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For Success, attitude is equally important as ability.

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(Knowledge Manager with Acquisory)

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HIGHLIGHTS

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ARTICLE

RERA Implementation – How Effective

The Real Estate Regulatory Act (RERA) has come into force w.e.f. 1st May, 2017 with its notification. This Act is expected to bring in much needed changes in how real estate market will behave in the future particularly in relation to the dynamics between the developers and the customers. The RERA has been enacted primarily to bring in transparency and efficiency in the real estate market by making the environment conducive towards buyers. The Act brings in a number of parameters to control and streamline real estate projects. While the federal law is a an umbrella guideline, each state has the right to enact its own regulations staying within the parameters of the federal law. A few states and UTs have circulated their draft with only Maharashtra leading the states with its own version of RERA already notifies. This Act is still in its nascent state and how effective it would be to have its intended effects will be clear in the near future.

Cross Border Merger and Acquisition – An Accelerative Approach

Ministry of Corporate Affairs (MCA) had notified the Section 234 of the Companies Act, 2013. With this provision of the Act, India has now allowed inbound and outbound merger. In this regard the RBI has proposed Regulations under FEMA, 1999 so that issues that may arise when an Indian company and a foreign company enter into Scheme of merger, demerger, amalgamation, or rearrangement, can be addressed. This paves way for a broader Merger & Acquisition landscape as the option of outbound mergers are now open to companies incorporated in India further facilitating Indian Companies in expanding their horizons for achieving growth, through consolidation, acquisitions or internal restructuring.

LEGAL UPDATES

Mandatory Quoting of Aadhaar for PAN Applications & Filing Return of Income

Ministry of Finance vide Press Release dated 5th April, 2017 has provided Section 139AA of the Income-tax Act, 1961 as introduced by the Finance Act, 2017 which provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017.

Aadhaar Integration for availing MCA21 related services

MCA is actively considering Aadhaar Integration for availing various MCA21 related services. As a preparatory step, all individual stakeholders viz. DIN holders / Directors / Key Managerial Personnel/Professionals – CAs, CSs, Cost Accountants (whether in employment or in practice) are requested to obtain Aadhaar on a priority for integrating their details with MCA21 and also ensure that the information in Aadhaar is in harmony with PAN. When implemented, all MCA21 services shall be available based on Aadhaar based authentication ONLY. The date of Aadhaar integration with MCA21 would be announced shortly.

MCA issues clarification relating to the Transfer of Shares to IEPF Authority

MCA has issued a Circular clarifying the issues relating to the Transfer of shares to IEPF Authority. The due date for transfer of shares by Companies to IEPF is May 31, 2017 pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017. The IEPF Authority has now decided to open a special demat account with NSDL and all companies shall now transfer such shares, whether held in dematerialised form or physical form to the demat account of IEPF authority. NSDL will prescribe the format and procedure to facilitate such transfer by April 30th 2017 and May 15th 2017 respectively. NSDL will also levy charges as provided in this Circular.

ARTICLES

RERA
Real Estate Regulatory Act

RERA Implementation – How Effective

The Ministry of Housing and Urban Poverty Alleviation wherein the government has notified the major sections of Real Estate (Regulation and Development) Act, 2016 (RERA) which shall come into force w.e.f. 1st May, 2017. While the deadline for the RERA implementation is almost there, many of the State Governments are still under the process to notify their versions of rules and bring in legislation for the same. Implementation of RERA is important as it is seen that regulators play a key role in removing unscrupulous players, promoting fair and healthy competition and instill confidence in buyers, all of which ensure the growth of real estate.

"The much-awaited Real Estate Act has come into force from May 1st, 2017 but only 13 states and Union Territories have so far notified rules under the Act. The Real Estate (Regulation and Development) Bill, 2016 was passed by Parliament in March last year and all the 92 sections of the Act come into effect from May 1. "

All sections in the Act have now been notified and states can now appoint both the regulatory and the appellate authorities. While the deadline was on May 01, only a handful of states have so far notified their versions of RERA. The main intention behind RERA is to increase transparency and bring in standardization into real estate industry and amongst various stakeholders including buyers, developers, brokers and investors.

RERA
Real Estate Regulatory Act

RERA Implementation – How Effective

Benefits under RERA –

- RERA will make it mandatory for all commercial and residential real estate projects where the land area is over 500 sq. mt or eight apartments to be registered with the regulator before launching of these projects. Under RERA, builders and agents will have to register themselves with the regulator
- Developers will be able to sell projects only after the necessary clearances are obtained.
- To enable informed decisions by buyers, Real Estate Regulatory Authorities will ensure publication on their websites information relating to profile and track record of promoters, details of litigations, advertisement and prospectus issued about the project, details of apartments, plots and garages, registered agents and consultants, development plan, financial details of the promoters, status of approvals and projects etc.
- RERA seeks to impose strict regulations on the promoter and ensure that construction is completed on time.
- More clarity provided for Carpet Area. It has now been clearly defined in the bill to include usable spaces like kitchen and toilets.
- Developer to put 70% of the money collected from a buyer in a separate account to meet the construction cost of the project for which the monies are being collected.
- A developers' liability to repair structural defects has been increased to 5 years from the earlier 2 years.
- To enable quick settlement of disputes under RERA, each state to setup appellate tribunals to solve disputes between buyer and builder within 120 days.
- The buyer will pay only for the carpet area (area with walls). The builder can't charge for the super built-up-Area, as is the practice at present.

The builders will also benefit from the RERA, as it proposes to impose penalty on allottee for not paying dues on time. With this the builders are also given an opportunity to approach the regulator in case there is any issue with the buyer. At the same time heavy penalties are also being imposed if builders do not honour their commitment or fail to register themselves with the regulator. In short, RERA will ensure that fly by night developers go out of business while only those survive and flourish who have the ability to develop and deliver while acting under the rules of engagement defined by RERA. However, as a fallout of such, the prices of real estate may increase for the buyer because to launch a project, a developer will have to provide for the land as well as all permissions before launching a project as opposed to what has been the norm so far.

INDIA:
RERA ACT-2017

RERA may lead to fewer new launches initially as the industry adjusts to it. However established brands who were already in conformity would not be impacted and will benefit from healthier competition. As the trust deficit in the sector reduces, projects of reputed developers may experience increased demand. Thus a developer who manages an efficient development cycle and builds trust with the customer, will create a solid differentiator in the market place.

RERA
Real Estate Regulatory Act

RERA Implementation – How Effective

From the perspective of the home buyers, the RERA regime will instill more confidence in the mind of homebuyers with respect to three key elements: First, product, which includes specifications of apartment, building and overall project; Second, price i.e. total amount payable, timing of payment, and penalty for both buyer and developer due to delay; and last, completion time for delivery of apartment and project. From the perspective of real estate developers, meticulous and complete planning with regards to the product design, approvals and resources before launch of any project will become mandatory and a key differentiator for success under RERA.

There will be a strong requirement for developers to tie up the required finances before they start sales of units, and this is where institutional capital will play a key role. The amount of housing required in India is so huge that formal funding of the industry will grow many folds in next few years. Private Equity players, NBFCs and banks will have higher confidence to provide capital to developers since all the necessary permits will be in place and completion of a project in committed time period will become a norm rather than exception. The implementation of RERA would require thorough reassessment of risk viz. business, regulatory, market and operational amongst the developer fraternity. This may result in lower cost of equity as well as debt for real estate developers.

