

Highlights

Corporate Brief

- Companies (Amendment) Ordinance, 2018 gets notified on 2nd November
- India suggests agenda to G-20 for action against Fugitive Economic Offences and Asset Recovery
- SEBI specifies norms to be followed by large entities: mandates issuance of debt securities while raising funds
- SEBI issues operating guidelines for AIFs in International Financial Services Centres
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- TDS not applicable to supplies between Public Sector Undertakings
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Corporate Brief

➤ Companies (Amendment) Ordinance, 2018 gets notified on 2nd November

The Government recently notified the Companies (Amendment) Ordinance on the 2nd November, 2018, (hereinafter referred to as the, "Ordinance") Following are some of the key changes that were introduced:

- Commencement of Business:** Section 10A has been inserted in the Companies Act, 2013, (hereinafter referred to as the, "Act") according to which no company, that is incorporated after the commencement of this Ordinance and has a share capital, shall commence any business or exercise any borrowing powers unless (i) a director files a declaration within 180 days of the date of incorporation of the Company stating that every subscriber to the memorandum has "paid the value of shares agreed to be taken by him" on the date of making such declaration and (ii) the company has filed a verification of its registered office with the Registrar in the manner prescribed within the Act.
In case of default of the company in complying with the section, the company would be liable to pay Rupees Fifty Thousand only and every defaulting officer would pay Rupees One Thousand for each day during such default but not exceeding Rupees One Lakh. Further, in case no declaration is filed by the company according to the manner prescribed and the Registrar has sufficient cause to believe that the company is not carrying out any business or operations, he may initiate the action of removing the name of the company from the register of companies.
- Registered office:** Section 12(9) has been newly inserted in the Act, according to which if the Registrar has reasonable cause to believe that a company is not carrying on any business or operations he can cause a physical verification at the registered office of the

company in the manner prescribed and initiate the process for striking the name of company off the register of companies.

- Significant Beneficial Ownership:** Previously, as per Section 90 of the Act, upon submitting of an application to the Tribunal with respect to significant beneficial ownership of a company, the Tribunal could pass an order restricting the rights attached with the shares within a period of sixty days of receipt of such application or such other period as may be prescribed. Accordingly, aggrieved persons could approach the NCLT for lifting of such restrictions. The Ordinance has now incorporated a timeline for such aggrieved persons to approach the NCLT, i.e., within one year from the date of passing of such order by the Tribunal, after expiry of which, the shares would be transferred to the Investor Education & Protection Fund. Further, as punishment, imprisonment of term of up to one year has been inserted within the said section.

➤ India suggests agenda to G-20 for action against Fugitive Economic Offences and Asset Recovery

India recently suggested a nine point agenda to G-20 for action against Fugitive Economic Offences and Asset Recovery, which has been captured as follows:

- Strong and active cooperation across G-20 countries to deal with the menace fugitive economic offenders.
- Cooperation in the legal processes like effective freezing of the proceeds of crime, an early return of the offenders and efficient repatriation of the proceeds of crime that should be enhanced and streamlined.
- Formulation of a mechanism through joint effort by G-20 which would help in denying entry and safe havens to all fugitive economic offenders.
- Full and effective implementation of the Principles of United Nations Convention Against Corruption (UNCAC), United Nations Convention Against Transnational Organized Crime (UNOTC), especially related to "International Cooperation."
- FATF should be called upon to assign priority and focus to establishing international co-operation that leads to timely and comprehensive exchange of information between the competent authorities and FIUs.
- FATF should be tasked to formulate a standard definition of 'fugitive economic offenders.'
- FATF should also develop a set of commonly agreed and standardized procedures related to identification, extradition and judicial proceedings for dealing with fugitive economic offenders to provide guidance and assistance to G-20 countries, subject to their domestic law.

- h) Common platform should be set up for sharing experiences and best practices including successful cases of extradition, gaps in existing systems of extradition and legal assistance, etc.
- i) G-20 Forum should consider initiating work on locating properties of economic offenders who have a tax debt in the country of their residence for its recovery.

➔ ***SEBI specifies norms to be followed by large entities: mandates issuance of debt securities while raising funds***

SEBI has released guidelines for operationalizing the Union Budget announcement for 2018-2019, mandating large entities to meet about one-fourth of their financial needs through the debt market. The guidelines would be applicable on the entities following April-March as their financial year and such guidelines shall come into effect from 1st April, 2019. For the entities that follow calendar year as their financial year, the guidelines shall become applicable from 1st January, 2020.

