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## **RBI/FEMA**

### **1) MAINTENANCE OF CRR / SLR ON FOREIGN CURRENCY ASSETS / LIABILITIES**

Financial Benchmarks India Private Limited (FBIL) has taken over the process of computing and disseminating reference rate for INR/USD and exchange rate for the other major currencies with effect from July 10, 2018. In this connection RBI has announced that banks shall use the conversion rate announced by FBIL for the purpose of converting foreign assets/liabilities. – *[DBR.Ret.BC.No.01/12.01.001/2018-19, dated 2nd August, 2018]*

### **2) INVESTMENTS IN NON-SLR SECURITIES BY PRIMARY (URBAN) CO-OPERATIVE BANKS – APPROVED COUNTERPARTIES FOR SECONDARY MARKET TRANSACTIONS**

As a step towards harmonization of regulations for Urban and Rural Co-operative Banks, RBI has decided to permit UCBs to undertake eligible

transactions for acquisition / sale of non-SLR investment in secondary market with mutual funds, pension / provident funds and insurance companies, in addition to undertaking transactions with commercial banks and primary dealers, subject to adherence to the instructions contained in Para 7 of RBI Master Direction FMRD.DIRD.2/14.01.002/2017-18 dated August 10, 2017. – *[DCBR.BPD.(PCB).Cir.No.02/16.20.000/2018-19, dated 16th August, 2018]*

### **3) LIQUIDITY ADJUSTMENT FACILITY (LAF) AND MARGINAL STANDING FACILITY (MSF) EXTENDED TO SCHEDULED CO-OPERATIVE BANKS**

RBI has decided that with effect from August 20, 2018, LAF will also be extended to Scheduled State Co-operative Banks (StCBs) which are CBS enabled and have CRAR of at least 9 percent. Further, in order to provide an additional window for liquidity management over and above what is available under LAF, it has also been decided that with effect from August 20, 2018, MSF will be extended to Scheduled UCBs and Scheduled StCBs which are CBS enabled and have CRAR of at least 9 percent. The terms and conditions for availing LAF and MSF would be as per the instructions issued by Financial Markets Operation Department (FMOD) of the Reserve Bank of India from time to time. –

*[DCBR.BPD.(PCB/RCB).Cir.No.3/16.27.000/2018-19, dated 16th August, 2018]*

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## 4) RUPEE DRAWING ARRANGEMENT – REMITTANCE TO THE CHIEF MINISTER’S DISTRESS RELIEF FUND- KERALA

In the wake of the floods in the State of Kerala and the representations received from the AD Cat - I banks, seeking permission to receive funds in the Chief Minister’s Distress Relief Fund - Kerala through the exchange houses, it has been decided in consultation with the Government of India, to permit receipt of remittances to the Chief Minister’s Distress Relief Fund - Kerala through exchange houses, subject to the condition that the remittances are directly credited to the fund by the banks and the banks maintain full details of the remitters.

This direction has been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

**[RBI/2018-19/41 A. P. (DIR Series) Circular No. 5, dated 29<sup>th</sup> August, 2018]**

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## FOREIGN TRADE

### 1) ACCEPTANCE OF INSTALLATION CERTIFICATE UNDER EPCG SCHEME BY THE RAS, WHEREIN INSTALLATION CERTIFICATE IS SUBMITTED BEYOND 18 MONTHS, WITHOUT PENALTY

Under the EPCG Scheme, the authorization holders are required to submit the installation certificate showing installation of the capital goods to the RA within the prescribed time period.

Sometimes, the submission of installation certificate to the RAs was not within the time prescribed on account of various reasons, including delay in installation of the machinery/delay in issuance of installation certificate etc. The EPCG Committee was receiving requests for condonation of time period of submission of installation certificate to the Regional authorities. Some of such requests for condonation were considered by the EPCG Committee on payment of composition fee of Rs.5,000/-.

As a facilitative measure, [Public Notice No.37/2015-20 dated 25.10.2017](#) was issued permitting one time relaxation for condonation of time period upto 31.03.2018 condoning the delay in submission of installation certificate on payment of penalty of Rs.5000/- per authorization (provided the installation has happened within the period of 18 months).

