

# **PKMG LAW CHAMBERS**

**ADVOCATES AND SOLICITORS**  
**MONTHLY LAW REPORT FOR FEBRUARY, 2017**  
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## **CIVIL LAWS**

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LIMITED

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

Notification & Circular No.	Date of Issue	Subject
<p style="text-align: center;"><b>1. Notification no.- GSR124(E) MANU/DCAF/0008/2017</b></p>	<p style="text-align: center;"><b>February 13, 2017</b></p>	<p><b>Subject: Ministry of Corporate Affairs, Field Offices (Company Prosecutor-Group 'B', Gazetted Posts) Recruitment (Amendment) Rules, 2016 –</b> In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules to amend the <b>Ministry of Corporate Affairs, Field Offices (Company Prosecutor-Group 'B', Gazetted Posts) Recruitment Rules, 2011</b>, namely:-</p> <p><b>1. Short title and commencement.-</b> (1) These rules may be called the <b>Ministry of Corporate Affairs, Field Offices (Company Prosecutor-Group 'B', Gazetted Posts) Recruitment (Amendment) Rules, 2016</b>. (2) These rules shall be deemed to have come into force from the 1st day of January, 2016.</p> <p><b>2. In the Ministry of Corporate Affairs, Field Offices (Company Prosecutor-Group 'B', Gazetted Posts) Recruitment Rules, 2011 (herein after referred to as the principal rules), for rule 2, the following rule shall be substituted, namely:-</b> "2. Number of posts, classification, Level in the Pay Matrix- The number of posts,</p>

		<p>their classification, Level in the Pay Matrix attached thereto shall be as specified in columns (2) to (4) of the Schedule annexed to these rules."</p> <p><b>3.</b> In the principal rules, in the Schedule, in column (4),--</p> <p>(a) for the heading, the following heading shall be substituted, namely:- "Level in the Pay Matrix.";</p> <p>(b) for the existing entries, the following entries shall be substituted, namely:- "Level 7 in the Pay Matrix of ` 44900-142400."</p>
<p><b>2. Notification No. : S0366(E) MANU/DCAF/0007/2017</b></p>	<p><b>February 08, 2017</b></p>	<p><b>Subject: Amendment in notification number S.O. 3118 (E), dated the 3rd October, 2016-</b></p> <p>In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956 (1 of 1956), hereinafter referred to as the said Act, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the <b>Ministry of Corporate Affairs</b>, number S.O. 3118 (E), dated the 3rd October, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 3rd October, 2016, namely:-</p> <p>2. In the said notification, in paragraph 1, for serial number 6 and the entries relating thereto, the following serial number and the entries shall be substituted, namely:-</p>

		"(6) Shri S.S. Member, Barik, [nominated Chief under clause General (d) of sub-Manager section (2) of -in- section 210A of Charge, the said Act]." Nominee of the Reserve Bank of India
<b>3. Notification No. : S0345(E) MANU/DCAF/0006/2017</b>	<b>February 03, 2017</b>	<b>Subject: Amendment of notification number S.O. 1935 (E) dated the 1st day of June, 2016-</b> In exercise of the powers conferred by sub-section (1) of section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby amends the notification of the <b>Ministry of Corporate Affairs</b> number S.O. 1935 (E) dated the 1st day of June, 2016, namely:- 2. In the said notification, in the Table,- (i) In serial number 1, in column number (4), the entry "(1) State of Haryana", shall be omitted. (ii) In serial number 5, in column number (4), after entry (4), the following entry shall be inserted, namely:- "(5) State of Haryana".
<b>4. Notification From File No. : 1/13/2013 CL-V- Part-I-Vol.II MANU/DCAF/0005/2017</b>	<b>January 25, 2017</b>	<b>Subject: Companies (Incorporation) Amendment Rules, 2017-</b> In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the

		<p>Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -</p> <p><b>1.</b> (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2017.</p> <p>(2) They shall come into force on the 30th day of January, 2017.</p> <p><b>2.</b> In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules) for rule 18, the following rule shall be substituted, namely:-</p> <p>“18. The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department”.</p> <p><b>3.</b> In the principal rules, for Form No.INC-11, the following form shall be substituted, namely:-</p> <p style="text-align: center;"><b>Form No.INC-11</b></p> <p><b>4.</b> In the principal rules, for form No.INC-32, the following form shall be substituted, namely:-</p> <p style="text-align: center;"><b>Form No.INC-32</b></p>
<p><b>5. Notification No. : GSR46(E) MANU/DCAF/0003/2017</b></p>	<p><b>January 18, 2017</b></p>	<p><b>Subject : Investor Education and Protection Fund Authority (Recruitment, Salary and other Terms and Conditions of Service of General Manager and Assistant General Manager)</b></p>

