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By Amita Desai & Co.

We love to serve and add value to business of our clients

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Preview:

MCA UPDATES

A. Amendment in Schedule VII of the Companies Act, 2013

- MCA vide Notification 568 (E) dated August 6, 2014 further amended **Schedule VII (Activities which may be included by Companies in their Corporate Social Development policies)** of the Companies Act, 2013

- In Schedule VII, after item (x), the following item and entry is inserted namely:

  "(xi) Slum area development".

  Explanation: For the purpose of this item, the term '**Slum area**' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for time being in force."

- **Thus now, slum area development is also an activity which companies may undertake as an activity while framing their corporate social responsibility policies.**

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_06082014.pdf

B. Company Law Settlement Scheme, 2014

- MCA vide General Circular No. 34/2014 dated August 12, 2014 gave an opportunity to the Companies **which have made a default in filing of annual statutory documents** to make their default good by filing belated documents under the **'Company Law Settlement Scheme, 2014 ("CLSS 2014")'**.

- This scheme i.e. CLSS 2014 will be in operation from **August 15, 2014 to October 15, 2014**.

- This scheme gives to such companies-
  i. **immunity for prosecution; and**
  ii. **Charging a reduced additional fee of 25% of the actual additional fees payable under Section 403 of the Act read with Companies (Registration Office and Fees) Rules, 2014.**

- This scheme also gives an opportunity to inactive companies to get their Companies declared as 'dormant Company' as under Section 455 of the Act by filing a simple application at reduced fees.

- The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the **E-Form CLSS-2014.**

- **Scheme is applicable to the following E-Forms:**

i. E-Form 20B – Form for filing Annual Return by a company having share capital;
ii. E-Form 21A - Particulars of Annual return for the company not having share capital;
iii. E-Form 23AC, 23ACA, 23AC-XBRL and 23ACA – XBRL – Forms for filing balance sheet and profit and loss account;
iv. Form 66 – Form for submission of Compliance Certificate with the Registrar;
v. Form 23B – Form for intimation of appointment of auditors.

- **Scheme shall not apply to the companies as detailed below:**

i. Companies against which action for striking off the name under Section 560(5) has already been initiated by the Registrar of Companies; or
ii. Where any application has been filed by the Companies for action of striking off name from the Registrar of Companies; or
iii. Where applications have been filed for obtaining dormant status under Section 455 of the Act; or
iv. To vanishing companies.

- **Scheme for Inactive Companies:**
  The defaulting inactive companies, while filing due documents under CLSS-2014 can simultaneously, either:

i. Apply to get themselves declared as Dormant Company under section 455 of the Companies Act, 2013 by filing E-Form MSC – 1 at 25% of the fee for the said form; or
ii. Apply for striking off the name of the Company by filing E-Form FTE at 25% of the fee payable on form FTE.

- **In case of defaulting companies which avail of the CLSS 2014 and file all belated documents, the provisions of Section 164 (2) (a) of the Companies Act, 2013 ("the defaulting Directors") shall apply only for the prospective defaults, if any, by such Companies.**

- At the conclusion of this scheme the Registrar shall take necessary action under the Companies Act, 1956/2013 against the companies who have not availed this scheme CLSS 2014 and are in default in filing these documents in a timely manner.

- The link of the circular is as follows:
  http://www.mca.gov.in/Ministry/pdf/circular_34_13082014.pdf

C. Amendments to the Companies (Meetings of Board and its Powers) Rules, 2014

- MCA vide **Notification No. G.S.R. 590(E) dated 14th August, 2014** amended the **Companies (Meetings of Board and its Powers) Rules, 2014**. The following are the highlights to the said Notification:

I. Video Conferencing Meeting:

Earlier, **Rule 3 (6)** states that "with respect to every meeting conducted through video conferencing or other audio visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, **which shall be in India**, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place."

- MCA vide the said notification has omitted the words and commas ", **which shall be in India**,"

Now **Rule 3 (6)** shall read as under:

"with respect to every meeting conducted through video conferencing or other audio visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place."

- **Thus, now a Company can schedule a meeting through video conferencing or other audio visual means authorized under the rules even at a place outside India.**

II. Audit Committee Meetings through Video Conferencing:

- The existing **Rule 4 (iv)** states that the Audit Committee Meetings cannot be held through video conferencing or other audio visual means for **consideration of accounts.**

- MCA vide the said Notification has amended the **Rule 4 (iv)** by substituting the words "**consideration of accounts" with "consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of Section 134 (Financial Statement, Board's Report, etc.) of the Act".**

- **Thus now, Audit Committee Meetings held through video conferencing or other audio visual means cannot consider approval of financial statement including consolidated financial statement. (The same has to be approved in physical meeting)**

III. Related Party Transactions:

- MCA vide the said notification amended the threshold limits for entering into transactions with related parties.

