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RBI/FEMA

1. MANDATORY FILING OF FORM ARF, FCGPR AND FCTRS ON E-BIZ PLATFORM

With a view to promote the ease of reporting of transactions related to FDI, RBI has made online filing of the following returns on e-Biz platform mandatory, w.e.f 08.02.2016:

- i. Advance Remittance Form (ARF) which is used by the companies to report FDI inflows to RBI;
- ii. FCGPR Form which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow; and
- iii. FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India. - **[A.P. (DIR Series) Circular No. 40, February 01, 2016]**

2. BANKS TO PERMIT SETTLEMENT OF EXPORT/IMPORT TRANSACTIONS IN CURRENCIES NOT HAVING A DIRECT EXCHANGE RATE

To further liberalize the procedure and facilitate settlement of export and import transactions where the invoice is in a freely convertible currency and the

settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, it has been decided that banks may permit settlement of such export and import transactions (excluding those put through the ACU mechanism), subject to conditions stated as under:

- a. Exporter/Importer shall be a customer of the AD(?) Bank;
- b. Signed contract / invoice is in a freely convertible currency;
- c. The beneficiary is willing to receive the payment in its/his own currency instead of the original (freely convertible) currency of the invoice/ contract/ Letter of Credit as full and final settlement;
- d. AD bank is satisfied with the bonafides of the transactions, and;
- e. The counterparty to the exporter / importer of the AD bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures. - **[A.P. (DIR Series) Circular No. 42, dated 4th February, 2016]**

3. FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATIONS, 2015

The Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000 have been repealed and replaced by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015. In terms of these Regulations, acquisition or transfer of any immovable property outside India by a person resident in India would require prior approval of the Reserve Bank of India except in few cases as specified under the circular. - **[A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)], dated 4th February, 2016]**

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4. FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) REGULATIONS, 2015

Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 have been repealed and replaced by the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015. According to the Regulations, a “Foreign Currency Account” means an account held or maintained in currency other than the currency of India or Nepal or Bhutan. These Regulations seek to regulate opening and maintenance of foreign currency accounts in and outside India by a person resident in India. In terms of Regulation No. 4, a person resident in India may open, hold and maintain with an authorized dealer in India the EEFC Account, RFC Account, RFC(D) Account, Diamond Dollar Account, subject to the conditions specified in the Regulations. - **[A.P. (DIR Series) Circular No.44/2015-16 [(1)/10(R)], dated 4th February, 2016]**

5. BANKS TO FOLLOW NEW ACCOUNTING STANDARD IND AS FROM APRIL, 2018

RBI has advised scheduled commercial banks (excluding RRBs) that they shall follow the Indian Accounting Standards as notified under the Companies (Indian Accounting Standards) Rules, 2015, subject to any guideline or direction issued by the Reserve Bank in this regard, in the following manner:

- i. Banks shall comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning from April 1, 2018 onwards, with comparatives for the periods ending March 31, 2018 or thereafter. Ind AS shall be applicable to both standalone financial statements and consolidated financial statements. “Comparatives” shall mean

comparative figures for the preceding accounting period.

- ii. Banks shall apply Ind AS only as per the above timelines and shall not be permitted to adopt Ind AS earlier. - **[DBR.BP.BC.No.76/21.07.001/2015-16, dated 11th February, 2016]**

6. EXTENSION OF THE DATE FOR EXCHANGING THE PRE-2005 BANK NOTES TO JUNE 30, 2016

RBI has decided to extend the date for exchanging the pre-2005 bank notes to June 30, 2016. However, from January 01, 2016, such facility is available at identified bank branches (<https://www.rbi.org.in/Scripts/Regionaloffices.aspx>) and Issue Offices of RBI. - **[DCM (Plg) No.G-9/2856/10.27.00/2015-16, dated 11th February, 2016]**

7. CLARIFICATION RELATING TO START-UPS ACCEPTING PAYMENT ON BEHALF OF OVERSEAS SUBSIDIARIES ISSUED

RBI in connection with the issues of acceptance of payments by start-ups on behalf of overseas subsidiaries has issued clarification as under:

- a. A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up;
- b. The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up;
- c. The balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within a period as applicable to realisation of export proceeds (currently nine months);

- d. A start-up is also permitted to avail of the facility for realising the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Providers (OPGSPs) for value not exceeding USD 10,000 (US Dollar ten thousand) or up to such limit as may be permitted by the Reserve Bank of India from time to time under this facility; and
- e. To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place. - **[A.P. (DIR Series) Circular No. 51, dated 11th February, 2016]**

8. CLARIFICATION ON DEMAND OF LEGAL GUARDIANSHIP CERTIFICATES ISSUED UNDER THE MENTAL HEALTH ACT, 1987 BY THE BANKS FROM MENTALLY ILL PERSONS

As per Circular DBOD. No. Leg. BC. 84 / 09.07.005 / 2013-14 dated January 13, 2014 RBI had advised banks, inter alia, to take note of the legal provisions in the Mental Health Act, 1987 and to rely on and be guided by the orders/certificates issued by the competent authority, under the Act, appointing guardians/ managers for the purposes of opening / operating bank accounts. However, observing the practice by the banks that they insist on guardianship certificate from all mentally ill persons.

