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Editorial:

No more 'tax terrorism' in India – beginning of a tax friendly era

After the advent of new Central Government in India in 2013, the outlook of global businessmen towards India has taken a big turnaround. The Prime Minister of India has taken a number of much-needed steps to put the economy back on track and woo foreign investors. India is now no longer looked upon as a cheap material and labour market but multinational companies look at India as a place to do their core business activities and gain profits out of the huge consumer demands of the country.

One of the giant issues before the foreign investors in past was 'tax terrorism' in India, which got ignited after retrospective amendments to tax laws of India by the previous Government. The issue of tax terrorism was further aired by uncertainties involved in interpretation of tax laws and coercive tax recovery mechanisms adopted by tax collection agencies.

The present Indian Government, contrary to their predecessors, has been able to portray India out of the previous 'tax terrorism' frame. While the Prime Minister in his foreign visits is assuring foreign investors about tax friendly and non-adversarial tax regime in India, back home, it is quite apparent that both the Government and tax collection agencies are putting in efforts to convert prevailing tax regime into a transparent and predictable one. There have also been efforts to reduce litigations surrounding tax matters and resolution of ongoing tax issues in a quick and fair manner.

The Government is looking keen to simplify the wide net of indirect taxes by introducing Goods and Service Tax ('GST') statute, which shall merge a number of indirect taxes, viz., excise, customs, service tax, entertainment tax, value added tax etc., into one legal net. Apart from that, there have been regulations enhancing benchmark levels for filing of appeals by Revenue before the Appellate Authorities, which has resulted in big reduction in the number of ongoing litigation matters.

In the field of direct taxes, Government has committed itself for not bringing anymore retrospective tax amendments. In addition to that, accepting High Court decision on applicability of transfer pricing provisions on cross border issue of shares was seen as a welcome gesture in restoring the confidence of foreign investors. That apart, tax professionals have been kept busy vide issue of frequent tax regulations aimed towards reducing tax litigation by resolving many of existing tax disputes in favour of taxpayers, raising monetary limit for filing of appeals before the Appellate Authorities, addressing taxpayer's concerns in a quick and friendly manner, India's contributions towards Base Erosion and Profit Shifting ('BEPS') recommendations of OECD, expediting issue of tax refunds, digitalization and comfortable tax audit norms etc.

Overall, the outlook of India as an investment destination amongst the foreign investors has changed drastically. The taxation concerns of multinational companies have been properly addressed and the Government is still in the process of improving the image of India in the field of taxation.

Due to constant efforts of Government in improving the picture of India as an investment hub, the foreign direct investment in India has increased by more than 48%. The GDP growth rate which was only 4.5% in financial year 2012-13 is expected to be at 7.5% in the current fiscal year. Further, due to global worries of slowdown and China losing growth speed bigtime, India, due to higher growth rate, population demographics, economic opportunities and governance is set to lead world economy in premium position.

TAXATION

International Trade and WTO

1. Merchandise Exports from India Scheme ('MEIS') & Service Exports from India Scheme ('SEIS') benefits availment procedure by Special Economic Zones ('SEZ')/ Export Oriented Units ('EOU') clarified

Recently, Directorate General of Foreign Trade ('DGFT') has clarified the procedure for filing of applications under MEIS and SEIS by SEZ Units and EOU for availing benefits under the said schemes. The following procedural clarifications were made by DGFT in this regard by amending paragraph 3.06 and 3.08 of Handbook of Procedures of Foreign Trade Policy 2015-20:

- The SEZ/ EOU must apply to concerned Development Commissioner ('DC') for availing benefit under said schemes;
- Where Importer Exporter Code ('IEC') holders have units in SEZ / EOU as well as in Domestic Tariff Area ('DTA'), separate applications shall be made to concerned DC & Regional Authority, DGFT respectively;
- SEZs being non-Electronic Data Interchange ('EDI') ports shall be registered at SEZ port and in case scrip-holder intends to use scrip for import from another port, concerned DC shall issue Telegraphic Release Advice ('TRA').

2. Constitutional amendment Bill for passage of Goods and Services tax ('GST') passed by Lok Sabha and Model GST Law released

GST is a proposed indirect tax regime in Indian arena of indirect taxes, which seeks to subsume Excise Duty, Custom Duty, Service Tax, Value Added Tax ('VAT'), Sales Tax, Entertainment Tax and Entry Tax under one legislation, benefitting the taxpayers to avail CENVAT credit of taxes paid against a wider gamut of taxes.

The Constitution (122nd Amendment) Bill, 2014 paving the passage of GST into Indian legislative system was passed by the Lok Sabha on 6th May, 2015. However, since then, the same is pending debate and approval from Rajya Sabha.

Recently, the Report of Sub-Committee-II on Model GST Law including draft legal provisions of Central/ State Goods and Services Tax Act, 2016 and the Integrated Goods and Services Tax Act, 2016 was also released for public comments.

3. Mutual Recognition Agreement ('MRA') signed by India & Korea for boosting International Trade & faster Customs clearances

The 11th Asia Europe Meeting ('ASEM') of the Directors General/ Commissioner of Customs was concluded in Goa on October 09, 2015, wherein, India & Korea signed a MRA to facilitate the scheme of Authorized Economic Operators ('AEO') for boosting international trade and faster customs clearances between the two countries.

Further, in the above meeting, for promotion of Digital India campaign, India sponsored 'Paperless Customs' which received wide support from the ASEM Members.

4. Sensitization of frequently raised queries relating to assessment and re-assessment

The Central Board of Excise and Customs ('CBEC') issued a circular laying down guidelines to reduce dwell time pursuant to concerns raised over increasing number of queries and resultant delay in assessment of Bills of Entry and piece meal clarifications sought by Customs Officers during re-assessments.

In order to overcome the aforesaid difficulties, CBEC, in the above circular, directed that genuine clarifications sought from importers/ exporters should be raised in one go and suggested listing/ sensitizing of trade of queries frequently raised in the course of assessment.

The above would enable importers to take preventive action so as to avoid such queries or be better prepared to reply to such queries.

CBEC further stated that time taken after receipt of answers to queries should be curtailed and in fact, delayed documents be accorded priority.
CBEC also instructed all Chief Commissioners to devise a mechanism for monthly update/ review of above and to suitably sensitize importers about most common errors to avoid delays in completion of reassessment by proper officer.

5. Extension of levy of Anti-Dumping Duty ('ADD') on import of Fully Drawn Polyester Yarn from China and Thailand for another 5 years

Levy of ADD on All Fully Drawn or Fully Oriented Yarn/ Spin Draw Yarn/ Flat Yarn of Polyester (non-textured and non – POY) falling under heading 5402 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China or Thailand and imported into India, has been extended for a period of 5 years.

6. Levy of ADD on import of Hexamine from China and UAE

In order to remove injury to domestic industry, ADD has been imposed on imports of Hexamine from People's Republic of China @ USD 84.25/ Metric Tons ('MT') and from United Arab Emirates @ USD 113.05/ MT. The said levy ADD shall be applicable for a period of 5 years on Hexamine originating in or exported from the People's Republic of China or UAE and imported into India.

7. Extension of levy of definitive ADD on import of 'Plain medium Density Fiber Board of thickness 6 mm and above' from China, Malaysia, Sri Lanka and Thailand for another 5 years

In order to remove injury to domestic industry, levy of ADD on imports of 'Plain medium Density Fiber Board of thickness 6 mm and above' from China, Malaysia, Sri Lanka and Thailand has been extended for a period of 5 years.

8. Extension of levy of ADD on import of Caustic Soda from China and Korea for another 5 years

In order to remove injury to domestic industry, levy of ADD on imports of Caustic Soda from China and Korea has been extended for a period of 5 years.

9. Extension of levy of ADD on import of Acrylonitrile Butadiene Rubber ('NBR') from Korea for another 5 years

In order to remove injury to domestic industry, levy of ADD on imports of NBR from Korea has been extended for a period of 5 years.

Direct tax

1. India-Israel Double Taxation Avoidance Agreement ('DTAA') amended, empowers Tax-treaty override to check DTAA misuse

The Indian Government had approved protocol to the India-Israel DTAA providing for effective Exchange of Information ('EOI') as per internationally accepted standards on tax matters including bank information and information without domestic tax interest. It is also provided in the amendment that the information exchanged in respect of an Indian resident can be shared with other law enforcement agencies with authorization of Competent Authority of Israel and vice versa.
In addition, the amendment also provides for insertion of 'Limitation of Benefit' ('LOB') clause in the India-Israel DTAA which permits application of domestic law provisions and measures concerning tax avoidance in the event of DTAA misuse.

2. India-Vietnam DTAA amended

The Indian Government had also approved protocol to the India-Vietnam DTAA providing for effective EOI as per internationally accepted standards on tax matters including bank information and information without domestic tax interest. It is also provided in the amendment that the information exchanged in respect of an Indian resident can be shared with other law enforcement agencies with authorization of Competent Authority of Vietnam and vice versa.

3. Central Board of Direct Taxes ('CBDT') clarifies on taxation of income from off-shore rupee denominated bonds, capital-gains to be exempt

CBDT had issued a press release dated October 29, 2015 providing for taxation of non-residents on income arising from off-shore Rupee Denominated Bonds outside India. The circular clarified that the

applicable rate of tax withholding on interest income arising to non-resident investors in this regard shall be 5%, which shall be in the nature of final tax.
Further, the circular also provided that the capital gains arising in case of appreciation of rupee between date of issue and date of redemption against the foreign currency in which the investment was made, shall be exempt from capital gains tax.
The legislative amendment in this regard will be proposed through the Finance Bill, 2016.

4. India-Turkmenistan DTAA protocol introduces 'Limitation on Benefits' clause, covers bank information under EOI

The Indian Government had approved protocol to the India-Turkmenistan DTAA providing for effective EOI as per internationally accepted standards on tax matters including bank information and information without domestic tax interest. It is also provided in the amendment that the information exchanged in respect of an Indian resident can be shared with other law enforcement agencies with authorization of Competent Authority of Turkmenistan and vice versa.
In addition, the amendment also provides for insertion of LOB clause in the India-Turkmenistan DTAA which permits application of domestic law provisions and measures concerning tax avoidance in the event of DTAA misuse.

5. Black money one-time compliance window results in INR 2,428 Crore tax collection upto December 31, 2015

CBDT has collected almost whole of the tax and penalty pursuant to declarations made under one time compliance window of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 upto December 31, 2015. As against the declaration of foreign assets of INR 4,164 Crore from 644 declarations, CBDT has collected INR 2,428.4 Crore amount by way tax (30%) and penalty (30%) upto December 31, 2015. The shortfall of around INR 70 Crore in taxes and penalty is primarily on account of certain declarations, in respect of which there was prior information under the provisions of Double Taxation Avoidance Agreements/ Tax Information Exchange Agreements.

6. CBDT initiates paper-less assessment proceedings for non-corporate taxpayers, pilot project to begin at 5 major locations

In a major step towards a tax-friendly administration, CBDT had announced commissioning of a pilot project for conducting paper-less tax assessments for non-corporate assessment jurisdictions at Delhi, Mumbai, Bengaluru, Ahmedabad and Chennai. Some of the key points of this paper less assessment project are as under:

- Issue of notices/ questionnaires by Income-tax Department to taxpayers through e-mail;
- Taxpayers to file reply to assessment notice/ questionnaires issued by Income-tax Department vide e-mail;
- A prior consent of the taxpayers will be obtained and pilot project will be carried out only in cases of willing taxpayers.
- The cases covered under the aforesaid pilot project would be those, which have been selected for scrutiny on the basis of Annual Information Return/ Central Information Branch information or non-matching with 26AS-data.
- The officers of the Income-tax Department can use their official e-mail IDs to interact with the taxpayers at their e-mail IDs as mentioned in the respective returns of income.

7. USA includes India in list of 34 countries for automatic information exchange under Foreign Account Tax Compliance Act ('FATCA') and guidance note issued by CBDT for implementation of FATCA rules & Common Reporting Standard ('CRS')

US Treasury Department has issued a list of 34 countries for automatic information exchange under FATCA regulations with regard to reporting of certain deposit interest paid to non-resident alien individuals on or after January 01, 2013. Total 16 countries have been added to original list, including India.

In addition, to provide direction to the Financial Institutions, regulators and Revenue officers for ensuring compliance with the reporting requirements of FATCA, CBDT has released a Guidance Note on the same.

8. Quoting of Permanent Account Number ('PAN') mandatory for transactions above INR 2 lakh

CBDT had issued a circular making quoting of PAN mandatory for transactions exceeding INR 2 lakhs regardless of the mode of payment. This move is made pursuant to recommendations of the Special Investigation Team on Black Money that PAN should be mandatorily quoted for transactions exceeding INR 1 lakh.

Further, CBDT enhances existing monetary limits of certain transactions which require quoting of PAN with a view to bring in a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value. The revised monetary limit for quoting PAN for some of the transactions is listed in the table below:

Particulars	Erstwhile monetary limit (INR)	Revised monetary limit (INR)
For transactions of sale/ purchase of immovable property	5,00,000	10,00,000
For hotel or restaurant bills paid at any one time	25,000	50,000
For purchase/ sale of shares of an unlisted company	50,000	More than 1,00,000

Further, CBDT has clarified that opening of a no-frills bank account such as a Jan Dhan account shall not require PAN, but states that the requirement of quoting PAN shall continue to apply to opening of all bank accounts including in co-operative banks. CBDT stated that "The above changes in the rules are expected to be useful in widening the tax net by non-intrusive methods. They are also expected to help in curbing black money and move towards a cashless economy". The aforesaid amendment in the Income-tax Rules shall take effect from January 1, 2016.

9. CBDT relaxes reporting compliance norms for payments to non-residents

CBDT relaxed reporting and certification requirements on foreign remittances under section 195 of the Income-tax Act, 1961 with a view to strike a balance between reducing compliance burden and collection of information of foreign remittances.

The following are the key relaxations granted by CBDT on reporting requirement of foreign remittances:

- No Form 15CA and 15CB are required to be furnished by an individual for remittances not requiring RBI approval under Liberalized Remittance Scheme ('LRS');
- No reporting requirement on foreign payments for imports;
- Chartered Accountant certificate in Form 15CB to be furnished only in respect of payments to non-residents exceeding INR 5 lakhs during the year and that are chargeable to tax.

The above amendments shall be applicable from April 1, 2016.

10. CBDT makes electronic filing of first appeal before CIT(A) mandatory

CBDT has introduced mandatory e-filing of first appeal, i.e., appeal before the Commissioner of Income-tax (Appeals) ['CIT(A)'], for persons who are required to file e-returns. The e-filing appeal process is expected to facilitate fixation of hearing of appeals also electronically. The e-filing appeal process would remove human interface, reduce paperwork and decrease the transaction cost for the taxpayer. CBDT anticipates that this step shall result in fewer deficient appeals as validations will be inbuilt which would ensure consistent and error free service. The current form for filing of appeal before CIT(A), i.e., Form No. 35 to be replaced by a new form. CBDT press release states that "The new format for filing of appeals is more structured, objective, systematic, and aligned with the current

provisions of the Income-tax Act". CBDT recognizes this as another significant step in Income tax Department's endeavour to digitize various functions of the Department for providing efficient taxpayer services.

11. CBDT issues draft guidelines for determination of place of effective management ('POEM')

Section 6(3) of the Income-tax Act, 1961 provides the provisions for determination of residential status of a company. As per the provisions of the said section, as amended by the Finance Act, 2015, in cases other than an Indian company, a company is said to be resident in India, if its 'place of effective management' ('POEM') in that year is in India. There were controversies on interpretation of term 'POEM' post the amendment made in the provisions of section 6(3) by the Finance Act, 2015. In order to clarify the controversies surrounding interpretation of term 'POEM', CBDT has issued draft guidelines for determination of POEM of a company, which are briefly discussed as under:

- POEM determination to be based on fact, whether, company is engaged in 'active business outside India' or not;
- If a company satisfies the test of being engaged in 'active business outside India', relaxed conditions for determining POEM;
- POEM in case of company engaged in 'active business outside India' shall be presumed to be outside India if majority of board meetings are held outside India;
- **Tests for 'active business outside India':**
- Passive Income - not more than 50% of the total income, and
- Assets situated in India – not more than 50% of the total assets,
- Number of employees situated in India – not more than 50% of the total number of employees,
- Payroll expense on such employees – not more than 50% of the total payroll expenses
- If the company is not considered as engaged in 'active business outside India', strict conditions for determining POEM have been laid down;
- In case of company not engaged in 'active business outside India', twin test of (i) whether the board regularly meets outside India and take key decisions and (ii) whether the company's senior management and support staff are located outside India;
- After above tests, if on facts, it is established that, decisions are in substance taken in India, then POEM will be in India;
- Adverse POEM decisions to be taken by assessing officers only after seeking prior approval of the Principal Commissioner or the Commissioner.