**Rules, 2017 -**

In exercise of the powers conferred by sub-section (7) of section 125 and section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

**1. Short title and commencement.-**

(1) These rules may be called the Investor Education and Protection Fund Authority (Recruitment, Salary and other Terms and Conditions of Service of General Manager and Assistant General Manager) Rules, 2017

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

**2. Definitions.-**

(1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013;

(b) "Investor Education and Protection Fund Authority" means the Authority as defined under section 125 of the Act;

(2) All the words and expressions used and not defined in these rules, but defined in the Act shall have the meanings as assigned to them in the Act.

**3. Application.-**

These rules shall apply to the General Manager and Assistant General Manager of the Investor Education and Protection Fund Authority.

**The Notification further clarifies about the following-**

- Number of posts, classification and level in the pay matrix
- Number of posts, classification

		<p>and level in the pay matrix</p> <ul style="list-style-type: none"> <li>• Procedure for appointment on deputation</li> <li>• Period of deputation</li> <li>• Conditions of service</li> <li>• Accommodation</li> <li>• Disciplinary Proceedings</li> <li>• Disqualification</li> <li>• Power to relax</li> </ul>
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**Companies Act 1956 and 2013 Case Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- ✚ Mumbai NCLT held that a Petitioner who does not have any kind of interest in the company is not entitled to seek inspection of the records falling in ambit of Section 163 dealing with Inspection and supply of copies of records. **Anilkumar Poddar v. Futura Commercials (P.) Ltd. [2017] 136 CLA 1 (NCLT)**
- ✚ Petition under 163/219 which are frivolous litigation against many listed companies by a habitual litigant are liable to be dismissed. **Anilkumar Poddar v. Reliance Corporate IT Park Ltd. and Ors. [2017] 136 CLA 5 (NCLT)**
- ✚ The Tribunal has no jurisdiction to convene EGM in exercise of its power u/s 186 where the Applicant and the Respondent are only the shareholders who can convene EGM. **Prem Anand v. Prisha Corporate Services (P.) Ltd. and Ors. [2017] 136 CLA 13 (NCLT)**
- ✚ The Tribunal can suo moto waive off the requirements specified under section 244(1)(a) or (b) to enable a member to apply for relief against Oppression/Mismanagement. **Church of South India Trust Association v. John S Dorai Vimal Sukumar [2017] 136 CLA 25 (NCLT)**
- ✚ Insertion of a new article entrusting all powers of management of the private limited company to one respondent of majority group does not per se amount to Oppression. **Ramachandran Damodaran v. Yash Highvoltage (P.) Ltd. and Ors. [2017] 136 CLA 50 (NCLT)**

- ✚ Investigation to company's affairs or its members for cases of fraud, misfeasance etc. shall fall under the jurisdiction of NCLT when section 213 is notified since the section deals with the same and provides for the proper recourse available to a person. **Abhay Govind Chebbi and Ors. V. State of Karnataka and Ors. [2017] 136 CLA 104 (Kar.)**
- ✚ The role of the company court, while dealing with the winding up proceedings, is restricted to claims by or against the company in liquidation. Accordingly, third party claims against a bidder in the auction of property of the company cannot be decided by the company court. **Al Rostamani International Exchange v. Official Liquidator, High Court, Madras and Ors. [2017] 136 CLA 104 (Kar.)**
- ✚ There is no categorization or difference between deposits accepted prior to or after the Companies Act, 2013. The term 'every deposit' means and includes all previous deposits accepted by the company. **Ms. Bimla Kothari and Ors. V. Unitech Ltd. [2017] 136 CLA 74 (NCLT).**
- ✚ The residuary article 113 of the Limitation Act, 1963 would be applicable and the period of limitation is 3 years in cases not specifically dealt with in the Schedule. **Praveen Shankaralayam v. Elan Professional Appliances (P.) Ltd. and Ors. [2017] 136 CLA 78 (NCLT)**
- ✚ The Tribunal can compound the offence even though the prosecution is pending against the applicants and prior permission is not necessary to compound the offence: NCLT Bengaluru Bench, **In Re : Tejas Network Ltd. and Ors. [2017] 136 CLA 110 (NCLT)**

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

**CBDT Issues Circular To Clarify Law On Implementation Of GAAR Provisions Under The Income-Tax Act**

The CBDT has issued Circular No. 7 of 2017 dated 27.01.2017 in which it has provided important clarifications on implementation of GAAR (General Anti-Avoidance Rule) provisions under the Income-tax Act, 1961.



