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RBI/FEMA

- **NORMS FOR PRE-PAID PAYMENT INSTRUMENTS RELAXED** - In order to ensure growth of the prepaid payment industry, the Reserve Bank of India (“RBI”) has amended existing guidelines related to prepaid payment instruments (“PPI”). It has enhanced the limit of PPI from Rs. 50,000 to Rs. 1 lakh. But it has further been mandated that the balance in the PPI should not exceed Rs. 1 lakh at any point of time. And the maximum validity of gift cards has also been enhanced from one year to three years.

RBI has also allowed issue of multiple PPIs by banks from fully-KYC compliant bank accounts for dependent or family members, subject to certain conditions. Commercial banks are also permitted to issue open system rupee denominated non-reloadable (a) PPIs to NRIs and foreign nationals visiting India & (b) PPIs co-branded with exchange houses/money transmitters (approved by RBI) to NRIs and foreign nationals visiting India again subject to certain conditions. [DPSS.CO.PD.No.980/02.14.006/2014-15, dated 3rd December, 2014]

- **EXIM-BANK EXTENDS LINE OF CREDIT TO NIGER** - The Export-Import Bank of India (“Exim-Bank”) has entered into an Agreement with the Government of the Republic of Niger for making available to the latter, a Line of Credit (“LoC”) of USD 25 million (USD Twenty Five million only) for financing eligible goods, machinery, equipment and services including consultancy services from India for the purpose of financing Potable Water for Semi-Urban and Rural Communities in Niger. - [A.P.(DIR Series) Circular No.44, dated 4th December, 2014]
- **BEST PRACTICES ON MOBILE BANKING NOTIFIED** - In order to expand the reach of mobile banking in the country and also to standardize procedures across banks, RBI also provided few suggestions and best practices that can be adopted by banks for registering / on-boarding customers for mobile banking. These best practices aim to help banks to improve efficiency and to bring down their operational costs. RBI has asked banks to make all possible efforts to enable customers to get on board the mobile banking platform. Henceforth, mobile banking PIN can be generated from ATMs, mobile phones, internet banking and mailers.. - [DPSS.CO.PD.No.1017/02.23.001/2014-2015, dated 4th December, 2014]
- **WHITE LABEL ATMs- Fresh Directives Issued after review of operations:** - Through fresh directives RBI, inter alia, has allowed the White Label ATM (“WLA”) operators to receive cash supply from any bank. Earlier, the WLA operators had to be dependent on their sponsor banks alone for cash supply arrangement. However, now the WLA operators can tie-up with any commercial bank for cash supply at ATMs. RBI has also allowed WLAs to accept international credit/debit/prepaid cards. - [DPSS.CO.PD.No.1025/02.10.003/2014-2015, dated 5th December, 2014]

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- **GUIDELINES REVISED ON INTEREST SUBVENTION SCHEME UNDER NRLM:**

RBI has issued the revised guidelines for the year 2014-15 on the Interest Subvention Scheme under National Rural Livelihoods Mission (“NRLM”). The draft of the revised guidelines was received from the Ministry of Rural Development, GoI, for implementation by banks. - *[FIDD.GSSD.CO.BC.No.45/09.01.03/ 2014-15, dated 9th December, 2014]*

- **RBI PERMITS SEBI REGISTERED AIFS TO INVEST OVERSEAS:**

RBI has permitted Indian Alternative Investment Fund (“AIF”), registered with SEBI, to invest overseas in terms of the A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively. Previously, such funds aiming to invest abroad had to set up an SPV, which would then invest in opportunities abroad. However, the investment opportunities made available to registered AIFs through the above mentioned Circulars are quite narrow in scope given that the 2007 Circulars allow investments in equity and equity-linked instruments of off-shore venture capital undertakings (“VCUs”). - *[A.P.(DIR Series) Circular No.48, dated 9th December, 2014]*

- **MINIMUM BALANCE IN SAVING BANK ACCOUNTS - Additional Guidelines For Cooperative Banks Issued:**

RBI has issued some additional guidelines to be adhered by the banks while levying charges for non-maintenance of minimum balance in the saving bank accounts.

Levy of the charges by Primary (Urban) Cooperative Banks and State and Central Co-operative Banks for non-maintenance of minimum balance in saving bank

accounts shall be subject to the following additional guidelines:

- (i) In the event of a default in maintenance of minimum balance / average minimum balance as agreed to between the bank and customer, the bank should notify the customer clearly by SMS / email / letter etc. that in the event of the minimum balance not being restored in the account within a month from the date of notice, penal charges will be leviable.
- (ii) In case the minimum balance is not restored within a reasonable period, which shall not be less than one month from the date of notice of shortfall, penal charges may be recovered under intimation to the account holder.
- (iii) The policy on penal charges to be levied may be decided with the approval of the Board of the bank.
- (iv) The penal charges should be directly proportionate to the extent of shortfall observed. A suitable slab structure for recovery of charges may be finalized.
- (v) It should be ensured that such penal charges are reasonable and not out of line with the average cost of providing the services.
- (vi) It should be ensured that the balance in the saving accounts does not turn into negative balance solely on account of levy of charges for non-maintenance of minimum balance.- *[DCBR.BPD (PCB/RCB) Cir. No. 3/12.05.001/2014-15, dated 12th December, 2014]*

