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## RBI/FEMA

### 1) **RBI INTRODUCES LEGAL ENTITY IDENTIFIER FOR LARGE CORPORATE BORROWERS**

The RBI has asked banks to direct their large corporate borrowers with an aggregate exposure of Rs. 50 crore and more to obtain a Legal Entity Identifier (LEI) latest by the end of 2019. The idea of LEI, a 20-digit unique code to identify parties to financial transactions worldwide, was conceived in the aftermath of the 2008 global financial crisis in a bid to improve financial data systems and strengthen risk management capabilities. The central bank has directed lenders not to renew or enhance the credit facilities of borrowers who do not obtain an LEI within a given time frame. It has also asked banks to encourage large corporate borrowers to obtain the code for their parents as well as subsidiaries and associates. In India, the code can be obtained from Legal Entity Identifier India Ltd., a subsidiary of RBI-recognized Clearing Corporation of India Ltd. Borrowers have been divided into four groups and RBI has set a deadline for companies in each of the sets to obtain an LEI code. –

*[DBR.No.BP.BC.92/21.04.048/2017-18, dated, 2nd November, 2017]*

### 2) **NEW DIRECTIONS ON MANAGING RISKS AND CODE OF CONDUCT IN OUTSOURCING OF FINANCIAL SERVICES BY NBFCs**

The RBI has issued directions on outsourcing of financial services by NBFCs (the draft guidelines were issued in April 2015). Existing NBFCs have been directed to conduct a self-assessment of their existing outsourcing arrangements and bring these in line with the directions within two months from the date of the Circular. –  
*[DNBR.PD.CC.No.090/03.10.001/2017-18, dated 9th November, 2017]*

### 3) **MODIFICATIONS IN THE MASTER CIRCULAR ON CONDUCT OF GOVERNMENT BUSINESS BY AGENCY BANKS - PAYMENT OF AGENCY COMMISSION DATED JULY 01, 2017**

After implementation of GST framework, RBI has modified paragraph 15 of the captioned Master Circular which will read as follows:

“Agency banks are required to submit their claims for agency commission in the prescribed format to CAS Nagpur in respect of Central government transactions and the respective Regional Office of Reserve Bank of India for State government transactions. However, agency commission claims with respect to GST receipt transactions will be settled at Mumbai Regional Office of Reserve Bank of India only and accordingly all agency banks, authorized to collect GST, are advised to submit their agency commission claims pertaining to GST receipt transactions at Mumbai Regional Office only. The revised formats for claiming agency commission for all agency banks and separate and distinctive set

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of certificates to be signed by the branch officials and Chartered Accountants are given in Annex-2. These certificates would be in addition to the usual Certificate from ED / CGM (in charge of government business) to the effect that there are no pension arrears to be credited / delays in crediting regular pension / arrears thereof.” – *[DGBA.GBD.No.1324/31.02.007/2017-18, dated 16th November, 2017]*

#### 4) RBI ALLOWS FPIs TO SETTLE OTC SECONDARY MARKET TRANSACTION EITHER ON T+1 OR ON T+2 BASIS

The RBI has decided to permit Foreign Portfolio Investors (FPIs) to settle Over-the-Counter (OTC) secondary market transactions in Government Securities either on T+1 or on T+2 basis. It may be ensured that all trades are reported on the trade date itself. All other existing conditions for settlement of transactions in Government Securities remain unchanged. – *[FMRD.DIRD.05/14.03.007/2017-18, dated 16th November, 2017]*

#### 5) RBI EASES DEBT CONVERSION NORMS FOR ASSET RECONSTRUCTION FIRMS

The RBI has relaxed norms capping the Asset Reconstruction Companies (ARCs) shareholdings at 26 per cent in the borrower firm under reconstruction, provided their net-owned funds are maintained at Rs. 100 crore. Earlier ARCs could convert a portion of the debt into equity of the borrower company to the extent of 26 per cent of the revamped equity capital. However, RBI *vide* present notification declared that the ARCs with net-owned fund (NOF) of Rs. 100 crore on an ongoing basis are exempted from the shareholding cap at 26 per cent of post-converted equity of the borrower company. All ARCs with at least half of the directors, including independent directors, are also

exempted from the 26 per cent shareholding cap in the borrower firm. The RBI also asked the boards of ARCs to frame a policy for converting debt into equity, under which it prefers a committee comprising mostly of independent directors to take a call on such matters. – *[DNBR.PD(ARC)CC.No.04/26.03.001/2017-18, dated 23rd November, 2017]*

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### FOREIGN TRADE

#### 1) FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2017

RBI has, on November 7, 2017, issued the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 in supersession of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 and Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000, to regulate investment in India by a Person Resident Outside India.

