

## **PKMG LAW CHAMBERS**

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**MONTHLY LAW REPORT FOR JANUARY, 2017**  
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LIMITED

## Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
<p>1. Notification no.: GSR08(E) MANU/DCAF/0001/2017</p>	<p>January 05, 2017</p>	<p><b>Subject: Central Government hereby directs that certain provisions of the Companies Act, 2013 shall not apply or shall apply with such exceptions, modifications and adaptations as specified to an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India -</b></p> <p>In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 and in pursuance of sub-section (2) of the said section of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with such exceptions, modifications and adaptations, to an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006 (herein after referred to as "Specified IFSC public company")</p>
<p>2. Circular No. : IRDA/F&amp;A/CIR/ACT</p>	<p>December 30, 2016</p>	<p><b>Subject: Report of the Implementation Group of Ind AS in</b></p>

<p><b>S/262/12/2016</b>  <b>MANU/IRDA/0050/2</b>  <b>016</b></p>		<p><b>Insurance Sector -</b></p> <p>As per the roadmap laid down by the Ministry of Corporate Affairs for the insurance sector for implementation of Ind AS, in their press release dated 18th January 2016. Insurers/insurance companies are required to prepare Ind AS based financial statements for accounting periods beginning from April 1, 2018 onwards with comparatives for the periods ending 31st March 2018 or thereafter</p> <p>2. In order to prepare the insurance industry for Ind AS, the Authority had constituted the Implementation Group on 17th November 2015 to examine the implications of implementing Ind AS, address the implementation issues and facilitate formulation of operational guidelines to converge with Ind AS.</p> <p>3. The Implementation Group has submitted its report which is published on the website of IRDAI</p> <p>4. Reference is invited to para 4 of the circular IRDA/ F&amp;A/ CIR/IFRS/038/03/2016 dated 1st March 2016 on implementation of Indian Accounting Standards (Ind AS) in insurance sector whereby insurers are required to submit proforma Ind AS financial statements to the Authority from the quarter ended December 31, 2016, The Insurers are hereby, advised to submit the proforma Ind AS compliant financial statements in the formats given in the Report.</p>
<p><b>3. Notification From</b>  <b>File No. : 1/13/2013-</b>  <b>CL-V</b>  <b>MANU/DCAF/0161/2</b>  <b>016</b></p>	<p><b>December</b>  <b>29, 2016</b></p>	<p><b>Subject: Companies</b>  <b>(Incorporation) Fifth</b>  <b>Amendment Rules, 2016 –</b></p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central</p>

		<p>Government hereby makes the following rules to amend the Companies (Incorporation) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2016.</p> <p>(2) They shall come into force on the 1st day of January, 2017.</p> <p>2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules),</p> <p>3. In the principal rules;</p> <p>(a) in rule 4, in sub-rule (2), for the words and figures such nomination in Form No. INC-2 along with consent of such nominee obtained in Form No. INC-3' the words and figures such nomination in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No. INC-3' shall be substituted (b) in rule 10, for the words and figures 'Form No. INC-7' the words and figures Form No. INC-7 or Form No. INC-32(SPICe)' shall be substituted.</p> <p>(c) in rule 12, for the words and figures 'Form No. INC-2 (for One Person Company) and Form No. INC-7 (other than One Person Company)' the words and figures Form No. INC-7 (Part I company and company with more than seven subscribers) and Form No. INC-32 (SPICe)' shall be substituted,</p> <p>(d) rule 36 shall be omitted.</p> <p>(e) for rule 38, the following rule shall be substituted, namely:-</p> <p>"38. Simplified Proforma for Incorporating Company Electronically (SPICe).-</p> <p>(1) The application for incorporation of a company under this rule shall be in FORM No. INC 32 (SPICe) alongwith e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of Association (e-AOA) in Form no. INC-34. Provided that in case of incorporation of a company falling under section 8 of the</p>
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		<p>Act, FORM No. INC-32 (SPICe) shall be filed along with FORM No. INC-13 (Memorandum of Association) and FORM No. INC-31 (Articles of Association) as attachments.</p> <p>(2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act, shall be filed in FORM No. INC-32 (SPICe), with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules, 2014:</p> <p>(3) For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in FORM No. INC-32 (SPICe), and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in FORM No. INC-32 (SPICe) in case of proposed directors not having approved Director Identification Number.</p> <p>(4) The promoter or applicant of the proposed company shall propose only one name in FORM No. INC-32 (SPICe).</p> <p>(5) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in FORM No. INC-33 and Articles of Association (e-AoA) in FORM No. INC-34, in accordance with rule 13.</p>
<p align="center"><b>4. MCA MANU/PIBU/1080/2 016</b></p>	<p align="center"><b>December 27, 2016</b></p>	<p><b>Subject: Major policy initiatives and achievements of the Ministry of Corporate Affairs</b></p> <p>1. To review the Companies Act, 2013 based on implementation experience in</p>

