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## RBI/FEMA

### 1) **RBI WIDENS FPIS' INVESTMENT SCOPE IN LOCAL CORPORATE DEBT**

While the FPIs are only permitted to invest in corporate bonds with minimum residual maturity of above one year, in order to bring consistency across debt categories, it is stipulated that investments by an FPI in corporate bonds with residual maturity below one year shall not exceed, at any point in time, 20% of the total investment of that FPI in corporate bonds. In addition, certain clarifications are issued with respect to the provisions in the AP (DIR Series) Circular No. 24 dated April 27, 2018 through which the RBI notified changes affecting operational aspects of FPI investments in debt. – *[A.P. (DIR Series) Circular No. 26, dated 1st May, 2018]*

### 2) **GUIDELINES ON STRIPPING / RECONSTITUTION OF GOVERNMENT SECURITIES REVISED**

With a view to meeting the diverse needs of investors and making Separate Trading of Registered Interest and Principal of Securities

(STRIPS) more aligned with market requirements, RBI has decided to revise the existing guidelines. Accordingly, it is proposed to remove the restrictions on the securities eligible for Stripping / Reconstitution as well as the requirement of authorization of all requests for Stripping / Reconstitution by Primary Dealers (PDs). In view of this, the existing instructions issued *vide* Notification IDMD.1762/2009-10 dated October 16, 2009 read with Circular IDMD.DOD.07/11.01.09/2009-10 dated March 25, 2010, has been partially revised as under:

#### **Eligible Securities**

- a. All fixed coupon securities issued by Government of India, irrespective of the year of maturity, are eligible for Stripping / Reconstitution, subject to certain conditions.

#### **Placing of Requests**

- a. Market participants, having an SGL account with RBI can place requests directly in e-kuber for stripping / reconstitution.
- b. Requests for stripping / reconstitution by Gilt Account Holders (GAH) shall be placed with the respective Custodian maintaining the CSGL account, who in turn, will place the requests on behalf of its constituents in e-kuber.

*[IDMD.GBD.2783/08.08.016/2018-19, dated 3rd May, 2018]*

### 3) **NEW GUIDELINES FOR MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES**

Currently, RBI receives data on investment made by Foreign Portfolio Investors (FPI) and Non-resident Indians (NRI) on stock exchanges from the custodian banks and Authorised Dealer Banks for their respective clients, based on which restrictions beyond a threshold limit is imposed

on FPI/ NRI investment in listed Indian companies.

In order to enable listed Indian companies to ensure compliance with the various foreign investment limits, RBI in consultation with SEBI, has decided to put in place a new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, shall be made available by the depositories. The same has been notified by SEBI *vide* Circular-IMD/FPIC/CIR/P/2018/61 dated April 05, 2018 read with Circular-IMD/FPIC/CIR/P/2018/74 dated April 27, 2018.

In terms of the new guidelines, all listed Indian companies are required to provide the specified data / information on foreign investment to the depositories. RBI has informed that the requisite information may be provided before May 15, 2018. The listed Indian companies, in non-compliance with the above instructions will not be able to receive foreign investment and will be non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and regulations made thereunder. – **[A.P. (DIR Series) Circular No. 27 [(1)/20(R)], dated 3rd May, 2018]**

#### **4) GUIDELINES ON LENDING TO PRIORITY SECTOR FOR PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS) REVISED**

The existing guidelines on lending to Priority Sector for Primary UCBs have been reviewed and consequently revised (as per Annex-I to this circular). Salient features of the revised guidelines are as under:

- i. Target for lending to total priority sector and weaker section will continue as 40 per cent and 10 per cent, respectively, of

- Adjusted Net Bank Credit (ANBC) or credit equivalent of off-balance sheet exposure, whichever is higher, as hitherto.
- ii. Agriculture: Distinction between direct and indirect agriculture is dispensed with.
- iii. Bank loans to food and agro processing units will form part of Agriculture.
- iv. Medium Enterprises, Social Infrastructure and Renewable Energy will form part of priority sector.
- v. A target of 7.5 per cent of ANBC or credit equivalent of off-balance sheet exposure, whichever is higher, has been prescribed for Micro Enterprises.
- vi. Education: Distinction between loans for education in India and abroad is dispensed with.
- vii. Micro Credit ceases to be a separate category under priority sector.
- viii. Loan limits for housing loans qualifying under priority sector have been revised.
- ix. Priority Sector assessment will be monitored through quarterly and annual statements. – **[DCBR.BPD (PCB).Cir.No.07/09.09.002/2017-18, dated 10th May, 2018]**

#### **5) RBI MODIFIES RULES FOR SETTING UP IFSC BANKING UNITS**

As per the extant guidelines, the parent bank is required to provide a minimum capital of USD 20 million or equivalent in any foreign currency to start their IBU operations and the IBU should maintain the minimum prescribed regulatory capital on an on-going basis as per regulations amended from time to time.