- **Prior approval of Members by means of Special Resolution not required now for Company having paid up share capital of Rs. 10 Crore or More**

- Earlier, proviso (1) of Section 188 of the Companies Act, 2013 read with Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014 states that a Company having paid-up share capital which **is equal to or exceeds Rs.10 Crore,** or transactions for value of threshold limit mentioned in the Rules required (i) approval of Board of Directors and (ii) prior approval of members by means of a special resolution before entering into any related party transactions. **However, as per the Notification dated 14th August, 2014, the above mentioned threshold limit of Rs. 10 Crore of the paid-up share capital, is withdrawn.**

- Therefore, now if the Company intends to enter into a Related Party Transaction then in addition to the approval of the Board of Directors of the Company, prior approval of members by means of a special resolution must also be sought for entering into transactions for the below mentioned threshold limits of transactions only, **disregard of Companies paid up share capital** :

i. Sale, purchase or supply of any goods or materials directly or through appointment of agents **exceeding 10% of the turnover of the company** or **Rs. 100 Crore, whichever is lower.**

ii. Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents **exceeding 10% of Net Worth of the Company** or **Rs. 100 Crore whichever is lower**

iii. Leasing of Property of any **kind exceeding 10% of the Net Worth** or **10% of turnover of the Company or Rs. 100 Crore whichever is lower.**

iv. Availing or rendering of any service directly or through appointment of agents **exceeding 10% of the turnover of the company** or **Rs. 50 Crore, whichever is lower.**

The limits specified in (i) to (iv) above shall apply for transaction(s) to be entered into either individually or **taken together with the previous transactions during a financial year.**

v. Appointment to any office or Place of Profit in the Company, its Subsidiary Company or Associate Company at a **monthly remuneration exceeding Rs. 2.5 Lakhs.**

vi. Remuneration for underwriting the subscription of any Securities or Derivatives thereof of the Company **exceeding 1% of the Net Worth.**

The Turnover or Net Worth referred in (i) to (vi) above shall be computed on the basis of the Audited Financial Statements of the preceding financial year.

In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding Company.

Disclosure norms

- **Disclosures to be made in notice calling Board Meeting (Rule 15 (1) of Chapter XII):**

a) the name of the related party and nature of relationship;
b) the nature, duration of the contract and particulars of the contract or arrangement;
c) the material terms of the contract or arrangement including the value, if any;
d) any advance paid or received for the contract or arrangement, if any;
e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
g) any other information relevant or important for the Board to take a decision on the proposed transaction.

- **Disclosures to be made in the explanatory statement to be annexed to notice of general meeting (Rule 15 (3) of Chapter XII):**

(a) name of the related party;
(b) name of the director or key managerial personnel who is related, if any;
(c) nature of relationship;
(d) nature, material terms, monetary value and particulars of the contract or arrangement;
(e) any other information relevant or important for the members to take a decision on the proposed resolution.

➢ The link of the Notification is as follows:
http://www.egazette.nic.in/WriteReadData/2014/160614.pdf

D. Clarification on Accounting Standards (AS) 10- Capitalization of Cost

- MCA vide General Circular No. 35 dated August, 27 2014 issued a circular providing clarification on Accounting Standards (AS) 10 – Capitalization of Cost:

- Accounting Standards AS 10 and AS 16 prescribes the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed asset which increases the worth of the asset. Cost incurred during the extended delay in commencement of commercial production after the plant is ready, it does not increase the worth of fixed assets and therefore such cost should not be capitalized.

- Accounting Standard (AS) 16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, cost should be capitalized in relation to that part once the part is ready for commercial production.

- It is further clarified by the MCA, that AS 10 and AS 16 are applicable irrespective of whether the power projects are:

  1. Cost Plus projects or
  2. Competitive Bid projects

- The link of the circular is as follows:
  http://www.mca.gov.in/Ministry/pdf/circular_35_27082014.pdf

E. Amendment in Schedule II Useful Lives To Compute Depreciation

I. <u>As per Notification (not yet Notified but just published) dated August 29, 2014, issued by MCA, useful life of the assets for the purpose of providing depreciation in the books of account can be longer than useful life specified in Schedule II, provided it supported by technical advice.</u>

<u>Existing Provision</u>:

In Part A, paragraph 3 (i)
The useful life of an assets and the residual value shall not be different from that is indicated in Part C, and if the same is different then it shall be **disclosed with justification** in the financial Statement.