12. OECD releases final reports on all 15 focus areas in its Action Plan on Base Erosion and Profit Shifting ('BEPS')

On October 5, 2015, OECD released its final reports on all 15 focus areas in its action plan on BEPS. These reports include recommendations for significant changes in key elements of the international tax architecture, resulting in transformation of global tax environment in which multinational enterprises operate. India, being a G20 member, also contributed significantly to the BEPS initiative.

BEPS recommended action plans provides for, amongst others, following significant changes for multinational enterprises operating globally:

- Change in tax laws in relation to digital economy
- Strengthening of Controlled Foreign Company ('CFC') Rules
- Limiting base erosion via check on interest deductions
- Preventing treaty abuse by insertion of Limitation of Benefit ('LOB') clause and Principal Purpose Test ('PPT')
- Preventing artificial avoidance of Permanent Establishment ('PE') formation even on conducting core business activities

- Assuring that transfer pricing outcomes are in line with value creation
- Re-examination of transfer pricing documentation and Country by Country reporting

The above BEPS recommendations can be infused into Indian tax system by legislative changes in the domestic tax laws. However, the impact of same on multinationals sheltering under bilateral treaty arrangements would be surrounded by uncertainties and litigations.

13. Government releases proposed roadmap to phase-out deductions under the Income-tax Act, 1961

The Finance Minister of India, in his budget speech during 2015, had proposed to reduce the rate of corporate tax from 30% to 25% over the next four years along with corresponding phase-out of exemptions and deductions.

In continuation of the above proposal, the Government of India, released the roadmap for phasing out of deductions and exemptions under the Income-tax Act, 1961, as under:

- Profit-linked, investment linked and area-based deductions would be phased out for both, corporate and non-corporate taxpayers;
- Provisions having a sunset clause would not be further modified to advance/ extend the sunset date;
- For incentives that do not have a terminal date, a sunset date of 31 March 2017 would be provided, either for commencement of activity or for claim of benefit, depending on the structure of the provision;
- No weighted deductions will be available with effect from 1 April 2017;
- The highest rate of depreciation is proposed to be reduced to 60% from 100%.

Tax Cases

Income Tax

Castleton Investment Limited vs Director of Income Tax (International Taxation) – (Civil Appeal Nos. 4559 & 4560 of 2013) - Supreme Court

Provisions of Minimum Alternate Tax ('MAT') not applicable to FII's and FPI's not having Business/ Permanent Establishment in India

The taxpayer was a Mauritian company which made an application before the Authority for Advance Rulings ('AAR') for determination of its tax liability on account of transfer of equity shares of an Indian company. The AAR had held that capital gains arising to the Mauritian company on sale of shares of an Indian company would be taxable in Mauritius only and not in India. However, the AAR also ruled that such capital gains shall be liable for MAT in India.

The taxpayer filed an appeal against the ruling of AAR before the Apex Court of India on the issue of applicability of MAT on capital gains.

The issue before the Apex Court was whether MAT applies to foreign company which did not have any Permanent Establishment ('PE') in India. The taxpayer in this regard placed reliance on CBDT circular dated September 2, 2015 wherein it has been stated that MAT provisions would not be applicable to FIIs and FPIs not having business/ Permanent Establishment in India.

The Supreme Court of India, in addition to the CBDT circular, also considered Attorney General's (Department Representative) statement that Government would abide by the above circular.

In view of the above, the Supreme Court disposed off the appeal holding that MAT is not applicable to FII's and FPI's not having any business establishment or PE in India.

NGC Network Asia LLC vs. Joint Director of Income-tax - (ITA No. 7994 of 2011) - Mumbai Tribunal

Advertisement procurement service provider constitutes agency PE in India

A US based company ('the taxpayer') was engaged in broadcasting of National Geographic channel and Fox International Channel. It had sold the entire 'advertisement air time' of its channels for a lump sum consideration to its associated enterprise in India, viz., NGC Network (India) Private Limited ('NGC India'). The taxpayer was of the view that income received by it from sale of 'advertisement air time' was not taxable in India as 'advertisement air time' would amount to 'goods' which was transferred to NGC India on principal to principal basis. Also, NGC India could not be treated as taxpayer's PE in India.
The Indian Revenue Authorities, however, considered NGC India as the 'dependent agent PE' of the taxpayer. The Indian Revenue Authorities were also of the view that 'advertisement air time' could not be considered as 'goods'.
On appeal before the Mumbai Bench of the Tribunal, the Tribunal held that 'advertisement air time' cannot be classified as goods, since the same could not be consumed/ used by NGC India without the assistance from the taxpayer by way of telecasting of same in the television channels. Thus, the concept of purchase and sale of goods could not be applied to the facts of the instant case.
The Tribunal further held that NGC India was habitually exercising an authority in India to conclude contracts on behalf of the taxpayer and the same were binding on the taxpayer, since it was agreed to broadcast the advertisements procured by NGC India. Thus, NGC India should be classified as 'dependent agent' of the taxpayer in terms of Article 5(4)(a) of the Indo-US DTAA and, accordingly, business income from selling of 'advertisement air time' had to be attributed to taxpayer's PE in India.

Service Tax

North American Coal Corporation India Pvt. Ltd vs. Commissioner of Central Excise (Ruling No. AAR/ST/13/2015) - Authority for Advance Ruling
No liability to pay service tax on salary and allowances payable to employee in terms of dual employment agreement
The issue before the Authority for Advance Ruling ('AAR') in this case was, whether service tax is chargeable on salary and allowances payable to employee on secondment in India, after the introduction of Negative List regime under the Finance Act, 1994.
The Applicant, an Indian subsidiary company of a US company had entered into a tripartite agreement with its parent company for secondment of one of parent company's employee to Indian subsidiary on employment basis, for a particular term. The salary of said employee, during the term of secondment, was to be paid by the Indian subsidiary, while, his social security interests were to be taken care of by the US parent company.
The applicant, during the course of hearing before the AAR, relied on the exclusion provided in the definition of term 'service', defined in section 66(44)(b) of the Finance Act, 1994. As per the said exclusion, rendition of service by an employee to the employer in course of or in relation to his employment is excluded from the definition of term 'service'. Consequently, once the same is out of the ambit of term 'service', there would be no chargeability of service tax on it.
The Revenue Authorities, on the other hand argued that, US parent company is bearing the cost of social security benefits of said employee, and therefore, the case under consideration do not amount to pure employment of employee by the Indian company, which is outside the ambit of exclusion provided in the definition of term 'service'.
The AAR, however, accepted the applicant's view and held that, so long as the employee was serving in India, he needs to be treated as an employee of the applicant Indian subsidiary, even though his social security interests were taken care of by the US parent company. Accordingly, there could be no question of charging service tax on salary paid to the employee by the Indian subsidiary.

CORPORATE LAWS

Filing of Documents and Notification of Companies (Extensible Business Reporting Language) Rules, 2015

Ministry of Corporate Affairs ("**MCA**") has vide its notification dated September 09, 2015 framed Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules 2015 ("**XBRL Amended Rules**"), amending the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011. Under the XBRL Amended Rules, the below mentioned companies are required to file their financial statements and other documents with the Registrar of Companies ("**ROC**") in accordance with Section 137 of Companies Act 2013 ("**CA13**"), , in the revised e-Form AOC-4 XBRL for financial year commencing from 1st April 2014 using XBRL Taxonomy.
Below mentioned are the Companies which fall under its purview:

- Companies or their subsidiaries listed with any of the Stock Exchanges in India;
- Companies having paid up Share Capital of INR 50 Million or more;
- Companies having turnover of 5 billion or more; and
- All companies which were hitherto covered under the Companies XBRL Rules 2011.

Banking Companies, Insurance Companies, Power Sector Companies and Non- Banking Financial Companies ("**NBFC**") are exempted from XBRL Filing.
Further the XBRL Amended Rules mandate filing of the cost audit report and other documents with the Central Government under section 148(6) of CA13 using XBRL Taxonomy provided in Annexure III of the XBRL Amended Rules in e-Form CRA- 4 provided under Companies (Cost Records & Audit) Rules 2014.
Given the challenges involved in developing 100 smart cities, only the capable cities will be chosen under the Smart Cities Mission through a two-stage competition. This was indicated in the Operation Guidelines for Smart Cities Mission released by Prime Minister Shri Narendra Modi on June 25, 2015. The selection criteria to be used in both the stages of competition are elaborated in the Guidelines.

Notification of Companies (Accounts) Second Amendment Rules, 2015

MCA vide its notification dated September 04, 2015 has amended the Companies (Accounts) Rules, 2014. Under the amended rules, filing of Financial Statements, Consolidated Financial Statements and other relevant documents with ROC in Form AOC-4 has been made mandatory by MCA. Pursuant to Sec 137 of CA13 a copy of Financial Statements along with other relevant documents, duly adopted at the Annual General Meeting ("AGM") of the Company are required to be filed with ROC within 30 days of the date of AGM in such manner as may be prescribed along with the requisite fees. Such filing shall now be done through Form AOC-4. In addition to the above, the following significant clarifications have been made under the amended rules:

1. It would now be mandatory for the Indian companies to prepare their financial statements in the form specified in Schedule III of CA 13 and comply with the Indian Accounting Standards; and
2. (2) Form AOC-4 CFS has been introduced for filing consolidated financial statements.

Notification of Companies (Acceptance of Deposits) Second Amendment Rules, 2015

MCA has notified the Companies (Acceptance of Deposits) Second Amendment Rules, 2015 vide its notification dated 5th September, 2015. The amendment mandates states that as and when a Company receives any amount as loan from its director or his/her relative (as defined under CA 13), then at the time of receiving such amount, such director (or his/her relatives) has to furnish to the Company, a declaration in writing to the effect that the amount given is not out of the funds acquired by him by borrowing or accepting loans or deposits from others. Further, the Company will now have to disclose the details of the money so accepted in the Board's report. Prior to this amendment, the requirement of furnishing a written declaration was only applicable to loans being advanced by a director, however now the relatives of the directors have also been brought within the ambit of these rules.

Notification of Companies (Share Capital and Debentures) Third Amendment Rules, 2015

MCA has, vide its notification dated November 6, 2015, amended rule 18 of the Companies (Share Capital and Debentures) rules, 2014. Prior to this amendment, companies except companies engaged in the setting up of infrastructure projects, infrastructure finance companies and infrastructure debt fund non-banking financial companies were not permitted to issue debentures for a period exceeding 10 years. However, the amended rules now permit companies to issue debentures for a period exceeding 10 years but not beyond 30 years, provided such companies are specifically permitted to do so by a Ministry or Department of the Central Government or by Reserve Bank of India ("**RBI**") or by any Statutory Authority.

Non- preparation of Financial Statements under section 129 by the Government Companies

MCA vide its notification dated September 04, 2015 has amended the applicability of Section 129(6) of CA 13 relating to preparation of Profit and loss A/c in Schedule III of CA 13 to certain Government Companies. It states that provisions of section 129(6) shall not apply to Government Companies producing defence equipment including space research subject to fulfilment of following conditions:

- The board of directors of the company has consented to the non- disclosure; of information relating to certain paras mentioned in the notification; and
- The grant of the exemption shall be disclosed in the Notes forming part of Balance Sheet and Profit and Loss Account; and.
- The company should comply with prescribed accounting standards; and
- The company should ensure that its true and fair financial position is disclosed; and
- The company shall maintain and file such information as may be prescribed or called for or required by the government or the RBI or any other regulator.

Prior to this amendment, Section 129(6) of CA 13 was applicable to Government companies as well.
This notification is applicable in respect of financial statement prepared in respect of the financial years ending on or after the 31st March, 2016.

Amendment of Schedule III of CA 13

MCA has vide its notification dated September 4, 2015 amended Schedule III of CA 13 thereby altering Part-1 of the Balance Sheet in the following manner:
Under the heading "Equity & Liabilities", "trade payables" are substituted with the following:
Trade Payables-
A. Total outstanding dues of micro enterprises and small enterprises.
B. Total outstanding dues of creditors other than micro enterprises and small enterprises."
Further, in light of the above amendment, the Notes for General Instructions for preparation of Balance Sheet have also been amended.

Notification of Limited Liability Partnership ("LLP") (Amendment) Rules, 2015

MCA vide its notification dated October 15, 2015, has amended 'The Limited Liability Partnership Rules, 2009'. Under 'The Limited Liability Partnership Rules, 2009', in case of conversion of any firm, private company or unlisted public company into LLP, an intimation of such conversion has to be sent to the concerned Registrar of firms or RoC, as the case may be, in Form 14 within fifteen days of the date of registration of the LLP. Pursuant to the amended rules, all type of companies are exempted from the requirement of filing an into of conversion into LLP to RoC. Only the firms are necessitated to make such a filing. Additionally, the amended rules now require the LLP incorporation certificate to have the national emblem on them.

GoI to set up new agency to probe corporate accounting frauds

The GoI has proposed to set up a specialised agency to investigate large corporate accounting frauds. This will be done in order to establish a vigorous mechanism for swift inquiries into scams. The proposed agency is likely to examine accounting frauds of certain classes of listed companies or those with net worth of INR 5 billion or more.
This agency shall be established under the provisions of CA 13. At present, the Institute of Chartered Accountants of India ("**ICAI**") has authority to investigate and take disciplinary action in such cases and this proposed agency shall have powers to investigate under the CA 13. It may be noted that a formal written document/order is still awaited.

Case Laws

1. Hindustan Lever & Anr v. State of Maharashtra & Anr
Tata Oil Mills Co. Ltd amalgamated with Hindustan Lever Ltd. ["**HLL"/ "Petitioner**"] under a scheme of amalgamation, which was sanctioned by the Court. On presentation of the certified copy of the Court's order, the RoC, Maharashtra issued a certificate amalgamating the two companies. The authorities under the Bombay Stamp Act, 1958 ("**Stamp Act**") demanded stamp duty on the transfer of assets and properties effected under the sanctioning order passed by the Bombay HC, from HLL. Against this order, HLL filed a writ petition in the Bombay HC challenging the constitutional validity of the provisions of the Stamp Act as mentioned in the order. The Division Bench of the Bombay HC dismissed the writ petition. Thereafter, HLL appealed to the SC invoking mainly the following grounds: (i) Amalgamation being an act by operation of law, any transfer of immovable properties effected under the court order sanctioning the scheme of amalgamation is an "involuntary transfer" in nature, and therefore, not liable to stamp duty as only "voluntary transfer" under the head "conveyance" is subject to stamp duty and (ii) Court order is not an instrument subject to stamp duty. The contention of the petitioner was that the Order of the Court in exercise of its judicial functions is not "a document" or an "instrument".
SC dismissed the appeal. SC rejected the contentions of the Petitioner while holding that the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies.
SC further held that consent decree is a live document transferring the property in dispute from the defendants to the plaintiffs and that where any property passes by conveyance, the transaction would said to be inter-vivos as distinguished from a case of succession or devise. For the reasons stated above, SC did not find any merit in the appeals and dismissed the same with no order as to costs.
2. Jai Mahal Hotels Pvt Ltd v. Rajkumar Devraj & Ors
Late Maharaja Jagat Singh held shares in M/s. Jai Mahal Hotels Pvt. Ltd. and other companies. He died leaving behind a Will in favour of his mother Gayatri Devi ("**GD**") and his children ("**Respondents**"). Succession certificate was issued by the District Judge, Jaipur jointly in favour of GD and the Respondents. GD later executed transfer deed in favour of the Respondents along with a Will. After GD's death, vide letter dated 15th July, 2009, the Respondents claimed transmission and transfer of shares in their favour on the basis of succession certificate and transfer deed along with revalidation of the letter issued by the RoC.
The application having not been accepted by the Company ("**Appellant**"), the Respondents appealed before the Company Law Board ("**CLB**"). CLB dismissed the appeal filed by the Respondent. On further appeal by them, Delhi HC reversed the order of the CLB and ordered rectification of the transfer register. Aggrieved by the order of Delhi HC, the Appellants filed an appeal before the SC.
SC dealt with the question relating to the scope of power under Section 111 of the Companies Act, 1956 to direct rectification in the share register of a company. SC observed that CLB's jurisdiction is exclusive if the matter truly relates to rectification but if the issue is alien to rectification, such matter

may not be within the exclusive jurisdiction of the Company Court/ CLB. It was further held by SC that even in summary jurisdiction, CLB had no justification to reject the claim of the Respondent and held that the Delhi HC rightly reversed the said order. The Court held that the nature of proceedings under Section 111 of the Companies Act, 1956 are slightly different from a title suit, although, sub-section (7) of Section 111 of Companies Act, 1956 gives to the tribunal the jurisdiction to decide any question relating to the title of any person who is a party to the application, to have his name entered in or omitted from the register and also the general jurisdiction to decide any question which it is necessary or expedient to decide in connection with such an application. SC while dismissing the appeal of the company held that Delhi HC has rightfully reversed the order of CLB.