The RBI has changed the present guideline so that the parent bank will be required to provide a minimum capital of \$20 million or equivalent in any foreign currency to its IBU which should be

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maintained at all times. However, the minimum prescribed regulatory capital, including for the exposures of the IBU, shall be maintained on an on-going basis at the parent level. Also, the parent bank will be required to provide a Letter of Comfort for extending financial assistance, as and when required, in the form of capital / liquidity support to IBU. – *[DBR.IBD.BC. 105/23.13.004/2017-18, dated 17th May, 2018]*

## 6) WITHDRAWAL OF EXEMPTIONS GRANTED TO GOVERNMENT OWNED NBFCs

The RBI has ended the special dispensations granted earlier for non-banking financial corporations (NBFCs) owned by the government. Instead, it has specified a roadmap, stretching till 2021-22, for these lenders to meet the norms on capital adequacy, provisioning and corporate governance. – *[DNBR (PD) CC.No.092/03.10.001/2017-18, dated 31st May, 2018]*

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## FOREIGN TRADE

### 1) AMENDMENTS IN TABLE 2 OF APPENDIX 3B FOREIGN TRADE POLICY 2015-2020

Some MEIS entries classifiable under the Handicrafts sector are included for enhanced benefit under the Merchandise Exports from India Scheme, for the exports made in the period 01.11.2017 to 30.06.2018. – *[Public Notice No. 02/2015-2020, 1<sup>st</sup> May, 2018 (DGFT)]*

### 2) AMENDMENT OF PARA 2.54 (D) (V) IV IN HANDBOOK OF PROCEDURES, 2015-2020

Requirement of Pre-Shipment Inspection Certification (PSIC) is dispensed with for import of metallic waste and scrap from safe countries through six ports where portal monitors and container scanners are operational. – *[Public Notice No. 04/2015-2020, 9<sup>th</sup> May, 2018 (DGFT)]*

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## CORPORATE

### 1) FINANCE MINISTRY FURTHER WIDENS CATEGORY TRANSPORT AND LOGISTICS FOR SUB-CATEGORY RAILWAY IN THE HARMONIZED MASTER LIST OF INFRASTRUCTURE SUB-SECTORS

The Ministry of Finance has further updated the Harmonised Master List of Infrastructure Sub-sectors. Under the category of “Transport & Logistics” the sub-category “Railway track, tunnels, viaducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure” has been amended as follows- (a) Railway track including electrical & signalling system, tunnels, viaducts, bridges; (b) Railway rolling stock along with workshop and associated maintenance facilities; and (c) Railway terminal infrastructure including stations and adjoining commercial infrastructure. – *[Ministry of Finance, 1<sup>st</sup> May, 2018]*

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## 2) COMMENCEMENT OF S. 227 TO 229 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Central Government has appointed **May 1, 2018** as the date on which Section 227 relating to power of Central Government to notify the financial service providers etc., Section 228 relating to budget and Section 229 relating to annual report, shall come into force. –*[Ministry of Corporate Affairs, 3<sup>rd</sup> May, 2018 (MCA)]*

## 3) THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS (AMENDMENT) ORDINANCE, 2018

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 has been promulgated w.e.f May 03, 2018 amending the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 as follows:

- a. The long title of the Act has been amended to introduce the word Commercial Appellate Courts and shall now read as “*The Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015*”
- b. S. 1(1) has been substituted to provide that – “*This Act may be called the Commercial Courts Act, 2015*”
- c. The definition of “Commercial Appellate Court” has been inserted in S. 2(1).
- d. The definition of “specified value” in S.2(1)(i) has been amended to bring down the specified value of a commercial

dispute to 3 lakhs from the present one crore.

