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AMENDMENTS TO THE FOREIGN EXCHANGE MANAGEMENT REGULATIONS

The RBI, in another set of amendments to the Foreign Exchange Management Act, 1999 and Regulations has introduced the following amendments:

- ❖ **No direct investment by an Indian Party in an overseas entity in non co-operative countries and territories:** Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 was amended by Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2016 to include Regulation 6(2) whereby an Indian Party shall not make any direct investment in an overseas entity (set up or acquired abroad directly as Joint Venture, Wholly Owned Subsidiary or indirectly as Step Down Subsidiary) located in the countries identified by the Financial Action Task Force (FATF) as 'non co-operative countries and territories'. These countries are listed on FATF website or it may be notified by the RBI from time to time.
- ❖ **Issue of 'Convertible Notes' by startup companies:** Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 was amended by Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fifteenth Amendment) Regulations, 2016 to include the following:
 - **What is a Convertible Note?:** The definition of "Convertible Note" as introduced under Regulation 2 "*means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the terms and conditions agreed to and indicated in the instrument.*"
 - **Terms for Issue of Convertible Notes:** Regulation 6D details the following terms for issuance of Convertible Note by startup companies:
 - a. **Minimum Consideration:** A person resident outside India (other than an persons/entities of Pakistan or Bangladesh), may purchase Convertible Notes issued by an Indian startup company for an amount of Rs. 25 Lakhs or more in a single tranche.
 - b. **Government Approval:** A startup company engaged in a sector where foreign investment requires Government approval may issue Convertible Notes to a non-resident only with approval of the Government.

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- c. **Manner of Receipt of Consideration:** A startup company issuing Convertible Notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE/ FCNR (B) / escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Such escrow account shall not continue beyond a period of 6 months and shall be closed immediately after the requirements are completed.
- d. **Acquisition on non-repatriation basis:** NRIs may acquire Convertible Notes on non-repatriation basis in accordance with Schedule 4 of the principal regulations.
- e. **Sale of Convertible Notes:** A person resident outside India may acquire or transfer Convertible Notes by way of sale from/to a person resident in/outside India, provided the transfer takes place in accordance with the RBI pricing guidelines. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.
- f. **Reporting:** The startup company issuing Convertible Notes shall be required to furnish reports as prescribed by RBI.

INCOME-TAX (1st AMENDMENT) RULES, 2017

The Central Board of Direct Taxes (“CBDT”) has amended the Income-tax Rules, 1962.

- ❖ **Furnish PAN or Form No. 60:** In rule 114B, a new proviso has been added to provide that a person who has an account maintained with a banking company or a cooperative bank to which the Banking Regulation Act, 1949, applies and has not quoted his permanent account number (PAN) or furnished Form No. 60 as the case may be, at the time of opening of such account or subsequently, he shall furnish his PAN or Form No. 60, as the case may be, to the person specified in clause (c) of sub-rule (1) of rule 114C on or before the 28th of February, 2017.
- ❖ **Validity of Documents:** In rule 114C, a new sub-rule 3 has been inserted that the person mentioned in sub-rule 1 and 2 shall ensure the validity of the PAN and that the related details are linked and mentioned in all information furnished to the income-tax authority or any other authority under any provision of the Act or any rule prescribed therein.

EMPLOYEE ENROLMENT CAMPAIGN, 2017 (under Employees’ Provident Funds Scheme)

The Central Government has amended the Employees’ Provident Funds Scheme, 1952 with an aim at providing the benefits of provident funds for Indian Nationals.

- ❖ **Declaration of entitled employees:** Through this campaign the employers have been given an opportunity to declare

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details of employees who were entitled for provident fund membership between the period 1st April, 2009 to 31st December, 2016. The declaration shall be valid only in respect of the employees who are alive and the declaration shall be made within 1st January, 2017 to 31st March, 2017.

- ❖ **Remittance of Contribution:** The employer shall remit, along with interest and damages, the employer contribution and the employee's contribution (deducted from the employee's wages) within 15 days from the declaration.
- ❖ **Filing of Returns:** The employer shall then file a return to the Regional Provident Fund Commissioner.

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AMENDMENT REGARDING APPLICABILITY OF CONTRACT LABOUR ACT

The applicability of the Contract Labour (Regulation and Abolition) Act, 1970 has been increased from 20 workmen to 50 workmen for the state of Maharashtra vide Maharashtra Contract Labour (Regulation and Abolition) (Maharashtra Amendment) Act, 2016

CALLING FOR NEW LEGAL ENVIRONMENT

The Union Cabinet has given its approval for introduction of the Repealing and Amending Bill, 2017. The Law Commission of India and the Legislative Department have identified 1,824 obsolete and redundant Central Acts which call for to being repealed. The Parliament has enacted 4 Acts (during the period of May, 2014 to August, 2016) to repeal 1,175 Central Acts. Out of the aforementioned 1,824 Acts, 227 Acts have been identified to be repealed by the State Governments. Till date, 73 Departments/ Ministries have given their comments and have agreed to repeal 105 Acts and disagreed to repeal about 139 Acts.