Exchange Control

Revised Framework for External Commercial Borrowings

The Reserve Bank of India ("RBI") has prescribed revised framework for External Commercial Borrowings ("ECB"). Broadly the ECB has been bifurcated into three tracks (i.e. Track I, Track II and Track III). Key parameters of revised framework are as follows:

Track I (Short Term or Medium Term ECB)	Track II (Long Term ECB)	Track III (Indian Rupee denominated ECB)
Forms of ECB		
i. Bank Loans; ii. Securitised Instruments (eg. Floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares/debentures); iii. Buyer's credit; iv. Supplier's Credit; v. Foreign Currency convertible bonds ("FCCB"); vi. Financial Lease; and vii. Foreign Currency Exchangeable Bonds ("FCEB") [only under Approval Route]		
Key Changes • The first six forms borrowings can be availed under automatic and approval routes, FCEB's can be issued only under the Approval route. • Financial leases are also now explicitly covered as a form of the ECB • The revised ECB framework comprises the three tracks.		
Minimum Average Maturity (MAM) Period		
i. ECB upto USD 50 Million or its equivalent for 3 years ii. ECB beyond USD 50 Million or its equivalent for 5 years.	10 years irrespective of the amount	Same as under Track I
Eligible Borrowers		
• Companies in Manufacturing, Software development and Shipping & Airline Companies sectors.	• All Entities listed under Track I. • Companies in Infrastructure	• All Entities listed under Track II. • All Non Banking Financial Companies (NBFC's). • NBFCs-Micro Finance

• Small Industries Development Bank of India(SIDBI) • Units in Special Economic Zones (SEZs) • Export Import Bank of India (EXIM Bank)	Sector. • Holding Companies. • Core Investment Companies (CICs). • Real Estate investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities Exchange Board of India ("SEBI").	Institutions (NBFCs-MFIs). • Companies engaged in miscellaneous services namely: i. Research & Development ii. Training (other than educational Institutes) iii. Companies supporting Infrastructure iv. Companies providing Logistics Services • Developers of SEZs / National Manufacturing & Investment Zones (NMIZs).
Key Changes		
• Entities which are engaged in micro finance activities are eligible to raise ECB subject to two conditions : i. There should be a satisfactory borrowing relationship for at least three years with an AD Category I Bank ("AD Bank") in India, and ii. A certificate of due diligence on 'fit and proper' status from the AD Bank should be obtained. • LLPs are still not covered as eligible borrowers for ECB. • Infrastructure companies and CIC/holding companies are now mandatorily required to comply with MAM of 10 years.		
Recognised Lenders/Investor		
• International banks. • International capital markets. • Multilateral/regional/Government-owned financial institutions. • Export credit agencies. • Suppliers of equipment. • Foreign equity holders. • Overseas long term investors such as: i. Prudentially regulated financial entities ii. Pension funds iii. Insurance companies iv. Sovereign Wealth funds v. Financial institutions located in International Financial Services Centers in India • Overseas branches/ subsidiaries of Indian banks.	• All Entities listed under Track I but for overseas branches/ subsidiaries of Indian Banks.	• Entities Listed under Track I but for overseas branches/subsidiaries of Indian Banks. • In case of NBFCs MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations and individuals.

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Key Changes • The overseas long term investors are a new category provided under the recognized lender category. • Overseas organization lenders are required to furnish a certificate of due diligence from an overseas bank which is subject to the regulations of host country. Such host country must adhere to the Financial Action Task Force (FATF) guidelines on anti-money laundering (AML)/combating the financing of terrorism. • Individual Lender has to furnish a certificate of due diligence from an overseas bank indicating that the lender maintains as account with the bank for atleast 2 years.		
All in cost ceiling (AIC)		
• For ECB with MAM 3 to 5 years- 300 basis points per annum over 6 months LIBOR or applicable bench mark for the respective currency. • For ECB with average maturity period of more than 5 years- 450 basis per point per annum over 6 months LIBOR or applicable bench mark for the respective currency. In case of default or beach of covenants, penal interest should not be more than 2 per cent over and above the contracted rate of interest.	i. The maximum spread over the bench mark will be 500 basis per point per annum. ii. Remaining conditions will be same as given under Track I.	The AIC should be in line with the market conditions.
Permitted End uses		
• ECB proceeds can be utilised for capital expenditure in the form of: i. Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods; ii. Local sourcing of capital goods; iii. New project; iv. Modernisation /expansion of existing units; v. Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS); vi. Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India; vii. Refinancing of existing trade credit raised for import of capital goods; viii. Payment of capital goods already shipped / imported but unpaid; ix. Refinancing of existing ECB provided the residual maturity is	• The ECB proceeds can be used for all purposes excluding the following: i. Real estate activities; ii. Investing in capital market; iii. Using the proceeds for equity investment domestically; iv. On-lending to other entities with any of the above objectives; v. Purchase of land • Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.	• NBFCs can use ECB proceeds only for: i. On-lending to the infrastructure sector; ii. providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and iii. providing capital goods/equipment to domestic entities by way of lease and hire-purchases • Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ. • NBFCs-MFI, other eligible MFIs, can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building. • For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following: i. Real estate activities ii. Investing in capital market iii. Using the proceeds for equity investment domestically; iv. On-lending to other entities with any of the above objectives; v. Purchase of land

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• SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector), where MSME sector is as defined under the MSME Development Act, 2006, as amended from time to time.
• Units of SEZs can raise ECB only for their own requirements.
• Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively.
• ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years.
• ECBs for the following purposes will be considered only under the approval route:
i. Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;
ii. On-lending by Exim Bank.</td><td></td><td></td></tr>
<tr><td colspan="3">Other Conditions for ECB</td></tr>
<tr><td>Individual Limits</td><td colspan="2">Under the Automatic route
<table><tr><th>Sectors</th><th>ECB Amount</th></tr><tr><td>For companies in Infrastructure and Manufacturing Sectors</td><td>Up to USD 750 million</td></tr><tr><td>For companies in software sector</td><td>Up to USD 200 million</td></tr><tr><td>For entities engaged in microfinance activities</td><td>Up to USD 100 million</td></tr><tr><td>For other entities</td><td>Up to USD 500 million or equivalent</td></tr></table>It is clarified that the above limits are separate from those prescribed for issuance of INR bonds overseas. However, the new framework does not seem to cover call/put options permitted under the existing framework.

Under the Approval Route
ECB proposal beyond the aforesaid mentioned limits will come under the approval route.</td></tr>
<tr><td>Currency of Borrowing</td><td colspan="2">• The ECB can be raised in any freely convertible currency as well</td></tr>
</table>

	as in Indian Rupees. • For Indian Rupees -denominated ECB, the NRI lenders other than foreign equity holders are required to mobilise INR through swaps/outright sale undertaken through the AD Bank in India. • Change of currency from one convertible foreign currency to another convertible foreign currency/INR is freely permitted but change of currency INR to any foreign currency is not permitted. • The ECB currency can be change into INR at the exchange rate prevailing on the date the agreements between the parties concerned for such change or at the rate which is less than the rate prevailing on the date of agreement if consented to be by the ECB lender.
Security for Raising ECB	AD Bank are permitted to allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised/raised by the borrower, subject to the following conditions: • the underlying ECB is in compliance with the extant ECB guidelines. • The existence of a security clause in the loan agreement for creation of charge in favour of overseas lender. • No objection certificate from existing lenders in India, as applicable, has been obtained.
Issuance of Guarantee, etc. By Indian Banks and Financial Institutions	• Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian Banks, all India Financial Institutions and NBFCs relating to ECB is not permitted. • Financial Intermediaries shall not be permitted to invest in FCCBs.
ECB liability : Equity Ratio	Under the automatic route Under the approval route 4:1 7:1
	This ratio will not be applicable if total of all ECBs raised by an entity is upto USD 5 Million or equivalent.
Parking of ECB Proceeds	**Abroad** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization can be retained for specified securities such as a. deposits or Certificate of Deposit or other products offered by banks with specified ratings; b. Treasury bills and other monetary instruments of one year maturity with specified ratings and c. Deposits with overseas branches/ subsidiaries of Indian banks abroad. **Domestic** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Banks in India for a maximum period of

	12 months. These term deposits should be kept in unencumbered position.
Conversion of ECB into equity	Conversion of ECB into equity is permitted subject to the following conditions: i. The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment (FDI) or approval from the Foreign Investment Promotion Board (FIPB), wherever applicable, for foreign equity participation has been obtained as per the extant FDI policy; ii. The foreign equity holding after such conversion of debt into equity is within the applicable sectoral cap; iii. Applicable pricing guidelines for shares are complied with.
ECB arrangements prior to December 02, 2015	• Entities raising ECB under the framework in force prior to December 02, 2015 can raise the said loans by March 31, 2016 provided the agreement in respect of the loan is already signed by the date the new framework comes into effect. • It is clarified that all ECB loan agreements entered into before December 02, 2015 may continue with the disbursement schedules as already provided in the loan agreements without requiring any further consent from the RBI or AD Bank. • In the following cases, ECB can be raised under the existing framework subject to the signing of the loan agreement and obtaining LRN by March 31, 2016: i. ECB facility for working capital by airlines companies; ii. ECB facility for consistent foreign exchange earners under the USD 10 billion Scheme; and iii. ECB facility for low cost affordable housing projects (low cost affordable housing projects as defined in the extant Foreign Direct Investment policy).

DEFENSE AND CIVIL AVIATION

Defence

Changes in FDI Policy in the defence sector

Press Note 12 (2015 Series)
The Department of Industrial Policy & Promotion ("**DIPP**"), Government of India has issued Press Note 12 (2015 Series) on November 24, 2015 ("**Press Note 12**"), in terms of which changes have been made to the Foreign Direct Investment ("**FDI**") Policy in respect of FDI in defence sector. A brief comparative analysis of the earlier FDI Policy in the defence sector and the revised position pursuant to the Press Note 12 issued by DIPP is as under:

S. No./ Ref. No. of Consolidated FDI Policy	Earlier provision	Revised provision	SDA Comment
Para 3.6.2	In sectors/activities with caps, including inter-alia defence	Foreign investment in sectors/activities under government	**SDA Comment Express mention of**

<table>
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<td>production, Government approval/FIPB approval would be required in all cases where:
(i) An Indian company is being established with foreign investment and is not owned by a resident entity or
(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or
(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. …</td>
<td>approval route will be subject to government approval where:
(i) An Indian company is being established with foreign investment and is not owned by a resident entity or
(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or
(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. …</td>
<td>defence production is deleted.</td>
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<tr>
<td>Para 6.2.6.1</td>
<td>
<table>
<tr><th>Sector/Activity</th><th>Cap</th><th>Entry Route</th></tr>
<tr><td>Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951</td><td>49%</td><td>Government route up to 49% Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and ‘state-of-art’ technology in the country.</td></tr>
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<table>
<tr><th>Sector/Activity</th><th>Cap</th><th>Entry Route</th></tr>
<tr><td>Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951</td><td>49%</td><td>Automatic up to 49% Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and ‘state-of-art’ technology in the country.</td></tr>
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Investment up to 49% is permitted under the automatic route.

Investment above 49% is possible with approval of the FIPB wherever it is likely to result
In access to modern and ‘state-of-art’ technology in the country.
No sub-limit on portfolio investments

</td>
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	(i) FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. (ii) Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route		
Para 6.2.6.2	Other conditions:	Other conditions:	
	Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.	License applications will be considered and licenses given by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, in consultation with Ministry of Defence and Ministry of External Affairs.	**No change.**
	The applicant company seeking permission of the Government for FDI up to 49% should be an Indian company owned and controlled by resident Indian citizens.	Deleted	**The requirement that the investee company be "owned and controlled" by resident Indian citizens has been done away with.**
	The management of the applicant company should be in Indian hands with majority representation on the	Deleted	**The requirement that the majority of the board of directors and**

	Board as well as the Chief Executives of the company/partnership firm being resident Indians.		**chief executives be resident Indians no longer applies. The requirement that the management of the investee company be in Indian hands no longer applies.**
	Chief Security Officer (CSO) of the investee/ joint venture company should be resident Indian citizen.	Deleted	**The requirement that the Chief Security Officer of the investee company be a resident Indian citizen no longer applies.**
	Full particulars of the Directors and the Chief Executives should be furnished along with the applications	Deleted	**This information is not required to be submitted.**
	The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.	Deleted	
	There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.	Deleted	
	The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible	Deleted	

	Investee/joint venture company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.	Investee company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.	**No change**
	Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.	Deleted	
	Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.	Deleted	
	The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency 47 under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.	Deleted	
	Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.	Deleted	
	The Licensee shall be allowed to sell Defence items to Government entities under the control of Ministry of Home Affairs (MHA), State	Deleted	

	Governments, Public Sector Undertakings (PSUs) and other valid Defence Licensed Companies without prior approval of the Department of Defence Production (DoDP). However, for sale of the items to any other entity, the Licensee shall take prior permission from the Department of Defence Production, Ministry of Defence		
	All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.	Deleted	
	Applications for FDI up to 49% will follow the existing procedure with proposals involving inflows in excess of INR 20 Billion being approved by Cabinet Committee on Economic Affairs (CCEA).	Deleted	
	Based on the recommendation of the Ministry of Defence and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the Ministry of Defence in respect of cases seeking permission of the Governme 0.nt for FDI beyond 49% which are likely to result in access to modern and 'state-of-art' technology in the country.	Deleted	
	Proposals for FDI beyond 49% with proposed inflow in excess of INR 20 Billion, which are to be approved by CCS will not require further approval of the Cabinet Committee on Economic Affairs (CCEA).	Deleted	
	Government decision on applications for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement	Deleted	
	For the proposal seeking Government approval for foreign investment beyond 49%, applicant should be Indian company/foreign investor. Further condition at para (iii) above will not apply on such proposals.	Deleted	
		Infusion of fresh foreign investment	• **Infusion of**

		within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.	**fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license requires approval** • **Transfer of stake by existing investor to new foreign investor requires government approval.**
		Foreign investment in the sector is subject to security clearance and guidelines of the Ministry of Defence.	• **Security clearance from the Ministry of Defence to be obtained and guidelines of the Ministry of Defence to be followed**

HIGHLIGHTS OF PROPOSED CHANGES TO THE DEFENCE PROCUREMENT PROCEDURE 2013

On January 11, 2016, a meeting of the Defence Acquisition Council ("DAC") was held to discuss the proposed changes to the Defence Procurement Procedure 2013 ("DPP"). As per the information available in the public domain, the following key changes to the DPP were approved by the DAC:

• New Category for Defence Acquisition: A category "Buy IDDM (Indigenously Designed, Developed and Manufactured)" is likely to be introduced in the DPP. The introduction of such a category would mean that Indian companies who have the capability of designing and developing products indigenously will be preferred in most purchases by the Indian Armed Forces. This will have two sub-categories — one, it will be mandatory to have 40 % local content in case the design is also indigenous. Two, in case the design is not Indian, 60 % local content will be mandatory.

