

Highlights

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- SEBI notifies cyber security and cyber resilience framework of stock exchanges, clearing corporation and depositories.

Corporate Brief

➤ Constitution of Companies Law Committee

MCA has constituted a Companies Law Committee to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 and to examine the recommendations received from the Bankruptcy Law Reforms Committee and other agencies. The committee has to submit its recommendations within six months from the date of its first meeting. [See MCA Notification F. No. 2/19/2011 CL-V (Part-I) dated June 04, 2015]

➤ Exemptions to private limited companies under the Companies Act 2013

MCA has notified that private limited companies shall be granted exemption from applicability of certain provisions of the Companies Act, 2013 ('the Act'). Exemptions to private company *inter alia* include the following: (a) Section 2 (76) (viii) dealing with the definition of related party shall not be applicable to private limited companies. Thus any transaction of a private company with its holding, subsidiary or associate company or a subsidiary of a holding company to which it is also a subsidiary shall not be regarded as 'related party' for the purposes of Section 188 of the Act. (b) Section 43 dealing with the kinds of share capital and section 47 dealing with voting rights shall not be applicable to private limited companies, if the memorandum or articles of association of private company so provides. (c) Section 62(b) has been amended to provide that 'ordinary resolution', instead of special resolution, shall be required for issuance of shares to employees under a scheme of employees' stock option. (d) Clauses (a) to (e) of Section 73(2) shall not be applicable to private limited companies accepting deposits from its members not exceeding 100% of aggregate of the paid up share capital and free reserves provided the company files

the details of the deposit so accepted to ROC in the specified manner. (e) Section 101 to 107 and Section 109 shall not be applicable to the private companies unless otherwise specified in respective sections or the articles of the company provides otherwise. The sections deal with notice of meetings, statement to be annexed to notice, quorum for meetings, chairman of meetings, proxies, restriction on voting rights, voting by show of hands and demand for poll. (e) Section 117(3)(g) shall not be applicable to private limited companies. The requirement of filing copy of board resolution passed under section 179(3) with ROC has been done away with in case of private limited companies. (f) Section 160, dealing with right of persons other than retiring directors to stand for directorship, shall not be applicable to private limited companies. (g) Section 180 shall not be applicable to private limited companies. Thus the requirement to pass special resolution is not required in the following events (i) to sell, lease or otherwise dispose off undertaking of the company, (ii) to invest the amount of compensation received as a result of merger and amalgamation, (iii) to borrow money exceeding aggregate of the paid-up capital and free reserve and (iv) to remit any debt due from a director.

MCA has also notified on granting of exemptions to Government companies, Nidhi companies and companies registered under Section 8 of the Act from the applicability of certain provisions of the Act. [See MCA Notification F.No. 1/1/2014-CL.V dated June 5, 2015, MCA notification F.No. 1/2/2014-CL.V dated June 5, 2015, MCA notification F.No. 2/11/2014-CL.V dated June 5, 2015 and MCA notification F.No. 1/2/2014-CL.I dated June 5, 2015]

➤ MCA clarifies on filing of application under section 73 and 74 of the Companies Act, 2013

MCA has clarified that a depositor is free to file an application under Section 73(4) of the Companies Act, 2013 ('the Act'), with the Company Law Board, if the company fails to make repayment of deposits accepted by it. Further the company may also file an application under section 74(2) of the Act with the Company Law Board seeking extension of time in making the repayment of deposits accepted by it before the commencement of the provisions of the Act. **MCA** has also clarified that there is no bar on the Registrar of Companies for filing of prosecution against a company if such company fails to make repayment of deposits accepted by it under the provisions of the Companies Act, 1956 or Companies Act, 2013, subject to Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014. [MCA Circular No. 1/8/2013 CL-V dated June 18, 2015]

➔ **MCA extends time for filing of notice of appointment of the Cost Auditor and filing of Cost Audit Report**

