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# Corporate Brief

## ➲ *FDI in brownfield pharma may get stringent conditions.*

**Recent** data on FDI into the Indian pharma sector suggests that nearly 96% of the total FDI in the sector between April 2012 and April 2013 was made in brownfield pharma companies. However there is a growing concern that the acquisitions do not result in drug development, but are mostly done to conduct clinical trials. In this backdrop, the Department of Industrial Policy and Promotion ('DIPP') has issued a draft Cabinet Note proposing steps to tighten the FDI conditions for investors acquiring stakes in the Indian pharma sector.

As per the note, foreign investors would not be allowed to close down existing R&D centers of the investee company. Additionally, at least 25% of the investment amount is to be spent in R&D within 3 years of the acquisition. The note also proposes to cap FDI in rare or critical pharma verticals to 49%; and makes it mandatory for investors to include non-compete clauses in their shareholder's agreements.

## ➲ *RBI notifies definition of 'group companies'.*

**RBI** has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 to incorporate therein the definition of 'Group Company'. Pursuant to the inclusion, 'Group Company' means two or more enterprises which, directly or indirectly, are in position to: (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.
*[See A.P. (DIR Series) Circular No.68 dated 01.11.2013]*

## ➲ *FIIs and QFIs among those allowed to invest in the credit enhanced bonds.*

**SEBI-registered** Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors, such as, Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks, are already allowed to purchase, on repatriation basis, Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company. The present limits for investments by FIIs, QFIs and long term investors registered with SEBI in Government securities and corporate debt is USD 30 billion and USD 51 billion, respectively.

RBI has now allowed SEBI-registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs) and long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks - to invest in the credit enhanced bonds up to a limit of USD 5 billion within the overall limit of USD 51 billion earmarked for corporate debt.
*[See A. P. (DIR Series) Circular No.74 dated 11.11.2013]*

## ➲ *Old law on loan to directors to remain.*

**The** Ministry of Corporate Affairs has issued a clarification stating that Section 372A of the erstwhile Companies Act, 1956, that dealt with inter-corporate loans and investments, shall continue to be in force till Section 186 (which corresponds to Section 372A) of the new Companies Act, 2013 is notified. Section 372A provides that no company shall directly or indirectly (i) make any loan to any other body corporate, (ii) give any guarantee, or provide any security, in connection with a loan made by any other person to, or to any other person by any body corporate, and (iii) acquire, by way to subscription, purchase or otherwise the securities of any other body corporate, exceeding 60% of its paid-up share capital and free reserves, or 100% of its free reserves, whichever is more.

## ➲ *Govt. widens definition of 'Infrastructure Lending.'*

**Last** year RBI had harmonised the definition of Infrastructure Lending with that of the 'Master List of Infrastructure Sub-Sectors' notified by the Government of India on March 27, 2012. The Government has further updated the harmonised master list to include hotels with project cost of more than INR 200 crore each in any place in India and of any star rating and convention centres with project cost of more than INR 300 crore each. The RBI has said that the new sub-sectors will get classified as 'infrastructure' for the purpose of lending by banks and select All India Term-Lending and Refinancing Institutions wef. 25.11.2013.
*[See RBI Circular DBOD.BP.BC.No.66/08.12.014/2013-14 dated 25.11.2013]*

## ➲ *RBI issues draft norms for bank's entry into insurance business.*

**RBI** has issued draft norms for banks interested in entering the insurance brokerage business. The norms will allow banks to undertake insurance broking with prior permission of the RBI. The approvals granted will be initially for a period of 3 years. Banks offering insurance broking services must have a net worth of not less than INR 500 crore and capital adequacy of not less than 10%. They should also not have non-performing assets of more than 3% of their loans, and must have made a profit for the previous 3 consecutive years.