1. <u>Revised Provision:</u>

In Part A, paragraph 3 (i)
The useful life of an asset shall not ordinarily be different from the useful life specified in the Part C and the residual value of an asset shall not be more than five per cent of the original cost of the assets.

Provided that where a Company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall **disclose such difference and provide justification in this behalf duly supported by technical advice.**

II. In **Part 'C',** of the **Schedule II** under the **Heading Notes** the following two changes were suggested in draft Notification:

Existing Provision:

In **Paragraph 4** Useful life specified in Part C of the Schedule is for **whole of the asset**. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the remaining asset, useful life of that significant part shall be determined separately.

Revised Provision:

Paragraph 4 is substituted with the

"4 (a) Useful life specified in **Part C** of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

(b) The requirement under sub-paragraph (a) shall be voluntary in respect of the financial year commencing on or after the **1st April, 2014** and mandatory for financial statements in respect of financial years commencing on or after the **1st April, 2015**."

In **Paragraph 7 (b)** following changes are suggested

Existing Provision:

In paragraph 7 (b) carrying amount of the asset as on that date after retaining the residual value, **shall be recognized** in the opening balance of retained earning where the remaining useful life of an asset is nil.

Revised Provision:

In paragraph 7, in sub-paragraph (b) for the words "**Shall be recognized**", the words "**may be recognized**" shall be substituted.

Thus the carrying amount of the asset as on that date after retaining the residual value **may be recognized** in the opening balance of retained earning now where the remaining useful life of an asset is nil.

- The link of the draft published Notification is as follows:
  http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_29082014.pdf

RBI UPATE

A. Amendments in Regulatory Framework for Securitisation Companies / Reconstruction Companies (SCs/RCs)

- In order to tone up the regulatory framework pertaining to SCs/RCs, RBI vide Circular No. 41 dated August 05, 2014 decided to make certain modifications to the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 dated April 23, 2003.

- The highlights of the said circular are as follows:

a. **Investment of SCs / RCs in Security Receipts (SRs) -** At present, SCs/RCs have to mandatorily invest and hold minimum 5% of the SRs issued by them against the assets acquired on an ongoing basis.

   Henceforth, SCs/RCs shall, by transferring funds, invest a minimum of 15% of the SRs of each class issued by them under each scheme on an ongoing basis till the redemption of all the SRs issued under such scheme.

b. **More time for due diligence -** Before bidding for the stressed assets, SCs/RCs may seek the auctioning banks to give adequate time, not less than 2 weeks, to conduct a meaningful due diligence of the account by verifying the underlying assets.

c. **Change in definition of Planning period -** Planning period will mean a period not exceeding six months (instead of twelve months as at present) allowed for SCs / RCs to formulate a plan for realization of non-performing assets of the selling bank acquired for the purpose of reconstruction.

d. **Valuation of SRs -**The initial valuation of SRs should be done within a period not exceeding six months of acquiring the underlying asset (instead of one year as at present) to enable all the stake holders to realistically assess the value of SRs at an earlier date.

e. **Management fees -** Management fees should be calculated and charged as percentage of the net asset value (NAV) at the lower end of the range of the NAV specified by the Credit Rating Agency (CRA) (rather than on the outstanding value of SRs as at present), provided that the same is not more than the acquisition value of the underlying asset. However, management fees are to be reckoned as a percentage of the actual outstanding value of SRs, before the availability of NAV of SRs.

f. **Membership in Joint Lenders' Forum (JLF)** - In terms of Circular DBOD.BP.BC.No.97/21.04.132/2013-14 dated Feb. 26, 2014 on 'Framework for Revitalizing Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)', the banks have been advised that as soon as an account is reported by any of the lenders to 'Central Repository of Information on Large Credits' (CRILC) as SMA-2, they should mandatorily form a committee to be called JLF if the aggregate exposure (AE) [fund based and non-fund based taken together] of lenders in that account is Rs 100 crore and above. SCs/RCs also should be members of JLF and should be a part of the process involving the JLF with reference to such stressed assets.