Taking into account the representations in this regard and to facilitate the ease of doing business for the purpose, it has been decided to permit the RAs to accept the installation certificate without insisting for penalty in respect of authorization issued upto 31.03.2020, as long as the installation has happened within 18 months from the date of import, provided the EPCG authorization is not under any investigation/adjudicated by RA/customs authority/ any other investigative agency. This relaxation will be available upto 31.03.2019. There will not be any refund of the penalty already paid under the [Public Notice No.37/2015-20 dated 25.10.2017](#). **–[Public Notice No.30/2015-20, 14<sup>th</sup> August, 2018 (DGFT)]**

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## CORPORATE

### 1) **CABINET APPROVES EXTENSION OF CONCESSIONAL FINANCING SCHEME (CFS) TO SUPPORT INDIAN ENTITIES BIDDING FOR STRATEGICALLY IMPORTANT INFRASTRUCTURE PROJECTS ABROAD**

The Cabinet has approved the extension of Concessional Financing Scheme (CFS) to support Indian Entities bidding for strategically important infrastructure projects abroad. Since 2015-16, under the CFS, the government has been supporting Indian Entities bidding for strategically important infrastructure projects.

Before the CFS was introduced, Indian entities were unable to bid for large projects abroad since the cost of financing was very high and bidders from other countries such as China, Japan, Europe and US were able to provide credit at superior terms, such as lower interest rate and longer tenures.

The decision to finance under CFS is decided, on a case to case basis, by a Committee including members from Department of Expenditure along with MoEA, DIPP, Department of Commerce, Department of Financial Services and MHA.

Since the objectives of the Scheme continue to be relevant, the Cabinet has proposed to extend the Scheme for another 5 years from 2018 to 2023. The scheme envisages government to provide counter guarantee and interest equalization of 2% to Export-Import Bank of India (EXIM Bank) to offer concessional finance to any foreign government or foreign government owned or controlled entity, if any Indian entity, succeeds in

getting contract for the execution of a project. Under the Scheme, EXIM Bank extends credit at a rate not exceeding LIBOR (average of 6 months) + 100 bps. The repayment of the loan is guaranteed by the foreign government. -[*Cabinet Press Release dated 1<sup>st</sup>, August, 2018*]

### 2) **NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018 RECEIVED PRESIDENT'S ASSENT**

The Negotiable Instruments (Amendment) Act, 2018 received the President's assent on August 02, 2018. The Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Amendment Act has inserted two new sections in the Negotiable Instruments Act, 1881 as follows:

**S.143A (Power to direct interim compensation):** The Section permits the Court trying an offence under Section 138 of the Act to order the drawer of the cheque to pay interim compensation to the complainant which shall not exceed 20% of the amount of the cheque. The interim compensation shall be paid within sixty days from the date of the order or within such further period not exceeding 30 days as the Court may direct upon sufficient cause being shown by the drawer of the cheque.

**S.148 (Power of Appellate Court to order payment pending appeal against conviction):** Where an appeal is filed by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the trial Court. This amount shall be in addition to any interim compensation paid by the appellant under Section 143A. This amount shall be deposited within 60 days from the date

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of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant. *–[Ministry of Law and Justice, dated 2<sup>nd</sup> August, 2018]*

### 3) **SECTION 10 OF THE COMPANIES (AMENDMENT) ACT, 2017 COMMENCES FROM AUGUST 7.**

MCA has notified that Section 10 of the Companies (Amendment) Act, 2017 which substitutes S.42 of the Companies Act, 2013, regarding Issue of Shares on Private Placement Basis, shall come in to force from August 7, 2018.

Pursuant to the above Notification, the MCA has also substituted Rule 14 regarding Private Placement in the Companies (Prospectus and Allotment of Securities) Rules, 2014 as follows:

For the purposes of S. 42(2) & (3), a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution, for each of the offers or invitations. **[Rule 14(1)]**

To do as above, company shall, amongst other things disclose, in the explanatory statement annexed to the notice for shareholders' approval, the particulars of the offer including date of passing of board resolution; kinds of securities offered and the price at which it is being offered; basis or justification for the price (including premium, if any) at which the offer or invitation is being made; name and address of valuer; amount which the company intends to raise by

way of such securities; material terms of raising such securities, proposed time schedule, etc. **[Proviso to Rule 14(1)]**

Rule 14(1) shall not apply in case of offer or invitation for non-convertible debentures (NCDs), where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in S. 180(1)(c) and in such cases relevant Board resolution under S.179(3)(c) shall suffice. **[Proviso to Rule 14(1)]**

In case of offer or invitation for NCDs, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified S. 180(1)(c), it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year. **[Proviso to Rule 14(1)]**

