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Changing Regulatory Landscape

Newsletter

July - August 2014

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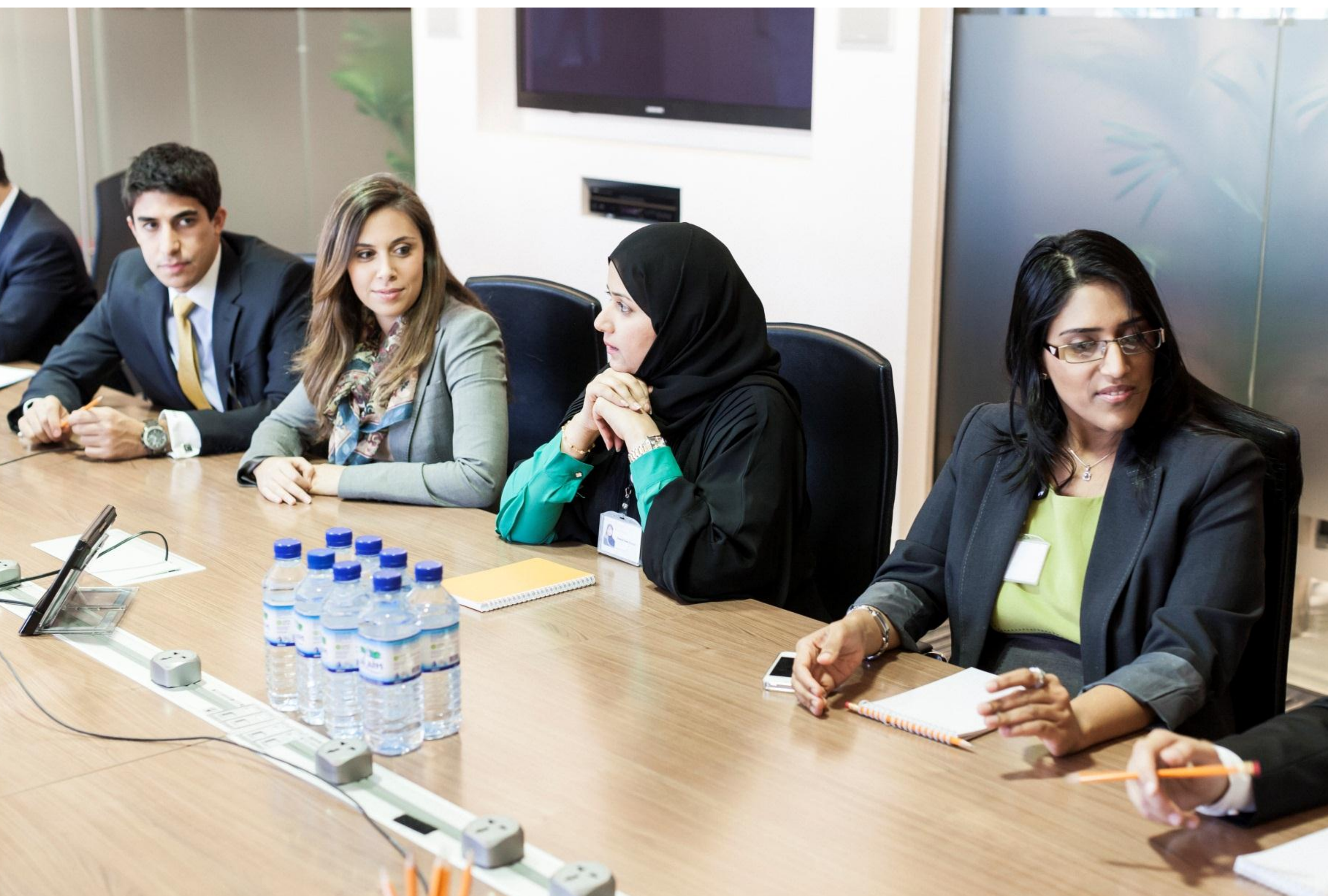
The FIPB meeting

Some matters of importance considered by the FIPB in its recent meeting are mentioned below:

- A proposal to commence offering 'trusteeship services to private and charitable trusts' and 'estate planning' services to its clients in India through a new company to be established was approved.
- Proposals for capitalisation of import payables and post facto approval for capitalising preliminary expenses were rejected.



Foreign investment regulations

FDI

Announcement by the Finance Minister in his Budget speech, July 2014

The Union Budget 2014 proposes liberalisation of FDI norms in the following sectors:

Defence and insurance

The composite cap for foreign investment is proposed to be enhanced from 26 to 49% in the defence and insurance sectors respectively, under the approval route. The management and control of the Indian JV company needs to be totally vested with Indians.

Further, with specific reference to the insurance sector and to amend the existing FDI norms, the Union Cabinet has also cleared the Insurance Laws (Amendment) Bill. It is likely to be introduced in the current parliamentary session.

Construction development

- Conditions linked to foreign investment in the construction development sector is proposed to be relaxed as listed below:
  - Reduction in minimum area to be developed from 50,000 sq mt to 20,000 sq mts
  - Reduction in minimum capitalisation amount in case of WOS from 10 million to 5 million USD.
- Projects with a committed cost of at least 30% of the total project cost for affordable housing is proposed to be exempted from the minimum built-up area and capitalisation requirements. However, the condition of three year lock-in period will continue to apply.

Manufacturing

Manufacturing units will be allowed to sell its products through retail including e-commerce platforms without additional approval.

The aforementioned proposed liberalisation will come into effect upon issuance of the appropriate press note by the government.

Amendment in pricing guidelines for foreign investment in India

In the following cases, the issue/transfer price of unlisted equity instrument shall be now determined as per internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accounted or a SEBI registered merchant banker:

- Issue/transfer without option under the FDI route under Schedule 1 of FEMA 20
- Transfer of unlisted equity shares (with call/ put option) under the FDI route under Schedule 1 of FEMA 20
- Issue under portfolio investment scheme for private placement under Schedule 2 of FEMA 20
- Issue under the foreign portfolio investment scheme under Schedule 2A of FEMA 20

Source: Notification no FEMA 306/2014 notified vide G.S.R no. 435(E) dated 23 May 2014 and A.P. (DIR series) Circular No 4 dated 15 July, 2014

Issue of partly paid shares and warrants by the Indian company to foreign investors

The RBI has reviewed the policy and now recognises partly paid equity shares and warrants issued by an Indian company as eligible instruments for the purpose of FDI and FPI subject to compliance with the prescribed conditions.

The pricing of partly paid equity shares should be determined upfront and 25% of the total consideration should be received upfront, with balance towards fully paid equity shares to be received within 12 months. However, the 12 month period for balance consideration shall not be insisted upon;

- where the issue size exceeds 500 crore INR, and
- In case of a listed company – the Indian company complies with Regulation 17 of the SEBI (ICDR) Regulations regarding monitoring agency;
- In case of an unlisted company – the Indian company appoints a monitoring agency (AD category – I Bank) on the same lines required in case of a listed Indian company under the SEBI (ICDR) Regulations.

The pricing of the warrants and the conversion formula shall also to be determined upfront with 25 % of the consideration amount to be received initially itself. The balance consideration towards fully paid equity shares shall be received within a period of 18 months. The price at the time of conversion should not be lower than the fair value worked out at the time of issuance of such warrants.