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- **HELD TO MATURITY (HTM) LIMITS FOR STANDALONE PRIMARY DEALERS (PDS) DECREASED :** Taking into consideration the prevailing market conditions, RBI has reduced the quantum of securities that can be classified as HTM from 200% to 100% of the audited NoF of the PD as at the end of the preceding financial year. The new limits came into effect from December 31, 2014. PDs are allowed to effect one additional transfer from HTM for the current quarter ending December 31, 2014 to enable them to comply with the new norms.- *[IDMD.PDRD.No.7/03.64.00/2014-15, dated 15th December, 2014]*
- **RTGS - Business Hours Extended:** RBI has extended the RTGS business hours to facilitate customers and inter-bank transactions as well as to facilitate other market obligations to settle in the Real Time Gross Settlement (“RTGS”) system. Now, RTGS business window will be open from 8.00 am to 8.00 pm on week days and 8.00 am to 3.30 pm on Saturdays. Earlier the opening time of RTGS business window was 9.00 am. - *[DPSS (CO) RTGS No. 1064 / 04.04.002 / 2014-15, dated 15th December, 2014]*
- **NORMS EASED FOR PROJECT LOANS For INFRASTRUCTURE PROJECTS AND CORE INDUSTRIES PROJECTS – RBI has eased the:** RBI has allowed the banks to flexibly structure the existing project loans to infrastructure projects and core industries projects with the option to periodically refinance the same. - *[DBR.No.BP.BC.53/21.04.132/2014-15, dated 15th December, 2014]*
- **FEM (DEPOSIT) REGULATIONS, 2000, REVIEWED - RBI, with the objective of**

bringing all the multilateral organisations at par, for opening of accounts in India, has reviewed the extant instructions. And it has decided to include the deposits held in accounts maintained with an authorised dealer by any multilateral organization, of which India is a member nation, and its subsidiary/affiliate bodies in India and its/their officials in India in the exemptions laid down in FEM (Deposit) Regulations, 2000. - *[A.P. (DIR Series) Circular No.51, dated 17th December, 2014]*

- **‘NON-COOPERATIVE BORROWER’ - DEFINITION MODIFIED:** RBI has modified the definition of a Non-Cooperative Borrower as under:

“A non-cooperative borrower is one who does not engage constructively with his lender by defaulting in timely repayment of dues while having ability to pay, thwarting lenders’ efforts for recovery of their dues by not providing necessary information sought, denying access to assets financed / collateral securities, obstructing sale of securities, etc. In effect, a non-cooperative borrower is a defaulter who deliberately stone walls legitimate efforts of the lenders to recover their dues”. In this regard banks / FIs are advised to take measures in classifying/ declassifying a borrower as non-cooperative borrower and reporting information on such borrowers to Central Repository of Information on Large Credits (CRILC)”.

-[DBR.No.CID.BC.54/20.16.064/2014-15, dated 22nd December, 2014]

- **OVERSEAS DIRECT INVESTMENT BY INDIAN COMPANIES - Norms Liberalised:** RBI has further liberalised the norms for Indian companies investing abroad. Some of the Liberalised norms are as under:-
 - (i) Bank may permit creation of charge on the shares of the Joint Venture/Wholly Owned

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Subsidiary/Step down Subsidiary (“JV/WOS/SDS”) of an Indian party in favour of a domestic or overseas lender for securing funded and/or non-funded facility.

(ii) The loan availed by the JV/WOS/SDS from the domestic/overseas lender shall be utilized only for its core business activities overseas and not for investing back in India in any manner whatsoever.

(iii) Bank may permit creation of charge on the domestic assets of an Indian party in favour of an overseas lender for securing the funded and/or non-funded facility.

(iv) Bank may permit creation of charge on the overseas assets (excluding the shares) of the JV/WOS/SDS of an Indian party in favour of a domestic lender for securing the funded and/or non-funded facility. - *[A.P. (DIR Series) Circular No.54, dated 29th December, 2014]*

- **GLOBAL INTERMEDIARY IDENTIFICATION NUMBER - Govt. Mandates it for fiis in model 1 jurisdictions:** The Government of India has advised the Foreign Financial Institutions (“FFIs”) in Model 1 jurisdictions, such as India, to register with IRS and obtain a Global Intermediary Identification Number (“GIIN”) before January 1, 2015 or at the earliest. The FFIs who registered but have not obtained a GIIN should indicate to the withholding agents that the GIIN is applied for, which may be verified by the withholding agents in 90 days. -*[DBR. AML. No. 9644/14.07.018/2014-15, dated 30th December, 2014]*

- **DATE FOR EXCHANGE PRE-2005 CURRENCY NOTES EXTENDED:** RBI has extended the date for exchanging the pre-2005 banknotes to June 30, 2015. - *[DCM(Plg) No.G-8 /3004/10.27.00/2014-15, dated 31st December, 2014]*

FOREIGN TRADE

ORGANIC PRODUCTS - Procedure For Export Of Certified Organic Products Comes Into Effect:

The Directorate General of Foreign Trade (“DGFT”) vide Public Notice No. 73 (RE-2013)/2009-2014 dated November, 18, 2014 had clarified that “organic product” which are to be exported, had to be accompanied by a transaction certificate issued by a Certification Body accredited by National Accreditation Body (NAB) for Organic Products under the National Programme for Organic Production of the Department of Commerce and to be in conformity with the standards laid down in the document “National Programme for Organic Production (NPOP)”.and it has since come into effect from December, 18, 2014. - *[Public Notice No. 77 (RE-2013)/2009-2014, dated 1st December, 2014, (DGFT)]*

- **MONUMENTAL OR BUILDING STONE, MOSSAIC CUBES, NATURAL STONE, COLOURED GRANULES, CHIPPINGS AND POWDER OF NATURAL STONE - Revision In Import Policy:** Import of items under the Exim Codes 68021000, 68022110, 68022120, 68022190, 68029100 and 68029200 of Chapter 68 is permitted freely if CIF value is US\$ 60 and above per square meter with the condition that maximum thickness of