For the purpose of S. 42(2), an offer or invitation to subscribe securities under private placement shall not be made to more than 200 persons in the aggregate in a financial year. However, any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of S. 62(1)(b) shall not be considered while calculating the limit of two hundred persons. For the purposes of Rule 14(2), it has been clarified that the restrictions above would be reckoned individually for each kind of security i.e., equity share, preference share or debenture. **[Rule 14(2)]**

A private placement offer cum application letter shall be in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within 30 days of

recording the name of such person. However, no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid. **[Rule 14(3)]**

The company shall maintain a complete record of private placement offers. **[Rule 14(4)]**

The payment to be made for subscription of securities shall be made from bank account of the person subscribing to such securities and the company shall keep the record of the bank account from where such payment for subscription has been received. These provisions shall not apply in case of issue of shares for consideration other than cash. **[Rule 14(5)]**

A return of allotment of securities shall be filed with the Registrar within 15 days of allotment with the prescribed fees along with a complete list of all the allottees and their details as specified in Rule 14(6). **[Rule 14(6)]**

Rule 14(2) shall not apply to NBFC's registered with RBI; housing finance companies which are registered with the National Housing Bank (NHB) if they are complying with regulations made by the RBI or the NHB in respect of offer or invitation to be issued on private placement basis. Such companies shall comply with sub-rule (2) in case the RBI or NHB have not specified similar regulations. **[Rule 14(7)]**

A company shall issue private placement offer cum application letter only after the relevant special resolution or board resolution has been filed in the Registry. Private Companies shall file

with the Registry copy of the board resolution or special resolution with respect to approval under S. 179(3)(c) **[Rule 14(8)]**

Form PAS – 4 has also been substituted. – ***[Ministry of Corporate Affairs, dated 7<sup>th</sup> August, 2018]***

#### **4) APPLICATION UNDER SECTIONS 7, 9 OR 10 OF IBC NOT ADVERSARIAL LITIGATION; NCLT NOT REQUIRED TO RECORD DETAILED DECISION THEREUNDER: NCLAT**

NCLAT dismissed an appeal filed against the Order of the National Company Law Tribunal, Chennai, whereby the application filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted.

Firstly, the Appellant (shareholder of the Corporate Debtor) submitted that the Respondent is not a Financial Creditor as defined under Section 5(7) read with Section 5(8). However, on facts, the Appellate Tribunal rejected the submission. It was found that the Rajkumar Impex Ghana Ltd. (subsidiary of the Corporate Debtor) had applied for a loan which was provided by Stanbic Bank Ghana Ltd. The Corporate Debtor executed guarantee in favour of the Bank for the said loan. As such, the Bank became a Financial Creditor. Secondly, the admission of application filed by the Respondent under Section 7 for initiation of Corporate Insolvency Resolution Process was assailed. It was challenged on the ground that NCLT while admitting the application, did not record reasons in writing.

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The NCLAT rejected the second submission filed by the Appellant as well. It observed that application under Section 7 is not a recovery proceeding or proceeding for determining of a claim on merit that can be decided only by a court of competent jurisdiction. An application under Sections 7, 9 or 10 of the Code not being a money claim or suit and not being an adversarial litigation, NCLT is not required to write a detailed decision as to which are the evidence relied upon for its satisfaction. NCLT is only required to be satisfied that there is a debt and default had occurred. In the present case, NCLT held that a *prima facie* case was made out by the applicant. As such, NCLT expressed its satisfaction about existence of debt and default. Thus, the appeal was dismissed holding it to be sans merit. ----- **[V.R. Hemantraj v. Stanbic Bank Ghana Ltd., Company Appeal (AT) (Insolvency) No. 213 of 2018, dated 29<sup>th</sup> August, 2018]**

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## SECURITIES

### 1) SEBI DISCONTINUES SUB-BROKER CATEGORY

Under the current regulatory framework, Sub-Brokers ("SB") need to seek registration from SEBI under SEBI (Stock Broker and Sub-Broker) Regulations, 1992, and Authorized Persons ("AP") need to seek registration from the concerned Exchange. There is no difference in the operative role of a Sub-Broker and that of an Authorized Person. In its meeting held on June 21, 2018, SEBI decided to discontinue with Sub-Broker as an intermediary to be registered with SEBI. In

view of the same, the need for the category of Sub-Broker as a market intermediary may no longer be required. Therefore, SEBI has now decided that:

No person will be granted a fresh sub-broker registration, and the registered ones will have time till March 31, 2019 for migrating to act as an authorized person or trading member (TM). Those who do not choose to migrate will be deemed to have surrendered their registration with SEBI from March 31, 2019. Consequent upon migration/ deemed surrender, the certificate of registration granted to the sub-brokers by SEBI shall stand withdrawn.