> "***RERA has been enacted primarily to bring in transparency and efficiency in the real estate market by making the environment conducive towards buyers. The Act brings in a number of parameters to control and streamline real estate projects.***"

While RERA is being hailed as signifying the dawn of a new era for the Indian real estate sector and a possible panacea to all that ails the real estate industry, there are still a number of lacunae which may need to be addressed soon, viz., what happens to banks and lenders' charge on the 70% collection in the designated account?; what kind of cover would the investors look at now that at least 70% of the cash flows in the projects are being held back and can be utilized only for the project construction?; What happens to the delays which are beyond the control of the developers – e.g., government regulatory bodies not giving permissions et al?; What happens when the government is implementing a project through its own agencies like DDA, HUDA, MHADA?; how will the regulatory body, appointed by the government adjudicate when the government itself is a party to the dispute? And many more such questions

RERA Implementation – How Effective

RERA Regime:

RERA has come into effect with an assurance to protect the right of consumers.. It is basically a consumer – centric act where the government has tried to portray consumer as the king. Nonetheless, the real estate developers have also welcomed the implementation of the Act, saying it will bring a paradigm shift in the way the Indian real estate sector functions. This move of the government has brought in the legislation to protect home buyers and encourage genuine private players.

RERA, being a central Act, does not need to be passed separately by states. However, land being a state matter, various operational rules and clauses for implementing the Act are to be formulated and notified by state governments. Each state has to appoint regulatory authorities to oversee implementation of the Act.

Since land is a State subject under the Constitution, even after the Centre enacts the legislation, State governments will have to ratify them. States will have to set up the Real Estate Regulatory Authority's (RERA) and the Real Estate Appellate Tribunals and have only a maximum of a year from the coming into effect of the Act to do so.

The states and UTs that have notified the rules are Uttar Pradesh, Gujarat, Odisha, Andhra Pradesh, Maharashtra, Madhya Pradesh and Bihar. The housing ministry had last year notified the rules for five UTs—Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, and Lakshadweep, while the urban development ministry came out with such rules for the National Capital Region of Delhi.

> ***"While the federal law is a an umbrella guideline, each state has the right to enact its own regulations staying within the parameters of the federal law. A few states and UTs have circulated their draft with only Maharashtra leading the states with its own version of RERA already notifies."***

So far, only 13 states and Union territories have notified the new rules, of which only three states—Maharashtra, Madhya Pradesh and Rajasthan—have appointed a housing regulator. Besides, none of the states apart from Maharashtra has set up a website where developers and brokers can register or apply for new projects under the new Act.

Eventually the benefit of any statute is contingent on its effective implementation. Despite a model set of rules, only a few States have notified their rules. The onus is now on States to formulate rules and establish the regulatory authorities on time. There shouldn't be just paper compliance, by designating an existing authority to take additional charge as the real estate regulator, as that would affect the timeliness prescribed under the Act.

In brief, the new legislation is a welcome enactment. It will go a long way in assisting developers and customers. More importantly, it will ease the burden on innocent home buyers who put their life's savings into a real estate investment in the hope of having a roof over their head but often find their dreams come tumbling down.

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Cross Border Merger and Acquisition – An Accelerative Approach

Ministry of Corporate Affairs (MCA) has recently vide notification dated 13th April, 2017 has notified Section 234 of the Companies Act, 2013 ('Act') which deals with Merger or amalgamation of company with foreign company now allowing the merger or amalgamation of Company with foreign company. The corresponding rules have also been notified in consultation with Reserve Bank of India (RBI) for implementation of the said section. MCA has issued the Companies (Compromise, Arrangements and Amalgamation) Amendment Rules, 2017 inserting Rule 25A and Annexure B in prescribing rules in the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 in relation to operation of section 234.

Regulatory Compliances

Section 234 of the Act provides for amalgamation of a foreign company incorporated in notified jurisdiction with a company incorporated under the provisions of the Act or under the provisions of the earlier Companies Act, 1956 and vice versa. It also provides that both inbound merger and outbound merger should be subject to prior approval of RBI and application of the other provisions of Chapter XV of the Act. Section 394 of the Companies Act, 1956 allowed inbound mergers only, there was no provision for outbound merger under the Companies Act, 1956.

Further, section 234 provides that a Scheme prepared for inbound merger/outbound merger may inter alia provide for payment of cash or issue of depository receipts or both as consideration to the shareholders of the merging company. For the purpose of Section 234, 'Foreign Company' means any company or body corporate incorporated outside India whether having a place of business in India or not.

Rule 25A prescribes as follows:

a) A foreign company, incorporated in any jurisdiction outside India, may merge with a company incorporated in India ("inbound merger").
b) A company incorporated in India may merge with a foreign company incorporated in jurisdictions specified in Annexure "B" ("outbound merger").
c) Both inbound merger and outbound merger require prior approval of RBI.
d) Both inbound merger and outbound merger should comply with the provisions of section 230 to 232 of the Act.
e) Concerned companies should file application with National Company Law Tribunal (NCLT) under provisions of section 230-232 of the Act and Rule 25A for obtaining approval of the NCLT.
f) In relation to outbound merger, the transferee company should ensure that the valuation conducted by valuers (being members of a recognized professional body in the jurisdiction of the transferee company) is in accordance with internationally acceptable principles of accounting and valuations and a declaration to that effect is filed with the RBI.

Annexure "B" specifies following jurisdictions in relation to outbound merger:

i a jurisdiction whose securities market regulator is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding (Appendix A) or a signatory to a bilateral MoU with Securities and Exchange Board of India; (or)
ii a jurisdiction whose Central Bank is a member of the Bank of International Settlements (BIS)
And
iii a jurisdiction, not identified in the public statement of the Financial Action Task Force (FATF) as:

a) a jurisdiction having a strategic anti-money laundering or combating the financing of terrorism deficiencies to which counter measures apply; or
b) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies.

List of jurisdictions covered under Annexure "B" indicate that outbound mergers seem to be possible with foreign companies incorporated in jurisdictions such as Mauritius, Netherlands, Singapore, Cayman Islands, Abu Dhabi, DIFC (Dubai), UAE, United Kingdom, United States etc.

Cross Border Merger and Acquisition – An Accelerative Approach

Rolling out draft Regulations for Cross Border Mergers by RBI

RBI has proposed fresh Regulations under Foreign Exchange Management Act, 1999 for Cross Border Mergers on April 26, 2017 and has Invited comments from stakeholders. The draft guidelines proposed to be issued on cross border merger transactions pursuant to the Rules notified by Ministry of Corporate Affairs through Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017. The Reserve Bank of India has proposed these Regulations under the Foreign Exchange Management Act, 1999 (FEMA) in order to address the issues that may arise when an Indian company and a foreign company enter into Scheme of merger, demerger, amalgamation, or rearrangement. These Regulations stipulate conditions that should be adhered to by the companies involved in the Scheme. The Regulations shall be named Foreign Exchange Management (Cross Border Merger) Regulations.