From the perspective of creation of security in form of Pledge, following may be noted:

Regulation 10 (12): The transfer of capital instruments of an Indian company or units of an Investment Vehicle by way of pledge is subject to the following terms and conditions:

(a) Any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing (ECB) in

compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing (ECB) raised by the borrowing company subject to the following conditions:

- (i) the period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;
- (ii) in case of invocation of pledge, transfer shall be in accordance with these Regulations and directions issued by the Reserve Bank;
- (iii) the Statutory Auditor has certified that the borrowing company will utilise/ has utilised the proceeds of the external commercial borrowing for the permitted enduse/s only;
- (iv) no person shall pledge any such share unless a no-objection has been obtained from an Authorised Dealer bank that the above conditions have been complied with.

(b) Any person resident outside India holding capital instruments in an Indian company or units of an investment vehicle may pledge the capital instruments or units, as the case may be:

- in favour of a bank in India to secure the credit facilities being extended to such Indian company for bona fide purposes,
- in favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company,

- in favour of a Non-Banking Financial Company registered with the Reserve Bank to secure the credit facilities being extended to such Indian company for bona fide purposes,

- subject to the Authorized Dealer bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank in this regard.

(c) In case of invocation of pledge, transfer of capital instruments of an Indian company or units shall be in accordance with entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge.

‘Capital Instruments’ has been defined to mean equity shares, debentures, preference shares and share warrants issued by an Indian company;

Explanation:

Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid. The expression ‘Debentures’ means fully, compulsorily and mandatorily convertible debentures. ‘Preference shares’ means fully, compulsorily and mandatorily convertible preference shares. Share Warrants are those issued by an Indian Company in accordance with the Regulations issued by the Securities and Exchange Board of India. Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.

Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue. Twenty five percent of the total consideration amount (including share premium, if any), shall be received upfront.



In case of share warrants at least twenty five percent of the consideration shall be received upfront and the balance amount within eighteen months of issuance of share warrants.

Capital instruments shall include non-convertible/ optionally convertible/ partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible/ partially convertible debentures issued up to June 7, 2007 till their original maturity. Non-convertible/ optionally convertible/ partially convertible preference shares issued after April 30, 2007 shall be treated as debt and shall conform to External Commercial Borrowings guidelines regulated under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000. *–[No. FEMA 20(R)/2017-RB, 7<sup>th</sup> November, 2017, (RBI)]*

## 2) ENLISTMENT OF MIDC INDUSTRIES ASSOCIATION TO ISSUE CERTIFICATE OF ORIGIN (NON-PREFERENTIAL)

M/s MIDC Industries Association (MIDC-IA) is enlisted under Appendix 2E of [FTP 2015-20](#), for issuing Certificate of Origin (Non-Preferential). *– [Public Notice No. 39/2015-20, 9<sup>th</sup> November, 2017, (DGFT)]*

## 3) AMENDMENT IN PARA 5.03(a) OF HANDBOOK OF PROCEDURE (HBP) OF FOREIGN TRADE POLICY 2015-20 AND ADDITION OF NEW PARA C IN APPENDIX 5A

Director General of Foreign Trade (DGFT) has clarified that a Chartered Engineer shall act only in the domain of his/her competence for issuance of nexus certification under EPCG Scheme. *–[Public*

*Notice No. 40/2015-20, 13<sup>th</sup> November, 2017, (DGFT)]*

## 4) RELIEF IN AVERAGE EXPORT OBLIGATION IN TERMS OF PARA 5.19 OF HANDBOOK OF PROCEDURES OF [FTP 2015-20](#).

Director General of Foreign Trade (DGFT) has circulated list of 395 items that have witnessed a decline in export of 5% or more in 2016-17 compared to 2015-16. Accordingly, all regional offices are requested to re-fix annual average export obligation for EPCG authorization for the year 2016-17. Reduction in export obligation should be appropriately endorsed in the license file of the office of RA as also in the Amendment Sheet to be issued to the EPCG authorization holder. *–[Policy Circular No. 3/2015-20, 21<sup>st</sup> November, 2017, (DGFT)]*

