MONTHLY
NEWSLETTER

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## RBI/FEMA

### 1. GUIDELINES ON SALE OF STRESSED ASSETS BY BANKS AMENDED

The Reserve Bank of India, vide its Circular dated February 26, 2014 introduced certain amended Guidelines relating to sale of non-performing assets (NPAs) by Banks to Securitisation Companies (SCs)/ Reconstruction Companies (RCs) (created under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002). Now in order to further strengthen the Banks' ability to resolve their stressed assets effectively, RBI has introduced an improved framework governing sale of such assets by Banks to SCs/RCs and also to other Banks/Non Banking Financial Companies /Financial Institutions etc. Detailed Guidelines are Annexed to this Circular.– ***[DBR.No.BP.BC.9/21.04.048/2016-17, dated 1st September, 2016]***

### 2. RBI PERMITS SEBS TO GRANT ADVANCES TO NON-MEMBERS

As per RBI's Circular UBD.No.BL.(SEB)5A/ 07.01.00-2001/02 dated August 8, 2001, Salary Earners' Primary (Urban) Co-operative Banks (SEBs) applying for permission to open branches were required to ensure, *inter alia*, that their Bye-laws do not contain provisions for giving loans to outsiders (non-employees) by enrolling them as members / nominal members. Through the present Circular, RBI has permitted SEBs to grant advances against term deposits of non-members, subject to the following conditions:

i. The SEB should fulfill all the criteria for financially sound and well managed (FSWM) UCBs laid down in our Circulars UBD.CO.LS (PCB) Cir.No.20/07.01.000/ 2014-15 and DCBR. CO.LS (PCB) Cir.No.4/07.01.000/2014-15 dated October 13, 2014 and January 28, 2015 respectively.
ii. The SEB should have in place an Audit Committee of the Board of Directors which is constituted and functioning in compliance with the instructions contained in our Circular UBD. No.Plan.(PCB).9/09.06.00-94/95 dated July 25, 1994.
iii. The Bye-laws of SEB should have a provision for giving loans to non-members against Term Deposits held in their own name singly or jointly with other non-members/ members.
iv. The SEB should maintain a reasonable margin against such advances at all times as per the policy approved by its Board.
v. No credit facilities, other than advances against Term Deposits, shall be granted to non-members. – ***[DCBR.BPD (PCB).BC. No.3/12.05.001/2016-17, dated 1st September, 2016]***

### 3. GUIDELINES ON UNBUNDLING OF CHARGES THROUGH MERCHANT DISCOUNT RATES (MDR) STRUCTURE ISSUED

RBI vide its Circulars DPSS.CO.PD.No.2361/ 02.14.003/2011-12 dated June 28, 2012 and DPSS.CO.PD.No.27/02.14.003/2012-13 dated July 04, 2012 issued directions pertaining to merchant

discount rates (MDR) for debit card transactions. It has been brought to the RBI's notice that in many instances charges for merchants are bundled and a composite fee is levied on merchants irrespective of the type of card used. This practice hinders adherence to the extant regulatory mandate. Further, this practice not only disincentivises the merchants from accepting cards but also gives them scope to indiscriminately pass on the costs to the customers in the form of surcharge. Therefore, in order to bring a greater transparency in MDR applicable at the merchant level, RBI has advised that the acquiring Banks shall:

i. ensure that MDR are clearly unbundled for different categories of cards;
ii. enter into separate agreements or annexes within the same agreement for debit, credit and prepaid cards so as to bring in more clarity and transparency; and
iii. educate the merchants regarding the charges associated with different categories of cards, at the time of acquisition. – ***[DPSS.CO.PD No.639/02.14.003/2016-17, dated 1st September, 2016]***

## 4. BANKS TO ACCEPT OVER THE COUNTER CASH UNDER THE INCOME DECLARATION SCHEME, 2016

Taking note of the situation that the Banks are hesitant in allowing deposit of large amounts of cash by the declarants under the Income Declaration Scheme, 2016 (the Scheme) which came into effect from June 1, 2016, RBI has advised the Banks that they must invariably accept cash, irrespective of amount, over the counters from all declarants who desire to deposit cash at the counters, including deposits under the above Scheme through challan ITNS- 286. Further that the Banks shall comply with the Know Your Customer (KYC) requirements for the customers and the walk-in customers as contained in The Master Direction – Know Your Customer Direction, 2016 issued vide DBR.AML.BC.No.81/14.01.001/2015-16 dated February 25, 2016. – ***[DBR.No.Leg.BC. 13/ 09.07.005/2016-17, dated 8th September, 2016]***

## 5. GUIDELINES ON PUBLISHING OF PHOTOGRAPHS OF WILFUL DEFAULTERS ISSUED

In view of the sensitivity involved and the need to prevent the publishing of photographs of defaulting borrower/guarantor in an indiscriminate manner, the RBI has decided as under:

i. A lending Institution can consider publication of the photographs of only those borrowers, including proprietors/ partners /directors / guarantors of borrower firms/ companies, who have been declared as wilful defaulters following the mechanism set out in the RBI Circular DBR.CID.BC. No.22/20.16.003/2015-16 dated July 1, 2015. This shall not apply to the non-whole time directors who are exempted from being considered as wilful defaulters unless the special conditions, in accordance with these instructions, are satisfied.
ii. The lending Institutions shall formulate a policy with the approval of their Board of Directors which clearly sets out the criteria based on which the decision to publish the photographs of a person covered in paragraph (i) above will be taken by them so that the approach is neither discriminatory nor inconsistent. – ***[DBR.CID. BC. No.17/ 20.16.003/2016-17, dated 29th September, 2016]***

## 6. INVESTMENT LIMITS FOR FOREIGN PORTFOLIO INVESTORS IN GOVERNMENT SECURITIES INCREASED

As announced by the RBI in the Medium Term Framework (MTF), the limits for investment by FPIs in the Central Government Securities for the next half

year is to be increased in two tranches, each of Rs.100 Billion from 3 October, 2016 and 2 January, 2017 respectively. Accordingly, the RBI has now announced that the total limit for FPIs will go up to Rs. 2,100 Billion (including Rs. 1,480 Billion for all FPIs and an additional of Rs. 620 Billion for those investing for a long term) from 3 October, 2016. The same will move up to Rs. 2,200 Billion from 2 January, 2017 and shall include Rs. 1,520 Billion for all FPIs and an additional of Rs. 680 Billion for those investing for long term. Further, the limits of SDLs will go up to Rs. 175 Billion from the present Rs.140 Billion starting from October 3, 2016 and will be hiked to Rs.210 Billion from 2 January, 2017. – ***[A.P. (DIR Series) Circular No. 4, dated 30th September, 2016]***

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## FOREIGN TRADE

### 1. EXPORT POLICY FOR EXPORT OF RED SANDERS WOOD RELAXED

The Central Government has amended Sl. No. 188 of Schedule 2 of ITC(HS) Classifications of Export and Import Items 2012 read with Notification No. 47 (RE-2013)/2009-2014 dated 24.10.2013 to relax the Prohibition on export of Red Sanders wood in log form for export of 383.132 MT of Red Sanders wood, through State Government of Maharashtra and Tamil Nadu. ***–[Notification No. 25/2015-2020, 2nd September, 2016, (DGFT)]***

### 2. PARAGRAPH 4.61 OF HANDBOOK OF PROCEDURES 2015-2020 AMENDED

The DGFT has amended paragraph 4.61 of the Hand Book of Procedures 2015-2020 to cover also the minimum value addition for export of Silver/Platinum jewellery and articles thereof, which were inadvertently left out earlier. These amendments will be applicable with effect from 01.04.2015. ***-[Public Notice No. 28/2015-2020, 2nd September, 2016, (DGFT)]***

