

### Highlights

- MCA notifies rules for omnibus approval for Related Party Transactions
- The Negotiable Instruments Act, 1881 amended
- SEBI issues Consultation Paper for public issue of REITs
- SEBI issues Consultation Paper for public issue of InvITs
- SEBI proposes norms for issuance of Green Bonds
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- IRDAI advises insurers to report compliances with Guidelines of Indian Ownership and Control
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- The Payment of Bonus Act, 1966 amended
- Indian Performing Rights Society Limited v. Sanjay Dalia, (2015) 10 SCC 161

## Corporate Brief

### ➔ MCA notifies rules for omnibus approval for Related Party Transactions

**MCA** has amended the Companies (Meetings of Board and its Power) Rules, 2014 to insert Rule 6A for omnibus approval for related party transactions on annual basis. All related party transactions will now require approval of Audit Committee and the Audit Committee may make omnibus approval for related party transactions subject to the conditions *inter alia* including the following: (a) The Audit Committee shall specify the criteria for making the omnibus approval. (b) The Audit Committee shall consider the following factors while specifying the criteria for making the omnibus approval, namely: repetitiveness of the transactions and justification for the need of omnibus approval. (c) The omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year. (d) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company. [See MCA Notification F.No. 1/32/2013-CL-V-Part dated December 14, 2015]

### ➔ The Negotiable Instruments Act, 1881 amended

**The Negotiable Instruments Act, 1881 ('The Act')** has been amended. Highlights of the amendments are: (a) Section 142(2) is inserted to clarify the jurisdictional issues for trying cases for offences committed under section 138 of the Act. Section 138 of the Act deals with the offence pertaining to dishonour of cheque for insufficiency etc. of funds in the account. The offence under section 138 of the Act shall now be inquired and tried only by a court within whose local jurisdiction (i) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder maintains the account, is situated; and (ii) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account is situated. (b) Section 142 A has been inserted to

provide that if complained is filed by the payee or the holder in due course against the drawer before the Court having jurisdiction under section 142 (2), all further complaints arising out of Section 138 shall be filed before the same Court where the first complaint is filed, irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that Court. [See the Gazette of India, Ministry of Law and Justice dated 26<sup>th</sup> December, 2015]

### ➔ SEBI issues Consultation Paper for public issue of REITs

**SEBI** has issued Consultation Paper for guidelines for public issues of units of Real Estate Investment Trusts (REITs). Highlights of the Consultation Paper are: (a) Manager of REIT shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries. (b) Draft offer document shall be filed with SEBI and the designated stock exchange. (c) Shares of REIT shall be allocated as follows: (i) not more than 75% to qualified institutional buyers, and (ii) not less than 25% to other investors. (c) Manager may allocate upto 60% of the portion for allocation to qualified institutional investors to anchor investors. (d) REIT shall deposit, before the opening of subscription, and keep deposited with the stock exchange, an amount calculated at the rate of 0.5% of the amount of units offered for subscription to the public. (e) An issue shall be kept open for atleast 3 working days from the date of filing the offer document with the Board. A public issue shall be kept open for atleast 3 working days but not more than 30 days. [See SEBI Consultation paper on guidelines for public issue of units of Real Estate Investment Trust dated December 31, 2015]

### ➔ SEBI issues Consultation Paper for public issue of InvITs

**SEBI** has issued Consultation Paper for guidelines for public issues of units of Infrastructure Investment Trusts (InvITs). Highlights of the Consultation Paper are: (a) Investment Manager of InvIT shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries. (b) Draft offer document shall be filed with SEBI and the designated stock exchange. (c) Shares of InvIT shall be allocated as follows: (i) not more than 75% to qualified institutional buyers, and (ii) not less than 25% to other investors. (c) Investment Manager may allocate upto 60% of the portion for allocation to qualified institutional investors to anchor investors. (d) InvIT shall deposit, before the opening of subscription, and keep deposited with the stock exchange, an amount calculated at the rate of 0.5% of the amount of units offered for subscription to the public. (e) An issue shall be kept open for atleast 3 working days from the date of

filing the offer document with the Board. A public issue shall be kept open for atleast 3 working days but not more than 30 days. [See SEBI Consultation paper on guidelines for public issue of units of Infrastructure Investment Trust dated December 18, 2015]

### ➔ *SEBI proposes norms for issuance of Green Bonds*

**SEBI** has issued Concept Paper for issuance of Green Bonds as a means of financing and innovative financial instruments that can leverage a wider investor base such as pension funds, sovereign wealth funds, insurance companies etc. that can invest in the infrastructure sector. As per the Concept Paper, as of now there is no standard definition of Green Bonds, and on market practice Green Bonds means a debt instrument issued by an entity for raising funds from investors wherein the proceeds of a Green Bond offering are 'ear marked' for use towards financing 'green' projects. Issuance of Green Bond in India does not require any amendment to SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ('ILDS Regulations'). The Concept Paper proposes that the issue, listing and disclosure requirements as prescribed under ILDS Regulations will continue to be applicable, like any other regular corporate bond issuance. However for designating an issue of corporate bonds as green bonds, in addition to the compliance with the requirements under ILDS Regulations, an issuer shall have to make certain additional disclosure in the offer document about the Green Bonds namely, use of proceeds, project evaluation and selection, management of proceeds and reporting. [SEBI Concept Paper for Issuance of Green Bonds dated December 03, 2015]