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slab is 20 mm. - *[Notification No. 100 (RE-2013)/2009-2014, dated 5th December, 2014, (DGFT)]*

- **COTTON- Export Policy Amended:** The registration requirement for export of cotton under Tariff Codes 5201 (Cotton neither carded nor combed) & 5203 (Cotton, carded or combed) has been dispensed with. - *[Notification No. 102 (RE-2013)/2009-14, dated 8th December, 2014, (DGFT)]*
- **EXPORT OF COTTON YARN - Policy Amended:** The registration requirement for export of cotton yarn Tariff Codes 5205 (Cotton yarn other than sewing thread containing 85% or more by weight or cotton not put up for retail sale), 5206 (Cotton yarn other than sewing thread containing less than 85% by weight or cotton not put up for retail sale) & 5207 (Cotton yarn other than sewing thread put up for retail sale) has been dispensed with. - *[Notification No. 103(RE-2013)/2009-14, dated 8th December, 2014, (DGFT)]*
- **NOTIFICATION RELATING TO EXIM CODE 1005 KEPT IN ABEYANCE -:** The Notification No.93 (RE-2013) dated 29.09.2014 has, *inter alia*, revised the Import Policy for EXIM Code 1005 - Maize (Corn) removing the item from the "State Trading Enterprises" list to "free". However, the said notification has been challenged before the Hon'ble High Court of Andhra Pradesh and Telangana. Accordingly, it has been decided by the DGFT to keep the said notification in abeyance. - *[POLICY CIRCULAR NO. 14/(RE-2013)/2009-2014, 10th December, 2014, (DGFT)]*

- **IMPORTER EXPORTER CODE- Guidelines For Issue/Modification Amended:** Part V of the "Detailed Guidelines for Issue / Modification of Importer Exporter Code Number ("IEC")" of ANF 2A as notified vide Public Notice No. 76 (RE-2013)/2009-2014 dated the 27th of November, 2014, has been modified to provide for inclusion of certain additional documents, which have been highlighted in Para 2 of the notice. Further, Para 9.1 of Handbook of Procedure vol.1 stands modified to the effect that applicants will have to submit online application for IEC and pay Rs. 500/- as application fee. - *[Public Notice. 79 /(RE-2013)/2009-2014, dated 31st December,2014, (DGFT)]*
- **IMPORTER EXPORTER CODE - Guidelines For Regional Authorities Notified:** The policy circular prescribes the guidelines for Regional Authorities ("RAs") to process online IEC applications. From January, 1, 2015 onwards, from now on all the applications for IEC would have to be made in online mode only. All applicants will need to fill online IEC application and upload all requisite documents. IEC certificate will be issued in digital format. All the Applications for issuance of IEC will be processed and disposed within two working days. - *[Policy Circular No.15 (RE-2013)/2009-2014, dated 31st December, 2014, (DGFT)]*
- **BUFFALO TALLOW - Export Allowed:** Export of buffalo tallow has been permitted by DGFT as per the item description enumerated in this notification. - *[Notification No 104 (RE - 2013)/2009-2014, dated 31st December, 2014, (DGFT)]*

CORPORATE

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- **BANKS, AS PARTIES, NEED NOT BE CONCERNED WITH PERFORMANCE OF A CONTRACT-DELHI HC:** Banks as parties to a letter of credit (“LC”) are not required to concern themselves with the actual performance of the services that were to be rendered under a contract. And if the requisite documents are in order, then a Bank is required only to perform its obligations under the LC. Under the law relating to bank guarantees, a party seeking injunction from en-cashing of bank guarantee by the supplier(s) has to show *prima facie* case of established fraud and an irretrievable injury. - *[Credit Agricole, CIB v. JVL Agro Industries Ltd. & Ors, dated 26th December, 2014, (Delhi High Court)]*
- **Companies (Amendment) Bill 2014 - Lok Sabha Clears the Bill:** The Companies Act, 2013 (“Act”) was notified on August 29, 2013. Out of 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. In order to address some issues raised by stakeholders such as Chartered Accountants and other professionals, some amendments in the Act have been proposed. Lok Sabha, the lower house of the Parliament, has passed the Companies (Amendment) Bill, 2014, which will make it easier for corporate to do business and to ensure severe punishment for illegal money pooling activities, among other things.

The salient features of the proposed amendments include the following:

 1. Omitting requirement for minimum paid up share capital, and consequential changes. (For ease of doing business);
 2. Making common seal optional and consequential changes for authorization for execution of documents. (For ease of doing business);
 3. Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission);
 4. Prohibiting public inspection of Board resolutions filed in the Registry. (To meet corporate demand);
 5. Including provision for writing off past losses/depreciation before declaring dividend for the year. This was missed in the Act but included in the Rules;
 6. Rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed. (To meet corporate demand);
 7. Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter category also to be made in the Board’s Report. (Demand of auditors);
 8. Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (This was provided under the Rules but being included in the Act as a matter of abundant caution);
 9. Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of doing business);

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10. Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by non-related shareholders. (Meet problems faced by large stakeholders who are related parties);
 11. Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders. (corporate demand);
 12. Bail restrictions to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry & ED);
 13. Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench. (Removal of an inadvertent error); and
 14. Special Courts to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations).
- **COMPANIES (COST RECORDS AND AUDIT) AMENDMENT RULES, 2014 - New Cost Audit Rules Introduced:** The Ministry of Corporate Affairs ("MCA") has introduced new Cost Audit Rules that include a new minimum threshold limit for cost auditing for certain class of entities and also add several new businesses to the list. The new rules have also made it mandatory for companies having annual turnover of Rs. 35 crores and above to maintain cost records and include it in their books of account.