• Offset: The Offset policy which currently applies to contracts worth ≥Rs. 300 crores is proposed to apply to contracts worth ≥ Rs. 2,000 crore only. The threshold limit is being raised to Rs 2,000 crore,

as not many Indian companies are available to absorb so much of technology infusion.

• Shorter AONs (Acceptance of Necessity) Period: In order to reduce delays in procurement process, AON of a particular platform will be valid only for only six months as against the current 12 months deadline. Moreover, AON would not be notified until accompanied by a finalized RFP.

• 'Indian Company' defined: A company controlled and operated by Indian nationals would be considered as an Indian Company and would be eligible to participate in the categories Buy Indian, Buy & Make Indian and Make cases.

• 'Single Vendor' Situation: The new DPP will allow 'single vendor situation' at every stage (bid submission stage, Technical evaluation stage and Staff evaluation stage) as long as the vendor complies with the prescribed procedures.

• Opportunity for 'Medium and Small Scale Industries': For encouraging R&D in the private sector, the department of defence production will bear 90% of the design and development cost of major systems. Small and medium scale industries will be given from Rs. 3 crore to 10 crore in funding for design and development and contract within 24 months and If contract is not awarded then the entire cost shall be refunded.

In addition to the proposed changes in the DPP, the DAC is also contemplating to come up with a new blacklisting policy for companies involved in wrongdoing and the policy concept of choosing strategic partners for major weapons platforms. The same are proposed to be discussed in the next meeting of the DAC.

Civil Aviation

Draft National Aviation Policy 2015 Stands Revised

With the mission of providing safe, secure, affordable and sustainable air travel with access to various parts of India and the world. A revised draft of National Aviation Policy has been issued by the Ministry of Civil Aviation, GOI and aims at enhancing regional connectivity through fiscal support and infrastructure development, enhancing ease of doing business through deregulation, simplified procedures and e-governance and also promoting the entire aviation sector chain: cargo, MRO (Maintenance Repair & Overhaul), general aviation, aerospace manufacturing and skill development. Some of its salient features being:

1. Keeping the eligibility criteria for Scheduled Commuter Airlines in terms of paid-up capital to be at INR 20 Million to facilitate easy entry of new players

2. Increasing FDI in airlines from 49% to above 50% if the government decides to go in for open skies

3. MRO (Maintenance Repair Overhaul), ground handling, cargo and ATF infrastructure co-located at an airport shall avail the benefit of 'infrastructure' sector, with benefits under Section 80-IA of Income Tax Act.

Penalty Imposed on Airlines for Cartelization

A complaint had been filed by the Express Industry Council of India with the Competition Commission of India, in which a body of 29 logistics and courier companies had been significantly affected by the

sudden increase in the prices of ATF (Air Turbine Fuel). The competition commission of India (CCI) charged these five airlines of Cartelization -Air India, Go Airlines, Jet Airways, Indi-Go Airlines and Spice-Jet imposing a penalty of over Rs 2.5 billion on Jet Airways, IndiGo Airlines and Spice-Jet. While Jet Airways had a penalty of INR 1.52 Billion, IndiGo INR 640 Million and Spice Jet INR 425 Million. **Medical Fitness Assessment Age for Pilot License Increased**

Vide Notification bearing no. G.S.R. 78(E), rule 39C, in sub-rule (5) of the Aircraft Rules, 1937 stands amended. In rule 39C, in sub-rule (5) of the Aircraft Rules, 1937, for the word "forty", the word "sixty" has been substituted. By this amendment the period of validity of medical fitness assessment of 12 months in respect of the Airline Transport Pilot's License and Commercial Pilots License (aero plane/helicopter), Flight Navigator's License and Flight Radio Telephone Navigators License would now be reduced to half, i.e. 6 months only after such license holder has attained the age of sixty instead of attainment of an age of forty years. **The Carriage by Air (Amendment) Bill, 2015 has been passed**

The Lok Sabha has passed the Carriage by Air (Amendment) Bill, 2015, which intends to increase the compensation for death in an accident to more than INR 10 Million from around INR 8.9 Million at present. Once the Bill is enacted into a law, domestic carriers will have to pay the same as their global counter-parts by raising the liability limit for damage in case of death or bodily injury for each person from 1,00,000 SDR (special drawing rights) to 1,13,100 SDR (One SDR is presently equivalent to more than INR 90). The liability for delay in carriage is to be raised from 4,150 SDR to 4,694 SDR while the liability in case of destruction, loss, damage or delay of baggage is proposed to be raised from 1,000 SDR to 1,131 SDR. Liability in case of destruction, loss or delay in relation to the carriage of cargo has been raised from 17 SDR to 19 SDR.

SECURITIES LAWS

Amendment in the process for Fast Track Issue of shares

The Securities and Exchange Board of India ("SEBI") vide notification dated August 11, 2015 has issued SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2015 for amendment in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulation") by inserting a new proviso after the first proviso in Regulation 10(1), clause (e) in the said ICDR Regulation. The proviso provides that imposition of only monetary fines by stock exchange on the issuer shall not be a ground for ineligibility for undertaking issuance of securities under this Regulation.

A new clause (ga) is also inserted in Regulation 10 clause (g) of the said ICDR Regulation which provides for that the issuer or its promoter or its promoter group or its directors should not have settled any alleged violation of securities laws through the consent or settlement mechanism with the SEBI during immediately preceding three years of the reference date.

Further, following new clauses have also been inserted, namely:-

i. in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;

ii. The equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;

iii. The annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the weighted average number of equity shares listed during such six months' period;

iv. There shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**") have been notified by SEBI on September 2, 2015 which are effective from December 1, 2015. The Listing Regulations have been sub-divided into two parts viz.,(a) substantive provisions incorporated in the main body of Regulations; and (b) procedural requirements in the form of Schedules to the Regulations. The salient features of Listing Regulations are as follows:

1. The Listing Regulations start by providing broad principles which are in line with International Organization of Securities Commissions ("IOSCO") Principles for periodic disclosures by listed entities and also have incorporated the principles for corporate governance in line with Organisation for Economic Co-operation and Development ("OECD") Principles. These principles underlie specific requirements prescribed in different chapters of the Listing Regulations. In the event of the absence of specific requirements or ambiguity, these principles would serve to guide the listed entities.

2. The Listing Regulations provides for obligations which are common to all listed entities. These common obligations include general obligation of compliances on listed entity, appointment of common compliance officer, filings on electronic platform, mandatory registration on SEBI Complaints and Redress System ("SCORES"), etc.

3. The Listing Regulation provides for certain obligations in separate chapters which are applicable to specific types of securities only.

4. Under the Listing Regulations, the Stock Exchanges have been given responsibility to monitor compliance or adequacy / accuracy of compliance with provisions of these regulations and to take necessary action for non-compliance, if any.

5. The related provisions under the Listing Regulations have been aligned and provided at a common place for ease of reference. Further, all disclosures which are required to be made on the website of the listed entity have been enumerated at a single place for ease of reference and all requirements pertaining to disclosures in annual report have been combined.

6. In order to ensure that there is no overlapping or confusion on the applicability of these regulations, pre-listing requirements have been incorporated in respective regulations viz. ICDR Regulations, Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations") etc. These provisions pertain to allotment of securities, refund and payment of interest, 1 percent Security Deposit (in case of public issuance), etc. Post-listing requirements have been incorporated in Listing Regulations.

7. The provisions in Listing Regulations have been aligned with those of the Companies Act, 2013, wherever necessary.

8. A shortened version of the Listing Agreement will be prescribed which will be required to be signed by a company getting its securities listed on Stock Exchanges. Existing listed entities will be required to sign the shortened version within six months of the notification of the Listing Regulations.

Streamlining the Process of Public Issue of Equity Shares and Convertible Securities

SEBI has streamlined the process of Public Issue of equity shares and convertibles securities. The revised process is applicable for securities that are being listed on or after January 1, 2016. The following is the summary of changes made in the revised process:

1. The time taken to list the list the securities after the closure of the issue have been reduced from 12 days to 6 days.

2. The investors applying in a public issue shall use only Application Supported by Blocked Amount ("ASBA") facility for making payment.

3. In addition to the Self Certified Syndicate Banks (SCSBs), Syndicate Members and Registered Brokers of Stock Exchanges, the Registrars to an Issue and Share Transfer Agents (RTAs) and Depository Participants (DPs) registered with SEBI are now permitted to accept application forms (both physical as well as online) in public issues.

4. Intermediaries accepting the application forms shall be responsible for uploading the bid along with other relevant details in the application forms on the electronic bidding system of stock exchanges. All the applications should be stamped and also acknowledged by the intermediary at the time of receipt.

5. All intermediaries shall co-ordinate with one another to ensure completion of listing of shares and commencement of trading by T+6 days.

6. The intermediaries shall provide guidance to their investors on making applications in public issues.

7. The merchant bankers shall ensure that appropriate disclosures are made in offer documents.

Case Laws:

Ankur Chaturvedi v. SEBI
Mr. Ankur Chaturvedi ("**Appellant**") has filed this appeal before the Securities Appellate Tribunal, Mumbai ("**SAT**") against the Order of Adjudicating Officer ("**AO**"), Securities and Exchange Board of India ("**SEBI**"), for imposition of penalty of INR 0.5 million and INR 0.2 million under Section 15A(b) and section 15HB respectively of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**").

In the given case the Appellant was a promoter of a company whose shares were listed on the Bombay Stock Exchange ("**BSE**"). The SEBI during the investigation noticed that the Appellant has purchased shares of the company and failed to make disclosure of the said purchases to the BSE. The SEBI held that there was violation of Regulation 13(4) and 13(4A) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"). It has also been noticed by the SEBI that, the Appellant has also entered into sale transaction of shares of the same company in the same month in which he had purchased the shares. The SEBI further held that the Appellant was in violation of clause 4.2 of the Model Code of Conduct for prevention of insider trading for listed companies prescribed by SEBI. Accordingly, SEBI started proceedings against the Appellant and impugned order penalty under section 15A(b) and section 15HB of the SEBI Act.

On appeal, SAT was of the view that, omission on the part of the Appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market as the entire securities market stands on the disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, no fault can be found with the decision of the SEBI in imposing penalty of INR 0.5 million and INR 0.2 million under the SEBI Act. Thus, the appeal was dismissed.

NEW LEGISLATIONS

August 2015 - December 2015

1. Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Act") was passed on December 31, 2015. The purpose of the Act is the creation of Commercial Courts, and creation of a Commercial Division and Commercial Appellate Division in High Courts in the country.

Salient features of the Act are summarised below:

(i) Establishment of commercial courts and commercial divisions of High Courts: The Act authorises the state governments to establish, after consultation with the concerned high court, commercial courts at district level. In territories where the High Court has ordinary civil jurisdiction, the chief justice may constitute a Commercial Division having one or more benches and Commercial Appellate Division.

(ii) Jurisdiction: The courts constituted under the Act will have jurisdiction over "commercial disputes", which is defined as including disputes relating to transactions of merchants, bankers, financiers and traders, distribution and licensing agreements, construction and infrastructure contracts, including tenders, intellectual property rights, subscription and investment agreements, joint venture agreements, shareholders agreements, and such other commercial disputes as may be notified by the Central Government. The Commercial Division of a High Court will also preside over matters transferred to the high court under the Design Act, 2000 or the Patents Act, 1970.

Courts constituted under the Act will entertain commercial disputes over matters having a minimum 'Specified Value' of Rs.10,000,000 (Indian Rupees Ten million) or such higher value as may be notified by the Central Government. The Specified Value of a suit or application will be determined by taking into account the subject matter of the case, including the relief sought, market value of the immovable property or rights involved or the counter- claim.

The Commercial Division of a HC will have jurisdiction over all suits and applications relating to commercial disputes of a Specified Value filed in a HC exercising ordinary original civil jurisdiction, including a commercial dispute suit filed in a court, not lower than a District Court. If a counter claim is filed in a suit before a civil court relating to a commercial dispute of a Specified Value, such a suit will be transferred to the Commercial Division of a HC or a Commercial Court, as the case maybe.

(iii) Appointment: The State Government in concurrence with the Chief Justice of the concerned HC will have the power to appoint one or more person(s), having experience in dealing with commercial disputes, to preside over Commercial Courts as judge(s).

(iv) Jurisdiction over arbitration proceedings: Applications or appeals relating to international commercial arbitration under the provisions of the Arbitration Act, filed in a high court and suits relating to domestic commercial arbitration filed on the original side of the HC or that would ordinarily be filed before the principal civil court of ordinary jurisdiction in a district, will be heard and disposed of by the CAD. Commercial Courts/Commercial Divisions will not have jurisdiction over suits, application and proceedings in which the jurisdiction of civil courts has been expressly/impliedly barred.

(v) Appeals: Appeals against the decisions of a Commercial Courts/Commercial Divisions of a HC will lie with the Commercial Appellate Division. Appeal will have to be preferred within a period of 60 (sixty) days from the date of the order or judgement and the Commercial Appellate Division will endeavour to dispose of the same within a period of 6 months.

(vi) Pending matters: Pending suits under the Arbitration Act, relating to a commercial dispute of a Specified Value in a HC and a principal civil court will be transferred to the Commercial Division of that HC and the district, respectively. However, suits in which the final judgment have been reserved, prior to the constitution of the Commercial Divisions/Commercial Courts shall not be transferred.

2. The Arbitration and Conciliation (Amendment) Act, 2015

The President promulgated the Arbitration and Conciliation (Amendment) Act, 2015 on December 31, 2015 ("Arbitration Act"). The Act introduces several significant changes to the Arbitration & Conciliation Act 1996. The object of these changes is to expedite the arbitration process and minimalize court intervention in arbitration. Significant changes contained in the Arbitration Act are:

(i) A distinction has been made as regards jurisdiction for international commercial arbitration, and for all other matters. For the former, the appropriate High Court shall have jurisdiction, whereas for the latter, the principal Civil Court of original jurisdiction or the High Court shall have jurisdiction.

(ii) Certain sections of the Arbitration and Conciliation Act shall apply to international commercial arbitration even when the place of arbitration is not in India. These are Section 9 (interim measures by the Court), Section 27 (Court assistance in taking evidence), Section 37(1)(a) which states than an appeal shall lie on orders granting or refusing to grant measures under Section 9, and Section 37(3) which states that no second appeal shall apply in such cases.

(iii) In case the arbitration agreement or certified copy thereof is not available to the party applying for reference for arbitration, such party can file an application requesting the Court to call upon the other party to produce the same.

(iv) If the court passes any interim measure under Section 9, the arbitral proceedings must commence within 90 days of the court doing so.

(v) No application for interim measure under Section 9 shall be entertained after the arbitral tribunal has been constituted unless the remedies under Section 17 have been rendered inefficacious.

(vi) Fees of arbitral tribunal: The High Court may frame rules for the purpose of determination of fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal. However, such rules shall not apply to international commercial arbitration and in arbitrations where parties have agreed for determination of fees as per the rules of an arbitral institution.

(vii) Independence of arbitrators: The provisions to ensure independence of arbitrators have been elaborated upon under Section 12. A Fifth Schedule has also been inserted enumerating certain grounds for the same. A potential arbitrator must disclose in writing circumstances such as the existence of direct or indirect, past or present relationship with any of the parties or in relation to the subject matter of the dispute which is likely to give doubts as to independence. Further disclosures shall be made in writing with respect to circumstances which are likely to affect the ability of arbitrators to devote time towards the arbitration. The applicability of this sub-section can be waived by the parties in writing, subsequent to the dispute having arisen.

