperation with stakeholders to assess and evaluate areas of strength and potential.
- iii. Undertake studies to assess the contribution of IP content in different industries on the economy, employment, exports and technology transfer
- iv. Encourage researchers in public funded academic and R&D institutions in IPR creation by linking it with research funding & career progression
- v. Improve awareness of the value of copyright for creators, the importance of their economic and moral rights;

➤ **Objective 3: Legal and Legislative Framework**

To have strong and effective IPR laws, to balance the interests of rights owners with larger public interest.

It is an acknowledged fact that a strong and balanced legal framework encourages continuous flow of innovation and is among the bare necessities to fuel a vibrant knowledge economy.

The steps to be taken towards attaining this objective are outlined below:

- i. Review existing IP laws, where necessary, to update and improve them or to remove anomalies and inconsistencies
- ii. Engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders
- iii. Continue to engage actively and constructively in the deliberations at various international fora to develop legally binding international instrument(s) to protect Traditional Knowledge (TK), Genetic Resources (GR) and Traditional Cultural Expressions (TCE);
- iv. Review and update IP related rules, guidelines, procedures and practices for clarity, simplification, streamlining, transparency and time bound processes in administration and enforcement of IP rights

➤ **Objective 4: Administration and Management**

To modernize and strengthen service-oriented IPR administration

The Offices that administer the different Intellectual Property Rights (IPOs) are the cornerstone of an efficient and balanced IPR system, administering laws, granting or registering IP rights, providing IPR related services to users, including dissemination of IPR related information for the benefit of research & development

The steps to be taken towards attaining this objective are outlined below:

- i. The administration of the Copyright Act 1957 alongwith the office of the Registrar of Copyrights, under the Department of Higher Education, is being transferred to the Department of Industrial Policy and Promotion;
- ii. Restructure, upgrade and modernize IPOs taking into account the rapid growth and diversity of IP users and services, higher responsibilities and increased workload;
- iii. Promote cooperation with IP offices in other countries in areas of Capacity Building, Human Resource Development, Training, Access to Databases, Best Practices in search and examinations, use of ICT and user oriented services.
- iv. The office of CGPDTM, which administers patents, designs, trademarks and GIs, has undergone a sea change in the past few years, in up gradation and use of ICT. They also prescribed measures related to IPR related matters.

➤ **Objective 5: Commercialization of IPR**

Get value for IPRs through commercialization

The value and economic reward for the owners of IP rights comes only from their commercialization. A concerted effort should be made for capitalizing the existing IP assets in the country. Entrepreneurship should be encouraged so that the financial value of IPRs may be captured.

The steps to be taken towards attaining this objective are outlined below:

- i. Provide a platform for IPR owners and users of IPRs by acting as a facilitator for creators and innovators to be connected with potential users, buyers and funding agencies.
- ii. Promote licensing and technology transfer for IPRs; devising suitable contractual and licensing guidelines to enable commercialization of IPRs; promote patent pooling and cross licensing to create IPR based products and services
- iii. Promote use of Free and Open Source Software along with adoption of open standards; possibility of creating Indian standard operating environments will be examined
- iv. Promote collaborative IP generation and commercialization efforts between R&D institutions, Industry, Academia and Funding Agencies

➤ **Objective 6: Enforcement and Adjudication**

To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements

The primary obligation of protecting IP rights is on the IPR owners who can seek legal remedies for enforcement of their rights; Along with providing an effective mechanism for enforcement of IP rights, it is equally important to balance the rights of the public in a manner conducive to social and economic welfare and to prevent misuse or abuse of IP rights

The steps to be taken towards attaining this objective are outlined below:

- i. Create awareness of the value of IP and respect for IP culture by Educating the general public; Engaging with all levels of industry, including e-commerce; Sensitizing inventors, creators of IP on measures for protection and enforcement of their rights.
- ii. Assistance to smaller firms for protection of their IPRs internationally will be enhanced, such as DeitY's Support for International Patent Protection in Electronics and IT (SIP-EIT);
- iii. Enhanced coordination between the various agencies and providing direction and guidance on strengthening enforcement measures; coordinating with and sharing of intelligence and best practices at the national and international level

- iv. Licensing practices or conditions that may have an adverse effect on competition will be addressed through appropriate measures, including regulation of anti-competitive conduct in the market by the Competition Commission of India

➤ **Objective 7: Human Capital Development**

To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs

The steps to be taken towards attaining this objective are outlined below:

- i. Strengthen and empower RGNIIPM, Nagpur to conduct training for IPR administrators and managers in industry and business, academicians, R&D institutions; IP professionals; inventors and civil society; train the trainers and develop training modules; develop links with other similar entities at the international level; provide legal training for examiners
- ii. Strengthen IP Chairs in educational institutes of higher learning to provide quality teaching and research; develop teaching capacity and curricula and evaluate their work on performance based criteria.
- iii. Making IPR an integral part of the curriculum in all legal, technical, medical and management educational Institutions, NIFTs, NIDs, AYUSH Educational Institutes, Agricultural Universities, centres of skill development and the like.
- iv. Progressively introduce IP teaching in Schools, Colleges and other Educational Institutions and centres of skill development

Thus, the Department of Industrial Policy and Promotion shall be the nodal point to coordinate, guide and oversee implementation and future development of IPRs in India. The responsibility for actual implementation of the plans of action will remain with the Ministries/ Departments concerned in their assigned sphere of work. Public and private sector institutions and other stakeholders, including State governments, will also be involved in the implementation process.