### **CBDT Issues Circular To Clarify Law On Low Tax Effect Circulars**

The CBDT has issued Circular No. 5/2017 dated 23.01.2017 in which it has clarified the impact of Circular No. 21/2015 dated 10.12.2015 and Circular No. 8/2016 with regard to the non-filing of appeals by the department in cases where the tax effect does not exceed the specified monetary limits

### **CBDT Issues Circular To Clarify Law On Taxation And Investment Regime For PMGKY Scheme**

The CBDT has issued Circular No.2 of 2017 dated 18.01.2017 by which it has provided important clarifications on the Taxation and Investment Regime for the Pradhan Mantri Garib Kalyan Yojana, 2016. The PMGKY provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity to declare such income and pay tax, surcharge and penalty totaling in all to 49.9 per cent. of such declared income and make a mandatory deposit of not less than 25% of such income in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The Scheme has commenced on 17.12.2016 and shall remain open for declarations/deposit upto 31.03.2017

### **CBDT Keeps Circular No. 41/2016 (Taxation Of Indirect Transfers) In Abeyance To Address Concerns Of Stakeholders**

The CBDT has issued a press release dated 17.01.2017 stating that it has received representations from various FPIs, FIIs, VCFs and other stakeholders expressing concerns that Circular No. 41/2016 which was issued on 21.12.2016 to deal with clarification on Indirect Transfer provisions, does not address the issue of possible multiple taxation of the same income. The CBDT has stated that pending the examination of the representations, the operation of the above mentioned circular is kept in abeyance for the time being

### **Finance Ministry Notifies Effective Date Of India-Cyprus DTAA (Download Full DTAA)**

The Ministry of Finance has issued a Notification dated 10.01.2017 stating that all the provisions of the Agreement and Protocol between the Government of

Republic of India and the Government of Republic of Cyprus for the avoidance of double taxation and the Prevention of Fiscal evasion with respect to taxes on income shall be given effect to in the Union of India with effect from the 1st day of April, 2017 being the First day of Fiscal year next following the year in which the said Agreement and Protocol entered into force

**CBDT Circular Reg TDS From Salaries U/s 192 Of The Income-Tax Act, 1961 In FY 2016-17**

The CBDT has issued Circular No. 01/2017 dated 02.01.2017 in which it has explained in a comprehensive manner the obligation of taxpayers with regard to deduction of tax at source from salaries under section 192 of the Income-tax Act, 1961 for the financial year 2016-17

**CBDT Directs Suspension Of Collection Of Taxes During Mutual Agreement Procedure (MAP) Under India-Sweden DTAA**

The CBDT has issued Instruction No. 01/2017 dated 04.01.2007 stating that on receipt of a formal request for suspension of collection of outstanding tax from a taxpayer who is a resident of Sweden and where MAP has been invoked through the Competent Authority of Sweden, the Assessing Officers are required to keep the enforcement of collection of outstanding taxes in abeyance for a period of two years in respect of such taxpayers subject to fulfillment of certain conditions

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

[2017] 78 taxmann.com 187 (Mumbai - Trib.)

**IT: Amount paid to ex-employees under settlement is not 'profit in lieu of salary' under section 17(3)(i)**

- Under clause (i) of section 17(3) of the Act, in order to characterise a particular payment received from the employer, on termination of the employment, as "profits in lieu of salary", it has necessarily to be shown that this amount is due or received as "compensation". The word "compensation"

is not defined under the Act. Therefore, one has to take into consideration the ordinary connotation of this expression in common parlance. It has to be in the nature of something awarded to compensate for loss, suffering or injury. When translated in the context of employment, it would imply a monetary and non-monetary amount to be given to the employee in return for some services rendered by him. Inherent in this would be the obligation of the employer to pay some amount to the employee to "compensate" him. It would also mean that the employee gets a vested right to get such an amount. In the case under consideration there the ex employee did not get vested right to receive the amounts in question. A settlement was arrived at to avoid litigation-there was no obligation on part of the employer to pay some amount to the employees to compensate them.

