

### **Indian Government brings out amendment regarding formation of Audit and other Committees of Public Companies**

The latest notification dated 12th June 2014 issued by the Ministry of Corporate Affairs (MCA) regarding amendments made to the Companies (Meetings and Powers of the Board) Rules, 2014 now requires public companies under this rule which were not required to constitute an Audit Committee under section 292A of the Companies Act, 1956 to constitute an Audit Committee within 1 year from the commencement of these rules or appointment of independent directors whichever comes first. The notification also states that the public companies under this rule shall also constitute their Nomination and Remuneration Committee within 1 year from the commencement of these rules or the appointment of independent directors whichever's earlier.

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### **Investment by FIIs, QFIs, FPIs, SWFs, etc. in debentures and non-convertible preference shares**

According to the RBI circular RBI/2013-14/632 A.P. (DIR Series) Circular No.140 dated June 6, 2014 registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) deemed as registered Foreign Portfolio investors, registered Foreign Portfolio Investors (FPIs), long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks will now be allowed to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company listed on any recognized stock exchanges in India, within the overall limit of USD 51 billion earmarked for corporate debt. Further, NRIs may also invest, both on repatriation and non-repatriation basis, in non-convertible/redeemable preference shares or debentures.

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### **Pledge of shares for business purposes in favour of NBFCs**

Vide Reserve Bank of India (RBI) circular RBI/2013-14/633 A.P. (DIR Series) Circular No. 141 dated June 6, 2014 it has been declared that AD Category – I banks have been delegated the powers to allow pledge of equity shares of an Indian

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company held by non-resident investor/s in accordance with the FDI policy, in favour of the Non Banking Financial Companies (NBFCs) – whether listed or not, to secure the credit facilities extended to the resident investee company for bona-fide business purposes / operations, subject to compliance with the conditions indicated below:

- only the equity shares listed on a recognised stock exchange/s in India can be pledged in favour of the NBFCs;
- in case of invocation of pledge, transfer of shares should be in accordance with the credit concentration norm as stated in the related Master Circular;
- (i) The AD may obtain a board resolution ‘ex ante’, passed by the Board of Directors of the investee company, that the loan proceeds received consequent to pledge of shares will be utilised by the investee company for the declared purpose; (ii) The AD may also obtain a certificate ‘ex post’, from the statutory auditor of investee company, that the loan proceeds received consequent to pledge of shares, have been utilised by the investee company for the declared purpose;
- the Indian company has to follow the relevant SEBI disclosure norms, as applicable;
- under no circumstances, the credit concentration norms should be breached by the NBFC. If there is a breach on invocation of pledge, the shares should be sold and the breach shall be rectified within a period of 30 days from the date of invocation of pledge.

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## **Transfer of assets of Liaison Office / Branch Office / Project Office**

In pursuance to the new circular issued by RBI dated June 12, 2014, Authorised Dealer Banks of category I have been delegated the powers relating to the transfer of assets of Liaison Office (LO) /Branch Office (BO) /Project Office (PO) subject to the following conditions:

- Such proposals will be considered only from LO/BOs who are adhering to the operational guidelines such as (i) submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation) and (ii) obtained PAN from IT Authorities and have got registered with Registrar of Companies under Companies Act 1956. Similarly, proposals from POs should conform to the guidelines issued in circular dated May 17, 2005 with regard to initial reporting requirements and submission of Chartered Accountant certified annual report indicating project status.
- A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or WDV value and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be

more than the book value in each case.

- The assets should have been acquired by the LO/BO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included. AD bank should scrutinize and ensure that no revenue expenses such as lease hold improvements incurred by LO/ BOs are capitalised and transferred to joint venture (JV)/ wholly owned subsidiary (WOS) .
- AD bank to ensure payment of all applicable taxes while permitting transfer of assets.
- Transfer of assets to be allowed by AD banks only when the foreign entity intends to close their LO /BO /PO operations in India. Subsequently, the AD banks should ensure closure of LO /BO in accordance with the stipulations indicated in para.5 (iii) of A.P (DIR Series) Circular No.24 of December 30, 2009 and para.5 of A.P (DIR Series) Circular No.37 of November 15, 2003 in respect of POs.
- Credits to the bank accounts of LO /BO /PO on account of such transfer of assets will be treated as permissible credits.
- The relevant documents are to be preserved separately for scrutiny by their own auditors and RBI auditors.

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