

### Highlights

- DIPP issues Consolidated FDI Policy, 2015
- Cabinet reviews FDI Policy on investments by NRIs, PIOs and OCIs
- Cabinet reviews investment limit for cases requiring prior approval of FIPB
- RBI notifies on ECB lending denominated in Indian Rupees by overseas lenders
- Lok Sabha passes the Goods and Services Tax Bill
- The Companies Act, 2014 amended
- MCA amends the Companies (Incorporation Rules), 2014
- MCA amends the Companies (Share Capital and Debentures) Rules, 2014
- MCA amends the Companies (Declaration and Payment of Dividends) Rules, 2014
- RBI dispenses with the requirement of declaration in Indian Rupees by overseas lenders
- RBI has increased the trade related remittances limit under Rupee Drawing Arrangement
- RBI clarifies on Foreign Currency (Non-Resident) Account (Banks) FCNR (B) Scheme
- RBI clarifies on FDI inflows

## Corporate Brief

### ➔ DIPP issues Consolidated FDI Policy, 2015

**DIPP** has issued the Consolidated FDI Policy, 2015 in supersession of all the press notes, press releases, clarifications, circulars etc. in relation to FDI, which were in force as on 11<sup>th</sup> May, 2015. Highlights of the key changes and clarifications are as follows: (a) where the non-resident investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company will be responsible for filing FC-TRS with the AD Category-Bank instead of transferor or transferee; (b) In cases of transfer of shares from one non-resident to another non-resident investor in the investee company which is under approval route, approval of FIPB shall be obtained; (c) FIPB approval will not be required for the issue of ESOP's or in cases of mergers or acquisitions, taking place in the companies engaged in the automatic route sectors; (d) FIPB approval shall not be required in respect of additional foreign investment beyond the approved investment limits subject to the condition that the approved foreign equity percentage is maintained. [See DIPP circular D/o IPP F.No. 5(1)/2015-FC-1 issued by RBI dated April 23, 2015]

### ➔ Cabinet reviews FDI Policy on investments by NRIs, PIOs and OCIs

**Union Cabinet** has reviewed the FDI Policy on investments by Non Resident Indians (NRIs), Person of Indian Origin (PIOs) and Overseas Citizens of India (OCIs) and gave its approval to amend the FDI Policy. Highlights of the amendments are as follows: (a) NRI will now include OCI cardholders as well as PIO cardholders. (b) Investment by NRIs on non-repatriable basis will be deemed to be domestic investment at par with the investment made by residents. [See Press Information Bureau, Government of

India, Cabinet Committee on Economic Affairs (CCEA), Print Release dated May 21, 2015]

### ➔ Cabinet reviews investment limit for cases requiring prior approval of FIPB

**The Cabinet Committee on Economic Affairs** has approved the proposal of DIPP to review the investment limit for cases requiring prior approval of FIPB/ Cabinet Committee on Economic Affairs (CCEA), as provided in the Consolidated FDI Policy Circular effective from April 17, 2014 as follows: The Ministry of Finance who is in charge of FIPB would consider the recommendation of FIPB on proposals with total foreign equity inflow up to Rs. 3000 crores. Recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 3000 crore would be placed for consideration of CCEA. [See Press Information Bureau, Government of India, Cabinet Committee on Economic Affairs (CCEA), Print Release dated May 06, 2015]

### ➔ RBI notifies on ECB lending denominated in Indian Rupees by overseas lenders

**RBI** had permitted recognized ECB lenders to extend loans in Indian Rupees subject to, *inter alia*, the lender mobilizing Indian Rupees through a swap undertaken with an AD Category-1 Bank in India. In order to facilitate ECB lending denominated in INR by overseas lenders, RBI has now permitted such lenders to enter into swap transactions with their overseas bank which shall, in turn enter into a back-to-back swap transactions with any AD Category-1 Bank in India as per the specified procedure. [See A.P. (DIR Series) Circular No. 103 dated May 21, 2015]

### ➔ Lok Sabha passes the Goods and Services Tax Bill

**Lok Sabha** has passed The Constitution (One Hundred and Twenty-Second Amendment) Bill ('The Bill') to introduce the goods and services tax ('GST'). The GST includes various central indirect taxes including the Central Excise Duty, Countervailing Duty, Service Tax, etc. and state value added tax, octroi and entry tax, luxury tax, etc. Highlights of the Bill are: (a) A new Article has been inserted in the Constitution to give the central and state governments the concurrent power to make laws on the taxation of goods and services. (b) The President has to constitute a Goods and Services Tax Council within sixty days of the Act coming into force. The GST Council will aim to develop a harmonized national market of goods and services. (c) The centre may levy and collect GST on supplies in the course of inter-state trade or commerce. The tax collected would be divided between the centre and the states in a manner to be provided by Parliament, by law, on the recommendations of the GST Council.