		<p>line with changing economic environment and initiatives for addressing all concerns with reference to Companies Act, 2013 and Companies (Amendment) Bill, 2016</p> <p>2. Notifications of remaining Sections of the Companies Act, 2013- As on 15th December, 2016 out of 470 sections, 422 sections of the Companies Act, 2013 have been notified. 39 sections are omitted by Insolvency Banking Code (IBC). Remaining 9 sections would be notified shortly.</p> <p>3. Stabilization of the Cost Records and Audit Rules: The Companies (Cost Records and Audit) Rules, 2014 reviewed so as to make necessary amendments for further improvement and to obviate ambiguities or technical errors, keeping in view the practical difficulties experienced over a period of time and after considering various queries/ representation from the stakeholders. Necessary amendments were notified vide notification dated 14-07-2016.</p> <p>4. MCA was assigned with timeline of 1st December, 2016 to put in place Corporate Insolvency Resolution process as stated under the Code. To achieve the target, following three pillars as envisaged under the Code have been put in place by framing various rules and regulations and notifying relevant sections of the Code:- (i) Insolvency and Bankruptcy Board of India [IBBI] (ii) Insolvency Professional Agencies &amp; Insolvency Professionals (iii) Adjudicating Authority</p> <p>5. National Company Law Tribunal and National Company Law Appellate Tribunal Chapter- XXVII of Companies Act, 2013 deals with formation of National Company Law Tribunal (NCLT) and National Company Law Appellate</p>
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		Tribunal (NCALT). The constitution of NCLT and NCALT have been notified on 01st June, 2016. Vide Notification dated 30th November, 2016, the Central Government has designated the Benches of NCLT to exercise the jurisdiction, power and authority of Adjudicating Authority conferred by or under part II of the Insolvency and Bankruptcy Code, 2016.
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## Companies Act 1956 and 2013 Case Laws By Advocate P.K. Mittal, +91-9811044365

- ✚ The NCLT has ruled that either Board Meeting or General Meeting is bad in law if the notices have been sent at the address registered at the records of the company though the company is aware of change of address. In the absence of notice, meeting held is bad in law. **H.P. Poddar v. Shree Radhaswamy Plastic Pvt. Ltd. MANU/NC/0144/2016**
  
- ✚ The Delhi High Court has held that even when name of the company has been struck off at the instance of applicants itself, yet the company can seek restoration of name under section 560 of the Companies Act, 1956. **In Re : Intec Corporation Pvt. Ltd. MANU/DE/3425/2016**
  
- ✚ The Bombay High Court has ruled that winding up petition where petitioner has not been served upon by Respondent, such petition shall only be transferred to NCLT. Rest will continue with High Court. **West Hills Realty Pvt. Ltd. MANU/MH/2758/2016**
  
- ✚ The NCLT has held principal of quasi partnership can be borrowed when there is equal contribution by all segments of family. If only one segment has contributed in terms of money and others have not contributed he cannot be called upon to quit the company. **Sanjay Parlikar v. Ajit Scanning and Diagnostic Centre Pvt. Ltd. MANU/NC/0134/2016**
  
- ✚ The NCLT has held the offence of non filing of Annual Return can be compounded even if the criminal prosecution is pending in the court of ACCM

and prior permission of court dealing with criminal prosecution is not required.  
**Carpet Export Promotion Council MANU/NC/0131/2016**

- ✚ The NCLT has held that under Sec 241, oppression and mis-management, no time is prescribed for filing petition but by virtue of Section 113 of the Limitation Act, a period of three years has to be read into. **Esquire Electronics v. Netherlands India Communication Ltd. [2016] 135 CLA 267 NCLT.**
- ✚ The NCLT has held compounding of offence cannot be denied unless legally impermissible. Serious Fraud Investigation Office has opposed this petition on vague and ambiguous grounds of allegations against the petitioners. **Clark Consultancy Pvt. Ltd. [2016] 135 CLA 254 NCLT**
- ✚ The NCLT has directed the Central Government to take action for investigation into affairs of a company where there are serious violations of provisions of the Companies Act in maintenance of Minutes Books. Apparent mis deeds and dishonesty in maintenance of statutory records. **PTC Energy Ltd. v. R.S. India Wind Energy Pvt. Ltd. [2016] 135 CLA 248**

**Income Tax Circulars, Notifications and Press Release-  
By CA Manoj Kumar Mittal, +91-9810764620**

**CBDT Directive Reg Reporting Cash Transactions Under Rule 114E Of Income-Tax Rules, 1962**

The CBDT has issued a Press Release dated 22nd December 2016 in which it provided that for reporting of transaction in respect of cash receipt against sale of goods and services as per rule 114E(2) for 2 lacs and above ; per transaction limit has to be checked and not in aggregation.