RBI has clarified that paragraph 2(iii) of the aforesaid circular has not been intended to mandate banks to insist on appointment of a guardian as a matter of routine from every person "who is in need of treatment by reason of any mental disorder". It would be necessary for banks to seek appointment of a guardian only in such cases where they are convinced on their own or based on documentary evidence available, that the concerned person is mentally ill and is not able to enter into a valid and

legally binding contract. - **[DBR. No. Leg. BC. 78/09.07.005/2015-16, dated 11th February, 2016]**

9. NOTIFICATION OF INTEREST EQUALISATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT

The Government of India has announced the Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit to eligible exporters. The scheme is effective from April 1, 2015. The details of the scheme are provided in this circular. - **[DCBR.CO.SCB.Cir. No. 1/13.05.000/2015-16, dated 11th February, 2016]**

10. NBFCs NOT TO UNDERTAKE POP SERVICES FOR NATIONAL PENSION SYSTEM

RBI has received proposals from Non- Banking Financial Companies (NBFCs), seeking approval for undertaking of Point of Presence (PoP) Services under Pension Fund Regulatory and Development Authority for National Pension System. The RBI has carefully examined the proposals and it has been decided in public interest that NBFCs shall not undertake PoP services for National Pension System. - **[DNBR (PD) CC. No. 073/03.10.001/2015-16, dated 18th February, 2016]**

11. GUIDELINES ON PROVISION OF FACTORING SERVICES BY BANKS REVIEWED

RBI has reviewed the guidelines on provision of factoring services by banks and specified certain conditions under which banks can departmentally undertake factoring activities. To ensure against regulatory gaps/ arbitrage arising from differential regulations as between NBFC-Factors and banks, the RBI has issued clarifications/ instructions to NBFC – Factors for meticulous compliance. -

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[DNBR.CC.PD.No.074/03.10.01/2015-16, dated 18th February, 2016]

12. REVISION OF THRESHOLD FOR REPORTING OF FRAUDS

RBI has decided to revise the threshold for reporting of frauds and submission of quarterly progress reports on frauds to Central Fraud Monitoring Cell, Reserve Bank of India, Department of Banking Supervision, from Rs. 25 lakh as on date to Rs. 1 crore with immediate effect. As regard reporting of frauds and submission of quarterly progress reports on frauds below the revised threshold, NBFCs will have to furnish the same to the Regional Office of Reserve Bank of India, Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC falls. - *[DNBR (PD) CC.No.075/03.10.001/2015-16, dated 18th February, 2016]*

13. REVIEW OF PRUDENTIAL GUIDELINES FOR REVITALISING STRESSED ASSETS IN THE ECONOMY

On review a various guidelines aimed at revitalising the stressed assets in the economy. The measures taken by the Reserve Bank include Strategic Debt Restructuring Mechanism, Framework to Revitalise the Distressed Assets in the Economy, Revisions to the Guidelines on Restructuring of Advances by Banks, Flexible structuring of Long Term Project Loans and amendments to guidelines on Sale of Financial Assets to Securitisation Companies (SC) / Reconstruction Companies (SC). RBI has decided to partly modify, and also clarify, some aspects of the guidelines, as given in the Annexure to this circular. The revisions will take effect prospectively. - *[DBR. BP. BC. No. 82/21.04.132/2015-16, dated 25th February, 2016]*

FOREIGN TRADE

1. AMENDMENT IN AYAT NIRYAT FORM

Applicants can now, with immediate effect, submit online application for Importer Exporter Code (IEC) Number by uploading only 2 documents- PAN and cancelled cheque bearing entity's pre-printed name or Bank certificate, besides their digital photograph. The manual mode of application for IEC will cease to exist w.e.f. 1.4.2016 and only online applications for IEC /modification in IEC would be accepted with digital signatures w.e.f. 1.4.2016.

Applicants seeking IEC through manual mode are required to submit their applications in the format notified vide Public Notice No. 58 dated 1.2.2016 along with signatory applicant's photograph with only two documents. RA's should also ensure that henceforth applications in manual mode are accepted only in the revised format with the documents listed above.

However, pending manual applications will not be rejected for being filed under the old norms. If fit for acceptance as per the norms prevailing when filed, these applications will be processed and accepted expeditiously. If they are found to be deficient under these old norms, RAs will consider and process them under the above new simplified arrangement and pass them if they meet the new requirements. If these pending applications are not eligible even under the new simplified norms, RAs will give applicants an opportunity to provide additional documents / information as per the new simplified arrangement.

As regards modification in IEC, applicant will be required to upload documents corresponding to the

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modification required in their IEC. - *[Public Notice No. 58/2015-2020 and Trade Notice No. 18/2016, 1st and 12th February, 2016, (DGFT)]*

2. AMENDMENT IN IMPORT POLICY OF MOTORCYCLES

DGFT by amending import policy has mandated that Import of Euro – III and Euro – IV compliant motorcycles shall be allowed till 31/03/2017 and thereafter, only import of Euro – IV compliant motorcycles would be allowed. - *[Notification No. 36/2015-2020, 2nd February, 2016, (DGFT)]*

3. PROCEDURE FOR EXPORT OF SESAME SEEDS TO EUROPEAN UNION OUTLINED

The procedure for export of sesame seeds to the European Union countries has been outlined in the document 'Procedure for Control of Contamination of Salmonella in Sesame Seeds for Export to EU' and is available on the website of DGFT. The procedure/conditions will come into force with effect from 10.03.2016. - *[Notification No. 37 & 39/2015-2020, 3rd and 11th February, 2016, (DGFT)]*