Cross Border Merger & Acquisition

Impact on the Industry

Notifying the Section 234 of the Act has no doubt a big move as earlier only inbound merger were permitted whereas now with the notification outbound merger has also been legalized. This paves way for a broader Merger & Acquisition landscape as the option of outbound mergers are now open to companies incorporated in India. It will further facilitate Indian Companies in expanding their horizons for achieving growth, be it for consolidation, acquisitions or internal restructuring. This in return shall ease out the listing of Indian Securities on overseas stock exchanges, and enable provision of exit mechanism to non-resident investors.

Though, this is a welcome move but it shall require alignment of these provisions with other applicable Indian laws and thus comply with such other regulations RBI has already rolled out the draft regulations for stakeholder's comments and suggestions. Further, under Indian Income Tax Laws, since the capital gain tax benefit is presently available only in case of inbound mergers, one awaits the corresponding changes to the Indian Income Tax Laws with respect to any reliefs for the merging company, its shareholders and the merged company.

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The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

Key Highlights of New Tariff Order and Interconnection Agreement:

Telecom Regulatory of India (TRAI) had rolled out a draft telecom tariff order (TTO) in October 2016. Post final approval from supreme court of India TRAI rolled out Tariff Order and New Interconnection regulation on 03 March 2017. This time TRAI have attempted to ensure transparency, non-discrimination, consumer protection and create an enabling environment for orderly growth of the sector. Following points specified in the regulation will have an impact on the broadcasting sector:

Multi-system Operators / Distributors:

- New regulation demands declaration of following details to the authority & on a public portal, every distributor of television channels shall, within thirty days from the commencement of these regulations or within thirty days from the commencement of its operations, as the case may be, on its website, publish:

- Target markets as declared under sub-regulation wherein every distributor of television channel shall declare coverage area of each distribution network;
- The total channel carrying capacity of its distribution network in terms of number of standard definition channels;
- List of channels available on the network;
- Number of channels for which signals of television channels have been requested by the distributor from broadcasters and the interconnection agreements signed;
- Spare channel capacity available on the network for carrying signals of television channels; and list of channels, in chronological order, for which requests have been received from broadcasters for distribution of their channels, the interconnection agreements have been signed and are pending for distribution due to non-availability of the spare channel capacity.

- Regulatory also mandated the MSOs to specify the territories of interconnection agreement. Following are the details for describing the territories for distribution of signals of television channels:

- The registered area of operation of the multi-system operator as mentioned in the registration granted by the central government;
- The names of specific areas for which distribution of signals of television channels has been agreed, initially, at the time of signing of the interconnection agreement; and

The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

- The names of the corresponding states/ union territories in which such agreed areas as referred in clause (b) of this sub-regulation are located.

➢ Compliance officer will be designated by the broadcaster and the distributor of television channel; who will ensure:

a. generating awareness for ensuring compliance with the provisions of these regulations;
b. reporting to the Authority, with respect to compliance with these regulations and directions of the Authority issued under these regulations; and
c. ensuring that proper procedures have been established and are being followed for compliance of these regulations.

➢ To ensure smooth functioning and speedy restoration, the MSO will have to provide the LCO with at least 2% of total STBs active in LCO's network with an upper cap of 30 spare STBs - as maintenance which are not pre-activated.

➢ Distributors of television channels shall submit monthly subscription reports of channels and bouquet of channels to respective broadcasters as per the format specified under the Schedule VII, within seven days from the end of each calendar month. However, broadcasters will hold the authority to disconnect its television channel after giving a written three weeks' notice, if DPOs fail to provide monthly subscription report.

➢ The DPOs shall arrange a consumer friendly electronic payment options within SMS.

➢ Authority through the new regulations has introduced a revised format submission of monthly subscription reports to broadcasters wherein the monthly average subscriber count will be derived based on the following format:

Name of the channel	No. of subscribers of the channel on 7th day of the month	No. of subscribers of the channel on 14th day of the month	No. of subscribers of the channel on 21st day of the month	No. of subscribers of the channel on 28th day of the month	Monthly subscription of the channel
(A)	(B)	(C)	(D)	(E)	(F) = [(B)+(C)+(D)+(E) / 4]

Local Cable Operators:

➢ In the new regulation, authority has mandated LCOs to submit the Customer Application Form (CAF) to MSOs within 15 days.
➢ The network capacity amount and distribution fee amount shall be shared in the ratio of 55:45 (MSO: LCO) between multi system operator and local cable operator respectively.

The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

- The LCO shall not replace STBs of the MSO with the STBs of any other MSO without prior receiving the requests from the subscribers through application forms for returning the STB of existing connections and for providing new connections through Customer Application Form. The new Set Top Box shall be activated only after entry of the customer details, as provided in new Customer Application Form, into the Subscriber Management System of the new MSO.

Broadcasters:

- Each channel of broadcaster should now be offered to the distributors of television channels on a-la-carte basis. However, provided that the broadcaster may also offer its pay channels, in addition to offering of pay channels on a-la-carte basis, in form of bouquet. However, the bouquet should not include any "Free to air channel" and High Definition (HD) and Standard Definition (SD) variant of the same channel.
- As specified under the new regime, Broadcaster shall not propose, stipulate or demand for packing of the channel in any bouquet neither directly nor indirectly to the distributor of television channels to subscribers.
- Minimum guarantee commitment or minimum subscription percentage on subscriber base on its channel or bouquet shall not be proposed by Broadcaster directly or indirectly.
- Payment of minimum guarantee amount for providing signals for television channels, shall not be demanded from other service provider.
- Further broadcaster can offer its pay channels in the form of bouquet(s) and declare the maximum retail price(s), per month, of such bouquet(s) payable by a subscriber. However, such bouquet shall not contain any pay channel for which maximum retail price per month is more than rupees nineteen.
- Broadcaster will have a liberty to offer promotional schemes to the distributor of maximum retail prices per month on a-la-carte pay channels however, the overall period should not exceed 90 days. Also, the frequency of any such scheme by the broadcaster should not exceed twice in calendar year.
- A broadcaster will need to publish the reference interconnection offer on its website, so that it is in the compliance with the regulatory, for providing the signals of all its pay channels to the distributor of television channels. This should be done within 60 days of commencement of the tariff order or before launching the pay channel in case of new pay channel launch.

"As on 5th May 2017 – Sony Pictures Network India (SPNI), ZEEL, IndiaCast (which represents TV18 and Viacom18), Sun TV Network and Disney India have filed their respective RIOs in compliance with TRAI regulations. Star India has written to the Authority (TRAI) seeking 10 more days to publish its reference interconnect offer (RIO) under the new tariff order regime."

- As specified in the regulations, the maximum discount a broadcaster can provide on distribution fee should not exceed 35% of the MRP of its pay channel or bouquet of pay channel.
- A minimum of 20% of pay channel MRP or a bouquet of pay channel of every broadcaster shall be declared as distribution fee. Provided that the distribution fee declared by the broadcaster shall be uniform across all the distribution platforms.

