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Newsletter for June, 2016

By Amita Desai & Co.



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MCA UPDATES:

A. CONSTITUTION OF NATIONAL COMPANY LAW TRIBUNAL

- The Ministry of Corporate Affairs (“MCA”) has issued a notification no. S.O. 1932(E) S.O. 1933(E) and S.O. 1934(E). — dated June 1, 2016 constituting of National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) with effect from June 01, 2016. With the constitution of NCLT, the Company Law Board constituted under Companies Act, 1956 stands dissolved. MCA in its notification has also listed out eleven Benches, its location and the territorial jurisdiction of the Benches.
- For detail information about constitution of NCLT kindly refer Article/News Alert using below mentioned link:
<http://www.amitadesai.com/images/uploads/downloads/News%20alert%20NCLT%2001%20June%202016.pdf>
- The link of the above Notification is as under:
http://www.mca.gov.in/Ministry/pdf/Notification_02062016_II.pdf

B. LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES 2016

- Ministry of Corporate Affairs (“MCA”) vide notification dated June 10, 2016 has issued Limited Liability Partnership rules (Second Amendment) Rule, 2016.
- As per the Notification following forms were revised in following manner:
 - In Form 2 (Incorporation document and subscribers statement) and Form 4 (Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner. and consent to become a partner/designated partner) the words “**Name of Partner(s)**” were substituted by words “**Name of Nominee(s)**”;
 - Form 3 (Information with regard to limited liability partnership agreement and changes, if any, made therein) additional information of “**Nominees**” is required to be given.
- The link of the above Notification is as under;
http://www.mca.gov.in/Ministry/pdf/LLP_Second_Amendment_Rules_2016.pdf

C. COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014

Ministry of Corporate Affairs (“MCA”) vide notification dated June 29, 2016 has issued Companies (Acceptance of Deposits) Amendment Rule, 2016. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principle rules) following major amendment are introduced:

1. **Following Receipts by the Company falls outside the ambit of Public Deposit**
 - a) Any amount raised by issue of secured CCDs (compulsorily convertible debenture), **convertible into shares of the Company within 10 years** (earlier it was 5 year).
 - b) Any amount raised by issue of **Listed unsecured NCD (non-convertible debenture)** on recognized stock exchange.
 - c) Any non-interest bearing amount **received and held in trust**.(earlier it was any non-interest bearing amount **received or held in trust**)
 - d) Any amount received as an advance towards consideration for providing future services in the form of a **warranty or maintenance contract** as per **written agreement** or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or 5 years from the date of acceptance of such service whichever is less.
 - e) Any amount received as an advance and as allowed by **any sectoral regulator or in accordance with directions of Central or State Government**.
 - f) Any amount received as an advance for subscription towards **publication**, whether in **print or in electronic** to be adjusted against receipt of such publications
 - g) Any amount received by way of subscription in respect of a **chit under the Chit Fund Act, 1982**
 - h) Any amount received by the Company under any **collective investment scheme**
 - i) An amount of **25 lac or more received by start up Company** by way of convertible note (Convertible into Equity Shares or repayable **within a period not exceeding 5 years** from the date of issue) in a **single trench from a person**.
 - j) Any amount received by a Company from **AIF (Alternate investment funds), domestic venture capital funds and MF (Mutual Funds)** registered with SEBI.
- For detail information about constitution of NCLT kindly refer Article/News Alert using below mentioned link:
<http://www.amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Desposit%20&%20Managerial%20rem%20Rules%202014.pdf>
- The link of the above Notification is as under:
http://www.mca.gov.in/Ministry/pdf/Rules_30062016.pdf

D. COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2016

Ministry of Corporate Affairs (“MCA”) vide notification dated June 30, 2016 amended Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016.

1. **Form MR- 1 is not required to be filed** for appointment of following KMPs
 - a) Chief Executive Officer (CEO),
 - b) Company Secretary (CS)
 - c) Chief Financial Officer (CFO)
2. **Following disclosures are not required to be made in Board’s Report of Listed Companies:**
 - a) the explanation on the relationship between average increase in remuneration and company performance;
 - b) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
 - c) variations in the market capitalization of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
 - d) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
 - e) the key parameters for any variable component of remuneration availed by the directors;
 - f) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.
3. **Discloser in Board Report** of top ten employees in terms of remuneration drawn and the name of every employee who is in receipt of remuneration of **Rs.1.2 crore per annum or Rs.8.5 Lac per month** is required . (Earlier the limit for such disclosure was remuneration of Rs.60 Lac per annum or Rs.5 Lac per month).

