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Newsletter for June 2014
By Amita Desai & Co.

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MCA UPDATES

A. The Companies (Acceptance of Deposits) Amendment Rules, 2014

- MCA vide Notification No. G.S.R. 386 (E) dated 6th June, 2014 amended the Companies (Acceptance of Deposits) Rules, 2014. They shall come into force from the date of their publication in the Official Gazette.

- Rule 5(1) of the Companies (Acceptance of Deposits) Rules, 2014 states that every Company including a private Company and other eligible Company i.e. a Public Company having a net worth of not less than Rs. 100 Crore or a turnover not less than Rs. 500 Crore and which has obtained the prior consent of the Company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits; shall enter into a contract for providing deposit insurance at least 30 days before the issue of circular or advertisement or at least 30 days before the date of renewal, as the case may be. The amount specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

- Now with this Notification, the following proviso shall be inserted in Rule 5(1) of the Companies (Acceptance of Deposits) Rules, 2014 , namely:-
  "Provided that the companies may accept the deposits without deposit insurance contract till 31st March, 2015."

  Hence, now the Company may continue and also accept deposits, without taking any insurance contract for such deposit till one year i.e upto 31st March 2015.

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

B. Regarding Deposits – Commencement of provisions of sub sections (2) and (3) of section 74 of the Companies Act, 2013

- As per the provisions of Section 74 of the Companies Act, 2013 (CA, 2013), a Company shall repay Deposit within a period of (1) one year from the commencement of the CA, 2013 or from the date on which such payments are due, whichever is earlier.

- Section 74 (2) of the Companies Act, 2013 further states that the Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

- Section 74 (3) of the Companies Act, 2013 states that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (*1*) or such further time as may be allowed by the Tribunal under sub-section (*2*), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than Rs. 1 Crore but which may extend to Rs. 10 Crore and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than Rs. 25 Lac but which may extend to Rs. 2 Crore, or with both.

- However now MCA vide Notification No.S.O.1459 (E) dated 6th June, 2014 fixed June 06, 2014 as the date on which the Section 74 sub-section (2) and sub-section (3) shall come into force.

  Accordingly now a company can make an application to the Tribunal to extend the time limit to repay the deposit and if a Company fails to repay the deposit within the stipulated time, penalty shall be levied as stated in Section 74(3) of the CA, 2013.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/Provisions_of_section74.pdf

C. Power to Tribunal (Company Law Board) w.r.t Deposits Companies (Removal of Difficulties) Fourth Order, 2014

- MCA vide Notification No. S.O. 1460 (E) dated 6th June, 2014 exercised its power u/s 470 of the CA 13 and ordered that , the Company Law Board shall exercise the jurisdiction, powers , authorities and functions of the Tribunal under Section 74 (2) of the CA 2013 and on an application made by the company , Company Law Board may allow further time to the company as considered reasonable to CLB to repay the deposit and CLB shall consider the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters before giving any order.

- The link of the notification is as below:

  file:///C:/Documents%20and%20Settings/admin/Desktop/Notfn%201460%20dt%2006062014%20Removal%20of%20difficulties%204th%20order.pdf

D. Appointment of Company Secretaries as Key Managerial Personnel

- MCA vide Notification No. G.S.R. 390(E) dated 9th June, 2014 amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

- As per Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of Rs. 10 Crore or more shall have whole-time key managerial personnel.

- As per the said notification now **a company other than a company covered under rule 8 as mentioned above which has a paid up share capital of Rs. 5 Crore or more shall have a whole-time company secretary."**

- The link of the notification is as below:
  http://www.icsi.edu/portals/0/kmp_amendment.pdf

E. Clarifications on Rules prescribed under the Companies Act, 2013 - Matters relating to appointment and qualifications of directors and Independent directors

- Section 149 of CA 2013 and the relevant rules governing the appointment and qualification of Independent Directors (ID's) became effective from 1st April, 2014. Government received representations from Industry Chambers, Professional Institutes and other stakeholders seeking clarifications for the appointment of ID's under the relevant provisions of the CA, 2013. MCA vide General Circular No. 14/2014 dated 9th June, 2014 clarified as follows:

- **Section 149(6)(c): "pecuniary interest in certain transactions"** :

a) As per the existing provision of the CA 2013 'ID's' should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary/associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications were sought whether a transaction entered into by 'ID's' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c).

- However now, MCA vide the aforementioned Notification has clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, 'ID's' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases.

- **Hence, now an ID can enter into transaction with a company provided that the transactions are in the ordinary course of business and at arm's length and in such transactions shall ID will not be said to have 'pecuniary relationship with a company.**

b) Clarification was sought for whether receipt of remuneration, (in accordance with the provisions of the Act) by ID's from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

- MCA has now clarified that **'pecuniary relationship'** provided in section 149(6)(c) of the Act **does not include receipt of remuneration, from one or more companies, by way of fee for attending meetings of the Board or Committee thereof, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members,** in accordance with the provisions of the Act.

- **Section 149: Appointment of 'IDs':**

- Clarification was sought if ID's appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the CA,2013.

- Section 149(5) provides that every company existing on or before the date of commencement of this Act shall, within one year from the commencement of the Act or from the date on which the said rules were notified in this regard as may be applicable, comply with the requirements of the provisions of with respect to the appointment of ID's.

- Section 149(10) provides that subject to the provisions of section 152, ID's shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

- Section 149(11) provides that notwithstanding anything contained in sub-section (*10*), no ID shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an ID:
  Provided that ID's shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

- Explanation to section 149(11) clearly provides that any tenure of an 'ID's' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act

- In view of the transitional period of one year provided under section 149(5), it is hereby clarified by the MCA that it would be necessary that if it is intended to appoint existing 'IDs' under the CA 2013, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.

➢ **Section 149(10)/(11) - Appointment of 'IDs' for less than 5 years:**

- Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years.

- It is clarified by the MCA that section 149(10) of the Act provides for a term of "upto five consecutive years" for an 'ID'. **As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act.**

- Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years.

- **Hence, the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.**

➢ **Appointment of 'IDs' through letter of appointment:-**

- With reference to Para IV (4) of Schedule IV of the Act (Code for IDs) which requires appointment of 'IDs' to be formalized through a letter of appointment, clarification was sought if such requirement would also be applicable for appointment of existing 'IDs'?