**CBDT Circular Of Clarifications on the Direct Tax Dispute Resolution Scheme, 2016**

The CBDT has issued Circular No. 42 of 2016 dated 23rd December 2016 in which important clarifications on the Direct Tax Dispute Resolution Scheme, 2016 have been provided

**CBDT Circular Clarifies Imp Aspects Of Law On Taxability Of Indirect Transfers In S. 9(1)(i)**



The CBDT has issued Circular No. 41 of 2016 in which it has provided clarification to several important aspects relating to the taxability of indirect transfers in s. 9(1)(i) of the Income-tax Act, 1961

### **Finance Ministry Directive Reg Filing Of Revised Income Tax Returns By Tax Payers Post De-Monetisation Of Currency**

The Finance Ministry has issued a press release dated 11th December 2016 in which it has warned that any instance coming to the notice of Income-tax Department which reflects manipulation in the amount of income, cash-in-hand, profits etc. and fudging of accounts may necessitate scrutiny of such cases so as to ascertain the correct income of the year and may also attract penalty/prosecution in appropriate cases as per provision of law

### **CBDT Circular Reg Reopening U/s 147 Of Past Assessments Due To Increase In Current Year's Turnover**

The CBDT has issued Circular No. 40/2016 dated 9th December 2016 directing Assessing Officers not to reopen assessments of earlier years u/s 147 of the Act merely because there is an increase in turnover of the present year because of the adoption by the assessee of digital means of payment. The CBDT has pointed out that such move would cause "*undue harassment*" to the taxpayers

### **Notification of The Taxation Laws (Second Amendment) Act, 2016**

The salient features of the Scheme are as under:

- (i) Declaration under the Scheme can be made by any person in respect of undisclosed income in the form of cash or deposits in an account with bank or post office or specified entity.
- (ii) Tax @30% of the undisclosed income, surcharge @33% of tax and penalty @10% of such income is payable besides mandatory deposit of 25% of the undisclosed income in Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The deposits are interest free and have a lock-in period of four years.
- (iii) The income declared under the Scheme shall not be included in the total income of the declarant under the Income-tax Act for any assessment year.
- (iv) The declarations made under the Scheme shall not be admissible as evidence under any Act (eg. Central Excise Act, Wealth-tax Act, Companies Act etc.). However, no immunity will be available under Criminal Acts mentioned in section 199-0 of the Scheme.

(v) Non declaration of undisclosed cash or deposit in accounts under the Scheme will render such undisclosed income liable to tax, surcharge and cess totaling to 77.25% of such income, if declared in the return of income.

(vi) In case the same is not shown in the return of income a further penalty @10% of tax shall also be levied followed by prosecution.

(vii) It may be noted that the provisions for levy of penalty for misreporting of income @200% of tax payable under section 270A of the Income-tax Act have not been amended and shall continue to apply with respect to cases falling under the said section.

(viii) The Taxation Laws (Second Amendment) Act, 2016 has also amended the penalty provisions in respect of search and seizure cases. The existing slab for penalty of 10%, 20% & 60% of income levied under section 271AAB has been rationalised to 30% of income, if the income is admitted and taxes are paid. Otherwise a penalty @60% of income shall be levied.

**CBDT notification: Govt Lift ban on blacklisted Cyprus with retro -effect from Nov 1 2013**

**S. O. 4033 (E).** – In exercise of the powers conferred by sub section (1) of section 94A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, number 86 of 2013 published in the Gazette of India, Part II, section 3, sub-section (ii) *vide* S.O. 3307(E) dated 1st November 2013, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this notification in the Official Gazette.

**Income Tax Case Laws**  
**By CA Manoj Kumar Mittal, +91-9810764620**

**DOMESTIC TAXATION**

**[2016] 76 taxmann.com 328 (Ahmedabad - Trib.)**

IT : Depreciation on 'goodwill' arising on amalgamation claimed by assessee company during course of assessment proceedings vide a revised computation of income without filing revised return of income was allowable.