The link of the above Notification is as under;

http://www.mca.gov.in/Ministry/pdf/AmendmentRules_01072016.pdf

**E. CLARIFICATION FOR AUDITORS APPOINTMENT –
COMPANIES (REMOVAL OF DIFFICULTIES) THIRD ORDER, 2016.**

Ministry of Corporate Affairs (“MCA”) vide notification dated June 30, 2016 has provided clarification relating to section 139(2) of the Companies Act, 2013 which with respect to appointment of statutory auditors as follows:

- a) Every Listed Company;
- b) Unlisted public Company having paid up capital of Rs.10 crores or more;
- c) Private Companies having paid up capital of Rs. 20 crores or more;
- d) All Companies having paid up capital less than the aforesaid limits but having public borrowing from Financial Institution, Banks or public deposits of Rs. 20 crores or more

is required to comply with the provisions of the Section 139 (2) of the Companies Act, 2013 with respect to appointment of statutory auditors from the **first annual general meeting of the Company** held after **3 years** from the date of commencement of Companies Act, 2013 (which means by **30th September 2017**) (Before this clarification it was mentioned three years from the date of commencement of the Act, which was considered as 1st April, 2017)

The link of the above Notification is as under;

http://www.mca.gov.in/Ministry/pdf/ROD_Third_Order_2016.pdf



SEBI UPDATES:

A. INVESTOR PROTECTION FUND (IPF) OF DEPOSITORIES

- SEBI vide Circular No. 58 dated June 07, 2016 has issued circular relating to Investor Protection Fund (IPF), amending SEBI (Depositories and Participants) (Amendment) Regulations, 2012.
- SEBI has mandated the depositories to **credit 5% or such percentage as may be specified by the Board, of its profits from depository operations every year to the IPF.**
- **The IPF may be utilized for the following purposes:**
 - (i) Promotion of investor education and investor awareness programmes through seminars, lectures, workshops, publications to enhance securities market literacy.
 - (ii) To aid, assist, subsidise, support, promote and foster research activities for promotion/ development of the securities market
 - (iii) To utilize the fund for supporting initiatives of Depository Participants for promotion of investor education and investor awareness programmes
- The **Depositories are required to frame their internal guidelines on utilisation** of the funds in accordance with the aforementioned objectives and post approval of their board, submit the same to **SEBI within 30 days** and also have to intimate any changes in guidelines thereof to SEBI time to time.
- The IPF is mandated to be administered by way of a Trust created for the purpose. For contribution to the IPF and investment of funds detailed guidelines are prescribed by the SEBI with the above mentioned circular.
- The details of above Circular is given below in below link:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1465305439512.pdf

B. KNOW YOUR CLIENT (KYC) NORMS FOR ODI SUBSCRIBERS, TRANSFERABILITY OF ODIs, REPORTING OF SUSPICIOUS TRANSACTIONS, PERIODIC REVIEW OF SYSTEMS AND MODIFIED ODI REPORTING FORMAT

- SEBI vide Circular No. 59 dated June 10, 2016 issued circular for Foreign Portfolio Investors (FPIs) issuing ODIs (hereinafter referred to as ODI Issuers) are required to comply with the conditions viz. KYC for issuance of ODIs
- This circular shall come into effect from July 01, 2016. The reporting of the ODI in new format shall be applicable from the month of July 2016 to be submitted on or before August 10, 2016.
- With regards to KYC of ODI subscribers, ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold as defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 i.e. 25 % in case of a company and 15 % in case of partnership firms/ trusts/ unincorporated bodies.

The link of above Circular is given below:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1465796415786.pdf

C. REVIEW OF THE FRAMEWORK OF POSITION LIMITS FOR CURRENCY DERIVATIVES CONTRACTS

- SEBI vide Circular No. 60 dated June 22, 2016 issued circular for Review of the framework of position limits for currency derivatives contracts.
- With the view to ease trading requirements in the currency derivatives segment, it is clarified that the position limit linked to open interest shall be applicable at the time of opening a position.
- However, in the aforementioned scenario, the eligible market participants shall not be allowed to increase their existing positions or create new positions in the currency pair till they comply with the applicable position limits.
- Stock exchanges and Clearing corporations are directed to
 - i. take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
 - ii. Bring the provisions of this circular to the notice of the stock brokers / clearing members and also disseminate the same on their website.
 - iii. Communicate to SEBI the status of implementation of the provisions of this circular.

The link of above framework is given below :

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1466596412445.pdf

D. CLARIFICATION REGARDING GRANDFATHERING OF ODI ISSUERS AND MODIFICATION OF REPLIES OF FAQ 70 AND FAQ 71 OF SEBI FAQS TO SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014

- SEBI vide Circular No. 61 dated June 29, 2016 issued circular for Clarification regarding grandfathering of ODI issuers and modification of replies of FAQ 70 and FAQ 71 of SEBI FAQs to SEBI (FPI) Regulations, 2014.
- In terms of the SEBI (Foreign Portfolio Investors) Regulation, 2014 (FPI Regulations) and circulars issued from time to time regarding ODI, the Foreign Portfolio Investors (FPIs) issuing ODIs (hereinafter referred to as ODI Issuers) are required to comply with the clarifications to the following queries raised by them:
- **Query 1** - ODIs have been issued to unregulated funds under the FII Regulations. Whether these ODI positions can continue under the FPI regime? Whether the existing ODI subscribers can continue to subscribe to ODIs?

Clarification: The ODI subscribers who have subscribed to ODIs under FII Regulations can continue to subscribe to ODIs under the FPI regime, subject to the condition that they comply with Regulation 22 of SEBI FPI Regulations, 2014 and meet the eligibility criteria as laid down in the SEBI circular CIR/IMD/FIIC/20/2014 dated November 24, 2014 along with other norms which may be notified by SEBI from time to time.

- **Query 2-** Whether an ODI issuer can issue ODIs to existing entities, which were registered as clients but did not have positions as on January 07, 2014?

