AT INDIA
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Dear Reader,

It gives me immense pleasure to bring to you Volume II - 2015 Series of our in house newsletter **"AT INDIA"**. We have in this July 2015 edition of **"AT INDIA"** thrown light on Crowdfunding which is the new age investment mechanism and put together the legal snippets to give you a bird's eye view of the recent legal developments.

We trust you will find **"AT INDIA"** useful and informative. Please feel free to revert back to us with any queries or feedback to enable us to serve you better.

We look forward to hear from you.

Best regards,

Ashu Thakur
Editor in chief

"CROWDFUNDING " : IT'S ESSENSE & PERCEPTION

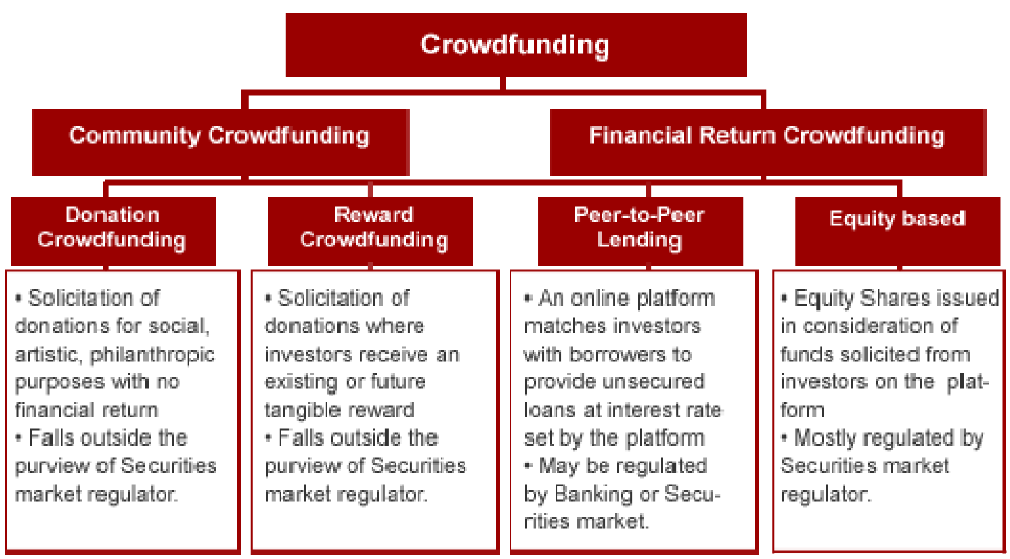
India has emerged as one of the most attractive destination for investments in the recent years and is one of the fastest growing economies. The constantly changing phases of development and emergence of new entrepreneurs has lead to need for new and innovative means of funding. The accompanying stages of financing have made considerable changes in investment funding. In this backdrop, Crowdfunding has emerged as a new concept for raising funds through online Crowdfunding platforms enabling small and medium enterprises and start-ups to raise funds at ease. This Article seeks to enlighten the readers about the concept of Crowdfunding and the Indian Regulations which govern it.

WHAT IS CROWDFUNDING?

Crowdfunding is solicitation of small amounts of money from multiple investors through a web-based platform or social networking site for a specific project, business venture or social cause which is promoted through social media. Crowdfunding is at a growth stage in India and it has slowly nudged its way up as a fundraising tool for entrepreneurs, filmmakers, artists, sportsmen and non-profit entities. Recently the cash strapped Indian hockey players managed to raise approximately INR 5 lakhs to fund their dream of participating in a championship in Kuwait. Similarly Shiva Keshavan a five-time Olympian and Asian Champion raised INR 10 lakhs through Crowdfunding to buy equipment for the 2014 Sochi Olympic Games.

TYPES OF CROWDFUNDING

Crowdfunding can be divided broadly into two categories i.e. "Community Crowdfunding" and "Financial Return Crowdfunding" which are further divided into sub-categories as detailed below:



LEGAL FRAMEWORK FOR CROWDFUNDING

In India, the concept of Crowdfunding is catching up fast and there is a compelling need to put in place a legal framework to regulate Crowdfunding. In view of which the Securities and Exchange Board of

India **("SEBI")** issued a Consultation Paper dated 17th June 2014 which was put for public comments. Presently the final SEBI regulations are awaited.

SEBI has suggested the following possible routes for Security based Crowdfunding i.e.