**[2016] 76 taxmann.com 349 (Punjab & Haryana)**

IT : Annual value of properties which are more than one, owned by assessee and which admittedly remained vacant throughout previous year would not be assessed under section 23(1)(c) but under section 23(1)(a)

**[2016] 76 taxmann.com 354 (Delhi - Trib.)**

IT : Where assessee due to his wife's illness was prevented by sufficient cause from producing evidences in support of its claim, First Appellate Authority could not have outrightly rejected appeal

**[2016] 76 taxmann.com 363 (Punjab & Haryana)**

IT : Activity of printing and publishing of newspaper by assessee-trust constituted "advancement of an object of general public utility", however accumulation of a huge profit without any explanation for same or without any indication that it is for advancement of object of general public utility would take assessee out of definition in Section 2(15) of 'charitable purpose'

**[2017] 77 taxmann.com 10 (Punjab & Haryana)**

IT : In case of assessee institution enjoying exemption under section 80G, if substantial surplus is generated, but same is found to have been ploughed back for building infrastructure/assets, which in turn are used for educational/charitable purposes, institution would not lose its charitable character and, thus, assessee's claim for renewal of exemption cannot be denied on mere fact of earning huge surplus

IT : Registration of assessee-institution under section 12A and grant of exemption to it under section 10(23C)(vi), by itself would not entitle assessee to enjoy exemption under section 80G

**[2017] 77 taxmann.com 30 (Pune - Trib.)**

IT : Voluntary contribution made with a specific direction by donor to form part of the corpus of the trust to be excluded in determining whether 85% of the income of the trust has been applied in terms of section 11(1)(a)

**[2016] 76 taxmann.com 365 (Punjab & Haryana)**

IT: Furnishing CA certificate in Form No.26A shall only exonerate person liable to deduct TDS from payment of TDS amount in respect of failure to deduct TDS from any payment to a resident liable to deduction of TDS. Such certificate will, however, not exonerate such person in respect of liability for

interest under section 201(1A) as 1st proviso to section 201(1) uses the words "in respect of such tax" and the word "tax" as defined in section 2(43) does not include interest

**[2016] 76 taxmann.com 360 (Bangalore - Trib.)**

IT : Amount of disallowance under section 14A has to be added back to book profits for purpose of computing tax liability, however, amount of addition should be restricted to actual disallowance made under section 14A, read with rule 8D of Income tax Rules, 1962

IT : Even though capital gain arising from sale of capital asset is exempt under section 10(38), yet assessee company is entitled to benefit of indexation while calculating said long term capital gain which is to be considered for purpose of computing tax liability under section 115JB

**INTERNATIONAL TAXATION**

**[2016] 76 taxmann.com 257 (Bombay)**

IT/ILT : Deductions claimed under section 80HBB and section 35B of Saudi Arabian projects of assessee would not qualify for relief under section 91 as though they formed part of total income received by assessee, however did not bear any tax in India.

**[2016] 70 taxmann.com 294 (SC)/[2016] 240 Taxman 299 (SC)**

IT/ILT: SLP granted against High Court's ruling that assessee would be entitled to take credit of income tax paid in a foreign country even in relation to income which was exempt under section 10A

IT/ILT: SLP granted against High Court's ruling that payments made by assessee for import of software could not be disallowed under section 40(a)(i) as same did not constitute royalty

**[2013] 29 taxmann.com 250 (Bombay)**

IT/ILT : Object of section 91(1) is to give relief from taxation in India to extent taxes have been paid abroad for relevant previous year and this relief is not dependent upon payment also being made in previous year

**[2013] 140 ITD 642 (Mumbai - Trib.)**

IT/ILT : Where assessee earned income from hydroelectric project in Bhutan, in absence of DTAA between India and Bhutan, assessee was entitled to relief under section 91 in respect of income from Bhutan operations at average rate of tax paid in Bhutan because it was said income which was subjected to tax in both countries

IT : Any expenditure which is disallowed under section 14A and attained finality, has to be added back while computing book profit under section 115JB

**Transfer Pricing Case Laws**  
**By CA Manoj Kumar Mittal, +91-9810764620**

**[2016] 76 taxmann.com 25 (Chennai - Trib.)**

IT/ILT : Where turnover of assessee was Rs. 600 crores, comparable having turnover of Rs. 62.5 crores was to be excluded from comparable list

**[2016] 76 taxmann.com 123 (Bombay)**

IT/ILT : Assessee can sought exclusion of comparable on basis of Director's report available before prescribed date as per section 92(F)(iv)

**[2014] 45 taxmann.com 102 (Delhi - Trib.)**

IT/ILT: TP adjustments made to assesses ALP were not justified as assessee had earned profit in India whereas its AE had continuously sustained losses FAR