g. **Reporting to Indian Banks' Association (IBA)** - In terms of the same circular, banks are to report to IBA the details of the recalcitrant CAs, Advocates and Valuers who have committed serious irregularities in course of rendering their professional services. Likewise, the SCs / RCs are to report to IBA the details of such CAs, Advocates and Valuers for placing it on the IBA database of Third Party Entities involved in fraud. However, the SCs/RCs will have to ensure that they follow meticulously the procedural guidelines issued by IBA (Circ. No. RB-II/Fr./Gen/3/1331 dated August 27, 2009) and also give the parties a fair opportunity to explain their position and justify their action before reporting to IBA. If no reply / satisfactory clarification is received from them within one month, the SCs/RCs may report their names to IBA. SCs / RCs should consider this aspect before assigning any work to such parties in future.

h. **Additional disclosure –**

i. At present it is mandatory for the SCs / RCs to disclose in their balance sheet the value of financial assets acquired during the financial year either on its own books or in the books of the trust. In addition, SCs / RCs will have to mandatorily disclose the basis of their valuation if the acquisition value of the assets is more than the Book Value (the value of the assets as declared by the seller bank in the auction). Similarly, SCs / RCs will have to disclose the details of the assets disposed off (either by write off or by realisation) during the year at substantial discount (say more than 20% of valuation as on the previous year end) and the reasons therefore. SCs / RCs are, also, to declare upfront the details of the assets where the value of the SRs has declined substantially below the acquisition value.

ii. SCs / RCs should put up in their website the list of wilful defaulters, (by adopting the process as defined in DBOD Master Circ. No. CID.BC.3/20.16.003/2014-15 dated July 1, 2014) at quarterly intervals. Further, in terms of DNBS (PD-SC/RC).CC.No.23/26.03.001/2010-11 November 25, 2010, each SC / RC is required to become a member of at least one credit information company (CIC) and provide to the CIC periodically accurate data/history of the borrowers. In this case, also, they should furnish the data of wilful defaulters to the CIC in which they are members.

- The link of the circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CIR164NTF060814.pdf

B. Amendments in Regulatory Framework for Securitisation Companies / Reconstruction Companies (SCs/RCs) – Clarifications

- RBI vide Circular No. 42 dated August 7, 2014 provided clarification with respect to the amendments made in Regulatory Framework for Securitisation Companies and Reconstruction Companies (SCs/ RCs).

- The highlights of the said Circular are as follows:

- RBI vide Circular No. 41 dated August 05, 2014 had amended the Regulatory Framework for SCs/ RCs. The provisions of the said Circular will be applicable from the date of the notification i.e. from August 5, 2014.

- With respect to the Additional Disclosures which is required to be made, as mentioned in Paragraph 2(h) (ii) of the above mentioned circular, RBI has clarified that the said paragraph shall now read as follows:

  SCs / RCs should put up in their website, at quarterly intervals, the list of suit filed accounts of wilful defaulters (the current definition of wilful defaulters and the procedure to be followed are in DBOD Master Circ. No. CID.BC.3/20.16.003/2014-15 dated July 1, 2014). Further, in terms of DNBS (PD-SC/RC).CC.No.23/26.03.001/2010-11 November 25, 2010, each SC / RC is required to become a member of at least one credit information company (CIC) and provide to the CIC periodically accurate data/history of the borrowers. In this case, also, they should furnish the data of wilful defaulters (both suit filed and non-suit filed accounts) to the CIC in which they are members."

- The link of the circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C169D070814F.pdf

C. Liberalised Remittance Scheme for Resident Individuals- Clarification

- RBI vide A.P. (DIR Series) Circular No. 5 dated July 17, 2014, had clarified that Liberalised Remittance Scheme (LRS) upto 125,000 USD per financial year by any Resident Individuals be allowed to be remitted for any permitted current or capital account transaction or a combination of both, can now also be used for acquisition of immovable property outside India.

- Further in the light of the above clarification, RBI vide Circular No 19 dated August 11, 2014 further clarified that the requirement of post facto reporting stipulated in terms of A.P. (DIR Series) Circular No.32 dated September 04, 2013, (Sr. no. 4 of Annexure to the Circular) stands withdrawn for any reporting by AD Bank to RBI reporting such purchase of Immovable Properties by Residents.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP19110814F.pdf

D. Appointment of Non-Deposit Accepting NBFCs with asset size of RS. 100 Crore and above as sub-agents under Money Transfer Service Schemes (MTSS)

- In order to broaden the network of sub-agents under the Money Transfer Service Schemes (MTSS), RBI vide Circular No. 405 dated August 12, 2014 decided to permit Non-Deposit Accepting NBFCs with asset size of Rs. 100 crore and above to act as sub-agents under MTSS subject to the following conditions:

  a. There is no co-mingling of the Indian agent's funds with that of the NBFC's funds.

  b. The Indian agent should maintain with a designated bank, a security deposit in favour of the NBFC sub-agent. The amount of the security deposit to be maintained may be mutually decided between the Agent and the sub-agent. It should be ensured that the payouts of NBFC sub-agents pending reimbursement by the agents should not, at any point of time, be higher than the security deposits.

  c. No NBFC, acting as sub-agent, should appoint any other entity as its sub-agent.