## ➲ *SEBI tightens disclosure norms for listed companies.*

**SEBI** has issued a circular whereby it has ordered stock exchanges to monitor secondary market disclosures by listed companies. The Equity Listing Agreement mandates listed companies to make periodic event-based disclosures which are price sensitive in nature and which will have a bearing on the performance or operations of the company. SEBI has raised concerns that the contents of the disclosures made by the companies are at times not adequate or accurate. As a result, investors are unable to make informed investment decisions based on such disclosures.

As per the circular, SEBI-recognised stock exchanges have been directed to (i) put in place appropriate framework to adequately monitor the disclosures, (ii) devise frameworks to detect non-compliance, (iii) put in place mechanisms for handling disclosure/ non-compliance-related complaints, (iv) submit to SEBI an 'Exception Report', and (v) obtain details of promoters/ directors and key managerial personnel.

The stock exchanges are also required to keep themselves informed and updated of media reports on listed company. Stock exchanges have also been directed to compare disclosure filings of a company with those of the previous year.
*[See SEBI Circular No. CIR/CFD/POLICYCELL/13/2013 dated 18.11.2013]*

## ➲ *SEBI set to overhaul employee stock option schemes.*

**SEBI** has issued a discussion paper wherein it has proposed to overhaul the existent stock-related employee benefit schemes. The proposals include allowing companies to purchase shares from the open market through such schemes. An umbrella regulation covering various employee benefit schemes (such as employee stock ownership plans, employee stock purchase schemes, and stock appreciation rights) shall be issued to cover the same. It may be noted that in January 2013, SEBI has prohibited secondary market purchases by employee welfare trusts.

Secondary market acquisitions will allow companies to grant options to its employees without having to dilute their existing share capital. As per the discussion paper, companies will be able to purchase shares from the secondary market subject to a ceiling of 2% of the paid up capital per financial year, and overall ceiling of 5% for all stock-related employee benefit schemes. Companies may grant shares even after hitting the ceiling by issue of fresh shares.

# Litigation Brief

## ➲ *Medical opinion not mandatory for civil cases.*

**Earlier**, the Hon'ble Supreme Court in the case of *Martin F. D'Souza vs. Mohd. Ishfaq* [(2009) 3 SCC 1], held that in cases where a complaint, whether consumer or criminal, is filed against a doctor/hospital, then before issuing notice to the doctor or hospital against whom the complaint was made, the consumer forum or criminal court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence, notice should be issued to the concerned doctor or hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. However, now in a recent case of *A. Srimannarayana vs. Dasari Santakumari and Another* [(2013) 9 SCC 496], the Hon'ble Supreme Court observed that the mandatory direction issued for expert medical opinion in Martin F. D' Souza Case, is only meant for criminal cases and not for civil cases filed in consumer fora for the purposes of determining civil liability. Thus, the consumer complaint is maintainable even without the expert medical opinion.

## ➲ *SAT defines scope and interpretation of SAST Regulations.*

**The** main issue in the case of *Smt. Madhuri S Pitti and Others vs. SEBI*, before the Securities Appellate Tribunal, Mumbai ('SAT') in Appeal No. 2 of 2013 involves the multifaceted yet plain distinction and application of Regulations 10 and 11 of the Substantial Acquisition of Shares and Takeovers Regulations, 1997 ('SAST'). Regulation 10 mandates an acquirer, whether acting individually or collectively as a group, to make a public offer if the shareholding of such an acquirer crosses the threshold of 15%. Whereas, Regulation 11, lays down the concept of creeping acquisition and its limit as 5% in a year for an acquirer who already holds between 15 % to 55% shares in a given company, whether individually or with persons acting in concert.

The SAST Regulations, 1997 have since been replaced by the SAST Regulations, 2011. The new Regulation mandates the making of an open offer for acquiring shares of a target company irrespective of its aggregate shareholding with persons acting in concert if the shareholding of such an individual person exceeds the threshold limit prescribed by Regulation 10. The limit has also been increased from 15% to 25%. The SAT held that SEBI could not have invoked the 2011 regulation in respect of the acquisition that took place during 2006-07.

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