The framework would be applicable on all listed entities, which as on the last day of their financial year, (i) have their specified or debt securities or non-convertible redeemable preference shares, listed on a recognised stock exchange(s) in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; and (ii) have an outstanding long-term borrowing of at least Rs. One Hundred Crores, such outstanding borrowing being one which has original maturity of more than 1 year and excluding external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies), (iii) a credit rating of 'AA' and above where such credit rating shall be of the unsupported bank borrowing or plain vanilla bonds of an entity, that do not have structuring/ support built in; highest rating would be considered in the case, where an issuer has multiple ratings from multiple rating agencies, Upon fulfilment of the above-mentioned criteria, a listed entity shall be considered as a "Large Corporate" (hereinafter, referred to as "LC") and such LC shall raise not less than 25% of its incremental borrowings, during the financial year subsequent to the financial year in which it is identified as a LC, by way of issuance of debt securities, as have been defined under SEBI (Issue and Listing of Debt Securities) Regulations, 2008

➔ ***SEBI issues operating guidelines for AIFs in International Financial Services Centres.***

On 26th November, 2018 SEBI issued a circular, addressed to all Alternative Investment Funds (hereinafter, referred to as "AIFs") as well as all

Custodians on the subject of "Operating Guidelines for Alternative Investment Funds in International Financial Services Centres", (hereinafter referred to as "IFSCs") for the purpose of protecting the interests of investors in securities and promoting the development of, and to regulate the securities market. Some of the aspects of the abovementioned Operating Guidelines are:

- a) Registration: (i) For registration as AIFs for operating in IFSC, any fund established or incorporated in IFSC which is in the form of a company or a trust, or a limited liability partnership or a body corporate, can seek registration under the provisions of SEBI (AIF) Regulations, 2012 under the categories that are mentioned therein. (ii) An application, accompanied by a non-refundable application fee, for that grant of certificate shall be made in accordance with the provisions of the AIF Regulations. (iii) If the Board is satisfied, it may grant certificate under any specific category of AIF
- b) Sponsor / Manager of an AIF: The sponsor / manager of an existing AIF in India may act as a Sponsor / Manager of an AIF set up in the IFSC by : i) setting up a branch in the IFSC; or ii) incorporating a company or limited liability partnership in the IFSC. However, Sponsor / Manager to be set up in IFSC shall need to incorporate a company or limited liability partnership in the IFSC.
- c) Custodian: (i) The Sponsor or Manager of an AIF (Category I and II) shall appoint a custodian registered with the Board for the safekeeping of securities if the corpus of the AIF is more than USD seventy million. (ii) It will be mandatory for Category III AIF to appoint a custodian.

➔ ***Delhi HC clarifies the position of e-commerce websites acting as 'intermediaries' under the IT Act.***

In the case of *Christian Louboutin SAS v Nakul Bajaj* and others, the Delhi High Court laid down certain principles regarding liabilities of e-commerce platforms as 'intermediaries.'

Facts: The plaintiff claimed that it had intellectual property rights over the products being sold by the defendant on the defendant's online platform called Darveys.com, (hereinafter referred to as the "Platform") which were under the name of 'Christian Louboutin', (hereinafter referred to as the "said Products.") According to the plaintiff, the said Products were being used on the Platform to make it seem like they were being sponsored or approved for sale by the plaintiff. Furthermore, the plaintiff claimed the said Products were counterfeit and fake. The defendants claimed that they were not selling

the said Products but merely enabling the sale of said Products on their Platform.

Held: The High Court held that e-commerce websites are not just 'intermediaries' in terms of sale of products, but they are also in a position to exercise complete control in terms of sale of the products, such as identifying the sellers, promoting the products being sold, observing the necessary due diligence etc. Therefore, any e-commerce websites which "conspire, abet, aide or induce commissions of unlawful acts" must be held accountable for their actions. The defendant therefore, would be termed as an 'intermediary' and would consequently not be entitled protection IT Protection Act, and not be excused of its liability under the IT Protection Act.

GST Brief

➡ *TDS not applicable to supplies between Public Sector Undertakings*

It was recently amended by the Central Government that the provisions of TDS shall not apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, under the GST regime.

[See: Notification No. 61/2018-C.T. dated 5.11.2018]

C.B.I & C clarified the scope of the principal and agent relationship in regards to the activities to be treated as supply (taxable) even if made without consideration, under Schedule-I of CGST Act, 2017 in the context of del-credere agent.

C.B.I & C has specifically provided clarification in regards to the ambit of an 'agent' under Paragraph 3 of Schedule I of the CGST Act, 2017 and where the del-credere agent makes payment on behalf of the buyer and charges interest to buyer for any delayed payment along with the value of goods being supplied.

[See: Circular No. 73/47/2018-GST, dated 5.11.2018]

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➡ *Government issues clarification regarding principal and agent relationship as per CGST, 2017*