**[2014] 42 taxmann.com 56 (Mumbai - Trib.)**

IT/ILT : Where DRP failed to consider assessee's contention on issue of adjustment of low capacity utilization, determination of PLI and selection of comparables, matter required fresh adjudication

**[2013] 35 taxmann.com 579 (Mumbai - Trib.)**

IT/ILT: Penalty under section 271G, for failure to furnish information under section 92D, cannot be imposed unless notice is issued specifying information to be produced by person entering into an international transaction

**Corporate Laws**  
**By Advocate PK Mittal, +91-9811044365**

**SARFAESI LAW**

- ✚ If a provision is mandatory, it can still be waived by the party for whose benefit such mandatory provision has been considered. If a party is entitled to notice under SARFAESI Rules, he can waive it. **Eskay Construction (P.) Ltd. v. Soma & Paper and Industries Ltd. MANU/MH/2565/2016.**
  
- ✚ The Gujarat High Court dismissed Writ Petition challenging notice u/s 13(4) of SARFAESI Act issued by lenders bank for recovery and sale of assets on the ground that alternate by way of appeal before DRT is available and therefore writ petition is not maintainable. **Harikrishan Engineering Works v. Syndicate Bank MANU/GUJ/2651/2016**

**SICA LAW**

The Supreme Court held that the provisions of SICA shall prevail over the provisions of Companies Act. When proceedings are pending before BIFR for revival, High Court cannot order winding up of a company. **Madura Coats Ltd. v. Modi Rubbers Ltd. MANU/SC/0696/2016**

**Sick Industrial companies (Special Provisions) Repeal Act, 2003**  
**enforced from 1<sup>st</sup> December, 2016**

***SO 3568(E) dated 25<sup>th</sup> November 2016, issued by Ministry of Finance***

In exercise of powers conferred by sub-section (2) of section 1 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Central Government hereby appoints the 1<sup>st</sup> day of December, 2016, as the date on which the provisions of the said Act shall come into force.

**[It is to be noted that the provisions of SICA stands repealed]**

## **INSOLVENCY AND BANKRUPTCY LAWS**

### **Insolvency and Bankruptcy Code, 2016-Certain sections notified**

*SO 3594(E) dated 30<sup>th</sup> November 2016, issued by MCA*

In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the date 1<sup>st</sup> December, 2016 as the date on which the provisions of the following sections of the said code shall come into force :

- (1) Clause (a) to clause (d) of section 2 (except with regard to voluntary liquidation or Bankruptcy);
- (2) Section 4 to section 32 [both inclusive];
- (3) Section 60 to section 77 [both inclusive];
- (4) Section 198;
- (5) Section 231;
- (6) Section 236 to section 238 [both inclusive]; and
- (7) Clause (a) to clause (f) of sub-section (2) of section 239.

### **Section 33 to section 54 of Insolvency and Bankruptcy Code, 2016 enforced with effect from 15<sup>th</sup> December, 2016**

*SO 3687(E) dated 9<sup>th</sup> December 2016, issued by MCA*

#### **Bankruptcy Code - Section 33 to Section 54 - Provisions relating to 'Liquidation Process' enforced with effect from 15<sup>th</sup> December, 2016.**

In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the 15<sup>th</sup> day of December, 2016 as the date on which the provisions of section 33 to section 54 (both inclusive) of the said Code shall come into force.

**SEBI Notifications and Circulars**  
**By CS P.K. Mittal, Advocate, +91-9811044365**

<b>Notification &amp; Circular No.</b>	<b>Date of Issue</b>	<b>Subject</b>
<p><b>1. Press Release No. : 04/2017 MANU/SPRL/00 04/2017</b></p>	<p><b>January 14, 2017</b></p>	<p><b>Subject: Seventh Meeting of the International Advisory Board of SEBI</b> The seventh meeting of the International Advisory Board (IAB) of the Securities and Exchange Board of India (<b>SEBI</b>) was held on January 13 &amp; 14, 2017. The following major issues were inter alia discussed during the meeting:</p> <ul style="list-style-type: none"> <li>i. Issues and Developments in Corporate Governance</li> <li>ii. Migration from Commission Based to Fee Based Advisory Model</li> <li>iii. New Practices to Strengthen Indian Fund Industry - Passporting of Funds</li> <li>iv. Internationalization of Indian Securities Market</li> <li>v. Crowd funding Framework</li> <li>vi. Open-house Session on Challenges Facing Securities Markets</li> </ul>
<p><b>2. Press Release No. : 05/2017 MANU/SPRL/0 005/2017</b></p>	<p><b>January 14, 2017</b></p>	<p><b>Subject: SEBI Board Meeting -</b> The <b>SEBI</b> Board met in Jaipur today and took the following decisions:</p> <ul style="list-style-type: none"> <li>i. Reduction of Fees payable by brokers by 25% and Calibration of other fees</li> <li>ii. Review of advertisement guidelines for Mutual Funds</li> <li>iii. Investment by Mutual Funds in Hybrid Instruments</li> <li>iv. Regulatory Framework on Schemes of Arrangements - Mergers and Demergers</li> <li>v. Empowerment of Stock Exchanges for effective regulation of Listed Entities</li> <li>vi. <b>SEBI</b> (Issue and listing of Debt Securities by Municipalities) Regulations, 2015 to provide for a criteria alternative to "Net Worth" for municipalities making public issue of debt securities under these regulations</li> <li>vii. <b>SEBI</b> (Settlement of Administrative and Civil Proceedings) Regulations, 2014</li> </ul>