### 3. ONE TIME EXCEPTION FOR EXPORTERS TO CLAIM REPLENISHMENT OF GOLD

The RBI Circulars from 22.07.2013 to 14.02.2014 had not provided for provisions to claim replenishment of gold in respect of export of Gems and Jewellery products manufactured from gold, by participation in the Exhibitions abroad or claiming gold in cases where gold was booked by payment of minimum 20% with the Nominated Agency, subject to adjustment at time of actual sale. All such exporters have been provided one-time facility to claim replenishment of gold within 120 days from the date of issuance of this Public Notice subject to fulfilment of all other conditions of the FTP and HBP 2009-14. ***-[Public Notice No. 29/2015-2020, 8th September, 2016, (DGFT)]***

### 4. IMPORT POLICY OF UREA AMENDED

The Actual User (AU) condition on import of Industrial Urea / Technical Grade Urea (TGU) is being removed by the Central Government. Now, import of Industrial Urea / Technical Grade Urea (TGU) shall be free, regardless of Actual User condition. ***-[Notification No. 26/2015-2020, 9th September, 2016, (DGFT)]***

### 5. ADDITIONAL PRE-SHIPMENT INSPECTION AGENCY NOTIFIED

The Directorate General of Foreign Trade has included M/s. Melt Enterprises Ltd., UK in Appendix 2G of Appendices and Aayat Niryat Forms of Foreign Trade Policy, 2015-20 as Pre-Shipment Inspection Agency in terms of Para 2.55

(d) of HBP 2015-20.. The Details of the authorized instruments for inspection in respect of M/s. Asia Inspection Agency Co. Ltd., Thailand is re-notified. ***–[Public Notice No. 31/2015-2020, 9th September, 2016, (DGFT)]***

## 6. IMPORT POLICY OF ROUGH MARBLE AND TRAVERTINE BLOCKS AMENDED

The import of items under the ITC (HS) Codes 25151100, 25151210 and 25151290 (Marble and Travertine) has been permitted by the Central Government freely w.e.f. 1.10.2016 provided CIF value is US$ 200 or above per MT. ***-[Notification No. 27/2015-2020, 17th September, 2016, (DGFT)]***

## 7. IMPORT POLICY OF WORKED MONUMENTAL OR BUILDING STONE AMENDED

The import of items under the ITC(HS) Codes 68021000, 68022110, 68022120, 68022190, 68029100, 68029200 and 25151220 related to marble slabs has been permitted by the Central Government freely, provided CIF value is US $ 40 or above per square metre (for maximum thickness of slab of 20 mm) w.e.f. 1.10.2016. ***-[Notification No. 28/2015-2020, 17th September, 2016, (DGFT)]***

## 8. NEW REGIONAL OFFICE OF DGFT INCLUDED

A new Regional Office of DGFT at Belagavi, Karnataka has been included by the DGFT in the Appendix - 1A of Foreign Trade Policy, 2015-20. Consequently the territorial jurisdiction of Regional Authority, Bangalore is reallocated as whole of Karnataka excluding the districts which are under the jurisdiction of the Regional Authority, Belagavi. - ***[Public Notice No. 36/2015-2020, 28th September, 2016, (DGFT)]***

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# CORPORATE

## 1. EXPERT GROUP CONSTITUTED TO LOOK INTO ISSUES RELATED TO AUDIT FIRMS

An expert Group comprising of Three (3) Members has been constituted by the Ministry of Corporate Affairs to examine the issues related to audit firms. The expert group has been asked to examine *inter alia* the following issues-

(i) adverse impact on the Indian audit firms from restrictive shareholder covenants, (ii) adverse impact on the Indian audit firms through the manner in which audit rotation is being implemented by companies, (iii) possibility of introduction of joint audit where there is multi-national audit firm as auditor, (iv)legal and regulatory steps for implementation of joint audit, (v) examine the practices in other emerging economies in relation to domestic audit/joint audit, and (vi) measure to promote creation of internationally competitive Indian audit firms.

The expert group has been asked to present its report within two months of the order. ***[Ministry of Corporate Affairs, 30th September, 2016]***

## 2. EMPANELLING OF EXPERTS BY REGIONAL DIRECTORS UNDER MCA

**The Regional Directors** under the Ministry of Corporate Affairs have been empowered to prepare a Panel of Experts to be appointed as Mediators or Conciliators in the respective Regions. Their task will be to resolve matters referred to them by the

Central Government or the Tribunal or the Appellate Tribunal. The Rules governing the process have been notified vide circular G.S.R. 877 (E), 9th September, 2016. Such a panel will select suitable mediators or conciliators who had previously been the judge of the Supreme Court of India or the High Court or the District or the Sessions Court. To become a qualified member, the member could also be a retired member or Registrar of a Tribunal constituted at the National level or a retired officer previously employed in the Indian Corporate Service or the Indian Legal Service with a minimum of fifteen years of experience. A qualified legal practitioner with a minimum of ten years of experience or a CA, CS or Cost Accountant with fifteen years of continuous practice. A Member who is President of any State Consumer Forum also would be deemed to be qualified for being empanelled.

Applications requesting for appointment on the Panel are to be sent to the Regional Director, Kolkata in Form MDC-1 which has been annexed to the Circular. Online applications can also be sent to rd.east@mca.gov.in latest by 8th November, 2016. ***[Ministry of Corporate Affairs, 28th September, 2016]***

## 3. COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2016 NOTIFIED

Sub-rule (1) of Rule 3 of the Companies (management and Administration) Rules, 2014 requires every company limited by shares to maintain a register of its members in Form No. MGT-1. The proviso to this clause earlier required the existing companies registered under the Companies Act, 1956, to comply within six months from the date of commencement of these Rules. This proviso has been amended to lift the time limit. The requirement now is to transfer the particulars of members maintained under the Companies Act, 1956 to a new Register in Form MGT-1 along with any additional information of members as required by the Act and Rules. Sub-rule (2) of Rule 3 deals with a scenario of the companies without share capital which are required to be maintained in the Register of Members containing details of members such as, name, address, PAN or CIN, unique identification number, occupation, name and nationality of father/mother/spouse, date of becoming a member and date of cessation, amount of guarantee and instructions given to member regarding sending notices. Proviso to this sub-rule requires the existing companies to comply with this provision within six months of commencement of the Rules. The Amendment removes the time bar and requires the transfer of details on members registers to Form No. MGT-1 with any additional information of members required by Act and rules also added to the register.

Rule 13 has also been amended. While the old provision required every listed company to file a Return in Form MGT-10 relating to either increase or decrease of two per cent or more in shareholding position of Promoters and the top ten shareholders, either value or volume of shares, within fifteen days of such a change. With the amendment, the requirement is to disclose increase or decrease by two percent or more of paid up share capital of the company.

Rule 20 which deals with voting through electronic means requires every listed company having not less than 1000 shareholders to provide to its members facility to exercise their right to vote at General Meetings by electronic means. Sub rule (2) of this rule has been streamlined and it now requires every listed company having not less than 1000 shareholders to provide to its members facility to exercise their right to vote on Resolutions proposed

to be considered at General Meeting by electronic means. However, this requirement to provide facility to vote through electronic means is not applicable in the case of Nidhi (company incorporated with the object of cultivating habit of savings amongst its members and which simply receives deposit and lends to its members), or an enterprise referred to in Chapters XB or XC of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Form MFT-6 required to be filed with the Registrar to fulfil the requirement of Section 89 of the Companies Act, 2013 to declare the beneficial interest in any share has been amended and updated form has been annexed with the Circular. ***-[G.S.R. 908(E),23rd September, 2016, (Ministry of Corporate Affairs)]***

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## SECURITIES

### 1. MINIMUM CAPITALISATION NORMS ARE NOT APPLICABLE TO NON-RESIDENT INVESTORS COVERED UNDER SCHEDULES 2 AND 8 OF FEMA REGULATIONS - SAT

In the instant case, the Adjudicating Officer (AO) of SEBI had imposed a penalty of Rs. 1 Crore on the six appellants, on grounds that as Book Running Lead Managers (BRLM) they failed to make appropriate disclosures at the time of IPO of Credit Analysis and Research Limited (CARE) in the Red Herring Prospectus (RHP), and thus violated the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and the SEBI (Merchant Bankers) Regulations, 1992. The IPO structure contemplated transfer of equity shares of CARE by certain shareholders who are residents in India to investors who are residents in India and also to eligible non-resident investors. This latter requirement required adherence to FEMA Regulation and accordingly different schedules and prescribed norms are to be fulfilled for different classes of investors. Schedule 1, in this regard prescribed minimum capitalisation requirements when investments are made by non-resident investors and this requirement of minimum upfront capital is not prescribed for other routes of investment under other Schedules.

