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MONTHLY LAW REPORT FOR NOVEMBER, 2016
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Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
<p style="text-align: center;">1.Notification no.: S03464(E) MANU/DCAF/0136/2016</p>	<p style="text-align: center;">November 17, 2016</p>	<p>Subject: Central Government, with the concurrence of the Chief Justice of the High Court of Meghalaya hereby designates Court of District and Sessions Judge, Shillong for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013</p> <p>In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Meghalaya, hereby designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013, namely:-</p>

		<p style="text-align: center;">TABLE</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Sl. No.</th> <th style="width: 40%;">Existing Court</th> <th style="width: 45%;">Jurisdiction as Special Court</th> </tr> <tr> <th style="text-align: center;">(1)</th> <th style="text-align: center;">(2)</th> <th style="text-align: center;">(3)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td style="text-align: center;">Court of District and Sessions Judge, Shillong.</td> <td style="text-align: center;">State of Meghalaya</td> </tr> </tbody> </table> <p>2. The aforesaid Court mentioned in column number (2) shall exercise the jurisdiction as Special Court in respect of jurisdiction mentioned in column number (3).</p>	Sl. No.	Existing Court	Jurisdiction as Special Court	(1)	(2)	(3)	1.	Court of District and Sessions Judge, Shillong.	State of Meghalaya
Sl. No.	Existing Court	Jurisdiction as Special Court									
(1)	(2)	(3)									
1.	Court of District and Sessions Judge, Shillong.	State of Meghalaya									
<p style="text-align: center;">2.Notification no.: S03453(E) MANU/DCAF/0135/2016</p>	<p style="text-align: center;">November 15, 2016</p>	<p>Subject: Enforcement date of provisions of Insolvency and Bankruptcy Code, 2016:</p> <p>In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 15th November, 2016 as the date on which the provisions of the following sections of the said Code shall come into force:--</p> <p style="padding-left: 40px;">(1) section 199 to section</p>									

		<p>207 [both inclusive]; (2) sub-section (1) of section 208- (i) clause (c); (ii) clause (e); (3) sub-section (2) of Section 208; (4) Section 217 to section 220 [both inclusive]; (5) Section 251; (6) Section 253; (7) Section 254; and (8) Section 255.</p>
<p>3. Notification No.- GSR1049(E) MANU/DCAF/0134/2016</p>	<p>November 7, 2016</p>	<p>Subject: Companies (Registration Offices and Fees) Second Amendment Rules, 2016:</p> <p>In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Registration Offices and Fees) Second Amendment Rules, 2016.</p> <p>(2) They shall come into force from the date of</p>

their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, (herein after refer to as the principle rules), in the principle rules, in rule 8, in sub-rule (12), in clause (b) for sub-clause (iv), the following shall be substituted, namely:-

"(iv) AOC-4 certification by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole- time practice."

3. In the principal rules, in the Annexure, in item II, for sub-item (vi), the following sub-items shall be substituted, namely;-

For Application made	Other than OPCs and Small Companies	OPC and Small Companies
"(vi) For allotment of Director Identification Number (DIN) under section 153 of the Act	500	500
(vii) For surrender of Director Identification Number	1000	1000"

		under rule 11(f) of the Companies (Appointment and Qualification of Directors) Rules 2014		
<p align="center">4. Notification No. : S03355(E) MANU/DCAF/0133/2016</p>	<p align="center">November 2, 2016</p>	<p>Subject: Enforcement date of specified provisions of Insolvency and Bankruptcy Code, 2016:</p> <p>In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st November, 2016 as the date on which the provisions of the following sections of the said Code shall come into force:--</p> <p>(1) section 3 -</p> <p>(i) clause (2) to clause (4);</p> <p>(ii) clause (6) to clause (21);</p> <p>(iii) clause (23) to clause (25);</p> <p>(iv) clause (27);</p> <p>(v) clause (29) to clause (36);</p> <p>(2) section 196;</p> <p>(3) section 197;</p> <p>(4) section 223;</p> <p>(5) sub-section (2) of section 239-</p>		

		<p>(i) clause (ze) to (zh); (ii) clause (zl) to (zm); (6) sub-section (2) of section 240- (i) clause (a) to (zm); (ii) clause (zu) to (zzzc); (7) Section 244; (8) Section 246 to Section 248 [both inclusive]; (9) Section 250; and (10) Section 252.</p>
<p>5. General Circular No. : 12/ 2016 MANU/DCAF/0132/2016</p>	<p>October 27, 2016</p>	<p>Subject: Relaxation of additional Fees and extension of last date of in filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 e-forms under the Companies Act, 2013: In continuation of this Ministry's General Circular No.08/2016 dated 29.07.2016, keeping in view the requests received from various stakeholders, it has been decided to further extend last date for filing of financial statements and annual returns using e-forms AOC-4, AOC-4 (XBRL), AOC-4 (CFS), or MGT-7, as the case may be, without payment of additional fee, wherever applicable, till 29th November, 2016.</p>