<p><b>Notification No.</b>  <b>: SEBI/LAD/NRO</b>  <b>/GN/2016-</b>  <b>2017/020</b>  <b>MANU/SREG/00</b>  <b>03/2017</b></p>	<p><b>January 12,</b>  <b>2017</b></p>	<p>viii. Enabling Payment by Digital Mode</p> <p><b>Subject: Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2017</b></p> <p>In exercise of the powers conferred by section 31 of the Securities Contracts (Regulation) Act, 1956 read with sections 11 and 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India hereby makes the following regulations to further amend the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, namely:-</p> <ol style="list-style-type: none"> <li>1. These regulations may be called the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2017.</li> <li>2. They shall come into force on the date of their publication in the Official Gazette.</li> <li>3. In the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012,       <ol style="list-style-type: none"> <li>(I) in regulation 17,-           <ol style="list-style-type: none"> <li>(a) in sub-regulation (3), after the words "stock exchange", for the symbol "." the symbol ":" shall be substituted;</li> <li>(b) after sub-regulation (3), the following shall be inserted,-               <p>"Provided that, -</p> <ol style="list-style-type: none"> <li>(i) a foreign stock exchange;</li> <li>(ii) a foreign depository;</li> <li>(iii) a foreign banking company;</li> <li>(iv) an foreign insurance company; and</li> <li>(v) a foreign commodity derivatives exchange, may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, upto fifteen per cent. of the paid up equity share capital of a recognised stock exchange.</li> </ol> <p>Explanation.-For the purposes of this proviso, the persons referred to in clauses (i) to (v) shall mean persons recognised/ incorporated outside India."</p> </li> </ol> </li> </ol> </li> </ol>
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		(c) in sub-regulation (4), the proviso and Explanation shall be omitted.
<b>4. Notification No. : SEBI/LAD/NRO /GN/2016-2017/018 MANU/SREG/00 04/2017</b>	<b>January 12, 2017</b>	<p><b>Subject: Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2017</b></p> <p>In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby, makes the following regulations to further amend the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, namely,-</p> <p>1. These regulations may be called the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2017.</p> <p>2. They shall come into force on the date of their publication in the Official Gazette.</p> <p>3. In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014,-</p> <p>(1) In regulation 21,-</p> <p>i. in sub-regulation (1), in clause (a),-</p> <p>(1) for the words "Securities in the primary and secondary markets including shares", the word "Shares" shall be substituted;</p> <p>(2) after the word "India", the words and symbol ", through primary and secondary markets", shall be inserted;</p> <p>ii. in sub-regulation (4), in clause (e),-</p> <p>(1) after sub-clause (vii) the following sub-clauses shall be inserted, namely,-</p> <p>"(viii) transactions by Category I and II foreign portfolio investors, in corporate bonds, as may be specified by the Board;</p> <p>(ix) transactions on the electronic book provider platform of recognized stock exchanges;"</p> <p>(2) existing sub-clause (viii) shall be re-numbered as sub-clause (x)</p>
<b>5. Press Release No. : 02/2017 MANU/SPRL/00</b>	<b>January 06, 2017</b>	<p><b>Subject: Amendments to the SEBI (Portfolio Managers) Regulations, 1993 to provide a</b></p>

02/2017

**framework for registration of fund managers for overseas funds, pursuant to introduction of Section 9A in the Income Tax Act, 1961 -**

**SEBI** (Portfolio Managers) Regulations, 1993 have been amended to provide an enabling framework for registration of fund managers desirous of providing their services to overseas funds.