- MCA has clarified that in view of the specific provisions of Schedule IV, appointment of -IDs' under the CA, 2013, **appointment of - IDs would need to be formalized through a letter of appointment.**

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/General_Circular_14_2014.pdf

F. Maintaining Register of Loan or Guarantee etc in new format from 1st April, 2014 onwards

➢ Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid, as per Section 186 (9) read with sub-rule (1) of Rule 12 of the Companies (Meeting of Board and its Powers) Rule, 2014.

➢ MCA received various communications seeking clarification regarding the maintenance of register of loans/guarantee/security/making acquisition in new format i.e. in Form MBP.2.

- In this connection, MCA vide General Circular No. 15 dated 9th June, 2014, clarified that **registers maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1st April, 2014.**

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_15_2014.pdf

G. Non Applicability of PAN requirement for Foreign Nationals

- The Ministry of Corporate Affairs (MCA) has vide a Circular No. 16 dated June 10, 2014 clarified that :

- This Circular is applicable to a Foreign National who is a subscriber/ promoter of the Company at the time of incorporation of the Company ;

- If the subscriber/ promoter does not possess Permanent Account Number (PAN) , he/she shall required to give a declaration in the prescribed format (attached in the circular) and attach it along with Form INC-7, (at the time of Incorporation) and ;

- In case of a Resident Director of the Company he/she shall require to submit details of Permanent Account Number (PAN) at the time of Incorporation of the Company.

- Hence, now all the Resident Director should have Permanent Account Number (PAN) before they are appointed as a director of the Company.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/Circular_16_2014.pdf

H. Filing of Return of listed company for change in shareholding of promoters and top 10 shareholders in Form MGT-10---clarification

- As per Section 93 of the Companies Act, 2013 every listed company shall file a return in Form MGT - 10 with the Registrar of Companies with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

- As the E-Form MGT-10 is not available, MCA vide its General Circular No. 17 dated 11th June, 2014 clarified that Form MGT- 10 can be physically filled and get it duly signed/ certified by a professional and file it along with other required enclosures as attachments with the prescribed General E-Form No. GLN – 2.

- This temporary arrangement will continue till an E-form for MGT-10 is made available.

- Fee applicable for MGT-10 will be as per the table of fees prescribed in Companies (Registration Offices and Fees) Rules, 2014.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_17_2014.pdf

I. Clarification for filing of Form No. INC-27 for conversion of company from public to private under the provisions of Companies Act, 2013

- Attention of the Ministry was drawn to difficulties being faced by stakeholders while filing form INC-27 for conversion of a public company into a private company, since the relevant provisions of CA, 2013 (second proviso to sub-section (1) and sub-section (2) of section 14) are not yet notified by the MCA.

- MCA vide General Circular No. 18 dated 11th June, 2014 has clarified that, **the corresponding provisions of Companies Act, 1956 (Proviso to sub-section (1) and sub-section (2A) of Section 31) shall remain in force till corresponding provisions of Companies Act, 2013 are notified**. The Central Government has delegated such powers under the Companies Act, 1956 to the Registrar of Companies (ROCs) and this delegated power remains in force. Applications for such conversions, therefore, have to be filed and disposed as per the earlier provisions of CA, 1956.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_18_2014.pdf

J. Clarification on Rules prescribed under the Companies Act, 2013- Matters relating to share capital and debentures

- Government has received representations from Industry Chambers, Professional Institutes and other stakeholders seeking clarifications on matters relating to 'share capital and debentures' under the relevant provisions of the Companies Act, 2013 (Act) read with relevant rules, which have come into force with effect from 1st April, 2014. The representations were examined and clarifications on the following points were given by MCA vide General Circular No. 19 dated 12th June, 2014:

- **Share Transfer Forms executed before 1st April, 2014:**

  - In view of prescription of new Securities Transfer Form as per Form SH-4 with effect from 1st April, 2014, the companies and other stakeholders have sought clarity with regard to Share Transfer Forms executed before 1st April, 2014 as per earlier Form 7B but which are yet to be accepted/ registered by companies.

  - It has now been clarified by the MCA, that since transaction relating to transfer of shares is a contract between two or more persons/shareholders, any share transfer form executed before 1st April, 2014 and submitted to the company concerned within the period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such share transfer form, executed prior to 1st April, 2014, is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc.

  - In case a company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within a period of one month from the date of receipt of the transfer instrument by the company as provided under section 56(4)(c) of CA, 2013.

- **Delegation of powers by board under rule 6(2)(a):**

  - Clarification was sought whether the powers of the Board provided under rule 6(2)(a) of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of duplicate share certificates can be exercised by a Committee of Directors.

- The matter was examined in light of the relevant provisions of the CA,2013 particularly sections 179 & 180 and regulation 71 of Table "F" of Schedule I and it is **clarified by the MCA that a committee of directors may exercise such powers, subject to any regulations imposed by the Board in this regard.**

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/General_Circular_19_2014.pdf

K. Constitution of Audit Committee and Nomination and Remuneration Committee

➢ The existing Rule 6 of the Companies (Meetings and Powers of Board) Rules, 2014 deals with the Committees of the Board and states as follows:

"The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board:

i. All public companies with a paid up capital of Rs. 10 Crore or more;
ii. All public companies having turnover of Rs. 100 Crore or more;
iii. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 50 Crore or more.

Explanation: The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, **as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule**."

➢ MCA vide Notification No. G.S.R. 398(E) dated June 12, 2014 amended the Companies (Meetings and Powers of Board) Rules, 2014. In the Companies (Meetings and Powers of Board) Rules, 2014, in Rule 6, after the explanation, the following shall be inserted, namely:

"Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 (1 of 1956) shall constitute their Audit Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier :

Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier."

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/Notification_120614.pdf

L. Notification for the Official Liquidator at Hyderabad having territorial jurisdiction in the whole State of Telangana

➢ MCA vide Notification No. S.O. 1524(E) dated June 13, 2014, exercised the powers conferred by section 448 of the Companies Act, 1956 (1 of 1956), established the office of the Official Liquidator at Hyderabad having territorial jurisdiction for the purposes of the said Act for discharging the functions of the Official Liquidator in the whole State of Telengana and appointed the Official Liquidator at Hyderabad as Official Liquidator for the liquidation of companies under the said Act in the State of Telengana.

