

Highlights

- MCA clarifies on Section 186(7) of the Companies Act, 2013
- MCA clarifies on remuneration to managerial person under Schedule XIII of the Companies Act, 1956
- RBI notifies on revision on FDI cap in Insurance Sector
- RBI issues directions for using Virtual Private Network accounts for accessing e-biz portal
- RBI directs Banks to add 'third gender' column in all forms
- RBI issues instructions with respect to wilful defaulters
- DIPP notifies 49 per cent FDI in pension sector
- DIPP streamlines procedure for grant of Industrial License
- SEBI issues norms for tendering and settlement of shares through stock exchange mechanism
- SEBI extends time limit for obtaining listing of exclusively listed companies
- SEBI imposes fine on non-compliance with the requirement of Clause 49(II)(A)(i)
- SEBI amends the SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008
- Land Acquisition Ordinance gets re-promulgated
- Forfeiture Of Earnest Money – Not Flouting Statutory Rights

Corporate Brief➤ ***MCA clarifies on Section 186(7) of the Companies Act, 2013***

MCA has clarified that that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year government security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013 ('The Act'). Sub-section (7) of section 186 of the Act restricts companies to give loan at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year government security. [See MCA General Circular No. 06/2015 dated April 09, 2015]

➤ ***MCA clarifies on remuneration to managerial person under Schedule XIII of the Companies Act, 1956***

MCA has clarified that a managerial person appointed by listed companies or their subsidiaries as per the provisions of Schedule XIII of the Companies Act, 1956 ('the earlier Act'), before commencement of the Companies Act, 2013, may continue to receive remuneration for their remaining term in accordance with terms and conditions approved by company as per relevant provisions of the Schedule XIII of the earlier Act even if part of their tenure fall after 1st April, 2014. [See MCA General Circular No. 07/2015 dated April 10, 2015]

➤ ***RBI notifies revision on FDI cap in Insurance Sector***

RBI has notified that FDI in Insurance sector shall be permitted up to 49% subject to the revised conditions specified in the Press Note 3 (2015 Series) dated March 2, 2015. RBI has also included a new activity viz. "Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999" in the definition of 'Insurance'. [See A.P. (DIR Series) Circular No. 94 dated April 08, 2015]

➤ ***RBI issues directions for using Virtual Private Network accounts for accessing e-biz portal***

RBI has informed that financial aspects for using the Virtual Private Network (VPN) accounts obtained from National Informatics Centre (NIC) for accessing the e-Biz portal have now been finalized in consultation with Government of India, Department of Industrial Policy and Promotion (DIPP) and NIC. RBI has also specified the details, which *inter alia* include the following: (a) VPN will be in the name of the individual users and will be coterminous with the lifetime of the Digital Signing (Class 2) certificates (which is for a maximum

period of two years) issued by Institute for Development and Research in Banking Technology (IDRBT), Hyderabad; (b) AD Category Bank (AD Bank) will be required to credit (through NEFT/RTGS) the payment in advance for the VPN account (i.e. Rs 9,654 per account for a block of two years) directly to National Informatics Centre Services Inc's bank account; and (c) After making the payment, the AD Bank may fill up the details in the Payment Reference Form. [See A.P. (DIR Series) Circular No. 95 dated April 17, 2015]

➤ ***RBI directs Banks to add 'third gender' column in all forms***

RBI has advised banks to refer to the judgment dated April 15, 2014 of the Supreme Court in the case of National Legal Services Authority v. Union of India and others on treating all transgender persons as 'third gender' and directed them to include 'third gender' in all forms/applications etc. prescribed by the RBI or the banks themselves, wherein any gender classification is envisaged.

[See DBR. No.Leg.BC.91/09.07.005/2014-15 issued by RBI dated April 23, 2015]

➤ ***RBI issues instructions with respect to wilful defaulters***

RBI has notified the following to all scheduled commercial banks (excluding RRBs and LABs) and all India notified financial institutions: (1) A non-whole time director should not be considered as a defaulter unless it is conclusively established that (a) he was aware of the fact of default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a committee of the Board and has not recorded his objection to the same in the minutes, or (b) the default had taken place with his consent or connivance. (2) The above exception will not apply to a promoter director, even if not a whole time director. RBI has also advised the Banks that while disseminating information to Credit Information Companies on borrowers with outstanding amount aggregating Rs 1 crore and above classified as doubtful or loss assets (non-suit filed as well as suit filed accounts), banks/FIs should exclude the names of non-whole time directors (Nominee and Independent Directors) other than the promoter directors from the list, except in the rarest circumstances specified above.