**[2017] 78 taxmann.com 188 (Mumbai - Trib.)**

**IT:** The assessee was not in the business of purchase and sale of patents, so the sale proceed of the assignment agreement could not be treated a revenue receipt. Patent is a legal document that is granted by the Sovereign and gives an inventor exclusive right to make/use/sale an invention for a specified number of years. Section 55(2)(a) talks of right to manufacture, produce or process any article or thing. Therefore, consideration for sale of patent (the right to manufacture/ produce/ process) would be taxable under the head capital gains and cost has to be taken at Rs. Nil.

**[2017] 78 taxmann.com 161 (SC)**

**IT:** Section 139, read with sections 56, 68 and 143, of the Income-tax Act, 1961 and section 13 of the Prevention of Corruption Act, 1988 - Return of income (General) - Whether income-tax returns and orders would not *ipso facto* either conclusively prove or disprove the charge of disproportionate assets (acquisition of assets disproportionate to known sources of income) and can at best be pieces of evidence which have to be evaluated along with the other materials on record - Held, yes

- Income-Tax returns and orders would not *ipso facto* either conclusively prove or disprove the charge of disproportionate assets (acquisition of assets disproportionate to known sources of income) and can at best be

pieces of evidence which have to be evaluated along with the other materials on record.

- Where the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted, neither the income tax returns nor the orders passed in the proceedings relating thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by section 13(1)(e) of the Prevention of Corruption Act, 1988.
- Submission of income tax returns and the assessments orders passed thereon, would not constitute a full proof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the Prevention of Corruption Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the Prevention of Corruption Act is made out or not.
- The scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not certify or authenticate that the source(s) thereof to be lawful and are thus of no significance vis-à-vis a charge under section 13(1)(e) of the Prevention of Corruption Act, 1988.
- Even if a receipt claimed as a gift is after the scrutiny of the Income Tax Authorities construed to be income from undisclosed sources and is subjected to income tax, it would not for the purposes of a charge under section 13(1)(e) of the Prevention of Corruption Act, 1988 be sufficient to hold that it was from a lawful source in absence of any independent and satisfactory evidence to that effect.
- Property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. In such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law.

- Gift is not lawful source of income for the purpose of satisfactorily explaining disproportionate assets. In *R.S. Nayak v. A.R. Antulay* [1986] 2 SCC 716, it was enunciated that under section 161 of IPC a present is taken by a public servant as a motive or reward for abuse of office but under section 165 of IPC, the question of motive or reward is wholly immaterial and acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing. While observing that the ambit of Section 165 is wider than that of sections 161, 162 and 163 of the IPC and is intended to cover cases of corruption which do not come within the sweep of the latter provisions, it was emphatically proclaimed that if public servants are allowed to accept presents when they are prohibited in law, they would easily circumvent the prohibition by accepting the bribe in the shape of a present. It was underscored that the provisions under sections 161 and 165 IPC as well as the section 5 of the Prevention of Corruption Act, 1947 were intended to keep the public servant free from corruption and thus ultimately to ensure purity in public life.

**[2017] 78 taxmann.com 128 (Delhi - Trib.)**

**IT:** It is well established fact that the practice of yoga gives positive reliefs in the cases of asthma, migraine, hyper tension, stress etc. Thus, even for AYs prior to AY 2016-17, **Yoga qualifies as 'medical relief'**

**[2017] 78 taxmann.com 101 (Kolkata - Trib.)**

**IT/ILT:** Income earned by assessee a company incorporated in Netherlands from on-shore supply of software and licenses for mere purpose of operating equipment is for 'copyright' in such software because software in question is embedded in equipment supplied under project and cannot be regarded as giving any independent right to use software. Accordingly, such consideration is for purchase of a 'copyrighted article' and hence not taxable as 'royalty'.

[2017] 78 taxmann.com 65 (Punjab & Haryana)

**IT :** Where an assessee claims that no expenditure has been incurred by him in relation to exempt income, Assessing Officer can resort to Rule 8D only if having regard to accounts of assessee he is not satisfied with correctness of claim of assessee that no expenditure has been incurred by him in relation to income which does not form part of total income under Act.