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/Notification_13062014_2.pdf

M. Notification for ROC at Hyderabad having territorial jurisdiction in the whole State of Telangana

- MCA vide Notification No S.O. 1525(E) dated June 13, 2014 exercised the powers conferred by sub-section (1) and sub-section (2) of Section 396 of the Companies Act, 2013 (18 of 2013), to establish the office of the Registrar of Companies at Hyderabad having territorial jurisdiction in the whole State of Telengana for discharging the functions of the Registrar of Companies under the various provisions of the said Act and appoints the Registrar of Companies, Hyderabad as Registrar of Companies for the purpose of registration of companies under the said Act in the State of Telengana.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/Notification_13062014_3.pdf

N. Clarification with regard to voting through electronic means

- Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means). The provisions seek to ensure wider shareholders participation in the decision making process in companies. However, there are some practical difficulties in respect of general meetings which are to be held in the next few months.

- As compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/postal ballot etc will be taking some more time. Accordingly, it has been decided by the MCA vide Circular No. 20/2014 dated June 17,2014 **that the relevant provisions shall not be treated as mandatory till 31st December, 2014.** The relevant notification in this regard is being issued separately.

- To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided as follows:

i. Show of hands not to be allowed in case of e-voting:

Section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

Hence, in every listed company or a company having not less than one thousand shareholders, voting by show of hands would not be allowed.

ii. Participation in the general meeting after voting by e-means:

It is clarified by MCA that **a person who has voted through e-voting mechanism** in accordance with Rule 20 **shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.**

iii. Applicability of rule 20 for matters specified under rule 22(16):

Pursuant to Section 110(1) (a), the following items of business shall be transacted only by means of voting through a postal ballot-

a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
b) alteration of articles of association in relation to insertion or removal of provisions which, under section 2 (68), are required to be included in the articles of a company in order to constitute it a private company;
c) change in place of registered office outside the local limits of any city, town or village as specified in section 12 (5);

d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under section13 (8);
e) issue of shares with differential rights as to voting or dividend or otherwise under section 43 (ii) (a);
f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
g) buy-back of shares by a company under section 68 (1);
h) Appointment of director elected by small shareholders under section 151 of the Act;
i) sale of the whole or substantially the whole of an undertaking of a company as specified section 180 (1) (a);
j) giving loans or extending guarantee or providing security in excess of the limit specified under section 186 (3):

- Stakeholders had sought clarification from MCA whether matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facility is available.

- **The matter has been examined by MCA and it is stated that in view of clear provisions of section 11O (1) (a) read with such rule 22(16) it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.**

iv. Relevance of provisions relating to demand for poll:

- In case of companies having share capital, voting through e-means takes into account 'Proportion principle' [i.e. 'one share - one vote'] unlike 'one person - one vote' principle under 'show of hands'.

- This along with provisions of section 107 (voting by show of hands) make it clear that in case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules i.e. **in case of every listed company or a company having not less than one thousand shareholders, the provisions relating to demand for poll would not be relevant.**

v. Permissibility of voting by postal ballot under rule 20:

- Stakeholders have sought a clarification that in cases (covered under rule 20) where a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e-means whether such a person shall have the option to vote through postal ballot.

- The matter has been examined by MCA and it is felt that keeping in view the provisions of the Act such an option would not be available.

- **Therefore, a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e-means such a person shall not have the option to vote through postal ballot.**

vi. Manner of voting in case of shareholders present in the meeting:

- Stakeholders have sought clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified by the MCA, that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.

vii. Applying rule 20 voluntarily:

- Stakeholders have referred to words 'A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system ' appearing in Rule 20(3), which states the procedure to be followed for voting by electronic means and have raised a query whether Rule 20 is applicable to companies not covered in rule 20(1) i.e. for companies other than every listed company or a company having less than one thousand shareholders.

- It is clarified by the MCA that Rule 20(3) is being amended to align it with Rule 20(1). Regarding voluntary application of Rule 20, **it is clarified by MCA that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in Rule 20 shall be applicable to such a company.** This is necessary so that any piece-meal application does not prejudice the interest of shareholders.

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/General_Circular_20_2014.pdf

O. The Companies (Share Capital and Debentures) Amendment Rules, 2014

➢ MCA vide Notification No G.S.R. 413.(E) amended the Companies (Share Capital and Debentures) Rules, 2014. Some of the key highlights of the said notification are as follows:

- For the purposes of Rule 4(6) it is hereby clarified by the MCA that equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956 (1 of 1956) and the rules made there under, shall continue to be regulated under such provisions and rules."

- The following sub- rule is inserted after Rule 13(2), namely :
"The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer."

➢ The link of the notification is as below:
http://www.mca.gov.in/Ministry/pdf/Notification_18062014.pdf

P. Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

➢ MCA has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as 'the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013.

➢ MCA vide Circular No. 21 dated June 18, 2014 provided clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR') which are as under:

➢ The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Act, the entries in the said Schedule VII must be **interpreted liberally** so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure to the said circular.

- It was further clarified by the MCA that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. **One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.**

- Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act, 2013.

- Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

- "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

- Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

- 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

- Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

- The link of the notification is as below:
  file:///C:/Documents%20and%20Settings/admin/Desktop/General_Circular_21_2014.pdf

Q. Clarification with regard to format of Annual Return applicable for Financial Year 2013-14 and fees to be charged by companies for allowing inspection of records.

- Government has received requests for clarification about the applicability of form of annual return (MGT-7) prescribed under rule 11 (1) of the Companies (Management and Administration) Rules, 2014 for financial year(s) commencing earlier than 1st April, 2014. The matter has been examined in the light of provisions of section 92(1) of the Act which requires annual return to contain particulars as they stood on the close of the financial year.

- **MCA vide Circular No. 22 dated June 25, 2014, clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956, i.e. in Form 20B.**

- Companies have also sought clarity about permitting free of cost inspection of records under rule 14(2) and rule 16 of the rules cited above and till a fee is prescribed for the purpose in the Articles. It is clarified that until the requisite fee is specified by companies, inspections could be allowed without levy of fee.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_22_2014.pdf

R. Clarification relating to incorporation of a company i.e. company Incorporated outside India

- Government has received references seeking clarity about the status of subsidiaries incorporated/to be incorporated by companies incorporated outside India. Attention has, in particular, been drawn to the absence of the deeming provision of section 4 (7) of the Companies Act, 1956 in the Companies Act, 2013.