- e. New provisos added to S.3(1). The existing proviso states that no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction. This has been substituted to provide that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level. Further, with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.
- f. New sub-section (1A) has been added to S. 3 providing that “*Notwithstanding anything contained in this Act, the State Government may, after consultation with concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.*”
- g. A new S. 3A regarding Designation of Commercial Appellate Courts has been added providing that “*Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of*



*exercising the jurisdiction and powers conferred on those Courts under this Act”*

- h. S. 9 regarding Transfer of suit if counterclaim in a commercial dispute is of Specified Value has been omitted.
- i. A new Chap. IIIA has been introduced regarding Pre-Institution Mediation and Settlement process in cases where no urgent, interim relief is contemplated. The Central Government may authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre- institution mediation.
- j. The process of mediation shall be completed within three months from the date of application made by the plaintiff. The period of mediation may be extended for a further period of two months with the consent of the parties. The period during which the parties remained occupied with the pre-institution mediation shall not be computed for the purpose of limitation under the Limitation Act, 1963.
- k. If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator. The settlement arrived at under this process shall have the same status and effect as if it is an arbitral award on agreed terms under S. 30(4) of the Arbitration and Conciliation Act, 1996.
- l. A new Section 21(A) regarding power of Central Government to make Rules has been inserted.

- m. A new Appendix-I regarding Statement of Truth has been inserted.

*[Ministry of Law and Justice, 3<sup>rd</sup> May, 2018]*

#### **4) COMPANIES (SHARE CAPITAL AND DEBENTURES) SECOND AMENDMENT RULES, 2018**

Pursuant to commencement of various sections of the Companies (Amendment) Act, 2017, MCA has amended the Companies (Share Capital and Debentures) Rules, 2014. Rule 8 deals with issue of sweat equity shares to directors or employees. The explanation lists the persons who can be considered as an employee for the purposes of this Rule. Explanation (i)(a) states that an employee means a permanent employee of the company who has been working in India or outside India, **for at least last one year**. Clause (i)(a) of the explanation has now been amended to omit the words "for at least last one year". The Amendment shall come in to force on the date of its publication in the Gazette. – *[Ministry of Corporate Affairs, 7<sup>th</sup> May, 2018 (MCA)]*

#### **5) MCA ISSUES CLARIFICATION REGARDING CONDONATION OF DELAY SCHEME, 2018**

MCA has issued clarification on applicability of Condonation of Delay Scheme, 2018 (CODS) on struck off companies, which have already filed an application before closure of scheme and are revived through the order of NCLT. MCA has received representations from stakeholders raising doubts regarding filing requirements of e-CODS, 2018, in cases where petitions have already been filed before NCLT under Section 252 of the Companies Act, 2013 (Act), during the currency of the scheme and orders are pending before the NCLT and whether such struck off companies could file CODS upon obtaining orders for the same even after May 1, 2018. MCA

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has clarified that as per para 4(v) of the General Circular dated December 29, 2017, in such cases the Registrar of Companies shall raise a ticket through Change Requirement Form (CRF) on MCA21 portal along with copy of NCLT order and E-governance shall activate DIN of the directors of such struck off companies that have been revived through NCLT to file e-CODS, 2018. Para 4(v) of the General Circular dated Dec 29, 2017 states *"In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents"*.

However, the directors whose DINs are proposed to be activated through CRF should not be directors on any other company which has been struck off u/s 248(1) of the Act (other than the one revived through NCLT order as mentioned in CRF). This may be ensured by the ROC before raising CRF with E-governance. Further, the Registrar of Companies shall ensure that CRFs are raised in such cases only after thorough scrutiny of the NCLT orders and ensuring that such struck off companies had filed overdue documents before filing e-CODS, 2018 and had filed petitions before the NCLT during the validity of CODS Scheme. **–[Ministry of Corporate Affairs, 17<sup>th</sup> May, 2018 (MCA)]**.

## 6) MCA ISSUES CLARIFICATION WITH REGARDS TO CSR

Pursuant to concerns raised by some stakeholders regarding non-compliance of first proviso to S. 135(5) of the Companies Act, 2013, MCA has reiterated that the provisions of first proviso to S. 135(5) shall be followed in letter and spirit by the Companies. The first proviso to S. 135(5) lays down that the company shall give preference to the local area and areas around it where it

operates, for spending the amount earmarked for Corporate Social Responsibility activities. **– [Ministry of Corporate Affairs, 28<sup>th</sup> May, 2018 (MCA)]**

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## SECURITIES

### 1) MASTER CIRCULAR ON CREDIT RATING AGENCIES

SEBI has issued a Master Circular on Credit Rating Agencies which is a compilation of the circulars issued by SEBI up to March 31, 2018, which are operational as on the date of this circular. In case of any inconsistency between the Master Circular and the applicable circulars, the contents of the relevant circular shall prevail. **–[SEBI/HO/MIRSD/DOP2/CIR/P/2018/76, 2<sup>nd</sup> May, 2018, (SEBI)]**

### 2) ADDITIONAL RISK MANAGEMENT MEASURES FOR DERIVATIVES SEGMENT

SEBI has put in place additional risk management measures for the derivatives segment. These measures pertain to margin collection requirement and computation of liquid net worth for the equity derivatives segment. Accordingly:

**Margin Collection Requirement** - For the Equity Derivatives segment, clearing members or trading members should include initial margin, exposure margin or extreme loss margin, calendar spread margin and mark to market settlements in the client margins which are required to be compulsorily collected and reported to stock exchanges or clearing corporation.