Clarification: Fresh ODIs can be issued to those entities which comply with SEBI circular CIR/IMD/FIIC/20/2014 dated November 24, 2014 along with other conditions that may be notified by SEBI from time to time read along with Regulation 22 of SEBI FPI Regulations, 2014.

The link of above Clarification is given below :

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1467202574494.pdf

E. ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF DEBT SECURITIES ON PRIVATE PLACEMENT BASIS

On June 30, 2016 SEBI has issued Press Release 118 in continuation of circular dated April 21, 2016, wherein the use of an Electronic Book Mechanism (EBM) has been made mandatory from July 01, 2016 for issuance of debt securities on private placement basis in the primary market with an issue size of Rs. 500 crores and above, inclusive of the green shoe option.

The circular stated that the EBM shall be provided by the recognized stock exchanges. Pursuant to this, BSE and NSE have been granted approval by SEBI to act as an Electronic Book Provider (EBP) and both these exchanges have informed that they have brought such EBM into operation and the platform is ready for issuance of debt securities on private placement basis.

All the issuers of debt securities and market participants are mandated to make such private placement offer only through the EBM for their issuances with effect from July 01, 2016.

For issues, having issuance size below Rs. 500 crores, inclusive of green shoe option, if any, the issuer shall disclose the details to the Electronic Book Provider and/ or to the information repository for corporate debt market.

The link of above Clarification is given below :

<http://www.sebi.gov.in/sebiweb/home/detail/34204/yes/PR-Electronic-book-mechanism-for-issuance-of-debt-securities-on-private-placement-basis>

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RBI UPDATES:

A. FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) (AMENDMENT) REGULATIONS, 2016

RBI vide its Notification dated June 1, 2016 has issued the following amendments in the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015.

- A clause for **start-up** is inserted as Clause E in regulation 5 stating that the Indian start-up or any other entity as notified may open a foreign currency account with a Bank outside India subject to the condition that the balances in the account are repatriated to India within the period prescribed in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time, for realization of export proceeds which is as under:

The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India within 9 (nine) months from the date of export, provided

- a. that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realized and in any case within 15 (fifteen) months from the date of shipment of goods;
 - b. further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of 9 (nine) months or 15 (fifteen) months, as the case may be.
- Now, all the insurance/reinsurance companies registered with **Insurance Regulatory and Development Authority of India (IRDA)** are allowed to open, hold and maintain a Foreign Currency Account with a Bank outside India for the purpose of meeting the expenditure incidental to the insurance/reinsurance business carried on by them. Earlier it was just the Life Insurance Corporation of India or General Insurance Corporation of India and its subsidiaries; who were allowed to do so.
 - The Schedule I of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 is amended and now the payments, arising out of exports/sales, received in foreign exchange by an Indian startup, or any other entity as may be notified may also credit 100% of the foreign exchange earnings to the **EEFC Account with an Authorised Dealer in India.**

- The link for the aforesaid notification is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10441&Mode=0>
- RBI had also issued a Circular No. 77 [(2)/10(R)] dated June 23, 2016, for the same.

The link for the aforesaid circular is as under:

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10457

B. SIMPLIFYING AND RATIONALIZING THE PROCESS OF REGISTRATION OF NEW NBFCs

- The Reserve Bank Of India vide its Press Release dated June 17, 2016 has simplified the process of registration of new Non Banking Financial Companies (NBFCs) by reducing the application form and the checklist of documents **from the existing set of 45 documents to about 8 documents**. This has been done to make the process of registration of new Non Banking Financial Companies (NBFCs) smoother and hassle free.
- The link for the above mentioned Press Release is as under:
<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2935252A21CA6FE344D8AB9EB67A23348C98.PDF>

C. RBI PUBLISHES “PAYMENT AND SETTLEMENT SYSTEMS IN INDIA: VISION-2018”

- The Reserve Bank of India vide its Press Release dated June 23, 2016 released its framework for payment and settlement systems in India, with a view to moving towards “less-cash” society and ensuring **access of mobile banking services**. The Vision-2018 encourages greater use of electronic payments by all sections of society so as to achieve a “less-cash” society.
- The link for the above mentioned Press Release is as under:
<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR29918041BA2FFA414DB686067B7BCF04506C.PDF>

D. MASTER DIRECTION - RESERVE BANK OF INDIA (FINANCIAL STATEMENTS OF ALL INDIA FINANCIAL INSTITUTIONS - PRESENTATION, DISCLOSURE AND REPORTING) DIRECTIONS, 2016

- RBI vide its Master Direction dated June 23, 2016 has issued the master direction for All India Financial Institutions (AIFIs) regulated by Reserve Bank of India viz. EXIM Bank, NABARD, NHB and SIDBI with effect from the quarter ended December 2016.
- These Directions shall be called the Reserve Bank of India (Financial Statements of All India Financial Institutions-Presentations, Disclosures and Reporting) Directions, 2016 wherein the formats of Balance sheet and Profit and Loss Account and consolidated financial statements to be prepared by the AIFIs has been prescribed. The Master Direction also includes the disclosure requirements in financial statements and consolidated prudential reporting requirements.
- The link for the above mentioned notification is as under:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD2693E25C394ACC405C988BEB35U4DEA53DD.PDF>