- The matter has been examined in the Ministry in the light of sections 2(68) definition of private company, 2(71) definition of public company and 2(87) definition of subsidiary company of the CA, 2013Act.

- MCA vide Circular No. 23 dated June 25, 2014 that **there is no bar in the CA 2013, for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company, as the case may be, without any change in the incorporation status of such company.**

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_23_2014.pdf

S. Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013

- In continuation of the General circular No. 20/2013 dated December 27, 2013 where MCA had clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

- MCA vide Circular No. 24/2014 dated June 25, 2014 further clarified that **the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company'** under section 2(6) of the Companies Act, 2013.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_24_2014.pdf

T. Clarification on applicability of requirement for Resident Director

- Section 149(3) of the Companies Act, 2013 (Act) requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Government has received requests from stakeholders for clarification with regard to applicability of these provisions in the current calendar/financial year.

- MCA vide Circular No. 25/2014 dated June 26, 2014 clarified that the' residency requirement' would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014, **The first 'previous calendar year' for compliance with these provisions would, therefore, be Calendar year 2014.** The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 i.e. 1st April to 31st December. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India during Calendar year 2014, shall exceed 136 days.

- Regarding newly incorporated companies it is clarified by MCA, that companies incorporated between 1st April, 2014 to 30th September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30th September, 2014 need to have the resident director from the date of incorporation itself.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_25_2014.pdf

U. Clarification with regard to use of the words "Commodity Exchange" in a company-reg.

- In continuation of MCA circular No. 02/2014 dated February 11, 2014 where MCA had intimated Companies/Limited Liability Partnerships (LLPs) for prohibiting the use of word “National” in their names unless it is a Government Company and the Central / State Government(s) has a stake in the Company. Similarly, the words like “Bank” and “Stock Exchange” or “Exchange” should be used by an entity only after obtaining a “No Objection Certificate” from Reserve Bank of India and Securities Exchange Board of India (SEBI) respectively.

- In continuation of the above mentioned circular, MCA vide circular No. 26/2014 dated June 27, 2014 clarified the use of the word *"Commodity Exchange" may* be allowed only where a "No Objection Certificate" from the Forward Markets Commission *(FMC)* is furnished by the applicant. All other provisions of the Companies (Incorporation) Rules, 2014 will continue to be applicable.

- It was also further clarified that the certificate from Forward Markets Commission will also be required in cases of companies registered with the words" *Commodity Exchange'* before the issue of the said circular.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_26_2014.pdf

V. Clarification regarding filing of Form DPT4 under Companies Act, 2013.

- As per section 74(1) (a) of the Companies Act, 2013and the companies (Acceptance of Deposits) Rules, 2014 made there under, companies are required to file a statement regarding deposits existing as on date of commencement of the Act within a period of 3 months from such commencement. The time for filing of said statement expired on 30-06-2014.

- After considering the reference received to the Ministry, MCA vide Circular No. 27/2014 dated June 30, 2014 decided to grant **extension of time for the period of 2 months i.e. up to August 31, 2014 without any additional fee in terms of section 403 of the Act to enable the companies for filing of statement under Form DPT4 with the Registrar**.

- The link of the notification is as below:
  http://www.mca.gov.in/Ministry/pdf/General_Circular_27_30062014.pdf

RBI UPATES

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

- RBI vide Circular No. 138 dated 3rd June, 2014 **enhanced the eligibility limit for foreign exchange remittances under the Liberalised Remittance Scheme from USD 75,000 per financial year (April-March) to USD 125,000 with immediate effect.**

- Accordingly, AD Category –I banks may now allow remittances up to USD 125,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both.

- The Scheme should not be used for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR138LR0614.pdf

B. Foreign investment in the Insurance Sector – Amendment to the Foreign Direct Investment Scheme

- RBI vide Circular No. 139 dated 5th June, 2014 brought to the attention of Authorised Dealers Category – I (AD Category - I) to Annex B of Schedule 1 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, wherein entry route, sectoral cap and other conditions for sectors/activities in which FDI is permitted are specified. In terms of the Schedule ibid, Foreign Direct Investment (FDI) up to 26 % is permitted under automatic route in insurance sector.

- The extant FDI policy for insurance sector has since been reviewed. Accordingly, effective from February 4, 2014, foreign investment by way of FDI, investment by FIIs/FPIs and NRIs up to 26% under automatic route shall be permitted in insurance sector subject to the conditions specified in the Press Note 2 (2014 Series) dated February 4, 2014 which are as follows:

Sr. No	Sector/ Activity	% of FDI Cap/ Equity	Entry route
1	Insurance		
	(i) Insurance Company (ii) Insurance Brokers (iii)Third party Administrators (iv) Surveyors and Loss Assessors	26% (FDI+FII+NRI)	Automatic
2	Other conditions		
	(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route.		
	(2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.		
	(3)The provisions of paragraphs 6.2.17.2.2(4)(i) (c) & (e), relating to 'Banking – Private Sector', shall be applicable in respect of bank promoted insurance companies.		
	4) Indian Insurance Company is defined as a company: (a) which is formed and registered under the Companies Act, 1956; (b) in which the aggregate holdings of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed 26% paid-up equity capital of such Indian insurance company; (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.		

	(5) As per IRDA (Insurance Brokers) Regulations, 2002,"insurance broker" means a person for the time-being licensed by the Authority under regulation 11, who for remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients.		
	(6) As per IRDA (TPA - Health Services) Regulations, 2001, "TPA" means a Third Party Administrator who, for the time being, is licensed by the Authority, and is engaged, for a fee or remuneration, by whatever name called as may be specified in the agreement with an insurance company, for the provision of health services.		
	(7) Surveyors and Loss Assessors will be governed by the IRDA Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000		

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APN050614FL.pdf

C. Foreign investment in India – participation by registered FPIs, SEBI registered long term investors and NRIs in non-convertible/redeemable preference shares or debentures of Indian companies

- As per the extant RBI policies SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long term investors registered with SEBI, may purchase, on repatriation basis, Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time. The present limits for investments by FIIs/FPIs, QFIs and long term investors registered with SEBI in corporate debt stands at USD 51 billion.