Companies Act 1956 and 2013 Case Laws
By Advocate P.K. Mittal, +91-9811044365

- ✚ When an explicit stand is taken by the petitioners that no notice of the meeting was served on them, the burden is on the Respondent that notice was sent as per Section 286 of the Companies Act, 1956. Appointment of Directors so made is liable to set aside in defiance of Section 260. **Pradeep Kumar Goil and Another v. Sarveshwar Infrastrucuture (P.) Ltd. and Ors. [2016] 134 CLA 397 (NCLT)**
- ✚ Section 456 of Companies Act, 1956- dealing with Custody of company's property on winding up order – Once company is revived under the order of the Court, persons, who have occupied property of a company, could be evicted by the Court. **A Talukdar & Co. (Fertiliser) (P.) Ltd. v. Official Liquidator, High Court of Calcutta [2016] 134 CLA 407 (SC)**
- ✚ Section 205(3) dealing with Capitalisation of Reserves for issue of Bonus Shares – When Articles of Association do not permit issue of Bonus Shares out of revaluation reserve, the Board of Directors cannot issue bonus shares even if it is permissible under the above provisions. **Tin Plate Dealers Association (P.) Ltd. and Ors. V. Satish Chandra Sanwalka and Ors. [2016] 134 CLA 435 (SC)**
- ✚ Section 166 of Companies Act, 2013 dealing with Duties of Directors- Where a director starts competing business with the company, he is bound to account for the pecuniary advantages gained by him by such action. **Rajeev Saumitra v. Neetu Singh and Ors. [2016] 134 CLA 450 (Del.)**
- ✚ A Director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a directors and take all diligent steps to take care of the affairs of the company. In the matter of proceedings for negligence, default, breach of duty or trust, misfeasance etc. all such directors will be held liable equally for acts of commission or

omission. **In Re: Megasys Healthcare Limited and Ors. MANU/SB/0268/2016**

- ✚ Section 434 and 465 of Companies Act, 2013 read with Section 163 and 219 of Companies Act, 1956 – dealing with Transfer of Pending proceedings – It has been held “There is no merit in the contention that NCLT has no subject matter jurisdiction to deal with the cases filed u/s 163 and 219 of the 1956 Act and transferred to NCLT. NCLT has jurisdiction to deal with all transferred cases.” **Anilkumar Poddar v. Prime Focus Ltd. and Ors. [2016] 135 CLA 27 (NCLT)**
- ✚ The Doctrine of piercing or removing corporate veil is applicable not only in the case of holding of subsidiary companies or in the case of tax evasion but can be equally applied in execution proceedings. **Bhatia Industries & Infrastructure Ltd. v. Asian Natural Resources (India) Ltd. [2016] 135 CLA 45 (Bom.)**
- ✚ Rule 33 of the Companies (Incorporation) Rules, 2014, which prescribed that for effecting the conversion of a private company into public company was to be approved by the Central Government, became redundant after notification dated 1st June, 2016. The impact of the said notification of MCA is that, the applicability of the old provisions along with the attached rules get suspended. Further the notification makes it clear that the corresponding provisions of the Companies Act, 1956 shall remain in force till the corresponding provisions of 2013 Act are notified. Further the MCA has also notified on 21st July, 2016 the National Company Law Tribunal Rules, 2016. The issue of conversion of private company into public company and vice versa is to be dealt with by the NCLT within the ambit of Section 14. In addition to section 14, there is rule 68 of above mentioned Rules of the NCLT which has laid down the guidelines for the implementation of such conversion. **In Re: Induri Farm Ltd. [2016] 135 CLA 40 (NCLT)**

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

+ CBDT Issues S. 119 Order To Extend Time Limit For Processing U/s 143(1) Of Returns With Refund Claims

The CBDT has issued an order u/s 119 of the Income-tax Act dated 25.10.2016 stating that in instances where a valid return-of-income having 'claim of refund' for AYs 2014-2015, 2013-2014 and 2012-2013 was filed either under section 139 or 142(1) of the Act and in which the time for sending intimation under sub-section (1) of section 143 has lapsed, the time-frame prescribed in second proviso to sub-section (1) of section 143 is required to be processed by 31.03.2017. Further, intimation of processing and consequential refund, if any, is required to be issued expeditiously as per the prevailing norms and existing provisions of the Act.

