

# THE NEWSLETTER

## CLARIFICATION ON E-FORMS DIR-11 AND DIR-12

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Ministry of Corporate Affairs (“MCA”), after considering several representations in relation to the difficulties faced by the stakeholders as a result of automatic deactivation of Digital Signature Certificate (DSC) following the resignation of all the directors of a company, before the company could appointment new directors. Upon the filing of DIR-11 (Notice of resignation of a director to the Registrar), the DSC is automatically deactivated, due to which DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) could not be filed by the companies due to lack of an authorized signatory Director.

MCA, in order to enable the e-filing of the abovementioned e-forms and till an alternative mechanism is provided to solve this issue, *vide* this Circular<sup>1</sup> has clarified that the Registrar of Companies are authorized, on the request from the stakeholders and after conducting due examination, to allow any one of the resigned director, who was an authorized signatory Director for the purpose of filing DIR-12.

### COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2015<sup>2</sup>

The Companies (Registration Offices and Fees) Rules, 2014 have been amended to include Rule 10(7) which provides that in the event any further information or documents that are called for in respect of applications or e-forms or documents, which have been filed electronically with the Ministry of Corporate Affairs, shall be furnished in Form No. GNL-4 as an addendum.

### DELHI HC SEEKS CENTRE'S RESPONSE ON TREATING COSMETICS AS VEG OR NON-VEG<sup>3</sup>

The Delhi High Court sought the Centre's reply on pharma major Reckitt Benckiser's plea challenging a Government notification mandating that every pack of cosmetics and toiletries like shampoo, toothpaste and soap should indicate whether it has any ingredient of animal origin. The notification mandates that packages of cosmetics and toiletries like shampoos, toothpastes and soaps should bear a red/brown dot for non-vegetarian origin and green dot for vegetarian. The department issued the notification under the Legal Metrology Act, while the company claimed that the issue falls under the scope of the Drugs and Cosmetics Act.

<sup>1</sup> General Circular No.03/2015 dated 03.03.2015

<sup>2</sup> Notification No. 01/16/2013 (Part-I) CI-V, Dated 24-2-2015

<sup>3</sup> <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/hc-seeks-centres-reply-on-treating-cosmetics-as-veg-or-nonveg/article6953472.ece>

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RESERVE BANK OF INDIA ON BANK RATE<sup>4</sup>

The Reserve Bank of India ("RBI") *vide* Circular dated 15.01.2015 had cut down the Bank Rate by 25 base points from 9.0 per cent to 8.75 per cent, w.e.f. 15.01.2015. RBI has further decreased the Bank Rate by 25 base points from 8.75 per cent to 8.50 per cent w.e.f 04.03.2015.

MADRAS HIGH COURT DECLARES ECONOMIC ABUSE AS DOMESTIC VIOLENCE<sup>5</sup>

The Hon'ble Madras High Court has directed a man to pay the third and fourth year fee, amounting to Rs. 2.11 lakh, of his son pursuing engineering from a private college in Coimbatore, besides his other expenses, pointing out that 'economic abuse' is domestic violence and interim relief, can be ordered by the trial court under the Protection of Women from Domestic Violence Act, 2005.

The wife approached the trial court seeking direction to her husband to meet the education expenses of her son for pursuing engineering course. The Court directed the husband to pay the fees. Aggrieved by the order the husband went into appeal wherein the order was modified by the appellate court in favour. Aggrieved, the husband, wife and son filed the petitions before the Hon'ble Madras High Court which decided the matter.

SC: COURTS CAN ASK STATES TO PAY COMPENSATION TO ROAD MISHAP VICTIMS<sup>6</sup>

The Hon'ble Supreme Court has held that courts can ask states to pay compensation to road mishap victims or their relatives if convict drivers are not capable of paying the adequate compensation. The Hon'ble Court held as follows:

We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section.

## AMENDMENT OF FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA) REGULATIONS, 2000

Reserve Bank of India, *vide* Notification<sup>7</sup> dated 04.02.2015 amended Regulation 7 which provides for the prohibition on acquisition or transfer of immovable property in India by citizens of certain countries. The list of countries prior to the amendment include:-Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan. Regulation 7 has been amended to prohibit citizens from Macau and Hong Kong to acquire or transfer immovable property situated in India.



<sup>4</sup> RBI/2014-15/486 dated March 04, 2015 also see RBI/2014-15/406 dated January 15, 2015

<sup>5</sup> <http://www.deccanchronicle.com/150303/nation-current-affairs/article/economic-abuse-domestic-violence-declares-madras-high-court>

<sup>6</sup> State of Himachal Pradesh vs. Ram Pal CRIMINAL APPEAL NO. 393 OF 2015 (SC)

<sup>7</sup> Notification No. FEMA. 335/2015-RB

## CLB NOT EMPOWERED TO ADJUDICATE UPON THE VALIDITY OF A MEETING<sup>8</sup>

The Hon'ble Company Law Board ("CLB"), Mumbai, has held that if any meeting is held by a company within stipulated time in accordance with law, CLB is not empowered to adjudicate validity of such a meeting.

While deciding upon the question in the matter of Kaleidoscope Travel Consultants (P.) Ltd. v. Travel Agents Association of India, the CLB stated that the petitioner has failed to substantiate that any material irregularity/illegality has been committed by the company in making compliance of the provisions of the Act. There is substantial compliance of law by the company in holding the AGM' under challenge. Once the meeting has already been held, and the result of election of the office bearers also has already been declared, the petitioner shareholder who actually participated in the meeting and contested for election, is not entitled to get such meeting declared as *null and void*.



