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AMENDMENTS TO THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2016

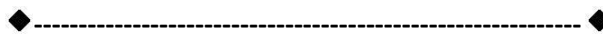
The Ministry of Corporate Affairs *vide* Notification dated 12th August 2016 amended the *Companies (Share Capital and Debentures) Rules, 2014 [Fourth Amendment Rules, 2016]* to carry major changes with regard to broader category of 'employees' for ESOPs for start-ups for an initial period of five (5) years as privileges to start-ups.

Rule 12 (1) of the Companies (Share Capital and Debentures) Rules, 2014, *inter alia*, provides certain conditions for issue of Employees Stock Option Scheme (ESOP) and accordingly certain category of persons are not eligible for ESOP. Such categories of persons are:

- An employee who is a promoter or a person belonging to the promoter group; or
- A director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company.

The Amendment Rules, in order to promote start-ups, provides that, in case of startups, the above mentioned category of persons would also be eligible for ESOPs up to a period of five (5) years from the date of incorporation or registration of such start-ups.

The notification of Amendment Rules is a step forward for making provisions of the Companies Act, 2013 simpler, so far it is relating to issue of securities and to promote the start-ups. The Amendment Rules provide certain relaxations to the start-ups which are otherwise not available to the other companies.



FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) (THIRTEENTH AMENDMENT) REGULATIONS, 2016

The Reserve Bank of India (“RBI”) (*vide* Notification No. FEMA.375/2016-RB dated 9th September 2016) made the following amendments in the *Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000*, with regard to the sectoral cap on investments by persons resident outside India.

The amendment brings another heading, *namely*, “Other Financial Services” wherein the financial services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India, has been brought under *automatic route to the extent of 100%*, subject to the following:

- Foreign investment in 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/Government Agency.

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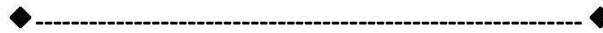
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- 'Other Financial Services' activities need to be regulated by one of the Financial Sector Regulators. In all such financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route subject to conditions including minimum capitalization requirement, as may be decided by the Government.
- Any activity which is specifically regulated by an Act, the foreign investment limits will be restricted to those levels/limit that may be specified in that Act, if so mentioned.
- Downstream investments by any of these entities engaged in "Other Financial Services" will be subject to the extant sectoral regulations and provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time.



THE CENTRAL GOVERNMENT PROPOSED THE FOLLOWING AMENDMENTS TO SCHEDULE V OF THE COMPANIES ACT, 2013

[Note: This notification has not come into force, since it is yet to be published in the official gazette.]

The notification dated 12th September, 2016 issued by the Central Government has proposed the amendment with regard to the remuneration of the managerial personnel where a company has no profits or its profits are inadequate, and a Company may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:

(A)

| Where the Effective Capital is | Limit of Yearly Remuneration Payable shall not exceed |
|---|---|
| Negative or less than Rs. 5 Crores | Rs. 60 Lakhs |
| Rs. 5 Crores and above but less than Rs. 100 Crores | Rs. 84 Lakhs |
| Rs. 100 Crores and above but less than Rs. 250 Crores | Rs. 120 Lakhs |
| Rs. 250 Crores and above | Rs. 120 Lakhs plus 0.01% of the effective capital in excess of Rs. Rs. 250 Crores |

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation - It is hereby clarified that for a period less than one (1) year, such limits shall be pro-rated.

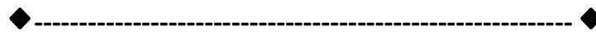
(B) In case of a managerial person, who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person does not have any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and does not have any direct or indirect interest or is related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two (2) years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialized knowledge in the field in which the company operates, subject to following:

OUR EXPERTISE

- | | | | |
|-------------------------|-----------------------------|----------------------|-----------------------------------|
| ▪ General corporate | ▪ Mergers and Acquisitions | ▪ Microfinance | ▪ Litigation |
| ▪ Regulatory Compliance | ▪ Family Law | ▪ Real Estate | ▪ Technology Law |
| ▪ Private Equity | ▪ Intellectual Property Law | ▪ Human Resource Law | ▪ Arbitration |
| ▪ Fund Advisory | ▪ Media and Entertainment | ▪ Insurance | ▪ Finance/Project Finance/Banking |



- any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company; and
- the limits specified under items (A) and (B) of this section shall apply, if the payment of remuneration is approved by a resolution passed by the Board and in the case of a company covered under sub-section (1) of section 178 by the Nomination and Remuneration Committee;
- the company has not committed any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 (thirty) days in the preceding financial year before the date of appointment of such managerial person;
- an ordinary resolution or a special resolution, as the case may be, has been passed for payment of Remuneration as per the limits laid down in item (A) above or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three (3) years;
- Explanatory statement along with notice calling for a general meeting as aforementioned with certain required information has been circulated