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

- ✚ CCI approves JV between Allegheny Technologies and General Electric Company - CCI approves creation of a JV company between Allegheny Technologies and General Electric Company pursuant to Master Agreement dated 18.07.2016; Proposed combination is to test and develop infrastructure, intellectual property and technology related to the production, marketing and sale of titanium alloy powders through an emerging and developing process (JV Process); and subsequently to commercialize, produce, market and sell titanium alloy powders and develop novel titanium alloys and involves exclusive licensing of intellectual property relating to the JV Process and transfer of a lease by ATI at fair market value to the JV; GE does not operate in the business of production or/and sale of titanium or related products in India or at a worldwide level while TDY ships certain titanium alloy mill products into India, thus observes no horizontal overlaps; Notes no change in level of concentration in the Indian market since the activities will be carried on outside India; notes no change in market dynamics of Indian market : CCI  
**[LSI-1352-CCI-2016-(NDEL)]**
  
- ✚ CCI approves acquisition of Emerson Electric Co. by Nidec Corporation, finds no adverse effect and competitive concern - CCI approves acquisition of Emerson Electric Co. by Nidec Corporation (Acquirer) via Asset and Stock Purchase Agreement; Notes that post acquisition Nidec would solely control Emerson's motors, drives and electric power generation businesses, which prior to the acquisition was conducted under the brand names Leroy-Somer Electric Power Generation, Leroy-Somer Motors & Drives, Control Techniques and Kato Engineering; Observes that activities of Nidec and Target Business would overlap in motors segment however states that with respect to the purposes of

competition assessment, motors segment can be sub-segmented based on motor type into AC motors and DC motors and further categorize into 4 types end-users and power outputs hence states that proposed Combination would be unlikely to cause an appreciable adverse effect on competition; In addition , holds that acquisition would not have raise significant competition concern and would continue to face competitive constraints from competitors such as Crompton Greaves, ABB-Baldor, Marathon, Siemens, Bharat Bijlee etc : CCI [**LSI-1351-CCI-2016-(NDEL)**]

- ✚ CCI gives nod to acquisition of TVS logistical Services by CDPQ Asia subject to modifications - CCI approves acquisition of TVS Logistical Services Ltd. by CDPQ Asia, a SPV in Singapore, subject to modification of the scheme undertaken by the investor group; Approval given considering the fact that such acquisition would not amount to horizontal or vertical overlapping of the business of either the acquirer or the target company as both the companies operated in different fields; The acquirer would acquire the shares of the target company from GS Holdings Ltd. and Zumrut Investments Ltd., Mr. R. Dinesh, existing promoter of target company is also a co-acquirer in the said acquisition, his shareholding being below the prescribed thresholding limit; Parties have entered into various agreements for the purpose of the said combination and CCI has been notified of the same : CCI [**LSI-1352-CCI-2016-(NDEL)**]



### ***Insolvency and Bankruptcy Code, 2016***

#### **Ms. Suman Saxena takes charge as the Whole Time Member of the Insolvency and Bankruptcy Board of India (IBBI)**

**Dated 22<sup>nd</sup> February, 2017**

Ms. Suman Saxena took charge here today as the Whole Time Member, **Insolvency and Bankruptcy Board of India (IBBI)**.

Ms. Saxena will look after Research and Regulation Wing comprising Corporate Insolvency, Corporate Liquidation, Individual Insolvency, Individual Bankruptcy, Research and Publications, Data Management and Dissemination and Advocacy. She will also look after National Insolvency Programme, Continuing Professional Programme, and Knowledge Management and Partnership.

Ms. Saxena served as a member of the Indian Audit and Accounts Service for over 35 years. Her last assignment was Deputy Comptroller and Auditor General, where she oversaw three important sectors, namely, defence, communications and railways. She has also been the Director of National Academy of Audit and Accounts.

**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 style="text-align: center;"><b>1. Circular No. : SEBI/HO/IMD/DF2/CI R/P/2017/13 MANU/SMFD/0001/2 017</b></p>	<p style="text-align: center;"><b>February 20, 2017</b></p>	<p><b>Subject: Participation in derivatives market by Mutual Funds -</b></p> <p>1. In terms of <b>SEBI</b> circular no. DNPD/Cir-29/2005 dated September 14, 2005, existing schemes of the Mutual Funds, whose Scheme Information Documents (SIDs) do not envisage investments in derivatives, are required to obtain positive consent from majority of the unit holders before commencing investment in derivatives. An exit option has to be provided to the dissenting unit holders and such option is to be kept open for a period of one month prior to the scheme commencing trading in derivatives.</p> <p>2. <b>SEBI</b> has received representations that for existing schemes' whose SIDs do not currently envisage investments in derivatives, obtaining positive consent from majority of unit holders as mandated above is challenging on account of vast geographical spread of unit holders and hence the request for doing away with such requirements. This matter was discussed in Mutual Fund Advisory Committee, wherein it was recommended that for participation in derivatives market by such schemes, the requirement of obtaining positive consent should be dispensed with and all investors of the scheme should be given exit option with no exit load, in line with the guidelines for changes in any other fundamental attribute of the scheme.</p>



3. Based on the above considerations and in view of prudent investment norms that are in place for investment in derivatives by Mutual Funds, it has been decided that for introduction of derivative investments in an existing scheme, whose SIDs do not currently envisage such investments, the requirement of obtaining positive consent from majority of unit holders shall no longer be applicable. However, prior to the scheme commencing participation in derivatives, all investors of such schemes shall be given exit option with no exit load for 30 days, as against exit option to only dissenting unit holders mandated earlier.