All the existing sub-brokers will have to pay renewal fees up to the financial year 2018-19, while the payment made by them for the period beyond that will be refunded by SEBI on receipt of recommendation from the respective stock exchange.

Stock Exchanges are required to put in place an appropriate process for surrender or migration of sub-broker to trading member or authorised person.

In case of a registered Sub-Broker who is already approved to act as AP in Derivatives Segment of the Exchanges, he shall be registered with the Exchange to continue activities of Sub-Broker as an AP in Cash Segment. In case of a registered Sub-Broker who is not approved by Stock Exchanges to act as AP in Derivatives Segment, Exchanges shall register them as AP in Cash Segment, to continue their operations without disruption.

The existing Sub-Broker has an option to become a Trading Member, if the Sub-Broker meets the

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eligibility criteria prescribed under Stock Exchange Bye-laws and SEBI Regulations and by complying with these Regulations. – *[SEBI/HO/MIRSD/DoP/CIR/P/2018/117, dated 3<sup>rd</sup> August, 2018]*

## 2) **SECURITIES CONTRACTS (REGULATION) (SECOND AMENDMENT) RULES, 2018**

Ministry of Finance (MoF) has amended Rule 19A(1) & (2) of the Securities Contracts (Regulation) Rules, 1957 as follows:

Rule 19A(1) requires every listed company to maintain public shareholding of at least 25%. The amendment substitutes the proviso to Rule 19A(1). The new proviso states that every listed public sector company which has public shareholding below 25% on the commencement of the Securities Contracts (Regulation)(Second Amendment) Rules, 2018, shall increase its public shareholding to at least 25%, within two years from the date of such commencement, in the manner specified by SEBI.

Rule 19A(2) provides that where the public shareholding in a listed company falls below 25% at any time, such company shall bring the public shareholding to 25% within a maximum period of twelve months from the date of such fall. A new proviso has been added to this rule stating that every listed public sector company whose public shareholding falls below 25% at any time after the commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2018, shall increase its public shareholding to at least 25%, within two years from such fall, in the manner specified by SEBI. –*[Ministry of Finance, 3<sup>rd</sup> August, 2013]*

## 3) **SEBI ISSUES CLARIFICATION ON ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF SECURITIES ON PRIVATE PLACEMENT**

With a purpose to further rationalise and ease the process of issuance of securities on Electronic Book Provider Platform (EBP Platform), and in consultation with the market participants, SEBI has decided to provide for the following additional facilities:

**Closed bidding:** Closed bidding shall also be permitted on EBP platform along with existing open bidding subject to the issuer disclosing the mode of bidding in the Private Placement Memorandum (PPM)/Information Memorandum (IM). Under closed bidding, there shall be no real time dissemination of bids on the EBP platform.

**Multiple yield allotment:** An issuer can choose from a uniform yield or a multiple yield allotment, as long as it is disclosed in the PPM/IM.

**Multiple bids by an investor:** Investors are now permitted to place multiple bids in an issue.

**Allotment on yield-time priority basis:** Allotment to the bidders shall be done on the basis of "Yield-time priority". However, where two or more bids are at the same yield, then the allotment shall be done on "time -priority" basis. Further, if two or more bids have the same yield and time, then allotment shall be done on "pro-rata" basis.

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**Pay-in of funds through escrow bank account of issuer:** Currently, the process of pay-in of funds is conducted through clearing corporation of Stock Exchanges. Now the pay-in of funds towards an issue on EBP shall also be permitted through escrow bank account of an issuer. An issuer, in its PPM/IM, shall disclose the manner of funds pay-in so chosen. The process of pay-in of funds by investors and pay-out to issuer can be done on either T+1 or T+2 day, where T day is the issue day, and shall be disclosed by issuer in PPM/IM.

**Depositories to act as EBP:** In addition to the Stock Exchanges, Depositories can also act as EBP.

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*[SEBI/HO/DDHS/CIR/P/2018/122, dated 16<sup>th</sup> August, 2018 (SEBI)]*

#### 4) **EXTENSION OF TRADING HOURS OF SECURITIES LENDING AND BORROWING (SLB) SEGMENT**

The SEBI with a view to facilitate physical settlement of equity derivatives contracts, has decided to permit Stock Exchanges to set their trading hours in the Securities Lending and Borrowing (SLB) Segment, subject to the conditions that:

- The trading hours shall be between 9 AM and 5 PM, and
- The Exchange/Clearing Corporation has in place risk management system and infrastructure commensurate to the trading hours.