The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

- Broadcaster shall allow window of fifteen days to the distributor of television channel for making payments
- Service provider shall not disconnect the signals of television channels without giving at least three weeks' notice in writing to other service provider, clearly specifying the reason. In such cases, the subscribers of the particular network shall be informed fifteen days prior to the disconnection of signals of such television channels through scrolls on channels proposed to be disconnected.
- Every broadcaster shall declare the genre of its channels and such genre shall be either:
  - ✓ Devotional
  - ✓ General Entertainment
  - ✓ Infotainment
  - ✓ Kids
  - ✓ Movies
  - ✓ Music
  - ✓ News and Current Affairs
  - ✓ Sports
  - ✓ Miscellaneous

Packaging – Bouquet:

- The authority has also prescribed a rental fee of up to Rs 130 per month, excluding taxes, which distributor of television channel can charge from subscribers towards their distribution network cost to carry 100 SD channels.
- Subscribers will have to pay additional Rs 20 per month excluding taxes for additional network capacity in bundles or lots of 25 SD channels.
- Provided further that the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet.
- As specified under the new regime a minimum of 20% of the maximum retail price of the pay channel or a bouquet of pay channel of every broadcaster will considered as distribution fee.

Carriage Fees:

- The regulator has capped carriage fees for standard definition (SD) channels at 20 paisa per channel per subscriber per month and 40 paisa for high definition (HD) channels in the regulation.
- The maximum discount a distributor of television channel can offer to a broadcaster for carriage fee should not exceed 35%.
- TRAI through this regulation has regularized the carriage fees:

Monthly subscription for a channel in the target market (of active subscriber base)	Carriage fee amount
< 5%	(Carriage fee rate per channel per subscriber per month) * (Avg. Subscriber base for the month)
5% to 10 %	(Carriage fee rate per channel per subscriber per month) * (0.75 time of Avg. Subscriber base for the month)
10% to 15%	(Carriage fee rate per channel per subscriber per month) * (0.5 time of Avg. Subscriber base for the month)
15% to 20%	(Carriage fee rate per channel per subscriber per month) * (0.25 time of Avg. Subscriber base for the month)
> 20%	NIL

The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

Audit:

- Every distributor of television channels shall, once in a calendar year, cause audit of its SMS, CAS and other related systems by an auditor to verify that the monthly subscription reports are complete and correct.
- Provided further that any variation, due to audit, resulting in less than zero-point five percent of the billed amount shall not require any revision of the invoices.
- Incase the Broadcaster if of the view that requirements are not being adhered by the distributors, then it shall be permissible to the broadcaster to conduct the audit against such distributors.
- As specified under Schedule II of the interconnection regulation 2017 - The distributor of TV channel will have to submit the copy of the report of the auditor in compliance of schedule III of Telecom. (Broadcasting and Cable) services Interconnection (Addressable System) Regulation 2017.
- The DPOs can now get their systems certified from the auditor empaneled with TRAI.

Key Technical Amendments:

TRAI has also introduced some welcoming changes in the revised schedule (SCHEDULE III) Some of which are listed below:

- Non-alteration of the data and logs recorded in CAS & SMS to ensure authenticity of the historical records for at least two years
- The regulation has restricted user access to direct activate subscribers from CAS
- Maintaining data and logs in CAS for at least immediate preceding two years
- Insertion of watermarking at encoder end only
- Mandating the Copy Protection Systems for STBs with recording facilities

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Written By:
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LEGAL UPDATES

RBI UPDATES

1. Revised Prompt Corrective Action (PCA) framework for banks

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/276 DBS.CO.PPD. BC.No.8/11.01.005/2016-17 dated 13th April, 2017 has revised the existing PCA framework for banks. The provisions of the revised PCA framework will be effective from April 1, 2017 based on the financials of the banks for the year ended March 31, 2017. The framework would be reviewed after three years. The PCA framework does not preclude the Reserve Bank of India from taking any other action as it deems fit in addition to the corrective actions prescribed in the framework.

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10921&Mode=0

2. RBI proposes fresh Regulations for Cross Border Mergers

RBI proposes fresh Regulations under Foreign Exchange Management Act, 1999 for Cross Border Mergers on April 26, 2017 and has invited comments from stakeholders. The draft guidelines proposed to be issued on cross border merger transactions pursuant to the Rules notified by Ministry of Corporate Affairs through Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017. The Reserve Bank of India has proposed these Regulations under the Foreign Exchange Management Act, 1999 (FEMA) in order to address the issues that may arise when an Indian company and a foreign company enter into Scheme of merger, demerger, amalgamation, or rearrangement. These Regulations stipulate conditions that should be adhered to by the companies involved in the Scheme. The Regulations shall be named Foreign Exchange Management (Cross Border Merger) Regulations. Members of public, including the stakeholders and experts in the area, are requested to offer their views and comments on the proposed Regulations. The comments may be sent latest by May 9, 2017 to email with the subject "Cross Border Mergers – Comments/Suggestions.

3. Guidelines on Merchant Acquisition for Card Transactions

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/296 DCBR.RAD (PCB/RCB) Cir.No.4/7.12.001/2016-17 dated 28th April, 2017 has issued guidelines on Merchant Acquisition for Card Transactions. Co-operative banks have been permitted to install both onsite/offsite ATM networks and can issue debit cards on their own or through sponsor banks based on certain eligibility conditions. Also, all co-operative banks have been allowed to enter into credit card business on their own or co-branding arrangement with other banks, subject to fulfilment of the guidelines prescribed in this regard.

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10950&Mode=0

4. RBI issues Guidelines on Merchant Acquisition for Card Transactions –

Reserve Bank of India (RBI) vide Notification No. RBI/2016-17/296 DCBR.RAD (PCB/RCB) Cir.No.4/7.12.001/2016-17 dated 28th April, 2017 has issued Guidelines on Merchant Acquisition for Card Transactions. Co-operative banks have been permitted to install both onsite/offsite ATM networks and can issue debit cards on their own or through sponsor banks based on certain eligibility conditions. Also, all co-operative banks have been allowed to enter into credit card business on their own or co-branding arrangement with other banks, subject to fulfillment of the guidelines prescribed in this regard. All co-operative banks can act as Point of Sale (POS) acquiring bank by deploying their own POS terminals with prior approval of RBI subject to fulfillment of conditions specified in this regard. All co-operative banks not intending to act as Point of Sale (POS) acquiring bank are permitted to deploy third party POS terminals without prior approval of Reserve Bank of India (RBI) subject to fulfillment of conditions specified in this regard.

https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10950&Mode=0

MCA UPDATES

1. *Aadhaar Integration for availing MCA21 related services –*

MCA is actively considering Aadhaar Integration for availing various MCA21 related services. As a preparatory step, all individual stakeholders viz. DIN holders / Directors / Key Managerial Personnel/Professionals of the Institute of Company Secretaries of India-Institute of Chartered Accountants of India-Institute of Cost Accountants of India (whether in employment or in practice) are requested to obtain Aadhaar as early as possible for integrating their details with MCA21 and also ensure that the information in Aadhaar is in harmony with PAN. When implemented, all MCA21 services shall be available based on Aadhaar based authentication ONLY. The date of Aadhaar integration with MCA21 would be announced shortly. Stakeholders are requested to plan accordingly on PRIORITY so as to avoid future inconvenience.

2. *MCA notifies Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017*

MCA has notified the amendments to the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 which shall come into force from the date of notification. In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (hereinafter referred to as the principal rules) after Rule 25, Rule 25A shall be inserted which provide for Merger or Amalgamation of a Foreign company with an Indian Company and vice versa after obtaining prior approval of

Reserve Bank of India and after complying with the provisions of Sections 230 to 232 of the Act and these rules.

