

### **The Securities Laws (Amendment) Act, 2014 gets notified**

The Securities Laws (Amendment) Act, 2014 "SLAA" got notified on 25th August 2014, to further amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

Chapter II of SLAA deals with the amendments in the Securities and Exchange Board of India Act, 1992. Chapter III deals with the amendments in Securities Contracts (Regulation) Act, 1956 and Chapter IV deals with the amendments in the Depositories Act, 1996.

#### **Some of the Key Takeaways**

1. The SEBI powers have been widened and sharpened. For instance followings powers have been extended to SEBI.
  - a. calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities
  - b. calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government
2. Any pooling of funds under any scheme or arrangement, which is not registered with SEBI or is not covered under the SEBI Act, involving a corpus amount of INR 1000 million or more shall be deemed to be a collective investment scheme.
3. The amount disgorged, pursuant to a direction issued, under section 11B of SEBI Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by SEBI and such amount shall be utilised by the SEBI in accordance with the regulations made under the Act.
4. The power to issue directions under section 11B of that SEBI Act, shall include

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**India Juris**

F-116

Lajpat Nagar-1

New Delhi - 110 024, India

Ph: +91-11-29814816 / 29814817

Fax: +91-11-29815116

E: newdelhi@indiajuris.com

www.indiajuris.com

#### **International Desks**

**Asia & Australia**

M.P.Mehani

asia@indiajuris.com

**Americas**

Shivkumar Idnani

americas@indiajuris.com

and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention

5. As per new section 15JB in SEBI Act,

1. Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
2. The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

6. 6. If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of SEBI for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may proceed to recover from such person the amount by one or more of the following modes, namely:—

- a. attachment and sale of the person's movable property;
- b. attachment of the person's bank accounts;
- c. attachment and sale of the person's immovable property;
- d. arrest of the person and his detention in prison;
- e. appointing a receiver for the management of the person's movable and immovable properties,

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**UK & Europe**

Sameer Rastogi

europa@indiajuris.com

**Africa**

Surabhi Tyagi

africa@indiajuris.com

**Middle East**

Dinesh Sabharwal

mideast@indiajuris.com

## ECB in Indian Rupees

As per Regulation 6 of Notification No. FEMA.3/2000-RB dated May 03, 2000 in terms of which persons resident in India may raise foreign currency loans from non-residents. Further as per paragraph 2(ii)(a) of AP (DIR Series) Circular No. 27 dated September 23, 2011, in terms of which all eligible borrowers are eligible to raise ECB in Indian Rupees from foreign equity holders as per the extant ECB guidelines.

With a view to providing greater flexibility for structuring of ECB arrangements, it has been decided by RBI vide notification dated 3 September 2014 that recognised non-resident ECB lenders may extend loans in Indian Rupees subject to the following conditions:

- a. The lender should mobilise Indian Rupees through swaps undertaken with an Authorised Dealer Category-I bank in India.
- b. The ECB contract should comply with all other conditions applicable to the automatic and approval routes as the case may be.
- c. The all-in-cost of such ECBs should be commensurate with prevailing market conditions.

For the purpose of executing swaps for ECBs denominated in Indian Rupees, the recognised ECB lender, if it desires, may set up a representative office in India following the prescribed laid down process. It may be noted that the hedging arrangement for ECBs denominated in Indian Rupees extended by non-resident equity-holders shall continue to be governed by the provisions of AP (DIR Series) Circular No. 63 dated December 29, 2011.

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## **Purchase & sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India**

As per Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, in terms of which, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time.

With a view to providing flexibility in regard to the manner in which government securities can be acquired by eligible investors, it has now been decided vide notification dated 28th August 2014, to remove any stipulation as to the manner of acquisition from the said Regulations. Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice.

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