**Margin Enforcement Requirement** – SEBI has clarified that the 'margins', for both Equity Derivatives Segment and Currency Derivatives Segment, shall include margins as specified in the

above point, mark to market settlements or any other margin as prescribed by the Exchange/Clearing Corporation to be collected by Clearing Members from their clients (i.e., Custodial Participants and Trading Members - for their proprietary positions) and by Trading Members from their clients.

**Computation of Liquid Net worth** – SEBI has clarified that for the equity derivatives segment, the liquid net worth shall be arrived at by deducting initial margin and the exposure margin/extreme loss margin from the liquid assets of the clearing member. *– [SEBI/HO/MRD/DRMNP/CIR/P/2018/75, 2<sup>nd</sup> May, 2018 (SEBI)].*

### 3) NEW FRAMEWORK TO CHECK NON-COMPLIANCE OF LISTING REGULATIONS

In order to streamline the process, maintain consistency and adopt a uniform approach in the matter of levy of fines for non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter and promoter group of a non-compliant listed entity, SEBI has put in place a new framework/mechanism to check non-compliance of listing conditions. **This framework is in supersession of its Circulars dated November 30, 2015 and October 26, 2016.** Under the new framework:

- a. The depositories, on receipt of intimation from the concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter and promoter group in such non-compliant listed entity as well as all other securities held in the demat account of the promoter and promoter group.
- b. If a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action in consultation with each other.
- c. Stock exchanges to impose penalties ranging from Rs. 1,000-5,000 per day on violation of certain provisions of the Listing Regulations like non-submission or delay in submission of document related to the company's financial and shareholding details, failure to appoint women director on the board, etc.
- d. The exchanges can levy a fine of Rs. 10,000 per instance for delay in furnishing prior intimation about the company's board meeting and delay in non-disclosure of record date or dividend declaration.
- e. Such fines will continue to accrue till the time of rectification of the non-compliance to the satisfaction of the concerned recognised stock exchange or till the scrip of the listed entity is suspended from trading for non-compliance with the provisions of listing regulations. Such accrual will be irrespective of any other disciplinary or enforcement action initiated by stock exchanges or SEBI.
- f. Every stock exchange is required to review the compliance status of the listed entities within 15 days from the date of receipt of information. Also, exchanges need to issue notices to the non-compliant listed entities to ensure compliance and pay fine within 15 days from the date of the notice.
- g. The board of directors need to be informed about the non-compliance and their comments shall be duly informed to the recognised stock exchanges for dissemination.



- h. If a listed entity is non-compliant with the provisions of the Listing Regulations, exchanges can move the stocks of such firms to "Z" category wherein trades shall take place on 'Trade for Trade' basis and suspend trading in the shares of such entities.
- i. If a listed entity commits default in complying with the provisions of the Listing Regulations, the concerned recognised stock exchanges shall, in addition to imposing fine stated above, move the scrip of the listed entity to "Z" category wherein trades shall take place on 'Trade for Trade' basis. The recognized stock exchange shall give 7 days prior public notice to investors before moving the scrip to "Z" category or while moving the scrip out of "Z" category. While issuing the notice, the recognized stock exchange shall intimate the other recognized stock exchanges where the shares of the non-compliant entity are listed.
- j. Grounds for suspension from listing/restrictions on trading include failure to comply with the board composition including appointment of women director and failure to constitute audit committee for two consecutive quarters; failure to submit information on the reconciliation of shares and capital audit report for two consecutive quarters, amongst others.
- k. In case an entity fails to comply with the requirements or pay the applicable fine within six months from the date of suspension, the exchange will need to initiate the process of compulsory delisting.
- l. The recognized stock exchanges shall disclose on their website the actions taken against the listed entities for non-compliances; including the details of the

respective requirement, amount of fine levied, the period of suspension, details regarding the freezing of shares, etc.