In the Union Budget 2015-16, the Hon'ble Finance Minister announced amendments in Income Tax Act, 1961. These changes were aimed at developing and promoting fund management industry in India. Section 9A was inserted in the Income Tax Act, 1961 to provide a 'safe harbour' to overseas funds availing fund management services from Indian based managers, provided the fund and the manager comply with the requirements specified in the section. Such overseas funds and fund managers were designated as 'Eligible Investment Funds' and 'Eligible Fund Managers' respectively.

One of the requirements for a fund manager to become 'Eligible Fund Manager' is to be registered with **SEBI** under specified regulations.

In pursuance to this, **SEBI** has notified amendments to **SEBI** (Portfolio Managers) Regulations, 1993 (PMS Regulations). These amendments provide a separate Chapter II-A for 'Eligible Fund Managers' and permit existing portfolio managers as well as new applicants, compliant with requirements specified under Section 9A of Income Tax Act, 1961, to act as 'Eligible Fund Managers'.

Existing portfolio managers desirous of providing fund management services to overseas funds, if compliant with requirements specified in Section 9A of Income Tax Act, 1961, may pursue this activity on intimation and submission of declarations to **SEBI**.

A new applicant desirous of providing fund management services to overseas funds, and

		<p>compliant with the requirements specified in Section 9A of Income Tax Act, 1961, may seek registration with <b>SEBI</b>, as laid out in the Chapter II-A.</p> <p>Further, Chapter II-A also defines the obligations and responsibilities of such fund managers. Recognizing the different business requirements of such fund managers, as compared to the existing Portfolio Managers, <b>SEBI</b> has also identified certain provisions of the PMS Regulations which would not be applicable to Eligible Fund Managers pertaining to their activities as fund manager to Eligible Investment Funds. Some of the provisions are listed below:</p> <ul style="list-style-type: none"> <li>a. High Water Mark Principle regarding calculation of fees, disclosure of fees;</li> <li>b. Obligation to act in a fiduciary capacity;</li> <li>c. Audit of overseas fund;</li> <li>d. Entering into agreement between the portfolio manager and overseas fund;</li> <li>e. Reporting requirements in respect of overseas fund;</li> <li>f. Minimum investment requirements (i.e. INR 25 Lakhs), etc.</li> </ul>
<p><b>6. Notification No. : SEBI/LAD/NRO /GN/2016-2017/025 MANU/SREG/00 01/2017</b></p>	<p><b>January 04, 2017</b></p>	<p><b>Subject: Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements)(Third Amendment) Regulations, 2016 -</b></p> <p>In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 31 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India hereby makes the following regulations to further amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, namely:-</p> <ol style="list-style-type: none"> <li>1. These regulations shall be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2016.</li> </ol>

	<p>2. They shall come into force on the date of their publication in the Official Gazette.</p> <p>3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, in regulation 26,-</p> <p>i. the title shall be substituted with the following, namely- "Obligations with respect to employees including senior management, key managerial persons, directors and promoters".</p> <p>ii. after sub-regulation (5), the following sub-regulation shall be inserted, namely:- "(6) No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution: Provided that such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination: Provided further that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting: Provided further that if the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting: Provided further that all interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.</p>
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**SEBI Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- ✚ **SEBI** has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the **SEBI** Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 lists measures that **SEBI** may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers **SEBI** to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, inter alia, to any company in respect of issue of capital, transfer of securities etc. **In Re: Sunshine Agro-Infra Limited and Ors. MANU/SB/0288/2016**
  
- ✚ The Supreme Court held that Where Offer Period can be triggered of by an understanding that is yet to fructify into an agreement, it can be said that the starting point of Offer Period shall be the conclusion of the contemplated agreement. **SEBI v. Burren Energy India Ltd. and Ors. [2016] 135 CLA 312 (SC)**

**Civil Laws**  
**By Advocate Praveen K Mittal, +91-9810826436**

- ✚ **CCI approves LG Chem Ltd - LG Life Sciences Ltd merger for absence of horizontal overlap & insignificant customer-supplier relationship:** CCI approves merger of LG Life Sciences Ltd (LG LS) with LG Chem Ltd (LG Chem) absent horizontal overlap in India. As regards vertical relationships emanating from proposed combination, CCI notes that LG Chem supplies acetone to LG LS which is used for contract manufacture of cephalosporin antibiotics sold to third party pharmaceutical company. The third party said that pharmaceutical company sells the products sourced from LG LS under

its brand name across the world, including in India. It further observes that nature and extent of existing customer supplier relationship is insignificant to cause any competition concerns. In view thereof, Commission opines that proposed combination is not likely to have appreciable adverse effect on competition : CCI **LSI**