## 5) EXPORT OF PULSES-REMOVAL OF PROHIBITION ON EXPORT OF ALL VARIETIES OF PULSES TILL FURTHER ORDERS

All varieties of pulses, including organic pulses, have been made 'free' for export without any quantitative ceilings, till further order. However, export through the non-EDI Land Custom Stations (LCS) on Indo-Bangladesh and Indo-Nepal border shall also be allowed subject to registration of quantity with DGFT. Regional Authorities (RAs) in Kolkata & Patna and such other RAs as notified by DGFT from time to time will be the designated RAs for the purpose of such registration of quantity. *– [Notification No. 28/2015-20, 22<sup>nd</sup> November, 2017, (DGFT)]*

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## 6) EXPORT POLICY OF ONIONS- IMPOSITION OF MINIMUM EXPORT PRICE (MEP)

Export of all varieties of onions as described at serial no. 51 and 52 of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export and Import Items, will be allowed only on Letter of Credit (LC) subject to a Minimum Export Price (MEP) of US\$ 850 F.O.B. per Metric Ton till 31.12.2017. *–[Notification No. 39/2015-20, 23<sup>rd</sup> November, 2017, (DGFT)]*

## 7) RELAXATION IN EXPORT POLICY FOR EXPORT OF RED SANDERS WOOD BY GOVERNMENT OF KARNATAKA.

Prohibition on export of Red Sanders wood in log form has been relaxed for export of 186.588 MTs of Red Sanders wood, in log form, through State Government of Karnataka. *–[Notification No. 40/2015-2020]*

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## CORPORATE

### 1) ORDINANCE ON INSOLVENCY LAWS

The President of India has given his assent today to the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (the Code).

The Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The amendments aim to keep out such persons who have wilfully defaulted, are associated with non-performing assets, or are habitually non-compliant and, therefore, are likely to be a risk to successful resolution of insolvency of a company. In addition to putting in place restrictions for such persons to

participate in the resolution or liquidation process, the amendment also provides such checks by specifying that the Committee of Creditors ensure the viability and feasibility of the resolution plan before approving it. The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers.

Regulations by the IBBI were also amended recently to ensure that information on the antecedent of the applicant submitting the resolution plan along with information on the preferential, undervalued or fraudulent transactions are placed before the Committee of Creditors in order for it to take an informed decision on the matter.

Along with other steps towards improving compliances, actions against defaulting companies to prevent misuse of corporate structures for diversion of funds, reforms in the banking sector, weeding out of unscrupulous elements from the resolution process is part of ongoing reforms of the Government. These would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment.

The Ordinance amends Sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new Sections 29A and 235A in the Code. Gist of the amendments is given below:

- (i) Clause (e) of Section 2 of the Code has been substituted with three clauses. This would facilitate the commencement of Part III of the Code relating to individuals and partnership firms in phases;
- (ii) Clause (25) and (26) of Section 5 of the Code which defines “resolution applicant” and “resolution applicant” are amended to provide clarity;

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- (iii) Section 25(2)(h) of the Code is amended to enable the resolution professional, with the approval of the Committee of Creditors (CoC), to specify eligibility conditions while inviting resolution plans from prospective resolution applicants keeping in view the scale and complexity of operations of business of the corporate debtor to avoid frivolous applicants;
- (iv) It has also been specifically provided that CoC shall reject a resolution plan, which is submitted before the commencement of the Ordinance but is yet to be approved, and where the resolution applicant is not eligible as per the new Section 29A. In such cases, on account of the rejection, where there is no other plan available with the CoC, it may invite fresh resolution plans;
- (v) Section 30(4) is amended to explicitly obligate the CoC to consider feasibility and viability of the resolution plan in addition to such conditions as may be specified by IBBI, before according its approval;
- (vi) The sale of property to a person who is ineligible to be a resolution applicant under Section 29A has been barred through the amendment in Section 35(1)(f);
- (vii) In order to ensure that the provisions of the Code and the rules and regulations prescribed thereunder are enforced effectively, the new Section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees;
- (viii) Consequential amendments in Section 240 of the Code, which provides for power to make regulations by IBBI, have been made for regulating making powers under Section 25(2)(h) and 30(4) and

- (ix) Section 29A is a new section that makes certain persons ineligible to be a resolution applicant. Those being made ineligible *inter alia* include willful defaulters, those who have their accounts classified as non-performing assets for one year or more and are unable to settle their overdue amounts including interest thereon and charges relating to the account before submission of the resolution plan, those who have executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor undergoing a corporate insolvency resolution process or liquidation process under the Code and connected persons to the above, such as those who are promoters or in management of control of the resolution applicant, or will be promoters or in management of control of corporate debtor during the implementation of the resolution plan, the holding company, subsidiary company, associate company or related party of the above referred persons.