E. STATEMENT ON BREXIT BY DR. RAGHURAM G. RAJAN, GOVERNOR

- On 23rd June, 2016, United Kingdom has voted to leave the European Union. Dr. Raghuram G. Rajan, Governor of India has gone on record and issued his official statement on the same stating that the Indian economy has good fundamentals, low short term external debt, and sizeable foreign exchange reserves due to which the country is in a good steady position and RBI will take all necessary steps, including providing liquidity support (both dollar and INR), to ensure orderly conditions in financial markets.
- The link of the above statement is as under:
https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=37312

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DIPP UPDATES:

A. ACHIEVEMENTS AND HIGHLIGHTS ON EASE OF DOING BUSINESS.

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

➤ INTRODUCTION:

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

➤ HIGHLIGHTS:

The key points which are facilitated by this initiative for starting a New Business:

1. Registration for Permanent Account Number (PAN), Tax Deduction Account Number (TAN), EPFO (Employees' Provident Fund Organization) and ESIC (Employee's State Insurance Corporation) and incorporation of Company can be done through a single form on eBiz portal.
2. Time taken for obtaining PAN and TAN on eBiz portal has been brought down to T+1 days.
3. Integrated Form INC-29 has been launched by Ministry of corporate Affairs to avail 3 pre-registration service viz. 'Name Availability', 'Director Identification Number', and 'Incorporation of Company' with one form and one payment.
4. Registration with ESIC and EPFO has been made real- time by eliminating all physical touch-points. Requirement of opening a bank account for registration with EPFO and ESIC has been eliminated.

5. **Physical submission of documents for export and import is not required** and Number of documents required for imports and exports have been reduced to three. They can be submitted electronically by using digital signatures.
6. Central Board of Excise and Customs (CBEC) has implemented Single Window Interface for Facilitating Trade (SWIFT). Custom ICEGATE Portal has been integrated with Food Safety and Standards Authority of India (FSSAI), Animal and Plant Quarantine, Drug Controller and Wildlife Control Bureau for imports.
7. Insolvency and Bankruptcy Code with provision of easy and faster exit, has been passed by the Parliament

➤ **ACHIEVEMENTS IN DELHI AND MUMBAI**

The highlights points of achievements of “Ease of Doing Business” in metro cities like Delhi & Mumbai

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

➤ **CONSTRUCTION PERMITS**

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

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

➤ **GETTING ELECTRICITY**

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

➤ **TRADING ACROSS BORDERS**

Online message exchange system under single window between custom ICEGATE and Plant Quarantine Information system (PQIS) for import clearance of agriculture commodities.

➤ **ENFORCING CONTRACTS**

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

➤ **DIGITIZATION PROCESS FOR REGISTERING PROPERTY**

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

For details code please refer the below mentioned link:

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

B. CONSOLIDATED FDI POLICY CIRCULAR OF 2016

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India recently released the new consolidated Foreign Direct Investment (FDI) policy (New FDI Policy) on June 7, 2016 which has been made effective immediately from the date of its publication. The New FDI Policy supersedes the consolidated FDI policy of 2015 (Erstwhile FDI Policy) issued by the DIPP on 12 May 2015 and consolidates press notes issued by the DIPP up to 6 June 2016.

• KEY CHANGES:

1. Investment by Foreign Venture Capital Investors (FVCIs)

FVCIs are permitted to invest in the infrastructure sector and in 'startups' engaged in any sector. FVCIs were only permitted to invest in Venture Capital Funds (VCF) or an Indian Venture Capital Undertaking (IVCU) until now. This will provide an impetus to the "Start-Up India: Action Plan" launched by the Government of India.

3. **Employees' stock option (ESOP)**

Indian Company is now allowed to issue “employees’ stock option” and/or “sweat equity shares” to its employees/directors or employees/directors of its **holding company** or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India. Under consolidated policy of 2015, issue of “employees’ stock option” and/or “sweat equity shares” to directors / employees of holding Company were not included.

Company can now issue shares of face value exceeding 5% (Five per cent) of the paid up capital of the company under ESOP.

Plain paper reporting of grant of ESOPs is replaced by reporting under the "Form ESOP", thus introducing a common form for all reporting requirements in connection with grant of ESOPs or issue of sweat equity shares or issue of shares pursuant to exercise of ESOPs.

4. **Investment by Non-Resident Indians (NRIs):**

Definition of NRI was amended to include ‘Overseas Citizens of India’ cardholder and Persons of Indian Origin (PIO).

NRI investments made on non-repatriation basis are now deemed to be domestic investments.

5. **Liberalization in certain sectors**

a. Insurance and Pension sector:

The Government liberalized its erstwhile FDI Policy on foreign investment in the insurance sector by allowing foreign investment up to 49% (Forty nine per cent) under the automatic route subject to the conditions prescribed therein. Earlier FDI in the insurance sector up to 26% was under Automatic route and beyond 26% and up to 49% was under Government route.

b. Defense:

FDI up to 49% is permitted under the automatic route and FDI in excess of 49% would require approval of the FIPB or the Cabinet Committee on Economic Affairs instead of the Cabinet Committee on Security.

c. FDI in following sectors are allowed upto 100% under automatic route

- **Teleports** (setting up of up-linking HUBs/Teleports)
- **Direct to Home** (DTH)
- **Cable Networks** (Multi System operators (MSOs) operating at National or State or District level and undertaking up gradation of networks towards digitalization and addressability)
- **Mobile TV**
- **Headend-in-the Sky Broadcasting Service** (HITS)

Earlier the FDI under the aforesaid sectors were allowed upto 74% out of which FDI upto 49% was under automatic route and FDI beyond 49% and upto 74 % was under Government approval route.

d. Pharmaceutical

Earlier, FDI in brownfield pharmaceuticals projects was allowed upto **100%** under **Government approval** route. Now, FDI up to **74%** in brownfield pharmaceuticals projects is allowed under **automatic route** and FDI **beyond 74% and upto 100%** is under **Government approval** route.