### ➔ *IRDAI notifies regulations for issuance of capital by Indian Insurance Companies*

**IRDAI** has notified the IRDAI (Issuance of Capital by Indian Insurance Companies transacting other than Life Insurance Business) Regulations, 2013. These regulations are applicable to Indian Insurance Companies which has been granted certificate of registration to transact the business of general insurance, health insurance or reinsurance raising funds under the ICDR regulations. Highlights of the regulations are: (a) Such companies may raise funds under the ICDR regulations through any of the following methods: (i) divestment of equity by promoter or investor through a public offer for sale; or (ii) through issue of capital under ICDR regulations; or (ii) both the methods. (b) Any issue of capital other than as specified above shall require specific prior approval of IRDAI. (c) Such companies may issue fully paid up or partly paid up shares. Where partly paid up shares are issued, period exceeding one year for payment of calls on share shall not be allowed. (d) The approval granted by

IRDAI shall be valid for a period of one year from the date of issue of the approval letter. (e) IRDAI may direct Indian Insurance Companies transacting general insurance or health insurance or reinsurance business to get listed on the stock exchange if the circumstances so warrant. [See IRDAI Notification No. F. No. IRDAI/ Reg/21/111/2015 dated December 15, 2015]

### ➔ *IRDAI advises insurers to report compliances with Guidelines of Indian Ownership and Control*

**IRDAI** has advised all insurers to confirm and report compliance as envisaged in the applicable insurance law within 3 months of the date of the Guidelines on Indian Ownership and Control, i.e. on or before 18<sup>th</sup> January, 2016. All insurer who are not in position to comply with the stipulations as regards the Indian ownership and control should furnish a confirmation on or before 18<sup>th</sup> January, 2016, from their Board of Directors assuring of reporting compliance within a maximum period of six month from the date of the Guidelines. [See IRDAI Circular dated December 23, 2015]

### ➔ *RBI introduces Cross Currency Futures and Exchange Traded Option Contracts*

**RBI** has, in order to enable direct hedging of exposure in foreign currencies and facilitate execution of cross-currency strategies by market participants, decided to permit the recognized stock exchanges to offer cross-currency futures contracts and exchange traded option contracts in the currency pairs of EUR-USD, GBP-USD and USD-JPY. Recognised stock exchanges are also permitted to offer exchange traded currency option contracts in EUR-INR, GBP-INR and JPY-INR in addition to the existing USD-INR option contract, with immediate effect. Accordingly Currency Futures (Reserve Bank) (Amendment) Directions, 2008 and Exchange Traded Currency Options (Reserve Bank) (Amendment) Directions, 2015 have been issued. [See A.P.(DIR Series) Circular No. 35 dated December 10<sup>th</sup>, 2015]

### ➔ *CBDT notifies emails as new communication mode with taxpayers*

**CBDT** has amended the Income Tax Act, 1961 to permit the tax department to serve notices, summons, requisition and other communication to taxpayers through their registered emails as the new mode of official communication, as part of the government's e-initiative to reduce human interface and complaints of harassment and corruption in conducting tax related jobs.

### ➔ *The Payment of Bonus Act, 1966 amended*

**The Payment of Bonus (Amendment) Bill, 2015** has been passed by both the houses of Parliament. According to the Payment of Bonus Act, 1966 ('the Act') every employee who has worked for at least 30 days and draws a salary of INR 10,000 per month is eligible to receiving statutory bonus. The amendment has increased the eligibility limit to a salary threshold of INR 21,000 per month. Further as per the Act, if an eligible employee's salary is more than INR 3,500 per month. The amendment has enhanced the monthly bonus calculation ceiling to Rs. 7000 from existing Rs. 3500. [See the *Gazette of India, Ministry of Law and Justice (Legislative Department) dated December 31<sup>st</sup>, 2015*]

## Litigation Brief

### ➔ *Indian Performing Rights Society Limited v. Sanjay Dalia, (2015) 10 SCC 161*

The general rule with respect to territorial jurisdiction of Courts for civil suits is that the court having jurisdiction over: (i) Defendant's place of residence; or (ii) Defendant's place of work; or (iii) place where the cause of action wholly or partly arises. An exception to this rule is carved out in S.62 of the Copyright Act, 1957 and S.134 of the Trade Marks Act, 1999 which provide an additional forum before which a suit can be instituted, i.e., the place where the Plaintiff resides or works.

The conflict between these competing sections arose on account of the explanation to S.20, which states that a corporation shall be deemed to carry on its business from its sole or principal office, or in respect of a cause of action arising at any place where it has a subordinate office, then at such place. Plaintiffs/Corporations have taken to harassing the Defendants, by filing suits at the place the Plaintiffs have subordinate offices even when the cause of action has arisen at the place of their principal office/ residence contending that that the explanation of S.20 CPC cannot be used to read down the non-obstante clause of S.62 and S.134.

This conflict came up before the Supreme Court in the instant case. The Court while deciding the same, observed that the non-obstante clause in S.62 and S.134 removes the embargo placed on the Plaintiff and allows him to institute a suit at a place more convenient for him i.e., his place of residence or place of work/principal office. The Court applied Heydon's rule of mischief and further observed that the provisions must be purposively constructed in such a manner to avoid

any counter mischief. On that note, the Court concluded by categorically declaring that in a situation where the cause of action has arisen at the same place where the Plaintiff resides or works/ has a principal office, the suit should be filed at that place and not at places where he has subordinate offices.



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