LISTING OF GENERAL INSURANCE COMPANIES AT STOCK EXCHANGES

The Cabinet Committee on Economic Affairs has given its approval for listing the following General Insurance Companies in the stock exchanges namely, the New India Assurance Company Limited, United India Insurance Company Limited, Oriental Insurance Company Limited, National Insurance Company Limited and General Insurance Corporation of India. Listing of above-mentioned public sector general insurance companies will ensure higher levels of transparency and accountability. It is also expected to improve scope of expansion of business, corporate governance and risk management practices. The shareholding of these companies will be divested from 100% to 75% in one or more tranches over a period of time.

REGULATIONS FOR ADOPTION NOTIFIED BY THE GOVERNMENT PRESS

The Central Adoption Resource Authority ("CARA") under the Juvenile Justice (Care and Protection of Children) Act, 2015 has framed the Adoption Regulations, 2017. These regulations have replaced the Adoption Guidelines, 2015. This initiative by the Government has been made with intent to strengthen the adoption programme in the country. The validity of Home Study Report under the Regulations has been increased from 2 to 3 years. All the adoptions shall be facilitated under the Juvenile Justice Act, 2015 through Child Adoption Resource Information and Guidance System (CARINGS). Transparency, informed choice for the parents, ethical practices and strictly defined timelines in the adoption process are the salient features of the Adoption Regulations.

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NEW VERSION OF FORM FOR APPLICATION OF INCORPORATION

In order to promote greater Ease of Doing Business in India, the Ministry of Corporate Affairs notifies a new version of SPICe Form (INC-32), effective from 30th January, 2017. Application for PAN and first TAN (allotted by Income Tax Dept) will be mandatory for all fresh incorporation applications and it shall be filed in the SPICe form itself. The new version of SPICe forms will be available for the stakeholders with effect from 1st February, 2017.

MENTION OF PAN IN CERTIFICATE OF INCORPORATION

The Ministry of Corporate Affairs has amended the Companies (Incorporation) Rules, 2014, whereby the Certificate of Incorporation shall now mention PAN of the newly incorporated company where if it is issued by the Income-tax Department.

CONSUMER'S DISCRETION TO PAY 'SERVICE CHARGE' OR NOT

The Ministry of Consumer Affairs, Food & Public Distribution have received complaints from consumers regarding forced payment of 'service charge' in the range of 5-20 % in lieu of tips. In this context, the department of Consumer Affairs had called for clarification from the Hotel Association of India to which they observed that service charge is completely discretionary, and the customer can waive it off, if he/ she is dissatisfied with the dining experience. The Hotels/ Restaurants have been advised to disseminate information through display at appropriate places in the hotels/ restaurants that the 'service charges' are voluntary and a consumer on being dissatisfied with the services can have it waived off.

TRAI TO BRING OUT CONSULTATION ON GREEN ISSUES

TRAI is set to bring out a consultation paper that would review issues related to reduction in carbon footprint for telecom infrastructure and mobile towers. The paper would be based on use of green technologies for reduction in carbon footprint from the telecom networks including the base transceiver stations.

CREDIT OF PROCEEDS DUE TO WRITE OFF OF SECURITIES HELD BY FOREIGN PORTFOLIO INVESTORS/DEEMED FOREIGN PORTFOLIO INVESTORS

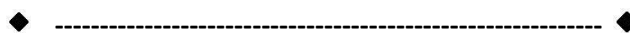
SEBI with reference to its circular no. FITTC/FII/02/2002 dated May 15, 2002 has notified that any proceeds due to disinvestment and corporate benefits (received in the form of cash) shall be credited to the Investors Protection and Education Fund of SEBI not later than 7 days from the date of receipt thereof.

PE FIRMS PULL OUT \$10.3 BILLION IN 2016

The value of PE investment was stagnant over the past one decade. However, the global PE players made a sudden jump in valuation of their investments in 2016 and chose to pull out a record \$10.3 billion from domestic market. The total PE exits rose 1% to \$10.3 billion from \$9.4 billion in 2015.

STARTUPS LIKELY TO GET TAX BENEFITS IN UNION BUDGET 2017

The Startup India programme may get benefited from the upcoming Financial Budget as the department is drawing up a list of tax concessions on ESOPs, unlisted securities and convertible instruments. DIPP has proposed that ESOPs for startups shall be taxed at the time of sale, when they have greater liquidity to pay taxes and the instruments get a fair valuation. DIPP is also in the process of finalising guidelines for a credit guarantee fund scheme to increase the availability of finances for startups.



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