Source: Notification no FEMA 308/2014 notified vide G.S.R no 436(E) dated 30 June 2014 and *A.P. (DIR series) Circular no 3 dated 14 July, 2014*

FDI in non-convertible or redeemable preference shares/debentures of Indian companies

In January this year, the RBI had permitted Indian companies to issue non-convertible or redeemable preference shares or debentures to non-resident shareholders, by way of distribution as bonus from its general reserves under a scheme of arrangement, subject to certain conditions.

The RBI has now allowed FIIs, QFIs (deemed as registered FPIs), registered FPIs, long-term investors registered with SEBI, viz sovereign wealth funds, multilateral agencies, pension,

insurance, endowment funds, foreign central banks to invest on repatriation basis, in such non-convertible, redeemable preference shares or debentures issued by Indian companies within the overall limit of 51 billion USD earmarked for corporate debts.

Further, NRIs are also permitted to invest as above, both on repatriation and non-repatriation basis.

Source: A.P. (DIR series) Circular no 140 dated 6 June 2014

Pledge of shares for business purposes in favour of NBFCs

Presently, AD banks are authorised to permit non-resident investor to pledge shares of the Indian company held by them in favour of a bank in India to secure the credit facilities being extended to the resident investee company for *bonafide* business purposes subject to specified conditions.

This facility is now extended to credit availed from NBFC (whether listed or not), subject to compliance with the following conditions:

- Equity shares listed on recognised stock exchanges in India can only be pledged
- In case of invocation of pledge, transfer of shares should be in accordance with the credit concentration norms

Source: A.P. (DIR Series) circular no 141 dated 6 June 2014

Use of NIC 2008 while reporting issue/transfer of shares

The RBI has now instructed that business activities under the NIC 2008 list shall be used as reference (in place of NIC 1987) while reporting to the RBI under Form FC-GPR for issue of shares and Form FC-TRS for transfer of shares respectively.

Source: A.P. (DIR Series) circular no 6 dated 18 July 2014

Foreign investment in India by SEBI registered long-term investors in government dated securities

Presently, limit for investments by FIIs, QFIs, FPIs and long-term investors in government securities stands at 30 billion USD, of which a sub-limit of 10 billion USD is available for investment by long-term investors in the government dated securities.

The RBI has now enhanced this investment limit by 5 billion USD, while reducing the sub-limit available to long-term investors to 5 billion USD, subject to fulfillment of certain conditions.

The incremental investment limit of 5 billion USD shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FII,QFI,FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years.

It is, however, clarified that there will be no lock-in period and the FIIs, QFIs, FPIs shall be free to sell the securities (including that are presently held with less than three years of residual maturity) to the domestic investors.

Source: RBI/2014-15/145 A. P. (DIR series) circular no 13 dated 23 July 2014

Exchange control

Limit on financial commitments

The RBI has now reinstated the earlier financial commitment limit for overseas investment to 400 % of the net worth of the Indian party as per the last audited balance sheet. This limit was reduced to 100 % of net worth of the Indian party *vide* the RBI circular released in August 2013.

However, the financial commitment exceeding 1 billion USD (or its equivalent) in a financial year will require prior RBI approval even though the

total financial commitment is within the permissible limits.

Source: AP (DIR series) circular no. 1 dated 3 July 2014

Long-term export advances for a maximum tenor of 10 years

Indian exporters receiving advance against exports need to ship goods within a period of one year. Further, AD banks are permitted to approve cases for receipt of advance payment for export of goods for cases which will take more than one year to manufacture and ship.

The RBI has now liberalised the policy and permitted export advance up to a maximum tenor of 10 years for long-term service contracts for exporters having a minimum of three years of satisfactory track record. Related key conditions are summarised below:

- Firm irrevocable supply orders should be in place. The contract should clearly specify the nature, amount and delivery timelines of products over the years and penalty in case of non- performance or contract cancellation. Product pricing should be in consonance with prevailing international prices.
- Such export advances shall not be permitted to be used to liquidate rupee loans, which are classified as non-performing assets as per the RBI's asset classification norms.
- Double financing for working capital for execution of export orders should be avoided.
- The rate of interest payable, if any, should not exceed LIBOR plus 200 basis points.

Source: A.P. (DIR series) circular n.132 dated 21 May, 2014

Export of goods and services:Project exports

The RBI has liberalised and simplified the procedure under which the structure of the working group (consisting of representatives from the Exim bank, ECGC and RBI), which has hitherto been permitted to consider project exports and deferred service exports proposals for contracts exceeding 100 millionUSD in value, will now be dispensed with. The AD banks or the Exim bank can now consider awarding post-award approvals without any monetary limit and permit subsequent changes in the terms of post-award approval within the relevant FEMA guidelines or regulations.

The stipulation of time limit of 30 days for the exporter undertaking project exports and service contracts abroad to submit form DPX1, PEX-1, TCS-1 to the approving authority for seeking post- award approval will not apply henceforth.

Source: RBI/2014-15/141 A.P. (DIR series) Circular no 11 dated 22 July 2014

LRS

The limit under the LRS for resident individuals has been enhanced from 75,000 to 125,000 USD. Further, resident individuals can also utilise the LRS scheme for acquisition of immovable property outside India.

Source: A.P. (DIR series) circular no 138 dated3 June 2014 and A.P (DIR series) circular no 5 dated 17 July 2014

Transfer of assets of LO, BO, PO at the time of closure

The RBI has directed AD banks to process applications for transfer of assets of LO, BO, PO to a JV or WOS or any other entity in India at the time of closure, on fulfillment of prescribed stipulations.

It is important to note that cases of transfer of assets at instances other than closure will still continue to require an approval from the RBI.

Source: Notification no FEMA 295/2014 –RB dated 24 February 2014 published in the Official Gazette on 30 May 2014 and A.P. (DIR series) circular no 145 dated 18 June 2014

Export and import of currency: Enhanced limit for residents and non-residents

The RBI has enhanced the limit for export and import of Indian currency notes while going out or coming to India from 10,000 to 25,000 INR.

Source: A.P. (DIR series) circular no 146 dated 19 June 2014

Company law

Clarification on the transitional period for resolutions passed under the Companies Act, 1956

It has been clarified that for resolutions passed or approved by the company from September 2013 to March 2014 under the old act can be implemented as per the provisions of old act subject to the following conditions:

a) The implementation of the resolution has commenced before 1 April 2014

b) The transitional provision is available for one year from the date of passing of the resolution or six months from the commencement of the corresponding provision under the new act, whichever is later.

