

## Highlights

- RBI liberalizes existing hedging facilities
- RBI notifies on reporting by LLPs on Foreign Liabilities and Assets
- RBI announces Medium Term Framework for FPIs
- Foreign Law Firms not permitted to open Liaison Office in India
- SEBI notifies format of Listing Agreement
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- The Arbitration and Conciliation (Amendment) Ordinance, 2015 promulgated
- IRDA issues guidelines on "Indian owned and controlled"
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- RBI permits NRIs to subscribe to National Pension System
- TRAI mandates telecom companies to credit the account of consumer for each call drop
- Mohan Singh Gill v. State of Punjab (2015) 8 SCC 345

## Corporate Brief

### RBI liberalizes existing hedging facilities

**RBI** has decided to allow all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures, to book foreign exchange forward and FCY-INR options contracts up to 1,000,000 (USD one million) without any requirement of documentation on the basis of a simple declaration. [See A.P. (DIR Series) Circular No. 20 dated October 08, 2015]

### RBI notifies on reporting by LLPs on Foreign Liabilities and Assets

**RBI** has directed LLPs that have received FDI and / or made overseas investment in the previous year as well as current year, to submit Foreign Liabilities and Assets Return (FLA Return) to the RBI by July 15 every year, in the format prescribed vide A.P. (DIR Series) Circular No. 145 dated June 18, 2014. The FLA return was earlier required to be submitted only by Indian companies that has received FDI and/or made overseas investment. Any person violating the FDI Regulations is liable to penalty upto thrice the sum involved in such contraventions where such amount is quantifiable or upto Rupees two lakhs where the amount is not quantifiable. [See A.P. (DIR Series) Circular No. 22 dated October 21, 2015]

### RBI announces Medium Term Framework for FPIs

**RBI** has announced Medium Term Framework (MTF) for FPI limits in government securities. Features of MTF are: (a) The limits for FPI investment in debt securities will be fixed in Rupee terms; (b) The limits for FPI investment will be increased in phases to reach 5% of the outstanding stock by March 2018; (c) There will be a separate limit for investment by all FPIs in the State Development Loans which will be increased in phases to reach 2% of the outstanding stock by March 2018; (d) Effective increase in limits for the following two quarters will be announced every half year in March and September; (e) Aggregate FPI investment in any Central Government security would be capped at 20% of the outstanding stock of the security. Accordingly, for the current financial year, RBI has decided to enhance the limit for investment by FPIs in government securities in two tranches from October 12, 2015 and January 01, 2016. [See A.P. (DIR Series) Circular No. 19 dated October 16, 2015]

### Foreign Law Firms not permitted to open Liaison Office in India

**RBI** has been directed by the Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the Bar Council of India vs. A.K. Balaji & Ors., to not to grant any permission to any foreign law firms, on or after the date of the said interim order, for opening of Liaison Office in India. Hence RBI has notified that no foreign law firm shall be permitted to open any Liaison Office in India till further orders/ notification in this regard. However, foreign law firms which have been permitted prior to the date of interim order for opening Liaison Office in India may be allowed to continue provided such permission is still in force and no fresh permission or renewal of permission shall be granted by RBI or AD Banks. [See A.P. (DIR Series) Circular No. 23 dated October 29, 2015]

### SEBI notifies format of Listing Agreement

**SEBI** has notified a simplified listing agreement which is uniform across all types of securities / listed entities. Further a listed entity which has previously entered into agreement(s) with a recognized stock exchange(s) to list its securities shall be required to execute fresh listing agreement with such Stock Exchange within 6 months of the date of notification of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, i.e. September 2, 2015. [See SEBI Notification No. CIR/CFD/CMD/6/2015 dated October 13, 2015]

### SEBI notifies on investment by AIFs and VCFs in overseas venture capital undertakings

**SEBI** has decided to increase the limit. up to which venture Capital Fund (VCF) may invest in offshore venture capital undertaking having an Indian connection, from 10% to 25% of the investible funds of the VCF. VCFs shall not be allowed to invest in Joint Venture / Wholly Owned Subsidiary while making overseas investments and shall adhere to FEMA Regulations with respect to foreign direct investment under overseas direct investment route. SEBI has further decided to permit Alternative Investment Funds (AIFs) to invest in equity and equity linked instruments of offshore venture capital undertakings, subject to overall limit of USD 500 million. AIFs desirous of making investments in offshore venture capital undertakings shall be required to submit their proposal for investment to SEBI for prior approval and no separate permission from RBI shall be necessary in this regard. [SEBI Circular No. CIR/IMD/DF/7/2015 dated October 01, 2015]