- As per the existing policies, an Indian company is permitted to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.

- RBI vide Circular No. 140 dated 6th June, 2014 has now decided to allow registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) deemed as registered Foreign Portfolio investors, registered Foreign Portfolio Investors (FPIs), long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company in and listed on recognized stock exchanges in India, within the overall limit of USD 51 billion earmarked for corporate debt. Further, NRIs may also invest, both on repatriation and non-repatriation basis, in non-convertible/redeemable preference shares or debentures as above.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C140AP060614F.pdf

D. Transfer of assets of Liaison Office (LO) / Branch Office (BO) / Project Office (PO) of a foreign entity either to its Wholly Owned Subsidiary (WOS) / Joint Venture (JV) / Others in India– Delegation of powers to AD Banks.

- As per the existing RBI policies prior approval of RBI is required for transferring assets of LO/BO to their subsidiaries or other LO/BO or to any other entity. Presently ADs are delegated with powers to allow closure of the accounts of LO/BO and repatriate the surplus balances subject to submission of prescribed closure documents.

- With a view to smoothen the entire process of closure of LO/BO/PO, it has been decided by RBI vide Circular No. 142 dated 12th June, 2014 to delegate the powers relating to transfer of assets of LO/BO/PO to AD Category-I banks subject to compliance with the following stipulations:

  a. Such proposals will be considered only from LO/BOs who are adhering to the operational guidelines stipulated by RBI such as
     i. submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation) and
     ii. Obtained PAN from IT Authorities and have got registered with ROC under Companies Act 1956. Similarly, proposals from POs should conform to the guidelines issued by RBI with regard to initial reporting requirements and submission of CA certified annual report indicating project status.

  b. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or WDV value and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.

  c. The assets should have been acquired by the LO/BO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included. AD bank should scrutinize and ensure that no revenue expenses such as lease hold improvements incurred by LO/BOs are capitalised and transferred to JV/WOS.

  d. AD bank to ensure payment of all applicable taxes while permitting transfer of assets.

  e. Transfer of assets to be allowed by AD banks only when the foreign entity intends to close their LO/BO/PO operations in India.

  f. Credits to the bank accounts of LO/BO/PO on account of such transfer of assets will be treated as permissible credits.

g. The relevant documents are to be preserved separately for scrutiny by their own auditors and RBI auditors

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP142120614F.pdf

E. Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies – Revised format

- RBI vide Circular No. 145 dated June 18, 2014 brought to the attention of the Authorised Dealer Category – I banks to A.P. (DIR Series) Circular No.133 dated June 20, 2012 which stipulated that all Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year, should file the annual return on Foreign Liabilities and Assets (FLA) in the soft form to the Reserve Bank by July 15 every year.

- In order to collect information on Indian companies' Outward Foreign Affiliated Trade Statistics (FATS) as per the multi-agency global 'Manual on Statistics of International Trade in Services', the FLA return has been modified marginally by RBI and is made available on the RBI website (www.rbi.org.in → Forms category → FEMA Forms) along with the related FAQs (www.rbi.org.in → FAQs category → Foreign Exchange).

- RBI has therefore amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2014 which have been notified vide Notification No. FEMA.307/2014-RB dated May 26, 2014, vide G.S.R. No. 400(E) dated June 12, 2014.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FLR180614FLS.pdf

F. Enhanced facilities for residents and non-residents

- As per the extant Regulation of Foreign Exchange Management (Export and Import of Currency) (Amendment) Regulations, 2009, any person resident in India may take outside India or having gone out of India on a temporary visit, may bring into India (other than to and from Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.10,000/-.

- In view of the evolving economic conditions and with a view to facilitating travel requirements of residents travelling aboard as well as non-residents visiting India, it has been decided by RBI vide Circular No. 146 dated June 19, 2014 **to allow all residents and non-residents (except citizens of Pakistan and Bangladesh and also other travelers coming from and going to Pakistan and Bangladesh) to take out Indian currency notes up to Rs. 25,000/- while leaving the country.** An announcement to this effect was made in the Second Bi-Monthly Monetary Policy Statement, 2014-15 released on June 3, 2014.

- Accordingly, any person resident in India:

  i. may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000/- ; and

  ii. who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000 /-.

- Any person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveler coming from and going to Pakistan and Bangladesh, and visiting India:

  i. may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000 /-while exiting only through an airport.

  ii. may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000/- while entering only through an airport.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/146APDIR19062014.pdf

G. Participation of Residents in the Exchange Traded Currency Derivatives (ETCD) market

- In terms of the present regulatory framework, domestic participants in the currency futures and exchange traded options markets are not required to have any underlying exposure while requirement of underlying is mandatory for taking a position in the over-the-counter (OTC) derivatives markets.

- With a view to bringing about an alignment between the two markets, RBI vide Circular No. 147 dated June 20, 2014 decided that henceforth domestic participants in the currency futures and exchange traded currency options will be subject to certain terms and conditions, some of which are as follows:

- Domestic participants shall be allowed to take a long (bought) as well as short (sold) position upto USD 10 million per exchange without having to establish the existence of any underlying exposure. For the purpose of convenience, exchanges may prescribe a fixed limit for the contracts in currencies other than USD such that the limit is within the equivalent of USD 10 million.

- Domestic participants who want to take a position exceeding USD 10 million in the ETCD market will have to establish the existence of an underlying exposure. The procedure for the same shall be as under:

  i. For participants who are exporters or importers of goods and services, the eligible limit up to which they can take appropriate hedging positions in ETCDs will be determined as:

     a. higher of the (I) average of the last three years' export turnover, or (II) previous year's export turnover, in case they are exporters and
     b. 50% of the higher of the (I) average of their last three years' imports turnover or (II) the previous year's turnover, in case they are importers.

  ii. The participants shall furnish, to the trading member of the exchange, a certificate(s) from their statutory auditors regarding the limit(s) mentioned above along with an undertaking signed by the Chief Financial Officer (CFO) to the effect that at all time, the sum total of the outstanding OTC derivative contracts and the outstanding ETCD contracts shall be corresponding to the actual exports or imports contracted, as the case may be.