As the transfer of shares by a resident to a non-resident shall be as per the pricing Guidelines issued by RBI, CARE wrote to RBI seeking its approval for sale of IPO shares at a price determined through the book building process instead of determining the offer price under the RBI Pricing Guidelines. However, a later Circular issued by RBI (A.P. (DIR Series) Circular No. 43, 4th November, 2011) in pursuit to liberalise FDI policy allowed transfer of shares from resident to non-resident without the approval of RBI, subject to two conditions in case where investee company is in financial sector- firstly, NOCs are obtained by regulator of investee company as well as the transferor and the transferee entities and secondly, the requirements of fulfilling the minimum capitalisation norms, and the reporting requirements are complied with. In view of this Circular, RBI responded to CARE's letter asking it to proceed with its IPO in compliance with Circular No 43. CARE however sought for exemptions from the requirement of obtaining NOCs from the regulators of the non-resident investors, since the non-resident investors who would invest in the IPO through the book building process and are not identifiable in advance. RBI, in response, agreed to exempt the NOC requirement, provided the minimum capitalisation requirement was met, post issue pattern of shareholding was submitted and reporting requirement is complied

with. CARE however responded by informing that there is no question of complying with the minimum capitalization norms in the present case, as the class of investors do not fall under the bracket of Schedule 1 (where a minimum capitalisation requirements are mandated), and offer of CARE is being restricted to the FIIs covered under Schedule 2, NRIs covered under Schedule 4 and QFIs covered under Schedule 8 of the FEMA Regulations.

Adjudicating Officer held the Appellants guilty for not disclosing in the RHP of CARE, conditions imposed by RBI for exempting the non-resident investors participating in the offer of CARE from the requirement of obtaining NOC from their respective regulators. The material issue revolves around the condition imposed by RBI for exempting the non-resident investors participating in the offer from the requirement of obtaining NOC from their regulators subject to strict compliance of minimum capitalization norms.

In this regard the majority verdict of SAT was that under the FEMA Regulations, investments by non-resident investors in NBFCs engaged in non fund based activities (such as CARE) is subject to compliance of minimum capitalization norms only when investments are made under the route specified in Schedule 1 of the FEMA Regulations. Non-residents investing through the routes specified in Schedules 2 to 8 of the FEMA Regulations are not required to comply with the minimum capitalization norms.

Thus, under the FEMA Regulations, the minimum capitalization norms have to be complied with by the non-resident investors only when the investments are made under the route specified in Schedule 1 and the said norms are not applicable when investments are made under the routes specified in Schedules 2 to 8 of the FEMA Regulations.

CARE in its RHP made offer only to those non-resident investors to whom the minimum capitalization norms were not applicable. Thus, according to the Appellate Tribunal, since the minimum capitalization norms were not applicable to the investors permitted to participate in the offer of CARE, non-disclosure of the information relating to compliance of minimum capitalization norms cannot be said to be failure to disclose material information, because the said information was not applicable to the investors permitted to participate in the offer of CARE to take an informed investment decision. SAT observed that upholding AO's offer would mean that CARE was obliged to disclose information in RHP in spite of its irrelevance to the investors permitted to participate in the offer. SAT held that conditions imposed by RBI in its letter to CARE did not amount to material information, non-disclosure of which would affect investors permitted to participate into offer to take an informed investment decision and accordingly, penalty was lifted and appeal allowed. ***-[Kotak Mahindra Capital Company Limited & Others v. SEBI, 30th September, 2016, (SAT)]***

## 2. GUIDELINES FOR DUE DATE RATE (DDR) FIXATION FOR REGIONAL COMMODITY DERIVATIVE EXCHANGES ISSUED

The erstwhile Forward Markets Commission (FMC) had prescribed Guidelines for fixation of Due Date Rate (DDR) for Commodity Specific (Regional) Exchanges. Vide this Circular the said Guidelines are being re-issued by SEBI for Regional Commodity Derivatives Exchanges. These Guidelines are placed in the annexure of the Circular and *inter alia* require formation of DDR Committee by the Exchange comprising 50% members who are other than trading members and top two members holding highest long and highest short position as observers. DDR Committee would decide the names of 15

entities for forming Spot Price Polling Panel. The spot price rates would be collected from the panellists on daily basis, starting with three days prior to the due date of the contract. This information will be placed on the Notice Board of the Exchange on daily basis. Spot price should be polled over phones before all the DDR Committee Members including the two Observers.

Average of the spot prices of last three days, on which spot prices are available, prior to the due date but not earlier than seven days would be considered for fixing DDR. The rates would be polled once a day between 1:00 p.m. and 4.00 p.m. in order to capture this most active trade time. DDR arrived at by the Committee has to be recommended to the Board of the Exchange, which shall have the discretion to make final approval. Once DDR is fixed it shall be announced in the trading ring and displayed on the Notice Board. ***-[SEBI/HO/CDMRD/DRMP/CIR/P/2016/79, 7th September, 2016,(SEBI)]***

## 3. DAILY PRICE LIMITS (DPL) FOR NON-AGRICULTURAL COMMODITY DERIVATIVES/FIRST DAY DPL FOR ALL COMMODITY DERIVATIVES CONSOLIDATED

The instant Circular has been issued in continuation of SEBI Circular dated January 15, 2016 with an objective of consolidating and updating norms prescribed by erstwhile FMC with regard to DPL of non-agricultural commodity derivatives and norms for DPL determination on the first trading day of the derivatives contract.

**DPL for Non-Agri Commodity Derivatives:** In case of steel, initial slab shall be 4% with first enhanced slab of 2%. Once the trade hits the prescribed initial slab, the DPL shall be relaxed further by First Enhanced Slab (i.e. 2%) after a cooling off period of 15 minutes. During cooling off periods trading shall continue to be permitted within the previous slab of DPL.

For gold, initial slab of DPL shall be 3% with first enhanced slab of 3% and second enhanced slab of 3%. Once the trade hits the prescribed Initial slab, the DPL shall be relaxed further by Fkirst Enhanced Slab without any cooling off period in the trading. In case 1st Enhanced Slab is also breached, then after a cooling off period of 15 minutes, the DPL shall be further relaxed by 2nd Enhanced Slab. For other non-agricultural commodities, initial slab shall be 4% and first and second slab as 2% and 3% respectively.

**DPL on First Trading Day of the Contract (For Agri/Non-Agri Commodity Derivatives):** For fixing DPL slab on first trading day of each contract, Exchange shall determine base price based on Volume Weighted Average Price (VWAP) of the first half an hour, subject to minimum of ten trades. If sufficient Number of trades is not executed during the first half an hour, then the VWAP of first one hour trade subject to a minimum of ten trades and first ten trades if sufficient Number of trades is not executed even during the first hour of the day. Price arrived at after such assessment shall be used to determine DPL for the remaining part of the day.