## LOK SABHA PASSES THE MINES AND MINERALS BILL

The Mines and Minerals (Development and Regulation) Amendment Bill, 2015, seeking transparency in mineral allocations was passed by Lok Sabha on March 03, 2015. This bill replaces the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 that was promulgated on January 12, 2015. Through one of the amendments the bill creates a new category of mining license i.e. the prospecting license-cum-mining lease, which is a two stage-concession for the purpose of undertaking prospecting operations (exploring or proving mineral deposits), followed by mining operations. Further, under the Mines and Minerals (Development and Regulation) Act, 1957, a mining lease was granted for a maximum of 30 years and a minimum of 20 years and could be renewed for a period not exceeding 20 years. The bill has amended the period of mining lease granted for all minerals other than coal, lignite and atomic minerals, to a period of 50 years. All mining leases granted for such minerals before the Bill, shall be valid for 50 years. On expiry of the lease, instead of being renewed, the leases shall be put up for auction, as specified in the Act. Under the Bill, the lease period for coal and lignite remains unchanged.



## CBDT: NOW, INCOME TAX DEPARTMENT TO PROSECUTE WILFUL TAX EVADERS<sup>9</sup>

In its crusade against black money and with a view to have credible deterrence against generation of black money, the Government has shifted the focus to successfully prosecute the offenders in shortest possible time. Central Board of Direct Taxes has said that in order to deter the generation of black money, Income tax dept. has shifted its focus in search & survey cases from revenue generation to prosecuting wilful tax evaders which is a serious offence punishable with imprisonment of up to 7 years and fine.



<sup>8</sup> C.P. NO. 3 OF 2014, NOVEMBER 28, 2014

<sup>9</sup> Press Release on the shift in the focus of the department from civil consequences to criminal consequences in serious cases of tax evasion. Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes, 12.02.2015

SANCTION OF ARRANGEMENT AND COMPROMISE SCHEME BY THE HIGH COURT  
(MR. ABHISHEK GURBANI, ASSOCIATE)

There is a positive wave in the industry, with the stock market scaling the peaks of points and investment from both foreign and local entities being encouraged; the corporate entities are now seeking to fortify their position in the market and flourish in this favourable atmosphere. One of the popular modes of solidifying the position in market is re-structuring or re-arranging the structure of business which may include the likes of arrangement or reconstruction techniques such as merger, de-merger, amalgamation and acquisition. To cite an example, there has been some stiff competition between international and national service providers in the cab services market for some time now and recently we witnessed an acquisition where the cab aggregator 'Ola' acquired its competitor 'Taxi For Sure' to add prominence to its presence in the market. To undertake such re-structuring or re-arrangement of the business, the entities have to comply with provisions governing arrangement and compromise under the commercial laws. Sections 230 to 240 of the Companies Act, 2013 lay down the provisions governing arrangement and compromise. However, as the same have not been notified yet by the Ministry of Corporate Affairs, the provisions laid down **by the Companies Act, 1956 ("Act") under sections 391-396** are in effect for the time being and govern the procedure of compromise and arrangement. Section 391 of the Act provides for the **sanctioning of the scheme of compromise and arrangement ("Scheme") by the High Court** in order for the Scheme to be effective. The process as established by the law for obtaining the sanction of the Scheme from the High Court is listed below:

1. An application for obtaining judge's summons for directions to convene a meeting of creditors and/or members or any class of them shall be in Form no. 33, and shall be supported by an affidavit in Form no. 34. A copy of the proposed scheme of merger is also required to be annexed thereto.
2. A copy of the application filed in the High Court must be sent to the Registrar of Companies (ROC) within 30 days.
3. The Notice (Form No. 36) convening the general meeting based on the directions given by the court (Form no. 35) shall be sent to every member and creditor as directed by the Court along with the Explanatory Statement and Form of Proxy (in Form No. 37). It shall be ensured the Notice reaches the member at least twenty one days before the date of the general meeting. Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge and within twenty four hours of a requisition being made for the same, with a copy of the proposed merger.
4. The notice of the meeting is required to be advertised in such newspapers and in such manner as the Court may direct, not less than twenty one clear days before the date fixed for the meeting. The advertisement shall be in Form no. 38.
5. The chairman of meeting is required to file affidavit of service proving dispatch of individual notices to the shareholders and publication of individual notice in newspapers with respective court, at least seven days prior to the date of the shareholders' meeting.
6. The company shall hold the meeting and pass the resolution approving the Scheme by the means of votes.
7. The chairman of meeting shall submit its report within seven days after the conclusion of the meeting to the court in Form No. 39.

10. The company shall prepare and file a petition for confirmation of Scheme in Form No. 40 along with affidavit, with the respective court, within seven days of filing the chairman's report.
11. After the court has fixed a date for the hearing of the petition, a notice of the hearing shall be advertised in the same papers in which the notice of the meeting was advertised or in such other newspaper as the court may direct, not less than ten days before the date fixed for the hearing.
12. **The company shall receive the court's order sanctioning the Scheme and file a copy of the order of the Court with the ROC within thirty days from the date of receipt of the order or within the time limit prescribed by the court.**
13. Stamp Duty as per the rate prescribed under the respective state law must be paid.

It is pertinent to note here that the scheme has to be sanctioned by the High Court and the Scheme shall be filed by both the transferor and transferee company, before the respective High Court within whose jurisdiction their registered offices are situated. If both the transferor and transferee companies fall within the jurisdiction of the same High Court, then both companies can file a combined scheme as co-applicants before the High Court. Apart from the requirements provided under Act, the companies shall ensure the compliance of other applicable laws such as Competition Act, Foreign Exchange Management Act etc. wherever applicable and regulations framed by governing bodies such as Reserve Bank of India, Securities Exchange Board of India and others with which the companies are registered, recognized or affiliated.

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