For the purpose of auditing of cost records, the MCA has broadly classified entities into regulated and unregulated sectors. In regulated category, companies with overall annual turnover of Rs. 50 crores or more and the aggregate turnover of the individual products or services of Rs. 25 crores have to get their cost

records audited. Entities falling under the unregulated category and having minimum annual turnover of Rs. 100 crore would need to carry out cost audits. The said Rules will come into effect from the date of its publication in the Official Gazette. - *[MCA Draft Rules dated 31st December 2014]*

SECURITIES

- **OFFER FOR SALE - Conditions Modified:** The Securities and Exchange Board of India ("SEBI") has modified the conditions of offer for sale ("OFS") through Stock Exchange mechanism to make it easier for retail investors to participate in OFS. The seller may give an option to retail investors to place their bid at cut-off price in addition to placing price bids. The other conditions to be fulfilled are mentioned in the circular. - *[CIR/MRD/DP/32 /2014, dated 1st December, 2014, (SEBI)]*
- **MUTUAL FUNDS - Use Of The Stock Exchange Infrastructure By Non-Demat Transactions In Mutual Fund Schemes, Permitted:** SEBI vide circular dated October 04, 2013 had permitted Mutual Fund Distributors to use recognised stock exchanges infrastructure (*i.e.* DEMAT accounts facilities) to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients. In order to broad base the reach of this platform, it is decided to permit non-demat transactions also in the Mutual fund through stock exchange platform. - *[CIR/MRD/DSA/33/2014, 9th December, 2014, (SEBI)]*
- **SEBI COMPLAINTS REDRESSAL SYSTEM, CIRCULARS CONSOLIDATED:** SEBI has consolidated all the Circulars pertaining to 'SCORES'

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(i.e. SEBI Complaints Redressal System), a centralized web based complaints redress system launched in June 2011. The purpose of SCORES is to provide a platform for aggrieved investors, whose grievances, pertaining to securities market, remain unresolved by the concerned listed company or registered intermediary after a direct approach. The present circular consolidates all other provisions issued in this regard. - *[CIR/OIAE/1/2014, dated 18th December, 2014, (SEBI)]*

- **DEPOSITORY PARTICIPANTS - Single Registration Mandated:** The existing requirement, of obtaining certificate of initial registration to act as a participant and subsequently permanent registration to continue to act as a participant for each depository, has been done away with. Henceforth, one certificate of initial registration and subsequently permanent registration through any depository shall be required after commencement of the Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2014. The guidelines for registration purposes are given in the circular. - *[CIR/ MIRSD/5/ 2014, dated 30th December, 2014, (SEBI)]*

- **GLOBAL INTERMEDIARY IDENTIFICATION NUMBER FOR FIIS FALLING IN MODEL 1 JURISDICTIONS, MANDATED:** The Government of India has informed SEBI *vide* communication dated December 30, 2014 that as per the FAQ published on the US Internal Revenue Service (“IRS”) website, Foreign Financial Institutions (“FFIs”) in Model 1 jurisdictions need to register with the US IRS and obtain a Global Intermediary Identification Number (“GIIN”) before January 01, 2015 or at the earliest.

Accordingly, the FFIs who have registered but have not obtained a GIIN should indicate to the withholding agents that the GIIN is applied for. The FAQ published on the IRS website (updated as on December 22, 2014), is placed as Annexure to this circular. All SEBI registered intermediaries who maintain US reportable accounts, as defined in the Model 1 Inter-Governmental Agreement, may take action appropriately. - *[CIR/MIRSD/6/2014, dated 30th December, 2014, (SEBI)]*

- **ISSUANCE AND LISTING OF DEBT SECURITIES ISSUED BY MUNICIPALITIES - Concept Paper Issued by SEBI:** Pursuant to the recommendation made by Corporate Bonds and Securitization Advisory Committee, SEBI issued a concept paper on proposed framework for issuance and listing of debt securities by municipalities. In this regard, SEBI has initiated the public consultation process by preparing concept paper and draft regulations *viz.* SEBI (Issue and Listing of Debt Securities by Municipality) Regulations, 2015. - *[PR No. 182/2014, dated 30th December 2014]*

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- **PLEA OF IMPLEADMENT, – WHEN IT MAY BE ALLOWED- SAT:** In this case, the Applicant sought to be impleaded as a party to appeal filed by DLF limited against the decision of WTM of SEBI barring its directors from accessing securities market.

SAT held that whether DLF Limited has violated SEBI Guidelines/Regulations is a question entirely between DLF Limited and SEBI and the Applicant has no role to play, irrespective of the fact that the complaints filed by the applicant has led SEBI to investigate DLF Limited. Applicant could be impleaded as party respondent only if it is

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demonstrated that setting aside/modifying/varying the order of SEBI in appeal would adversely affect the legal right or prejudicially affect the interests of the Applicant. - *[DLF Limited v. SEBI & Kimsuk Krishna Sinha, dated 10th December, 2014, (SAT)]*

