The “CRZ” Maze Simplified

The Ministry of Environment and Forests had under the powers vested under section 3 of the Environment (Protection) Act 1986 issued the Coastal Regulation Zone Notification 1991 on 19th February 1991 (“1991 Notification”) declaring coastal stretches of the country and the water area up to its territorial water limit, excluding the islands of Andaman and Nicobar and Lakshadweep and the marine areas surrounding these islands up to its territorial limit as “Coastal Regulation Zone” (“CRZ”). Over the last two decades several issues emerged while implementing the 1991 Notification which resulted in the 1991 Notification being amended almost 25 times. Eventually, the Government has now consolidated a new notification i.e. the Coastal Regulation Zone Notification 2011 (“2011 Notification”) to provide comprehensive measures to protect and conserve India’s coastal environment and address all the concerns which were unattended under the 1991 Notification.

The 2011 Notification provides for :

i. Special provisions for the fisher folk communities;
ii. Measures to combat pollution;
iii. Procedure for CRZ clearances;
iv. Enforcement mechanisms &
v. Special provisions for specific coastal stretches of greater Mumbai, Kerala, Goa and Sunder bans and other ecologically sensitive areas.

The CRZ areas, for the ease of better regulation have been classified in 4 categories namely :

1. CRZ – 1 (Ecological Sensitive)
2. CRZ – II (Built up area developed up to or close to the shore line)
3. CRZ – III (Rural area)
4. CRZ – IV(Water area)

The 2011 Notification restricts the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances in the CRZ areas. Additionally for the very first time, a separate draft Island Protection Zone Notification has been issued for protection of the islands of Andaman & Nicobar and Lakshadweep.

Significant changes in the 2011 Notification vis a vis the 1991 Notification have been listed below in a nutshell for the ease of better understanding :

- Water area up to 12 nautical miles and tidal influenced water bodies have now been included under CRZ areas;
- Infrastructural facilities are now permitted to be constructed for local fishing communities in CRZ-III;
- Restrictions on any fishing activities and allied activities of traditional fishing communities in the area in CRZ – IV removed;
- “No development zone” which is of 200m from the High Tide line has been reduced to 100m & “no foreshore development” is now permissible in high eroding areas;
- Special measures to combat pollution have been introduced in order to ensure untreated waste and phasing out of effluents within max period of 2 years and dumping of solid waste within one year;
- Specific procedures for clearances have been provided with a validity of five years from date of issue;
- Post clearance monitoring including method and time frame for initiating actions against any violations have now been introduced.

The 2011 Notification has introduced special provisions for Greater Mumbai i.e. Slum Rehabilitation Schemes, Redevelopment of dilapidated, cessed and unsafe buildings, construction of roads, etc. Further, special guidelines have been introduced for development of beach resorts/hotels in designated areas of CRZ-III for temporary occupation of tourist with the prior approval of the Ministry of Environment & Forest.

Laws over a period of time need to be tweaked periodically to effectively implement them locally. The 2011 Notification which specifically bars reclamation and hence the Maharashtra State Government has recently requested the Central Government to modify the 2011 Notification in order to permit reclamation for construction of roads in Maharashtra. Whilst the Maharashtra Government awaits Central Government clearance, the 2011 Notification is a positive step towards protecting the Indian coastal stretches and efficiently combating pollution which is now a global concern.

Written by:

Ashu Thakur	**Purvi Shah**
Editor in chief	Associate

Qualified Foreign Investors get direct entry to Indian Stock Markets

In order to widen the class of investors, attract more foreign funds, and reduce market volatility in the Indian capital market the Central Government has allowed Qualified Foreign Investors (QFIs) who meet prescribed Know Your Customer (KYC) requirements to directly invest in the Indian equity market. Securities and Exchange Board of India ("SEBI") has vide its circular dated 13th January 2012 listed out the various eligible transactions for QFI's, manner of opening a Demat account, Investment restrictions and limits for QFI etc. The onus is placed on the Depository Participant (DP) to ensure that QFIs meet all Know your customer norms & other regulatory requirements.

SEBI issues guidelines for auctioning of shares

In order to facilitate compliance with Securities Contracts (Regulation) Rules 1957 ("SCRR") requirements SEBI has recently in January 2012 issued additional methods i.e. Institutional Placement Programme and Offer for Sale of Shares through stock exchange to increase minimum public shareholding. In terms of which, Promoters having more than 75% stake in private sector companies and Government holding more than 90% in PSUs can reduce their shareholding through an auction to institutional players. Additionally, in order to facilitate promoters to dilute/offload their holding in listed companies in a transparent manner with wider participation, SEBI has on 1st February 2012 permitted Promoters to sell their shares through a separate window provided by stock exchanges. Presently this facility is available on Bombay Stock Exchange and National Stock Exchange. The eligible Promoters will be required to increase public shareholding to meet the minimum public shareholding requirements in terms of the SCRR and the Listing Agreement. Promoters of top 100 companies by market capitalization can also make use of this method to reduce their stake.