(viii) Time limit for award: A time limit of twelve months from the date of entry of the tribunal upon reference has been provided under Section 29A before which the award shall be made by the tribunal. Additional fees shall be provided to the tribunal if an award is made between six months. If the parties give consent to an extension, it shall be made for a further period up to six months.

(ix) Fast track procedures: Fast track procedures have been instituted under Section 29B of the Arbitration Act, wherein parties may agree in writing to have their dispute resolved by such procedures. The award shall be made within six months. There shall be no oral hearing, and decisions shall be made on the basis of written pleadings, documents, and submissions filed by the parties, along with any further information called for from the tribunal. Oral hearings shall be made if all the parties agree and the tribunal finds it necessary. A new Section 31A has been added giving specific provisions for costs regime.

(x) Grounds for setting aside an award widened: The ambit of setting aside an award for being in conflict with public policy under Section 34 has been broadened to include not only contravention with Section 75 or Section 81, but also if it is in contravention with the "fundamental policy of Indian law" or if it in conflict with the "most basic notions of morality or justice".

3. Negotiable Instruments (Amendment) Second Ordinance, 2015

In order to overcome the difficulties posed by the ruling of Supreme Court in Dashrath Rupsingh Rathod v. State of Maharashtra , the President of India, on June 15, 2015 promulgated the Negotiable Instruments (Amendment) Ordinance, 2015. The objective of the ordinances is to ensure that a fair trial is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

On 22 September 2015, the President of India promulgated a new ordinance, namely, the Negotiable Instruments (Amendment) Second Ordinance, 2015. The provisions under the Negotiable Instrument Second Ordinance are the same as under the first Negotiable Instrument Ordinance issued on June 15, 2015. Key features of the Ordinance are as follows:
(i) Jurisdiction: The Ordinance amends the Act to regulate the jurisdiction of courts for cases of cheque bouncing, such that in a case of cheque bouncing:

(a) If the cheque is delivered for collection to the account of the payee, the jurisdiction lies in the area of the bank branch where the payee maintains an account, or
(b) If the payee presents a cheque to a bank in any other way, the jurisdiction lies in the area of the bank branch where the drawer (person who writes the cheque) maintains an account.

(ii) All cases regarding cheque bouncing which were pending in any court, before this Ordinance came in force, will be transferred to a court with appropriate jurisdiction.

(iii) If the payee has filed a complaint against the drawer of a bounced cheque in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of whether the cheque was delivered for collection or presented at a bank branch within the territorial jurisdiction of that court.

(iv) If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction, before which the first case was filed.

(v) The Ordinance also amends the definition of 'cheque in the electronic form'. Under the Act, this was defined as a cheque containing the exact mirror image of a paper cheque and generated in a secure system using a digital signature. The definition has been amended to mean a cheque drawn in electronic medium using any computer resource and which is signed in a secure system with a digital signature and asymmetric crypto system (pair of a public key and private key to create a digital signature), or electronic system.

(vi) The definitions of 'computer resource', 'digital signature', 'electronic system' and 'asymmetric crypto system' are the same as those assigned to them in the Information Technology Act, 2000.

4. The Atomic Energy (Amendment) Act, 2015
The Atomic Energy (Amendment) Act, 2015 will allow state-run Nuclear Power Corporation of India Ltd ("NPCIL") to have collaboration with other public sector undertakings in the nuclear field. The law amends the 1962 Atomic Energy Act to change the definition of "Government Company" in the Act with a view to expand its scope. At present, only two PSUs — NPCIL and Bhartiya Nabhikiya Vidyut Nigam Limited ("BHAVINI"), which are under the administrative control of the Department of Atomic Energy, operate nuclear power plants in the country.

The key provisions are as follows:
• The new amendment will include joint ventures ("JV") of public sector undertakings ("PSUs") in developing atomic research facilities
• According to the Act, 51 percent of the shares of all atomic plants should be entrusted to the central

government
• Licensing of such plants would be ceased if the ratio of shares is violated

5. The Payment of Bonus (Amendment) Act, 2015

The Payment of Bonus (Amendment) Act, 2015, provides for enhancing monthly bonus calculation ceiling to Rs 7,000 per month from the existing Rs 3,500. It also enhances the eligibility limit for payment of bonus from Rs 10,000 per month to Rs 21,000 per month. The Act seeks to mandate prior publication of rules made by the Union Government in the Official Gazette to allow for more public consultation. It will have retrospective effect and will come into force from April 1, 2015.

BANKING AND FINANCE

Loans and Advances to Chief Executive Officer/ Whole Time Directors of a Banking Company.

The Reserve Bank of India ("**RBI**"), vide its notification dated September 16, 2015 has amended Section 20 of the Banking Regulation Act, 1949 ("**Banking Act**") relating to restrictions on loans and advances by a banking company. Section 20 of Banking Act prohibits banks from granting any loan or advance to any of its directors. However, vide the present notification, RBI has specified that for the purposes of the said Section, the following loans/advances granted to the Chief Executive Officer / Whole Time Directors will not be considered as 'loans and advances':

a. Loan for purchasing of car
b. Loan for purchasing of personal computer
c. Loan for purchasing of furniture
d. Loan for constructing/acquiring a house for personal use
e. Festival advance
f. Credit limit under credit card facility

Prior to this amendment, pursuant to Section 20 of the Banking Act, the above mentioned loans and advances required prior approval of RBI. The notification permits commercial banks to grant loans and advances to the Chief Executive Officer/ Whole Time Directors, without seeking prior approval of RBI, subject, however to the following conditions:

(i) The loans and advances shall form part of the compensation /remuneration policy approved by the board of directors or any committee of the board, as the case may be;

(ii) The guidelines on base rate will not be applicable on the interest charged on such loans. However, the interest rate charged on such loans cannot be lower than the rate charged on loans advanced to the bank's own employees.

Additionally, the notification states that the loans given to to Chief Executive Officer / Whole Time Directors which are currently outstanding may be reviewed at the banks' discretion in light of the above mentioned guidelines.

No Fresh Permission/ Renewal of Permission to Liaison Office ("LO") of Foreign Law Firms

The Hon'ble SC vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the Bar Council of India vs A.K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India.

Accordingly, RBI vide its notification dated October 29, 2015 has directed that no foreign law firm shall be permitted to open any LO in India till further orders in this regard. However, foreign law firms which have already been granted permission prior to the date of the interim order for opening LOs in India may be allowed to continue. The notification states that no fresh permission/ renewal of permission shall be granted by RBI till the policy is reviewed based on, inter alia, final disposal of the matter by SC.

Mobile Banking Transactions in India - Operative Guidelines for Banks – Customer Registration for Mobile Banking

RBI has vide its notification dated December 17, 2015 reiterated the need for simplification and standardization of procedures relating to registration of customers for mobile banking. Given the high mobile density in the country, RBI has been encouraging banks to leverage on the mobile channel for widening the access to banking services and has accordingly set out the following guidelines:

● **Mobile Banking Registration through ATMs** The National Payment Corporation of India ("NPCI") has developed mobile banking registration service / option on the National Financial Switch ("NFS"); the service is ready to be deployed on ATMs of all the NFS member banks. The necessary instructions for integration have been issued to banks by NPCI. All the banks participating in this switch should carry out necessary changes in their respective ATM switches and enable the capability of customer registration for mobile banking at all their ATMs latest by 31st March 2016.

● **Registration through other Channels and Customer Awareness**

In addition to the above, banks should also strive to facilitate customer registration for mobile banking through other channels including internet banking, phone banking, etc. As customer registration is essential for offering mobile banking services, banks should also create awareness among their customers regarding mobile banking services and options available for customer registration.

Withdrawal of all Old Series of Banknotes issued prior to 2005

RBI had earlier issued instructions relating to exchange of pre- 2005 banknotes and after several extensions, an extension till December 31, 2015 was given. Now, RBI vide its notification dated December 23, 2015, pursuant to a review of the matter, has decided to extend the date for exchanging such banknotes to June 30, 2016. However, from January 01, 2016, such facility will only be available at identified bank branches and Issue Offices of RBI. Additionally, RBI has advised such banks to facilitate the exchange of such notes without causing any inconvenience to the public, whatsoever. Further instructions may be issued to all identified bank branches to provide exchange facilities to public and to stop re-issue of the pre- 2005 series banknotes. Banks are also directed to ensure that such notes are not dispensed through the ATMs / over the counters.

Amendment in Regulation for Extension of Credit Facilities to Overseas Step-down Subsidiaries of Indian Corporates

RBI vide its notification dated December 31, 2015, has amended the existing regulations for permitting banks in India to extend funded and/or non-funded credit facilities to step-down subsidiaries of the overseas subsidiaries of Indian companies that may not be wholly owned.

The below mentioned are the amended instructions for the same:

(i) Banks may extend funded and/or non-funded credit facilities to the step-down subsidiaries of Indian companies, to finance the projects undertaken abroad;

(ii) The immediate overseas subsidiary of the Indian company must be directly controlled by the Indian parent company through any of the modes of control recognised under the Indian Accounting Standards. Additionally, the Indian parent company must directly hold a minimum 51% of the shareholding of overseas subsidiary;

(iii) All the step-down subsidiaries, including the intermediate ones, must be wholly owned subsidiary of the immediate parent company or its entire shares shall be jointly held by the immediate parent company and the Indian parent company and / or its wholly owned subsidiary. The immediate parent should, wholly or jointly with India parent company and/or its wholly owned subsidiary, have control over the step-down subsidiary; and

(iv) Banks shall make additional provision of 2% (in addition to country risk provision that is

applicable to all overseas exposures) against standard assets representing all exposures to the step-down subsidiaries, to cover the additional risk arising from complexity in the structure and location of different intermediaries in different jurisdictions exposing the Indian company, and hence the bank, to greater political and regulatory risk.

INFRASTRUCTURE AND ENERGY

1. National Offshore Wind Energy Policy, 2015

The Union Cabinet gave its approval to the National Offshore Wind Energy Policy, 2015 on September 09, 2015 which was subsequently notified on October 06, 2015. The Policy underlines the guidelines to facilitate the building of offshore wind farms in the territorial waters of India which generally extends up to 12 nautical miles ("nm") from the baseline and Exclusive Economic Zone ("EEZ"), beyond the 12 nm limit and up to 200 nm.

The project developers will be allocated blocks through an open international competitive bidding process by the National Institute of Wind Energy ("NIWE").

It will be NIWE's responsibility to facilitate necessary clearances for project developers and immediate off take of energy from the offshore wind energy project. These clearances have to be obtained from the Ministries of Defense, Home, External Affairs, Environment and Forests, and Department of Space.

2. Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015

The Central Electricity Regulatory Commission notified the Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015 on August 13, 2015. The main purpose of the said regulation is to restore system frequency to the desired level and to relieve transmission network congestion. The scope of applicability of these regulations would cover the regional entities involved in transactions facilitated through short term/medium term/ long term open access in inter-state electricity transmission.

All Generating Stations that are regional entities and whose tariff is determined or adopted by the Commission for their full capacity shall provide Reserve Regulation Ancillary Services.

3. MoU signed by India and USA receives approval

India and USA signed a MoU to establish Partnership to Advanced Clean Energy Setter Fund on June 30, 2015, which received union cabinet's ex- post facto approval on August 12, 2015. This Fund was set up to support the promotion of energy access to clean energy track of the USA-India partnership to advance clean energy between the two. This MoU will further help businesses to test innovative products and business models by providing early-state grant funding through innovative off-grid clean energy solutions.

The main objective of the Fund is to improve the viability of off grid renewable energy businesses that sell small scale (under 1 MW) clean energy systems to individuals and communities without access to grid connected power or with limited access of less than 8 hours per day.

The Fund aims at awarding grants for direct support of innovative technologies, business models and

programs including rural energy services companies, rural distribution companies, technology implementers and system integrators.

This memorandum is to remain in effect until the totality of the funds made available by either participant for grant making in connection with this MoU have been disbursed to the administrator.

5. The Green Highways (Plantation, transplantation, beautification and maintenance) Policy, 2015

The said policy was launched by the Union Minister of Road, Transport and Highways and shipping on September 29, 2015. The policy aims to promote greening of highway corridors with participation of the community farmers, NGOs, government institutions and the private sector.

As per the policy, 1% of the total project cost of all highways projects will be set aside for the highway plantation and its maintenance. The Policy is believed to generate employment opportunities for about five lakh people from rural areas and it depicts the governments concern for conservation of environment.

4. Amendments to the Model Concession Agreement

The Ministry of Road Transport and Highways ("MoRTH") has published an order containing the amendments to the provision of the Model Concession Agreement ("MCA") for Public Private Partnership Model. The amendments to the MCA for awarding the projects on the Build Operate Transfer (BOT) basis are likely to improve the confidence of both the developers and the lenders.

6. Project of Mechanization of East Quay (EQ) berths 1, 2 and 3 at Paradip Port receives a nod

The project was given approval by the Cabinet Committee on Economic Affairs on October 07, 2015, on Build, Operate and Transfer (BOT) basis under PPP model for handling thermal coal exports.

The total estimated cost of the project is Rs. 14.3776 Billion and the concessioner will bear 14.1276 Billion. The remaining cost will be borne by the Paradip Port Trust on dredging. Apart from creating additional employment opportunities, the project, by improving the operational efficiency in Paradip Port, will reduce transaction cost for thermal power plants dependent on coal supply through the Port.

7. Formal Contract Agreement signed for two Hi-Tech Modern Locomotive Joint Venture Factory Projects (Electric Locomotive Factory At Madhepura And Diesel Locomotive Factory At Marhowra - Bihar)

The signing of a formal contract agreement for two Rs.400 Billion High Horse Power HI-TECH best in class modern locomotive Joint Venture factory projects i.e. Electric Locomotive Factory ("ELF") at Madhepura, Bihar and Diesel Locomotive Factory ("DLF") at Marhowra, Bihar took place on November 30, 2015 in New Delhi.

DLF, Marhowra will manufacture and supply modern diesel electric locomotives of 4500 Horse Power ("HP") and 6000 HP (which in combination can operate as 9000 HP and 12000 HP multiple units). ELF, Madhepura will manufacture and supply modern electric locomotives of high horse power namely 12000 HP.

While the contract for DLF, Marhowra has been awarded to a USA based Company, the contract for Madhepura ELF has been awarded to a France based Company. These two factories also mark the flow of FDI in the Railway sector in India.

The projects will bring in private investment of about Rs. 13 Billion for each project for setting up the locomotive factory and maintenance depots and bring in state of the art technology to Indian Railways to run heavy haul trains and improve energy efficiency. This will help Indian Railways to modernize its rolling stock and improve upon its 20 year old technology.

8. Cabinet approves Rs. 50 Billion for promotion of Solar Rooftops

In a big boost for solar rooftops in India, the Cabinet Committee on Economic Affairs has approved the scaling up of budget from Rs. 6 Billion to Rs. 50 Billion for implementation of Grid Connected Rooftops systems over a period of five years up to 2019-20 under National Solar Mission (NSM). This will support Installation of 4200 MW Solar Rooftop systems in the country in next five years.

The capital subsidy of 30% will be provided for general category States/UTs and 70% for special category States i.e., North-Eastern States including Sikkim, Uttarakhand, Himachal Pradesh, Jammu & Kashmir and Lakshadweep, Andaman & Nicobar Islands. There will be no subsidy for commercial and industrial establishments

This capacity of 4200 MWp will come up through the residential, Government, Social and institutional sector (hospitals, educational institutions etc.) Industrial & commercial sector will be encouraged for installations without subsidy.

The Government has revised the target of National Solar Mission (NSM) from 20,000 MWp to 1,00,000 MWp by 2022. Out of the 40,000 MWp is to come through grid connected solar rooftop systems.

9. Cabinet approves Real Estate (Regulation and Development) Bill, 2015

The Union Cabinet has approved the Real Estate (Regulation and Development) Bill, 2015. The Bill will now be taken up for consideration and passing by the Parliament.

The Bill provides uniform regulatory environment to ensure speedy adjudication of disputes and orderly growth of the real estate sector. It will boost domestic and foreign investment in the Real Estate sector and help achieve the objective of Government of India to provide 'Housing for All' by enhanced private participation.