- m. If the non-compliant listed entity complies with SEBI's requirement and pays applicable fine, the recognized stock exchanges shall, on the date of compliance, give a public notice on its website informing compliance by the listed entity. The recognized stock exchanges shall revoke the suspension of trading of its shares after 7 days from the date of such notice. Simultaneously, the recognized stock exchanges shall also inform the same to the other recognized stock exchanges where the shares of the entity are listed. After revocation of suspension, the trading of shares shall be permitted only in 'Trade for Trade' basis for a period of 7 days from the date of revocation and thereafter, trading shall be shifted back to the normal trading category.

The recognized stock exchanges shall intimate the depositories to unfreeze the entire shareholding of the promoter and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group, after three months from the date of revocation of the suspension. –

**[SEBI/HO/CFD/CMD/CIR/P/2018/77, 3<sup>rd</sup> May, 2018 (SEBI)].**

#### **4) SEBI EXTENDS TRADING HOURS FOR DERIVATIVES MARKET**

With a view to enable integration of trading of various segments of securities market at the level of exchanges, it has been decided to permit Stock Exchanges to set their trading hours in the Equity Derivatives Segment between 9:00 AM and 11:55 PM, similar to the trading hours for Commodity Derivatives Segment which are presently fixed



between 10:00 AM and 11:55 PM, provided that the Stock Exchange and its Clearing Corporation(s) have in place risk management system and infrastructure commensurate to the trading hours. Stock exchanges that wish to extend trading hours will have to seek permission from SEBI, which will evaluate the requests based on the risk management system and infrastructure of these exchanges. The Circular shall come into effect from October 1, 2018. – *[SEBI/HO/MRD/DRMNP/CIR/78, 4<sup>th</sup> May, 2018 (SEBI)]*

## 5) SEBI IMPLEMENTS CERTAIN RECOMMENDATIONS OF THE KOTAK COMMITTEE ON CORPORATE GOVERNANCE

Pursuant to the amendments made to the Listing Regulations based on the recommendations of the Kotak committee, SEBI has now issued a Circular implementing a few recommendations made by the Kotak Committee. The following provisions shall apply to entities whose equity shares are listed on a recognized stock exchange:

As a part of its disclosures on board evaluation, the listed entity may consider - observations of board evaluation carried out for the year; previous year's observations and actions taken; proposed actions based on current year observations.

Where the listed entity has a large number of unlisted subsidiaries, it may establish an effective group governance policy or it may monitor their governance through a dedicated group governance unit/ Governance Committee comprising of members of its board of directors.

With respect to disclosure of medium-term and long-term strategy of the entity, the listed entity may disclose, under the Management Discussion

and Analysis section of the Annual report, within the limits set by its competitive position, its medium-term and long-term strategy based on a time frame as determined by its board of directors. The listed entity may articulate a clear set of long-term metrics specific to the company's long term strategy to allow for appropriate measurement of progress.

Clause 4.4 of the [SEBI Circular dated May 27, 2016](#) (discussing procedure where impact of the audit qualification is not quantified by the auditor) shall stand deleted. – *[SEBI/HO/CFD/CMD/CIR/P/2018/79, 10<sup>th</sup> May, 2018 (SEBI)]*

## 6) SEBI ENHANCES DISCLOSURE NORMS FOR CREDIT RATING AGENCIES

Pursuant to the feedback and comments received on its Consultation Paper comprising proposals pertaining to, *inter-alia*, rating process followed by the Credit Rating Agencies (CRAs) and disclosures pertaining to the ratings assigned on September 08, 2017, SEBI has issued the following guidelines:

In the interest of transparency and fairness, SEBI has decided that all cases of requests by an Issuers for review of the rating(s) provided to its instrument(s) by the CRA, shall be reviewed by a Rating Committee of the CRA that shall consist of a majority of independent members. The Circular defines "independent" members as those people that have any no pecuniary relationship with the CRA or any of its employee.

In order to make the disclosures more relevant, SEBI has clarified that all non-accepted ratings will have to be disclosed on the CRA's website for a period of 12 months in a prescribed format. This disclosure includes name of the issuer, sector, type of instrument, issue size, listing status of the instrument, rating assigned as well as date of non-acceptance of rating.

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A rating summary sheet presenting a snapshot of the rating actions carried out during the half-year, would have to be uploaded by the CRAs on their websites on a half-yearly basis, within 15 days from the end of the half-year.

For ease of understanding by the investors, the disclosures need to be prepared and disclosed separately for ratings of securities; and financial instruments other than securities.