4. In view of the above, in point 2 of **SEBI** circular no. DNP/Cir-29/2005 dated September 14, 2005, clause I) b shall be read as follows:

"Existing schemes of Mutual Funds, whose SIDs do not envisage investments in derivatives, may participate in derivatives market subject to the following conditions:

i. The extent and the manner of the proposed participation in derivatives shall be disclosed to the unit holders.

ii. The risks associated with such participation shall be disclosed and explained by suitable numerical examples.

iii. Prior to commencing participation in derivatives, the scheme shall comply with the provisions of Regulation 18 (15A) of **SEBI** (Mutual Funds) Regulations, 1996 and all unit holders shall be given at least 30 days to exercise option to exit at prevailing NAV without charging of exit load."

5. All other provisions of the above mentioned circular remains unchanged.

6. This circular is applicable with immediate effect.

This circular is issued in exercise of the

		<p>powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of <b>SEBI</b> (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.</p>
<p><b>2. Press Release No.</b> <b>: 12/2017</b> <b>MANU/SPRL/0012</b> <b>/2017</b></p>	<p><b>February</b> <b>15, 2017</b></p>	<p><b>Subject: SEBI International Commodity Derivatives Conference 2017-</b>  Securities and Exchange Board of India (<b>SEBI</b>), is organizing an International Conference on Commodity Derivatives (ICDC 2017) on February 17, 2017 at Mumbai. The objective of the conference is to generate discussion on several important issues in the Indian commodity derivatives market particularly in the agri commodity derivatives and to promote interest in the commodity derivatives among hedgers, processors, physical market participants, academia and practitioners. The conference focusses on exploring the issues that drive the spot and the futures markets and ways to strengthen integration between the commodity derivatives and the underlying markets.  The session-wise themes of the Conference include-  1.Commodity Derivatives markets: How to deepen and improve the liquidity  2.Financialization of Commodity Derivatives  3.Evolving a robust regulatory framework -Interconnectedness with Underlying Markets  4.Convergence of Spot Prices and Futures Prices in the Commodity markets  The detailed programme schedule of the International Commodity Derivatives Conference -2017 is available here: <b>SEBI ICDC 2017</b></p>

		<p>The eminent international speakers for the Conference include officials from CFTC (USA), Abu Dhabi Investment Authority (ADIA), European Commission and USDA. The Indian speakers include Officials from Ministry, academicians, and practitioners. The participants for the Conference are from a diverse mix of the regulator, exchanges, brokers, hedgers/processors, commodity associations, commodity researchers and academia. The participation in the Conference is by invitation only.</p> <p><b>SEBI</b> was entrusted with the regulation and development of the commodity derivatives market on September 28, 2015. <b>SEBI</b> has since been working to bring about the convergence in regulations and harness the economies of scope and scale for all the stakeholders. It has been <b>SEBI</b>'s constant endeavour to work towards orderly integration of the commodities market with the securities market and bringing it at par with the securities market in all aspects.</p>
<p><b>3. Notification No.: SEBI/LAD/NRO/GN /2016-2017/033  MANU/SREG/0005/  2017</b></p>	<p><b>February 15, 2017</b></p>	<p><b>Subject: Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second Amendment) Regulations, 2017 -</b></p> <p>In exercise of the powers conferred by sections 4, 8A and 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>

		<p>1. These regulations may be called the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second 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 Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012,</p> <p>(I) in regulation 18, in sub-regulation (4),-</p> <p>(a) after the words "share capital", for the symbol " : " the symbol " . " shall be substituted;</p> <p>(b) the proviso shall be omitted.</p>
<p><b>4. Notification No. : SEBI/LAD/NRO/GN /2016-2017/03 MANU/SREG/0006/2 017</b></p>	<p><b>February 15, 2017</b></p>	<p><b>Subject: Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2017-</b></p> <p>In exercise of the powers conferred by section 30 read with clause (c) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely:-</p> <p>1. These Regulations may be called the Securities and Exchange Board of India (Mutual Funds) (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 (Mutual Funds) Regulations, 1996,</p> <p>I. in regulation 2, -</p> <p>i. the following new clause shall be inserted after clause (mn), namely,-</p> <p>"(mo) "InvIT" or "Infrastructure Investment Trust" shall have the meaning assigned in clause (za) of sub-</p>