4. AMENDMENT TO EXPORT POLICY ON PULSES

Export of Roasted Gram (whole/split) in consumer pack upto 1 (one) Kg has been permitted by DGFT. - *[Notification No. 40/2015-2020, 15th February, 2016, (DGFT)]*

5. CLARIFICATION ON AVAILABILITY OF BENEFIT UNDER FOOD PRODUCT SCHEME ON THE EXPORT OF ITEMS 'OMEPRAZOLE AND LANSOPRAZOLE' ISSUED

DGFT after receiving representations stating that the bulk drugs Omeprazole and Lansoprazole are two different export products but have the same ITC HS code for availing Food Product Scheme (FPS) benefit under Foreign Trade Policy 2009-14. Accordingly, it has been notified that this entry be interpreted as two specific entries containing finished dosage forms based upon either Omeprazole or Lansoprazole used as the Active Pharmaceuticals Ingredients rather than treating this entry as a formulated product containing both of these bulk drugs. - *[Trade Notice No. 19/2015, 17th February, 2016, (DGFT)]*

6. ONLINE FILING AND PROCESSING OF APPLICATION OF EXPORT OF SCOMET ITEMS ALLOWED

With a view to reduce transaction time in the inter-ministerial working group (IMWG) consultation process, it has been decided by DGFT to adopt an online processing system for SCOMET applications in addition to online filing thereof. Under this system, the SCOMET applications along with prescribed documents will be forwarded to IMWG members electronically and the consultation process will be online also.

Accordingly, all applicants involved in the export of SCOMET item are required henceforth to upload the following documents along with online application to enable electronic processing of such applications:

End Use-cum-End User Certificates (EUC) from all the entities involved in the supply chain of the products (to be furnished on their letter head(s) duly signed by the authorised signatory); (2) Copies of Purchase Orders of firms involved in the supply chain of the item; (3) Aayat Niryat Form (ANF)-1 (profile of Exporter); (4) Elaborate technical

specification relating to item of export; (5) Copies of supply contract (if documents are bulky only the relevant portion containing contract reference and parties to the contract and the portion indicating the items to be supplied and quantity thereof not exceeding 10 pages shall be uploaded); (5) Copy of DGFT authorization letter for the same product, if any in case of repeat application; (6) No hard copy of the application and documents are required to be submitted to DGFT (HQ) except for the following documents: a. Original End Use-cum-End User Certificate (EUC); b. Copies of Bills of Entry into the destination country for items exported during the last one year. Further details may be read at Para 3(iv) of guidelines for applicants under ANF 20. - *[Trade Notice No. 20/2015, 19th February, 2016, (DGFT)]*

7. STANDARD INPUT OUTPUT NORMS FOR FOOD PRODUCT GROUP NOTIFIED

SION for "Malted Milk Food" in Food Product Group has been notified. - *[Public Notice No. 61/2015-2020, 23rd February, 2016, (DGFT)]*

CORPORATE

1. AMALGAMATION OF NSEL-FTIL

Ministry of Corporate Affairs has given approval for amalgamation of National Spot Exchange Ltd. (NSEL) with Financial Technologies India Ltd. under Section 396 of the Companies Act, 1956. The merger shall result into making NSEL and FTIL as one single entity wherein all the assets and liabilities of NSEL will become assets and liabilities of the resulting company (FTIL).

Forward Market Commission had suggested the merger of spot exchange with its promoter FTIL in light of fraud involving settlement crises of Rs 5,600 crores owed to over 13,000 investors on the trading platforms of NSEL after it was found violating many conditions which helped NSEL enjoy exemptions from the then commodities market regulator, FMC. - *[Ministry of Corporate Affairs, 12th February, 2016]*

2. REPORT OF COMPANIES LAW COMMITTEE PUBLISHED

Companies Law Committee, which was constituted by the Ministry of Corporate Affairs, has proposed changes in 78 sections of the Companies Act, 2013 and approximately 50 amendments to the Rules have also been proposed. Some of the key recommendations are:-

- (a) Managerial remuneration to be approved by shareholders. [s. 197, 198];
- (b) Incorporation process to be made easier and allow greater flexibility to companies: An unrestricted objects clause to be allowed in the Memorandum of Association dispensing with

detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors; changes also in various Forms. [s. 4, 7];

(c) Provisions relating to forward dealing and insider trading to be omitted from Companies Act, Listed companies are covered under SEBI Act/Regulations. [s. 194, 195];

(d) Companies may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement. [s. 185];

(e) Change in the definition of term 'relative' for determining disqualification of auditor [s. 141];

(f) Rationalize penal provisions with reduced liability for procedural and technical defaults. Penal provisions for small companies to be reduced;

(g) No filing fees if financial statements and annual returns filed within prescribed time [s. 403];

(h) Auditor to report on internal financial controls with regard to financial statements. [s. 143];

(i) Frauds less than Rs. 10 Lakh to be compoundable offences. Other frauds to be continued to be non-compoundable. [s. 447];

(j) Reducing requirement for maintaining deposit repayment reserve account from 15% each for last two years to 20% during the maturing year;

(k) Foreign companies having insignificant / incidental transactions through electronic mode to be exempted from registering and compliance regime under Companies Act, 2013. [s. 379];