+ CBDT Directive On Scope Of Disallowance U/s 40(a)(i) For Failure To Deduct TDS U/s 195 On Payment To Non-Residents

The CBDT has issued a letter dated 26.10.2016 in which it has drawn attention to its Circular No 3/2015 dated 12.2.2015. In the said Circular it was clarified that for the purpose of making disallowance of "other sums chargeable" under Section 40(a)(i) of the Income-tax Act, 1961, in the case of non-residents, the appropriate portion of the sum chargeable to tax under the Act, i.e. income component therein shall form the basis of such disallowance. The CBDT has noted that this Circular is not being kept in view by administrative Commissioners & Commissioners (Appeal) while filing further appeals and while deciding cases. Further, the Circular is not kept in view by departmental representatives in ongoing litigation cases, who still take a position that the disallowance should be based on the gross amount of offshore payments such as purchases. The CBDT has directed the departmental officers including representatives of the department in litigation before ITAT/Courts etc. to be sensitized to the content of this circular

✚ **CBDT Circular On Applicability of S. 195-I TDS To Payment Of Lump Sum Lease Premium**

The CBDT has issued Circular No. 35 /2016 dated 13.10.2016 in which it has clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-1 of the Act. Therefore, such payments are not liable for TDS under section 194-I of the Act.

✚ **CBDT Instruction Reg S. 143(2) Notices In Limited CASS Scrutiny Assessments**

The CBDT has issued Instruction No. 3 dated 16.09.2016 in which it has set out the procedure to be adopted by Assessing Officers for generation of notices under section 143(2) of the Income-tax Act, 1961 in cases which are selected for limited and full scrutiny under the Computer Assisted Scrutiny Selection (CASS).

✚ **CBDT notifies rule for buy back of shares**

CBDT has issued notification dated 17th Oct 2016 inserting rule 44BB under chapter VII-BA relating to Special Provisions for Tax on Distributed income of Domestic Company for Buy-Back of Shares.

✚ **CBDT notifies authority under Benami Property Transaction Act, 1988**

The CBDT has notified income-tax authorities to exercise powers and perform functions of authority under prohibition of Benami Property Transactions Act, 1988. **NOTIFICATION NO. SO 3290(E) [NO.100/2016 (F.NO.173/429/2016-ITA-I)], DATED 25-10-2016**

✚ **Notified date on which provisions of BTPA ACT shall come into force**

In exercise of the powers conferred by sub-section (2) of section 1 of the Benami Transaction (Prohibition) Amendment Act, 2016 (43 of 2016), the Central Government hereby appoints the 1st day of November, 2016 as the date on which provisions of the said Act shall come into force.
NOTIFICATION NO. SO 3289(E) DATED 25-10-2016

✚ **PROHIBITION OF BENAMI PROPERTY TRANSACTIONS RULES, 2016**

In exercise of the powers conferred by section 68 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby makes the rules vide notification no. Gsr 1004(e) [no.99/2016 (f.no.149

✚ **TAXABILITY OF COMPENSATION RECEIVED BY LAND OWNERS FOR LAND ACQUIRED UNDER RFCTLARR ACT**

The CBDT vide **CIRCULAR NO.36/2016** compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

✚ **Draft Rules For Prescribing Method Of Valuation Of Fair Market Value In Respect Of Trust Or Institution**

The Finance Act, 2016, *inter alia*, inserted a new Chapter XII-EB consisting of sections 115TD, 115TE and 115TF in the Income-tax Act, 1961 (the Act). This chapter contains specific provisions relating to levy of additional income-tax where the charitable institution exempt under the Act ceases to exist as charitable organization or converts into a non-charitable organization.

Sub-section (2) of newly inserted section 115TD provides that the accreted income for the purposes of sub-section (1) thereof means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed

The Govt has proposed to insert rule 17CB in the Income-tax Rules, 1962 vide letter dated **LETTER [F.NO.370142/21/2016-TPL], DATED 24-10-2016** to provide for the method of valuation of fair market value in respect of the trust or the institution as on the specified date for determination of accreted income needs to be prescribed in the rules .

✚ **CBDT launch sms alert service to salaried employee about the tds on their salary**

The new step is an effort by the Income Tax Department to directly communicate deposit of tax deducted, through SMS alerts to salaried taxpayers, at the end of every quarter. In case of a mismatch, they can contact their deductor for necessary correction. Simultaneously, SMS alerts will also be sent to deductors who have either failed to deposit taxes deducted or to e-file their TDS returns by the due date.