RBI has also advised the banks that the evidence of wilful default on the part of the borrowing company and its promoter/whole time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM. If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. [See DBR.No. CID.BC.90/20.16.003/2014-15 issued by RBI dated April 23, 2015]

➤ ***DIPP notifies 49 per cent FDI in pension sector***

DIPP, in pursuance of enactment of Insurance Regulatory & Development Authority Act, 2013, has permitted 49% Foreign Direct Investment (FDI) in Pension Sector, including foreign investments in the form of FDI, FPI, FII, QFI, NRI, FVCI and depository receipts, subject to the following conditions: (a) FDI is permitted under automatic route up to 26%. FIPB approval shall be required for FDI beyond 26%

(b) FDI in pension sector shall be subject to the condition that entities bringing in foreign equity investment as per section 24 of the Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA) shall obtain necessary registration from the Pension Fund Regulatory and Development Authority and comply with other requirements as per the PFRDA and rules and regulations framed thereunder; (c) Wherever such FDI involves control or ownership by the foreign investor or, transfer or control or ownership of an existing pension fund from resident Indian citizens to such foreign investing entities as a consequence of investment, FIPB approval in consultation with the Department of Financial Services, PFRDA shall be required. [See DIPP Press Note no. 4 (2015 series), File No. 5/6/2014-FC.I dated April 24, 2015]

➔ **DIPP streamlines procedure for grant of Industrial Licenses**

DIPP has revised the initial validity of Industrial License for Defence Sector to 7 (seven) years. as a measure to promote ease of doing business, in view of the long gestation period of Defence contracts to mature, The validity shall be further extendable up to 3 (three) years for existing as well as future Licenses. Prior to this, the initial validity of Industrial License for Defence Sector was 3 (three) years, extendable up to 7 (seven) years. [See DIPP Press Note No. 5 (2015 Series), File No. 9(8)/2014-IL(IP) dated April 27th, 2015]

➔ **SEBI issues norms for tendering and settlement of shares through stock exchange mechanism**

SEBI has, after due deliberations and consultations with the market participants, issued detailed procedure for tendering and settlement of shares through stock exchange mechanism for takeovers, buy back and delisting of shares, which will be applicable to all the offers for which Public Announcement is made on or after July 01, 2015. The procedure inter alia includes the following: (a) The facility for acquisition of shares through Stock Exchange mechanism pursuant to offer shall be available on the Stock Exchanges having nationwide trading terminals in the form of a separate window ('The Acquisition Window'). (b) The acquirer/company shall appoint a stock broker registered with SEBI for the offer. (c) The order for buying the required number of shares shall be placed by acquirer/ company through his stock broker. The order for selling the shares will be placed by eligible sellers through their respective stock brokers during normal trading hours of the secondary market. Such shares would be transferred to a special account of the clearing corporation specifically created for this purpose prior to placing the bid. (d) In case of offer under takeover regulations, the merchant banker to the offer shall finalise the basis of acceptance of the shares. In case of offer under buy-back regulations, the company is required to announce a record date for the purpose of determining the entitlement and the names of the security holders who are eligible to participate in the proposed buy-back. (e) Once the basis of acceptance is finalised, the clearing corporation would facilitate execution and settlement of trades by transferring the required number of shares from the special account to the escrow account of the acquirer/company. [See SEBI Circular CIR/CFD/Policy Cell/1/2015 dated April 03, 2015]

➔ **SEBI extends time limit for obtaining listing of exclusively listed companies**

SEBI has been in receipt of representations from companies exclusively listed in non-operational stock exchanges, which have failed to obtain listing in nationwide stock exchange, that they are interested and eligible to migrate to the main boards of nationwide stock exchanges but are not in a position to opt for the same due to paucity of time. Such companies have sought time to list in nationwide stock exchanges. In the interest of investors of such companies, SEBI has decided to allow a time line of eighteen months, within which such companies shall obtain listing upon compliance with the listing requirements of the nation-wide stock exchange, subject to the conditions which inter alia include the following: (a) Listing in nationwide stock exchanges is permitted only in respect of those class of securities that were already listed in the non-operational stock exchanges; (b) Such companies shall not undergo any material changes in their shareholding pattern which suggests change of control at the time of listing on nationwide stock exchanges; (c) All the promoters and directors of such companies, which have failed to provide the trading platform or exit to its shareholders, even after the extended time of eighteen months will have to undergo stricter scrutiny for their any future association with securities market. [See SEBI Circular No. CIR/MRD/DSA/05/2015 dated April 17, 2015]

➔ **SEBI imposes fine on non-compliance with the requirement of Clause 49(II)(A)(1)**