The Circular provides discretion to Exchanges to prescribe DPL narrower than the slabs prescribed by SEBI in case they require so, based upon their analysis of price movements and their surveillance findings. The Circular comes into effect from 29th September, 2016. ***-[SEBI/HO/ CDMRD/ DMP/ CIR/P/2016/83, 7th September, 2016, (SEBI)]***

## 4. RESTRICTIONS ON PROMOTERS AND WHOLE-TIME DIRECTORS OF COMPULSORILY DELISTED COMPANIES NOTIFIED

Regulation 24 of the SEBI (Delisting of Equity Shares) Regulations, 2009 provides that if a company has been compulsorily delisted, its whole-time directors, its promoters and the companies promoted by any such person, shall not directly or indirectly access the securities markets for a period of ten years from the date of compulsory delisting.

In such a scenario, sub-regulation (3) of regulation 23 provides that the promoter shall acquire delisted equity shares from the public shareholders, subject to the option of retaining their equity shares, by paying them the fair value, as determined by the independent valuer appointed by the concerned recognised Stock Exchange.

To ensure effective enforcement of exit option to the public shareholders in case of compulsory delisting and taking into account the interests of investors, it is hereby directed by SEBI that in case of such companies whose fair value is positive:

(a) such a company and the depositories shall not effect transfer of any of the equity shares and corporate benefits shall be frozen, for all the equity shares, held by the promoters/ promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with sub-regulation (3) of regulation 23 of the Delisting Regulations; (b) the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated above is provided. ***-[ SEBI/HO/CFD/ DCR/CIR/ P/ 2016/81, 7th September, 2016, (SEBI)]***

## 5. PROCEDURES FOR TRANSMISSION OF SECURITIES SIMPLIFIED

SEBI, in order to make the process of transmission of securities more efficient, issued a Circular No. CIR/MIRSD/10/2013 dated October 28, 2013. As complaints were received regarding Clause 2 of Annexure A of the said Circular, a modified Annexure has been enclosed with the present Circular by SEBI. Annexure A which is titled 'Documentary requirement for securities held in physical mode' *inter alia* requires:

**(A) For securities held in single name with a nominee (clause 1),** (i) duly signed transmission request form by the nominee, (ii) original or copy of Death Certificate duly attested by a Notary Public or by a Gazetted Officer, (iii.) self attested copy of PAN card of the nominee.

**(B)For securities held in single name without a nominee**: the following additional documents may be sought (clause 2)- (a) Affidavit from all the legal heirs made on appropriate non-judicial Stamp Paper – to the effect of identification and claim of legal ownership to the securities. Provided the legal heir is named in the succession certificate or will or letter of administration, affidavit from such legal heir/claimant alone would be sufficient; (b) For value of securities up to Rs. 2 lakhs per issuer company as on the date of application, one or more of the following documents: (i) Succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of the Indian Succession Act, 1925. (ii) in the absence of such documents (a) NOC executed by all the legal heirs of the deceased holder not objecting to such transmission (or) copy of Family Settlement Deed duly notarized, and (b) An Indemnity Bond made on appropriate non-judicial Stamp Paper – indemnifying the STA/Issuer Company.

For value of securities more than Rs. 2 lakhs per issuer company as on the date of application-

Succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of the Indian Succession Act, 1925. ***-[SEBI/HO/MIRSD3/CIR/P/2016/0000000085, 15th September, 2016, (SEBI)]***

## 6. UNIQUE CLIENT CODE AND PERMANENT ACCOUNT NUMBER (PAN) MANDATORY FOR ALL CLIENT TRANSACTIONS

Through the present Circular, SEBI has made it mandatory for the members of the commodity derivatives Exchanges to use Unique Client Code (UCC) for all clients transacting on the commodity derivatives Exchanges. The commodity derivatives Exchanges shall not allow execution of trades without uploading of the UCC details by the members of the Exchange.

PAN would be the sole identification number and mandatory for all entities/persons that are desirous of transacting on the commodity derivatives Exchanges. Members are required to collect, verify the authenticity of and maintain copies of PAN of all their clients. Investors residing in Sikkim are exempted from the mandatory requirement of PAN.

Commodity derivative Exchanges are required to ensure that members of their Exchanges collect copies of PAN from the existing as well as the new clients, cross check the details with those provided on Income Tax Department website, upload details of PAN to the Exchanges as part of Unique Client Code and verify documents with respect to the Unique Code and retain a copy of the document.

The members are required to furnish the above mentioned particulars of their clients to commodity derivative Exchanges and the same would be updated on monthly basis. Such information should reach the Exchange within 7 working days of the following month. Penalty at the rate of 1% of the value of every trade that has been carried out by the member would be imposed on failure to upload client details with possible suspension if the client details are not uploaded within a month of the trade. The commodity Exchanges shall be required to maintain a database of client details submitted by members up to a period of seven years. ***-[SEBI/HO/CDMRD/DMP/CIR/P/2016/87, 16th September, 2016, (SEBI)]***

## 7. TRADING NORMS IN FUTURE CONTRACT AND MODIFICATION IN CONTRACT SPECIFICATIONS AT EXCHANGE LEVEL UPDATED

SEBI through this Circular has consolidated and updated previous Circulars issued by erstwhile FMC regarding norms for National Commodity Derivatives Exchanges related to permission for trading in future contracts and modification in contract specifications at Exchange level. Accordingly, the following has been prescribed by SEBI:

**Check List of Information to be submitted along with proposal for launch of new contract:** All proposals of Exchange for launch of new contract and/or for renewal of existing/earlier contracts shall be accompanied by complete information covering all the points delineated in the check-list appended at Annexure 1.

**Approval of Future Contract on Continuous Basis:** The Exchange-wise list of contracts approved for continuous trading is placed at Annexure 2. Approval for continuous trading in future contracts is contingent upon volume and open interest at the Exchange. Continuous approval is subject to: (i) Rules, Bye-laws and Regulations of the concerned Exchange; (ii) Contract specifications and contract

launch calendar shall be notified well in advance to the market participants on the website of the Exchange; (iii) contracts specifications and contract launch calendar should not be changed without prior approval; (iv) The contracts approved for continuous trading in agri-commodities shall continue to follow the lean month expiry policy as laid down and shall be subject to any other directions issued by SEBI or by other authorities like Food Safety Standard Authority of India, Agmark, BIS etc; (v) A limit on open position of each member and non-member client and the limit on daily price fluctuation as specified in the contract specification; (vi) permission granted for the contracts is subject to daily Mark to Market settlement of outstanding contracts as per the procedure and delivery mechanism/process; (vii) there is no unhealthy speculative trading in the market, which may result in cornering or artificial rigging up or down of the prices by a particular member or group or class of members.

**Permission for modification in future contract specifications at Exchange level:** National Commodity Derivatives Exchanges are permitted to modify various parameters of the future contract specification subject to informing market participants and the regulator well in advance. The provisions of the present Circular shall come into effect immediately. ***-[ SEBI/HO/ CDMRD/ DRMP/CIR /2016/88, 20th September, 2016, (SEBI)]***

## 8. REGULATORY FRAMEWORK FOR COMMODITY DERIVATIVE BROKERS NOTIFIED

In order to harmonize regulatory framework for brokers across equity and commodity derivative markets, after the merger of FMC with SEBI, securities regulator through this Circular has repealed certain previous Circulars and applied certain relevant Circulars issued by SEBI in their place. Accordingly, 'SEBI Circulars relating to Segregation of Client and Own Funds and Securities' will be applicable in case of commodity derivative brokers. On 'Running Account Settlement', Circulars issued by FMC are repealed and SEBI Circulars issued in this regard are made applicable. Regarding 'Requirements with respect to Financial Documents, PAN, Inactive Clients etc', FMC Circulars are repealed and Circulars issued by SEBI are made applicable. Similarly, Circulars issued by FMC regarding 'In-Person Verification' are repealed and SEBI Circulars issued in this regard for equity markets are made applicable. Circulars issued by SEBI on 'Know Your Client Registration Agency' will be applicable to commodity brokers and Circulars issued in this regard by FMC will stand repealed. Circulars issued by FMC to prevent money laundering and on maintenance of records are repealed and the ones issued by SEBI in this regard are made applicable. Similarly Circulars issued on 'dealing in cash', 'Guidelines on pre-funded instruments', 'sms and email alerts facility to clients', contract note', 'Exclusive e-mail ID for redressal of Investor Complaint', 'Display of information such as logo, registration number on Notice Board and contract note and investor grievance redressal mechanism on Notice Board', 'Internal Audit', 'Inspection of Brokers', 'Change in control/ Constitution', 'Procedure for surrender of membership', 'Guidelines on Outsourcing of Activities by Intermediaries', 'BPO/KPO Services Segregation thereof from Commodity Derivatives Market' and 'Authorized Persons' by FMC are repealed and ones issued by SEBI in this regard are applicable.