However, FDI in brownfield pharmaceuticals projects is allowed upto **100%** under automatic approval route.

e. Civil Aviation Sector

Earlier, FDI in brownfield Airport projects was allowed upto **74%** under **automatic route** and FDI beyond **74%** was allowed under **Government approval** route. Now, FDI up to **100%** in brownfield Airport projects is allowed under **automatic route**.

f. Air transport services

Earlier, FDI upto **49%** was allowed under **automatic route** in scheduled Air Transport Service / Domestic Scheduled Passenger Airline. Further, FDI upto **74%** was allowed in Non –scheduled air transport services, out of which **49%** of FDI was allowed under **automatic route** and FDI **beyond 49% and upto 74%** was allowed under **Government approval** route.

Now, FDI in scheduled Air Transport Service / Domestic Scheduled Passenger Airline is increased to **100%**, out of which FDI upto **49%** is allowed under **automatic route** and FDI **beyond 49% and upto 100%** was allowed under **Government approval** route.

Further, FDI in Non –scheduled air transport services, is increased to **100%** under **automatic route**.

For details, please refer the below mentioned link:

http://dipp.gov.in/English/policies/FDI_Circular_2016.pdf and
http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2016.pdf

ARTICLE OF THE MONTH

STARTUP INDIA INITIATIVES AND VENTURE CAPITAL FUND

STARTUP INDIA INITIATIVES

- **INTRODUCTION:**

16th January, 2016 was a Landmark day for the India's Start up Community. Prime Minister Shri Narendra Modi initiated Startup Action Plan (SAP) at Vigyan Bhawan, New Delhi. **Startup India** is a flagship initiative of the Government of India, intended to build a strong ecosystem for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design.

Various Ministries like Ministry of Corporate Affairs (**MCA**), Department of Industrial and Promotion (**DIPP**), Central Board of Direct tax (**CBDT**), Central Board of Excise and Custom (CBEC) and Controller General of Patents Designs and Trademarks (CGPDTM) have initiated various activities for the purpose.

- **DEFINITION:**



STARTUP ENTITY MEANS:

Startup Entity may be either a **Private Limited Company** (as defined in the Companies Act, 2013), or a **registered Partnership Firm** (registered under section 59 of the Partnership Act, 1932) or a **Limited Liability Partnership** (under the Limited Liability Partnership Act, 2002) which are not older than five years from the date of its

incorporation/registration,

Startup means an entity, incorporated or registered in India **not prior to 5 years**, with annual **turnover not exceeding INR 25 crore** in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

- Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence.
- Provided also that an entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 5 years from the date of incorporation/ registration.
- Provided further that a Startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose.

IDENTIFICATION OF BUSINESSES COVERED UNDER THE DEFINITION AS START UP

A business is covered under the definition of **start up** if it aims to develop and commercialize a new product or service or process; or a significantly improved existing product or service or process, that will create or add value for customers or workflow.

POINTS TO BE KEPT IN MIND BY STARTUPS:

- 1 **A proprietorship or a public limited company is not eligible as startup.** A one person company, being a private limited company is entitled to be recognized as a 'startup'.
- 2 **An entity shall cease to be a startup** on completion of five years from the date of its Incorporation/registration or if its turnover for any previous year exceeds Rupees 25 crore.
- 3 **Turnover means** the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year as defined under the Companies Act, 2013.
- 4 **Under Startup Initiatives recognition is given to those entities** which is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property and which are aims to develop and commercialize:
 - a. A new product or service or process, or
 - b. A significantly improved existing product or service or process, that will create or add value for customers or workflow.
- 5 Mere act of developing products or services or processes which do not have potential for commercialization, or undifferentiated products or services or processes, or products or services or processes **with no or limited incremental value for customers or workflow would not be covered under the definition of Startup Entity.**

➤ PROCEDURE FOR RECOGNITION AS A 'STARTUP':

The Government vide notification dated 17th Feb 2016 came up with the detailed procedure for recognition of **eligible entities as a 'startup'.**



The process of recognition as a 'startup' shall be through mobile app/portal of the Department of Industrial Policy and Promotion.

For getting recognition, Startups will be required to submit a simple application **with any of following documents below mentioned:**

- (i) **A recommendation** (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, **from any Incubator established in a post-graduate college in India; or**

- (ii) **A letter of support by any incubator** which is funded (in relation to the project) from Government of India or any State Government as part of any specified scheme to promote innovation; or
- (iii) **A recommendation** (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, **from any Incubator recognized by Government of India; or**
- (iv) **Letter of funding** of not less than 20% in equity by any Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with Securities and Exchange Board of India that endorses innovative nature of the business. Department of Industrial Policy and Promotion may include any such fund in a negative list for such reasons as it may deem fit; or
- (v) **A letter of funding by Government of India** or any State Government as part of any specified scheme to promote innovation; or
- (vi) **A patent filed and published in the Journal by the Indian Patent Office** in areas affiliated with the nature of business being promoted.