- NBFCs desirous to act as sub-agents under the MTSS shall take prior approval of the Reserve Bank. Application in this regard may be forwarded to the concerned Regional Offices of the Reserve Bank of India.

- The link of the Circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/NBDSI120814F.pdf

E. Interest Rate Futures- NBFCs

- Earlier RBI vide Circular No.161 dated September 18, 2009 permitted NBFCs to participate in the designated interest rate futures exchanges recognized by SEBI, as clients, subject to RBI / SEBI guidelines in the matter, for the purpose of hedging their underlying exposures.

- The matter has been revisited and it has been decided by the RBI vide Circular No. 406 dated August 12, 2014 that all non-deposit taking NBFCs with asset size of Rs. 1000 crore and above may also participate in the interest rate futures market permitted on recognized stock exchanges as trading members, subject to RBI/ SEBI guidelines.

- It may be noted that in term of RBI circular IDMD.PCD. 08/14.03.01/2013-14 dated December 5, 2013 on 'Exchange-Traded Interest Rate Futures', the position limits for the various categories of participants in the Interest Rate Futures market shall be subject to the guidelines issued by the Securities and Exchange Board of India.

- The link of the Circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/INBF120814FS.pdf

F. NBFCs- Lending against Shares

- At present, lending against shares carried out by NBFCs is not subject to specific instructions apart from the general prudential regulation applicable to all NBFCs. Lending against shares could be in the normal course where shares are accepted as collateral or as part of their capital market operations. NBFCs lend either by way of pledge of shares in their favour, transfer of shares or by obtaining a power of attorney on the demat accounts of borrowers.

- Irrespective of the manner and purpose for which money is lent against shares, default by borrowers can and has in the past lead to offloading of shares in the market by the NBFCs thereby creating avoidable volatility in the market. Certain other associated areas of concern relate to absence of adequate prior information to the stock exchanges on the shares held as pledge by NBFCs, probable overheating of the market, over-exposure by NBFCs to certain stocks and overleveraging of borrowers.

- Further, while NBFCs in general are understood to have in place their own internal controls with regard to lending against shares including a loan to value (LTV) ratio, there are anecdotal evidences of volatility in the capital market being the result of offloading of shares by NBFCs.

- It is, therefore, found necessary by the RBI to introduce a minimum set of guidelines on lending against shares while at the same time ensuring that these do not result in unnecessary constraints to the requirements of genuine borrowers.

- Accordingly, RBI vide Circular No. 408 dated August 21, 2014 decided that NBFCs lending against collateral of shares shall, with effect from the date of this circular:

  i. Maintain an LTV ratio of 50%; and

  ii. accept only Group 1 securities (specified in SMD/ Policy/ Cir - 9/ 2003 dated March 11, 2003 as amended from time to time, issued by SEBI) as collateral for loans of value more than Rs. 5 lakh, subject to review by the Bank.

- All NBFCs with asset size of Rs. 100 crore and above shall report on-line to stock exchanges, information on the shares pledged in their favour, by borrowers for availing loans. The infrastructure for on-line reporting to the stock exchanges has been put in place. The exchanges may be approached for creation of user IDs. The web links for the respective exchanges are provided below:

  BSE : http://nbfc.bseindia.com
  NSE: https://www.connect2nse.com/LISTING/

- The format for reporting as desired by SEBI is given in the Annexure of the said circular..

- The link of the Circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/NBFC408NT0814.pdf

G. Refinancing of ECB at lower all-in-cost - Simplification of procedure

- RBI vide Circular No. 21 dated August 27, 2014 brought to the attention of Authorized Dealer Category - I (AD Category - I) banks to A.P. (DIR Series) Circular No. 5 dated August 01, 2005 as amended from time to time in terms of which refinancing of existing ECB by raising fresh ECB at lower all-in-cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained. The cases, where the Average Maturity Period (AMP) of the fresh ECB is more than the residual maturity of existing ECB, are examined by the Reserve Bank under the approval route.