Circulars issued by FMC on following subjects shall continue to have effect beyond 28th September,

2016- 'Account Opening Process', 'Customer Protection such as keeping evidence of client placing order', 'Nomenclature of Stock brokers' and 'Surrender of membership'.

SEBI has decided to repeal Circulars on following subjects issued by SEBI- 'Segregation of Client Accounts in Commodity Futures Exchange and Spot Exchanges', 'Member to obtain FMC Unique Code' and 'Submission of networth certificate from the members'.

SEBI has also informed that all commodity derivatives Exchanges shall continue to levy penalties they are currently levying and any revision thereof shall be decided in consultation with SEBI. Accordingly, FMC Circulars dealing with penalties including Uniform Penalty Circular dated Mar 05, 2010 shall stand repealed. Stock Exchanges are required to communicate the implementation of this Circular to SEBI by Oct 15, 2016. For Circular numbers and their dates, kindly refer to original Circular. ***–[SEBI/HO/ MIRSD/ MIRSD2/ CIR/P/2016/92, 23rd September, 2016, (SEBI)]***

## 9. DIRECTIVES ON DISCLOSURES BY COMMODITY DERIVATIVE EXCHANGES NOTIFIED

SEBI through the present Circular aims to update directives issued by the erstwhile FMC regarding disclosures by Commodity Derivative Exchanges. To promote transparency in the market, Commodity Derivative Exchanges are required to disclose following information on their websites:- (i)Position of top 10 trading clients in buy side as well as sell side in order of maximum open interest in anonymous manner every day after the end of trading session; (ii)The delivery intent of the hedgers on a daily basis in an anonymous manner; (iii) The pay-in and pay-out of commodities made by top 10 clients including hedgers 10 days after completion of settlement; (iv) members' proprietary position on monthly basis. This shall include average daily proprietary position as a percentage of member's average daily total position and average daily margin on proprietary position as a percentage of margins on member's average daily total position; (v) The percentage of proprietary trade and percentage of clients' High Frequency Trading; (vi) Members data as mentioned in Annexure 1 of this Circular; (vii)List of the members whose request of surrender has been approved; (viii) Break up of funds contributed into Settlement Guarantee Funds and will be updated on quarterly basis; (ix) Disclosure of information regarding trading activity during life cycle of contract as mentioned in Annexure-II.

Where the exchanges are suspending/ expelling/declaring defaulter their members for irregularities, they shall also declare details of such member (Name, Address, Names of Promoters/ Owners/Partners/Directors of Company, Registration No. etc.) and also details of disciplinary action taken. Provision of this circular shall come into force from September 29, 2016. ***–[SEBI/HO/ CDMRD/DMP/2016/101, 27th September, 2016, (SEBI)]***

## 10. LIST OF COMMODITIES UNDER THE SECURITIES CONTRACT (REGULATION) ACT NOTIFIED

The Department of Economics under the Ministry of Finance, has previously specified the goods that shall be traded as 'commodity derivative' for the purpose of clause (bc) of section 2 of the Securities Contracts (Regulation) Act, 1956. The list of those 91 articles can be found in the Notification No. S.O. 3068(E) dated September 27, 2016. However, SEBI through this present Circular has clarified that the commodity derivatives contracts which are being

traded on the commodity derivatives Exchanges shall continue to be traded under the provisions of the SCRA, 1956 and the Rules and Regulations made thereunder.***-[SEBI/HO/ CDMRD/DMP/ CIR/ P/2016/105, 28th September, 2016, (SEBI)]***

## 11. INTRODUCTION OF OPTIONS IN COMMODITY DERIVATIVE MARKET

At present the only instrument available in the Commodity Derivatives market is futures on individual commodities. After SEBI constituted a Committee of Experts (CDAC) and after their recommendations on the subject of introduction of new products were considered, it has been decided by the SEBI that Commodity Derivatives Exchanges shall be permitted to introduce trading in 'options'. The Commodity derivatives Exchanges willing to start trading in options contracts shall take prior approval of SEBI for which detailed Guidelines will be issued in due course. **– *[SEBI/HO/CDMRD/DMP/CIR/P/104, 28th September, 2016, (SEBI)]***

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# COMPETITION

## 1. COMMISSION AS A QUASI JUDICIAL BODY IS BOUND BY PRINCIPLES OF NATURAL JUSTICE – COMPETITION APPELLATE TRIBUNAL

The Competition Commission of India vide its Order dated 26th October 2010 had dismissed allegations made by Appellants regarding dominance of M/s Jaiprakash Associates and M/s Jaypee Infratech (respondent Nos 1 and 2 respectively) in the market for provision of services in the development and sale of residential apartments in Noida and Greater Noida and alleged abuse of dominance. In view of these allegations, the Commission ordered investigation into the matter and DG presented its report. Noting the unique characteristic of integrated township, DG held that integrated township should be considered a separate relevant product market altogether and within the product market Respondent No.1 occupied position of dominance (having largest Land Bank and ownership of cement manufacturing). Copies of the report were sent to parties to file objections or contest the findings. On conclusion of hearing, the majority opinion of CCI differed with the findings of DG and held that integrated township cannot be treated as a separate relevant market and Respondent No 1 did not have position of dominance.

The major ground for appeal was that the Commission did not give effective opportunity of hearing to the Appellants. The Appellants successfully argued that they did not file objection to the DG report when the opportunity was presented to them because the findings of the report were in their favour. Their contention was that, had the Commission supplied their reason for disagreement with findings of DG's report with the copy of investigation report, they would have availed the opportunity of filing objections and demonstrated that the findings were legally correct and justified. The Tribunal noted that this amounted to breach of principle of natural justice. The Commission was required to give indication to Appellants that it was not in agreement with the findings and conclusion reached by DG to enable them to file replies/objections.

The Appellate Tribunal held that the Order made by majority members of the Commission under appeal is legally unsustainable as it did not record its disagreement with the finding and conclusion recorded by Director General in his report holding M/s Jaiprakash Associates (Respondent No 1 in this case) dominant in the relevant market of integrated township. According to the Tribunal, majority should have engaged with findings of DG and also the opinion of minority before either accepting or denying that integrated township forms separate market and Respondent having dominance in such market has abused its market position. Accordingly, appeal was allowed and matter remanded back to the Commission. ***-[Suil Bansal & others v. M/s Jaiprakash Associates Ltd. & Others, 28th September, 2016, (Competition Appellate Tribunal)]***

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## INDIRECT TAXES

### a. CUSTOMS

#### 1. CERTIFICATE FOR OBTAINING EXEMPTION ON IMPORT OF FLAT COPPER WIRE DISPENSED WITH

The CBEC has amended Notification No.12/2012-Customs dated 17.03.2012 so as to exempt import of "Flat copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacture of solar photovoltaic cells or modules" provided importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The condition of obtaining Certificate from the Department of Electronics to avail the said exemption has been dispensed with. – ***[Notification No. 47/2016 – Customs, dated 2nd September, 2016]***