ROLLING OUT OF MOBILE APPLICATION AND PORTAL FOR STARTUPS

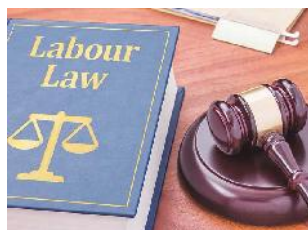


Apart from the above, **the Mobile App for startups** has also been provided to provide on-the-go accessibility for

- **Registering Startups with relevant agencies** of the Government of India
- **Tracking the status of the registration application of Startups** and anytime downloading of the registration Certificate.
- **For the purpose of filing documents for various compliances** applicable to startups and obtaining information on various clearances/ approvals/ registrations required to them.
- This Mobile Application shall also provide a **collaborative platform** with a national network of stakeholders (including venture funds, incubators, academia, mentors etc.) of the Startup ecosystem to have discussions towards enhancing and bolstering the ecosystem.

EXEMPTION TO STARTUPS FOR VARIOUS ENVIRONMENTAL AND LABOUR LAWS

EXEMPTION TO STARTUPS IN CASE OF LABOUR LAWS:



No inspections will be conducted for a **period of 3 years under following labour laws for Startups**. Startups may be inspected on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.

- The Building and Other Construction Workers' (Regulation of Employment & Conditions of Service) Act, 1966
- The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979
- The Payment of Gratuity Act, 1972
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948

EXEMPTION TO STARTUPS IN CASE OF ENVIRONMENTAL LAWS:



Startups which fall under the '**white category**' (as defined by the Central Pollution Control Board (CPCB) i.e those Industrial Sectors having **Pollution Index score incl. & upto 20** viz. Air coolers /conditioners, Bicycles ,baby carriages etc. would be able to self-certify compliance for the period of **one year** and only random checks would be carried out in such cases.

- The Water (Prevention & Control of Pollution) Act, 1974
- The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003
- The Air (Prevention & Control of Pollution) Act, 1981

LEGAL SUPPORT AND FAST-TRACKING PATENT EXAMINATION AT LOWER COST



Government of India has introduced several relaxation and simplifications of documentation for application and protection of **Intellectual Properties**. The scheme for **Startup Intellectual Property Protection (SIPP)** shall facilitate filing of Patents, Trademarks and Designs by innovative Startups. This scheme is being launched initially on a pilot basis for 1 year; based on the experience gained.

Various measures being taken in this regard include:

- The valuation of any innovation goes up immensely, once it gets the protective cover of a patent. So for giving best value to the innovations by startup entities, **the patent application of Startups shall be fast-tracked for examination and disposal**, so that they can realize the value of their IPRs at the earliest possible.
- For effective implementation of the scheme of SIPP, a panel of "**facilitators**" shall be empanelled by the Controller General of Patents, Designs and Trademarks (CGPDTM), who shall also regulate their conduct and functions.
- The Startups shall bear the cost of **only the statutory fees** payable and **entire fees of the facilitators** for any number of patents, trademarks or designs that a Startup may file shall be borne **by the Central Government**.
- The Startups shall be provided an 80% rebate in filing of patents vis-à-vis other companies. This will help them pare costs in the crucial formative years.

RELAXED NORMS OF PUBLIC PROCUREMENT FOR STARTUPS

In the older times, whenever any tender was floated by a Government entity or by a PSU, very often the eligibility condition specifies either “**prior experience**” or “**prior turnover**” which restrict the Micro, small and medium enterprises to take part in such tenders due to unfit for

criteria. At present, after startup Initiatives, from April 1, 2015 Central Government, State Government and PSUs have to mandatorily procure **at least 20% from the Micro Small and Medium Enterprise (MSME)** which will be subject to quality standards or technical parameters.

FASTER EXIT FOR STARTUPS



Sometimes, the new ideas and innovation does not get the results expected which were looking in beginning, **Eg. Nano Car Idea**, in such cases, a significant percentage is always there to fail for Startups. In the event of a business failure, it is very difficult to reallocate capital and resources to more productive avenues and accordingly a swift and simple process has been proposed for Startups to wind-up operations. **The Insolvency and Bankruptcy Bill 2015 (“IBB”), tabled in the Lok Sabha in December 2015** has provisions for the fast

track and / or voluntary closure of businesses.

PROVIDING FUNDING SUPPORT THROUGH A FUND OF FUNDS WITH A CORPUS OF INR 10,000 CRORE TO STARTUPS



In every business, we need funds and that is same challenges faced by Startups in India for accessing to finance. In order to provide funding support to Startups, **Government will set up a fund with an initial corpus of INR 2,500 crore and a total corpus of INR 10,000 crore over a period 4 years** (i.e. INR 2,500 crore per year). The Fund will be in the nature of Fund of Funds, which means that **it will not invest directly into Startups, but shall participate in the capital of SEBI registered Venture Funds.**

KEY FEATURES OF THE FUND OF FUNDS ARE HIGHLIGHTED BELOW

- The Fund of Funds shall be managed by a **Board with private professionals** drawn from industry bodies, academia and successful Startups.
- **Life Insurance Corporation (LIC)** shall be a co-investor in the Fund of Funds
- The Fund of Funds shall contribute to a maximum of 50% of the stated daughter fund size. In order to be able to receive the contribution, the daughter fund should have already raised the balance 50% or more of the stated fund size as the case maybe. **The Fund of Funds shall have representation on the governance structure/ board of the venture fund** based on the contribution made.
- The Fund shall ensure support to a broad mix of sectors such as manufacturing, agriculture, health, education, etc.