Compliance by CRA with the provisions of this Circular shall be verified during the half-yearly Internal Audit. With respect to point 6 A III of Circular dated Nov 01, 2016, SEBI has clarified that the audit team must be composed of, at least, a Chartered Accountant (ACA/ FCA) and a Certified Information Systems Auditor/ Diploma in Information Systems Auditor (CISA/ DISA).  
–[SEBI/ HO/ MIRSD/ DOP2/ CIR/ P/ 2018/ 86, 30<sup>th</sup> May, 2018, (SEBI)]

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## COMPETITION

### 1) LESSER PENALTY PROVISIONS AID CCI TO BUST CARTEL IN TENDERS OF PUNE MUNICIPAL CORPORATION

The Competition Commission of India (‘CCI’) passed final order imposing penalty on six firms - Fortified Security Solutions (‘Fortified’), Ecoman Enviro Solutions Pvt. Ltd. (‘Ecoman’), Lahs Green India Pvt. Ltd. (‘Lahs Green’), Sanjay Agencies, Mahalakshmi Steels (‘Mahalakshmi’) and Raghunath Industry Pvt. Ltd. (‘Raghunath’) for bid rigging / collusion in five tenders floated by Pune Municipal Corporation during the period December, 2014 to March, 2015 for “Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)”.

Under the provisions of Section 46 of the Competition Act, 2002 (‘the Act’) read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 (‘Lesser Penalty Regulations’) CCI reduced penalty on four bidders i.e., Mahalakshmi, Lahs Green, Sanjay Agencies and Ecoman.

From the evidence gathered during the investigation, CCI found that there was bid rigging / collusive bidding in the tender for ‘Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)’ in contravention of Section 3(3)(d) read with Section 3(1) of the Act. Further, CCI also found meeting of mind and co-ordination between various individuals which included the proprietor/ partner/ director of the firms to rig the tenders by way of submitting proxy/ cover bids. Considering contravention of provisions of the Act, an amount of INR 13.07 Lakhs, INR 45.20 Lakhs, INR 42 Lakhs, INR 1.51 Crores, INR 3.36 Crores and INR 30.55 Lakhs was computed as leviable penalty on six firms. CCI imposed penalty on firms at the rate of 10 percent of their profit for three years preceding the year in which collusion took place. Additionally, considering totality of facts and circumstances of the case, penalty leviable on individual officials of four firms namely Ecoman, Lahs Green, Sanjay Agencies and Raghunath was computed at the rate of 10 percent of their average income for the same three years. – [Nagrik Chetna Manch v. Fortified Security Solutions and Others, 1<sup>st</sup> May, 2018 (CCI)]

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## INDIRECT TAXES

### a. CUSTOMS

#### 1) INCREASE OF BCD ON CERTAIN ITEMS

The CBEC has increased BCD on following items:

- i. Walnuts in shell [0802 31 00 ] from 30% to 100%; - **[Notification No. 45 /2018 – Customs, dated 23rd May, 2018]**
- ii. Protein concentrates and textured protein substances [2106 10 00] from 30% to 40% - **[Notification No. 45 /2018 – Customs, dated 23rd May, 2018]**
- iii. Shelled Almonds [0802 12 00] from Rs.65/Kg to Rs.100/Kg; - **[Notification No. 46 /2018 – Customs, dated 23rd May, 2018]**
- iv. Wheat [1001 19 00, 1001 99 10] from present 20% to 30%; - **[Notification No. 46 /2018 – Customs, dated 23rd May, 2018]**
- v. Protein concentrates [2106 10 00] from 10% to 40% - **[Notification No. 46 /2018 – Customs, dated 23rd May, 2018]**

#### 2) BILL OF ENTRY (ELECTRONIC INTEGRATED DECLARATION AND PAPERLESS PROCESSING) REGULATIONS, 2018

The CBIT in supersession of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011, has made the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. They shall apply to the import of goods through all customs stations where the Indian Customs Electronic Data Interchange

System is in operation. – **[Notification No. 36 /2018-Customs (N.T.), dated 11th May, 2018]**

#### 3) THE SEA CARGO MANIFEST AND TRANSHIPMENT REGULATIONS, 2018

The CBIT in supersession of Import Manifest (Vessels) Regulations, 1971; Export Manifest (Vessels) Regulations, 1976; and Transportation of Goods (Through Foreign Territory) Regulations, 1965, has introduced the Sea Cargo Manifest and Transshipment Regulations, 2018, which shall come into force on August 01, 2018. – **[Notification No. 38 / 2018-Customs (N.T.), dated 11th May, 2018]**