  iii. Based on the above certificate, a trading member can book ETCD contracts upto 50% of the eligible limit [as at paragraph (i) above] on behalf of the concerned customer. If a participant wishes to take position beyond the 50% of the eligible limit in the ETCD, it has to produce a certificate from the statutory auditors certifying that the sum total of the outstanding OTC derivative contracts and outstanding ETCD contracts has generally been in correspondence with the eligible limits. Based on such a certificate, the trading member can book ETCD contracts beyond fifty per cent of the limit and up to limit mentioned in paragraph (i) above.

iv. For all other participants having an underlying foreign currency exposure in respect of both current and capital account transactions as also exporters and importers who wish to access the ETCD market on the basis of contracted exposure, they will have to undertake the transaction through AD Category-I bank/s who are operating as trading members. In such cases, the responsibility for verification of the underlying exposures and ensuring that the ETCD bought/sold is in conformity with the underlying exposure and that no OTC contract has been booked against the same underlying exposure shall rest with the concerned (AD Category I bank) trading member.

v. All participants in the ETCD market, except those covered by paragraph (iv) above, will be required to submit to the concerned trading member of the exchange a half-yearly certificate from their statutory auditors as on March 31st and September 30th, within fifteen days from the said dates, to the effect that during the preceding six months, the derivative contracts entered into by the participant in the OTC and the ETCD markets put together did not exceed the actual exposure.

- It may be noted that the onus of complying with the provisions of the said circular rests with the participant and in case of any contravention the participant shall render itself liable to any action that may be warranted as per the provisions of Foreign Exchange Management Act, 1999 and those of the Regulations, Directions etc. framed there under.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP147200614F.pdf

H. Guidelines relating to participation of Foreign Portfolio Investors (FPIs) in the Exchange Traded Currency Derivatives (ETCD) market

- As per the extant Regulations of Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 only persons resident in India shall participate in the currency futures and exchange traded currency options market in India subject to certain terms and conditions.

- It has now been decided by RBI vide Circular No. 148 dated June 20, 2014 to allow foreign portfolio investors (FPIs) eligible to invest in securities as laid down in Schedules 2, 5, 7 and 8 of the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000 (FEMA 20/2000-RB dated May 3, 2000 (GSR 406 (E) dated May 23, 2000)) as amended from time to time to enter into currency futures or exchange traded currency options contracts subject to the following terms and conditions:

  a. FPIs will be allowed access to the currency futures or exchange traded currency options for the purpose of hedging the currency risk arising out of the market value of their exposure to Indian debt and equity securities.
  b. Such investors can participate in the currency futures / exchange traded options market through any registered / recognised trading member of the exchange concerned.
  c. FPIs can take position – both long(bought) as well as short(sold) – in foreign currency up to USD 10 million or equivalent per exchange without having to establish existence of any underlying exposure. The limit will be both day-end as well as intra-day.
  d. An FPI cannot take a short position beyond USD 10 million at any time and to take a long position beyond USD 10 million in any exchange; it will be required to have an underlying exposure. The onus of ensuring the existence of an underlying exposure shall rest with the FPI concerned.
  e. The exchange will, however, be free to impose additional restrictions as prescribed by the Securities and Exchange Board of India (SEBI) for the purpose of risk management and fair trading.

f. The exchange/ clearing corporation will provide FPI wise information on day end open position as well as intra-day highest position to the respective custodian banks. The custodian banks will aggregate the position of each FPI on the exchanges as well as the OTC contracts booked with them (i.e. the custodian banks) and other AD banks. If the total value of the contracts exceeds the market value of the holdings on any day, the concerned FPI shall be liable to such penal action as may be laid down by the SEBI in this regard and action as may be taken by Reserve Bank of India under the Foreign Exchange Management Act (FEMA), 1999. The designated custodian bank will be required to monitor this and bring transgressions, if any, to the notice of RBI / SEBI.

- The link of the notification is as below:
  http://rbidocs.rbi.org.in/rdocs/notification/PDFs/148APD20062014.pdf

SEBI UPATES

A. Investments by FPIs in Non-Convertible / Redeemable preference shares or debentures of Indian companies

- Pursuant to the Reserve Bank of India (RBI) circular RBI/2013-14/632 dated June 06, 2014, SEBI vide Circular No. 13/2014 dated June 17, 2014 decided as follows:

  a. In terms of the RBI circular A.P. (DIR Series) Circular No. 84 dated January 06, 2014, an Indian company is permitted to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.

  b. FPIs are permitted to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company in terms of the above RBI circular and listed on recognized stock exchanges in India.

  c. The investments by FPIs in the abovementioned securities shall be reckoned against the Corporate Debt Investment Limits (US$ 51 billion).

- The above mentioned Circular shall have immediate effect.

- The link of the notification is as below:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403003705859.pdf

B. Disclosures in the Prospectus for Public Issue of Debt securities

- SEBI vide Circular No. 12/2014 dated June 17, 2014 revised the limits with respect to Base Issue Size, Minimum Subscription, Retention of Over-Subscription Limit in case of Public Issue of Debt securities, further in the said circular, the SEBI has also added the requirement of giving more disclosures in the Prospectus for Public Issue of Debt securities. The following are some of the highlights of the Circular.

- Minimum Subscription Limit:

  a. Section 69 of the Companies Act, 1956 specifies that no allotment shall be made of any share capital of a company, offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount has been subscribed. As per Schedule II to the Companies Act, 1956, the issuer is required to make a declaration about refund of the issue, if minimum subscription of 90% of the issue size is not received.

b. However, for public issue of non-convertible debentures (NCDs), no such requirement is specified under Companies Act, 1956. Further, as per Regulation 12 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (SEBI ILDS Regulations), the issuer may decide the amount of minimum subscription, which it seeks to raise from public through issue of NCDs and disclose the same in the offer document.

c. Companies Act, 2013 and the Rules made there under also do not specify the quantum of minimum subscription needed in case of public issues (both for equity and debt), but only requires disclosure of the same in the offer document.

d. In view of the above, it has been decided that the minimum subscription for public issue of debt securities shall be specified as 75% of the base issue size for both NBFCs and Non NBFC issuers.

e. Further, if the issuer does not receive minimum subscription of its base issue size (75%), then the entire application monies shall be refunded within 12 days from the date of the closure of the issue. In the event, there is a delay, by the issuer in making the aforesaid refund, then the issuer shall refund the subscription amount along with interest at the rate of 15% per annum for the delayed period.

f. However, the issuers issuing tax-free bonds, as specified by CBDT, shall be exempted from the above proposed minimum subscription limit.