General circular no 32/2014 dated 23 July 2014

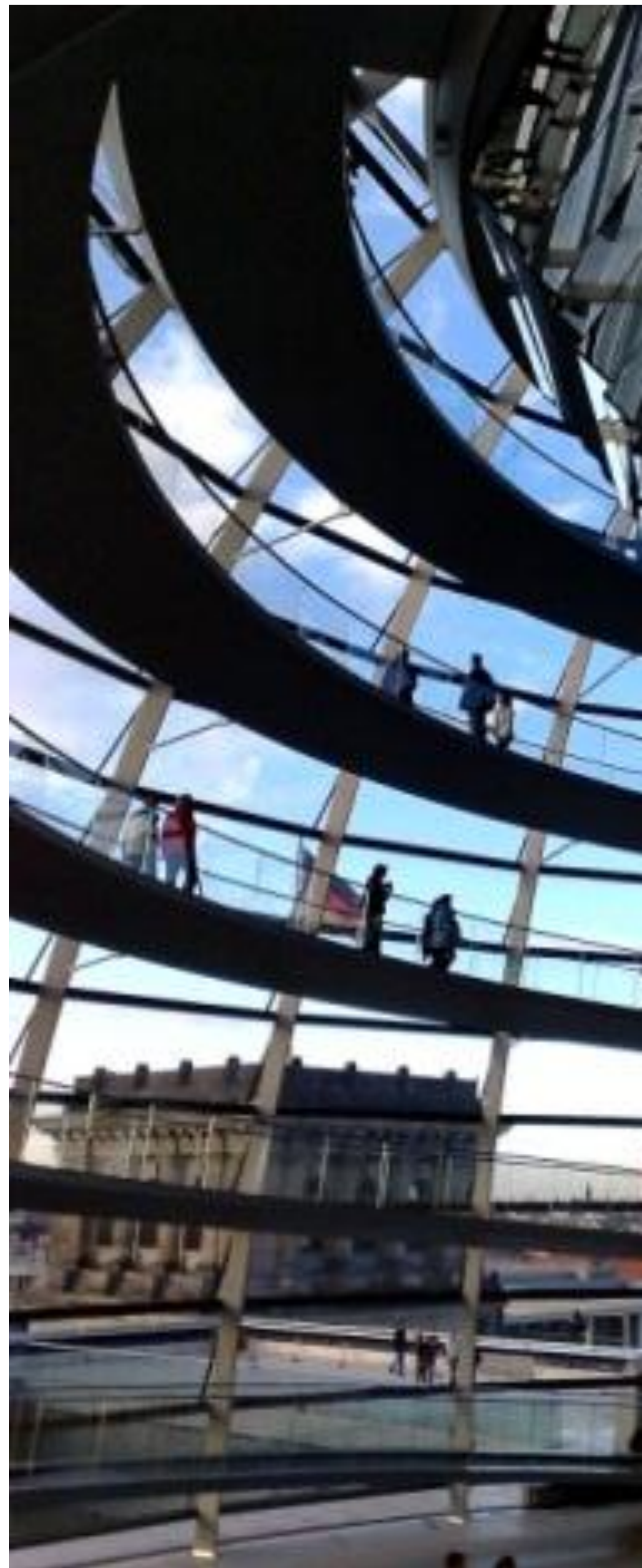
Amendment to the Companies (Acceptance of Deposits) Rules, 2014:

The MCA amended the Companies (Acceptance of Deposits) Rules, 2014, permitting them to accept deposits without deposit insurance contract till the 3 March 2015.

Notification dated 6 June 2014

Amendment to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, originally required every listed company and every other public company with a paid-up share capital of 10 crore INR or more to have a key managerial person (which includes a company secretary).



Now, the MCA has mandated every company (including a private limited company) which has a paid-up share capital of 5 crore INRor more to appoint a whole-time company secretary.

Notification dated 9 June 2014

Amendment to the Companies (Meetings and Powers of Board) Rules, 2014:

The MCA has amended the Companies (Meetings and Powers of Board) Rules, 2014 to mandate public companies which were not required to constitute an audit committee under Section 292A of the Companies Act, 1956 to constitute their audit committee and nomination and remuneration committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier.

Notification dated 12 June 2014

Amendment to the Companies (Declaration and Payment of Dividend) Rules, 2014:

The MCA has amended the Companies (Declaration and Payment of Dividend) Rules, 2014 to the effect that no company shall declare dividend unless carried forward losses and depreciation of previous years are set-off against profit of the company for the current year.

Notification dated 12 June 2014

Amendment to the Companies (Management and Administration) Rules, 2014:

The Companies (Management and Administration) Rules, 2014 mandated every listed company or a company having not less than a thousand shareholders, to provide the facility to its members to exercise their voting rights at general meetings by electronic means.

The MCA has now relaxed this rule by extending the timeline for compliance with the above requirement until 1 January 2015.

Notification dated 23 June 2014

Release of the Companies (Cost Records and Audit) Rules, 2014:

The MCA has released the Companies (Cost Records and Audit) Rules, 2014 in supersession of the following rules:

The Companies (Cost Accounting Records) Rules, 2011; Companies (Cost Audit Report) Rules, 2011; Cost Accounting Records (telecommunication Industry) Rules, 2011; Cost Accounting Records (petroleum Industry) Rules, 2011; Cost Accounting Records (electricity Industry) Rules, 2011; Cost Accounting Records (sugar Industry) Rules, 2011; Cost Accounting Records (fertilisers Industry) Rules, 2011 and Cost Accounting Records (pharmaceutical Industry) Rules, 2011.

Notification dated 30 June 2014

Amendment of the Companies (Specification of definition details) Rules, 2014:

The MCA has amended the Companies (Specification of Definition Details) Rules, 2014 to clarify that, the definition of the related party, shall not include an independent director or his relative.

Notification dated 17 July 2014

Clarifications on matters relating to appointment and qualifications of directors and independent directors:

Following the receipt of various requests for clarification regarding appointment of independent directors, the MCA has provided the following clarifications:

- **Pecuniary interest in certain transaction**:

  The MCA has clarified that in the context of Section 188 (related party transactions), an independent director will not have 'pecuniary relationship' in case of transactions entered with the company in

the manner and price on par with any member of the general public.

It is further clarified that receipt of remuneration, from one or more companies, by way of fee, reimbursement of expenses, etc, shall not be considered as factors to determine whether the independent director holds a pecuniary interest while considering his appointment in the holding, subsidiary or associate company.

- **Tenure of existing independent directors:**

  The MCA has clarified that any tenure of an independent director on the date of commencement of the act shall not be counted for his appointment under it.

- **Appointment of independent directors for less than five years:**

  The MCA has clarified that it is permissible to appoint an independent director for a term less than five years. Appointment for any term (five years or less) will be treated at one term and no person shall hold office as independent director for more than two consecutive terms.

- **<u>Appointment of independent directors through letter of appointment:</u>**

  The MCA has clarified that the appointment of existing independent directors will also need to be formalised through a letter of appointment.

General circular no14/ 2014 dated 9 June 2014

Applicability of PAN requirement of foreign nationals:

- The MCA has clarified that the provisions of the general circular no 12/ 2014 dated 22 May, 2014, are applicable to a foreign national who is a subscriber or promoter at the time of incorporation of the company.

  In the event, such a person does not possess a PAN, he has to furnish a declaration in the prescribed format, as an attachment to the form to be filed for the incorporation of a company.

- Further, in case of a resident director of a proposed company, he has to submit PAN details at the time of incorporation.

General circular no16/ 2014 dated 10 June 2014

Clarification regarding matters relating to share capital and debentures:

With regard to the appointment of independent directors, the MCA has clarified the following:

- **Share transfer forms executed before 1 April2014:**

  The MCA has clarified that, any share transfer form executed before 1 April 2014 and submitted to the company within the period prescribed under the Companies Act 1956 needs to be accepted by the company for registration of transfers.

  In the event, any such transfer form executed prior to 1 April2014, is not submitted within the prescribed period, the company may decide not to accept the share transfer form. In such a case, the company shall convey the reason for such non-acceptance to the shareholder.

- **Delegation of powers by board to the committee of directors with regard to issue of duplicate share certificates:**

  The MCA has clarified that a committee of directors may exercise powers for issue of duplicate share certificates, subject to any regulations imposed by the board in this regard.

General circular no19/ 2014 dated12 June 2014

Clarification with regard to voting through electronic means:

The MCA has provided clarifications in relation to procedural aspects of conduct of general meetings with e-voting by members.