(l) Disclosures in the Directors' Report to be simplified and duplications with SEBI's disclosure requirements and financial statements to be removed while retaining the informative content for shareholders. [s. 134, Rules];

(m) Increased threshold for unlisted companies for compliance in context of requirement for Independent Directors (IDs), Audit Committee and Nomination and Remuneration Committee. [s. 149, 177, 178];

(n) Test of materiality to be introduced for pecuniary interest for testing independence of ID; thresholds for relatives' pecuniary interest to be revised to make it more practical. [s. 149];

(o) Requirement for a managerial person to be resident in India for twelve months prior to appointment to be done away with. [Schedule V];

(p) Disclosures in the prospectus required under the Companies Act and SEBI Regulations to be aligned, with a view to make these simpler, by allowing prescriptions to be as per SEBI Regulations. [s. 26];

(q) ESOPs to be allowed to promoters working as employees/directors [s.62, Rules];

(r) Limit on sweat equity to be raised from 25% of paid up capital to 50% for start-ups. [s.54];

(s) Recognition of the concept of beneficial owner of a company proposed in the Act. Register of beneficial owners to be maintained by a company, and filed with the Registrar. [new section];

(t) Provisions with regard to consolidation of accounts to be reviewed and those with respect

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to attachment of standalone accounts of foreign subsidiaries to be relaxed in certain cases. [s. 129, 136];

(u) Re-opening of accounts to be limited to 8 years. [s. 130];

(v) Mandatory requirement of taking up some items only through postal ballot to be relaxed in case of a company that is required to provide electronic voting at its General Meetings. [s. 110];

(w) Requirement for annual ratification of appointment/continuance of auditor to be removed. [s. 139] - *[Report of Companies Law Committee, 1st February, 2016]*

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SECURITIES

1. CIRCULAR ON MUTUAL FUNDS ISSUED

SEBI has amended SEBI (Mutual Funds) (Amendment) Regulations, 2016, by providing prudential norms, which relate to restrictions on investments in debt instruments issued by a single issuer wherein the limit is reduced to 10% of Net Asset Value (NAV) which may be extended to 12% of NAV with the prior approval of the Board of Trustees and the Board of Asset Management Company (notification No. SEBI/LAD-NRO/GN/2015-16/034 dated February 12, 2016). Prudential limits in sector exposure and group exposure in debt oriented mutual fund schemes are as follows:

Sectoral Exposure: Presently, the guidelines for sectoral exposure in debt oriented mutual fund

schemes puts a limit of 30% at the sector level and an additional exposure not exceeding 10% in financial services sector only to Housing Finance Companies (HFCs). It has now been decided to reduce exposure limits to a single sector from the current 30% to 25% and reduce additional exposure limits provided for HFCs in finance sector from 10% to 5%.

Group Exposure: Mutual Funds/AMCs shall ensure that total exposure of debt schemes of mutual funds in a group (excluding investments in securities issued by Public Sector Units, Public Financial Institutions and Public Sector Banks) shall not exceed 20% of the net assets of the scheme. Such investment limit may be extended to 25% of the net assets of the scheme with the prior approval of the Board of Trustees. For this purpose, a group means a group as defined under Regulation 2 (mm) of SEBI (Mutual Funds) Regulations, 1996 (Regulations) and shall include an entity, its subsidiaries, fellow subsidiaries, its holding company and its associates.

Half Yearly reports by trustees: The trustees shall monitor the exposure of a mutual fund across all its schemes and confirm the same to SEBI through half yearly reports starting from half year ending March 31st, 2016.

For new schemes the revised investment restrictions shall come into force from the date of this circular. The existing mutual fund schemes shall comply with the investment restrictions at sectoral and group level within a period of one year from the date of issue of this circular. Existing close ended schemes shall not be required to sell their investments to comply with the restrictions. However, if existing

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close ended schemes sell their investments then their fresh investments shall be subject to these restrictions. - **[SEBI / HO / IMD / DF2 / CIR / P / 2016 / 35, 15th February, 2016, (SEBI)]**

2. OFFER FOR SALE (OFS) OF SHARES THROUGH STOCK EXCHANGE MECHANISM REVIEWED

SEBI after the above stated review has mandated that the Seller shall notify to the stock exchanges its intention for sale of shares latest by 5 pm on T-1 day (T day being the day of the OFS).

- (a) Stock exchanges shall inform the market immediately upon receipt of such notice.
- (b) On the commencement of OFS on T day only non-retail investors shall be permitted to place their bids. Cut off price shall be determined based on the bids received on T day as per the extant guidelines.
- (d) The retail investors shall bid on T+ 1 day and they may place a price bid or opt for bidding at cut off price. The seller shall make appropriate disclosures in this regard in the OFS notice.
- (e) Settlement for bids received on T+1 day shall take place on T+3 days (T+1 day being trade day for retail investors). Discount, if any to retail investors, shall be applicable to bids received on T+1 day.
- (f) In order to ensure that shares reserved for retail investors do not remain unallocated due to insufficient demand by the retail investors, the bids of non- retail investors shall be allowed to carry forward to T+1 day.

- (g) Unsubscribed portion of the shares reserved for retail investors shall be allocated to non-retail bidders (un-allotted bidders on T day who choose to carry forward their bid on T+1 day) on T+1 day at a price equal to cut off price or higher as per the bids.