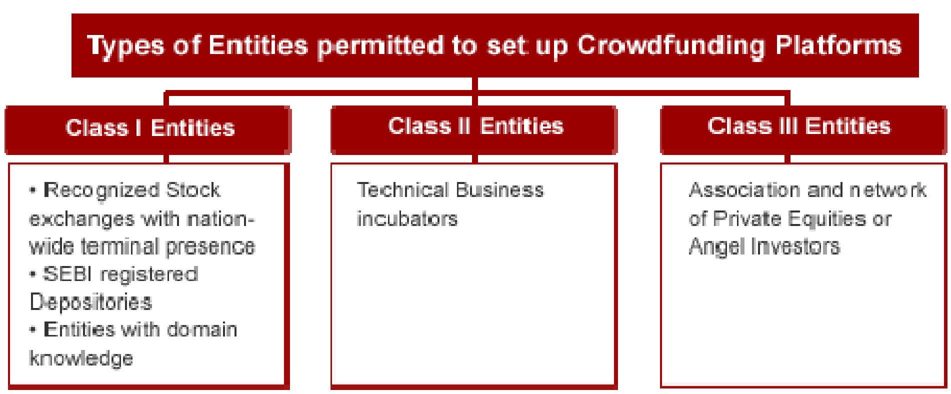
EbC and DbC are based on Private Placement route as defined under Section 42 of the Companies Act 2013 whereas the FbC route is primarily modeled on Alternative Investment Funds (AIFs) Regulations, 2012 of SEBI.

In order to protect the retail investors from the risks of start-up ventures SEBI has proposed to permit only "Accredited Investors" to invest through the Crowdfunding platform. The Accredited Investors would mean and include:

i. Qualified Institutional Buyers;
ii. Companies incorporated in India with a minimum net worth of INR 20 crores;
iii. High Net worth Individuals with minimum net worth of INR 2 crores (excluding primary residence or loan security on such property) and
iv. Eligible Retail Investors.

SEBI has imposed certain safeguards as investment limits and conditions for Accredited Investors as well as on fund raising entities to be eligible to participate in Crowdfunding. In order to ensure that the entities participating in Crowdfunding are genuine SEBI has listed certain issuer compliances and disclosure requirements.

In order to oversee that Crowdfunding platforms which are intermediaries between investors and start-up companies are not established or used to facilitate fundraising by fraudulent entities, SEBI has proposed that any online offering or issue or sale through the internet can be made only through a SEBI recognized Crowdfunding platform. As per the Consultation paper issued by SEBI the following categories of entities can set a Crowdfunding platform:



A Joint venture of Class I and Class II entities is also permissible & platforms launched by Class I & Class III entities can enable FbC.

As per the global scenario very few jurisdictions worldwide i.e. USA, New Zealand, Great Britain, Japan, France and Australia have issued regulations on Crowdfunding. Whilst the global regulations on Crowdfunding are evolving the Peer-to-Peer Crowdfunding platforms have been regulated as intermediaries in New Zealand and Australia. Presently India is witnessing a spurt in Security based Crowdfunding platforms which are running privately and are operating without any regulators to oversee their operations. India needs to expeditiously issue guidelines/ regulations to govern Crowdfunding and regulate all existing Crowdfunding platforms in order to protect the citizens and avoid abuse of Crowdfunding.

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AT INDIA - LEGAL SNAPSHOTS

FDI norms eased for NRIs & others of Indian origin:

The Union Cabinet has with effect from 18th June, 2015 liberalized the foreign direct investment norms for Non-Resident Indians **("NRIs")**. Accordingly, the definition of NRI has been amended to include an individual resident outside India who is a citizen of India, an Overseas Citizen of India **("OCI")** & a Person of Indian Origin **("PIO")**. The investments made by NRIs, OCIs and PIOs in India will no longer be treated as foreign investment but shall be treated as domestic investment which shall be at par with investments made by resident Indians.

'National Security Clause' for Foreign Companies in sensitive sectors:

All foreign companies investing in the defence, telecom and private security sectors will have to sign a "National Security Clause" which will empower the Government to terminate their operations if they violate national security provisions or indulge in money laundering. This is part of the new 'National Security Clearance Policy' approved by the Home Ministry. The "National Security Clause" will be built into permissions granted by the Foreign Investment Promotion Board as a safeguard for "post investment monitoring". The clause will be deemed to have been violated if the foreign companies investing in the defence, telecom or private security sectors are found to be involved in espionage or have links with terrorists & foreign intelligence agencies or are involved in money laundering and financial fraud. The new policy is not country-specific, however no investment from Pakistan will be allowed. The policy also stipulates that in these sectors, positions such as chief security officers should be manned by Indian nationals only.

FIPB, can now recommend FDI proposals up to INR 3,000 crore:

In a bid to ease doing business in India and to boost Foreign Direct Investment **("FDI")** inflows in the country, the Ministry of Commerce & Industry on 6th May, 2015 enhanced the powers of Foreign Investment Promotion Board **("FIPB")**, the inter-ministerial body that recommends overseas investment proposal to the Finance minister for approval. FIPB can now take decisions on foreign investments worth up to INR 3,000 crore (Rupees Three Thousand Crores only), up from the INR 2000 crore (Rupees Two Thousand Crores only). Any investment beyond the new ceiling of INR 3,000 crore (Rupees Three Thousand Crores only), will go to Cabinet Committee on Economic Affairs **("CCEA")** headed by the Prime Minister. The FIPB Secretariat in the Department of Economic Affairs **("DEA")** will process the recommendations of FIPB to obtain the approval of Minister of Finance and the CCEA.

SEBI halves IPO timeline to 6 days:

The capital market regulator, SEBI has on 23rd June, 2015 approved a new system for all public issues which open on or after 1st January, 2016. Under the new system the time required between listing and closing of an Initial Public Offering **("IPO")** shall be halved to 6 days. Currently, the IPO timeline is trade (T) + 12 (where T is the last day of the issue), which will be reduced to T+ 6.