**✚ CCI approves NLC India Ltd. & Damodar Valley Corp. joint venture for power generation; No appreciable impact on competition:**

CCI approves proposed joint venture between NLC India Ltd. (NLC) and Damodar Valley Corporation (DVC), wherein NLC would hold 74% shares and DVC would hold 26% in the Joint Venture Company namely NLC DVC Energy Limited. As per the proposed combination, DVC shall transfer 2 x 600 MW power plant to the Joint Venture Company on slump sale as a going concern basis. Further notes that the activities of parties overlap only in the generation of power (through coal) in India, Commission observes that relevant market product may be taken as the business of power generation although there exists a possibility of further segmentation into power generation through various fuel-types / sources of energy, Commission notes that same may be country wide as power generation cos. have capacity to supply power to entities across various States. Accordingly, since the proposed combination is unlikely to cause any appreciable adverse effect on competition in India, CCI observes that exact delineation of relevant market product and geographic market may be left open : CCI

**LSI**

**✚ In order to bring a case within section 141, the complaint must disclose the necessary 'facts' which make the person liable:**

Section 141 of the Negotiable Instruments Act, 1881 deals with Offence by the company with vicarious liability of directors. The persons, who are in-charge of and responsible for the day-to-day affairs of the company, are targeted to be held vicariously liable and are covered within the ambit of section 141. The proviso to that section specifies that a person not having the knowledge about the offence or person exercising all due diligence to prevent commission of the offence is excluded. Section 141 creates a legal fiction against the defaulting company so as to cover within its ambit all persons who have consented or in any way attributed to the commission of

the offence. The liability arises on account of conduct, act or omission on the part of the person and not merely on account of holding an office or position in a company. **Shashi Jindal and Others v. Government of NCT and Others [2016] 135 CLA (Snr.) 2 (Del.)**

✚ **The dates of disputed transaction, issuance of cheque, dishonour of cheque by bank and issuance of notice are relevant and they together constitute the offence under section 138:**

Section 138 of the Negotiable Instruments Act, 1881 deals with Dishonour of cheque due to insufficiency of funds. The relevant period for deciding the vicarious liability of the director for the dishonor of cheque by the company under section 138 is not only when the cheque was dishonoured but also when the disputed transaction was entered into, and from time-to-time thereafter such as the time of issuance of the cheque in question, presentation of the cheque in bank, etc.

Inherent powers of the court to quash criminal proceedings could be invoked sparingly and in exceptional circumstances.

**Lata Pramod Dave v. Mode Export (P.) Ltd. and Another [2016] 135 CLA (Snr.) 4 (Bom.)**

## Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

✚ Where the applicant moves an application under section 5 read with section 8, which deals with Application for reference of dispute to arbitration by judicial authority before filing first statement on the substance of the dispute, to get the dispute referred to arbitral tribunal, merely moving an application seeking further time of eight weeks to file the written statement would not amount to making first statement on the substance of the dispute. Before rejecting the application or reference of dispute to arbitration, the High Court ought to have also looked into the question that there was an agreement, and the reliefs sought could be adjudicated in arbitration. **Greaves Cotton Ltd. v. United Machinery & Appliances [2017] 136 CLA 1 (SC)**

✚ A petition filed under section 397/398 incorporating various reliefs the seeking of some of which invite judgment in rem and some other which invite judgment in personam would not permit the severance of one cause of action



from the other. Hence where such petition has been filed under section 397/398, any application by the respondent u/s 8 of the Arbitration and Conciliation Act, 1996 for reference of disputes to arbitration would entail dismissal unless the petition u/s 397/398 is vexacious and mala fide one. **Ms. Punita Khatter v. Explorers Travels & Tours (P.) Ltd. and Ors. [2017] 136 CLA 34 (NCLT)**

**Money-Laundering Laws**  
**By Advocate Pradeep K Mittal, +91-9811044365**

**Prevention of Money-laundering (Appeal)(Amendment) Rules, 2016**

***GSR 1116(E) dated 6<sup>th</sup> December 2016, issued by Ministry of Finance***

In exercise of the powers conferred by sub-section (1) and clauses (r) and clauses (x) of sub-section (2) of section 73, read with section 35 of the Prevention of Money-laundering (Appeal) Rules, 2005, namely:

1. (1) These rules may be called the Prevention of Money-laundering (Appeal) (Amendment) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Prevention of Money-laundering (Appeal) Rules, 2005, in rule 3, in sub-rule (2), in the Table, against serial number 3, in the second column, the words, letters and figure “and upto Rs. 1 lakh” shall be omitted.

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