In this regard, option shall be provided to such non-retail bidders to indicate their willingness to carry forward their bids to T+1 day. If the non-retail bidders choose to carry forward their bids to T+1 day, then, they may be permitted to revise such bids. Settlement for such bids shall take place on T+3 day.

Stock exchanges have also been advised to put in place necessary systems for implementation of above before 1st March, 2016. - **[CIR/MRD/DP/ 36 /2016, 15th February, 2016, (SEBI)]**

3. TREATMENT OF UNCLAIMED REDEMPTION AND DIVIDEND AMOUNTS

In partial modification of the SEBI circular dated November 24, 2000 on treatment of unclaimed redemption and dividend amounts, SEBI has decided that the unclaimed redemption and dividend amounts, that are currently allowed to be deployed only in call money market or money market instruments, shall also be allowed to be invested in a separate plan of Liquid scheme / Money Market Mutual Fund scheme floated by Mutual Funds specifically for deployment of the unclaimed amounts. AMCs shall not be permitted to charge any exit load in this plan and TER (Total Expense Ratio) of such plan shall be capped at 50 bps.

To ensure Mutual Funds play a pro-active role in tracing the rightful owner of the unclaimed amounts:

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- (a) Mutual Funds shall be required to provide on their website, the list of names and addresses of investors in whose folios there are unclaimed amounts.
- (b) AMFI shall also provide on its website, the consolidated list of investors across Mutual Fund industry, in whose folios there are unclaimed amounts. Containing name of investor, address of investor and name of Mutual Fund/s with whom unclaimed amount lies.
- (c) Investor may obtain above information only upon providing his proper credentials (like PAN, date of birth, etc.) along-with adequate security control measures being put in place by Mutual Fund / AMFI.
- (d) The website of Mutual Funds and AMFI shall also provide information on the process of claiming the unclaimed amount and the necessary forms / documents required for the same.
- (e) Further, the information on unclaimed amount along-with its prevailing value (based on income earned on deployment of such unclaimed amount), shall be separately disclosed to investors through the periodic statement of accounts / Consolidated Account Statement sent to the investors.

Investors who claim the unclaimed amounts during a period of three years from the due date shall be paid initial unclaimed amount along-with the income earned on its deployment. After the third year, the income earned on such unclaimed amounts shall be used for the purpose of investor education.

This process shall come into force from 1st April, 2016.

Distribution of Mutual Fund Products: It has been decided that simple and performing Mutual Fund schemes shall also comprise of Retirement benefit schemes having tax benefits and Liquid schemes/ Money Market Mutual Fund schemes. This shall be applicable with immediate effect. - **[SEBI / HO / IMD / DF2/CIR/P/2016/37, 25th February, 2016, (SEBI)]**

4. TO ESTABLISH LIABILITY UNDER SEBI (PFUTP) REGULATIONS, 2003 IT IS NECESSARY TO SHOW CLEAR CONNECTION BETWEEN THE APPELLANTS AND LIABILITY OF EACH APPELLANT IS TO BE ESTABLISHED SEPARATELY: SAT

A group of ten appellants were charged by the adjudicating officer to have acted in concerted manner and manipulating the price of four scrips. A penalty of Rs. 5 crore was imposed under SEBI Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003. SAT however, quashed the orders of adjudicating officer and asked for the matter to be remanded back and decided afresh.

Tribunal held that for the charge of acting as a group the respondent had failed to show unambiguous and clear evidence in respect of the connection sought to be established among the ten appellants. The guilt or culpability of each of the appellants has to be analysed and established separately before holding them guilty of forming an alleged group to manipulate the price or volume in a given case. Mere common landline number or that of the accountant of the appellants would not by itself convert certain entities into a group or concert who could have jointly traded in a design. It is a serious charge and hence cogent and convincing evidence is required to

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be brought on record before the said charge could be proved against the appellants.

The adjudicating officer had also not examined the fact that all the transactions in question which were undertaken by the appellants at the prevailing market price are screen based and delivery was duly effected after making/receiving payments by the appellants.

Some of the appellants did make profit whereas others suffered losses.

Also a copy of the Inspection Report or its relevant portions though relied upon by the adjudicating officer in the process of passing the impugned order, but has never been supplied to the appellants. This is in violation of the principles of natural justice in as much as it deprives a person to make an effective and proper reply to the show cause notice. - *[Mr. Babubhai Desai & Ors, v. SEBI, 15th February, 2016, (SAT)]*

5. EX-PARTE INTERIM ORDER AGAINST STOCK BROKERS SET ASIDE AS FRAUDULENT CONDUCT AGAINST CLIENTS HAD NOT BEEN ESTABLISHED

In this case, SEBI through its orders had restrained 22 brokers from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, except as a stock broker for their existing clients in the cash segment. They were also restrained from accepting registration from any new clients. These orders were challenged before the appellate tribunal.

SBI had restrained 22 stock brokers (including the appellants) from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, except as a stock broker for their existing clients in the cash segment, as it came across several

instances wherein it was noticed that a set of entities were consistently seen incurring trading loss by executing reversal trades in options on individual stocks in the Equity Derivative Segment. It was noticed that there was repeated sale of illiquid stock options by the loss making entities to a set of entities at a price far lower than the intrinsic value and subsequent reversal trades with the same set of entities within a short span of time with a significant difference in buy and sell value of stock options.