#### 2. BASIC CUSTOMS DUTY FOR MARBLE AND TRAVERTINE BLOCKS IN-CREASED

The Notification No.12/2012-Customs, dated 17.03.2012 has been amended by the Central Government so as to increase the effective rate of Basic Customs Duty for Marble and Travertine blocks, Marble slabs and Granite slabs with effect from 01.10.2016. The products will now be subject to Basic Customs Duty of 20 per cent *ad valorem*. – ***[Notification No. 49/2016 – Customs, dated 16th September, 2016]***

#### 3. CUSTOMS DUTY EXEMPTION ON RAW MATERIAL FOR SERVICING OF AIRCRAFT REMOVED

The Notification No. 12/2012-Customs dated 17.03.2012 has been amended by the Central Government so as to remove the raw material for servicing of Aircraft from the exemption list by deleting the words "or servicing" from the 'raw materials for manufacture and servicing of aircraft' in the said Notification. Further the importers are required to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 to avail exemption and the condition of obtaining Certificate from the Ministry has been dispensed with. – ***[Notification No. 50/2016 – Customs, dated 22nd September, 2016]***

#### 4. IMPORT DUTIES ON POTATOES, WHEAT AND PALM OIL REDUCED

The Notification No.12/2012-Customs dated the 17th March, 2012 has been further amended by the Central Government, so as to-

i. Reduce import duty on potatoes from 30% to 10% up to 31.10.2016.
ii. Reduce import duty on wheat from 25% to 10% up to 29.02.2017.
iii. Reduce import duty on palm oil from 12.5% to 7.5% for crude palm oil of edible grade, and from 20% to 15% for refined palm oil of edible grade. – ***[Notification No. 51/2016 – Customs, dated 23rd September, 2016]***

### 5. IMPORT DUTY ON BUTTER AND GHEE DEFERRED UPTO 31 MARCH 2017

The Notification No.12/2012-Customs dated the 17th March, 2012 has been further amended by the Central Government, so as to retain the Basic Customs Duty on ghee, butter and butter oil at 40% beyond 30.09.2016, for a further period up to 31.03.2017. – ***[Notification No. 53/2016 – Customs, dated 29th September, 2016]***

### 6. ADD IMPOSED ON IMPORTS OF GLASS FIBRE

Definitive anti-dumping duty has been imposed by the Central Government on all imports of Glass Fibre and articles thereof falling under heading 7019 of the First schedule to the Customs Tariff Act, 1975, originating in or exported from China PR for a period of five years. – ***[Notification No. 48/2016 - Customs (ADD), dated 1st September, 2016]***

### 7. ADD LEVIED ON PARA NITROANILINE EXTENDED

Levy of anti-dumping duty has been extended by the Central Government on imports of Para Nitroaniline, originating in, or exported from People's Republic of China, (imposed vide Notification No. 88/2011-Customs, dated 9th September, 2011) for a period of one year i.e. upto and inclusive of the 8th September, 2017. – ***[Notification No. 49/2016 - Customs (ADD), dated 7th September, 2016]***

### 8. 'CUSTOM CLEARANCE FACILITATION COMMITTEE' (CCFC) TO BE SET UP FOR LAND CUSTOMS STATIONS AND INLAND CONTAINER DEPOTS

The CBEC vide Circular 13/2015-Customs dated 13th April 2015 has instructed customs formation in ports and airports to set up customs clearance facilitation committees for ensuring expeditious clearance of imported and export goods. Similar instructions have now been issued to land customs stations and Commissionerates having jurisdiction over inland container depots. The committees will be headed by the Commissioner and will include the senior most jurisdictional functionary of security agencies and various agencies that have to give clearance for specific goods. The committee will meet once a month to facilitate speedy clearance, resolve bottlenecks, initiate time release studies, recommend best practices and resolve public grievances. – ***[Circular No.44/2016 – Customs, dated 22nd September, 2016]***

## b. CENTRAL EXCISE

### 1. CERTIFICATE FOR EXEMPTION ON COPPER WIRE OF SPECIFIED TYPES DISPENSED WITH

The CBEC has amended Notification No.12/2012-Central Excise dated 17.03.2012 so as to exempt manufacture of copper wire of specified types for use in the manufacture of photovoltaic ribbon for photovoltaic cells or modules provided manufacturer follows the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for

Manufacture of Excisable Goods) Rules 2016. The condition of obtaining Certificate from the Department of Electronics to avail the said exemption has been dispensed with. – ***[Notification No. 33/2016 – Central Excise, dated 2nd September, 2016]***

## 2. EXEMPTION FOR GOLDSMITHS' OR SILVERSMITHS' UNBRANDED ARTICLES OF PRECIOUS METAL AMENDED

The Notification No.12/2012-Central Excise dated 17.03.2012 has been amended by the Central Government, so as to amend the exemption for goldsmiths' or silversmiths' unbranded articles of precious metal. A condition of payment of appropriate duties of customs /excise and service tax (including nil rate) on the inputs and non-availment of Cenvat credit thereon, has been inserted for the exemption for goldsmiths' or silversmiths' unbranded articles of precious metal. – ***[Notification No. 34/2016 – Central Excise, dated 8th September, 2016]***

## 3. FORM ARE-2 AMENDED TO REFLECT THE CORRECT POSITION OF LAW

Due to the error with Form ARE-2, exporters were being denied drawback which they claimed at the lower rate because they were unable to declare that they had not availed any CENVAT credit pertaining to the consignment. The CBEC has now rectified this error by amending the ARE-2 form. – ***[Notification No. 44/2016 – Central Excise (N.T.), dated 16th September, 2016]***

## 4. THE CENVAT CREDIT RULES, 2004 AMENDED

The CENVAT Credit Rules, 2004 has been amended so as to remove the requirement of enclosing photocopies of the railway receipts (RRs) with the service tax certificate of transport of goods by rail (STTG) certificate in order to avail CENVAT credit of service tax paid on the carriage of goods by rail. ***[Notification No. 45/2016 – Central Excise (N.T.), dated 20th September, 2016 & Circular No. 1048/36/2016-CX, dated 20th September, 2016]***

## 5. CENTRAL EXCISE (REMOVAL OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE GOODS) RULES 2016 AMENDED

The Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2016 have been amended by the Central Government so as to reintroduce the concept of security with the surety by the supplier for removal for exempted manufacture. – ***[Notification No. 46/2016 – Central Excise (N.T.), dated 26th September, 2016]***

## 6. AUDIT OFFICERS EMPOWERED TO ADJUDICATE

The Notification No. 30/2014-CE (NT) dated 14th October, 2014 has been amended by the Central Government, so as to give auditors the power of adjudication along with audit and issue of show cause notice. – ***[Notification No. 47/2016 – Central Excise (N.T.), dated 28th September, 2016]***

## 7. MONETARY LIMITS FOR ADJUDICATION IN CENTRAL EXCISE AND SERVICE TAX REVISED

The CBEC through the present Circular has revised the monetary limits of designated Central

Excise Officers for adjudication of cases in Central Excise and Service Tax as follows-

- Superintendents will now have jurisdiction to adjudicate cases involving amounts up to Ten Lakhs of Rupees, if these do not involve refunds, classification, valuation and extended period of limitation.
- Joint and Additional Commissioners will have unlimited powers of adjudication of cases involving transit loss and Cenvat credit. Joint and Additional Commissioners can adjudicate other cases involving amounts up to Two Crores of Rupees, except for refund / rebate cases.
- Assistant and Deputy and Assistant Commissioners are now empowered to adjudicate cases involving amounts up to Fifty Lakhs of Rupees, as well as all cases of refund / rebate, without monetary restriction.
- If the amount involved is more than Two Crores of Rupees, and does not involve refund / rebate (jurisdiction of the AC / DC) or transit loss / Cenvat credit (jurisdiction of the JC / ADC), it falls within the jurisdiction of the Commissioner.
- If there are multiple Notices on the same issue, involving different amounts, these will all be adjudicated by the officer having the powers to adjudicate the highest amount. – ***[Circular No. 1049/37/2016-CX, dated 29th September, 2016]***