### Arbitration and Conciliation (Amendment) Ordinance promulgated

**Arbitration and Conciliation (Amendment) Ordinance, 2015** has been promulgated to amend the Arbitration and Conciliation Act, 1996. Highlights of the amendments are: (a) Section 11 is amended to provide that the application for appointment of an arbitrator shall be disposed of by the Court or the Supreme Court as expeditiously as possible and an endeavor shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. (b) Section 12 is amended to provide that when a person is approached as arbitrator, he shall disclose in writing about the existence of interest in any of the parties or the subject matter in dispute. Any person whose

relationship with the parties or council or subject matter of the dispute falls under the category of Schedule 7 shall be ineligible to be appointed as arbitrator. (c) Section 29A has been inserted to provide that the arbitral award shall be made within a period of twelve months from the date of arbitral tribunal enters upon the reference. The period may be extended for a further period not exceeding six months, with the consent of the parties. (d) Section 29B has been inserted to provide for fast track procedure for conducting arbitration. Award in such case shall be given within a period of six months from the date the arbitral tribunal enters upon the reference. (d) Section 32(7)(b) has been amended to provide that the sum directed to be paid by an arbitral award shall carry an interest at the rate of two percent higher than the current rate prevalent on the date of award. (e) Party can file application for setting aside arbitral award under section 34 only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement. Further an application for setting aside arbitral award shall be disposed of within a period of one year from the date on which the notice is served upon the other party. [The Arbitration and Conciliation (Amendment) Ordinance, 2015 notified vide the Gazette of India dated October 23, 2015]

#### ➡ **IRDA issues guidelines on "Indian owned and controlled"**

**IRDA** has issued guidelines on "Indian owned and controlled" ('The Guidelines'). The Guidelines are applicable to Indian Insurance Companies. Highlights of the Guidelines are: (a) Both direct and indirect holding in an Indian Insurance Company shall not exceed 49%. (b) Control can be exercised by any one or more of the following criteria: (i) virtue of shareholding, (ii) management rights. (iii) shareholders agreement, (iv) voting agreements, or (v) any other manner as per the applicable laws. (c) Majority directors excluding independent directors should be nominated by the Indian promoter(s)/ Indian investor(s). (d) Appointment of key management person should be through the Board of Directors or by the Indian promoter(s) and/ or Indian investor(s). (e) Where chairman of the Board is having a casting vote, such Chairman should be nominated by the Indian promoter(s) and/ or Indian investor(s). (f) The Guidelines are also applicable to Insurance intermediaries such as brokers, third party administrators, surveyors and loss assessors etc.

#### ➡ **Guidelines for Development of Solar Parks issued**

**Ministry of New and Renewable Resources (MNRE)** has issued guidelines for Development of Solar Parks ("The Guidelines") under the Jawaharlal Nehru National Solar Mission. Highlights of the Guidelines are: (a) State Government will identify the land for setting up of the Solar Park. The State Government may prioritize government waste / non-governmental land in order to speed up the acquisition process. The use of private land may be minimized. The solar parks are preferred to be closer to Central Transmission Utility. The park must have atleast 5 acres per MW towards installations of solar projects. All infrastructural requirements outside the park will be the sole responsibility of the concerned State Government. (b) Solar Power Park Developer (SPPD) will be nominated by the State Government for development of solar

parks. The SPPD is tasked with acquiring the land for the park, cleaning it, leveling it wherever considered desirable and allocating the plots for individual projects. SPPD will be responsible for creating the internal transmission network on behalf of the solar project developers. (c) Solar Energy Corporation of India (SECI) may also receive proposals setting up solar power parks and forward to MNRE with their recommendation. SECI will coordinate with SPPD for construction of pooling substation, land development and other common facilities and ensure completion as per timeline. SECI will also coordinate with Power Grid Corporation of India Ltd. For construction of transmission line and grid connectivity and ensure that there is no mismatch in commissioning of solar projects and that of transmission lines. (d) The solar project developers will set up solar power projects inside the solar park in accordance with the scheme being implemented by the SPPD. The standards with regard to metering and connectivity to the grid shall be as per the regulations notified by CEA.