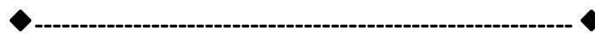


SEBI CIRCULAR DATED 20TH SEPTEMBER 2016 ON CONSOLIDATED ACCOUNT STATEMENT

Clause A of the SEBI circular dated 18th March, 2016 on consolidated account statement has been partially modified and shall read as follows:

“Consolidated Account Statement (“CAS”), issued to investors in accordance with Regulation 36(4) of SEBI (Mutual Funds) Regulations, 1996 and circulars thereof, at present provides information in terms of name of scheme/s where the investor has invested, number of units held and its market value, among other details. To increase transparency of information to investors, it has been decided that:

- Each CAS issued to the investors shall also provide the total purchase value / cost of investment in each scheme
- Further, CAS issued for the half-year (ended September/ March) shall also provide:
 - The amount of actual commission paid by AMCs/Mutual Funds (MFs) to distributors (in absolute terms) during the half - year period against the concerned investor’s total investments in each MF scheme. The term ‘commission’ here refers to all direct monetary payments and other payments made in the form of gifts / rewards, trips, event sponsorships etc. by AMCs/MFs to distributors. Further, a mention may be made in such CAS indicating that the commission disclosed is gross commission and does not exclude costs incurred by distributors such as service tax (wherever applicable, as per existing rates), operating expenses, etc.
 - The schemes average total expense Ratio (in percentage terms) for the half year period for each scheme’s applicable plan (regular or indirect or both) where the concerned investor has actually invested in.
- Half yearly CAS shall be issued to all MF schemes, excluding those investors who do not have any holdings in MF schemes, where no commission against their investments has been paid.
- The indicative format providing guidance on the key components which shall be reflected in half yearly CAS is as provided in the Annexure attached thereto.



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SNIPPETS OF OTHER KEY LEGAL UPDATES

Goods and Services Tax Bill Receives President's Assent: The President, Hon'ble Mr. Pranab Mukherjee signed the Goods and Services Tax ("GST") Bill on the 8th September 2016, paving way for it to become a law. The 122nd Constitutional Amendment (GST) Bill was passed by the Lok Sabha and the Rajya Sabha in August this year. The Bill received the President's assent pursuant to its ratification by 16 out of the country's 29 States. Enabling Acts would now have to be passed at the Centre and State level. GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer.

Meeting taken by Prime Minister to review the preparedness for rollout of GST: The Prime Minister held a meeting to review the preparedness for rollout for GST on 14th September, 2016. The meeting was attended by the Union Finance Minister, both the Ministers of State for Finance, senior officers from the Prime Ministers' office and the Finance Ministry. The meeting was to ensure that, all rollout of GST relating to preparation of Model GST laws and rules to be framed, establishment of IT infrastructure for both Centre and States, training of officers of Central and State Governments and outreach for awareness of trade and industry must be done before 1st April 2017 and the implementation of the GST takes place from 1st April 2017. The Prime Minister observed that GST Council would need to have intensive meetings to be able to make timely recommendations relating to its mandate including making recommendations relating to Model GST laws, GST rates, goods and services that may be subjected to or exempted from GST.

Cheque for repayment of instalment but described as "security" covered by Section 138 of Negotiable Instruments Act, 1881 ("NI Act"): The Supreme Court has held that dishonour of a post-dated cheque given for repayment of a loan instalment which is described as "security" in the loan agreement or given as security for discharge of a loan is covered by Section 138 of the NI Act. The decision was rendered by a Bench comprising of Justice Dipak Misra and Justice A.K. Goel in an appeal filed against a Delhi High Court judgment in *Criminal Appeal No. 867/2016*.

Magistrate can allow complainant to conduct prosecution independently: Examining the difference between Section 301 and Section 302 of the Code of Criminal Procedure ("CrPC"), the Supreme Court in *Dhariwal Industries Limited vs. Kishore Wadhvani and Others*, has held that Section 302 of CrPC confers power on a magistrate to grant permission to a complainant to conduct the prosecution independently. The court also made it clear that the said provision applies to every stage, including the stage of framing charge.