3. *Sec. 234 notified: Merger or Amalgamation of Company with Foreign Company*

MCA has issued Notification which states that the Central Government appoints 13.04.2017 as the date on which the provisions of section 234 of the Companies Act, 2013 shall come into force. Section 234 deals with the Merger and Amalgamation of company with foreign company.

http://www.mca.gov.in/Ministry/pdf/section234Notification_14042017.pdf

4. *Companies (Removal of Names of Companies from Register of Companies) Amendment Rules, 2017*

MCA has issued Notification to notify amendment to the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017 which shall come into force on the date of their publication in the Official Gazette. A new proviso has been inserted in Rule 7(1) to provide that the publication of notice under clause (iii) of this sub-rule, in respect of cases falling under sub-section (1) of section 248 shall be in Form No. STK-5A. The format of Form STK-5, Form No. STK-5A has also provided through this notification.

http://www.mca.gov.in/Ministry/pdf/CompRemovalofNamesRules_13042017.pdf

4. *Revision of E-Forms*

MCA has revised the versions of eForm – Forms CHG-1 (Application for registration of creation, modification of charge (other than those related to debentures), Form CHG-9 (Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures), Form CHG - 4 (Registration of Satisfaction of Charge), and Form STK – 2 (Application by company to ROC for removing its name from register of Companies) are being revised w.e.f. 22nd April 2017 (Saturday). Further, in Charge related Forms, if the 'Type of Charge' is 'immovable property or any interest therein', the location parameters (Latitude and Longitude) shall now also be required to be filed

MCA UPDATES

mandatory. All the stakeholders are advised to check the latest version of the form before filing.

5. MCA issues Clarification regarding online generation of Challans for Offline payment to Investor Education and Protection Fund (IEPF)

MCA has issued Clarification regarding online generation of Challans for Offline payment to Investor Education and Protection Fund (IEPF). In terms of Investors Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016 as notified on 05.09.2016, amount to IEPF can only transfer through Challans generated on MCA 21 portal. However it has been noticed that there are companies, which have transferred the amount to IEPF prior to 15.12.2016, through Challans not generated on MCA21 portal and these companies were/are unable to file IEPF1. To facilitate filing of eform IEPF1 by such companies can submit details of the challans in prescribed format duly certified by the professional to IEPF Authority on email id challan.iepfa@mca.gov.in up to 20th May, 2017 only and no further relaxation shall be granted. Further, the submitted data shall be processed by the IEPF Authority and a Front Office service will be made available on IEPF website from 5th June, 2017 for a period of 30 days i.e. up to 5th July, 2017 to enable the companies to submit the required data online. An automated generated number will be provided by the MCA21 system on validation of entries and using this automated generated number as SRN, companies may file e-form IEPF-1 online & upload investor details without requirement of filing additional fees.
http://mca.gov.in/Ministry/pdf/Notification_20042017_1.pdf

6. Insolvency Bankruptcy Board of India (IBBI) issues draft Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

IBBI has published the draft regulations for Fast Track Corporate Insolvency Resolution Process of Corporate Persons. Under the draft regulations, such Corporate Debtors with assets and income below a certain level or such class of creditors or such amount of debt or such categories of Corporate Persons, as may be notified by Central Government, may opt for the resolution process under Fast Track Regulations which shall be completed within a period of 90 days from the insolvency commencement date and can be extended by 45 days with the permission of Adjudicating Authority under certain circumstances. IBBI has also submitted a draft regulation on "Eligible CorporatePersons" on whom these Fast Track Corporate Insolvency Resolution Process regulations shall apply, to be notified by Central Government under section 55 (2) of the Insolvency and Bankruptcy Code. The draft are available for public comments on both regulations i.e Fast Track Insolvency Resolution Process for Corporate persons and Eligible Corporate Debtor under Fast Track Insolvency Resolution Process. Accordingly, comments on each provision of the draft regulations are invited from Public by 8th May, 2017.
http://www.ibbi.gov.in/RegulationsonFastTrackCorporateResolutionProcess.pdf

7. MCA issues clarification relating to the Transfer of Shares to IEPF Authority

MCA has issued a Circular clarifying the issues relating to the Transfer of shares to IEPF Authority. The due date for transfer of shares by Companies to IEPF is May 31, 2017 pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017. The IEPF Authority has now decided to open a special demat account with NSDL and all companies shall now transfer such shares, whether held in dematerialised form or physical form to the demat account of IEPF authority. NSDL will prescribe the format and procedure to facilitate such transfer by April 30th 2017 and May 15th 2017 respectively. NSDL will also levy charges as provided in this Circular.

SEBI UPDATES

1. Capacity Planning Framework for the Depositories

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MRD/DP/CIR/P/2017/29 dated 3rd April, 2017 has prescribed the framework for Depositories with regard to Capacity Planning. It has been decided to put in place following requirements for Depositories while planning capacities for their operations: The installed capacity shall be at least 1.5 times (1.5x) of the projected peak load, The projected peak load shall be calculated for the next 60 days based on the per hour peak load trend of the past 180 days, The Depositories shall ensure that the utilisation of resources in such a manner so as to achieve work completion in 70% of the allocated time.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1491222315847.pdf

2. Inclusion of "Derivatives on Equity shares" – IFSC

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2017/31 dated 13th April, 2017 it has been decided to specify "Derivatives on Equity Shares of a Company incorporated in India" as permissible security under sub-clause (vi) of Clause 7 of SEBI (International Financial Services Centres) Guidelines, 2015. Accordingly, the recognized stock exchanges operating in IFSC may permit dealing in 'Derivatives on equity shares', subject to prior approval of SEBI.

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1492078372887.pdf

3. SEBI Board Meeting

Securities Exchange Board of India (SEBI) vide Press Release dated 26th April, 2017 has taken various decisions' to improve the facilities being offered to the stakeholders. The SEBI Board discussed some major initiatives like Instant Access Facility (IAF) in Mutual Funds and use of e-wallet for investment in Mutual Funds upto Rs. 50,000/- in financial year; Amendments to Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012; Inclusion of RBI registered systemically important NBFCs in the category of QIBs; Exemption under SEBI (ICDR) Regulations, 2009, relating to preferential allotments, to be extended to Scheduled Banks and Financial Institutions; Strengthening the Monitoring of Utilisation of Issue Proceeds; Framework for consolidation and re-issuance of debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008; Amendment to SEBI (Foreign Portfolio Investor) Regulations, 2014; Amendments to the SEBI (Debenture Trustee) Regulations, 1993 & Integration of broking activities in Equity Markets and Commodity Derivatives Markets under single entity.

The following decisions taken by the Board –

1. Instant Access Facility (IAF) in Mutual Funds and use of e-wallet for investment in Mutual Funds – in order to channelize the households' savings into capital market and to promote digitalization in mutual funds, SEBI Board after deliberation has decided the following:

a) Mutual Funds / Asset Management Companies (AMCs) can offer instant access facility (through online mode) of upto INR 50,000 or 90% of folio value, whichever is lower, to resident individual investors in liquid schemes by applying lower of Previous Day NAV or Prospective NAV. For providing such facility AMCs would not be allowed to borrow. Liquidity is to be provided out of the available funds from the scheme and AMCs to put in place a mechanism to meet the liquidity demands.

b) Investment of upto INR 50,000 per Mutual Fund per financial year can be made using e-wallets. However, redemptions of such investments can be made only to a bank account of the unit holder.