CREDIT GUARANTEE FUND FOR STARTUPS



Looking into the high risk area to Startups, For the purpose of providing Debt from Banks and other Lenders to Startups, Banks are encouraged for Credit guarantee mechanism through National Credit Guarantee Trust Company (NCGTC)/ SIDBI which is being envisaged with a **budgetary Corpus of INR 500 crore per year for the next four years.**

CAPITAL GAINS & INCOME TAX EXEMPTIONS TO STARTUPS



With the objective of **providing benefits, incentives to startups,** exemption shall be given to persons who have capital gains during the year, whoever invested such capital gains in the Funds recognized by the Government subject to the condition that the amount remains invested for three years and upto maximum of Rs. 50/- Lakhs. In addition, existing capital gain tax exemption for investment in newly formed manufacturing MSMEs by individuals shall be **extended to all Startups.**

- To obtain tax benefits a startup so identified under the above definition of Startup, The **entity shall be required to obtain a certificate of an eligible business** from the Inter-Ministerial Board of Certification
- Profits of Startup initiatives are **exempted from income-tax for a period of 3 years** out of their five years and such eligible startups shall be setup before 01.04.2019.
- Those individual or HUF who willing to setup a start-up company by selling a residential property to invest in the shares of such company, **Long term capital gains arising on account of transfer of a residential property shall not be charged to tax** subject to condition that individual or HUF holds more than 50% shares of the company and such company utilizes the amount invested in shares to purchase new asset except Computer and Computer Software before due date of filing of return.
- No tax will be levied on capital raised by start-ups from domestic investors which exceeds the fair market value of the startup's shares under amended Section 56(2) (viib) of the Income Tax Act.

COMPLIANCES AND BENEFITS TO STARTUPS UNDER FEMA REGULATIONS



➤ **A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad** to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up;

➤ **The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India** as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the

name of the start-up;

- The cross-border transactions, particularly relating to the **operations of the start-up enterprises are proposed Enabling start-up enterprises**, irrespective of the sector in which they are engaged, to receive foreign venture capital investment and also explicitly enabling transfer of shares from Foreign Venture Capital Investors to other residents or non-residents.
- In case of transfer of ownership of a start-up enterprises, receipt of the consideration amount by way of **escrow arrangement or indemnity arrangement up to a period of 18 months** on a deferred basis is allowed.
- Start-up enterprises is allowed to access rupee loans under **External Commercial Borrowing (ECB) framework** with relaxations in respect of eligible lenders, etc.
- Startups are allowed to **issue innovative FDI instruments** like convertible notes.
- Start-up enterprises are allowed to **issue shares without cash payment** through sweat equity or against any legitimate payment owed by the company remittance of **which does not require any permission under FEMA**;
- Collection of **payments by start-up enterprises** on behalf of their subsidiaries abroad.

COMPANIES ACCEPTANCE DEPOSITS COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2016 RELATING TO STARTUPS

- Ministry of Corporate Affairs (“MCA”) vide notification dated June 29, 2016 amended Companies (Acceptance of Deposits) Amendment Rules, 2016.
- The definition of deposits under the Companies Act 2013 is an inclusive one with specific exemptions which provides that any advance of more than Rupees 25 lakh raised by a start-up shall be exempted from being considered a deposit.
- The conditions for above exemptions are as follows that the amount of Rs.25 lakhs or more should be received by the start-ups should be
 - (i) By way of a convertible note which is convertible in equity shares or repayable within a period not exceeding five years from date of issue
 - (ii) The monies should be received by way of bullet payment.
- "Convertible note" has been defined to mean an instrument that evidences the receipt of money, initially, as a debt but which is repayable (at the option of the holder) or which is convertible into such number of equity shares of the start-up company, upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

VENTURE CAPITAL FUND& INCUBATORS

MEANING OF VENTURE CAPITAL AND STARTUP INCUBATOR:



VENTURE CAPITAL: Venture capital means that **investor who provides financial aid to the startup companies and small businesses** that are believed to have long-term growth potential.



STARTUP INCUBATOR is a program designed to aid new startups to succeed. **Incubators help startup to solve some of the problems commonly associated with running a startup** by providing workspace, mentoring, and training. The sole purpose of a startup incubator is to help startup companies to grow their business.

Incubators are often associated with universities, and some business schools which allow their students and alumni to take part in these programs. There are several other incubators, however, that are formed by governments, civic groups, startup organizations or successful entrepreneurs.

GOVERNMENT STRATEGIES RELATING TO INCUBATORS

➤ ANNUAL INCUBATOR GRAND CHALLENGE:

The Government is proposing to make forward looking investments towards building world class incubators. In its first phase, the aim is to establish 10 such incubators. To enable this, Government of India shall identify and select 10 incubators who have the potential to become world class. These incubators would be given INR 10 crore each as financial assistance which may be used for ramping up the quality of service offerings.