## c. SERVICE TAX

### 1. EXEMPTION FOR SPECTRUM / TELECOM LICENCE PRIOR TO 1 APRIL 2016

Entry 62 of Notification No. 25/2012 - Service Tax, dated the 20th June, 2012 has been further amended by the Central Government, so as to exempt services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to 1st April, 2016 on payment of license fee or spectrum user charges, as the case may be. – ***[Notification No. 39/2016-Service Tax, dated 2nd September, 2016]***

### 2. EXEMPTION FOR RENTING OUT OF A RELIGIOUS PLACE AMENDED

Notification No. 25/2012- Service Tax, dated 20.06.2012 has been amended by the Central Government, so as to prescribe that exemption for renting out of the precincts of a religious place is now available only if the religious place is owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a Trust or an Institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax Act. The CBEC through a Circular also clarified that the 'precincts' means the entire area within the outer boundaries of the religious place. – ***[Notification No. 40/2016-Service Tax, dated 6th September, 2016 & Circular No. 200/10/2016-ST, dated 6th September, 2016]***

### 3. SERVICE TAX LEVIABLE ON LONG TERM LEASE PROVIDED BY STATE GOVERNMENT INDUSTRIAL DEVELOPMENT CORPORATIONS/ UNDERTAKINGS EXEMPTED

The Central Government has exempted taxable service provided by the State Government

Industrial Development Corporations/ Undertakings by way of granting long term (thirty years, or more) lease of industrial plots to industrial units from so much of service tax which is leviable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease. – ***[Notification No. 41/2016-Service Tax, dated 22nd September, 2016]***

### 4. TAX NOT PAID ON YOGA SERVICES FROM 1ST JULY 2012 TO 20TH OCTOBER 2015 WAIVED

The Central government after being satisfied that in the period commencing on and from 1st July 2012 and ending with 20th October 2015 there was a prevalent practice of non-levy of service tax on yoga services, despite this service was liable to service tax, waived the service tax for the said period on services by way of advancement of Yoga provided by entities registered under Section 12 AA of Income-tax Act, 1961. – ***[Notification No. 42/2016-Service Tax, dated 26th September, 2016]***

### 5. FORM ST- 3 UNDER SERVICE TAX RULES, 2016 AMENDED

The Central Government has amended the Service Tax Rules by way of the Service Tax (Third amendment) Rules, 2016 so as to amend the Form ST-3 prescribed under the said Rules. – ***[Notification No. 43/2016-Service Tax, dated 28th September, 2016]***

### 6. WAIVER OF SERVICE TAX NOT PAID ON SERVICE OF TRANSPORTATION, BY EDUCATIONAL INSTITUTIONS TO STUDENTS, FACULTY AND STAFF BETWEEN THE PERIOD 1ST APRIL 2013 TO 10TH JULY 2014

The Central Government after being satisfied that in the period commencing on and from 1st April 2013 and ending with 10th July 2014 there was a prevalent practice of non-levy of service tax on service of transportation, by educational Institutions to students, faculty and staff despite this service was liable to service tax, waived the service tax for the said period on the said services. – ***[Notification No. 45/2016-Service Tax, dated 30th September, 2016]***

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## INTELLECTUAL PROPERTY RIGHTS

### 1. PCT SEARCH REPORT IS AN ESSENTIAL INPUT IN THE EXAMINATION FOR THE EXAMINER : MADRAS HIGH COURT

The Petitioner in the present matter claimed that the time lines for examination of patent under the Patents Act, 1970 read with Rules thereunder are not followed resulting in years of delay. It was his submission that this time period can be reduced if the Patent Co-operation Treaty (PCT) Search Reports already obtained are treated as an essential input in the examination of the pending National Phase Application for patent of both Indian and foreign applicants. On the other hand, the learned Assistant Solicitor General, concedes that if a PCT search report is already available, certainly that will be taken into account, though it may not be binding. The Court observed that it is not the plea of the Petitioner that the ISR and IPRP are to be treated as final and binding, but only that they should be treated as an essential input, as it would facilitate an early scrutiny by the Examiners, something not disputed even by the learned Assistant Solicitor General. Therefore the Court disposed of the Petition by recording that such PCT Search Report is being and shall be treated as an essential input in the

examination by the Examiner, in pursuance of the mandate of Section 12 of the Patents Act, 1970 dealing with the question of examination of application. - ***[R.Muralidharan vs The Controller General of Patents, dated 1st September, 2016 (Madras High Court)]***

## 2. WHEN ONE COMPARES SIMILARITIES IN THE VARIOUS FEATURES OF THE MARKS, ONE ALSO MUST LOOK AT THE DISSIMILARITIES AND CONSIDER WHETHER THE LATTER OUTWEIGH THE FORMER: BOMBAY HIGH COURT

The present Petition was filed by the Plaintiffs seeking a temporary injunction restraining the Defendant from using the word 'VOGUE' as part of their impugned trade mark "JUST IN VOGUE" or any other deceptively similar mark or trade name in relation to its goods and services. It is the Plaintiffs' grievance that in or around January 2009, the Plaintiffs came to know of the Defendant's application for registration of the trade mark "JUST IN VOGUE" in Class 35 in respect of retail stores and sales services, etc. The Plaintiffs thereupon caused a notice of opposition to be filed through their Attorneys. Upon making further inquiries, the Plaintiffs have learnt of the Defendant's use of the trade mark "JUST IN VOGUE" in relation to retail stores and sales services. Considering particularly the range of merchandise dealt in by the Defendant, which includes various fashion goods and high end products, it is the Plaintiffs' grievance, the Defendant's use of the trademark "JUST IN VOGUE" featuring prominently the word "VOGUE" amounts to an infringement of the Plaintiffs' well-known trademark "VOGUE".

On the other hand it was contended that similarity referred to in Section 29 can only be either similarity between goods covered by the registered trade mark and goods covered by the rival mark or similarity between services offered under the two rival marks. Learned Counsel submits that it cannot be similarity between goods covered under one mark and services covered by the other.

The Court observed that there is hardly any dispute between the parties that physically the goods/services are clearly distinct and separate. The respective uses of the goods/services of the Plaintiffs and the Defendant are also distinct and dissimilar. The Plaintiffs' magazines are read by their consumers; the Defendant's services are used for buying goods of reputable third parties. The target users of the Plaintiffs' goods are 'intelligent, affluent, well-travelled women in the age group of 26-45 years'. On the other hand, the customers of the Defendant are said to be primarily men from the middle strata of the society. There are no common distributors or dealers dealing in these goods/services.

The Court further observed that assuming that the two trademarks in the present case are similar, there would be a case of an unfair advantage to the Defendant or a detriment within the meaning of Section 29(4) only where the Plaintiffs' registered trade mark has acquired a distinctive character or enjoys extensive reputation in India. If the Plaintiffs do not make out 'deceptive similarity' between the two marks, neither of their cases, whether under Section 29(1), Section 29(2)(c), Section 29(4) or passing off, can succeed. The similarity itself, it is trite to say, may be found in various ways - visual, phonetic and structural, but in either case the marks must be compared as a whole and not broken into parts for a comparison. Besides, when one compares similarities in the various features of the marks, one also must look at the dissimilarities and consider whether the latter outweigh the former. And all this from the standpoint of consumers who are likely to buy the goods or avail of the services.