	<p>regulation (1) of regulation 2 of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014;"</p> <p>ii. the following new clause shall be inserted after clause (sa), namely,-  "(sb) "REIT" or "Real Estate Investment Trust" shall have the meaning assigned in clause (zm) of sub-regulation 1 of regulation 2 of the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014;"</p> <p>iii. the existing clause (sb) shall be re-numbered as clause (sc).</p> <p>II. in the Seventh Schedule, the following new clause shall be inserted after clause 12, namely,-  "13. A mutual fund may invest in the units of REITs and InvITs subject to the following:  (a) No mutual fund under all its schemes shall own more than 10% of units issued by a single issuer of REIT and InvIT; and  (b) A mutual fund scheme shall not invest -  i. more than 10% of its NAV in the units of REIT and InvIT; and  ii. more than 5% of its NAV in the units of REIT and InvIT issued by a single issuer.  Provided that the limits mentioned in sub-clauses (i) and (ii) above shall not be applicable for investments in case of index fund or sector or industry specific scheme pertaining to REIT and InvIT."</p>
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**SEBI Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- SEBI issues Interpretive Letter to Karvy Stock Broking Ltd., a registered portfolio manager, under Informal Guidance Scheme, pursuant to query raised by Karvy on applicability of SEBI (Portfolio Managers) Regulations,

1993; The issue pertains to whether the practice followed by Karvy in maintaining pooled bank account under the name "Karvy Stock Broking Ltd. A/c Discretionary PMS Strategy Name" for pooling the demat transactions of its clients in accordance with SEBI Circular No. IMD/DOF I/PMS/Cir - 4/2009 dated June 23, 2009 and also for receiving of corporate benefits, is in order; Karvy uses the said account for receiving corporate benefits for distribution of securities on pro rata basis to the clients, instead of maintaining a separate bank account for each of its clients as required under SEBI (Portfolio Managers) Regulations, 1993 and the said account is stated as the bank account of the client in the demat records; SEBI in its clarification has concluded that a PM may keep funds of all clients in a separate bank account maintained by it and may capture it in the demat account of its resident Indian clients, subject to compliance of Regulation 16 of the PM Regulations read with the said SEBI circular issued on June 23, 2009 : SEBI **LSI**

- ✚ SEBI issues consultation paper with a view to build secondary market liquidity in corporate bonds; Proposal to consolidate and re-issue debt securities is with a view to infuse liquidity in the secondary market, based on the report which shows increase of 328.9% since 2007-08 in total issuance of corporate bonds in primary market and public issue and private placement of debt securities but comparatively there is not much liquidity in the secondary market; The main reasons attributable to this illiquidity being- i) Public issue of debt securities can be made only when the bonds are issued to more than 200 investors, hence, issuers take recourse to issuing multiple bonds in a month/quarter/year by private placement mode to meet their funding requirements, ii) Investors prefer to buy and hold the security, instead of trading it in the secondary market, iii) Absence of a well-developed corporate bond repo market and secondary market infrastructure; In order to resolve this, there should be capping of such fragmented issues vide consolidation and re-issuance as it would aid in generation of liquidity through minimal number of ISINs. Another method by which such fragmented issues can be avoided, is, if limit of 200 investors is increased for private placement; Deliberating on cons like levy of stamp duty on re-issue, thus making it cost ineffective, bunching of liabilities at the time of redemption, issue of securities based on the demand of the investors and re-issuance at discount or premium ; The way out being, reissue not to be treated as fresh issue for the purpose of stamp duty, amortization of repayment over a period of year,

allowing switching over and conversion through various methods; SEBI invites comments and suggestions by February 28 : SEBI LSI