Further, the clause under “Time Window for SLB” of Circular No. MRD/DoP/SE/Cir-31/2008 dated October 31, 2008, stands modified.

*[Circular No: SEBI/CIR/MRD/DoP-1/P/125/2018 dated 24th August, 2018]*

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## COMPETITION

### 1) **CCI IMPOSES PENALTY ON KARNATAKA FILM CHAMBER OF COMMERCE (KFCC), AND OTHERS FOR ANTI-COMPETITIVE CONDUCT**

The Competition Commission of India (CCI) has found that KFCC and others have acted in concert and impeded entry and screening of dubbed movies and in particular the Informant's film –“Sathyadev IPS” in State of Karnataka, thereby violating the provisions of Section 3(1) and Section 3(3)(b) of the Competition Act, 2002.

Such anti-competitive practice was found to have an appreciable adverse effect on competition and adversely affected the consumers, producers and exhibitors of dubbed cinema in the State of Karnataka and resulted in limiting and restricting the market for dubbed cinemas there. The Commission also found that KFCC had violated the provisions of the Act, on earlier occasions too, for which it had been penalised in Case No.58 of 2012.

Resultantly, Commission, besides passing cease and desist orders against the Opposite Parties, also directed KFCC (OP-1) to bring in place a Competition Compliance Manual to educate its members about the basic tenets of competition law principles. A penalty of Rs.9,72,943/- (Rupees Nine Lakhs Seventy Two Thousand Nine

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Hundred Forty Three only), Rs. 15,121/- (Rupees Fifteen Thousand One Hundred Twenty-One only) and Rs.2,71,286/- (Rupees Two Lakhs Seventy-One Thousand Two Hundred Eighty-Six only) was respectively imposed on KFCC (OP-1), Mr. Sa Ra. Govindu (OP-5) and Mr. Jaggesh, (OP-3) calculated @ 10% of their average income.

With regard to other Opposite Parties being Kannada Okkuta (OP-2) and Mr. Vatal Nagraj (OP-4), since they had failed to furnish their financial details despite sufficient opportunities, the Commission decided that a separate order regarding penalty would be passed in respect of these OPs in due course. – *[Case No. 42 of 2017, 31<sup>st</sup> August, 2018 (CCI)]*

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## INDIRECT TAXES

### a. CUSTOMS

#### 1) IMPLEMENTATION OF RETALIATORY DUTIES AGAINST US DELAYED

Notification No. 50/2017- Customs dated 30th June 2017, amended so as to give effect to serial number 14A and the second proviso to the Notification from the 18th day of September, 2018, to delay the implementation of retaliatory duties against US till 18th September, 2018. – *[Notification No. 56/2018-Customs, dated 3rd August, 2018]*

#### 2) CUSTOMS DUTY PRESCRIBED MECHANICAL ITEMS (METAL) FOR CELLULAR MOBILE PHONE

The CBEC has prescribed effective rate of Customs Duty of 15% on Screw or SIM socket / other mechanical items (metal) for cellular mobile

phone. – *[Notification No. 57/2018-Customs, dated 7th August, 2018]*

#### 3) BCD ON TARIFF LINES OF CARPETS, APPARELS AND OTHER TEXTILE PRODUCTS INCREASED

Notification No. 82/2017- Customs dated 27th October 2017, amended so as to increase Ad-valorem component of BCD from 10% to 20% on 328 tariff lines of carpets, apparels and other textile products. – *[Notification No. 58/2018-Customs, dated 7th August, 2018]*

#### 4) BCD & IGST EXEMPTED ON GOODS IMPORTED FOR DONATION FOR RELIEF & REHABILITATION OF THE PEOPLE OF KERALA

The CBEC *vide* present Notification has exempted BCD & IGST on goods imported for donation for relief & rehabilitation of the people of Kerala affected by the floods upto 31.12.2018. – *[Notification No. 59/2018-Customs, dated 21st August, 2018]*

#### 5) VALUE LIMIT RAISED FOR IMPORTS AND EXPORTS THROUGH COURIER TO RS. 5 LAKHS PER CONSIGNMENT FOR MEIS

The CBIC has amended the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 so as to raise the value limit for Imports and Exports through Courier to Rs. 5 Lakhs from Rs.25,000/- per Consignment for MEIS. –