2. Amendments to Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 - to enable the Commodity Derivatives Exchanges to organize trading of 'options',

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the Board, after undertaking due public consultation process, has approved a proposal to amend the relevant provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.

3. Inclusion of RBI registered systemically important NBFCs in the category of QIBs - the Board has approved the proposal for inclusion of systemically important NBFCs registered with RBI having a net worth of more than Rs. 500 crore in the category of QIBs. As NBFCs are well regulated entities, classifying such NBFCs under the definition of QIBs will give Issuers access to a larger pool of funds.

4. Exemption under SEBI (ICDR) Regulations, 2009, relating to preferential allotments, to be extended to Scheduled Banks and Financial Institutions - In order to carry out actions for recovery from a borrower which may be a listed Company, Banks or Financial Institutions have sold equity shares of the issuer during the preceding six months of the relevant date. Such Banks/Financial Institutions may also be one of the allottees of the specified securities of the company pursuant to CDR approved scheme under preferential issue route.
The Board considered and approved the proposal for extending such relaxation to the Scheduled Banks and Public Financial Institutions as is already being extended to Mutual Funds and Insurance Companies.

5. Strengthening the Monitoring of Utilisation of Issue Proceeds - SEBI Board considered and approved certain proposals to further strengthen the monitoring of issue proceeds raised in IPOs/FPOs/Rights Issues. Key proposals approved by Board are as under:

- Mandatory appointment of Monitoring Agency where the issue size (excluding offer for sale component) is more than Rs. 100 crore.
- Frequency of submission of Monitoring Agency Report has been enhanced from half-yearly to quarterly.
- Introduction of maximum timeline of 45 days for submission of Monitoring Agency Report from the end of the quarter in conjunction with the submission of the quarterly results.
- Mandating the disclosure of the Monitoring Agency Report on Company's website in addition to submitting it to Stock Exchange(s) for wider dissemination.
- Introduction of new requirement, i.e., comments of Board of Directors and Management on the findings of Monitoring Agency.

6. Framework for consolidation and re-issuance of debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 - The Board considered and approved the following proposals contained in the agenda for laying down a framework for consolidation and re-issuance of debt securities, one of the ways to increase liquidity in the secondary market.

a) Maximum of 12 ISINs maturing per financial year may be allowed for debt securities and within the bucket of these 12 ISINs, the issuer can issue both secured and unsecured Non-Convertible Debentures (NCDs)/bonds and no separate category of ISINs may be provided to them. Additionally, the issuer may issue five ISINs per financial year for structured debt instruments of a particular category (say bonds with call option or bonds with both call and put option);

b) The above restrictions will not be applicable on debt instruments which are used for raising regulatory capital such as Tier I, Tier II bonds, bonds for affordable housing and the capital gains tax bonds issued under section 54EC of the Income Tax Act, 1961;

c) In order to resolve the issue of bunching of liabilities, the issuer can as a one-time exercise make a choice of having bullet maturity payment or the issuer can make staggered payment of the maturity proceeds within that financial year;

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d) Active consolidation, i.e consolidation, of existing outstanding debt securities may be made recommendatory at present, which may be reviewed at a later stage. Such active consolidation can be done through switches and conversion; and

e) There should not be any clause prohibiting consolidation and re-issuance in the Articles of Association of the issuer/company.

7. Amendment to SEBI (Foreign Portfolio Investor) Regulations, 2014 - The SEBI (Foreign Portfolio Investor) Regulations, 2014 shall be amended as follows:
An express provision shall be inserted in the regulations to prevent Resident Indians/NRIs or the entities which are beneficially owned by Resident Indians/NRIs from subscribing to Offshore Derivative Instruments.

8. Amendments to the SEBI (Debenture Trustee) Regulations, 1993 - The Board approved the amendments to the DT Regulations, 1993 after taking into consideration the public comments.

The amendments are aimed to achieve the following objectives:

I. To streamline the existing provisions in the DT Regulations with the provisions as mentioned in the Companies Act 2013, Companies (Share Capital and Debentures) Rules, 2014 and on account of amendment to the other SEBI Regulations.

II. To fortify the existing provisions in the DT Regulations to enable the debenture trustees to perform the task of securing the interest of the investors.

9. Integration of broking activities in Equity Markets and Commodity Derivatives Markets under single entity.

http://www.sebi.gov.in/media/press-releases/apr-2017/sebi-board-meeting_34761.html

4. SEBI issues Circular on disclosure of executive remuneration by Mutual Funds

Securities Exchange Board of India (SEBI) vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2017/35 dated 28th April, 2017 has issued circular on mutual funds with regard to disclosure of executive remuneration. Mutual Funds (MFs)/AMCs shall make the disclosures pertaining to a financial year on the MF/AMC website under a separate head – 'Remuneration'.
http://www.sebi.gov.in/legal/circulars/apr-2017/circular-on-mutual-funds_34777.html

TAXATION UPDATES

1. Central Board of Direct Taxes requests for stakeholder's comments on draft of Notification to be issued Under Section 10(38) of the Income-tax Act, 1961

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Press Release dated 3rd April, 2017 has asked for the stakeholders comments on draft Notification to be issued under Section 10(38) of the Income Tax Act, 1961. Section 10(38) of the Income-tax Act, 1961 ('the Act'), prior to its amendment by Finance Act, 2017, provided that the income arising by way of a transfer of long term capital asset, being equity share in a company, shall be exempt from tax if such transfer is undertaken after 1st October, 2004 and chargeable to Securities Transaction Tax (STT) under Chapter VII of the Finance (No. 2) Act, 2004.

It is proposed to notify that the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after the first day of October, 2004 other than the specified transactions. In order to have wider consultation in this matter, the draft of notification proposed to be issued under section10 (38) of the Act has been uploaded on the website www.incometaxindia.gov.in.

2. CBDT notifies new Income Tax Return Forms for AY 2017-18: Introduces one page simplified ITR Form-1(Sahaj)

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Press Release dated 31st March, 2017 has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2017-18. One of the major reforms made in the notified ITR Forms is the designing of a one page simplified ITR Form-1(Sahaj). This ITR Form-1(Sahaj) can be filed by an individual having income upto Rs.50 lakh and who is receiving income from salary one house property / other income (interest etc.).

Various parts of ITR Form-1 (Sahaj) viz. parts relating to tax computation and deductions have been rationalised and simplified for easy compliance. This will reduce the compliance burden to a significant extent on the individual tax payer. This initiative will benefit more than two crore tax-payers who will be eligible to file their return of income in this simplified Form.

Simultaneously, the number of ITR Forms have been reduced from the existing nine to seven forms. The existing ITR Forms ITR-2, ITR-2A and ITR-3 have been rationalized and a single ITR-2 has been notified in place of these three forms. Consequently, ITR-4 and ITR-4S (Sugam) have been renumbered as ITR-3 and ITR-4 (Sugam) respectively.