COMPETITION

- **REGULATION OF COMBINATION - Acquisition of IBM'S Microelectric Business by Global Foundries, approved:** Proposed deal between technology major IBM and Global foundries has been cleared by the Competition Commission of India ("CCP" or "the Commission") stating that the deal would not have any adverse impact on competition in the country. Under the deal, Global foundries would acquire certain assets and assume the liabilities of IBM's Microelectronic business. - *[Combination Registration No. C-2014/11/223, dated 23rd December, 2014, (CCI)]*
- **REGULATION OF COMBINATION - Reliance Media Works' Proposed Transfer of Entertainment Business to Prime Focus Cleared:** Under the proposed combination Prime Focus would acquire all the fixed assets, current assets and current liabilities of the film and media division of Reliance MediaWorks. These include state-of-the-art studio facility in Film City Mumbai; media back end facility in SEZ at Navi Mumbai, 100 per cent ownership of Los Angeles-based digital film restoration firm Lowry Digital and debt of Rs 200 crores. Further, Reliance Mediaworks would purchase around 30.24 per cent stake in Prime Focus and additionally acquire 7.72 per cent shareholding in the company by the promoters. - *[Combination Registration No. C-2014/08/198, dated 8th December, 2014, (CCI)]*

- **REGULATION OF COMBINATION - Multi-Billion Dollar Deal between Global Pharma Giants Glaxosmithkline and Novartis, Approved:** CCI, has approved the three-part deal which involves acquisition of GSK's portfolio of oncology products by Novartis for \$16 billion. The deal also involves purchase of the global human vaccines business of Novartis (excluding its influenza vaccines business) by GSK for an estimated amount of \$7.1 billion. Besides, both the drug majors have entered into an agreement to form consumer healthcare joint venture in which GSK will own 63.5 per cent stake and Novartis would own the remaining 36.5 per cent holding. CCI said that the negligible presence of GSK and Novartis and the presence of significant competitors, the vaccines transaction are not likely to result in appreciable adverse effect on competition in the market in India. - *[Combination Registration No. C-2014/07/188, dated 12th December, 2014, (CCI)]*

REGULATION OF COMBINATION - CCI gives conditional approval to Sun Pharma For the proposed acquisition of Ranbaxy Laboratories: CCI has given approval to Sun Pharma's proposed acquisition Of Ranbaxy Laboratories, albeit with conditions. As one of its preconditions for the approval, CCI has asked the companies to divest seven products, which constitute less than one percent of the combined entity's revenues in India. Pursuant to the proposed combination, Ranbaxy will hold 14% of the equity share capital of the proposed entity, while Sun Pharma is expected top own 54.7% equity share capital of the merged entity. - *[Combination Registration No. C-2014/05/170, 5th December, 2014, (CCI)]*

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- **DOMINANT POSITION - Film Distributors Association (Kerala) fined for anti-competitive revenue sharing arrangements:** In the instant matter, the Informant, Cinemax India Limited, alleged that M/s Film Distributors Association (Kerala), has become a cartel of members who are exploiting their collective bargaining position to coerce film exhibitors to enter into extremely unreasonable revenue sharing arrangements.

The Commission held that as per Section 3(3) of the Act, once it is established that an association exists, the onus is on the Opposite Party ("OP") to rebut the presumption that agreement had no adverse impact on competition. OP has failed to rebut the presumption. Opposite Party being the single largest association of distributors in the State of Kerala has thereby controlled and regulated the market of film distribution/exhibition in contravention of Section 3(3)(a), 3(3)(b) and 3(1) of the Competition Act. The Commission imposed a penalty of Rs.75,315. - *[M/s Cinemax India Limited v. M/s Film Distributors Association (Kerala), 23rd December, 2014, (CCI)]*

INDIRECT TAXES

(A) SERVICE TAX

- **AUDIT UNDER SERVICE TAX LAWS, Rules Amended -** : Service Tax Rules have been amended to enable the Officer or the Audit Party deputed by the Commissioner or the Comptroller and Auditor General of India, or a Cost Accountant or Chartered Accountant nominated under section 72A of the Finance Act, 1994 to conduct the audit/ verification of records maintained by the person liable to pay service tax,

to ensure compliance with statutory provisions of service tax.

This amendment has been brought in the backdrop of decision of the Delhi High Court in *Travelite (India) (2014-TIOL-1304-HC-DEL-ST)* wherein Rule 5A(2) of the Service Tax Rules had been quashed on the ground that the powers to conduct audit envisaged in the Rule did not have appropriate statutory backing. - *[Notification No. 23/2014-Service Tax, dated 5th December, 2014 and Circular No. 181/7/2014-Service Tax, dated 10th December, 2014]*

- **MANAGEMENT CONSULTANCY SERVICES - Very nomenclature of the "management consultancy" service indicates that it has nothing to do with the provisions of facilities such as water, effluent treatment, etc Held not maintainable:** In this case, the contention of Revenue was that the services like general support services, operational services, personal services and secretarial services fall within the scope of management consultancy services and therefore, the appellant is liable to pay service tax on the amounts received for provision of such services.

Hon'ble Tribunal held that very nomenclature of the service "management consultancy" indicates that it has nothing to do with provisions of facilities such as water, effluent treatment, etc. the expenditure of which is reimbursed to the appellant. Appellant is not rendering any advice or consultancy. Therefore, demand set aside and appeal allowed. - *[M/s Konkan Synthetic Fibres (Processed Yarn Unit) v. CCE, Raigad, dated 27th November, 2014 (CESTAT)]*

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- **ALLAHABAD HC Interprets “UNDUE HARDSHIP”** – In the instant case the Hon’ble Court has held that the phrase 'undue hardship' does not exclusively related to economic hardship but would also cover a case where appellant has a strong *prima facie* case and a '*strong prima facie*' case would mean that the case is an arguable one and fit for trial, or *prima facie* covered by a binding precedent. The court viewed that it was incumbent upon the Tribunal to have addressed the issue of *prima facie* case of the appellant and also that of *undue hardship*.