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*[Notification No. 68 /2018-Customs (N.T.), dated 3rd August, 2018 & Notification No. 69 /2018-Customs (N.T.), dated 3rd August, 2018]*

## **6) CUSTOMS (FINALISATION OF PROVISIONAL ASSESSMENT) REGULATIONS, 2018 NOTIFIED**

The CBIC has notified the Customs (Finalisation of Provisional Assessment) Regulations, 2018, in respect of the provisional assessments ordered on and after the enforcement of these regulations, including regulations on time limit and manner of submission of documents/ information, completion of provisional assessment, penalty, etc. – *[Notification No.73/2018 - Customs(N.T.), dated 14th August, 2018]*

## **7) STANDARD OPERATING PROCEDURES NOTIFIED FOR DISCHARGE OF BONDS EXECUTED BY NOMINATED AGENCIES/ BANKS WHILE IMPORTING GOLD FOR THE PURPOSE OF EXPORT OF GOLD JEWELLERY/ ARTICLES**

After references were received from the exporter associations that there is an inordinate delay in release of bonds executed by the nominated agencies/ banks under Notification No. 57/2000-Customs dated 08.05.2000, while importing gold for the purpose of export of gold jewellery/ articles, the CBIC in the interest of trade facilitation, has notified the standard operating procedure that will henceforth be followed for the expeditious discharge of the said bonds. – *[Circular No. 25/2018-Customs, dated 8th August, 2018]*

## **8) SIMPLIFICATION AND RATIONALIZATION OF PROCESSING OF AEO-T1 APPLICATION**

Directorate of International Customs has issued the present Circular with an intent to ease out the compliance requirements for AEO – T1, prescribing a new procedure to be adopted for processing AEO-T1 application. – *[Circular No. 26/2018-Customs, dated 10th August, 2018]*

## **9) INSTRUCTIONS TO FIELD FORMATION FOR FORWARDING SAMPLES FOR TESTING TO THE OUTSIDE LABORATORIES**

The CBIC has clarified that in case the jurisdictional laboratory does not have testing facility for a given sample, it would be open to the field formations to send such samples to one of the other revenue laboratories which have the facility to test the given sample, instead of availing services of an outside Government laboratory. CRCL should also continuously update the list of testing facilities available on its webpage or on the web link of each laboratory so that there are no delays in testing merely on account of ascertaining as to which of the labs has the relevant testing facility. – *[Circular No. 28 /2018-Customs, dated 30th August, 2018]*

### **b. GST**

## **1) SPECIAL PROCEDURE NOTIFIED FOR COMPLETING MIGRATION OF TAXPAYERS**

The CBIC *vide* present Circular has notified the special procedure for completing migration of

taxpayers who received provisional IDs but could not complete the migration process. – **[Notification No. 31/2018 – Central Tax, dated 6th August, 2018]**

## 2) DUE DATES FOR FURNISHING VARIOUS FORMS UNDER GST REGIME

- i. FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores: Due date extended for the months from July, 2018 to March, 2019 till the eleventh day of the month succeeding such month. – **[Notification No. 32 /2018 – Central Tax, dated 10th August, 2018]**. Provided that the return for the months of July, 2018 and August, 2018, for (i) registered persons in the State of Kerala; (ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and (iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 5th October, 2018 and 10th October, 2018 respectively. – **[Notification No. 37/2018 – Central Tax, dated 24th August, 2018]**
- ii. Quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crores: for the period from July - September, 2018 till 31st October, 2018; for the period from October – December, 2018 till 31st January, 2019; for the period from January – March, 2019 till 30th April, 2019. – **[Notification No. 33 /2018 – Central Tax, dated 10th August, 2018]**. Provided that the return for the quarter from July - September, 2018 for (i) registered persons in the State of Kerala; (ii) registered persons whose principal place of business is in Kodagu district in the

State of Karnataka; and (iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 15th November, 2018 – **[Notification No. 38/2018 – Central Tax, dated 24th August, 2018]**

- iii. FORM GSTR-3B: for the months from July, 2018 to March, 2019 - on or before the twentieth day of the month succeeding such month. – **[Notification No. 34/2018 – Central Tax, dated 10th August, 2018]**. Provided that the return for the months of July, 2018 and August, 2018, for (i) registered persons in the State of Kerala; (ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and (iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 5th October, 2018 and 10th October, 2018 respectively. – **[Notification No. 36/2018 – Central Tax, dated 24th August, 2018]**