There is no change in the manner of filing of ITR Forms as compared to last year. All these ITR Forms are to be filed electronically. However, where return is furnished in ITR-1 (Sahaj) or ITR-4 (Sugam), the following persons have an option to file return in paper form:-

(i) an individual of the age of 80 years or more at any time during the previous year; or

(ii) an individual or HUF whose income does not exceed five lakh rupees and who has not claimed any refund in the return of income.

3. Budget 2017 takes Steps to discourage Cash transactions & curb Black Money

Ministry of Finance vide Press Release dated 5th April, 2017 has announced the various measures taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by promoting digital economy.

These prominently include placing restriction on cash transaction by introduction of New Sections 269ST & 271DA to the Income-tax Act. It has been provided that no person (other than those specified therein) shall receive an amount of two lakh rupees or more,

(a) in aggregate from a person in a day;

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

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Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt. However, the said restriction is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank. It has also been decided that the restriction on cash transaction shall not apply to withdrawal of cash from a bank, co-operative bank or a post office savings bank. Necessary notification in this regard is being issued.

It has also been provided that any capital expenditure in cash exceeding rupees ten thousand shall not be eligible for claiming depreciation allowance or investment-linked deduction. Similarly, the limit on revenue expenditure in cash has been reduced from Rs.20,000 to Rs.10,000.

In order to promote digital payments in case of small unorganized businesses, the rate of presumptive taxation has been reduced from 8% to 6% for the amount of turnover realised through cheque/digital mode.

Restriction on receipt of cash donation up to Rs. 2000 has been provided on political parties for availing exemption from Income-tax. Further, it has also mandated that any donation in cash exceeding Rs.2000 to a charitable institution shall not be allowed as a deduction under the Income-tax Act.

4. Mandatory Quoting of Aadhaar for PAN Applications & Filing Return of Income

Ministry of Finance vide Press Release dated 5th April, 2017 has provided Section 139AA of the Income-tax Act, 1961 as introduced by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form, for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017.

It is clarified that such mandatory quoting of Aadhaar or Enrolment ID shall apply only to a person who is eligible to obtain Aadhaar number. As per the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, only a resident individual is entitled to obtain Aadhaar. Resident as per the said Act means an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment. Accordingly, the requirement to quote Aadhaar as per section 139AA of the Income-tax Act shall not apply to an individual who is not a resident as per the Aadhaar Act, 2016.

5. CBDT notifies revised audit report format for claiming deduction U/s. 80JJAA

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 26 dated 3rd April, 2017 has notified the revised audit report format for claiming deduction under section 80JJAA (Deduction in respect of employment of new employees.) of the Income Tax Act, 1961. The Income Tax Rules, 1962 has been revised in this regard and a new rule 19AB - Form of report for claiming deduction under section 80JJAA has been introduced.

6. Extension of time to Furnish PAN/Form 60 to Banks

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 27/2017 dated 5th April, 2017 has extended time to furnish Permanent Account Number (PAN) or Form 60 by bank account holders who have not furnished the same at the time of account opening or subsequently to on or 30th day of June 2017.

http://www.incometaxindia.gov.in/communications/notification/notification27_2017.pdf

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7. Section 269ST not to apply on receipt from Bank or Post Office

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 28/2017 dated 5th April, 2017 has notified that Section 269ST (Section introduced to put a limit on Cash Transaction to put a check on Black Money and Tax Theft) shall not apply to cash receipt from Banking company, post office savings bank or co-operative bank.

http://www.incometaxindia.gov.in/communications/notification/notification28_2017.pdf

8. CBDT issues PAN and TAN within 1 day to improve Ease of Doing Business

Central Board of Direct Taxes, has tied up with Ministry of Corporate Affairs (MCA) to issue Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) in 1 day. Applicant companies has to submit a common application form SPICe (INC 32) on MCA portal and once the data of incorporation is sent to CBDT by MCA, the PAN and TAN are issued immediately without any further intervention of the applicant. CBDT has also introduced the Electronic PAN Card (E-PAN) which is sent by email, in addition to issue of the physical PAN Card, to all applicants including individuals where PAN is allotted. Applicant would be benefited by having a digitally signed E-PAN card which they can submit as proof of identity to other agency electronically directly or by storing in the Digital Locker.

http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/613/CBDT-issues-PAN-TAN-within-1-day-improve-Ease-Doing-Business-11-4-2017.pdf

9. Clarification on removal of Cyprus from the list of notified jurisdictional areas under Section 94A of the Income Tax Act, 1961

Ministry of Finance (Department of Revenue) has issued a Clarification on removal of Cyprus from the list of notified jurisdictional areas under Section 94A of the Income Tax Act, 1961. Cyprus was specified as a "notified jurisdictional area" (NJA) under section 94A of the Income Tax Act, 1961 vide Notification N0.86/2013 dated 01.11.2013. The said Notification No. 86/2013 was subsequently rescinded vide Notification No. 114 dated 14.12.2016 and Notification No. 1 19 dated 16.12.2016 with effect from the date of issue of the notification. For removal of doubts, it is hereby clarified that Notification No. 86/2013 has been rescinded with effect from the date of issue of the said notification, thereby, removing Cyprus as a notified jurisdictional area with retrospective effect from 01.11.2013.

http://www.incometaxindia.gov.in/communications/circular/circular15_2017.pdf

10. Date for filing of declaration under PMGKY extended up

Ministry of Finance vide Press Release dated 21st April, 2017 Central Board of Direct Taxes (CBDT) vide Circular No.14 of 2017 dated 21st April, 2017 has extended the date of filing of declaration under PMGKY to 10th May, 2017 in cases where tax, surcharge and penalty under PMGKY has been paid on or before the 31st March, 2017, and deposit under the Deposit Scheme has been made on or before the 30th April, 2017.

11. Lease Rent from letting out buildings/developed space along with other amenities in an Industrial Park/SEZ to be treated as business income

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Circular No. 16/2017 dated 25th April, 2017 it has now been decided that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by

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the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profit and Gains of Business'.
http://www.incometaxindia.gov.in/communications/circular/circular16_2017.pdf

12. Method of valuation for the purposes of sub-section (2) of section 115TD

Ministry of Finance, Central Board of Direct Taxes (CBDT) vide Notification No. 32/2017 dated 21st April, 2017 has prescribed the Method of valuation for the purpose of Section 115TD(2) with regard to Special provisions relating to tax on Accreted Income of Certain Trusts and Institutions. Now the aggregate the aggregate fair market value of the total assets of the trust or institution, shall be the aggregate of the fair market value of all the assets in the balance sheet as reduced by-
(i) any amount of income-tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act, and
(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.
http://www.incometaxindia.gov.in/communications/notification/notification32_2017.pdf

13. PFRDA smoothens the Process of Registration of Retirement Advisers; Process of submitting application transformed from Physical Mode to Online Mode.