COMPETITION LAWS

CCI Order's for Investigation against M/s Becton Dickinson India (P) Ltd and Max Super Speciality Hospital

Mr. Vivek Sharma ("the Informant") filed an information against M/s Becton Dickinson India (P) Ltd and Max super speciality Hospital alleging, inter alia, contravention of the provisions of sections 3 and 4 of the Competition Act, 2002 ("the Act").

Competition Commission of India ("the CCI") inter alia observed that the informant is primarily aggrieved by the conduct of the Opposite Parties in charging higher MRP for the "Disposable syringe, with a needle size 10ml of B. D. Emerald Brand ('DS') there exists a prima facie case of contravention of provisions of section 4 of the Act. Accordingly, the CCI vide order dated November 11, 2015 under Section 26 (1) of the Act directed the Director General to cause an investigation into the matter and complete the investigation within a period of 60 days.

CCI closed Complaint against Jaguar & Co. Pvt. Ltd & Others for Contravention of the Provision of the Competition Act, 2002.

M/s Mukesh Brothers ("the informant") filed an information against Jaguar & Co. Pvt. Ltd. before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of Section 3 & 4 of the Competition Act, 2002 ("the Act'). As per the information the Opposite Party did not appoint its dealers to the Informant in Jaipur and further gave instructions to its other dealers in Jaipur to stop the supply of sanitary ware and bathroom fittings to the Informant. CCI was of the view that the Informant with regards to the allegation of contravention of section 3 of the Act has not provided any information/data to substantiate the allegation with requisite material. Furthermore, there are a number of other brands that are available in the market and the choice of consumers is not restricted. The Informant had also not produced any cogent material to show the dominance of OP in the relevant market.

Accordingly, CCI vide order August 20, 2015 found that no prima facie case of contravention of the provisions of sections 3 and 4 of the Act is made out against the opposite parties. Therefore, the information was ordered to be closed in terms of the provisions contained in Section 26(2) of the Act.

CCI Closes Complaint against Hyundai Motor India Ltd. for Contravention of the Provisions of the Competition Act, 2002

Shri. Arvind Sood ("the Informant") filed an information under section 19(1)(a) of the Competition Act, 2002 ("the Act") against Hyundai Motor India Ltd. ("OP") before the Competition Commission of India ("the CCI") alleging, inter alia, contravention of the provisions of section 3 and 4 of the Act as the OP was collecting the booking amount through its dealers without giving any details of the product.

CCI observed that the existence of more than one automobile with comparable size and resources as well as the capability of manufacturing differentiated car in terms of price, design, type of fuel, engine displacement, distributor network, after sale service etc. indicates that there exists choice for the consumers in the relevant market.

Accordingly, CCI vide order September 29, 2015 inter alia held that the OP in the relevant market of multi/sport utility vehicles in India does not appear to have been in a dominant position. Therefore, it was held that no case of contravention of the provisions of section 4 of the Act is made out against them and the information is ordered to be closed in terms of the provisions contained in section 26(2) of the Act.

CCI Closes Complaint against Facebook and others for Contravention of the Provisions of the Competition Act,. 2002.

M/s Taj Pharmaceuticals Ltd. ("the Informant") filed an information under section 19(1)(a) of the Competition Act, 2002 ("the Act") against Facebook (OP 1), Google India Pvt. Ltd. (OP 2), Shri Arjun Ramnath Chari (OP 3), Shri Banwari Ramnath Chari (OP 4) and six others before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of Section 4 of the Act in the matter.

CCI observed that the Informant is primarily aggrieved by the publication of defamatory materials/ false statements published on various websites. Moreover, CCI was of the view that the genesis of the grievance can be traced to the dispute arising from a series of litigation and police action between the Informant on the one hand and OP 3 and OP 4 on the other in relation to the said property. The Commission was of the considered opinion that the said property dispute between the Informant and

OP 3 and OP 4 does not involve any competition concerns as such and was not covered under any of the provisions of the Act.

CCI vide its order dated October 07, 2015 was of the opinion that no prima facie case of contravention of the provisions of section 4 of the Act was made out against the OPs. Therefore, the information is ordered to be closed in terms of the provisions contained in section 26(2) of the Act.

CCI Orders M/s Bajaj Corp. Ltd., Mumbai and other to modify its bye-laws so as to bring the same in accord with the provisions of the Competition Act, 2002.

Shri Ghanshyam Dass Vij ("the informant") filed an information against M/s Bajaj Corp. Ltd., Mumbai (OP 1), its Officials and Sonipat Distributor (FMCG) Association (OP 5) before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of section 3 of the Competition Act, 2002 ("the Act"). The Informant has inter alia alleged the following actions of the Opposite Parties as anti-competitive and violative of the provisions of the Act viz. (a) Refusal to deal with the Informant and refusal to supply the goods to him while appointing a new stockist in Sonipat Area; (b) emposing condition on the stockist not to sell/ supply their products outside the Area allotted to stockist and (c) entering into exclusive supply and/ or distribution agreement with the new distributor to the detriment of the Informant.

CCI inter alia observed that the rules imposed upon the dealers prevent, restrict and distort the competition in the market. It was noted that the provision that grants territorial protection to a dealer from all competition in the market indicates that the very object of the provision is anti-competitive in nature. CCI was of the view that the association actually acted in terms of its bye-laws which themselves are found to be anti-competitive and contravened the provisions of section 3(3)(b) & (c) of the Act and there was no contravention is established against OP 1 in respect of allegations under section 3(4)(c), 3(4)(d) and 3(4)(e) of the Act.

Accordingly, CCI vide order dated October 12, 2015 was of the prima facie view that the OP 5 i.e. Sonipat Distributor (FMCG) Association and its office bearers are directed to cease and desist from indulging in the acts/conduct which have been found to be in contravention of the provisions of the Act.

Further, in exercise of the powers under 27(g) of the Act, the CCI directed OP 5 to put in place, in letter and in spirit, a "Competition Compliance Manual" to educate its members about the basic tenets of competition law principles.

CCI Imposes Penalty on Kerala Film Exhibitors Federation for Entering into Anti Competitive Agreements

M/s Crown Theatre ("the Informant") filed an information against Kerala Film Exhibitors Federation ("KFEM") before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of the Competition Act, 2002 ("the Act"). The Informant was denied the screening of Tamil and Malayalam language movies at its theatre due to the interference of Opposite Party.

CCI inter alia observed that the conduct of Opposite Parties amounts to contravention of section 3(1) read with section 3(3)(b) of the Act. CCI was of the prima facie view that both Mr. Basheer Ahmed and Mr. M.C. Bobby, being in-charge of and responsible for the conduct of business of KFEM under section 48 of the Act, are liable to be penalised.

Accordingly vide order dated September 08, 2015 inter alia held that KFEF and its office bearers, namely Mr. Basheer Ahmed and Mr. M.C. Bobby shall immediately cease and desist from indulging in anti-competitive conduct which they have been found to be indulging in contravention of section 3 of

the Act. A penalty of Rs. 82414/- (Rupees Eighty Two Thousand Four Hundred and Fourteen only) was imposed on KFEF calculated at the rate of 10% of its average income. Further, a penalty of INR 0.056397 million and INR 0.047778 million calculated at the rate of 10% of their average income was imposed on Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby, respectively.

CCI Imposes Penalty on Jet Airways (India) Ltd., IndiGo Airlines, SpiceJet Ltd., Air India Ltd. and Go Airlines (India) Ltd. for contravention of the provisions of the Competition Act, 2002.

Express Industry Council of India ('the Informant') filed a complaint against Jet Airways (India) Ltd., IndiGo Airlines, SpiceJet Ltd., Air India Ltd. and Go Airlines (India) Ltd. before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of section 3 of the Act. The informant alleged that certain domestic Airlines in India connived to introduce a 'Fuel Surcharge' (FSC) for transporting cargo. Also, freight charges have been uniformly increased by the Opposite Parties in collusion, in the garb of increasing FSC.

CCI inter alia observed that the basic concern is the overcharging of cargo freight, in the garb of fuel surcharge, by the air cargo transport operators which adversely affect consumers beside stifling economic development of the country. Such cartels in the air cargo industry particularly undermine economic development in a developing country.

Accordingly, CCI vide order November 17, 2015 directed jet Airways (India) Ltd., IndiGo Airlines and SpiceJet to cease and desist from indulging in the practices which have been found to be anti-competitive under the provisions of section 3(1) read with section 3(3)(a) of the Act. CCI also imposed a penalty under section 27(b) of the Act amounting to a total of INR 2.5791 billion at the rate of 1% of the average turnover of the last three financial year.

CCI imposed a penalty against All Kkerela Chemists and Druggist Association and others for contravention of Section 3 of the Competition Act, 2002.

Mr. P.K. Krishnan ('the Informant") filed an information against Mr. Paul Madavana (OP 1 M/s Alkem Laboratories Limited (OP 2) and All Kerela Chemists and Druggists Association (OP 3) before the Competition Commission of India ("the CCI") alleging inter alia contravention of the provisions of section 3 of the Competition Act, 2002 ("the Act"). The Informant inter alia alleged that OP 2 rejected his application for appointment as its stockist as he failed to obtain a "No Objection Certificate (NOC)" from OP 3.

CCI inter alia after considering the information and materials, passed a prima facie order dated September 29, 2014 under section 26(1) of the Act, directing the Director General (DG) to conduct an investigation into the matter for the alleged violation of the provisions of the Act. DG concluded that AKCDA and its office bearers were insisting on NOC before appointment of new stockists of pharmaceutical companies which led to limiting and controlling of the supply of drugs and medicines in Kerala apart from creating entry barriers contravening the provisions of section 3(3)(b) read with section 3(1) of the Competition Act, 2002.

CCI inter alia observed that OP 2 was responsible for contravention of section 3(1) of the Act for facilitating the acts of OP 3 and its officials Mr. Johnson Mathew and Mr. T.K. Haridas of OP 2 individually responsible under section 48(1) of the Act for the anti-competitive conduct perpetrated by OP 2.

Accordingly, CCI vide order December 01, 2015 inter alia directed OP 2, OP 3 and their officials/ office bearers to cease and desist from indulging in any of the practices which are found to be anticompetitive in terms of the provisions of section 3 of the Act. CCI also imposed a penalty on OP 3

at the rate of 10% of its income i.e INR 4.35778 million. Penalty of Rs. 0.050203 million calculated at the rate of 10% of the average income was imposed on Mr. A.N. Mohana Kurup a penalty of Rs. 746.31 million calculated at the rate of 3 % of the average turnover of OP 2 imposed on OP 2., penalties of INR 0.071371 million and INR 0.034248 million calculated at the rate of 3% of the average income imposed upon Mr. Johnson Mathew and Mr. T.K. Haridas.

Competition Appellate Tribunal set asides the order of CCI in the matter of Arora Medical Hall, Ferozepur versus Chemists and Druggists Association

A statutory appeal was filed against order dated February 05, 2014 passed by the CCI in the matter of M/s. Arora Medical Hall, Ferozepur ('the Informant') versus Chemists and Druggists Association, and seven others before the Competition Appellate Tribunal ("the COMPAT"). The issue raised by the Petitioners was that whether the practice allegedly followed by Chemists and Druggists Association, making it mandatory for anyone desirous of taking up distributorship of medicines of any pharmaceutical company in Ferozepur to obtain No Objection Certificate (NOC) and Letter of Credit (LOC) on payment of INR 2,100/- per company is violative of Section 3(3)(b) read with Section 3(1) of the Competition Act, 2002 ("the Act").

The CCI was of the view that the Association is an unregistered association of wholesalers and retailers of Ferozepur and has no legal or statutory mandate to regulate the business of distribution and sale of drugs and medicines. It was concluded that a practice of NOC necessarily required to be taken from it prior to appointment of a new / additional stockist has effected in limiting and controlling the supply of drugs and medicines hereby contravening the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

The COMPAT was of the view that be that as it may, we are convinced that the Commission should have, on being apprised of the fact that Informant had already availed remedy by filing two civil suits and a criminal complaint on the same cause, stayed the proceeding of the information and should not have passed the impugned order. Therefore, the conclusion recorded by the CCI that by insisting on obtaining NOC/LOC as a condition precedent for the appointment of a distributor of any pharmaceutical company, the Association had acted in violation of Section 3(3)(b) of the Act is legally unsustainable and is liable to be set aside.

COMPAT dismissed that complaint filed by Director General (Investigation and Registration) against Organisation of Pharmaceutical Producers of India and others under Monopolies and Restrictive Trade Practices Act, 1969

A complaint was filed under Section 10(a)(iii) of the Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act"), the Director General (Investigation and Registration) has prayed that the erstwhile MRTP Commission (now COMPAT) may order an inquiry made into the alleged restrictive trade practice committed by Organisation of Pharmaceutical producers of India and others ("the respondents") and direct them to cease and desist from continuing such practice. The allegation of the DG was based on the that fact that the Respondent Nos. 1, 2 and 3 have entered into an agreement dated 06.10.1984 and fixed uniform discounts for wholesalers and retailers and that has resulted in increase in the retail prices of common drugs and formulations which are not covered by Drug (Prices Control) Order, 1979.

The COMPAT vide order dated September 30, 2015 held that fixing uniform trade margins does not constitute a restrictive trade practice under MRTP Act and the ratio of the order passed by the Commission in the matter of Director-General (Investigation and Registration) vs. Indian Drugs Manufacturers Association and another, and law laid down by the Supreme Court in Tata Engineering and Locomotive Company Limited Versus Registrar of the Restrictive Trade Agreements are squarely applicable to the issue raised in this complaint and, therefore, the same is liable to be dismissed.

CONSUMER LAW

Vijaya Kumar and Another versus Regional Passport Officer, Regional Passport Office, Trichy & Others

The Revision petition stands dismissed under Consumer Protection Act, 1986 under Section 2(1)(d), 21 (b) and Passport Act ,1967. It was stated that Issuance of passport is statutory function and thus Passport Officer cannot be held as a service provider. The Complaint under the Act for delay in issuing passport is not maintainable. The Complainant is not a consumer.

National Insurance Co. Ltd versus Sarlaben Jayantibhai Patel

The Revision Petition was filed for Medial Reimbursement under Medi claim Policy. The petition was filed under Section 2(1)(g),14(1)1(d), 21(b). It was alleged that there was concealment of pre-existing disease and thus the claim was repudiated. District Forum allowed the complainant and ordered a sum of INR 0.1938 million to be paid along with 9% interest from date of complaint. Aggrieved by this order an appeal was filed in state commission which was dismissed. Hence in Revision Petition it was stated that the Complainant was covered under insurance policy which was taken by her husband and thereafter was renewed from year to year without any break. There is no evidence that her husband had obtained medical insurance qua her by concealment of material facts. The Complainant has undergone replacement of both knees at different occasions and thus the Repudiation is not justified. The subject complaints were filed by respondent in her capacity as beneficiary of insurance contract Section 2(1)(d)(ii), 21(b) thus it is rightly maintained and Revision petition stands dismissed.

Don Paul versus Durga Hyundai & Others

The complainant purchased a Hyundai make I-20 and immediately after purchase of the said vehicle he witnessed a manufacturing defect in the motor vehicle. He had informed the dealer of the persisting problem who had assured him that the said problem will subside after the first service. The problem still continued for which he even got his car engine changed. Deficiency in service caused him mental agony and harassment upon which District forum allowed the complaint and directed the opposite party to pay a sum of INR 496,51 with a compensation of INR 20,000. Sate Commission partly allowed the appeal and hence passed an order to make the vehicle roadworthy and free of defects. In revision petition Complainant could not ply with the vehicle even after change of vehicle. It was established that the vehicle can cross a flyover but cannot go up the high situated hill at considerable height. Thus the vehicle suffers from inherent defect and Manufacturer is directed to pay INR 0.496512 Million to complainant with interest @ 12% p.a.

TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY

Telecom regulator directs telecom service providers to compensate consumers for call drops The Telecom Regulatory Authority of India ("**TRAI**") on October 16, 2015 notified a compensatory mechanism for call drops.