***-[Ministry of Law and Justice, November 23, 2017]***

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## SECURITIES

### 1) INVESTMENT BY FPIs IN HYBRID SECURITIES

Presently, Foreign Portfolio Investors (FPIs) investments are classified as either debt or equity depending on the type of the security in which the FPIs transact.

FPIs are permitted to invest in REITs and InvITs, which are classified as hybrid securities and presently, the said investments are not reflected in the daily FPI

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net investment data or the monthly/fortnightly FPI Asset Under Custody (AUC) data.

In order to capture FPI investment data in hybrid securities, a third category termed as “Hybrid Security” shall be created for the purpose of capturing and disseminating FPI investment data in hybrid securities. *–[IMD/FPIC/CIR/P/2017/121, November 15, 2017, (SEBI)]*

## 2) REVIEW OF SECURITIES LENDING AND BORROWING (SLB) FRAMEWORK

Securities Lending and Borrowing (SLB) is a system in which traders borrow shares that they do not already own, or lend the stocks that they own but do not intend to sell immediately. The main function of borrowed stocks is to short-sell them in the market. When a trader has a negative view on a stock price, then s/he can borrow shares from SLB, sell them, and buy them back when the price falls. The difference between the selling and buying price, minus the interest rate (and other costs) is the trader's profit.

SEBI in view of feedback received from market participants, has revised the SLB framework and the key issues highlighted have been reproduced.

*Tenure of the Contract:* SEBI has clarified that Approved Intermediaries can introduce different tenures ranging from 1 day to 12 months based on the need of the market participants.

*Position Limit in SLB:* The market wide position limit for SLB transaction shall be 10% of the free-float capital of the company in terms of number of shares. SEBI has also mandated that no clearing member shall have open position of more than 10% of the market wide position limit. The position limit for institutional investor shall be the same as that for a

clearing member. Further, client level position limit shall not be more than 1% of the market-wide position limit.

*Treatment of Corporate Action during SLB:* (i) Dividend: the dividend amount would be worked out and recovered from the borrower on the book closure/record date and passed on to the lender; (ii) Stock Split: the positions of the borrower would be proportionately adjusted so that the lender receives the revised quantity of shares; (iii) Other Corporate Action such as bonus/merger/amalgamation/open offer, etc. The contracts would be foreclosed on the ex-date. The lending fee would be recovered on a pro-rata basis from the lender and returned to the borrower. AGM/EGM: in the event of AGM/EGMs, Approved Intermediaries (AI) are mandatorily foreclosing the contracts. But since it has been represented before SEBI that not all lenders may be interested in taking part in AGM/EGM, and therefore the AI shall provide facility to market participants either to foreclose the contract on event of AGM/EGM or not foreclose such contracts.

*Rollover:* SEBI has clarified that rollover facility is permitted, subject to that total duration of the contract after taking into account rollovers shall not exceed 12 months from the date of the original contract. Further, multiple rollovers of a contract by lender or borrower is permitted, however, rollover shall not permit netting of counter positions, i.e., netting between the borrower and lent positions of a client.

The Circular shall come into force with effect from January 1, 2018. *–[CIR/MRD/DP/122/2017, November 17, 2017, (SEBI)]*

## 3) TAKEOVER CODE LAYS DOWN THAT ANY PERSON ALREADY OWNING 55% OR MORE SHAREHOLDING IN A COMPANY



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## **BUT LESS THAN 75% MUST MAKE A PUBLIC ANNOUNCEMENT.**

The Appellants had a penalty imposed on them by SEBI of Rs. 2,00,00,000/- (Rupees Two Crores Only) for violation of Regulation 11(2) read with 14(1) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, (the “Takeover Code”) which lays down that any person, who together with persons acting in concert, already owns 55% or more shareholding in a company but less than 75%, must make a public announcement if he intends to acquire additional shareholding in a company.