- Base Issue Size:

  In any public issue of debt securities, it has been decided that the Base Issue size shall be minimum Rs 100 Crores.

- Retention of Over-Subscription Limit:

  a. Currently, in respect of public issue of NCDs, SEBI ILDS Regulations does not specify any maximum cap on the retention of over-subscription.

  b. In general, issuers shall be allowed to retain the over-subscription money up to the maximum of 100% of the Base Issue size or any lower limit as specified in the offer document. However, for the issuers filing a shelf prospectus, they can retain oversubscription up to the rated size, as specified in their Shelf Prospectus.

- The issuers of tax free bonds, who have not filed Shelf Prospectus, the limit for retaining the oversubscription shall be the amount, which they are authorised by CBDT to raise in a year or any lower limit, subject to the same being specified in the offer document.

- The link of the notification is as below:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403065620622.pdf

C. Guidelines on disclosures, reporting and clarifications under AIF Regulations

- SEBI vide Circular No. 14/2014 dated June 19, 2014 decided to provide certain clarifications on the AIF Regulations, increase transparency to the investors and provide reporting norms for AIFs. Some of the clarifications provided in the said Circular are as under:

i. Submission of information to SEBI under sub-regulation (1) of Regulation (3) of AIF Regulations

   a. Circular no. CIR/IMD/DF/10/2013 dated July 29, 2013 requires that all Category III AIFs report to the custodian on a daily basis the amount of leverage at the end of the day (based on closing prices) and whether there has been any breach of limit during the day.

b. It has been observed that with respect to reporting of amount of leverage at the end of the day, the AIF is dependent on various parties in order to calculate and submit to the custodian the amount of leverage as at the end of the day. Such various parties provide information at varied time periods due to which the AIFs are finding it difficult to report to the custodian the amount of end-of-day leverage on the same day.

c. Therefore, in part modification of the aforesaid circular dated July 29, 2013, all Category III AIFs shall report to the custodian the amount of leverage at the end of the day (based on closing prices) by the end of next working day.

ii. Compliance Test Report (CTR)

a. At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued there under in the format as specified in the Annexure to this circular.
b. In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.
c. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.
d. In case any violation of AIF Regulations or circulars issued there under is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible.

- The link of the notification is as below:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403173065618.pdf

D. Minimum Assets under Management (AUM) of Debt Oriented Schemes

- It has been observed by the SEBI that many debt oriented schemes are operating with a very low AUM. In the interest of investors, it is important that debt oriented schemes have an adequate corpus to ensure adherence to the investment objectives as stated in Scheme Information Document and compliance with investment restrictions specified under SEBI (Mutual Funds) Regulations, 1996.

- In this regard, it has been decided by SEBI vide Circular No. 15/2014 dated June 20, 2014 as follows:

a. The minimum subscription amount of debt oriented and balanced schemes at the time of new fund offer shall be at least `Rs. 20 Crores and that of other schemes shall be at least ` Rs. 10 Crores.

b. An average AUM of `Rs. 20 Crores on half yearly rolling basis shall be maintained for open ended debt oriented schemes.

c. The existing open ended debt oriented schemes shall comply with point (b) stated above within one year from the date of issue of this circular.

d. In case of breach of points (b) and (c) above, the AMC shall scale up the AUM of such scheme within a period of six months so as to comply with point (b) stated above, failing which the provisions of Regulation 39 (2) (c) of SEBI (Mutual Funds) Regulations, 1996 would become applicable.

e. The confirmation on compliance of the above shall be reported to SEBI in the Half Yearly Trustee Reports.

- The link of the notification is as below:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403264878657.pdf

E. Alignment of Employment benefit schemes with the SEBI (ESOS and ESPS) Guidelines, 1999

- SEBI vide circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013, inter alia, made certain amendments to the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 {"SEBI (ESOS and ESPS) Guidelines, 1999"} and employee benefit schemes involving securities of the company were required to be aligned with the SEBI (ESOS and ESPS) Guidelines, 1999. The time line for alignment was subsequently extended vide aforesaid circulars dated May 13, 2013 and November 29, 2013.

- Meanwhile, following a consultative process, SEBI Board has approved certain proposals for framing a new set of regulations concerning employee benefit schemes dealing in shares of the company. The new regulations shall come into force as and when notified.

- SEBI vide Circular No. 3/2014 dated June 27, 2014 decided to modify the said circular dated November 29, 2013 to extend the time line for aligning existing employee benefit schemes with the SEBI (ESOS and ESPS) Guidelines, 1999 till the new regulations are notified. However, it is reiterated that prohibition on acquiring securities from the secondary market shall continue till the existing schemes are aligned with the new regulations to be notified.

- The link of the notification is as below:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403863227016.pdf

ARTICLE OF THE MONTH

RESOLUTIONS AND AGREEMENTS TO BE FILED WITH THE REGISTRAR OF COMPANIES

The Companies Act, 2013 (CA 2013) which received the assent of the President on 29 August, 2013 has made significant changes in the manner in which the Companies are governed. In order to ensure greater control and compliance over the private companies, the Act, 2013 has withdrawn most of the exemptions as available under the Companies Act, 1956.

Section 117 of the CA 2013 states the list of Resolutions and Agreements which are required to be filed with the Registrar.

- **Resolutions which are required to be filed with RoC as per Section 117:**
    1. Special Resolution
    2. Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
    3. Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
    4. Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
    5. Resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (*a*) and clause (*c*) of sub-section(*1*) of section 180 of CA 2013 i.e. to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings and to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business as specified under;
    6. Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

- **Resolutions required to be filed with RoC as per Section 179**
    1. To make call on shareholders in respect of money unpaid on their shares;
    2. To authorize buy-back of Securities under Section 68;
    3. To issue securities, including debentures, whether in or outside India;
    4. To borrow monies;
    5. To invest the funds of the Company;
    6. To grant loans or give Guarantee or provide security in respects of Loans;
    7. To approve the Financial Statement and the Board's Report;
    8. To diversify the business of the company;
    9. To approve amalgamation, merger or reconstruction;
    10. To take over a Company or acquire a controlling or substantial stake in another Company;

- **Resolutions required to be filed as per Rule No. 8 of the Companies (Meetings of Board and its Powers) Rules, 2014**

1. To make political contributions;
2. To appoint or remove key managerial personnel (KMP);
3. To take note of appointment(s) or removal(s) of one level below the Key Management Personnel; (Please send us structure of Organisation)
4. To appoint internal auditors and secretarial auditor;
5. To take note of the disclosure of director's interest and shareholding;
6. To buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
7. To invite or accept or renew public deposits and related matters;
8. To review or change the terms and conditions of public deposit;
9. To approve quarterly, half yearly and annual financial statements or financial results as the case may be.