## 3) REVERSE CHARGE MECHANISM (RCM) UNDER GST FURTHER DEFERRED

The CBIC has notified that the provisions relating to Reverse Charge Mechanism (RCM) under GST, i.e., u/s 9(4) of the CGST Act, 2017; u/s 5(4) of the IGST Act, 2017; and u/s 7(4) of the UTGST Act, 2017 have been further Deferred/ Suspended by one year, upto 30th September, 2019, from 30th September, 2018. – **[Notification No. 22/2018 – Central Tax (Rate), dated 6th August, 2018; & Notification No. 23/2018 – Integrated Tax (Rate), dated 6th August,**

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**2018; & Notification No. 22/2018 –Union Territory Tax (Rate), dated 6th August, 2018]**

#### **4) CLARIFICATION REGARDING APPLICABILITY OF GST ON VARIOUS GOODS AND SERVICES**

The CBIC has clarified the applicable GST rates on the following items:

- (i) Fortified Toned Milk - (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401;
- (ii) Refined beet and cane sugar - attract 5% GST rate;
- (iii) Tamarind Kernel Powder (Modified & Un Modified form) - attract 5% GST rate;
- (iv) Drinking water - supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST;
- (v) Plasma products - normal human plasma would attract 5% GST rate under List I (S. No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List.
- (vi) Wipes using spun lace non-woven fabric - if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.
- (vii) Real Zari Kasab (Thread) - imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.
- (viii) Marine Engine - supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST

(ix) Quilt and comforter - a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply. – **[Circular No.52/26/2018-GST, dated 9th August, 2018]**

#### **5) CLARIFICATION REGARDING APPLICABILITY OF GST ON THE PETROLEUM GASES RETAINED FOR THE MANUFACTURE OF PETROCHEMICAL AND CHEMICAL PRODUCTS**

On receiving references regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases etc., the CBIC has clarified that, in the said cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is further reiterated that this clarification would be applicable *mutatis mutandis* on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient. – **[Circular No.53/27/2018-GST, dated 9th August, 2018]**

#### **6) CLARIFICATION REGARDING APPLICABLE RATE OF GST ON FERTILIZERS SUPPLIED FOR DIRECT USE AS FERTILIZERS**

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The CBIC has clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST. – **[Circular No. 54/28/2018-GST, dated 9th August, 2018]**

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## INTELLECTUAL PROPERTY RIGHTS

### 1) DELHI HC FINDS TRADEMARK 'OMEXGOLD' DECEPTIVELY SIMILAR TO THE REGISTERED TRADEMARK 'MEX'

The court in the present case after referring to various judgments pertaining to the issue held that the appellant has made out a prima facie case that the trademark 'OMEXGOLD' is deceptively similar to the registered trademark 'MEX' of the appellant. The addition of the letter 'O' to 'MEX' by the respondents makes no difference at all. The *malafide* intent of the respondents is writ large in the face of their attempts to secure registration of not only 'OMEX'; but also 'OMEXI'; 'OMEXGOLD'; 'QMEXI'. – **[M/S Mex Switchgears Pvt Ltd v. M/S Omex Cables Industries & Anr., dated 3rd August, 2018 (Delhi HC)]**

### 2) JURISDICTION OF A COURT IN A TRADE MARK ACTION, COULD BE INVOKED WHERE THERE IS USE UPON OR IN RELATION TO GOODS: DELHI HC

The Delhi HC in the present case interpreted the phrase 'in relation to' with respect to the

jurisdiction. The court held that jurisdiction of a Court in a trade mark action, could be invoked where there is use upon or in relation to goods. The phrase 'in relation to' has been interpreted to include advertising, promotion, publicity, etc. Thus, in addition to actual sale of goods and providing services, if a person advertises his or her business under the mark in a territory, promotes his or her business under the mark in a territory or for example invites franchisee queries from a particular territory, sources goods from a particular territory, manufactures goods in a particular territory, assembles goods in a particular territory, undertakes printing of packaging in a particular territory, exports goods from a particular territory, it would constitute 'use of a mark'. – **[Burger King Corporation v. Techchand Shewakramani & Ors., dated 27th August, 2018]**

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## CONSUMER

### 1) UNITECH HELD GUILTY OF DEFICIENCY OF SERVICE FOR DELAY OVER 120 MONTHS IN HANDING POSSESSION OF FLAT

National Consumer Disputes Redressal Commission (NCDRC) has directed Unitech guilty of deficiency in service for over 10-year delay in handing over possession of flat. The National Commission directed refund of the amount of Rs 58.41 lakh along with interest. As per the agreement made in year 2006, the complainant started paying the amounts as per the payment plan and demands raised by Unitech from time to time. An allotment letter was also issued and the complainants paid Rs.58,41,623.