MCA has notified revised Form CRA-2, for intimation of appointment of cost auditor by the company to Central Government, and Form CRA-4, for filing of Cost Audit Report with the Central Government. In view of the delay in availability of revised Form CRA-2 on the MCA21 portal, additional fees on delayed filing of Form CRA-2 beyond the prescribed period of 30 days from the date of the Board Meeting in which the appointment of auditor was made for the financial year on or after 1st April, 2015 is waived for all such filings till 30th June, 2015. Similarly, additional fees on delayed filing of Form CRA-4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the financial year on or after 1st April, 2014 is also waived for all such filings till 31st August, 2015. [MCA circular File No./1/40/2013/CL-V dated June 12th, 2015]

➔ **RBI extends ECB window for low cost affordable housing projects**

RBI has decided that the scheme of raising External Commercial Borrowings (ECB) for low cost affordable housing projects will continue for the financial year 2015-16 with the same terms and conditions as mentioned in the scheme. According to the scheme, eligible borrower is permitted to extend ECB with a ceiling of USD 1 billion each year subject to the terms and conditions prescribed in the scheme, such as: eligible borrower to have a minimum of 3 years experience in undertaking residential projects and to have a good track record in terms of quality and delivery. [See A.P.(DIR Series) Circular No.108 dated June 11, 2015]

➔ **RBI extends ECB window for civil aviation sector**

RBI has decided that the scheme of raising ECB for civil aviation sector will continue till March 31, 2016 with the same terms and conditions as mentioned in the scheme. As per the scheme, overall ECB ceiling for the entire civil aviation sector is USD 1 billion each year and the maximum permissible ECB that can be availed by an individual airline company is USD 300 million. ECB can be utilized for working capital as well as refinancing of the outstanding working capital rupee loan availed from the domestic banking system. [See A.P. (DIR Series) Circular No. 109 dated June 11, 2015]

➔ **RBI increases the limit under Liberalised Remittance Scheme**

RBI has increased the limit of remittances by a resident individual under Liberalised Remittance Scheme (LRS) from USD 125,000 to USD 250,000 per financial year. However, for the purposes of (i) emigration, (ii) expenses in connection

with medical treatment abroad, or (iii) studies abroad, individuals may avail of exchange facility for an amount in excess of the overall prescribed limit under LRS, if so required by the country of emigration, medical institute offering treatment or the university respectively. [See A.P. (DIR Series) Circular No. 106 dated June 01, 2015]

➔ **RBI permits NRIs to subscribe to chit funds on non-repatriation basis**

RBI, has reviewed the guidelines for subscription to the chit funds and regulation 4(b)(i) of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, in consultation with the Government of India and decided to permit Non Resident Indians to subscribe to the chit funds, without limit, on repatriation basis subject to the following conditions: (a) The registrar of Chits or an officer authorized by the State Government in accordance with the provisions of the Chit Fund Act in consultation with the State Government concerned, may permit any chit fund to accept subscription from Non-Resident Indian on non-repatriation basis; and (b) The subscription of the chit funds shall be brought in through normal banking channel, including through an account maintained with a bank in India. [See A.P. (DIR Series) Circular No. 107 dated June 11, 2015]

➔ **DIPP reviews FDI Policy on NRIs, PIOs and OCIs**

DIPP has reviewed the FDI Policy on Non Resident Indian (NRI), Persons of Indian Origin (PIO) and Overseas Citizen of India (OCI) and amended the definition of NRI as contained in the FDI Policy to mean an individual resident outside India who is a citizen of India or is an OCI cardholder within the meaning of section 7(A) of the Citizenship Act, 1955. PIO cardholders registered as such under Notification No. 26011/4/98 F.I., dated 19.08.2002 issued by the Central Government are deemed to be OCI cardholders. It has also been provided that for the purposes of FDI Policy, investment by NRIs under Schedule 4 of the FEMA (Transfer or Issue of Security by Persons Resident outside India) Regulations will be deemed to be domestic investment at par with the investments made by residents. [See DIPP Press Note No. 7(2015 Series) dated June 18, 2015]