For details code please refer the below mentioned link:

http://dipp.gov.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_12.05.2016.pdf

4. ACHIEVEMENTS AND HIGHLIGHTS ON EASE OF DOING BUSINESS.

Department of Industrial Policy & Promotion (DIPP) has issued the report on 8th May, 2016 consisting achievements and highlights of ease of doing Business initiated by Government of India.

➤ Introduction:

India's rank in the Doing Business Report 2015 was 142 among 189 countries which improved to 130 in the Doing Business Report, 2016. Government of India has emphasized on the importance of 'Ease of Doing Business' and it is a major pillar of 'Make in India' initiative. It is working extensively on improving India's rank in the World Bank Group's Doing Business Study.

➤ Highlights:

The key highlight points which are facilitated by this initiative:

- i. Requirement of minimum paid up capital and **common seal** under the **Companies Act 2013 done away with**.
- ii. Registration for Permanent Account Number (PAN), Tax Deduction Account Number (TAN), EPFO (Employees' Provident Fund Organization) and ESIC (Employee's State Insurance Corporation) and incorporation of company can be done through a single form on eBiz portal.
- iii. Time taken for obtaining PAN and TAN on eBiz portal has been brought down to T+1 days.
- iv. Provision for applying for Company name and Director Identification Number (DIN) at the time of incorporation with **single Form-INC29** has been made
- v. Requirement of bank account for registration with EPFO and ESIC has been eliminated.
- vi. **Physical submission of documents for export and import is not required** and Number of documents required for imports and exports have been reduced to three. They can be submitted electronically by using digital signatures.
- vii. Custom ICEGATE Portal has been integrated with Food Safety and Standards Authority of India (FSSAI), Animal and Plant Quarantine, Drug Controller and Wildlife Control Bureau for imports
- viii. Insolvency and Bankruptcy Code with provision of easy and faster exit, has been passed by the Parliament

➤ Achievements In Delhi And Mumbai

The highlights points of achievements of "ease of Doing Business" in metro cities like Delhi & Mumbai

- i. Unified building Bye-laws have been notified.

- ii. Online registration of Value Added Tax (VAT) with real-time Tax Identification Number (TIN) allotment has been introduced.
- iii. **Delhi VAT Sewa App** has been developed whereby permanent business registration is done without need for field verification by VAT inspector. This step has eliminated instances of corruption and irregularities during field verification.
- iv. Requirement of inspection has been removed to make registration of Shops and Establishments real-time.
- v. **VAT and Profession tax registration has been integrated into a single process.**
- vi. Municipal Corporation of Greater Mumbai has introduced fast track approval system for building permits with features such as Common application form; online transfer of application and receipt of NOC; Online system has been integrated with AAI & NMA.

➤ **Starting A Business**

Registration with ESIC and EPFO by eliminating all physical touch-points; registration with ESIC and EPFO without opening a bank account; **integrated Form INC 29** for registration of Company in MCA with 3 registration services viz. 'Name Availability', 'Director Identification Number' and 'incorporation of company' with one form and one payment.

➤ **Construction Permits**

Mumbai: Municipal Corporation of Greater Mumbai (MCGM) has completed the process of single window approval by integrating with internal departments as well as, AAI and NMA through a common application form.

Delhi: Municipal Corporations of Delhi has completed the process of single window approval by integrating with internal departments as well as DMRC, Delhi Fire Services, DUAC, AAI and NMA through a common application form.

➤ **Getting Electricity**

Maharashtra and Delhi have implemented the lump-sum charges for electric connection thereby removing the need of an estimate and an inspection for the same. They have also made online application for connections above 100KVA mandatory. Only two documents required for getting electricity connection; viz Identity proof and Proof of ownership/occupancy of premises.

➤ **Trading Across Borders**

Central Board of Excise and Customs(CBEC) has implemented Single Window Interface for Facilitating Trade (SWIFT) (online single window for clearance of goods) on the ICEGATE portal by integrating FSSAI, Animal Quarantine, Plant Quarantine, Drug Controller and Wildlife Control Bureau for imports.

➤ **Enforcing Contracts**

The Arbitration and Conciliation Act has been amended to reduce the time taken in arbitration proceedings and grounds on which an award may be challenged, Also Commercial Appellate Division Bench and Commercial Division Benches are functioning in Bombay High Court and Delhi High Court.

➤ **Digitization Process For Registering Property**

In Delhi, all sub-registrar offices have been digitized and sub-registrar's records have been integrated with the Land Records Department. In Maharashtra, all property tax records have been digitized.

➤ **State Level Regulatory Reforms**

In majority of states online filing and payment of Value Added Tax and Central Sales Tax have been implemented. Many states have eliminated pre-registration VAT inspections and replace them with post- registration advisory visits

A number of states have implemented Common Application Form and established dedicated single windows, backed by legislation or state notifications to establish and empower them. Clear timelines has been laid down for processing applications related to construction permits which will help investors to plan their construction effectively

Some states have allowed for self-certification under the Minimum Wages Act, 1948, the Shops and Establishment Act and Payment of Wages Act, 1936.

For details code please refer the below mentioned link:

http://dipp.gov.in/English/Investor/Ease_DoingBusiness/EODB_Initiatives_18May2016.pdf

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Amita Desai & Co. Company Secretaries

Mumbai Off :

1005, Hubtown Solaris
Off Western Express Highway
East End of Andheri Flyover
Andheri(East) Mumbai-400069

Landline: + 91-22-2684-5920/21
Fax: + 91-22-6678-7499
Mobile : + 91-982-017-7691

Hyderabad Off :

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

Chief Editor: Mrs. Amita Desai
Editor: Mr. Amit Dharmani