- It has now been decided by the RBI, to simplify the procedure by delegating powers to the AD Category – I banks to approve even those cases where the AMP of the fresh ECB is exceeding the residual maturity of the existing ECB under the automatic route subject to the following conditions:

  i. Both the existing and fresh ECBs should be in compliance with the applicable guidelines;
  ii. All-in-cost of fresh ECB should be less than that of the all-in-cost of existing ECB;
  iii. Consent of the existing lender is available;
  iv. Refinancing is to be undertaken before the maturity of the existing ECB;
  v. Borrower should not be in the default / Caution List of RBI and should not be under the investigation of the Directorate of Enforcement (DoE);
  vi. Overseas branches / subsidiaries of Indian banks will not be permitted to extend ECB for refinancing an existing ECB; and
  vii. All requirements in respect of reporting arrangements like filing of revised Form 83, etc. are followed.

- This facility will be available even in those cases where existing ECBs were raised under the approval route subject to the amount of new ECBs being eligible to be raised under the automatic route.

- All other aspects of the ECB policy like eligible borrower, recognized lender, permitted end-use, amount of ECB, all-in-cost, average maturity period, reporting arrangements, etc. shall remain unchanged.

- The link of the Circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/EAP21270814F.pdf

H. Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

- RBI vide circular No. 22 dated August 28, 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 (the Principal Regulations) notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, in terms of which, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time.

- With a view to providing flexibility in regard to the manner in which government securities can be acquired by eligible investors, it has now been decided by the RBI to remove any stipulation as to the manner of acquisition from the said Regulations. Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice.

- The link of the Circular is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/22APD280814.pdf

SEBI UPATES

A. Revised Format for disclosure under Regulation 30 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

- Regulation 30(1) of the (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 states that, every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

  Regulation 30(2) the (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 states that, the promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

- SEBI vide Circular No. 5 dated August 25, 2014 revised the format for continual disclosures required to be made by the promoters under regulation 30(1) and 30(2) of the (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- The revised format is placed as Annexure-1 in the said circular.

- The link of the said circular is as follows:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1408959397769.pdf

B. The Securities Laws (Amendment) Act, 2014

- The Securities Laws (Amendment) Act, 2014 has been amended by the Ministry on August 25, 2014. The highlights of the Act are as follows:

- The Act proposes to amend the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, and the Depositories Act, 1996. It empowers SEBI to regulate any pooling of funds of Rs. 100 Crore and above, that are not overseen by any regulator under law; conduct search-and-seizure operations on any suspected securities law violator's premises after obtaining permission from a magistrate or judge of a court in Mumbai, recover monetary penalties imposed by it through attachment and sale of assets, arrest and detain an individual for any failure to comply with its orders, call for information and records from any person, including banks or other authority, to aid its investigation, establish special courts for speedy trials of offences under the SEBI Act, re-examine an adjudicating officer's orders and raise the penalty amount if it is in the interest of the securities market and enter into agreements for exchange of information with foreign financial regulators.

- The link of the said ACT is as follows:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1409135096979.pdf

C. Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Second Amendment) Regulations, 2014

- SEBI vide draft Notification dated August 25, 2014 amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements).

- The Key highlights of the said draft notification are as follows:

  - In regulation 26 (6)after clause (b) of second proviso, a new clause shall be inserted, namely:-

  "(c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the Board and further subject to the following :

  i. such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and
  ii. such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer."

  - After Regulation 76, the following regulations shall be inserted, namely:

  76A. Pricing of equity shares – Infrequently traded shares

  Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:

  Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

76B. Adjustments in pricing - Frequently or Infrequently traded shares

The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

a. makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
b. makes a rights issue of equity shares;
c. consolidates its outstanding equity shares into a smaller number of shares;
d. divides its outstanding equity shares including by way of stock split;
e. re-classifies any of its equity shares into other securities of the issuer;
f. is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

- The link of the said draft Notification is as follows:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1409120871432.pdf

DIPP UPATES

A. Review of the policy on Foreign Direct Investment (FDI) in Defence sector - amendment to 'Consolidated FDI Policy Circular, 2014.

- The Department of Industrial Policy and Formation has amended certain paragraphs of the Consolidated FDI Policy Circular, 2014 by issuing Press Note. 7 dated August 26, 2014.