SEBI has advised the Stock Exchanges to impose the following fine on listed entities for non-compliance with the requirement of Clause 49(II)(A)(1) of Listing Agreement. (a) Fine of Rs. 50,000/- for listed entities complying between April 1, 2015 and June 30, 2015; (b) Fine of Rs. 50,000/- plus Rs. 1000/- per day w.e.f. July 1, 2015 till the date of compliance for listed entities complying between July 1, 2015 and September 30, 2015; (c) Fine of Rs. 1,42,000/- plus Rs. 5000/- per day from October 1, 2015 till the date of compliance for listed entities complying on or after October 1, 2015. It is also notified that for any non-compliance beyond September 30, 2015, SEBI may take any other action, against the non-compliant entities, their promoters and/or directors or issue such directions in accordance with law, as considered appropriate.

Clause 49(II)(A)(1) of the Listing Agreement requires board of directors of listed companies to have an optimum combination of executive and non-executive directors with at least one women director and not less than 50% of the Board comprising non-executive director. [See SEBI Circular CIR/CFD/CMD/1/2015 dated April 08, 2015]

➔ **SEBI amends the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008**

SEBI has amended the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, Highlights of the amendments are: (a) The requirement to obtain registration for making public offer of securitized debt instruments or seek listing of such securitized debt instruments shall not apply to the following - (i) scheduled commercial banks other than a regional rural bank; (ii) public financial institution; (iii) any other person as may be specified by SEBI. (b) An applicant seeking registration to act as a trustee shall have a network

of not less than two crore rupees and in its employment a minimum of two persons having atleast five years experience in activities related to securitization and atleast one among them to have a professional qualification in law from any university or institution recognized by Central Government or State Government or a foreign university. [See SEBI Notification No. SEBI-NRO/OIAE/GN/2015-16/001 dated April 09, 2015]

Land Acquisition Ordinance gets re-promulgated

Ordinance to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act) gets re-promulgated by the President. Highlights of the amendments are: (a) Section 10A has been inserted to empower appropriate government to exempt, by notification, any of the following projects from application of the provisions of Chapter II and Chapter III of the Act, namely, projects that are vital to national security or defence of India, rural infrastructure, affordable housing, industrial corridors set up by the appropriate government and its undertaking and infrastructure projects. Chapter II of the Act deals with determination of social impact and public purpose, and Chapter III of the Act deals with provisions related to safeguard food security and imposes restrictions on acquisition of irrigated multi-cropped land; (b) Before issuing notification, appropriate government needs to ensure the extent of land being acquired keeping in view the bare minimum land required for such project. The government is also required to conduct a survey of its wasteland and maintain a record containing details of such land. (c) Projects stated in Section 10A have also been excluded from obtaining consent from affected families, required under first proviso to Section 2(2) of the Act; (d) Under the Act, if land acquired remained unutilized for a period of five years, it had to be returned to the original owner. The Ordinance has amended the time period to be five years, or any period specified for setting up of any project, whichever is later. [See *The Gazette of India, Ministry of Law and Justice, Legislative Department, No. 4 of 2015 dated April 03, 2015*]

Litigation Brief

Forfeiture Of Earnest Money – Not Flouting Statutory Rights

A very significant question of forfeiture of earnest money in case of revocation of a 'tender' and revocation of 'tender notice' came up before the Apex Court in the matter of National Thermal Power Corporation Limited Vs. Ashok Kumar Singh and others cited in (2015) 4 SCC 252.

In the aforesaid case, National Thermal Power Corporation (hereinafter referred to as Corporation) floated two tenders. The contractor submitted two tenders in response to the tender notices enclosing earnest money deposit. The Respondents moved an application for withdrawal of the bids and praying for refund of the earnest money deposited.

Condition No. 2 of Special Conditions of Contract executed between the Parties is as under:

"2. The earnest money shall be forfeited on the following grounds: On revocation of the tender or, on refusal to enter into a Contract afterward to a Contractor or, if the work is not commenced after the work is awarded to a Contractor."

It was observed by the Hon'ble Court that earnest money would be forfeited in any one of the three contingencies referred to in relevant condition and one such contingency was revocation of the tender. It was held that the expression "revocation of tender" does not obviously refer to revocation by the Corporation, which had issued the tender notice. There is a clear difference between revocation of a 'tender' and revocation of the 'tender notice'. While revocation of the tender notice is the prerogative of the Corporation, revocation of the 'tender' could be only by the bidder concerned. In any such event, the earnest money deposited by the bidder would be liable to the forfeited. Accordingly, the Apex Court held that the Respondent was not entitled to withdraw the bid in terms of Section 5 of the Contract Act, 1872 without suffering forfeiture of the earnest money.



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