The phrase 'undue hardship' has been interpreted to be not only exclusively related to economic hardship but would also cover a case where appellant has a strong *prima facie* case. For a good or strong *prima facie* case, it is not necessary for the appellant to satisfy the tribunal that his case is foolproof and is bound to succeed. Strong *prima facie* case would mean that the case is an arguable one and fit for trial, or *prima facie* covered by a binding precedent. - *[M/s Shukla and Brothers v. Customs, Excise and Service Tax Appellate Tribunal and Ors, dated 4th December, 2014 (Allahabad HC)]*

- **CENVAT CREDIT MAY BE UTILISED FOR THE PAYMENT OF SERVICE TAX – Gujarat HC:** The Hon’ble High Court of Gujarat, in the instant case has interpreted Rule 3 of the CENVAT Credit Rules, 2004. It has held that, since Sub-rule (1) thereof allows the manufacturer or purchaser of final products or provider of output service to take credit of CENVAT of various duties specified therein. And also that Sub-rule (4) of Rule 3 of the said Rules provides that the CENVAT credit may be utilized for payment of various duties specified in clauses (a) to (e) thereof. Clause (e) pertains to "service tax on any

output service". Therefore a combined reading of these statutory provisions would establish that though the assessee was liable to pay service tax on GTA service, it could have utilized CENVAT credit for the purpose of paying such duty. - *[CCE & CC v. Panchmahal Steel Ltd., dated 18th December, 2014 (Gujarat HC)]*

(B) CENTRAL EXCISE

- **EXCISE DUTY ON PETROL AND DIESEL INCREASED -:** Notification No. 12/2012 - Central Excise dated 17/03/2012 has been amended so as to increase the Basic Excise Duty (“BED”) on petrol (both branded as well as unbranded) and diesel (both branded as well as unbranded). - *[Notification No. 24/2014-Central Excise, dated 2nd December, 2014]*
- **PENALTY CANNOT BE ENHANCED WITHOUT ISSUANCE OF A SHOW-CAUSE NOTICE- CESTAT:** The Hon’ble CESTAT has held that the Commissioner (Appeals) could not have enhanced penalty without issuance of any show-cause notice. The reasoning was based on the fact that, since First proviso to the provisions of section 35A(3) of the Central Excise Act mandates for issuance of a Show Cause Notice. - *[John Deere Equipment Pvt Ltd v. CCE, Pune, dated 17th December, 2014 (CESTAT)]*

(C) CUSTOMS

- **TARIFF CONCESSION ON SPECIFIED GOODS IMPORTED FROM KOREA RP - Revised rates effective from 01.01.2015:**

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Notification No. 152/2009-Customs dated 31.12.2009 has been amended to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement *w.e.f.* 1st January 2015. - **[Notification No. 35/ 2014 - Customs, dated 29th December, 2014]**

- **TARIFF CONCESSIONS GRANTED ON SPECIFIED GOODS IMPORTED FROM MALAYSIA - Revised rates effective from 01.01.2015:** Notification No. 53/2011-Customs dated 01st July, 2011 amended so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) *w.e.f.* 1st January 2015. - **[Notification No. 37/ 2014 - Customs, dated 29th December, 2014]**
- **TARIFF CONCESSIONS GRANTED ON SPECIFIED GOODS IMPORTED FROM ASEAN - Revised rates effective from 01.01.2015:** Notification No. 46/2011-Customs dated 01.06.2011 amended so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement *w.e.f.* 1st January 2015. - **[Notification No. 38/ 2014 - Customs, dated 29th December, 2014]**
- **CUSTOMS DUTY RATES - BCD rates Notified, effective from 01.01.2015:** Basic customs duty rates notified [under notification No. 69/2011-Customs dated 29th July 2011 (India-Japan CEPA)] on tariff item 84082020 and tariff item 87084000 at 6.8% and 8.75%, respectively *w.e.f.* 1st January 2015. -

[Notification No. 36/ 2014 - Customs, dated 29th December, 2014]

- **EXTENSION OF ZERO CUSTOMS DUTY RATES - Zero rates would be in force till 31st March, 2015:** Basic customs duty rates notified [under notification No. 69/2011-Customs dated 29th July 2011 (India-Japan CEPA)] on tariff item 84082020 and tariff item 87084000 at 6.8% and 8.75%, respectively *w.e.f.* 1st January 2015. - **[Notification No. 36/ 2014 - Customs, dated 29th December, 2014]**
- **SAFEGUARD DUTY LEVIED ON IMPORTS OF SODIUM CITRATE - Duty levied for a period of three years:** Safeguard duty levied on imports of Sodium Citrate (except from countries notified as developing countries under clause (a) of sub-section (6) of section 8B of the Customs Tariff Act, other than the People's Republic of China), for a period of three years at the following rate-
 - a) 30% ad valorem when imported during the period from 31st December, 2014 to 30th December, 2015 (both days inclusive);
 - b) 20% ad valorem, when imported during the period from 31st December, 2015 to 30th December, 2016 (both days inclusive); and
 - c) 10% ad valorem, when imported during the period from 31st December, 2016 to 30th December, 2017 (both days inclusive). - **[Notification No. 04/2014-Customs (SG), dated 31st December, 2014]**
- **ANTI DUMPING DUTY (ADD) ON SODIUM NITRITE - New levy:** Anti-dumping duty imposed on Sodium Nitrite originating in or exported from

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China PR. - *[Notification No. 46/2014-Customs (ADD), dated 8th December, 2014]*