General circular no20/ 2014 dated 17 June 2014

Clarification with regard to provisions of CSR under Section 135:

The MCA has provided the following clarifications with regard to CSR:

- While activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries must be interpreted liberally so as to capture the essence of the subjects enumerated.
- The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- CSR activities should be undertaken by the companies in project or programme mode. One-off events such as marathons, awards, charitable contribution, advertisement, sponsorships of TV programmes, etc. will not be qualified as part of CSR expenditure.
- Expenses incurred by companies for the fulfilment of any act or statute of regulations (such as Labour Laws, Land Acquisition Act, etc) will not count as CSR expenditure.
- Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to its time or hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- Expenditure incurred by foreign holding company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per Section 135 of the Act.
- 'Registered Trust' will include trusts registered under the Income Tax Act 1956, for those states where registration of the trust is not mandatory.
- Contribution to corpus of a trust, society or Section 8 companies, etc will qualify as CSR expenditure as long as (a) the trust, society or Section 8 companies, is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

General circular no21/ 2014 dated 18 June 2014

Clarification with regard to format of annual return applicable for financial year 2013-14 and fees to be charged by companies for allowing inspection of records:

- The MCA has clarified that the new format of annual returns shall not apply to companies whose financial year ended on or before 1 April 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant forms under the Companies Act, 1956.

General circular no22/ 2014 dated 25 June 2014

Clarification relating to incorporation of company (company incorporated outside India):

- The MCA has clarified that there is no bar in the new act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company.

  Further, an existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956 (private or public company), will continue to exist without any change in the incorporation status of such company.

General circular no23/ 2014 dated 25 June 2014

Clarification with regard to holding of shares in a fiduciary capacity by associate company under Section 2(6) of the Companies Act, 2013:

- The MCA has clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under Section 2(6) of the Companies Act, 2013.

General circular no24/ 2014 dated 25 June 2014

Clarification on applicability of requirement for resident director:

MCA has clarified that the 'residency requirement' for a 'resident director' would be reckoned from the date of commencement of Section 149 of the Act. Therefore, the first 'previous calendar year' for compliance with these provisions will be in 2014.

- The period to be taken into account for compliance with these provisions for the current year would be the remaining period of calendar year 2014. Hence, on a proportionate basis, the minimum number of days for which the director would need to be a resident in India shall be 136 days.

- With regard to newly incorporated companies (1 April2014 to 30 September2014), it should have resident director either at the incorporation stage or within six months of its incorporation.

- Companies incorporated after 30 September 2014 should have resident director from the date of incorporation itself.

General circular no25/ 2014 dated 26 June 2014

Clarification with regard to use of the words commodity exchange in a company:

- The MCA has clarified that the word commodity exchange may be allowed only where a no objection certificate from the Forward Market Commission is furnished by the applicant.

  Further, the certificate from Forward Markets Commission will also be required in cases where companies registered with the words commodity exchange before the issue of this circular.

General circular no26/ 2014 dated 27 June 2014

Clarification with regard to filing of form DPT-4 under the Companies Act, 2013:

- As per the provisions of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 made thereunder, it was mandatory for companies to file a statement regarding deposits existing as on date of commencement of the Act within 30 June2014.

- The MCA has decided to grant extension of time for a period of two months (i.e upto 30 August 2014) without any additional fee to enable the companies for filing of statement in the prescribed format (DPT4) with the registrar.

General circular no27/ 2014 dated 30 June2014

Clarification on matters relating to related party transactions:

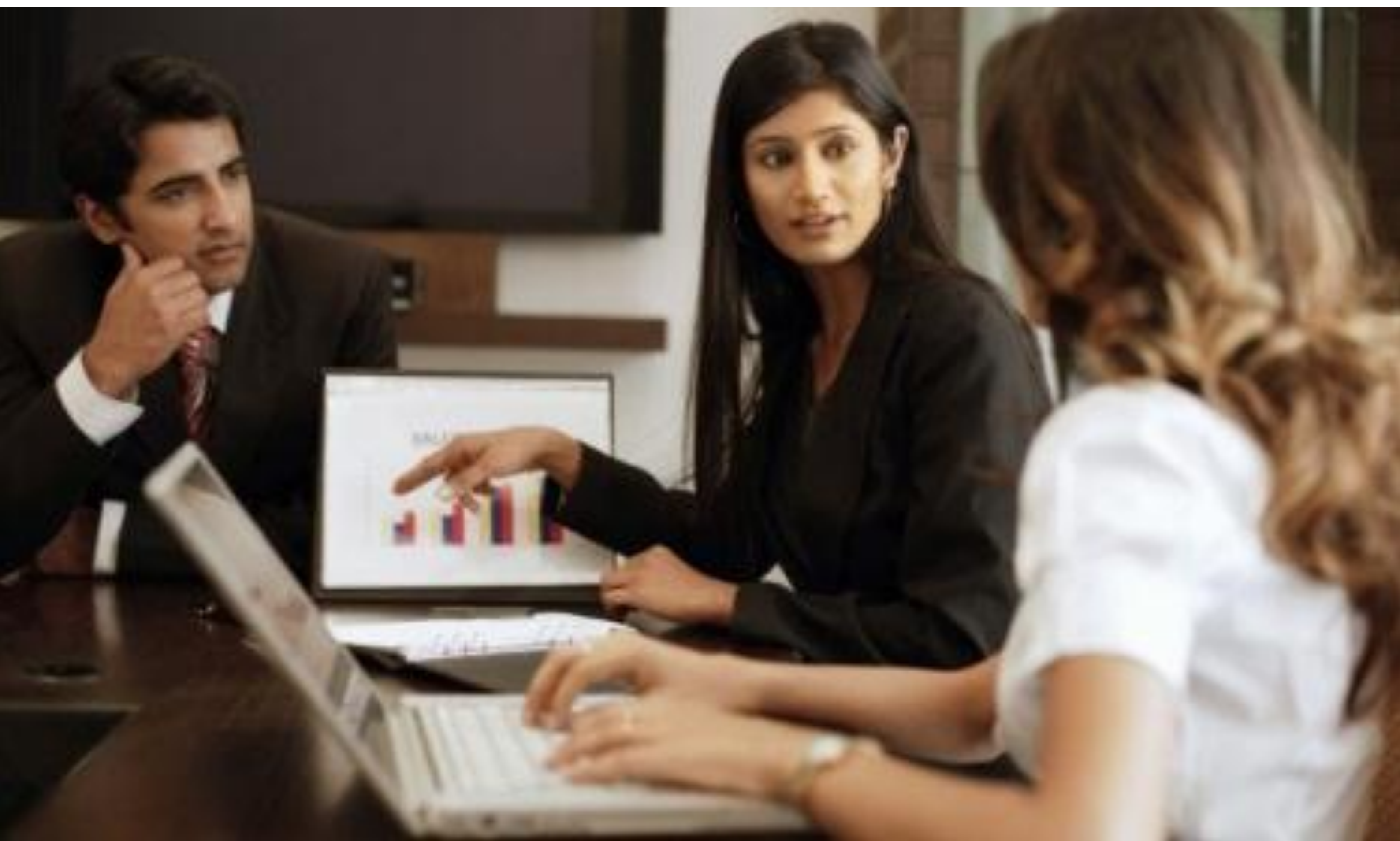
Following the receipt of various requests for clarification relating to related party transactions, the MCA has clarified the following:

- The term 'related party' has to be construed with reference only in the context of a contact or arrangement for which the special resolution is being passed.

- Transactions arising out of compromises, arrangements and amalgamations dealt with under specific provisions of the Companies Act, 1956 or 2013 will not attract the requirements of Section 188 of the Companies Act, 2013.

- Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act 1956, and which already came into effect before 1 April 2014, will not require fresh approval under the said Section 188 till the expiry of the original term of such contacts.
- If any modification in such contacts is made on or after 1 April 2014, the requirements under Section 188 will have to be complied with.

General circular no30/ 2014 dated 17 July 2014



Sectoral regulations

SEZs

Some key take-aways from the Finance Minister's speech while presenting the Union Budget in July 2014 are as under:

- The minister expressed commitment to revive SEZs and has affirmed that he would take effective steps to make them instruments of industrial production, economic growth, export promotion and employment generation.
- MAT at 18.5 % and DDT at 15% shall continue to be levied on SEZ units.

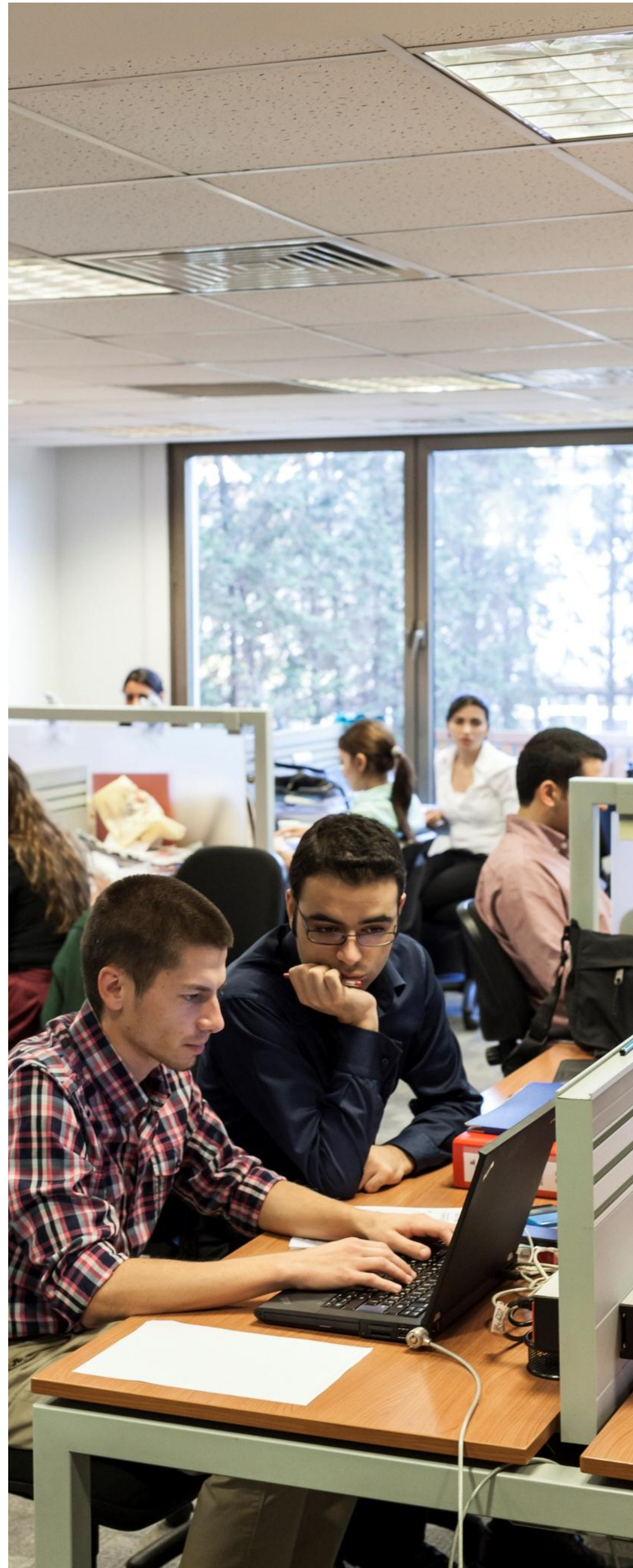
Some key decisions taken meeting of BoA

Under Industries (Development and Regulation) Act, 1951 manufacture of all types of electronics, aerospace and defence items requires compulsory industrial licensing, which is granted by DIPP.

The work of considering and issuing industrial license including entities relating to SEZ export oriented unit which was being looked after by DIPP has been transferred to DoC. With respect to SEZ entities, it has been decided in DoC, to place all such requests before the BoA for its consideration.

Basis the above, in recent BoA minutes, the BoA has approved proposal for issue of LoP to a unit for following activities subject to conditions as prescribed by MoD or MHA:

"Design, development, manufacture, assembly and upgrades of and precision engineered hydraulic and mechanical components of electronic warfare systems (stand along and integrated), design, development, manufacture, upgrade and assembly of precession engineered components or parts e.g. land gear actuators, air-frame, fuselages and other hydraulic and mechanical parts bridge laying systems on combat vehicles with annual capacity of 10-15 numbers in each category."



In such cases, the LoP wil be issued by the concerned DC in terms of Section 9(2)(e) of SEZ Act, 2005 and under Rule 18(1) read with Rule 19 (4) of the SEZ Rules, 2006.

M-SIPS scheme

The Indian government has come out with guidelines for disbursement of incentives in relation to M-SIPS for ESDM sector. M-SIPS offers incentives to greenfield and brownfield ESDM units cash incentives to the tune of 20-25% of capital expenditure.

Some of the salient features of the guidelines are as under:

Filing of claim for incentives

- The claim for incentives can be filed only after the end of the FY in which the project has made an investment exceeding the applicable threshold and has complied with conditions precedent to disbursement.
- In case of expansion, modernisation and diversification projects, disbursement claim can only be made after the applicant has made an investment specified under plant and machinery.

Calculation of threshold

For the purpose of calculating threshold, only expenditure allowable under approved Capex items for the approved project or phase (s) of the project will be considered. In case of land, investments made up to six months before the date of approval of a project would also be considered for calculation of eligible incentives under the Scheme.

General terms and conditions

- The incentives will be available upto 10 years from the date of the approval of the project
- reimbursement of capex subsidy (20% for SEZs and 25% for non-SEZs) shall have to be within the amounts for each of the items under Capex as per the approval letter accorded by DeitY.
- In case the applicant intends to claim incentives for expenditures incurred under items not included in the approved capex, prior approval from DeitY would be required before disbursement against the same is claimed.
- Any payment towards eligible capex, including opening of letter of credit with a bank, prior to the approval of the project, shall not be considered for calculation of incentives under the scheme. However, in case of land, payments made upto six months prior to the date of approval shall be considered for calculating the incentive.

Broad criteria laid down for individual capex items

Land

- The cost of land should be part of the approved capex by DeitY
- The cost of land exceeding 2% of the capex of the approved project cost shall not be eligible for claiming incentives.
- The land should either be purchased or taken on long lease (>30 years) by the applicant
- The payment for the purchase or lease of the land should not have been made prior to six months from the date of the approval of the project.
- The land should be in the name of the applicant.
- The land should not have been in the possession/ ownership of any Related Party within last 3 years from the date of purchase or date of lease by the applicant.

Building constructed

- The cost of construction of building will be considered as part of eligible capex, if it is part of the approved capex by DeitY.
- The capital expenditure incurred for construction of building, including fixtures for water, electricity, air conditioning, etc., shall be counted towards calculation of incentives.

Purchase or lease of built up building

- The cost of purchase or lease of built up building will be considered as part of eligible capex, if it is part of the approved capex by DeitY
- The building should be either purchased or leased by the applicant on long lease (>30 years).
- The building is purchased or leased in the name of the Applicant
- The said building should not have been in possession or ownership of any related party within the last three years from the date of purchase by the applicant.
- Expenditure on furniture and fixtures on purchased or leased building shall be eligible capex, if required for the project or phase(s) of the project.