The tribunal however, agreed with the contention advanced by the counsels of appellants that the alleged fraudulent plan to execute non-genuine trades was, if at all, connived by the clients and liability cannot be imposed on stock brokers merely because large number of reversal trades was executed by the said clients through them. The investigation against the clients who indulged in such trades is ongoing and Tribunal held that action should be first taken against the clients by investigating and establishing fraudulent conduct and then SEBI should have proceeded to investigate the involvement of Stock brokers.

Not restraining clients shows double standards and embolden them to pursue similar plans through other brokers. Accordingly the ad interim ex parte order was quashed and set aside. - *[Guinness Securities Limited v. SEBI, 25th February, 2016, (SAT)]*

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COMPETITION

1. CCI APPROVES RCOM-SISTEMA SHYAM MERGER

The Competition Commission of India (CCI) has approved the proposed merger of Sistema Shyam Ltd's operations into Reliance Communications. The deal will give India's fourth-largest carrier access to airwaves in the 850 Mhz band which can be used for 4G services that it plans to start later this year. Moreover, it will be able to extend the validity of its licenses by 12 years in eight high revenue generating circles like Delhi, Gujarat, Karnataka and Tamil Nadu.

On the other hand, holders in SSTL, which has been struggling to grow its CDMA based telecom business, will get to be a part of a stronger company. The transaction will add high data users to RCom's client base and give the company sufficient airwaves to move its CDMA customers and free up existing airwaves for trading. - *[CCI Press Release, 23rd February, 2016]*

INDIRECT TAXES

a. CUSTOMS

1. EXEMPTION OF IMPORTS FOR EXHIBITION / DEMONSTRATION

Subject to certain conditions and procedures, BCD & additional duties of customs have been exempted on items imported for exhibition / demonstration purposes and re-export. - *[Notification No. 8/2016-Customs, dated 5th February, 2016]*

2. REVISION OF CUSTOMS DUTY ON ELECTRICITY IMPORTED OR CLEARED FROM SEZ TO DTA

Notification 12/2012-Customs has been amended so as to revise the rates of import duty on electricity imported or cleared from SEZ to DTA. - *[Notification No. 9/2016-Customs, dated 16th February, 2016]*

3. RESTORATION OF CUSTOMS DUTY EXEMPTION ON THREE DRUGS

Several life-saving medication and kits had been deleted from the customs exemption notification 12/2012-Customs by notification 6/2016-Customs dated 28 January 2016.

The CBEC through the present notification restored import duty exemption on three drugs -- Octreotide, Somatropin and Anti- Haemophilic Factor Concentrate (VIII and IX). - *[Notification No. 10/2016-Customs, dated 17th February, 2016]*

4. REVISION OF DRAWBACK RATES

Notification No. 110/2015-Cus (NT) dated 16.11.2015 amended, thereby making certain changes in Schedule of All Industry rates of Drawback. Changes are effective from 11.2.2016. - *[Notification No. 22 / 2016 - Customs (N.T.), dated 8th February, 2016]*

5. PROSECUTION IN VIOLATION OF SECTION 155(2) OF THE CUSTOMS ACT IS NOT VALID

In the instant case, no notice as required under Section 155 of the Customs Act, 1962 had been issued by the Central Government to the accused/customs officers before launching prosecution against them. It was held that the prosecution in violation of Sec 155(2) is not valid.

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It would not be in interest of justice to subject petitioners to trial which will ultimately be still-born. - *[Sunil Kumar & Ors. v. Central Bureau Of Investigation & Ors., dated 11th February, 2016 (Punjab & Haryana High Court)]*

b. CENTRAL EXCISE

1. SHIPBREAKING INDUSTRY CAN NOW TAKE CENVAT CREDIT OF FULL AMOUNT OF DUTY PAID

Rule 3 of the Cenvat Credit Rules 2004 amended with effect from 1st March 2016 to remove the restriction under which the shipbreaking industry could take Cenvat credit of CVD only to the extent of eighty-five per cent of such duty paid. - *[Notification No. 01/2016 - Central Excise (N.T), dated 1st February, 2016]*

2. CENVAT CREDIT CANNOT BE USED FOR PAYMENT OF SWACHH BHARAT CESS

This notification seeks to amend CENVAT Credit Rules, 2004, so as to:

- i. specify that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Swachh Bharat Cess.
- ii. allow credit of service tax paid on sale of dutiable goods on commission basis.

- *[Notification No. 02/2016 - Central Excise (N.T), dated 3rd February, 2016]*

3. BHUTAN NOTIFICATION AMENDED TO ADD KHOLONGCHHU PROJECT

Notification No. 45/2001 - CE (NT) dated 26th June, 2001 has been amended, so as to allow export of material/equipment under bond, without payment of Central Excise duty, for Kholongchhu Hydro-Electric Project (KHEP) in Bhutan. -

[Notification No. 03/2016 - Central Excise (N.T), dated 3rd February, 2016]

4. REVENUE TO PAY INTEREST IF REFUND NOT PAID WITHIN THREE MONTHS FROM THE DATE OF APPLICATION

The Apex Court in the instant case held that manifestly, interest under Section 11BB of the (which) Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are further deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. - *[Union of India and Ors. v. M/s Hamdard (Waqf) Laboratories, dated 25th February, 2016 (Supreme Court of India)]*