- ✚ SEBI disposes of show cause notice issued to Co. promoter for violation of Regulation 11(2) of the SEBI Takeover Regulations, 1997 (Regulations), on the ground that said violation was venial and technical in nature without any intention for consolidation; Promoter Anil T Jain had acquired 42 shares of Reflex Industries Ltd (Target Company) on September 4, 2008 through off market deals without complying with the obligations to make public announcement of an open offer in terms of the Regulations; SEBI agrees with the Promoter's submissions that though he along with group entities holds more than 55% shares in the target company, his acquisition of 42 shares is not material and constitutes very negligible percentage of shares, which cannot be construed as acquisition for consolidation; Observes that amendment to Regulation 11(2) of Takeover Regulations on October 30, 2008 provided exemption from making open offer for acquisition of up to 5% shares by shareholders holding more than 55% shares in a company, subject to their fulfilling certain conditions; However, the Takeover Regulations 2011 repealed said provision, thus permitting acquisition upto 5% shares in a financial year by any acquirer who holds 25% or more shares or voting rights in a target company without making an open offer; Observes, "...the number of shares acquired are quite negligible and forms a very miniscule percentage of the share capital of the Target Company and these shares have been acquired by persons who are already in control of the company..." while noting reduction in shareholding of promotor and promotor group in quarter ending September 2008, and an unchanged percentage from December 31, 2008 to December 31, 2009 : SEBI LSI

## Civil Laws

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

- ✚ Articles 75 and 76 of the Schedule to the Limitation Act, 1963 has been referred which states that the time period available to a plaintiff for instituting a suit on libel or slander is one year from the date of the publication of the alleged defamatory statement. The concept of a continuing wrong does not apply to a case based on defamation. He submitted that a wrong is different from the effect of the wrong. The effect of publication of a defamatory statement may be

continuing but the defamation is complete once the publication of the offending statement is made. **Manik Lal Bhowmik Vs. Bharat Sanchar Nigam Limited MANU/WB/0098/2017**

✚ Before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an Advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. The Advocates-on-record like the other members of the Bar Advocates are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why in dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression "moral turpitude or delinquency" is not to be construed in an unduly narrow and restricted sense. **T.A. Kathiru Kunju Vs. Jacob Mathai and Ors. MANU/SC/0174/2017**

✚ The Board or the Appellate Authority shall, for the purposes of any inquiry or for any other purpose under the Companies Act, 2013 have the same powers as are vested in a civil court under the **Code of Civil Procedure**, 1908 while trying suits in respect of the following matters, namely:

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of document or other material object producible as evidence;
- (c) the reception of evidence on affidavit;
- (d) the requisitioning of any public record from any court or office;
- (e) the issuing of any commission for the examination of witnesses;
- (f) any other matter which may be prescribed. **Bank of New York Mellon, London Branch Vs. Zenith Infotech Limited MANU/SC/0191/2017**



## Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

- ✚ Section 34 clearly stipulates that an arbitral award could be set aside under certain conditions enumerated in the section and no other; those conditions being primarily with respect to process through which the award is delivered and not actually on the merits of the award. Section 5 of the Act which deals with the extent of judicial intervention clearly mandates that no judicial authority shall intervene except where so provided in the Act. The aforesaid provisions of the Act are aimed at ensuring that the Arbitral Tribunal operates within its jurisdictional limits and provides reasons for the arbitral award. This, in turn, would pave way for minimum judicial intervention. The only area where the merits of an arbitral award could be gone into is Section 2(b)(ii) of Section 34 of the Arbitration and Conciliation Act, 1996 which contemplates assessment of an award for being rescinded if the award is in conflict with the public policy of India. **National Highways Authority of India Vs. Gammon Atlanta (JV) MANU/DE/0420/2017**
  
- ✚ It was held by the learned single judge in the present case that arbitration clause could be invoked only in case of dispute between the parties. The "party", the learned single Judge further observed, was defined under section 2(1)(h) of the Arbitration and Conciliation Act, 1996 which means party to an arbitration agreement. **Geo Miller & Co. Pvt. Ltd. Vs. Bihar Urban Infrastructure Development Corporation Pvt. Ltd. and Ors. MANU/DE/0421/2017**

## Money-Laundering Laws

By Advocate Pradeep K Mittal, +91-9811044365

**Amendment in notification number G.S.R.381(E), dated the 27th June, 2006**

*Notification No. : GSR136(E) dated 17<sup>th</sup> February, 2017, issued by Ministry of Finance*

In exercise of the powers conferred by clause (ii) of section 66 of the Prevention of **Money-laundering Act**, 2002 (15 of 2003), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the

Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.381(E), dated the 27th June, 2006, namely :-

In the said notification, after serial number (20) and the entry relating thereto, the following serial number and entry shall be inserted, namely:-

"(21) Defence Intelligence Agency."

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