Plant and machinery

- The machinery should be purchased or leased in the name of the applicant. In cases where the machinery is being leased, the lease should be in the nature of financial lease within the meaning of Accounting Standard 19 issued by The Institute of Chartered Accountants of India.
- Refurbished plant and machinery cannot be greater than 20% of the total value of the machinery or the plant proposed to be purchased under the project for which M-SIPS subsidy is being claimed.

Expenditures related to R&D

- Expenditures related to R&D will be considered as part of the eligible capex, if it is a part of the approved capex by the DeitY.
- The software associated with R&D should have been procured or licensed through legally valid documents after payment of applicable taxes and duties.

Claims for CVD or excise

- Claims would be available to the extent CVD or excise is actually paid by the applicant, net off offset claimed.
- The reimbursement is applicable on capex items under eligible capex as per approval. If the amount claimed as subsidy exceeds the amount approved by the DeitY, a prior approval will be required.

Related party transactions

- For building works, plant and machinery as well as equipment purchased or leased from group companies or related entities, a transfer pricing certificate (for domestic and / or international procurements) as needed for income tax purposes is required.
- The decision on the approval or rejection of the certificate, and its amount shall depend on the final assessment of the income-tax authority.

Other considerations

- Capex items, for which incentives are being claimed for, should be capitalised in the books of accounts of the applicant.
- Capex items, for which incentives are being claimed for, should actually be required for the project or phase(s) of the project which have been approved for implementation by the DeitY.
- The reimbursement of CVD or excise, central taxes and duties should be on capex

items actually required for the project or phase(s) of the project for which disbursement is being claimed.

- Any deviation from the products, for which the application was made and approved under the M-SIPS should be after taking prior approval from the DeitY.

- Any change in the location of an approved project, should be with prior approval of the DeitY.

- The unit that has been granted incentives shall have to be in production for a period of five years after commencement of production.

Recently notified brownfield clusters under M-SIPS

Some of the recently notified clusters, notified on 5 June 2014 are as follows:

S no	State	Brownfield electronics manufacturing clusters for M-SIPS
1	Gujarat	Ahmedabad district
2		Gandhi Nagar district
3		Vadodara district
4	Maharashtra	Nagpur district
5		Nasik district
6		Aurangabad district
7		Thane district
8	Kerala	Kannur district
9	Rajasthan	Ajmer
10		Bhiwadi
11		Neemrana block
12		Kota district
13		Udaipur district
14	Uttarakhand	Haridawar district
15		Udham Singh Nagar district
16	Uttar Pradesh	Ghaziabad district

Food regulations

In relation to the logo and licence on the label of food products, the FSSAI has come out with the following guidelines and notifications. The FSSAI logo as well as the licence number shall be displayed on the label of the food package in a contrast colour to the background in the form shown below:

- In case of multiple units (manufacturer, packer, relabeller or marketer) the FSSAI logo as well as the licence number of the brand owner shall be displayed on the label of the food package. Addresses of the multiple units on the label should carry the licence number as under:
  - In case of imported food products, the importer shall display the FSSAI logo as well as the licence number along with the name and address of importer. These may either be pre-printed on the label or affixed through a sticker before customs clearance.

- The height of the letters as well as the numeral of the licence number shall be as prescribed in 2.3.3 of the Food Safety and Standards (Packaging and Labeling) Regulation, 2011.

- The display of the FSSAI logo on the label of the food product is not a mark of certification, but signifies that the food business operator holds a valid licence under the Food Safety and Standards Act, 2006.

Labelling for alcoholic beverages

In relation to alcoholic beverages, the following changes have taken place in respect of packaging and labelling regulations:

- If additives, including colour, water and preservatives are used in the manufacture of alcoholic beverages, then the list of ingredients will have to be declared on the label.
- In case, if the alcoholic beverage is a single ingredient, no ingredient list is required to be declared on the label like any other food product.
- The following specific labelling requirements for alcoholic beverages are exempted as per the FSS (Packaging and Labelling) Regulations 2011, which has come into force since 5 August 2011:
  a. Best before date shall not be applicable to the following products:
     i. Wines and liquors
     ii. Alcoholic beverages containing 10% or more volume of alcohol
  b. Declaration of the vegetarian or non-vegetarian logo on the label shall not be applicable to alcoholic drinks.
  c. Nutritional information is not required in case of alcoholic beverages.

The time period for following these guidelines has been extended to 1 January 2015.

Financial services

Base issue size, minimum subscription, retention of over-subscription limit and further disclosures in the prospectus for public issue of debt securities

The Companies Act, 2013 and the Rules made there under do not specify the quantum of minimum subscription needed in case of public issues (both for equity as well debt), but only requires disclosure of the same in the offer document. Further, as per Regulation 12 of SEBI ILDS Regulations, the issuer may decide the amount of minimum subscription, which it seeks to raise from the public through the issue of non-convertible debentures, and disclose the same in the offer document.

The board has now issued a circular with respect to the base issue size, minimum subscription, retention of over-subscription limit and further disclosures in the prospectus for public issue of debt securities. Important features are as follows:

- Minimum subscription for public issue of debt securities shall be 75% of the base issue
- In case of non- receipt of minimum subscription of its base issue size (75%), the entire application monies shall be refunded within 12 days from the date of the closure of the issue.
- In case of delay in making the aforesaid refund, refund of the subscription amount along with interest at the rate of 15% per annum for the delayed period.
- Tax-free bonds, as specified by the CBDT, shall be exempted from the above proposed minimum subscription limit.
- In any public issue of debt securities, the base issue size shall be a minimum of 100 crore INR.
- Issuers shall be allowed to retain the oversubscription money up to a maximum of 100% of the base issue size or any lower limit as specified in the offer document.
- In case of shelf prospectus, the issuer can retain oversubscription up to the rated size as specified in shelf prospectus.
- The limit for retaining the oversubscription amount for issuers of tax-free bonds, who have not filed shelf prospectus, shall be the

amount as authorised by the CBDT to be raised in a year or any lower limit, as specified in the offer document.

- Further, the board has specified the following additional disclosures to be made in prospectus for debt issue:
  - Objects of the issue
  - Disclosure requirements as specified in Chapter III of the Companies Act, 2013
  - Disclosure requirements as specified in Schedule I of the SEBI ILDS Regulations
- The board further clarified that the provisions of this circular shall be applicable for the draft offer document for issuance of debt securities filed with the designated stock exchange on or after 16 July 2014.

Source: CIR/IMD/DF/ 12 /2014 dated17 June 2014

Minimum AUM of debt oriented schemes

The board had clarified that in the interest of investors, the debt oriented schemes should have adequate corpus in order to ensure adherence to the investment objectives as stated in the scheme information document and compliance with investment restrictions as specified under the SEBI (Mutual Funds) Regulations, 1996.

In respect of above, the board has clarified the following:

- The minimum subscription amount of debt oriented and balanced schemes at the time of new fund offer shall be at least 20 crore INR and that of other schemes shall be at least 10 crore.
- An average AUM of 20 crore INR on a half-yearly rolling basis shall be maintained for open ended debt oriented schemes.
- The existing open-ended debt oriented schemes shall comply within one year from the date of issue of this circular.
- The confirmation on compliance of the above shall be reported to the board in the half yearly trustee reports.