#### 4) CUSTOMS BROKERS LICENSING REGULATIONS, 2018

The CBIT in supersession of the Customs Brokers Licensing Regulations, 2013, has introduced the Customs Brokers Licensing Regulations, 2018. These Regulations shall apply to, a Customs Broker who has been licensed and such other persons who have been employed or engaged by a licensed Customs Broker under these regulations or the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013. – **[Notification No. 41/2018 - Customs (N.T.), dated 14th May, 2018]**

#### 5) CUSTOMS AUDIT REGULATIONS, 2018

The CBIT in supersession of the On-site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011, has introduced the Customs Audit Regulations, 2018. – **[Notification No. 45/2018 - Customs (N.T.), dated 24th May, 2018]**



## 6) ADD ON PEROXOSULPHATES (PERSULPHATE)

Levy of anti-dumping duty imposed on imports of Peroxosulphates (Persulphate) originating in or exported from China PR under Notification No. 11/2013-Customs (ADD), dated the 16.05.2013 extended for a further period of one year (i.e., 14.05.2019). – **[Notification No. 26/2018-Customs (ADD), dated 14th May, 2018]**

## 7) ADD ON CERAMIC ROLLERS

Definitive anti-dumping duty imposed on imports of "Ceramic Rollers", originating in or exported from People's Republic of China for a period of five years. – **[Notification No. 27/2018-Customs (ADD), dated 17th May, 2018]**

## 8) ADD ON SATURATED FATTY ALCOHOLS

Definitive anti-dumping duty imposed on imports of 'Saturated Fatty Alcohols' originating in, or exported from Indonesia, Malaysia and Thailand for a period of five years. – **[Notification No. 28/2018-Customs (ADD), dated 25th May, 2018]**

### b. SERVICE TAX

#### 1) CLARIFICATION ON APPLICABILITY OF THE PLACE OF PROVISION OF SERVICES RULES, 2012 (POPS) TO DEVELOPMENT OF SOFTWARE AND SERVICES ON SOFTWARE

Under Rule 4 of the POPS in the erstwhile service tax law, there has always been an ambiguity in determining the place of provision of services in relation to development, design, programming, customization, etc. of information technology software. In certain cases, benefits were denied to software exporters as the POPS was determined to be within India based on the location of the goods (software) in India.

In view of this, the CBIC has sought to clarify that the place of provision of service in the following cases would be the location of the recipient of the service:

- i. In the case of services where data, instructions, etc. are provided so as to develop software, i.e. development, design and programming of information technology software; and
- ii. In the case of services on software involving testing, debugging, modification, etc., i.e., customization, adaptation, upgradation, enhancement, implementation of information technology software. – **[Circular no. 209/1/2018 – Service Tax, dated 4th May, 2018]**

### c. GST

#### 1) WAIVER OF LATE FEE FOR FORM GSTR-3B

The CBEC has decided to waive the late fee payable for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018, for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27th



day of December, 2017: Provided that such registered persons have filed the declaration in FORM GST TRAN-1 on or before the 10th day of May, 2018 and the return in FORM GSTR-3B for each of such months, on or before the 31st day of May, 2018. – **[Notification No. 22 /2018 – Central Tax, dated 14th May, 2018]**

## **2) NOTIFICATION OF NACIN AS THE AUTHORITY FOR CONDUCTING THE EXAMINATION FOR GST PRACTITIONERS**

The CBEC has notified the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India (NACIN) as the authority for conducting the examination for GST Practitioners under Rule 83 (3) of the CGST Rules, 2017. – **[Notification No. 24 /2018 – Central Tax, dated 28th May, 2018]**

## **3) EXTENSION OF DUE DATE FOR FILING OF FORM GSTR-6**

The CBEC has extended the due date for filing of FORM GSTR-6 for the months of July, 2017 to June, 2018, till the 31st day of July, 2018. – **[Notification No. 25/2018 – Central Tax, dated 31st May, 2018]**

## **4) LEVY OF PRIORITY SECTOR LENDING CERTIFICATE (PSLC) UNDER REVERSE CHARGE MECHANISM (RCM)**

Notification No. 04/2017- Central Tax (Rate) dated 28.06.2017 amended so as to notify levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM). – **[Notification No. 11/2018-Central Tax (Rate), dated 28th May, 2018]**

Similar notifications have been issued under the IGST Act and UT GST Act. – **[Notification No. 12/2018-Integrated Tax (Rate), dated 28th May, 2018 & Notification No. 11/2018-Union Territory Tax (Rate), dated 28th May, 2018]**