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Unitech had promised to hand over the possession in 36 months i.e., by November 7, 2009. The total sale consideration of the flat was Rs.61,26,771/- whereas the said amount was increased to Rs.65,11,323. Despite the passage of 120 months, the flat's possession was not handed over to the complainants forcing them to serve a legal notice on Unitech. *–[Shakti Kumar Matta and Anr., v. M/s Unitech Limited & 3 Others., August 29, 2018 (NCDRC)]*

**2) THE DISABILITY SUFFERED BY A PERSON WOULD BE TOTAL AND PERMANENT IF IT RESULTS IN HIM BECOMING INCAPABLE OF BEING ENGAGED IN A WORTHWHILE WORK, OCCUPATION OR PROFESSION AND BECOMING INCAPABLE OF EARNING HIS LIVELIHOOD**

In this present matter, a carpenter had lost his left hand above the elbow and therefore had become unfit for the work of carpenter. It was held by the Commissioner that he, having been rendered unfit for a work of carpentry which could not be done by one hand alone, had suffered total disablement. The findings recorded by the Commissioner were accepted by the Hon'ble Supreme Court. Thus despite use of the words 'which he was capable of performing at the time of the accident' the test applied was whether he could despite the injury, continue to be engaged in the work which he was performing at the time of the accident.

In the present case, the complainant was working with a contractor at the time he met with an accident. His left hand having been amputated below his elbow, it was not possible for him to continue as a construction worker, since the job

of a construction worker necessarily requires use of both the hands. Moreover, he had also developed defect in his left leg as was evident from the medical report of the complainant.

Therefore, it could hardly be disputed that as a result of the disablement suffered by him, he became incapable of adequately and fully performing the work in which he was engaged at the time of accident. The disablement of such a person on account of amputation of left hand below elbow level coupled with the defect in his leg would result in loss of his future earning capacity and therefore, the disablement would be virtually hundred percent. There is no evidence on record to prove that the complainant could get an alternative and adequate employment, despite the impairment suffered by him. There is no evidence of the complainant being qualified by education, training or experience to obtain an alternative adequate employment, despite the disability suffered by him. For the reasons stated hereinabove, it was held that the disability suffered by the complainant was total and permanent since he had become incapable of being engaged in a worthwhile work, occupation or profession and had become incapable of earning his livelihood. –

**[ LIFE INSURANCE CORPORATION OF INDIA & ANR v. MAHAVEER PRASAD REGAR , dated 2<sup>nd</sup> August, 2018 (NCDRC)]**

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## ENVIRONMENT

### 1) NGT TELLS CPCB TO CHECK STATUS OF 51,837 FACTORIES

Taking *suo motu* cognisance of a TOI article on 51,837 illegal industries operating in residential areas in Delhi, the NGT has directed CPCB to form a two-member expert committee to initiate action against the offenders. NGT has also directed the corporations, DSIIDC and the DDA to cooperate and provide assistance to CPCB in this. – *[The Times of India, dated 28th August, 2018]*

### 2) GET NOD TO USE GROUNDWATER, NGT TELLS 5-STAR HOTELS

The NGT has directed five-star hotels in the capital to seek permission from the Central Ground Water Authority (CGWA) for extraction of groundwater and to inform the tribunal about the quantity required by them. The tribunal has also asked the CGWA to submit a compliance report before the tribunal within two months and take action on hotels that were found to be extracting water in excess. – *[The Times of India, dated 23rd August, 2018]*

### 3) SC DECLINES TO RESTRAIN NGT FROM HEARING VEDANTA PLEA

The Supreme Court has declined to restrain the NGT from hearing Vedanta's plea against the closure of its Sterlite Copper smelter in Tuticorin. The Apex Court also refused to entertain a Tamil Nadu Government petition to quash NGT's Order providing Sterlite access to the

administrative block within the closed plant. – *[The Times of India, dated 17th August, 2018]*

### 4) NGT PRINCIPAL BENCH TO HEAR CASES THROUGH VIDEO CONFERENCING

In the absence of judicial members in the regional benches of the NGT, an alternative forum for the green bench of the high courts, the principal bench in New Delhi has decided to hear cases pending before these benches through video conferencing (VC). – *[The Times of India, dated 8th August, 2018]*

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