The Company involved in the present appeal was Ahlcon Parenterals (India) Ltd (the “Company”). On Bikramjit Ahluwalia holding 36.06% shares in the Company, further acquired 4.79% equity shares from open market without making public announcement. With this increase the holding of the Promoter and the Promoter Group increased from 66.15% to 70.95%. The Appellant further acquired 5.38% of the equity share capital of the Company thus triggering Regulation 11(2) read with 14(1) of the Takeover Code. Thereafter, Show Cause Notice was served to the seventeen Appellants.

The Appellants argued that there is no violation of Takeover Code as there was no change in the management and control of the Company. Further, no prejudice was suffered by the investors or shareholders on account of impugned acquisition. The Appellants argued that for applying the concept of ‘persons acting in concert’, the acquisition of shares has to be pursuant to an agreement or an understanding and in furtherance of a common objective.

SAT in view of the arguments held that any acquirer, who together with persons acting in concert with him, holds 55% of the shareholding of that

Company, but less than 75% shares or voting rights in a company, acquires any additional shares or voting rights in a company, has to make a public announcement if the new acquisition exceeds the limit of 5%. SAT also dismissed the contention of Appellant that in acquiring 5% shares of the target Company it was not acting in concert with other promoters. It stated that the Appellants have not brought on record anything either before the Adjudicating Officer (AO) or this Tribunal to point out that there were differences amongst the promoters in acquiring more than 5% shares either by Mr. Bikramjit Ahluwalia or by any other Promoter. Therefore, the contention of the Appellant about non-meeting of minds in the acquisition of shares in violation of Takeover Code cannot be countenanced. Accordingly, the penalty of Rupees two crores was upheld by SAT. *–[Ram Piari & Ors., v. SEBI, 20<sup>th</sup> November, 2017 (SAT)]*

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## **COMPETITION**

### **1) BCCI FINED INR 52.24 CRORES FOR ABUSE OF DOMINANCE**

The Competition Commission of India (CCI) has found BCCI to be in contravention of the provisions of Section 4(1) read with Section 4(2)(c) of the Competition Act, 2002 (Act).

Investigations conducted by Director-General, showed that BCCI had promised broadcasters of Indian Premier League that it would not organise, sanction, recognise, or support another professional domestic Indian T-20 competition that is competitive to IPL, for a sustained period of 10 years.

After a detailed investigation by the Director-General, the CCI found that BCCI enjoys a dominant position in the market for organisation of



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professional domestic cricket leagues and events in India, adding that since BCCI is recognised as an enterprise it falls within the purview of the Competition Act.

CCI held that while sports federations help in the development of sports, the restriction on similar T-20 events did not help the legitimate interest of cricket in the country and was only for the commercial interest of bidders of the IPL broadcasting rights and BCCI.

Accordingly, BCCI has been ordered to not place blanket restriction on organisation of professional domestic cricket league and events by non-members and to cease and desist from indulging in such conduct. –*[Surinder Singh Barmi v. The Board of Control of Cricket in India, 29<sup>th</sup> November, 2017, (CCI)]*

## 2) STATE OWNED OIL AND GAS COMPANIES EXEMPT FROM CCI NOD

Merger and Acquisition (M&A) deals involving public sector oil and gas companies have been exempted from seeking the approval of fair trade regulator Competition Commission of India (CCI).

The Ministry of Corporate Affairs decision to exempt such deals from the ambit of the CCI comes against the backdrop of the proposed consolidation and stake purchases among state-owned oil and gas firms.

The MCA has said that all cases of combinations involving central public sector enterprises (CPSEs) operating in the oil and gas sectors under the Petroleum Act, 1934, have been exempted from seeking the CCI's approval for five years.

The exemption will also be applicable to their wholly- or partly-owned subsidiaries operating in the oil and gas sectors, from the application of the provisions of Sections 5 and 6 (wherein combinations or deals beyond a certain threshold compulsorily require approval from the CCI) of the Competition Act, for a period of five years. –*[Ministry of Corporate Affairs, 22<sup>nd</sup> November, 2017]*

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## INDIRECT TAXES

### a. CUSTOMS

#### 1) AMENDMENTS TO EXEMPTION NOTIFICATION

Notification No. 50/2017-Customs dated 28.06.2017 amended, so as to: i.) exempt Lifesaving drugs/medicines for personal use, supplied free of cost by overseas supplier; and ii.) exempt IGST on all goods, vessels, ships [other than motor vehicles] imported under lease, by the importer for use after import. – *[Notification No. 85/2017-Customs, dated 14th November, 2017]*