- **Period within which the resolutions are required to be filed :**

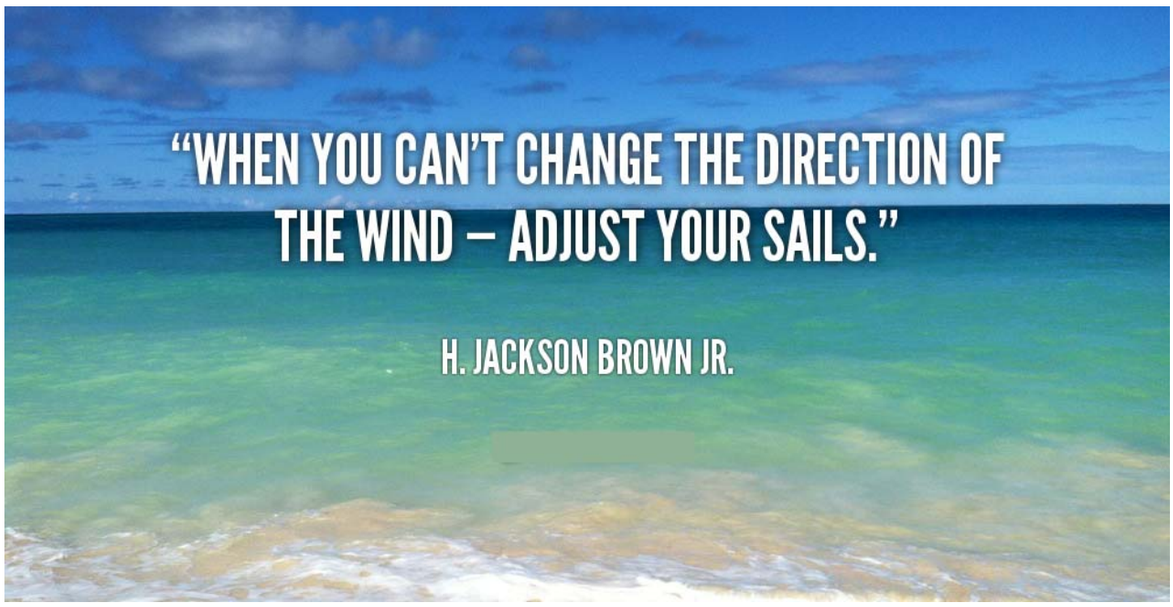
Copy of every resolution or any agreement, in respect of matters specified above, together with the explanatory statement if required as per section 102 of the CA 2013, shall be filed in Form MGT 14 with the Registrar **within 30 days from** the date of passing of such resolution.

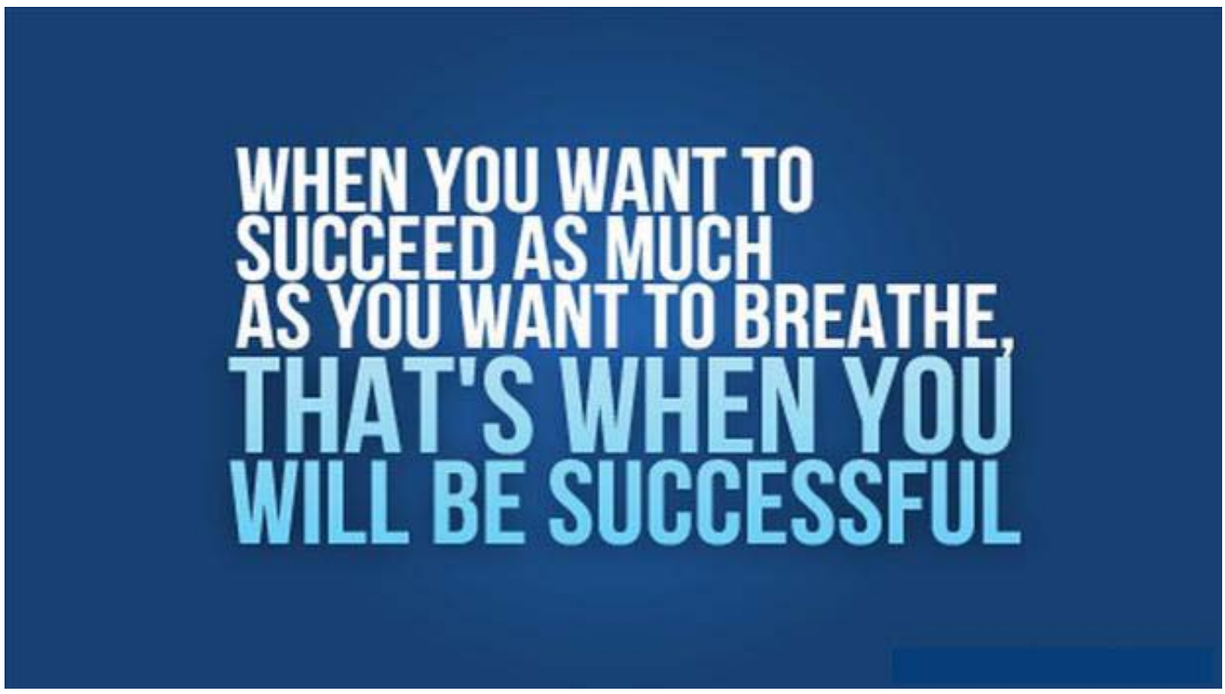
The copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in Section 117 (*3*) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

- **Penalties for non – compliance :**

If a company fails to file the resolution or the agreement before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than Rs. 5 Lacs but which may extend to Rs. 25 Lacs and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than Rs.1 Lacs but which may extend to Rs. 5 Lacs.

INSPIRATIONAL QUOTES





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