Government announces enhanced support under Merchandise Exports from India Scheme (MEIS) of the Foreign Trade Policy: In the backdrop of the continued challenging global environment being faced by Indian exporters, Department of Commerce has extended support to certain new products and enhanced the rate of incentives for certain other specified products under the MEIS. Many items of traditional medicines like ashwagandha herbs, other herbs, extracts, marine products, sea feed items, onion dried, processed, value added items of plastics, lather articles, suitcases, engineering goods, fabrics, garments, chemicals, ceramics, glass products, leather goods, newspapers, periodicals, silk items, made up, wool products, tubes, pipes etc. are included under the scheme.

Insurance Regulatory and Development Authority of India (IRDA) Circular: Insurance Regulatory and Development Authority of India on 13th July, 2016 (effective from 1st October 2016) has come up with a Circular "Harmonisation of training and examination requirements for various channels of distribution" proposing revised training and examination requirements for the Insurance Agents, Insurance Brokers and other Insurance Intermediaries. The Circular witnesses feature such as bifurcation of the broad categories such as Insurance agents, Insurance brokers, and other insurance intermediaries, namely, corporate agents, web aggregators, Insurance Marketing Firm, CSC-SPV, Point of Salesperson (PoS). Further the Circular has a clear approach on the examinations to be conducted, number of hours of training required, etc., very clearly trying to bring in efficiency in the conduct of training and examination and to engage more number of persons.

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Our Clients' Satisfaction.
Our Pride.



Section 28 of the Contract Act, 1872, being substantive law, operates prospectively as retrospectively is not clearly made out by its language: The Supreme Court in *Union of India & Anr. vs. M/s IndusInd Bank Ltd.* [SLP (Civil) NOS. 16166-16168/2011], has held that the 1997 amendment to the Indian Contract Act, 1872 which made certain agreements covered by Section 28(b) of the Act void, operates prospectively. The Bench comprising Justice C. Nagappan and Justice R.F. Nariman made the observation while hearing an appeal filed by the Union of India against an order of Division Bench of the Bombay High Court. The Division Bench of the Bombay High Court had upheld a Single Bench order that held that the amendment would operate retrospectively. The following was added to Section 28 vide amendment in 1997: *“Every agreement which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights by usual legal proceedings, is void to that extent.”*

The Bench, referring to various decisions, including Constitution Bench decision in *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1, observed: *“Section 28, being substantive law, operates prospectively as retrospectively is not clearly made out by its language. Being remedial in nature, and not clarificatory or declaratory of the law, by making certain agreements covered by Section 28(b) void for the first time, it is clear that rights and liabilities that have already accrued as a result of agreements entered into between parties are sought to be taken away. This being the case, we are of the view that both the Single Judge and Division Bench were in error in holding that the amended Section 28 would apply.”*

States, Union Territories must upload FIRs on websites within 24 hours: In a path-breaking judgment, the Supreme Court has directed that the copies of the First Information Report (“FIR”), unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under Protection of Children from Sexual Offences Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four (24) hours of the registration of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances.

Income Declaration Scheme 2016 – Government issues clarifications in the form of sixth set of FAQs: The Income Declaration Scheme, 2016 (“**Scheme**”) provides an opportunity to persons who have not paid full taxes in the past to come forward and declare their undisclosed income and assets. The Scheme has come into effect from 01.06.2016 and is open for declarations up to 30.09.2016. The amount payable under the Scheme can be paid in installments namely, 25% of the total amount payable by 30.11.2016; another 25% by 31.03.2017 and balance 50% by 30.09.2017. In order to address concerns of the stakeholders and to clarify the queries relating to the provisions of the Scheme, the rules have been amended from time to time and sixth set of FAQs have been issued.

Restrictions on Promoters and Whole Time Directors of Compulsorily Delisted Companies Pending Fulfilment of Exit Offers to the Shareholders: SEBI vide its notification SEBI/HO/CFD/DCR/CIR/P/2016/81 dated 7th September 2016 has imposed restriction on the promoters and whole time directors. In terms of Regulation 24 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (“**Regulations 2009**”), the company which has been compulsorily delisted, its whole-time directors, its promoters and the companies promoted by any such person, shall not directly or indirectly access the securities markets for a period of 10 years from the date of compulsory delisting. Further, Regulation 23 (3) of the Regulations 2009 provides that the promoter shall acquire delisted equity shares from the public shareholders, subject to their option of retaining their equity shares, by paying them the fair value, as determined by the independent valuer appointed by the concerned recognised stock exchange.

Additionally the notification provides that (i) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares and corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters/ promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with Regulation 23 (3) of the Regulations 2009, as certified by the concerned recognized stock exchange; and (ii) the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated at ‘a’ above is provided.

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