The TRAI issued an amendment, being the ninth amendment to the 'Telecom Consumers Protection Regulations, 2012' ("**Ninth Amendment**"), introducing compensation for call drops. This mandates

the Telecom Service Providers ("**TSPs**") to provide compensation to the consumers for call drops. The Ninth Amendment shall come into effect from January 1, 2016.

TRAI, through the Ninth Amendment, has instructed the TSPs to credit the account of the subscriber by one rupee for every dropped call. However, such credit has been limited at three dropped calls per day.

Additionally, the Ninth Amendment prescribed that the TSP is required to inform the subscriber, within four hours of the dropped call through Short Message Service (**SMS**) or Unstructured Supplementary Service Data (**USSD**) message in case of a prepaid subscriber and details of the credit in the next bill in case of a post-paid subscriber, information about the credit for a call drop.

This decision to impose penalty for dropped calls has been challenged before the High Court of Delhi, which has stayed the implementation of the same until further orders. However, the matter is pending and yet to be finally decided by the High Court.

Government permits spectrum sharing

The Union Cabinet on August 12, 2015 approved the proposal of the Department of Telecommunication ("**DoT**") on guidelines for spectrum sharing ("**Spectrum Sharing Guidelines**"). The DoT issued these guidelines in pursuance of the recommendations of the TRAI.

In terms of the Spectrum Sharing Guidelines, all access spectrum can be shared, provided that the TSPs intending to share have spectrum in the same band. It has been clarified that the traded spectrum can also be shared.

The Spectrum Sharing Guidelines categorically state that leasing of spectrum will not be permitted.

The Spectrum Sharing Guidelines permit sharing of spectrum for the remaining period of validity of the license of the TSP or till the expiry of the period of right to use the spectrum, whichever is earlier.

Spectrum sharing has also been permitted in case both the TSPs possess spectrum for which market price has been paid. However, in case of spectrum in the 800 MHz band acquired during the auction held in March 2013, sharing of spectrum shall be permitted only if differential of latest auction price and the auction price of March 2013 (on pro-rata basis for the balance period of right of use) is paid.

Spectrum can also be shared by two (2) TSPs, where both have been allotted spectrum administratively. However, in such a case, the TSP is required to have paid the one time spectrum charges for respective spectrum holdings above 4.4 MHz (GSM) / 2.5 MHz (CDMA) based on the reserve price or the auction determined price.

In case where spectrum sharing is intended between TSPs, where one (1) TSP has acquired spectrum through the auction or has liberalized spectrum and the other TSP has spectrum allotted administratively, sharing will be permitted only after spectrum charges for liberalizing the administratively allocated spectrum have been paid.

For the purpose of charging Spectrum Usage Charges ("**SUC**"), the TSP shall be considered to be sharing their entire spectrum holding in the particular band in the entire licensed service area ("**LSA**"). Further, the SUC rates of each TSP will increase by point five per cent (0.5%) of the aggregate gross revenue of the TSP, post sharing.

In relation to the spectrum cap, the prescribed cap on spectrum holding shall continue to be applicable to both TSPs individually. The total spectrum holding of a TSP in a LSA shall not exceed twenty five

per cent (25%) of the total spectrum assigned for access services and also shall not be more than fifty per cent (50%) of the spectrum in a particular band. The spectrum holding of each TSP, post sharing, shall be counted after adding 50% of the spectrum held by the other TSP in the band being shared.

Government issues guidelines for spectrum trading

The Union Cabinet on September 9, 2015 approved the proposal of the DoT on guidelines for spectrum trading ("**Spectrum Trading Guidelines**"). The DoT issued these guidelines in pursuance of the recommendations of the TRAI.

In terms of the Spectrum Trading Guidelines, trading of spectrum has been permitted only between two access service providers holding the prescribed licenses along with the proper authorization of access service in an LSA. Trading of spectrum is permitted only on a pan-LSA basis and cannot be traded for a part of the LSA. Spectrum can be traded only for spectrum bands which are earmarked for access services by the DoT.

While, the said Spectrum Trading Guidelines permit trading of spectrum, spectrum leasing has not been permitted.

Further, there shall also be a cap on total spectrum holding by a TSP. The total spectrum holding of a TSP in a LSA shall not exceed twenty five per cent (25%) of the total spectrum assigned for access services and also shall not be more than fifty per cent (50%) of the spectrum in a particular band. With regard to the timeframe, the Spectrum Trading Guidelines stipulate that spectrum can only be traded after two (2) years from the date of its acquisition through auction or conversion of administratively assigned spectrum into tradeable spectrum.

Furthermore, the guidelines also prescribe that non-refundable transfer fees of one per cent (1%) of the transaction amount or the market price of spectrum, whichever is higher. This amount shall be payable on all spectrum trade transactions and has to be paid by the buyer to the Government. It has been clarified that the amount received as a result of spectrum trading shall be a part of the revenue of the TSP selling the spectrum and shall be subject to a license fee and spectrum usage charges as applicable.

Auction of the Private FM Radio Phase III Channels and Migration from Phase II to Phase III The auctions for the first batch of private FM Radio channels under Phase-III commenced in the month of July, 2015 were completed on September 9, 2015.

These auctions comprised of one hundred thirty five (135) channels across sixty nine (69) cities. The auction concluded with the final frequency allocation stage.

The bidders at the auction were allowed to select FM frequency from the frequencies identified in the respective city. The preference for frequency selection was based on the rank of the bidders, wherein a higher ranking bidder had the first preference to choose from the frequencies already identified.

The auctions resulted in the provisional allocation of ninety seven (97) channels in fifty six (56) cities. The cumulative provisional winning amount was about INR 11.569 billion, which was one hundred fifty one point fifty eight per cent (151.58%) over the aggregate reserve price of about INR 4.598 billion.

Further, the FM broadcasters have been permitted to migrate from Phase II to Phase III on the payment of a non-refundable one-time migration fees.

Government increases Foreign Direct Investment up to 100 percent in the Broadcasting sector The Department of Industrial Policy and Promotion ("**DIPP**") has vide Press Note No. 12 (2015 Series)

amended the Consolidated FDI Policy Circular of 2015. These amendments have increased the permitted foreign direct investment ("**FDI**") limits in certain sectors, inter alia the broadcasting sector.

A comparative analysis of the FDI permitted in the broadcasting sector is as follows:-

S. No.	Sector/Activity	Revised FDI Cap & Route	Previous FDI Cap & Route
1	Direct to home (DTH), Mobile TV, Headend-in-the Sky Broadcasting (HITS), Cable Networks (Multi System Operators ("**MSOs**") operating at the National or District level undertaking upgradation of networks towards digitalization and addressability), Teleports (setting up of up-linking HUBs/Teleports)	Hundred per cent 100% Automatic route up to forty nine per cent (49%) and approval route beyond forty nine per cent (49%).	74% Automatic route up to forty nine per cent (49%) and approval route beyond forty nine per cent (49%) and up to seventy four per cent (74%).
2	Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	Hundred per cent (100%) Automatic route up to forty nine per cent (49%) and approval route beyond forty nine per cent (49%)	Forty nine per cent (49%)Automatic route
3	Terrestrial Broadcasting FM (FM Radio)	Forty nine per cent (49%) Approval route	Twenty six per cent (26%) Approval route
4	Up-linking of 'News & Current Affairs' TV Channels	Forty nine per cent (49%) Approval route	Twenty six per cent (26%) Approval route
5	Up-linking of 'Non-News & Current Affairs' TV Channels, downlinking of TV channels	Hundred per cent (100%) Automatic route	Hundred per cent (100%) Approval route

It is pertinent to note that there has been no change, by virtue of the said amendments, in relation to the foreign ownership norms for the print media sector, wherein the FDI remains capped at twenty six per cent (26%).

S Tel Private Limited v. Union of India

The Telecom Disputes Settlement & Appellate Tribunal ("**TDSAT**"), vide order dated July 6, 2015, has directed the Union of India to refund a sum of INR 3.376 billion with interest at 8% p.a. from date of withdrawal of spectrum, to S. Tel Private Limited ("**S Tel**").

In July, 2007 S Tel filed an application for Unified Access Services ("**UAS**") licences for six (6) circles. The licences were awarded to it vide press notes issued on September 25, 2007. Further, S Tel made another application for licences in additional sixteen (16) circles; however this became a subject matter of litigation. Before the litigation was disposed off, the Government issued a Notice Inviting Applications ("**NIA**") for auction of 3G and BWA spectrum. S Tel participated in the said auction and was successful for the award of 3G spectrum for six (6) circles and thereto paid an entry fee of INR 3.376 billion.

Further, on September 1, 2010, the Government amended the UAS licence by introducing clause 23.7(i). The said inserted clause provided "In case the UAS license is

cancelled/terminated/revoked/surrendered for any reason, the spectrum usage rights shall stand withdrawn forthwith."

However, in the case of Centre for Public Interest Litigation & Ors. v. Union of India, filed before the Supreme Court of India ("**SC**") in 2010, all licences issued after 2008 were challenged for irregularities in the process of the grant of the license. The SC, in its judgment on February 2, 2012, struck down one hundred twenty two (122) licences granted after January 10, 2008. These licenses included six (6) licences granted to S Tel.

S Tel was unable to commercially use the 3G spectrum. S Tel made several representations before the Government in this regard, pleading the refund of the entry fees of INR 3.376 billion. However, upon a failure to obtain any favourable relief, S Tel ultimately approached TDSAT for a refund of the said amount.

Upon, hearing S Tel and the Government, TDSAT observed that spectrum allocation after 2008 had been quashed by the SC and this was not due to any fault of S Tel. TDSAT distinguished between the cases where licence was terminated due to fault of licensee and other scenarios where licence was terminated due to fault of licensor (Government). TDSAT held that the expression 'for any reason' would have to be read 'for any reason attributable to licensee'. TDSAT observed that it would not be possible to stretch the meaning of 'for any reason' to include the acts in the manner as done by Union of India.

Consequently, the TDSAT ruled that there was no justification in law or in equity that would entitle the Union of India to retain the entry fee of INR 3.376 billion paid by S Tel for 3G spectrum. Therefore, relying on the principle of restitution, the TDSAT ordered that the entry fee be refunded to S Tel. The SC also held that S Tel will be entitled to interest as well at the rate of 8% per annum.

Loop Telecom Limited v. Union of India & Anr.

The TDSAT vide order dated September 16, 2015 denied the refund of entry fee and license fee to Loop Telecom Limited ("**Loop**").

The SC had quashed 122 telecom licenses through its judgement dated February 2, 2012 in the case of Centre for Public Interest Litigation & Ors. v. Union of India. Among the licenses struck down, 21 licenses of Loop were also quashed. Besides this case, criminal proceedings were also underway with respect to the manner in which the licenses were granted.

The report of the Comptroller and Auditor General of India dated November 8, 2010 inter alia reported that 85 of the 122 licenses granted by the DoT had gone to applicants who did not fulfil the eligibility criteria. Further, the Central Bureau of Investigation ("**CBI**") filed a charge sheet alleging that Loop was ineligible for the grant of the 21 UAS licenses. The CBI stated that Loop violated the UAS license guidelines, which prohibited an entity from having substantial equity holding in more than one telecom licensee in the same service area. The CBI claimed that Loop was a front of an entity which held substantial equity in another licensee.

Loop approached the TDSAT to claim refund of the entry fee and license fee paid for the grant of the 21 licenses. Loop had paid INR 14.5494 billion to the Department of Telecommunications ("**DoT**") and claimed the refund of the said amount along with interest.

Additionally, Loop also sought a direction for the discharge of bank guarantees given to the DoT in terms of the UAS licenses. However, during the pendency of the case, the bank guarantees expired and Loop was permitted to not renew the guarantees, by an interim order of the TDSAT. This permission was given subject to the condition that Loop would pay the demands raised by the DoT

depending upon the outcome of this case.

Loop contended that the TDSAT should review the matter from the perspective of a contractual relationship. Loop relied on the provisions of Section 56 and 65 of Contract Act, 1872, which provide for restitution for void contracts or contracts which become impossible to perform. Lop contended that the decision in the 2G Case made the performance of their license impossible due to which it became void, and hence the UoI is liable to refund the license fee. In relation to the pending criminal proceeding, Loop denied that there was any link between the present restitutionary claim before the Tribunal and the criminal matter. The Union of India argued that the Petitioner was obliged to pay the entry fee and not for usage of spectrum for which there is a separate charge. The Union of India referred to a number of clauses in the UASL guidelines and the UAS license, stating that the entry fee was 'non-refundable'.

Upon hearing the matter, the TDSAT denied Loop's claim for refund of the amount paid as the entry fees by the Petitioner was denied by the TDSAT. The TDSAT observed that the defects that rendered the license illegal and liable to be quashed are totally different from the elements and causes contemplated under the Contract Act for rendering an agreement void or voidable. Thus, the TDSAT held that the quashing of the licenses did not fit into the provisions of the Contract Act. TDSAT stated that until the Petitioner was exonerated of the criminal charges an order of refund could not be made in favour of Loop.

With respect to the claim of discharge of bank guarantees, the TDSAT has noted that the Union of India had a claim amounting to INR 587 million and ordered the DoT to raise its demands against Loop.

INTELLECTUAL PROPERTY AND PHARMACEUTICALS

Guidelines for **Computer Related Inventions**
The Office of the Controller General of Patents, Designs and Trademarks ("**Controller General**") vide office order dated August 21, 2015 amended the Manual of Patent Office Practice and Procedure ("**Patent Manual**") in relation to the provisions pertaining to Computer Related Inventions ("**CRIs**").

The Controller General has also issued the Guidelines for Examination of CRIs ("**CRI Guidelines**"). The provisions of the Patent Manual were deleted and it was stated that the CRI Guidelines would be applicable in relation to procedure for examination of such patent applications. The CRI Guidelines have been notified with the object of reconciling various problems faced by the inventors of CRIs and patent protection on one hand and uniformity and consistency in the examination of such patent applications. The CRI Guidelines specify what subject matter is patentable.

The Patents Act, 1970 ("**Patents Act**") provides subject matter, under Section 3, which cannot be patented. In terms of Section 3(k) of the Patents Act 'computer program', 'mathematical methods' or 'business methods' per se are not patentable.

While, the Patents Act does not specifically define the term 'computer related inventions'; the CRI Guidelines prescribe a definition for the term. The CRI Guidelines define the term 'computer related inventions' as "those inventions which require of computer, computer networks, or other programmable apparatus and including such inventions, one or more features of which are realized wholly or partially by means of computer program/programs". It is a well-established principle that in patentability cases, the focus should be on the substance of the invention rather than on the form in which the invention is claimed.

The CRI Guidelines lists down the grounds which preclude the claims from the exceptions provided under Section 3(k) of the Patents Act. The CRI Guidelines stipulate that in the process of examining the patent applications for CRIs, the examiners are to consider whether the CRIs have the requisite technical advancement. The CRI Guidelines have prescribed the following questions that are to be addressed in defining the technical advancement of the CRIs:-

"(i) whether the claimed technical feature has a technical contribution on a process which is carried on outside the computer;
(ii) whether the claimed technical feature operates at the level of the architecture of the computer;
(iii) whether the technical contribution is by way of change in the hardware or the functionality of hardware.
(iv) whether the claimed technical contribution results in the computer being made to operate in a new way;
(v) in case of a computer programme linked with hardware, whether the programme makes the computer a better computer in the sense of running more efficiently and effectively as a computer;
(vi) whether the change in the hardware or the functionality of hardware amounts to technical advancement."

The CRI Guidelines provide that in case answer to any of the above question is in the affirmative, the CRI may not be considered as an exclusion to patentability under the Patents Act.

Further, the CRI Guidelines provide that for a subject matter to be considered as patentable, it should involve either of the following:-

(i) novel hardware, or
(ii) novel hardware with a novel computer programme, or
(iii) novel computer programme with a known hardware which goes beyond the normal interaction with such hardware and affects a change in the functionality and/or performance of the existing hardware.