- **ANTI DUMPING DUTY (ADD) ON CABLE TIES** - New levy for a period of five years: Anti-dumping duty levied on imports of cable ties, originating in or exported from People's Republic of China and Chinese Taipei, for a period of five years. - *[Notification No. 47/2014-Customs (ADD), dated 9th December, 2014]*
- **ANTI DUMPING DUTY (ADD) ON CLEAR FLOAT GLASS** - New levy: Anti-dumping duty imposed on imports of Clear Float Glass originating in or exported from Pakistan, Saudi Arabia and United Arab Emirates (UAE). - *[Notification No. 48/2014-Customs (ADD), dated 11th December, 2014]*
- **ANTI DUMPING DUTY (ADD) ON PENTAERYTHRITOL** - New levy for a period of five years: Anti-dumping duty levied on imports of Pentaerythritol, originating in or exported from Chinese Taipei, for a period of five years. - *[Notification No. 49/2014-Customs (ADD), dated 31st December, 2014]*
- **ADJUDICATION CASES** - New Rank of Officers Created: Pursuant to the Cadre structuring/reorganization of Central Board of Excise and Customs ("CBEC") new posts in the rank of Commissioners of Customs have been created in Directorate of Revenue Intelligence ("DRI") and Directorate General of Central Excise Intelligence ("DGCEI") for the adjudication of cases investigated by DRI and DGCEI. - *[Circular No. 14/2014 - Customs, dated 11th December, 2014]*

- **CUSTOMS CLEARANCE - 24*7 Facility:** It has been decided that with effect from 31.12.2014 the facility of 24x7 Customs clearance for specified imports viz. goods covered by 'facilitated' Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills will be made available, at the selected 18 sea ports and 17 air cargo complexes. - *[Circular No. 19/2014 - Customs, dated 31st December, 2014]*
- **FOREIGN TRADE DEVELOPMENT AND REGULATION** - Must be decided by the authorities under the parliamentary statute and not the Courts: In the instant case the Petitioner sought benefit of duty credit entitlement under the Served from India Scheme ("SFIS"). Authority under FTDR Act, 1992 pointing out deficiency in the application made and filed a Writ Petition against the said communication before High Court.

The Hon'ble High Court held that how and in what manner the foreign trade needs to be developed and regulated is essentially to be decided by the authorities under the Parliamentary statute and court must not examine these issues as not only they are intricate but essentially a policy decision to be taken by the executive. - *[UHDE India Pvt Ltd v. UOI, dated 5th December, 2014 (Bombay HC)]*

- **LIMITATION FOR FILING APPEAL** - Bombay HC on Applicability of Section 128(1), Customs Act: In the instant case the extent to which section 5 of Limitation Act, 1963 can be applied having been enumerated and set out in section 128(1) of the Customs Act, 1963, which is a special law, as the question before the Hon'ble Court. Therefore, for the further delay in filing or presenting the Appeal, applicability of section 5 of the Limitation

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Act, 1963 is expressly ruled out. The language of section 128(1), which is a special law, therefore cannot be ignored or brushed aside. Further the petitioner cannot get over the period of limitation under subsection (1) of section 128 of the Customs Act, 1962 with the aid of subsection (2) of section 14 of the Limitation Act, 1963 - *[M/s Flemingo (Duty Free Shop) Pvt Ltd v. CC, Mumbai & Ors and Sandvik Asia Pvt Ltd v. UOI & Ors., dated 24th December, 2014 (Bombay HC)]*

INTELLECTUAL PROPERTY RIGHTS

TRADE MARKS-

- **At an interlocutory stage the Court can go into the question of validity of registration of plaintiff's trade mark only for the limited purpose i.e. to arrive at a prima facie finding: Bombay HC-** The issue involve in this case was whether the Court can go into the question of the validity of the registration of the plaintiff's Trade Mark at an interlocutory stage when the defendant takes up the defence of invalidity of the registration of the plaintiff's trade mark in an infringement suit?

The Hon'ble Court held that in cases where the registration of trade mark is *ex facie* illegal, fraudulent or shocks the conscience of the Court, the Court is not powerless to refuse to grant an injunction, but for establishing these grounds, a very high threshold of prima facie proof is required. It is, therefore, open to the Court to go into the question of validity of registration of plaintiff's trade mark for this limited purpose, to arrive at a prima facie finding. - *[Lupin Ltd. v. Johnson & Johnson and Shakti Bhog Foods*

Limited v. Parle Prodcuts Private Limited, dated 23rd December, 2014 (Bombay HC)]

- **Where grant of damages would be against the law, unjustified and harsh: DELHI HC**
In the instant case, Hon'ble Court after referring to Section 135 (b) of the Trade Marks Act, 1999, Section 55(1) of the Copyright Act and Section 22 (2) (b) of the Designs Act, 2000, held that there is a clear mandate in a case where the parties were not aware that their mark was offending a Registered Trade Mark of the plaintiff and at the threshold admitted their mistake without wasting the time of the Court, the grant of damages even nominal or rendition of account would not only be against the law but also unjustified and harsh. - *[DKT India v. HLL Lifecare Ltd. & Anr, dated 8th December, 2014 (Delhi HC)]*

CONSUMER

- **NCDRC AWARDS COMPENSATION FOR DEFICIENCY IN SERVICE:** In the instant case the deceased a 27-year-old software engineer, and who drowned in swimming pool. Appellant had enrolled himself for a summer camp in swimming. Though the swimming pool belonged to the Bangalore Mahanagar Palika, it was leased to P M Swimming Centre for conducting swimming classes.

NCDRC finding that on the day of the incident there was no coach, lifeguards or other employees from the leaseholder present at the time of the incident and nobody noticed his drowning. No immediate steps were taken by the swimming pool authorities to either give first aid or to rush the victim to the hospital.