#### ➡ **TRAI mandates telecom companies to credit the account of consumer for each call drop.**

**TRAI** has amended the Telecom Consumer Protection Regulations, 2012 ('The Regulations') with an aim to provide financial disincentive upon access service providers for failure to meet the quality of service of cellular mobile telephone service providers (CMTSP). TRAI has observed that as the call drops are instances of deficiency in service delivery on part of the CMTSPs which cause inconvenience to the consumers, and hence it would be appropriate to put in place a mechanism for compensating consumers in the event of dropped calls. Accordingly, TRAI has notified that every CMTSPs shall credit one rupee for each dropped call within its network to the calling consumers as notional compensation. However such credit in the account of the calling consumer shall be limited to three dropped calls in a day (00:00:00 hours to 23:59:59 hours). The amendment will come into force from 1<sup>st</sup> January, 2016. [TRAI Notification No. 301-23/2015-F&EA dated October 26<sup>th</sup>, 2015]

## NRI Column

#### ➡ **RBI permits NRIs to subscribe to National Pension System**

**RBI**, in consultation with the Government of India, has permitted NRIs to enable National Pension System (NPS) as an investment option for NRIs under FEMA, 1999. Accordingly, NRIs may subscribe to the NPS governed and administered by the Pension Fund Regulatory and Development Authority, provided such subscriptions are made either by inward remittance through normal banking channels or out of funds held in their NRE/ FCNR/ NRO account. Further there will be no restriction on repatriation of the annuity / accumulated savings. [See A.P. (DIR Series) Circular No. 24 dated October 29, 2015]

## Litigation Brief

### ➔ *Mohan Singh Gill v. State of Punjab (2015) 8 SCC 345*

In the instant case, the State of Punjab acquired land vide two notifications under the Land Acquisition Act (hereinafter referred to as "the Act"). The first notification was for the acquisition of land for development of a missing link in the bypass being constructed to decongest Ludhiana city. The second notification was for the acquisition of land to develop a residential urban estate, to adjust the oustees of the abovesaid missing link. Both acquisitions were challenged before the High Court via Writ Petitions, which were dismissed, and the Supreme Court upheld the decision of the High Court.

The challenge to the first notification has two facets. The first was regarding the construction of the road itself. The Court agreed with the High Court that it was for the concerned authorities who were engaged in the development and planning of a city to ascertain the need of infrastructure and acquisition of land for the same and that it was not for the Court to substitute itself in the place of such authority. The second issue was that the notification mentioned that 450 ft. of land was being acquired only for construction of the road whereas the road was being constructed only on 200 ft. and the remaining land was being used for constructing shops on both sides of the road. The appellants claimed that as this fact had not been mentioned in the notification they were deprived of their right to file objections relating to the construction of shops under section 5A of the Act. The question which arose before the Court was whether such change in use of the land, from the construction of road to the construction of shops, was permissible without being mentioned in the impugned notifications. The Court discussed various cases on the importance of the right to file objections as it is the only procedural safeguard under the Act. The Collector is required to give all objectors an opportunity of being heard either in person or by a pleader because their land is being acquired by way of compulsory acquisition and they must have the right to oppose the decision of the government. Any violation of section 5A would be a violation of the principles of natural justice. The Court held that in the instant case utilizing the land for development of commercial space would be a violation of Section 5A and it also found strength in the submission that the commercial space was being developed to finance the construction of the road and that it could not be treated as public purpose. Therefore the Court set aside the impugned notification to the extent of land acquired over and above what was needed for the construction of the missing link.

The challenge to the second notification was with regard to the fact that the appellants were being ousted from their land for the purposes of rehabilitating the oustees of the land acquired for the missing link and it also questioned the State's plan to acquire 55.41 acres of land to rehabilitate people who had originally held 74.52 acres of land. The Court chose not to go into the validity of the said impugned notification as most of the landowners of the missing link land were not even party to this petition and had accepted the

compensation. But the Court gave the appellants the liberty to make a representation before the government regarding the amount of land which was going to be acquired to rehabilitate not only the oustees but the landowners as well.



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