➔ **DIPP reviews investment limit for cases requiring prior approval of FIPB/CCEA**

DIPP has revised the position in regard to the investment limit for cases requiring prior approval of the Foreign Investment Promotion Board (FIPB)/ Cabinet Committee on Economic Affairs (CCEA) as follows: (a) The Ministry of Finance who is charge of FIPB would consider the recommendations of FIPB on proposals with total foreign

equity inflow up to Rs. 3000 crore. (b) The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 3000 crore would be placed for consideration of CCEA. (c) The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Ministry of Finance (in charge of FIPB). [See DIPP Press Note No. 6 (2015 Series) dated June 3, 2015]

➔ **SEBI clarifies on grant of registration as FPI to registered FVCI**

SEBI has clarified that Designated Depository Participant may consider an applicant, holding Foreign Venture Capital Investors (FVCI) registration, for grant of registration as Foreign Portfolio Investor (FPI), subject to the conditions *inter alia* including the following: (a) The applicant complies with the eligibility criteria as prescribed under the SEBI (Foreign Portfolio Investors) Regulations, 2014 ('FPI Regulations'); (b) The funds raised, allocated and invested must be clearly segregated for both the registrations; (c) Separate accounts must be maintained with the custodian for execution of trades. However, such an applicant shall have same custodian for its activities as FPI and FVCI. [See SEBI Circular CIR/IMD/FIIC/05/2015 dated June 12, 2015]

➔ **SEBI reviews offer for sale mechanism**

SEBI has modified the Offer for Sale (OFS) framework in order to enhance more retail participation in the OFS process and to simplify the bidding process for retail investor. It has been decided that OFS notice shall continue to be given latest by 5 pm on T-2 days. However T-2 days shall be reckoned from banking day instead of trading day. It has also been decided to make it mandatory for sellers to provide the option to retail investors to place their bids at cut off price in addition to placing price bids. [See SEBI Circular CIR/MRD/DP/12/2015 dated June 26, 2015]

➔ **SEBI notifies on database for distinctive number of shares**

SEBI has decided that, in order to ensure centralized record of all securities, including both physical and dematerialized shares, issued by the company and its reconciliation thereof, the Depositories of equity shares shall create and maintain a database of distinctive numbers (DN) of equity shares of listed companies with details of DN in respect of all physical shares and overall DN range for dematerialized shares. The DN database shall make available, information in respect of issued capital, such as DN range, number of equity shares issued. Name of stock exchange where the shares are listed. ISIN etc at one place. SEBI has also issued instructions to the depositories, stock exchanges, issuers/ RTAs, Depositories Participants. [See SEBI Circular CIR/MRD/FDP/10/2015 dated June 05, 2015]

➔ **SEBI notifies cyber security and cyber resilience framework of stock exchanges, clearing corporation and depositories**

SEBI, along with the Technical Advisory Committee (TAC), has developed necessary guidance in the area of cyber security and cyber resilience and laid down a framework that stock exchanges, depositories and clearing corporations (hereafter referred as Market Infrastructure Institutions or MIIs) would be required to comply. Highlights of the framework are: (a) MII should formulate a comprehensive cyber security and cyber resilience policy document encompassing the framework. The policy should be approved by SEBI. The policy should include the process to identify, assess and manage cyber security risk associated with processes, information, networks and systems. (b) MII should also incorporate best practices from standards such as ISO 27001 etc. (c) MII should establish a reporting procedure to facilitate communication of unusual activities and events to CISO or to the senior management in a timely manner. [See SEBI Circular CIR/MRD/DP/13/2015 dated June 06, 2015]

- Sunil Tyagi on NDTV Prime | Builder Changes Layout Seek Refund With Interest 30 Jun 2015
- HT Estates:: "Don't go in for risky investments" 21 Jun 2015
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- HT Estates:: "Why NRIs can't be taken for a ride" 06 Jun 2015

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