- The highlights of the said Press Note are as follows:

  - In the Information and Broadcasting Sector where the sectoral cap is less than 49% the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

SI. No.	Sector/Activity	% of Equity FDI Cap	Entry Route
6.2.6	Defence		
6.2.6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation Act), 1951	49%	Government route up to 49% Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country
	Note: (i) FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs),Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India)Regulations. (ii) Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.		

- The link of the Press Note is as follows:
  http://dipp.nic.in/English/acts_rules/Press_Notes/pn7_2014.pdf

B. Policy for Private lnvestment in Rail lnfrastructure through Domestic and Foreign Direct lnvestment

- As per extant Foreign Direct lnvestment (FDI) policy, contained in 'Consolidated FDI Policy Circular of 2014', issued on 17.04.2014, FDI is prohibited in Railway Transport (other than Mass Rapid Transport Systems).

- The Government of India, vide Notification No. S.O. 21 13(E), dated 22 August 2014, has reviewed its policy for private investment in rail infrastructure and amended the list of industries reserved for public sector under item No. 8 of Schedule I of the Notification No.S.0.477(E) dated 25 July 1991. Accordingly it has been decided to permit FDI in the following activities of the Railway Transport sector:

  - Construction, operation and maintenance of the following:

  i. Suburban corridor projects through PPP
  ii. High speed train projects
  iii. Dedicated freight lines
  iv. Rolling stock including train sets, and locomotives /coaches manufacturing and maintenance facilities,
  v. Railway Electrification,
  vi. Signaling systems
  vii. Freight terminals
  viii. Passenger terminals,
  ix. Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and
  x. Mass Rapid Transport Systems.

  FDI beyond 49% of the equity of the investee company in sensitive areas from security point of view, will be brought before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.

- The revised position of the Sectors in which FDI is prohibited is as follows:

  i. Lottery Business, including Government/ private lottery, online lotteries, etc.
  ii. Gambling and betting, including casinos, etc
  iii. Chit Funds
  iv. Nidhi Company
  v. Trading in Transferable Development Rights (TDRs)
  vi. Real Estate Business or construction of Farm Houses
  vii. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
  viii. Activities/ sectors not open to private sector investment e.g (i) Atomic Energy and (ii) Railway Operations (other than permitted activities mentioned above)

  Foreign Technology collaboration in any form, including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and betting activities.

- The link of the Press Note is as follows:
  http://dipp.nic.in/English/acts_rules/Press_Notes/pn8_2014.pdf

ARTICLE OF THE MONTH

DUTIES OF DIRECTORS

The Companies Act, 2013('The Act') has raised the bar for the boards in India. The Act has made several significant changes, which seek to redefine the board governance in India. New concepts have been introduced such as women directors on the boards to bring in gender diversity, small shareholder director, performance evaluation, corporate social responsibility and class actions; the internal financial controls and risk management oversight of the boards have been strongly emphasized; disclosures have been enhanced in board's report to shareholders, additional rigor has been added to strengthen the Directors' Responsibility Statement; and the Independent Directors have been entrusted with new responsibilities to make their role more objective and purposeful. Overall, the Act aims to raise the governance profile of Indian companies and their boards, at par with the roles and responsibilities assumed by boards globally.

Fiduciary duties of directors (Section 166):

i. Director shall **act in accordance with the articles** of the company.
ii. Director shall **act in good faith** in order to promote the object of the company for benefit of members as a whole and in best interest of company, employees, shareholders, community and for protection of environment.
iii. Director shall exercise his duties **with due and reasonable** care, skill and diligence and shall exercise independent judgment.
iv. Director **shall not involve in a situation in** which he may have a direct or indirect interest that **conflicts, or possibly may conflict**, with the interest of the company.
v. Director shall **not achieve or attempt to achieve any undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
vi. Director shall **not assign his office and any assignment** so made shall be void.

Penalty for contravention of the above duties:

If a Director of the Company contravenes the provision of this section such Director shall be punishable with **fine which shall not be less than Rs. 1 Lac but which may extend to Rs. 5 Lac**.

Additional Duties of Directors:

Disclosure of Interest by Director (Section 184):

- Every Director shall at the first meeting of the Board in which he participates as a Director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company (ies) or body corporate, firms or other association of individuals.

- When any contracts or arrangement is proposed to be entered into by a company, **check whether any of the Directors are interested** in the same or not. A general notice shall not be sufficient and the **interest must be notified prior to or in each board meeting** where such contract or arrangement is discussed.

- The director must excuse himself from such meeting if he is "interested".

- Stringent punishment with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 1 Lac, or with both.