5. THE SERVICES WHICH WERE CRUCIAL FOR MAINTAINING THE STAFF COLONY HELD INPUT SERVICES BY CESTAT

In this case, the point for decision was the eligibility of the appellant for service tax credit of tax paid on maintenance or repair service relating to the residential buildings and quarters in their manufacturing unit. The Tribunal observed that staff colony provided by the company is directly and intrinsically linked to its manufacturing activity & Cost necessarily forms part of business expenditure captured in the assessable value of their final product. Therefore it held that the services which were crucial for maintaining the staff colony were

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Input services & credit is admissible. - *[M/s Hindustan Zinc Ltd v. CCE, Jaipur, dated 2nd February, 2016 (CESTAT)]*

c. SERVICE TAX

1. AMENDMENTS TO THE NOTIFICATION ALLOWING REBATE OF SERVICE TAX IN CASE OF EXPORT OF GOODS

Notification No. 41/2012- ST, dated the 29th June, 2012 has been amended, so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods and to increase the refund amount commensurate to the increased service tax rate. - *[Notification No. 01/2016-Service Tax, dated 3rd February, 2016]*

2. SWACHH BHARAT CESS REFUNDABLE TO SEZ UNITS

Notification No. 12/2013- ST, dated the 1st July, 2013 has been amended, so as to allow refund of Swachh Bharat Cess paid on specified services used in an SEZ. - *[Notification No. 02/2016-Service Tax, dated 3rd February, 2016]*

3. SWACHH BHARAT CESS REFUNDABLE ON EXPORT OF SERVICE

Notification No. 39/2012- ST, dated the 20th June, 2012 amended, so as to provide for rebate of Swachh Bharat Cess paid on all services, used in providing services exported in terms of rule 6A of the Service Tax Rules. - *[Notification No. 03/2016-Service Tax, dated 3rd February, 2016]*

4. THE SERVICE TAX AND CENTRAL EXCISE (FURNISHING OF ANNUAL INFORMATION RETURN) RULES, 2016 NOTIFIED

In order to detect tax evasion, CBEC has notified the Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016. To begin with, CBEC has asked -

- i. the RBI to file annual information return on remittances exceeding Rs.50 lakh made by a service provider based in India for receipt of services from overseas entities; and
- ii. the state electricity boards to file annual information return with respect to manufacturing units such as producing beyond a particular threshold and consuming certain levels of electricity. - *[Notification No. 04/2016-Service Tax, dated 15th February, 2016]*

5. SERVICES OF GOVERNMENT OR LOCAL AUTHORITIES TO BUSINESS ENTITIES, WITH TURNOVER OF ABOVE RS. 10 LAKHS, TAXABLE FROM 1st APRIL, 2016

As per Section 109(1) of the Finance Act, 2015 “any service” provided by a government or local authority to business entities was made taxable, however the date of its coming into effect was not notified. The CBEC through the present notification has notified 1st April, 2016 as the date from which the amendment will come into effect. Further, the CBEC has also amended Notification No.25/2012-ST (the exemption notification) to exempt such services if provided to a business entity with a turnover up to rupees ten lakh in the preceding financial year. - *[Notification No. 06/2016-Service Tax, dated 18th February, 2016; & Notification No. 07/2016-Service Tax, dated 18th February, 2016]*

6. SERVICE TAX PAID ON HEALTH CLUB AND FITNESS CENTER IN BPO COMPANIES IS AN INPUT SERVICE: CESTAT

In the present case, the appellant was providing BPO services. It was observed that in BPO companies the

health and fitness of the employees are very essential factors in order to run the BPO Company.

Therefore, health and fitness services availed by the companies for their employees is a necessity for providing the better quality of output service. Therefore, these services are input services and credit is admissible. - *[M/s Sitel India Ltd v. CCE, Mumbai, dated 9th February, 2016 (CESTAT)]*

7. TAX ON THE FUNDS TRANSFERRED IN A CROSS-BORDER TRANSACTION NOT CONTEMPLATED IN FINANCE ACT, 1994

The appellant in this case was an exporter registered under an export promotion scheme whose objective is to generate employment and contribute to the inflow of "convertible currency". The appellant had been taxed taking recourse to Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 by deeming the provision of 'advertising agency service' by the three Cyprus-based entities to be an import of service into India.

The Bench observed that Services that are not connected with manufacturing or with the transport of goods till the customs frontier of the country can be disassociated from use within the country and hence would not lie within the ambit of the legal fiction of import of services. Services that are undeniably rendered by a foreign 'service provider' in relation to the goods sold abroad cannot be presumed to be covered by the legislative intent to tax. To tax a service using the legal fiction of import and then reimburse that tax because the service was not required for any activity within the country is an exercise in futility and is contrary to the objectives of and means devised for export promotion by the State. From the context in which the appellant has entered into agreements with three providers who were held to be rendering 'advertising agency services' it would appear that these are intended to relate to the activities of the appellant in relation to

export goods after their arrival in Ukraine. At no stage are they required for any activity of the appellant in India.