However, having provided for the above mentioned determining guidelines, it is pertinent to note that the CRI Guidelines state that do not constitute rule making and in case of any conflict between the CRI guidelines and the provisions of the Patents Act or the rules made thereunder, the provisions of the Act and the rules shall prevail. The CRI Guidelines are primarily meant to be used by the examiners of patents in the process of examining and awarding patents.

Copyright on titles of literary work

The issue of intellectual property protection for titles of literary work has been put to rest by a decision of the Supreme Court of India ("SC"). The position in this regard is now clear and it has been held that generally, there would be no copyright for titles of literary works.

The SC has observed that the protection with regard to the titles can only be claimed in exceptional circumstances, such as where the title of the literary work is itself of a creative nature.

The said issue was examined and decided by the SC in the case of Krishika Lulla v. Shyam Vithalrao Devkatta. The SC has reaffirmed the precedents set by the High Court of Delhi, High Court of Madras and even some foreign courts. The SC observed that in terms of Section 13 of the Copyright Act, 1957, copyright protection is available for original literary works and a mere title cannot be considered a 'work'. The SC held that the term 'work' refers to the main content and not the title.

Mangalore Ganesh Beedi Works v. CIT

The primary issue in the said case decided by the SC was the applicability of Section 43(3) of the Income Tax Act, 1961 ("Income Tax Act") on intellectual property rights.

In the said case, the SC discussed and examined whether the acquisition of trademarks, copyright and technical know-how can be treated as 'plant and machinery' so that depreciation / amortization may be claimed on them under the provisions of Section 32 of the Income Tax Act. The SC observed that initially Section 32 of the Income Tax Act did not distinguish between tangible and intangible assets for the purposes of depreciation. However, the said distinction was created through an amendment.

The SC has held that intellectual property would fall within the ambit of 'plant' in terms of the Income Tax Act. Further, the SC has also held that an assesse would be entitled to claim the benefit under Section 32 read with Section 43(3) of the Income Tax Act.

REAL ESTATE AND HOSPITALITY

Maharashtra to establish Housing Regulatory Authority

Government of Maharashtra has proposed to set up a housing sector regulator and appellate tribunal and would soon complete the formalities to establish a Housing Regulatory Authority ("**HRA**") and Housing Appellate Tribunal ("**HAT**"). The Union government, which is setting up a national real estate regulator, has allowed Maharashtra to constitute its own housing sector regulator and appellate tribunal.

In July 2012, Maharashtra State Assembly passed the Maharashtra Housing (Regulation and Development) Bill ("**Maharashtra Housing Bill**"), which provided for a housing sector regulator, passed by the assembly. It was meant to replace the Maharashtra Ownership Flats (Regulations of Promotion of Construction, Sale, Management and Transfer) Act, 1963. Key provisions of the bill involved the establishment of the HRA and HAT. However, the bill required presidential assent since it had several punitive provisions to imprison builders found guilty of cheating home buyers. The Maharashtra state government is following up with the centre for speedy clearance of the Maharashtra Housing Bill.

Under the Maharashtra Housing Bill, HRA and HAT have quasi-judicial powers to regulate the real estate sector and hear grievances. Once the HRA is in place, it will be mandatory for all realty developers to register with HRA. They would also need to submit all information about their upcoming projects to HRA. All such information submitted by the realty developers would be uploaded on the HRA website. If a prospective home buyer is keen on conducting an on-site verification of this information, HRA can direct the concerned realty developer to arrange for the same within eight days of the buyer's request being filed. Any violation of the Maharashtra Housing Bill, when enacted, would make a developer liable for penalty or imprisonment of up to three years or both.

Cancelled SEZ Land to be Returned

As per the Industries Department of Maharashtra, the land acquired by the developers from the revenue department for development of a special economic zone ("SEZ"), the approval of which has been cancelled, will now have to be returned by the developer to the state government.

If the land, for which the SEZ was approved, has been acquired by the developers directly from the farmers, then the developer can retain such land. However, the land so acquired by the developer

from farmers would have to be returned to them by the developer in case the developer fails to start their ventures on it within 10 years from the date of its acquisition.

No Service Tax on Sale of Flats with Occupancy Certificate

The Ministry of Finance, Government of India, ("**Finance Ministry**") has clarified that in cases of sale of flats, transfer of title after the issuance of occupancy certificate will not attract service tax.

The Central Board of Excise and Customs issued the following clarification in relation to the cases pertaining to areas under the jurisdiction of Municipal Corporation of Greater Mumbai ("**BMC**"):

"...it has been conveyed to the Service Tax Authorities in Mumbai (on October 23, 2015) that sale of flats/dwellings, etc., where the entire consideration is received after issue of occupancy certificate by BMC, leading to a mere transfer of title in immovable property, falls outside the definition of 'Service' under the Finance Act, 1994, and is "therefore, not taxable".

As per the Finance Ministry, the clarification was issued to resolve a long standing issue relating to levy of Service Tax on sale of flats/dwellings, etc. after issue of occupancy certificate but before issue of completion certificate in areas under BMC.

Penalty for not Registering Sale Deed in Noida

Gautam Budh Nagar (Noida) district magistrate ("**DM**") has said that notices will soon be issued to residents who have taken the possession of their flats in Noida from the developers and have started living there without getting the sale deeds with respect to their flats registered with the registering authorities. As per the DM. living in the flats without getting the sale deeds with respect to their flats registered is a violation of the law and, therefore, ten times of the registry fee can be charged as a penalty from such occupants.

GENERAL CASE LAWS

DR. JANET JEYAPAUL V. SRM UNIVERSITY & ORS. [4]

In the present case, SRM University & Ors ("**Respondent**") being a "Deemed University" under Section 3 of the University Grants Commission Act ("**UGC Act**") terminated the services of Dr. Janet Jeyapaul ("**Appellant**") who was appointed as a lecturer in the Respondent's University by giving one month's notice.

Aggrieved by the said termination, the Applicant filed a writ petition before the Hon'ble High Court of Madras, wherein the Hon'ble Single Judge quashed the termination notice and directed the Respondent to reinstate the Appellant into services.

The Respondents however, challenged the said judgment before the Division Bench of High Court, wherein the Division Bench allowed the appeal and held that Respondents was neither a State nor an authority within the meaning of Article 12 of the Constitution of India and hence not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

The decision of the Division Bench of the High court was challenged before the Hon'ble Supreme Court of India wherein the primary issue for consideration was whether writ jurisdiction lies against a "Deemed University" engaged in imparting education to students at large."

The Hon'ble Supreme Court while allowing the appeal filed by the Applicant observed that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of writ petition under Article 226 of the Constitution of India.

The Hon'ble Court while relying on the ratio laid down by the constitution bench in **Zee Telefilms Ltd. v. Union of India** , held that in the present case, the Respondent was discharging "public function" by way of imparting education to students in higher studies. The Respondent was also notified as a "Deemed University" under Section 3 of the UGC Act and hence all provisions of UGC Act were applicable on it including effective discharge of the "public function" and by the virtue of the application of the UGC Act, it was "authority" within the meaning of Article 12 and as a consequence it was amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

SASAN POWER LTD V. NORTH AMERICA CORPORATION OF INDIA PVT. LTD

"It is not against the public policy of India when two Indian parties contract to have a foreign-seated arbitration."

The Madhya Pradesh High Court in Sasan Power Ltd v. North America Coal Corporation India Pvt Ltd has held that two Indian parties may conduct arbitration in a foreign seat under English law. The Court relied on Atlas Exports Industries v. Kotak & Company where in the Supreme Court observed that it isn't against the public policy of India when two Indian Parties contract to have a foreign seated arbitration.

In the present case, Sasan Power ("Appellant") had entered into an agreement with North American Coal Corporation-US ("**NACC-US**"). The Agreement also incorporated a clause for resolution of disputes by way of arbitration to be administered by International Chamber of Commerce ("**ICC**") in London, England, under laws of the United Kingdom. Thereafter, by way of an Assignment Agreement in 2011, NACC-US assigned its rights, liabilities and obligations under the Agreement to its Indian subsidiary North America Coal Corporation India Pvt Ltd. ("**Respondent/NACC-India**").

Subsequently, disputes arose between the Appellant and the Respondent over the performance of the contract, and in accordance with the arbitration clause contained in the Agreement, the said dispute was referred to ICC for adjudication.

The Applicant however filed a civil suit before the District Court at Singrauli and obtained an ex-parte injunction preventing the Respondent from proceeding with the arbitration before the ICC. Subsequently the Respondent filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 read with Section 45 of the Arbitration & Conciliation Act, 1996 ("the Act") and advocated for rejection and outright dismissal of the plaint.

The Learned District Judge after taking into consideration the averments made by both the parties dismissed the suit filed by the Applicant. Aggrieved by the said judgment, the Applicant filed an appeal before the division bench of Madhya Pradesh High Court.

The primary issue before the Division Bench of Madhya Pradesh High Court was whether the appeal filed by Sasan Power was maintainable in light of Section 50 of the Act or not and Secondly whether two Indian parties could choose to seat their arbitration in a foreign country or not.

The Hon'ble Court while dismissing the appeal filed by the Applicant relied on the judgment given in Atlas Exports Industries v. Kotak & Company and observed under Section 28 of the Indian Contract Act, 1872 read with Exception 1 that there can be no bar to a foreign seated arbitration. It was

observed that the question of foreign seated arbitration being against the public policy of India is unsustainable since both the parties had willingly entered into an agreement in relation to arbitration. Further, it was observed that merely because the arbitrators are situated in a foreign country cannot by itself be enough to nullify the arbitration agreement.

The Hon'ble Court clarified that the Act is not based on the nationality of the parties but where the arbitration is "seated". If arbitration is seated outside India, then irrespective of the nationality of the parties involved, it will be considered to be a "foreign award" and Part II of the Act will be applicable. Where the parties have agreed to resolve their disputes through arbitration, the courts can give effect to the intention of the parties and interfere only when the agreement is either null or void or inoperative. The Court observed that once parties by mutual agreement had agreed to resolve their disputes by a foreign-seated arbitration, Part I of the Act would not apply. The nationality of the parties would not influence the applicability of Part II of the Act, the applicability of which would flow depending on the seat of arbitration.

ZILLION INFRA PROJECTS (P) LTD. V. FAB TECH WORKS & CONSTRUCTION PVT. LTD & ANR

In the present case, Zillion Infra Projects (P) Ltd. ("**Petitioner**") had issued a Letter of Intent to Fab Tech Works & Construction Pvt. Ltd ("**Respondent No.1**") for various work operations related to construction of a Power Project. The Respondent No. 1 through Canara Bank ("**Respondent No. 2**") also provided an unconditional & irrevocable Bank Guarantee to the Petitioner as security for due and faithful performance.

Subsequently, dispute arose amongst the parties on account of failure of the Respondent No. 1 to perform its obligations and to act in accordance with the terms of the contract and the Petitioner invoked the Bank Guarantee by issuing a letter to Respondent No. 2, thereby encasing the secured amount.

In response, the Respondent No. 1 filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("**the Act**") before the Hon'ble High Court of Delhi thereby seeking an order restraining encashment of Bank Guarantee. The Learned Single Judge while looking into the facts of the matter passed an order restraining the Petitioner from encashment of the Bank Guarantee.

Aggrieved by the said order of the Learned Single Judge, the petitioner filed an appeal before the Division Bench of the Hon'ble High Court of Delhi challenging the said order in terms of the settled legal principle governing Bank Guarantees.

The Division Bench of the Hon'ble High Court which allowing the appeal, placed reliance on Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. and observed that a letter of credit is an independent and separate contract being absolute in nature, hence existing of any dispute between the parties shall not be a ground for restraining enforcement of the same.

The Court took notice of the fact that there were no pleadings raised by Respondent 1 for establishing "fraud", "irretrievable injury" or "irretrievable injustice". The Respondent 1 even failed to plead "special equities". It was observed that since none of the three mandatory pleas, fraud, irretrievable injury/injustice or special equities has been pleaded, the Respondent No. 1 is not entitled to any order of restraint from invocation of Bank Guarantee.

The Court observed that the Respondent 2 i.e. bank is bound to honour the bank guarantee as per its terms irrespective of any dispute raised between Respondent No.1 and Petitioner, else the very purpose of issuing Bank Guarantee would be defeated.

ENVIRONMENT & CLIMATE CHANGE

MoEF Office Memoranda Quashed

The National Green Tribunal, Principal Bench ("**NGT**") has held in the matters of Kishan Lal Gera Vs. State of Haryana & others and S. P. Muthuraman Vs. Union of India & Others that the Office Memorandum dated 12th December, 2012 and 27th June, 2013 (collectively "**Office Memoranda**") issued by the Ministry of Environment, Forest and Climate Change ('**MoEF**') is ultra vires, violative and in in derogation of and destructive to the Environment Impact Assessment Notification, of 2006 ("**EIA Notification**"), provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and has quashed the Office Memoranda.

The MoEF had earlier issued the Office Memoranda which provided that in cases where the projects which required to obtain prior environmental clearance in terms of the EIA Notification ("**Environmental Clearance**"), but the construction / physical operation activities relating to such projects have been started at the sites without obtaining such environmental clearance, the environmental clearance for such projects will be granted to such projects post facto, provided, inter alia, that the matter relating to the violation will need to be put up by the project proponent to the Board of Directors of its Company or to the Managing Committee/CEO of the Society, Trust, partnership /individually owned concern for consideration of its environment related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF to ensure that violations will not be repeated.

In the above said matters, the NGT has held that:

(i) The Office Memoranda do not refer to the source of their power under the provisions of any Act, Rules, or Notification. They even do not satisfy the basic ingredients of an order or instrument having been issued in compliance to the prescribed procedure under Articles 53, 73 and / or 77 of the Constitution. They have neither been issued nor authenticated by a person authorized by the President of India and in any case, they have not even been issued in the name of the President of India. The contention raised on behalf of MoEF and some of the private Respondents that the issuance of impugned Office Memoranda is in exercise of the executive power, is therefore, not tenable.

(ii) These Office Memoranda provide benefit to the class of the project or activity owners who have started construction in violation of the law i.e., without obtaining prior Environmental Clearance. They do not deal with any subject in general but are applicable to specific case and particular situations.

(iii) The impugned Office Memoranda have not been issued in exercise of subordinate or delegated legislation. Indisputably, they have also not been issued under Sections 3 and 5 of the Environment (Protection) Act of the 1986. They are also not in compliance with the Constitutional requirements and other ingredients of exercise of executive power simplicitor.

(iv) EIA Notification mandates the requirement of 'prior Environmental Clearance' without exception. However, the entire mandate of prior Environmental Clearance has not only been diluted but completely rendered infructuous or ineffective by issuance of these impugned Office Memoranda. Therefore, the Office Memoranda stated to be 'guidelines', are potently destructive of the EIA Notification. Since the law provides performance of acts in a particular manner, the impugned Office Memoranda under the garb of 'guidelines', cannot be permitted to alter the same completely; being prejudicial to the principal law.

(v) The impugned Office Memoranda do not even advert themselves to how the interest of the

environment would be protected in cases where the projects have substantially progressed. It does not even refer as to how detrimental effects on environment would be taken care of, if the Project Proponent is permitted to file an application and claim Environmental Clearance after the project is at a very advanced stage of completion.

(vi) The impugned orders have been titled as 'Office Memorandum' and content of the orders captioned as 'guidelines' but in fact, are Office Memoranda which directly vary the substantive law in force. This has been adopted by the MoEF as a via-media to bypass the statutory requirements of law or for truncating the prescribed process of environmental protection, in terms of the EIA Notification. These Office Memoranda not only substantially amend or alter its application but even frustrate the requirements of the existing law.

(vii) The impugned Office Memoranda vest in the authorities an unguided and unfettered discretion, both in regard to processing of application and in condonation of violation already committed by the project proponent. It is a very pertinent defect in terms of administrative law jurisprudence. An unguided and unreasonable discretion is bound to result in arbitrary exercise of powers. The MoEF being the controlling Ministry, all the expert bodies under it would be duty bound to carry out its directives even if it is unreasonable and unjustifiable.