Duty in Respect of Financial Statement (Section 129):

- Directors need to ensure that the financial statements of the company reflect a true and the fair view of the state of affairs of the company and comply with accounting standards, if he is charged by the board of director to do so.

Additional disclosures in the annual return filed by the companies (Section 92):

- Every company is required to prepare an annual return containing the particulars as at the close of the financial year relating to, among other things, details of principal business activities, particulars of holding, subsidiary and associate companies, details of promoters, directors, key management personnel, meetings of board and its various committees along with attendance details, remuneration of directors and key management personnel and penalties or punishment imposed on directors.

- An extract of the Annual Return shall form a part of the Board's Report.

Additional disclosure in the Directors' Responsibility Statement regarding internal financial controls and regulatory compliance Section 134 (5)

- The Directors' Responsibility Statement to now additionally state that the directors had devised proper systems for internal financial controls and for ensuring compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Duty to ensure Accuracy in Prospectus/ Private Placement Offer Letter of the Company:

- In addition to criminal liability, civil liability can arise in case of prospectus issued for all types of securities (not only shares and debentures) for untrue statements, inclusion or omission of any matter which is misleading.

Duty to ensure Certain Compliances by the Company:

- A Director must ensure that the company files it financials **and** annual returns with the Registrar of Companies.

- **Failure** of a company to do so for a **continuous period of 3 years** leads to **disqualification of a director for a period of 5 years** from all companies (Section 167).

- Further, the director must ensure that the company deposits and redeems debentures in accordance with its terms, including interest and dividend. Any failure of the company to do so for a period of 1 year or more will lead to disqualification of the director for a period of 5 years from all companies.

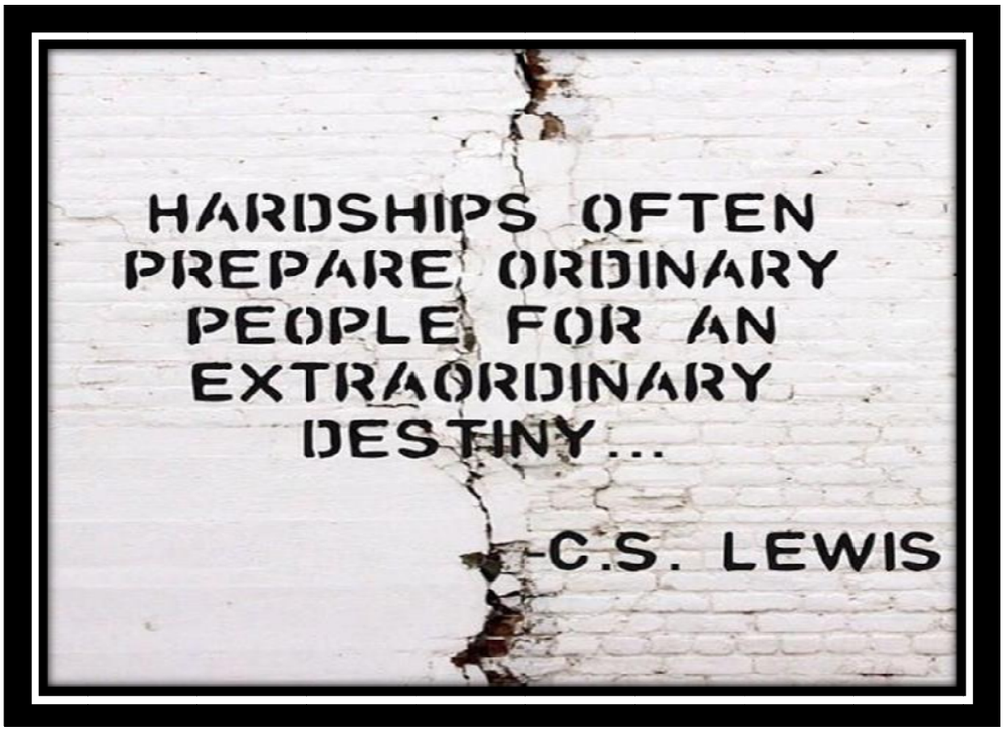
Duty to Attend Board Meeting:

- Absence of a director from all meetings of the board for a period of 12 months, with or without seeking leave of the board, can lead to automatic vacation of office.

Duty to Notify Assent or Dissent and Have the same recorded in Minutes:

- Any director who is aware of any contravention and who has not objected to the same becomes liable in respect of such acts. **Knowledge or awareness** may be attributable through the board process.

INSPIRATIONAL QUOTES



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