In accordance with the Guidelines, the Promoters/ Promoter group entities should not have purchased and/or sold shares of the company in the 12 weeks prior to offer or after the offer. The size of the offer is required to be at least 1% of the paid-up capital of the Company, subject to a minimum of Rs 25 crores. In the event the paid –up capital of the Company is less than 25 crores on the specified date, dilution would be at least 10% of the paid-up capital or a lesser percentage so as to achieve minimum public shareholding in a single tranche. The guidelines stipules conditions for advertisement, offer expenses, announcement, floor price, timelines, allocation, settlement etc.

RBI enhances External Commercial Borrowing ("ECB) Limits

The ECB limit for eligible borrowers under the automatic route has been enhanced to USD 750 million or equivalent per financial year per borrower for permissible end-uses from the earlier USD 500 million. Consequent to the enhancement of the limit the revised average maturity guidelines under the automatic route are :

- ECB up to USD 20 million or equivalent in a financial year with minimum average maturity of three years and
- ECB above USD 20 million and up to USD 750 million or equivalent with minimum average maturity of five years.

The requirement of average maturity period, prepayment and call / put options specified in the earlier 2006 Circular have been dispensed with.

Further, eligible borrowers under the automatic route can raise Foreign Currency Convertible Bonds (FCCBs) up to USD 750 million or equivalent per financial year for permissible end-uses. Similarly, Corporates in specified service sectors, viz. hotel, hospital and software, can raise FCCBs up to USD 200 million in a financial year, however the proceeds of the ECB cannot be used for land acquisition.

Liberalization of FDI in Single Brand Retail Trading

Foreign Direct Investment ("FDI") upto 51% was permitted in retail trade. However the Government has vide a press note 1 of 2012 Series permitted 100% FDI in single brand product retail trading subject to certain conditions namely:

- The Products to be sold should be of a 'Single Brand' only and should be sold under same brand internationally;
- The 'Single-Brand' product-retail trading to cover only products which are branded during manufacture;
- The Foreign investor to be owner of the brand;
- Proposals involving FDI beyond 51% are required to mandatorily outsource at least 30% of the value of products sold from Indian 'small industries/village and cottage industries, artisan and craftsmen

New Packaging Norms effective 1st July 2012

The Ministry of Consumer Affairs, Food & Public Distribution has issued a Notification amending the packaging flexibility of 20 product categories such as baby food, weaning food, biscuit, butter, cereals bread, tea, coffee, edible oil, beverages, milk powder, rice, wheat flour, salt, aerated drinks, mineral water, salt, soap, detergents, cement and paint As the per the Notification with effective from 1st July 2012, the 20 product categories will be required to be packed for sale, distribution or delivery in standard quantities unlike in the past where non-standard packaging was allowed with a disclaimer that the product is of a "non-standard size". As per the new Notification, the popular price point strategy will be rendered void as grammage content will not be permissible to be altered to non-standard sizes. . Shampoos, hair oils, chocolates and confectionery have however been exempted.

RBI doubles limit on Gifts to NRI's to USD 50000 per annum

As a part of liberalizing international transactions, the Reserve Bank of India ("RBI") has doubled the limit of gifts of securities i.e. shares, securities, convertible debentures etc to Non-Resident Indians ("NRI's"), Person of Indian Origin ("PIO") close relative from USD 25,000 to USD 50,000 per financial year. However a prior approval of Reserve Bank is required to be obtained if the transferor (Indian Resident) proposes to transfer, by way of gift, to a NRI/PIO close relative any securities including shares/convertible debentures.

IRDA issues uniform norms to ensure insurers' Solvency

In order to bring consistency in Asset Liability Management ("ALM") reporting of all Life Insurers and to strengthen the ALM framework, the Insurance Regulatory Development Authority ("IRDA") has on 3rd January 2012 issued additional guidelines which come into effect on 1st April 2012. ALM is the practice of managing a business so that decisions and actions taken with respect to assets and liabilities are coordinated. As per the guidelines insurers will have an ALM policy approved by the Board of the insurer and submitted to IRDA within 90 days from date of the circular. ALM policy should, at the minimum, enable the insurer to understand risks, develop policies, apply techniques and measure the interest rate risk etc.

Visa Norms for Expats Relaxed

Under the amended guidelines issued by the Ministry of External Affairs, Expats working at senior positions in India will now not need to go back home and seek fresh employment visas when they take inter group transfers. The mandatory home land visit and issue of fresh working visas has been dispensed with the amendment. This will facilitate multinational companies in transferring their expatriate employees to different subsidiaries in India based on their business needs. However the relaxed visa norms are only applicable to changing jobs between holding company and its subsidiaries and change of employer would only be permitted once during the tenure of 5 years of the original employment visa and five years of residency on employment visa counting from date of such issuance.

ATA INDIA - Advocates & Solicitors

Ashu Thakur & Associates
506 Gundecha Chambers, 5th floor,
Nagindas Master Road, Mumbai - 400 023.
Phone Nos. : +(91)(22) 2261 7120, +(91)(22) 2261 7214.
Mobile :09820549603.
Email: ashu@ataindia.co.in