#### 2) SPECIFIED GOODS EXEMPTED FROM WHOLE OF THE INTEGRATED TAX WHEN IMPORTED BY EMINENT SPORTSPERSON

The CBEC has exempted from whole of the integrated tax various sports goods when into India by a sports person of outstanding eminence for training purposes. – *[Notification No.86 /2017 –Customs, dated 14th November, 2017]*

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### 3) AMENDMENTS WITH REGARD TO PROVISIONAL MEGA POWER PROJECTS

Notification No. 50/2017-Customs amended so as to amend the condition with regard to provisional mega power projects and permit proportionate release of FDR or BG based on proportionate mega certificate issued by Ministry of Power. – *[Notification No. 89/2017-Customs, dated 24th November, 2017]*

### 4) ADD ON "SODIUM CHLORATE"

Definitive anti-dumping duty imposed on the imports of "Sodium Chlorate" originating in or exported from Canada, China PR and European Union for a period of five years. – *[Notification No. 53/2017-Customs (ADD), dated 2nd November, 2017]*

### 5) ADD ON RUBBER CHEMICAL PX 13

Anti-dumping duty imposed on rubber chemical PX 13 originating in and exported from EU and rubber chemical MOR originating in and exported from China PR for a period of five years. – *[Notification No. 54/2017-Customs (ADD), dated 17th November, 2017]*

### 6) ADD ON CAUSTIC SODA

Levy of ADD on imports of caustic soda originating in or exported from Saudi Arabia and United States of America extended for a further period of one year, upto 25.11.2018. – *[Notification No. 55/2017-Customs (ADD), dated 24th November 2017]*

### 7) REFUND OF IGST PAID ON EXPORT OF GOODS UNDER RULE 96 OF CGST RULES, 2017

The CBEC has stated that refund of IGST paid on goods exported out of India in the month of July, 2017 has been initiated w.e.f. October 10, 2017. But there are many cases where the refund of IGST paid could not be done due to errors in EGM/ GSTR – 1 return/Shipping Bill which are as under:

- i. Incorrect Shipping Bill No in GSTR – 1.
- ii. Error in Export General Manifest.
- iii. Difference in invoice no and amount paid as IGST.
- iv. Wrong bank account details provided to Customs Department.

The CBEC has also provided its decisions to address such errors.

Further, refund of IGST paid on export of goods for the month of August, 2017 will be allowed for those exporters who will declare the information related to Zero rated supplies in Table 6A of GSTR 1. GST Council in its 22nd meeting had approved the IGST rate of 0.1% for supplies to merchant exporters and Notification No. 41/2017 – Integrated Tax (Rate) dated October 23, 2017 have been issued to give effect to such decision. – *[Circular No. 42/2017 – Customs, dated 7th November, 2017]*

Similar notifications have also been issued under CGST, UTGST and respective State GST laws to give effect to the decision of GST council.

### 8) CBEC CLARIFIES ISSUES ON APPLICABILITY OF IGST /GST ON

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## **GOODS TRANSFERRED / SOLD WHILE BEING DEPOSITED IN A WAREHOUSE**

As per the present GST law, supply of imported goods which takes place before they cross the customs frontiers of India, shall be treated as an Inter-State supply for which IGST is applicable. The value of such supply shall be determined in terms of Section 15 of the CGST Act read with Section 20 of the IGST Act and the Rules made thereunder, without prejudice to the fact that customs duty (which includes BCD and applicable IGST payable under the Customs Tariff Act) will be levied and collected at the ex-bond stage. However, in respect of goods stored in a customs bonded warehouse, there is a possibility that certain cases may involve an additional taxable event, if a transfer of ownership of warehoused goods takes place between the importer and another person, before clearance of the goods, whether for home consumption or for export.

Addressing the issue, the CBEC has clarified that “so long as such goods remain deposited in the warehouse the customs duty to be collected shall remain deferred. Further, it is only when such goods are ex-bonded under Section 68 of the Customs Act, 1962, shall the deferred duty be collected, at the value as had been determined under Section 14 of the Customs Act, 1962 in addition to IGST leviable, as indicated at Para 5.1.” An illustrative chart on in-bond sales and clearance thereof has been annexured with the Circular. – *[Circular No. 46/2017-Customs, dated 24th November, 2017]*

## **b. CENTRAL EXCISE**

### **1) CENTRAL EXCISE (APPEALS) RULES, 2001 AMENDED**

The CBEC has amended the Central Excise (Appeals) Rules, 2001 to specify jurisdiction of Revisionary Authority under Rule 10 of the said Rules under the Central Excise Non-tariff section. – *[Notification No. 27/ 2017 - Central Excise (N.T.), dated 23rd November, 2017]*