Ministry of Finance vide Press Release dated 25th April, 2017 it has been announced that the process of registration of Retirement Advisers, Pension Fund Regulatory and Development Authority (PFRDA) has transformed the process of submitting application from physical mode to online mode.
The applicants can now submit their application online and upload scanned images of all the required documents. This will reduce the application processing time. PFRDA is registering Retirement Advisers for widening the coverage of NPS by facilitating on boarding of the subscribers and also providing advisory services to them for allocating assets under NPS and choosing Pension Fund Managers.
"Retirement Adviser" can be any individual, registered partnership firm, body corporate, or any registered trust or society, which desires to engage in the activity of providing advice on National Pension System or other pension schemes regulated by PFRDA to prospects / existing subscribers or other persons or group of persons and is registered as such under the PFRDA (Retirement Advisers) Regulations.
NISM and FPSB India are providing necessary certification in order to become eligible for registration as Retirement Adviser. However, Investment Advisers registered with SEBI are exempted from the requirement of such certifications and they can directly submit their application to PFRDA for registration.

14. FAQs on GST

Ministry of Finance vide Press Release dated 25th April, 2017 has issued the Frequently Asked Questions (FAQs) on GST.
http://pibphoto.nic.in/documents/rlink/2017/apr/p201742502.pdf

15. Service Tax Return filing date extended to 30th April, 2017

Ministry of Finance, Central Board of Excise and Customs vide Order No. 1/2017 dated 25th April, 2017 has extended the date of submission of Form ST 3 for the period from 1St October 2016 to 31st March 2017, from 25th April, 2017 to 30th April. 2017.

TAXATION UPDATES

16. DVAT return filing due date for 4th quarter extended to May 15, 2017

Department of Trade and Taxes, vide Circular No. 2 dated 28th April, 2017 hereby extend the last date of filing of online/hard copy of fourth quarter return for the year 2016-17, in Form DVAT-T6 ,DVAT-17 and DVAT-48 along with required annexure/enclosures up to 15/05/2017.

OTHER LEGAL UPDATES

1. Cabinet approves MoU between India and Australia on cooperation in the field of Health and Medicine

The Cabinet vide Press Release dated 5th April, 2017 dated has approved the MoU between India and Australia on cooperation in the field of Health and Medicine.

The main areas of cooperation include the following:

1. Communicable diseases such as Malaria and TB;
2. Mental Health and Non-Communicable Diseases;
3. Anti-Microbial Resistance and responding to public health emergencies;
4. Regulation of Pharmaceuticals, vaccines and medical devices;
5. Digital Health;
6. Tobacco Control; and
7. Any other area of cooperation decided mutually between the two countries.

The MoU will involve cooperation through joint initiatives in the Health Sector and strengthen bilateral ties between India and Australia.

2. Guidelines on insurance e-commerce

Ministry of Finance vide Press Release dated 7th April, 2017 announced that Insurance Regulatory and Development Authority of India (IRDAI) has issued guidelines on insurance e-commerce dated 9th March, 2017. IRDAI has informed that the guidelines issued by the Authority enable insurers and insurance intermediaries to set-up Insurance Self-Network Platforms (ISNP) to sell and service insurance policies. The said guidelines lay down the manner and procedures of grant of permission for establishing an ISNP for undertaking insurance e-commerce activities in India.

Further, e-commerce is seen as an effective medium to increase insurance penetration and enhance financial inclusion in a cost-efficient manner. As part of its developmental mandate, IRDAI has issued these guidelines to promote e-commerce in insurance space which is expected to lower the cost of transacting insurance business and bring higher efficiencies and greater reach.

3. Government makes compliance of Labour Laws and Rules easy - Government reduces number of forms and Reports from 36 to 12 to lessen costs and compliance burden of various establishments

Ministry of Labour & Employment vide Press Release dated 10th April, 2017 has announced that The Government has undertaken an exercise to promote ease of compliance of Labour Laws and Rules by various establishments. The "Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017" has reduced the number of forms and reports prescribed under 3 Acts and the Rules made thereunder from 36 to 12. The overall aim of the exercise is to make the forms and reports easy to understand for the users.

While reviewing the requirement of filing forms under various Labour Lawsit was observed that 36 forms prescribed under 3 Acts and the Rules made thereunder had several overlapping/redundant fields. Therefore, an exercise was undertaken by the Ministry of Labour and Employment to do away with overlapping fields and reduce the number of forms. An intention notification for reducing the number of forms and reports was placed in the public domain on 9th February, 2017 and objections and suggestions thereon were sought from all stake-holders.

The Labour Laws under which these forms are filed include:

(I) The Contract Labour (Regulation and Abolition) Act, 1970

(II) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

(III) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

OTHER LEGAL UPDATES

4. Cabinet approves implementation of Supreme Court's Judgment regarding Target Plus Scheme (TPS) under Foreign Trade Policy (FTP) 2004-09

Cabinet vide Press Release dated 12th April, 2017 has approved implementation of Supreme Court's Judgment regarding Target Plus Scheme (TPS) under Foreign Trade Policy (FTP) 2004-09. Benefit is being extended to all the applicant exporters eligible as per provisions of the initially notified TPS Scheme under FTP for the year 2005-06, and as per provisions of Foreign Trade Policy 2004-09 throughout the country.

The Target Plus Scheme (TPS) 2005-06 was already implemented partially. However, the claims which were denied as a result of retrospective Notification will be now settled as per direction of the Supreme Court in the CA No. 554 of 2006. The scheme has been discontinued w.e.f. 01.04.2006.

The claims will be considered as per original notifications till the date of the Notification No. 48 dated 20.02.2006 and Notification No. 8 dated 12.8.2006. The guidelines and modalities for processing the claims will be worked out by the DGFT HQs in consultation with Deptt. of Revenue and is proposed to be completed in one year from the date of approval of the Cabinet.

The corrective measure will bring an end to multiple litigations with the Government and the claims under the TPS will be issued as per original provisions under Foreign Trade Policy in compliance with the decision of the Hon'ble Supreme Court.

5. Cabinet approves setting up of a Special Purpose Vehicle to be called Government e-Marketplace (GeM SPV) –

Cabinet vide Press Release dated 12th April, 2017 has given its approval for the following:-

Setting up of a Special Purpose Vehicle to be called Government e-Marketplace (GeM SPV) as the National Public Procurement Portal as Section 8 Company registered under the Companies Act, 2013, for providing procurement of goods & services required by Central & State Government organizations. GeM SPV shall provide an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services in a transparent and efficient manner.

DGS&D shall be wound up and cease its functions by 31st October, 2017. In case it is not possible to wind up DGS&D by 31st October, 2017, the Department may extend the date of closure with proper justification latest upto 31st March, 2018.

6. The Maternity Benefit (Amendment) Act, 2017

The Ministry of Labour and Employment has released a set of clarifications addressing concerns under the provisions of the Maternity Benefit (Amendment) Act, 2017. The release clarifies that the Act is applicable to contractual or consultant women employees, as well as to the women who are already on maternity leave at the time of enforcement of the Amendment Act. Further, the Act is also applicable to all mines, plantations, shops and establishments and factors, whether in organized or unorganized sector. However, the women employees who have already availed 12 weeks of maternity leave before the enforcement of the Act shall not be entitled to avail the extended benefit of a 26 weeks leave. The Act had received the assent of the President on March 27, 2017, and had come into force on April 1, 2017. However, the provision for creche facilities shall be enforced from July 1, 2017.

http://www.labour.nic.in/sites/default/files/The%20Maternity%20Benefit%20%28Amendment%29%20Act%2C2017%20-Clarifications.pdf

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