➔ **The Companies Act, 2013 amended**

**The Companies (Amendment) Bill, 2015** ('the Amendment Act') has received the assent of the President and has been notified by MCA amending the provisions of the Companies Act, 2013 ('The Act'). Highlights of the amendments are: (a) Sub-sections 68 and 71 of Section 2 of the Act has been amended to omit the mandatory requirement of minimum paid up capital. (b) Section 9 of the Act has been amended to make the common seal optional. (c) Section 11 of the Act dealing with the provisions for commencement of business etc. has been omitted. Hence the requirement of filing a declaration and verification by director with the Registrar for commencement of business of the company has been done away with. (d) Section 185 of the Act, dealing with the provisions related to loan to directors etc, has been amended to insert two new clauses specifying the circumstances under which the provisions of Section 185 shall not be applicable. (i) if any loan is made by a holding company to its wholly owned subsidiary company, or any guarantee is given or security is provided by a holding company in respect of the loan made to its wholly owned subsidiary company; (ii) if any guarantee is given or security is provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company. (e) Section 188 of the Act, dealing with the provisions related to related party transactions, has been amended to substitute 'special resolution' with 'resolution'. The provisions of the Amendment Act shall come into force on such date as may notified by the Central Government. The Central Government has appointed 29<sup>th</sup> May, 2015 as the date on which the amended provisions of sections 1 to 12 and 15 to 23 of the Act shall come into force. [See *The Gazette of India, Ministry of Law and Justice, Legislative Department, No. 21 of 2015 dated May 25<sup>th</sup>, 2015 and MCA Notification File No. 1/6/2015-CL.V dated 29<sup>th</sup> May, 2015*]

➔ **MCA amends the Companies (Incorporation Rules), 2014**

**MCA** has amended the Companies Incorporation Rules, 2014 ('The Rules'). Highlights of the amendments include the following: (a) Rule 5 dealing with penalty has been replaced with Rule 7A. Earlier, if a One Person Company or any officer of the Company contravenes any of the provisions of the Rules, it was punishable with fine which may extend to Rs. 10,000 (Rupees Ten Thousand) and with a further fine of Rs. 1,000 (Rupees One Thousand) for every day after the first offence during which such contravention continues. Now the fine has been reduced to Rs. 5,000 (Rupees Five Thousand) and further fine of Rs. 500 (Rupees

Five Hundred) per day for continuing default. (b) The procedure for incorporation has been integrated and is applicable with effect from 01/05/2015. The application for allotment of DIN upto 3 directors, reservation of name, incorporation of company and appointment of directors of the proposed company will be filed in integrated form no. INC-29, for One Person Company, private company, public company and Producer Company with the Registrar. (c) Rule 24 dealing with the provisions for filing of declaration at the time of commencement of business has been omitted. [See *MCA Notification No. 01/13/2013 CL-V (Part-I) dated May 01, 2015 and MCA notification File No. 1/13/2013-CL-V dated May 29<sup>th</sup>, 2015*]

➔ **MCA amends the Companies (Share Capital and Debentures) Rules, 2014**

**MCA** has amended the Companies (Share Capital and Debentures) Rules, 2014 ('The Rules') to revise Rule 5 of the Rules. Highlights of the amendments are: (a) Where a company does not have any common seal, the share certificates shall be signed by 2 directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary. (b) In case the One Person Company does not have a common seal, the share certificate shall be signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose. [MCA Notification File No. 1/4/2013 CL-V dated May 29<sup>th</sup>, 2015]

➔ **MCA amends the Companies (Declaration and Payment of Dividend) Rules, 2014**

**MCA** has amended the Companies (Share Capital and Debentures) Rules, 2014 ('The Rules') to omit sub-rule (5) of rule 3 of the Rules. The said sub-rule restricted companies to declare dividends unless carried over previous losses and depreciation not provided in previous year are set off against the current year profit of the company. [MCA notification F.No. 1/31/2013-CL-V-Part dated May 29<sup>th</sup>, 2015]

➔ **RBI dispenses with the requirement of declaration of exports of goods/software**

**RBI** has decided to dispense with the requirement of filing declaration of the export of Goods/ Software in Form SDF under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, in case of export taking place through the Electronic Data Interchange (EDI) ports, as the mandatory statutory requirements contained in the SDF have been subsumed in the Shipping Bill format. [See *A.P.(DIR Series) Circular No.101 dated May 14, 2015*]

➔ **RBI has increased the trade related remittance limit under Rupee Drawing Arrangement**

**RBI** has reviewed the permitted transactions under the Rupee Drawing Arrangements (RDA) and decided to increase the limit of trade transactions from the existing Rs. 5,00,000/- (Rupees Five Lakh only) per transaction to Rs. 15,00,000/- (Rupees Fifteen Lakh only) per transaction, with immediate effect. Further RBI has permitted AD banks to regularize payments exceeding the prescribed limit under RDA provided they are satisfied with the bonafide of the transaction. [See A.P. (DIR Series) Circular No. 102 dated May 21, 2015]

➔ **RBI clarifies on Foreign Currency (Non-Resident) Account (Banks) FCNR (B) Scheme**

**RBI**, after noticing that AD Banks are insisting on different requirements at the time of closure of FCNR (B) deposits and subsequent remittance of funds, clarified the following: (a) Form A2 is to be filed at the time of purchase of foreign exchange using rupee funds and hence not applicable while remitting FCNR (B) funds. (b) Banks, with the help of technology, will have to devise better alternatives/methods for ensuring bonafides of the transaction rather than insisting on physical presence of the account holder, in order to ensure hassle free remittance of funds to the account holder. [See A.P. (DIR Series) Circular No. 98 dated May 14, 2015]

➔ **RBI clarifies on FDI inflows**

**RBI** has clarified that in terms of the Regulations framed under FEMA, 1999, an Indian company receiving FDI does not require prior approval of RBI at any stage. It is only required to report the capital inflow and subsequently the issue of shares to the RBI in prescribed formats. [See RBI Press Release: 2014-2015/2472 dated May 22, 2015]

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