### **2) NOTIFICATION OF PROCEDURE FOR MANUAL DISBURSAL OF BUDGETARY SUPPORT UNDER GST TO UNITS IN J&K, HP, UK, NE**

The CBEC *vide* present circulars has prescribed procedure for manual disbursement of Budgetary Support under Govt. Scheme to the existing eligible manufacturing units operating/ located in the States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh & North Eastern States including Sikkim, which were eligible for drawing benefits under the earlier excise duty exemption/ refund schemes stopped w.e.f. 1 July 2017 in the GST Regime. – *[Circular No.1060/9/2017-CX, dated 27th November, 2017 & Circular No.1061/10/2017-CX, dated 30th November, 2017]*

## **c. GST**

### **1) NOTIFICATIONS ISSUED TO GIVE EFFECT TO 23RD GST COUNCIL DECISIONS / RECOMMENDATIONS**

The 23rd GST Council meeting held at Guwahati, Assam has proposed many changes in the structure of GST. The CBEC has issued following notifications to give effect to the changes:



- i. **Notification No. 55/2017 – Central Tax, dated 15th November, 2017** - Twelfth amendment to CGST Rules, 2017: The CBEC has made few changes in CGST Rules including introduction of Manual Forms for Refund application. Further, Manual Submission as e-filing of Forms is also allowed.
- ii. **Notification No. 56/2017 – Central Tax, dated 15th November, 2017** – The CBEC has clarified that till March 2018, every dealer irrespective of turnover, is required to file GSTR 3B with due payment of tax and interest and penalty as the case may be. Further, the due date to file GSTR 3B from January to March 2018 is notified as 20th of Next month.
- iii. **Notification No. 57/2017 – Central Tax, dated 15th November, 2017** – The CBEC has prescribed quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crore as follows:
  - a. July to September 2017- 31st December 2017
  - b. October to December 2017- 15th February 2017
  - c. January to March 2018- 30th April 2018
- iv. **Notification No. 58/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the due dates for the furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs.1.5 crores as follows:
  - a. July to October 2017- 31st December 2017
  - b. November 2017- 10th January 2017
  - c. December 2017- 10th February 2017
  - d. January 2017- 10th March 2017
  - e. February 2017- 10th April 2017
  - f. March 2017- 10th May 2017
- v. **Notification No. 59/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the time limit for filing of FORM GSTR-4 till 24th December 2017 for period of July 2017 to September 2017.
- vi. **Notification No. 60/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the time limit for furnishing the return in FORM GSTR-5 till 11th December 2017 for the months of July to October, 2017.
- vii. **Notification No. 61/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the time limit for furnishing the return in FORM GSTR-5A till 15th December 2017 for the months of July to October, 2017.
- viii. **Notification No. 62/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the time limit for furnishing the return in FORM GSTR-6 till 31st December 2017 for the month of July, 2017.
- ix. **Notification No. 63/2017 – Central Tax, dated 15th November, 2017** – The CBEC has extended the due date for submission of details in FORM GST-ITC-04 till 31st December 2017 for the quarter July to September 2017.
- x. **Notification No. 64/2017 – Central Tax, dated 15th November, 2017** – The CBEC has limited the maximum late fee payable for delayed filing of return in FORM GSTR-3B from October, 2017 onwards to INR 25 per day per Act (i.e. INR 25 for CGST Act and INR 25 for SGST Act). Further, if total amount of Central Tax Payable is Nil in any period, for that period late fees will be INR 10 per day per Act.
- xi. **Notification No. 65/2017 – Central Tax, dated 15th November, 2017** – The CBEC

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has exempted suppliers of services through an e-commerce platform from obtaining compulsory registration if turnover does not exceed 20 Lakh (10 Lakh in case of Special Category State).

- xii. **Notification No. 66/2017 – Central Tax, dated 15th November, 2017** – The CBEC has exempted all taxpayers from payment of tax on advances received in case of supply of goods.