On the facts of the case the court held that the Plaintiffs' registered trade mark is the word "VOGUE", the Defendant in its impugned mark is not using the word simplicitor but in conjunction with two other words, namely, "JUST" and "IN VOGUE". Besides, the Defendant's mark is a device mark, which is rendered in a distinctive style of

writing with the word "JUST", which is part of the corporate name of the Defendant, being prominently displayed above the words "IN" and "VOGUE" and in a font size which is significantly larger (said to be four times that of the word 'VOGUE' used in the mark). The word 'JUST' is further emphasized by an underline below it and is written in Italics. The font and writing style used by the Defendant for the word 'VOGUE' are also not similar to the font/writing style used by the Plaintiffs for its trade mark 'VOGUE'. All this indicates that there is no per se visual, phonetic and structural similarity between the two marks, when they are compared as a whole, that is to say, without breaking them into parts for comparison. Compared to the similarity in the two marks, which is signified only by the use of the word 'VOGUE' in both the marks, the word being the whole of the mark in case of one and in a combination of words in the other, the dissimilarities between the two, which are noted above, viewed in their entirety, sufficiently outweigh this singular similarity. - ***[Advance Magazine Publishers, Inc. and Anr. vs. M/s. Just Lifestyle Pvt. Ltd., dated 19th September, 2016 (Bombay HC)]***

### 3. DAMAGES TO THE TUNE OF RS.32,00,000/- GRANTED IN AN EX-PARTE DECREE OF TRADEMARK INFRINGEMENT BY THE DELHI HC

Present suit was filed by the Plaintiff, Yahoo! Inc., against the Defendants seeking permanent injunction to restrain the Defendants from infringing the Plaintiff's trademark, passing off, damages and delivery up etc. The plaintiff claimed to be the owner of the trademark YAHOO and registered in India in various Classes including Classes 29 and 30, which covers snack foods, snack mixer, snack bar, pretzels, tortilla chips, etc. The defendants are stated to be infringing the plaintiff's trademark by manufacturing and marketing products falling in Classes 29 and 30. The merchandise being marketed is under the name YAHOO MASALA CHAKRA and YAHOO TOMATO TANGY. None appeared on behalf of the Def. No.1 & 2 despite service and hence they were proceeded ex parte.

The Court observed that the Plaintiff was able to prove that Defendants 1 and 2 have adopted the Plaintiff's trademark as the name of their product in order to piggyback on the reputation of the Plaintiff and the Plaintiff's trademark and that such adoption of the trademark Yahoo for AFPL's snack items is undoubtedly dishonest. On the basis of the affidavit-in-evidence submitted by the Plaintiff and report of the Local Commissioner appointed by the Court, the Court held that as total sale by the Defendants in the two years during which the infringement continued would be around Rs. 3.2 crores and the profit margin to be at least 10%, the profit works out to Rs.32 lakhs which the Def No.1 & 2 needs to pay to the Plaintiff as damages. - ***[Yahoo! Inc vs Sanjay Patel & Ors., dated 1st September, 2016 (Delhi HC)]***

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## CONSUMER

### 1. INSURER WILL BE ESTOPPED FROM ALLEGING MISREPRESENTATION IF HE WAS AWARE OF THE FACTUAL MATRIX - NCDRC

The complainant in the present case took a Marine Cargo Policy from the Appellant Insurance Company to insure export of a consignment from Jetpur in Gujarat to Lusaka in Zambia. The sum assured under the said policy was Rs.28,10,000/- and the basis of valuation was CIF (cost, insurance and freight) plus 10%. The goods however, got stolen before the container could reach Lusaka and the loss was reported to the police as well as to the local agent of the insurer. The claim lodged by the

Complainant/Respondent however, was repudiated by the insurer.

The ground for rejection was on the basis that complainant had made false representation while taking the insurance policy, since it was not disclosed to the insurance company that in fact, the goods were sold on C&F and not on CIF basis. Sale by the complainant was made on Cost & Freight (C&F) basis, whereas the basis of valuation as per the insurance policy was on CIF (Cost, Insurance & Freight) plus 10%.

The National Commission however noted that this information was available with the insurer as copy of invoice was made available. Therefore, it cannot be said that the insurer was not aware that the transaction between the complainant and the overseas buyer was on C&F basis, and not on CIF basis. The distinction between CIF and C&F is relevant because, in the sale on CIF basis, the cost of insurance is borne by the seller, whereas in the sale on C&F basis, the cost of insurance is borne by the purchaser. The Commission however relied on the fact that, there is no evidence on record to show that the complainant had made a misrepresentation to the insurer as regards the basis of the transaction between it and the overseas seller.

Another contention relied on by the appellant was that since the transaction between the complainant and the overseas buyer was on C&F basis, the property/ownership in the goods got transferred from the complainant to the consignee, the moment the goods were loaded on the ship for transportation and therefore, the complainant which thereafter was left with no insurable interest in the goods, could not have got them insured and therefore, is not entitled to any reimbursement from the insurer on account of loss of those goods. This contention was not accepted by the Commission. According to the Commission, this was not a case where the goods were delivered to the carrier, without reserving any right in them to the seller. The transaction being of delivery against acceptance, with promise to pay within 120 days, the property in the goods did not get transferred from the complainant to the consignee even at Dar-E-Salaam (port of delivery) though the delivery of the goods at Dar-E-Salaam was taken by the agent of the consignee. Commission noted that despite delivery to the agent of the consignee at Dar-E-Salaam, the property in the goods would have been transferred from the complainant to the consignee, only on payment of the price of the goods in terms of the bill of exchange accepted by the consignee

The Commission thus held that insurer knew that transaction was on C&F basis despite which they chose to insure the goods on CIF basis. According to the Commission, the insurer is estopped from repudiating the claim solely on the ground that the transaction between the parties was on C&F basis, having insured the goods upto Lusaka, without any concealment on the part of the complainant. Commission, accordingly, dismissed the appeal and maintained the order directing insurer to pay the sum of insurance with Rs.10,000 compensation and litigation cost. ***–[Oriental Insurance Co. Ltd., v. M/s Ajanta International, 5th September, 2016, (NCDRC)]***

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## ENVIRONMENT

### 1. THE UNION CABINET APPROVED INDIA'S RATIFICATION TO THE PARIS AGREEMENT ON CLIMATE CHANGE

As per the Paris Agreement clause, the agreement will come into force 30 days after 55 countries, representing 55 per cent of global emissions, deposit their instruments of ratification, acceptance or accession with the UN Secretary General. The Paris Agreement calls on countries to take actions post-

2020 to combat climate change and intensify their efforts needed for a sustainable low carbon future. It is meant to limit global warming "well below" 2 degrees Celsius and as close to 1.5 degrees Celsius as possible to increase the economic ability to adapt to the extreme climate. The countries' pre-2020 actions to fight the menace of climate change is currently being covered by the Kyoto Protocol. Once the Paris Agreement comes into force in November, the countries, including India, will engage themselves in framing Rules for its implementation. – ***[The Times of India, dated 28th September, 2016]***

## 2. INDIA HAS REQUESTED CONSULTATIONS WITH THE US UNDER THE DISPUTE SETTLEMENT SYSTEM OF THE WTO

India has sought consultations since the US measures are inconsistent with the global trade norms because they provide less favourable treatment to imported products than to like domestic products, and because the subsidies are contingent on the use of domestic over imported goods. The request for consultations is the first step in a dispute at the WTO under its Dispute Settlement System. – ***[The Time of India, dated 12th September, 2016]***

## 3. DELHI, UP GOVT DIRECTED BY THE NGT TO ACT AGAINST UNAUTHORIZED INDUSTRIES

The NGT has directed Delhi and Uttar Pradesh Governments to take action against unauthorized industrial units running in residential areas on the outskirts of the National Capital Region. The Bench observed that the Delhi Pollution Control Committee (DPCC) has the power to act against such illegal units and it can even pass specific directions with regard to disconnection of electricity and water supply to these units. The Bench directed DPCC and East Delhi Municipal Corporation (EDMC) to identify such industries located in residential areas and take action against them as per the Law. – ***[The Times of India, dated 8th September, 2016]***

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