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Therefore it awarded the compensation - *[Dr. Niranjan Nath Sharma v. Bangalore Mahanagara Palika & Ors., dated 2nd December, 2014, (NCDRC)]*

POLICY OF VEHICLE INSURANCE

- **DELAY IN REPORTING TO THE INSURER ABOUT THE THEFT OF THE VEHICLE WOULD BE A VIOLATION OF CONDITION OF THE POLICY AS IT DEPRIVES THE INSURER OF A VALUABLE RIGHT TO INVESTIGATE- NCDRC:** In the instant case a tractor was stolen and information about it was given to police after two days. Regarding intimation to the Insurance Company, the complainant says that such intimation was given on the second day of the theft but from the facts and circumstances on record, it has not been established anywhere that intimation about the theft was given to the Insurance Company on the second day of the incident. The NCDRC held that the complainant is not entitled for any compensation even on 'non-standard' basis. - *[M/s. HDFC Ergo General Insurance Co. Ltd v. Shri Bhagchand Saini, dated 4th December, 2014, (NCDRC)]*
- **CLAIM COULD BE REPUDIATED IF ON THE DATE OF THEFT VEHICLE WAS NOT REGISTERED- NCDRC:** The Complainant purchased a vehicle and got it insured for a year. However, on the date of theft, vehicle was not registered, which is an admitted fact. The commission held that the complainant had not placed any evidence on record that after getting vehicle insured that she ever applied for extension of temporary registration or applied for permanent registration under Section 39 of the Motor Vehicle Act. Merely by mentioning that after purchase of vehicle, complainant's husband, on account of serious illness

was admitted in various hospitals and she remained busy to help her husband, it cannot be a sufficient ground for not getting vehicle registered for 110 days. -*[Oriental Insurance Co. Ltd., v. Vidya Bai, dated 5th December, 2014, (NCDRC)]*

- **NO LICENSING AUTHORITY HAS POWER TO RENEW A FAKE LICENSE AND TRANSFORM A FAKE LICENSE AS GENUINE: NCDRC** If driver of the vehicle is not holding a valid and effective driving licence for driving the vehicle in question, it shall be a serious violation of the statutory requirements under the Motor Vehicles Act and also the conditions of the insurance policy which would vitiate the contract of insurance. Thus, the insurance company would be entitled to repudiate the claim. - *[M/s. MRH Associates v. National Insurance Co. Ltd., dated 17th December, 2014, (NCDRC)]*
- **CONTRACT OF HEDGING IS NOT A CONTRACT OF INSURANCE – NCDRC:** When a party resorts to and enters into an arrangement of hedging against currency, it is (without any doubt) for a commercial purpose which essentially involves profit motives. Thus, hedging even though it provides protection to the person who avails of the facility under a contract cannot be called as insurance. The Commission held that the services of the opposite party Bank availed by the complainant in terms of availing the credit facility of Rs.15 crores in respect of its hedging against currency was for commercial purpose and involved profit motive and as such the complainant in this case cannot be covered by the definition of a consumer. - *[M/s. Sushant Minerals Pvt. Ltd v. M/s Indusind Bank Ltd, dated 12th December, 2014, (NCDRC)]*

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- **COMPLAINT CANNOT GET THE BENEFIT OF THE ACT, IF THE CLAIM BARRED BY LIMITATION- NCDRC:** In the instant case the complainant did not file complaint within the period of 12 months from the date of repudiation of part of the claim. In view of that NCDRC held that complaint filed by the complainant before State Commission was barred by limitation and complainant therefore was not to get benefit of limitation provided under Section 24A of the Consumer Protection Act. - *[M/S. GLOBAL ISPAT LTD. v. Oriental Insurance Co. Ltd., dated 10th December, 2014, (NCDRC)]*

ENVIRONMENT

- **FELLING OF TREES - Delhi High Court stays felling of trees in Vasant Kunj:** The Delhi High Court has granted a stay on felling of trees during widening of a major road by the Delhi Public Works Department in Vasant Kunj. The interim order was passed on a Writ Petition alleging that the Appellate Authority on preservation of trees had not afforded sufficient hearing to the local residents. - *[The Hindu, dated 31st December, 2014]*
- **NGT ON EMISSION TEST OF VEHICLES -** Under the guidelines of NGT all vehicles moving towards Rohtang will now have to undergo emission test: Concerned about the increasing effect of pollution on the ecologically fragile Rohtang area, the National Green Tribunal (“NGT”) had ordered the State Government to establish a Pollution Check Centre near Vashisht so

that only “fit and low emission vehicles” could play on the route. Now, the vehicles with high emission will not be allowed to run beyond Vashisht. Also, vehicles older than 10 years are strictly banned on the Manali-Rohtang Highway. - *[The Times of India, dated 30th December, 2014]*

- **NGT DIRECTS INSTALLATION OF DUSTBINS ON RAILWAY STATIONS:** Concerned over the declining cleanliness levels on the Railway stations, the National Green Tribunal (“NGT”), has directed the Indian Railways and the contractors engaged by it for cleaning to install dustbins at all railway stations. It also sought list of names and addresses of persons found littering who will then be issued show cause notice by the Tribunal, as to why they be not fined Rs.5,000 for polluting the environment. - *[The Hindu, dated 25th December, 2014]*
- **NGT RAISES CONCERN ON NATIONAL ACTION PLAN ON CLIMATE CHANGE: -:** Observing that there is a conflict of interest between the Central Government and various States and because of which an important plan like the NAPCC has failed to get implemented in its true letter and spirit. To deal with the situation it has sought response from the Centre, States and Union Territories about the measures to check Climate Change and how the National Action Plan on Climate Change (“NAPCC”) so that it may be implemented in a better manner - *[The Hindu, dated 2nd December, 2014]*

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