The service itself is not warranted except in relation to export by the appellant and hence tax, even if leviable, is not to be burdened onto the export goods. In the circumstances it was held that since the appellant has no requirement of 'advertising agency service' for manufacture and export of goods, the tax demanded in the impugned order is not on the consideration for a service received in India but a tax on the funds transferred in a cross-border transaction. Such a tax is not contemplated in Finance Act, 1994. - *[Genom Biotech Pvt Ltd v. CCE & CC, Nashik, dated 10th February, 2016 (CESTAT)]*

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INTELLECTUAL PROPERTY RIGHTS

1. MEDIATION / CONCILIATION IN CONTESTED MATTERS OF THE TMR DELHI

In view of the pendency of Opposition/Rectification matters at Trade Mark Registry, Delhi, the office of the CGPDTM in collaboration with Delhi State Legal Service Authority (DSLISA) has undertaken to initiate a project to liquidate such pendency through Mediation / Conciliation based on Mediation/Conciliation Rules framed under the Legal Services Authorities Act, 1987. Initially, it has been decided to undertake the project on pilot basis by taking up 500 pending Opposition / Rectification matters (a list of which is enclosed with the circular). The interested parties in the listed matters may submit their consent in the "Consent Form" to the concerned person within 30 days from the date of the Notice, so that their matters may be referred to DSLISA for further action. - *[Circular No. CG/TMR Del/DSLISA/174, dated 19th February, 2016, CGPDTM]*

2. GUIDELINES FOR EXAMINATION OF COMPUTER-RELATED INVENTIONS (CRIS) PUBLISHED

The guidelines for examination of computer related inventions were kept in abeyance for consideration of stakeholder's view. After taking into consideration inputs/suggestions/comments received from various stakeholders and from experts / academic institutions, the CRI guidelines have been finalized and published. The guidelines shall come into effect forthwith. - *[Circular No. CG/ Office Order/ 2016 / 179, dated 19th February, 2016, CGPDTM]*

3. IN RESPECT OF MATTERS RELATING TO INVALIDITY OF REGISTRATION OF A TRADEMARK, THE JURISDICTION TO DECIDE THE MERITS OF THE DISPUTE IS EXCLUSIVELY THAT OF THE STATUTORY AUTHORITIES: DELHI HIGH COURT

The Court in this case observed that where special rights are created by a statute, which provides a mechanism for the enforcement of such statutory rights then, even in the absence of an express exclusion, the civil court's jurisdiction over those matters is barred. An analysis of the provisions of the Trade Marks Act leads one to conclude that in respect of matters relating to invalidity of registration of a trademark, the jurisdiction to decide the merits of the dispute is exclusively that of the statutory authorities-i.e. the Registrar or the IPAB; in the event of such dispute being raised after the filing of an infringement suit, it is exclusively that of the IPAB. The civil court's jurisdiction to go into the merits of the plea of invalidity is therefore barred. - *[Data Infosys Ltd. & Ors. v. Infosys Technologies Ltd., dated 5th February, 2016 (Delhi High Court)]*

CONSUMER

1. INVESTING IN MULTIPLE REAL ESTATE PROJECTS EXCLUDES THE PROTECTION OF CONSUMER PROTECTION ACT FOR NRIS: NCDRC

Citing a previous ruling the commission restated that multiple properties purchased by the complainants for profit were relatable to commercial purpose and do not fall within the definition of 'consumers' under the Consumer Protection Act. In the present case, the Complainant, an NRI invested in a property by Lavasa group and later on courts also disclosed his substantial investment in properties elsewhere as well. The commission dismissed the appeal at the threshold as the purpose of investment was to make profit and transaction was not of a consumer for protection to be invoked under the act. - *[Manohar Damecha v. Lavasa Corporation Limited, 1st February, 2016, (NCDRC)]*

2. SELLING OFF LAND FOR HOUSING PROJECT AFTER COLLECTION OF BOOKING AMOUNT WILL REQUIRE RETURN OF BOOKING AMOUNT WITH COMPENSATION AND INTEREST

The respondents, a group of builders took booking amounts for residential housing projects and sold the land for the proposed schemes to a third party, leaving the buyers in the lurch. The commission held that a builder cannot deny customers the benefit of cost escalation by simply returning the booking amount without any interest or compensation for making them wait for years and not delivering flats. It directed the return of 1.34 cr booking amount collected from around 132 people with 18% interest per annum and pay Rs 4 lakh compensation to the customers. The 18% interest per annum on refund

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of the booking amount has to be paid from the date each buyer booked the flat, till realization. - *[Akhil Bhartiya Grahak panchayat & Anr., v. M/S KDS Infra Buildcons & Ors., 17th February, 2016, (NCDRC)]*

ENVIRONMENT

1. NGT ASKS AUTHORITIES TO PUNISH BUILDERS FOR AIR POLLUTION

The NGT directed civic bodies and public authorities in Delhi-NCR to check air pollution caused by dust emanating from construction sites and initiate action against real estate developers violating environmental norms. NGT further asked the municipal corporations to strictly impose a fine of Rs 50,000 on builders who are violating the Environment Ministry's 2010 guidelines on constructions. - *[The Business Standard, dated 25th February, 2016]*

2. DUST POLLUTION VIOLATORS TO BE FINED RS 5,000

Vehicles carrying construction material or demolition waste in Delhi will be penalized up to Rs 5,000 if they are found violating pollution norms. - *[The Times of India, dated 10th February, 2016]*

3. CARMAKERS TO GIVE POLLUTION INFO TO BUYERS

Vehicle purchasers will be able to get data on mass emission values and noise level of horns from July 1. Based on an order issued by the National Green Tribunal, Pune, on November 26, 2015, the Ministry of Road Transport and Highways issued an advisory to all vehicle manufacturers to publish data of pollutants for petrol-, diesel- and CNG-run vehicles and noise level of horns. The data will be available in the form of pollutants and their values. - *[The Times of India, dated 9th February, 2016]*

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