Mandatory Documents required for Export & Import reduced to Three each:

In order to facilitate "Ease of Doing Business" in India the Directorate General of Foreign Trade vide a notification dated 12thMarch 2015 reduced the number of mandatory documents required for export & import. In view of which now only 3 documents would be mandatory for export & import as i.e.:

SR. No.	EXPORTS	IMPORTS
i	Bill of Lading/ Airway Bill	Bill of Lading / Airway Bill
ii	Commercial Invoice cum Packing List	Commercial Invoice cum Packing List
iii	Shipping Bill / Bill of Export	Bill of Entry

The reduction in the number of mandatory documents would also lead to corresponding reduction in Transaction cost and time.

New Exemptions to Private Companies under Companies Act, 2013:

The Ministry of Corporate Affairs **("MCA")** has vide a notification dated 5th June, 2015 done away with certain restrictive provisions applicable to private limited companies. The MCA has exempted private companies from:-

i. Filing of certain board resolutions except special resolutions;
ii. Differential voting rights of equity & preference shares capital;
iii. Restrictions on purchase of its own shares under conditions prescribed.

These companies will now be entitled to advance loans to directors & interested entities on prescribed conditions. Group Companies would not be considered as related parties owing to which private companies will not be required to obtain the approval of the board or the shareholders, for the purpose of entering into a contract/ arrangement with a Group Company. Further, shareholders interested in such contract/ arrangement will now be permitted to vote on the resolution for authorizing the related party transaction.

Exemptions granted to Sections 8 Companies under Companies Act, 2013:

The Ministry of Corporate Affairs **("MCA")** has vide its notification dated 5th June 2015, set out various exemptions/modifications and adaptations to Companies with charitable objects i.e. Section 8 Companies. As per the amendments, Section 8 Companies are now dispensed with the requirement to appoint a Company Secretary, maintain a minimum paid up capital, ceiling on the number of Directors, appointment of an Independent Director, issuance of notice for standing for directorship if the Articles of Association provide for election of Directors by ballots, appointment of a remuneration committee etc. The frequency of Board meetings is reduced to 1 meeting within every 6 calendar months & notice of General meeting has been reduced from 21 days to 14 days etc.

Subscription to chit funds by Non-Resident Indians on non-repatriation basis:

The Reserve Bank of India has vide a circular dated 11thJune, 2015 allowed NRIs to invest in chit funds on non-repatriation basis without any ceiling, thus revising the extant guidelines for subscription to the chit funds on condition that subscription to the chit funds should be brought in through normal banking channel, including through an account maintained with a bank in India. Earlier in May 2000, NRIs were barred from investing in a company or firms engaged in the business of chit fund. Further the Registrar of Chits or an officer authorized by the State Government in accordance with provisions of Chit Fund Act, 1982 may permit any chit fund to accept subscription from NRIs on non-repatriation basis.

IRDA notifies Transfer of Equity Shares of Insurance Companies Regulations, 2015:

The Insurance Regulatory and Development Authority of India **("IRDA")** has on 18th May, 2015 notified the IRDA (Transfer of Equity Shares of Insurance Companies) Regulations, 2015 whereby restrictions are placed on Transfer of shares of Insurance Companies i.e. – the prior approval of IRDA is required for registration of transfer of shares or issue of equity capital if the transfer is likely to exceed 5% of its paid-up equity capital or the nominal value of the shares intended to be transferred is likely to exceed 1% of the paid up equity capital. Further an application for transfer of shares shall be accompanied by a declaration on beneficial shareholding & the authorities shall conduct a 'due diligence' before approving any deal for transfer of shares. Foreign investors are now permitted to hold shares in an Insurance company as per the Indian Insurance Companies (Foreign Investment) Rules, 2015 subject to a minimum lock-in period, infusion of additional capital at periodic intervals etc & the investment by an Indian investors are now subjected to a ceiling of 10% of paid up capital of the insurance company.

National Air Quality Index launched:

On 6th April 2015 the Central Government launched a National Air Quality Index **("AQI")**, which will monitor the quality of air in major urban centers across the country on a real time basis. The AQI is available on the website of Ministry of Environment & Forests providing the current status of the level of pollution in a particular city, with this being depicted through a color-coded system indicating air quality, ranging from dark green as "good" to maroon as "severe". The AQI would also alert people about the possible health impacts in each of its six categories. It would be launched in phases where the first leg would cover only 10 major cities with plans of expansion to other cities in subsequent phases.

Simplification of Company Incorporation Procedure:

As part of the Governments initiative to ease the process of "starting a business" in India, the Government has consolidated the incorporation procedure for registering a Company & has on 1st May, 2015 introduced a new registration form INC- 29 — which consolidates seven different forms into one other than form INC-22 which is the requisite form for notifying the address of the registered office which can be submitted within 30 days of incorporation. This move will bring down the time taken to register a company from around 30 days to 7 days.

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