## **5) CLARIFICATIONS ON ISSUES RELATED TO TAXABILITY OF 'TENANCY RIGHTS' UNDER GST**

Doubts have been raised as to -

- i. Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?
- ii. Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

It has been clarified that the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of Notification No. 12/2017-Central Tax (Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST. – **[Circular No.44/18/2018-CGST, dated 2nd May, 2018]**

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## INTELLECTUAL PROPERTY RIGHTS

### 1) SECTION 124 OF THE TRADE MARKS ACT IS VERY SPECIFIC AND MAKES IT CLEAR THAT IT IS APPLICABLE ONLY TO SUITS FOR INFRINGEMENT AND NOT TO THE SUITS FOR PASSING OFF: DELHI HC

The defendant in the present case filed an application under Section 124 of the Trade Marks Act (hereinafter 'the Act') read with Section 151 of CPC for stay of the present proceedings pending final disposal of rectification application filed by it. The application is contested by the plaintiff. The Court putting reliance on earlier decided judgments "Puma Stationer P .Ltd. & Anr. vs. Hindustan Pencils Ltd." and "Micolube India Ltd. vs. Maggon Auto Centre & Anr." observed that Section 124 of the Trade Marks Act is very specific and makes it clear that it is applicable only to suits for infringement and not to the suits for passing off. Consequently, the court partly allowed the present application and held that so far as the suit for infringement of Trademark it is stayed till the final decision of the pending rectification; the suit filed by the plaintiff for 'passing off', however, shall continue and is to be decided on its own merit. – *[M/S. J.K.Oil Industries v. M/S. Adani Wilmar Limited, dated 29th May, 2018 (Delhi HC)]*

### 2) A WORD, EVEN IF GENERIC, IF APPLIED TO A BUSINESS WITH WHICH THE WORD IS UNRELATED, IS INDEED TO BE PROTECTED: DELHI HC

The Court in the present case observed that 'H&M' or 'HM' are not generic or publici juris to the trade or business for which they are being

used by the plaintiffs and the defendants. The said alphabets are alien to the trade / business of clothing / garments / accessories and were applied thereto by the plaintiffs, admittedly much prior to the defendants, merely on account of being first alphabets of the originators of business of the plaintiffs. As distinct therefrom, LIV 52 & LIV-T were at interim stage found being used for medicinal preparations for treatment of Liver and were thus held to be generic and / or publici juris. That is not so here. A word, even if generic, if applied to a business with which the word is unrelated, is indeed to be protected. Merely because it is alphabets or acronym, is immaterial. Moreover, this Court has to be wiser from the experience of LIV-52 case aforesaid, where ultimately injunction sought against use of 'LIV-T' was granted. It is not even the case of the defendants that 'H' and 'M' or 'HM' are generic to the trade in which the plaintiffs and defendants are. – *[H&M; Hennes & Mauritz Ab & Anr v. HM Megabrands Pvt. Ltd. & Ors, dated 31st May, 2018, Delhi HC]*

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## CONSUMER

### 1) MULTIPLEXES MAY SOON REGULATE THE RATES OF EATABLES

If all goes as per the UT administration's plan, cinemagoers may soon get eatables and beverages at regulated prices. The decision was taken by the Chandigarh District Consumer Protection Council in a meeting under the chairmanship of UT deputy commissioner Ajit Balaji Joshi. The members of the council unanimously decided that the multiplex owners should not be allowed to sell products above maximum retail price (MRP). A formal order in this regard is expected to be issued shortly. The council also decided that

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cinema halls will have to put up a rate list at the entrance. The members expressed displeasure over multiplexes not allowing people to carry their own eatables and water bottles inside the complex. The council held that senior citizens, patients and children should be allowed to carry eatables with them.

The Bombay High Court had recently raised the issue of exorbitant prices of eatables and beverages being sold inside cinema halls and prohibition of outside food inside. On April 4, the Bombay High Court ruled that cinemagoers cannot be prohibited from bringing their own eatables in multiplexes. - *[The Times of India dated May 01, 2018]*

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## ENVIRONMENT

### 1. FATE OF INDUSTRIES AFFECTING NATURE HANGS IN BALANCE

Fate of the industries in Jodhpur, causing irreversible damage to the environment because of toxic effluents, hangs in balance with the awaited decision of the National Green Tribunal (NGT). A report submitted by the court commissioner appointed by the NGT, further to the imposition of the cost of Rs. 10 lakhs on the government of Rajasthan, to ascertain the ground realities has found glaring deficiencies in compliance of NGT's directions. - *[The Times of India, dated 28th May, 2018]*

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