## 2) AMENDED/ REDUCED GST RATES (CGST/ IGST/ UTGST) NOTIFIED FOR VARIOUS ITEMS OF GOODS AND SERVICES, APPLICABLE W.E.F. 15 NOV. 2017

The CBEC has issued notifications for amendments/ reduction in GST Rates of various items of Goods and Services spread across many sectors and commodities, applicable w.e.f. 15 Nov. 2017, in line with recommendations of the 23rd Meeting of the GST Council held on 10 Nov. 2017. Tax rate of 177 mass use items reduced from existing 28% to 18%, tax rate reduced from 28% to 12% for 2 items, tax rate reduced on 54 items under different rates. – *[Notification No. 41/2017-Central Tax (Rate), dated 14th November, 2017 & Notification No. 41/2017- Union territory Tax (Rate), dated 14th November, 2017 and Notification No. 43/2017- Integrated Tax (Rate), dated 14th November, 2017]*

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## INTELLECTUAL PROPERTY RIGHTS

### 1) “THE WORD 'PERSON' AS APPEARING IN SECTION 134(2) IS NOT RESTRICTED TO REGISTERED PROPRIETOR AND REGISTERED USER, IT CERTAINLY DOES NOT INCLUDE A PERMITTED USER IN A SUIT FOR INFRINGEMENT OF A REGISTERED TRADE MARK” – DELHI HC

The Delhi HC while interpreting Section 134(2) of the Trademark Act observed that the Explanation to Section 134(2) provides that for the purposes of sub-section (2), 'person' includes the registered proprietor and the registered user. According to the learned single Judge and the respondents, this is an inclusive definition and is not a restrictive one. It is also the case of the respondents that the word 'person' would also include a 'permitted user'. On the contrary, the contention of the appellants is that it is an exhaustive one and the reference to person could only be to a registered proprietor and a registered user. The HC observed that both submissions are not correct. It is true that the definition of a 'person', as given in the Explanation cannot be restricted to 'registered proprietor' and the 'registered user' and on the face of it, it is a definition of the inclusive kind and not of a restrictive or exhaustive nature. It is because Section 134(2) deals not only with cases of infringement of a registered trade mark as indicated in clause (a) of sub-section (1) of Section 134, but also pertains to suits relating to any right in a registered trade mark which may, if permitted by other provisions of the said Act, be instituted by persons other than the registered proprietor and the registered user. But, it would certainly not include a permitted user suing for an infringement of a trade mark. This is so because there is an express prohibition under Section 53 of the said Act. The learned single Judge seems to

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have lost sight of this aspect of the matter. If, indeed, the word —person would include a permitted user, then it would mean that while on the one hand Section 53 bars such a person from instituting any proceeding for infringement, Section 134(2) would yet regard him as a person instituting the suit. This interpretation would be contrary to the terms of the enactment. Consequently, it was held that the word 'person' as appearing in Section 134(2) is not restricted to registered proprietor and registered user, it certainly does not include a permitted user in a suit for infringement of a registered trade mark. – *[Max Healthcare Institute Limited vs. Sahrudya Health Care Private Limited, dated 29th November, 2017 (Delhi HC)]*

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## CONSUMER

### 1) REMEDY UNDER CONSUMER PROTECTION ACT IS ADDITIONAL REMEDY TO REMEDY BEFORE THE CIVIL COURT

The National Consumer Disputes Redressal Commission (NCDRC) has held that the remedy available under the Consumer Protection Act, 1986 is an additional remedy which the parliament has made available to a consumer and even if two remedies, one before the civil court and the other before the consumer forum are available, it is for him to decide as to which remedy he wants to avail. The National Commission further held that the jurisdiction of the consumer forum to entertain a complaint is not ousted on account of a civil suit having been instituted by the opposite party, even if the subject matter of the said suit is the same agreement which is foundation of the consumer complaint. – *[Yashwant Rama Jadhav and Ors., v. Shaikat Hussain Shaikh & Anr, 10<sup>th</sup> November, 2017 (NCDRC)]*

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## ENVIRONMENT

### 1. RS 1 CRORE FINE IN 2 DAYS FOR VIOLATING NGT NORMS

The Noida Authority has fined 96 entities a total of Rs 97.72 lakh in two days for violating the 'green' rules laid down by NGT. The tribunal had sought that toxins — emissions from construction machinery and vehicles, diesel generators, construction dust — are not released in the air. – *[The Times of India, dated 10th November, 2017]*

### 2. GOVT TO STANDARDISE PARAMETERS USED FOR MEASURING AIR QUALITY

The Centre will soon initiate the process for standardisation of equipment, data and all other parameters required to measure purity of air, Environment Minister Harsh Vardhan said. – *[The Times of India, dated 29th November, 2017]*

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