Source: Cir/ IMD/ DF/ 15 /2014 dated 20 June 2014

Participation of FPIs in the currency derivatives segment and position limits for currency derivatives contracts

The Finance Minister in his Union Budget 2013-2014 speech on 28 February 2013 had announced that “FIIs will be allowed to participate in the exchange traded currency derivative segment to the extent of their Indian rupee exposure in India.”

The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment)

Regulations, 2014 and the RBI vide AP (DIR Series) Circular no 148 dated 20 June 2014 has allowed FPIs who are eligible to invest in securities as per the provisions of the FEMA 20, to enter into currency futures or exchange traded currency options contracts.

In view of the above, FPIs are permitted to trade in the currency derivatives segment of stock exchanges, subject to terms and conditions mentioned in the circular.

Source: CIR/MRD/DP/20/2014 dated 20 June 2014

Broadcasting

Recommendation on ‘issues related to new DTH licences’

The TRAI has released its recommendation paper highlighting issues for new licences and migration of existing DTH licencees. Some of the key aspects mentioned in the recommendation paper are as follows:

- The period of the DTH licence to be increased from 10 to 20 years, renewable by 10 years at a time.
- One time entry fee to be retained at 10 crore INR. Existing licence fee to be reduced from 10% of the gross revenue to 8% of adjusted gross revenue in line with the telecom licences.
- The existing DTH licencees to be permitted to migrate to a new regime at any time during the currency of their existing licences.
- The DTH licencees to be mandated to comply with the tariff order or scheme as prescribed by the TRAI for commercial inter-operability.
- There should be uniformity in the policy on cross-holding or 'control' between broadcasters and DPOs, and among DPOs, in the broadcasting and distribution sectors

  "Control" has been defined – An entity (E1) is said to control another entity (E2), if E1, directly or indirectly through associate companies, subsidiaries or relatives meets the following criteria:

  (a) Owns at least 20% of the total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership will be calculated using the multiplicative rule

  (b) Exercises *de jure* control by means of the following:

    (i) Having not less than 50% of voting rights in E2 or

    (ii) Appointing more than 50% of the members of the board of directors in E2

    (iii) Controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel

    (iv) Exercises *de facto* control by means of being a party to agreements, contracts or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

- Broadcasters and DPOs - MSO/HITS and DTH operators to be separate legal entities.
- Rationalised and regulated vertical integration to be permitted between broadcasters and DPOs. Vertically integrated broadcaster(s) and DPOs to be subjected to an additional set of regulations. A vertically-integrated broadcaster to be permitted to control only one DPO.
- A vertically-integrated DPO not permitted to acquire more than 33% of the market share in the relevant market. Relevant market for a DTH to be the entire country and for MSO/HITS state.

Consultation paper on regulatory framework for platform services

All TV channel DPOs, that is, cable TV (MSOs in areas covered by DAS and MSOs and LCOs elsewhere), DTH, IPTV and HITS operators, operate certain kind of programming services which are specific to each platform, and which are not obtained from broadcasters. Hereinafter, such platform-specific services being offered by DPOs have been referred to as PS. Unlike TV channels broadcast by authorised broadcasters, PS is largely unregulated at present. There is no requirement for registration of PS channels.

In light of the above, TRAI has issued a consultation paper on the regulatory framework for platform services. Some of the key aspects on

which comments from stakeholders have been invited are as follows:

- Definition of platform services (PS)?
- What PS channels can or cannot transmit or include
- Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?
- Whether PS channels should also be subjected to the same security clearances or conditions, as applicable for private satellite TV channels
- What should be the period of validity of registration and annual fee per channel, and whether there should be any limit on the number of PS channels which can be operated by a DPO?
- Views, if any, on FDI limits, renewal of permission, mechanism for monitoring of PS channel, time limit that should be granted to DPOs for registration of the existing PS channels

Consultation paper on tariff issues related to broadcasting and cable TV services for commercial subscribers

Subscribers of broadcasting and cable TV services are basically of two kinds – on one hand there are the ordinary subscribers who consume TV services domestically and for their own requirements, on the other hand there are commercial subscribers who obtain TV services for the benefit of their clients, customers, etc, at their commercial establishment, that is, for the furtherance of their business interests.

In order to consider whether it is necessary or not to fix tariff for commercial cable TV subscribers, the TRAI had issued a consultation paper on tariff issues related to broadcasting and cable TV services for commercial subscribers.

With this background, TRAI has issued a tariff order after analysing all the issues involved and the inputs received from various stakeholders. The highlights of the tariff order are as follows:

- Commercial establishments who do not specifically charge their clients or guests on account of providing or showing television programmes and offer such services as part of amenities, are to be treated like ordinary subscribers, wherein the charges would be on per television basis.
- In cases where commercial establishments specifically charge their clients or guests on account of providing or showing television programmes, the tariff will be as mutually agreed between the broadcaster and the commercial subscriber.
- In all cases, the commercial subscriber is to obtain television services only from a distribution platform operator (MSO, DTH operator, cable operator, IPTV operator or HITS operator).

Aerospace and defence

Key takeaways from the Finance minister Union Budget speech presented in July 2014 are as follows:

- The Union Budget 2014-15 has increased the defence allocation to 2,29,000 crore INR for FY 15. This represents a growth rate of 12.44% over the previous year's revised estimates of 2,03,672 crore INR.

Key statistics of the defence budget 2013-14 and 2014-15

	2013-14 (Revised estimates)	2014-15 (Interim Budget)	2014-15
Defence budget (in crore INR)	2,03,672	224,000	229,000
Growth of defence Budget (%)	----	9.98	12.44
Revenue expenditure (in crore INR)	1,24,800	134,412	134,412
Growth of revenue expenditure (%)	---	7.70*	7.70*
Share of revenue expenditure in defence budget (%)	61.27	60.01	58.70
Capital expenditure (in crore INR)	78,872	89,588	94,588
Growth of capital expenditure (%)	----	13.59*	19.93*
Share of capital expenditure in defence Budget (%)	38.73	39.99	41.30

**Growth rate in comparison to RE for 2013-14*

- It is proposed that the limit of foreign direct investment in defence manufacturing will be raised to 49% from the existing cap of 26%, with full Indian management and control.

- Capital outlay for defence raised by 5,000 crore INR over the amount provided in the interim budget (including 1,000 crore INR for accelerating the development of the railway system in the border areas).

- Hundred crore INR provided for setting up a technology development fund to provide resources to public as well as private sector companies to support research and development of defence systems.

List of defence items requiring an industrial licence

As per the PIB release dated 26 June 2014, Press Note 3 of 2014 has been issued by the DIPP, Ministry of Commerce & Industry listing out the items which require an industrial license. The list has to be read in conjunction with Entry No 13 of Schedule II of the Notification No S.O.477(E) dated 25 July 1991 as amended by Notification No SO 11(E) dated 3 January 2002.

The PIB release also states that dual use items, having military as well as civilian applications, other than those specially mentioned in the list, would not require an industrial licence.

Security manual for licensed defence industries

As per the PIB release dated 8 July 2014, the Department of Defence Production, MoD has finalised the 'Security Manual for Licenced Defence Industry'. The important highlights of the manual are as follows:

New applicants

- The manual prescribes minimum standards of security as well as other safeguards required to be put in place by the licencee in the interest of national safety and security. All units, offices or areas of licenced defence industries in the private sector dealing with any classified information, document or material will now be 'prohibited places' in terms of the provisions of the Official Secrets Act, 1923.