- The **incubators shall also become reference models for other incubators** aspiring to offer best-in-class services. Video interviews of these incubators would be showcased on the Startup India portal. An “Incubator Grand Challenge” exercise shall be carried out for identification of these incubators.

VENTURE CAPITAL (VCs) ASSISTANCE TO STARTUPS



If your Startup is growing, at some point **you will likely be seeking more capital for completing your desire of huge amount for further expansion of your business**, for the purpose of fund, you may need to approach venture capital. Unlike angel investors, who typically write cheques between \$10,000 to \$100,000, VCs can write multi-million dollar cheques. This means that VCs can support startup growth from seed to much later stages.

- **VCs deploy large amounts of capital and expect significant returns**, the process of raising money from these so called institutional investors is far from trivial.
- Venture capitalists are looking to deploy millions of dollars, and they are looking for multiple times return on that capital. That is why, in addition to founders, VCs focus heavily on the size of the market. If they don't believe the market is large enough, they won't invest. In order to receive funds from such startups by way of investments by venture Capital fund, The Startups must have huge amount of potential to succeed.

TAX EXEMPTIONS



Currently, investment by **venture capital funds in Startups is exempted**. The same shall be extended to investment made by incubators in the Startups.

HOW TO GET REGISTERED AS A VENTURE CAPITAL FUND



The Applicant **who wants to get registered as Venture Capital Fund under SEBI (Venture Capital Funds) Regulations, 1996** need to make an Application to SEBI in Form A along with all the necessary documents.

- The **applicant is advised to go through the SEBI (Venture Capital Funds) Regulations, 1996 for checking the eligibility criteria** and such other details which may help expedite the registration process. As an integral part of the registration process, the applicant will submit:
 - Form A along with the non refundable application fees of Rs.1,00,000** and documents as under:
 - 1. Copy of **Memorandum and Articles of Association** in case the applicant is set up in the form of a Company (Reg. 4(a)) or **Copy of Registered Trust Deed** in case the applicant is set up in the form of a trust (Reg. 4(b)) or **Copy of Main objective of constitution** in case the applicant is set up in the form of a body corporate. (Reg. 4(c))
 - 2. Copy of **Investment Management Agreement** (only if applicable).

- Apart from the above documents/declarations as required under the Form A, the applicant will also be required to **submit the details/information as under:**
 1. **Details of the Sponsor/Settlor** like activities of the Sponsor/Settlor, its shareholding pattern/profile of the directors. or whether the Sponsor/Settlor is registered with SEBI, RBI or any other regulatory authority in any capacity along with the details of its registration and other details.
 2. **Details of the Trustees/Trustee Company** like activities of the Trustee Company/ Profile of Trustees, Shareholding pattern and the write up on profile of the Directors.
 3. **Details of the Investment Manager/Investment Advisor**/Asset Management Company (AMC)
 4. **Investment strategy** which should disclose the investment style or pattern, preferred sectors/industries for investment, proposed corpus, the class of investors, life cycle of the fund and any other information.
 5. **Declarations** to be submitted by the applicant that An undertaking under Regulation 11(3) of SEBI (Venture Capital Funds) Regulations, 1996 complies with the requirements of Third Schedule to SEBI (Venture Capital Funds) Regulations, 1996.
- **Grant of Certificate of Registration**

Once all requirements including the Fit and Proper Person criteria have been complied with and on intimation from SEBI for payment of Registration fees of Rs.10,00,000 as per Second Schedule to Regulations, SEBI will grant the applicant, certification of registration as a SEBI Registered Venture Capital Fund.

HARNESSING PRIVATE SECTOR EXPERTISE FOR INCUBATOR SETUP BY GOVERNMENT

- To have a professional approach the Government has formed sponsored / funded incubators, Government proposes to create a policy and framework for setting-up of incubators across the country in public private partnership.
- Government shall encourage setting up of;
 1. **35 new incubators in existing institutions**, funding support of 40% shall be provided by Central Government for establishment of new incubators for which 40% funding by the respective State Government and 20% funding by the private sector has been committed.
 2. **35 new private sector incubators**, grant of 50% shall be provided by Central Government for incubators established by private sector in existing institutions. The incubator shall be managed and operated by the private sector.
- Participating departments and agencies for setting up of new incubators shall be Department of Science and Technology, Department of Biotechnology, Department of Electronics and Information Technology, Ministry of Micro, Small and Medium Enterprises, Department of Higher Education, Department of Industrial Policy and Promotion and NITI Aayog.

INSPIRATIONAL QUOTES



In order to
SUCCEED
we must first believe than we can

Niklas Kazantzakis | www.geckoandfly.com

**“THERE’S A DIFFERENCE BETWEEN
INTEREST AND COMMITMENT.**

**WHEN YOU’RE INTERESTED IN DOING
SOMETHING, YOU DO IT ONLY
WHEN IT’S CONVENIENT.**

**WHEN YOU’RE COMMITTED TO
SOMETHING, YOU ACCEPT NO
EXCUSES; ONLY RESULTS.”**

– KENNETH BLANCHARD

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