- Defence products will be categorised in three categories such as A, B & C. Category A involves products which require the highest level of security, category B involves a medium level of security and category C requires a minimum level of security. In case any company is involved in the manufacture of defence products which fall under more than one category, then either the company should clearly segregate its areas of operation or manufacturing for different categories of products and apply the related security instructions or if the areas of operation or manufacture are not possible to be segregated, the security instructions applicable to the higher level of security will be applied.

- Earlier, the applicant companies had to submit an affidavit stating that adequate safety and security procedures will be put in place. This affidavit has been done away with.

Companies which have already been issued an industrial license

- Companies which have already been issued a licence for manufacturing defence items and have already started manufacturing defence items, will have to put in place the necessary security systems as prescribed in the manual within a period of one year from the date of notification of the manual.

- The IB or MHA will undertake the first security audit of all the licensed private companies within the defence sector immediately after the manual comes into force and based on the experience, the feedback of the IB or MHA, the Security Manual may be revised, if required.

Perspective

Let's revive the decelerating education sector

The education sector is vital for India to realise its demographic dividend. It is a key driver of skill development, productivity, economic growth and ultimately, quality of life. As India aspires to become a knowledge economy and a powerhouse of the global workforce, this sector needs continuous growth. Unfortunately, in recent years it has grown well below its potential despite opportunity.

The sector in India is broadly classified into two streams i.e. regulated and un-regulated. The regulated stream includes schools (K-12) and higher education (universities and colleges). The unregulated stream includes pre-school, vocational training, test preparation, multimedia and books, online courses, etc.

The Indian education sector, which was earlier deemed a sunrise sector in India, has slowed down in recent times. The major stumbling blocks include lack of quality faculty, inferior facilities and teaching tools, requisite innovative and entrepreneurial spirit. Hence, in order to revive the sector, there is a need to develop partnerships, better understanding and cooperation between all stakeholders i.e. academia, industry and the government.

The current policy framework of the government provides only not-for-profit organisations to enter the regulated stream. This has restricted the entry of corporates.

India as a country has distinct advantages for this sector given its demographic profile, its track record in service delivery in sectors such as IT and low operational costs. Therefore, in order to convert these opportunities, several initiatives are required both from the private sector as well as the government.

Encourage private sector participation: Encouraging and facilitating private sector participation in the formal school and higher education sector is a key challenge. Current regulations discourage the organised corporate sector, which has the required technical and managerial skills but not necessarily the financial resources to operate entirely on a not-for-profit basis in the Indian education sector in an efficient and scalable model. There is a need for policy measures that ease the way for greater involvement of the private sector as well as reduce the red tape synonymous with this sector.

Regulatory ambiguity and existing policy discouraging foreign institution: FDI in the education sector has been low at a meagre 950 million USD, forming only 0.43% of all FDI in the country in last 14 years from April 2000 to April 2014. Among the key reasons for this are contradictory government policies. While the FDI policy allows 100% FDI in education, the education policy stipulates that only a not-for-profit entity like a trust, a society or a Section 8 company can set up a formal education institute.

While FDI is not allowed in a trust or society, recent MHA decisions have said that investment in a Section 8 company will require FCRA approval which for an educational institute will be difficult requiring security clearance from the MHA. Streamlining this clause can help attract foreign investments in the education sector. If the MHA believes that a security clearance is necessary, the desired changes need to be put in place through the FDI policy and not through the FCRA. Thus, there is a need for a more open policy in terms of making the systems more welcoming for foreign partners.

Lack of funding in the education sector: Historically, government spend has averaged between 3.3 and 3.5% of GDP. This is lower than world averages which stand way above 4%. A higher budget will address the acute shortage of qualified, trained and motivated faculty across the education sector; providing students with better teaching methods and physical infrastructure and thereby quality education that improves learning outcomes.

Increase the usability of the existing manpower: The recent Economic Survey has highlighted that a significant proportion of school students are unable to perform at levels expected of their specific grade or class. Further, employers in various sectors such as IT and finance also indicate that over 75% of qualified candidates lack key 'employability' skills. Moreover, since we have a remarkable 60% of the total population available for working and contributing towards the GDP, it means that out of the total pool of workable force available, only 25% is capable of being used by the market.

The lack of quality education has churned out a workforce with inadequate skills. This is mainly due to the weak industry-academia linkage. Thus, there is a need to increase industry involvement and involve industry in the education process as well as provide students with more vocational training.

Enhanced focus on research: India lags far behind its global peers in producing quality research output. Lacking on intellectual property rights does not allow India to tap the commercial opportunity available in the market. Hence, India needs to follow the best global practices in this regard.

Incentive for creating physical infrastructure: The education sector suffers from a lack of physical infrastructure. The government needs to provide the necessary fiscal and policy incentives to companies engaged in creating physical infrastructure.

Given the focus on innovation and technology, there is a need to make students more tech-savvy and innovative. Soft skills such as the ability to work in teams, speak new languages, give presentations, etc. are going to be pre-requisites for the upcoming global employee. Courses offered need to reflect the need of the industry.

In a nutshell, easy access needs to be provided to capital and know-how for expansion in the formal as well as the non-formal education space. Technology enhanced learning and industry-academia linkage must be promoted in order to spur innovation. Vocational education and training needs to be integrated into mainstream school and higher education in order to provide mobility between training, education and employment. Solving these problems requires true-blue participation from all participants in the supply chain.

Mayank Kapoor (manager, Regulatory Services)

Glossary

AD	AD category – I
AGR	Adjusted gross revenue
AUM	Asset under management
BO	Branch office
BoA	Board of approval
CBDT	Central Board of Direct Taxes
CSR	Corporate social responsibility
CVD	Counter vailing duty
DDT	Dividend distribution tax
DeiTY	Department of Electronics and Information Technology
DIPP	Department of Industrial Policy & Promotion
DoC	Department of Commerce
DPOs	Distribution Platform Operators
DTH	Direct to home
ESDM	Electronics systems design and manufacturing
FC	Financial commitment
FCRA	Foreign Contribution Regulation Act
FCs	Foreign companies
FDI	Foreign direct investment
FEMA 20	Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000
FEMA	Foreign Exchange Management Act
FIIs	Foreign institutional investors
FIPB	Foreign investment promotion board
FPI	Foreign portfolio investment
FSSAI	Food Safety and Standards Authority of India
FY	Financial year
HITS	Head-end-in-the-sky
IB	Intelligence Bureau
INR	Indian rupee
IPTV	Internet Protocol Television
IT	Information technology
ITAT	Income Tax Appellate Tribunal
JV	Joint venture
LO	Liaison office
LoP	Letter of permission
LRS	Liberalised remittance scheme
MAT	Minimum alternate tax
MCA	Ministry of Corporate Affairs
MHA	Ministry of Home Affairs
MIB	Ministry of Information and Broadcasting
MoC	Ministry of Commerce
MoD	Ministry of Defence:
M-SIPS	Modified special incentives package scheme
MSOs	Multi system operators
NBFCs	Non-banking financial companies
NIC 2008	National Industrial Classification 2008
NRIs	Non-resident Indians
ODI	Overseas direct investment
PAN	Permanent account number
PIB	Press Information Bureau
PO	Project office
PS	Platform services
QFIs	Qualified foreign investors

R&D	Research and development
RBI	Reserve Bank of India
RD	Regional director
SEBI ILDS Regulations	SEBI (Issue and Listing of Debt Securities) Regulations, 2008
SEBI	Securities Exchange Board of India
SEZ Act	Special Economic Zone Act, 2005
SEZ	Special economic zone
TRAI	Telecom Regulatory Authority of India
USD	United States dollar
WOS	Wholly owned subsidiary

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