✚ **CBDT Extends the due date for filling ITR in Jammu and Kashmir**

The CBDT by order [F.NO.225/195/2016/ITA.II], DATED 18-10-2016 extends the 'due date' for filing income tax returns and reports of audit under the provisions of Income-tax Act pertaining to Assessment Year 2016-2017 for **all categories of taxpayers** in the State of Jammu & Kashmir to 31st December, 2016.

✚ **Expenditure for obtaining right to use spectrum for telecommunication services.** The rule 6A has been introduced which provide the meaning of the terms “Payment has been made” for the purpose of allowability of expenditure for obtaining right to use spectrum for telecommunication services.

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

DOMESTIC TAXATION

[2016] 74 taxmann.com 198 (Karnataka)

Where assessee constructed several flats, used them as stock-in-trade of business and showed income from these flats under head 'Income from house property', deduction under section 54F could not be denied

[2016] 74 taxmann.com 225 (Gujarat)

Where assessee claimed his land to be an agricultural land on basis of fake certificate, order of reopening of assessment could not be quashed

[2016] 50 ITR(T) 303 (Hyderabad - Trib.)

IT: Once Form No. 15G/Form 15H were received by persons responsible for deducting tax, there was no liability to deduct tax at source in view of section 194A read with section 197A, even though said documents were not filed before proper authority; section 40(a)(ia) could not be invoked in such case

[2016] 74 taxmann.com 220 (Punjab & Haryana)

IT : In terms of 14th proviso to section 10(23C), application for exemption of income can be filed even prior to 1st April of relevant assessment year, from which exemption is sought

[2016] 74 taxmann.com 187 (Kolkata - Trib.)

Section 45(3) is applicable only in respect of a capital asset, thus, where partners of a firm had in fact brought in land into partnership business as a current asset and said firm upon receipt of said land also accounted for it as a current asset and not a capital asset, section 45(3) would be inapplicable.

[2016] 74 taxmann.com 208 (Kolkata - Trib.)

Cost of inflation index should be applied with reference to year in which capital asset was first acquired by previous owner.

[2016] 74 taxmann.com 239 (Kerala)

Reassessment u/s 147 will be invalid if no notice u/s 143(2) was issued and will not be saved by section 292BB even if assessee participates in proceedings. The Department can avail of section 292BB only if notice u/s 143(2) was issued and not when the admitted position is no notice was issued as in the instant case

[2016] 74 taxmann.com 240 (Pune - Trib.)

Provisions of section 273B cover default committed under section 272A(2)(k) and, thus, in respect of assessment year 2011-12 in which strict requirement of filing e-TDS return was imposed for first time, delay caused in filing said returns by assessee for different quarters due to non-availability of expert staff who were aware of intricacies of filing e-returns, was to be liberally construed.

INTERNATIONAL TAXATION

[2016] 73 taxmann.com 107 (AAR - NewDelhi)

Where applicant, UK based company, has entered into a contract with ONGC for hiring of services for acquisition, processing & integration of long offset of 2D Seismic, gravity, magnetic sea bed based reflection-refraction survey in block Offshore India, consideration receivable by applicant is taxable in accordance with section 44BB

[2016] 71 taxmann.com 166 (Delhi - Trib.)

Mobilisation/demobilization of vessels being incidental activity to main activity of assessee of carrying out contract in respect of seismic data processing services, in India, reimbursement for payment for mobilisation/demobilization is liable to be included while computing profits under section 44BB

Service tax is to be excluded from gross receipts for purpose of determining income under section 44BB

Income received in connection with prospecting, exploration or production of mineral oil, would be assessed under section 44BB, and not under section 44DA

[2016] 180 TTJ 660 (Mumbai - Trib.)

For purpose of determination of Permanent Establishment, each project of a non-resident company has to be considered separately for computing work duration in number of days to test time limit of 9 months

Where project of assessee did not have work duration of more than 9 months during year, a back-up-cum-support office simpliciter would not constitute PE of assessee

Insurance claim for recovery of cost of installation of off-shore platform, even if received outside India, would be a business receipt taxable in India only on existence of PE in India

Where part of business operations of assessee were carried out outside India, only part of income reasonably attributable to operations carried on in India shall be deemed to accrue or arise in India

[2016] 69 taxmann.com 454 (Pune - Trib.)

Where assessee, a non-resident company, had entered into an agreement with its principal in UK and received know-how of designing and running plants which in turn, it had sub-licensed to Indian company against royalty at 5 per cent of net sales, royalty income having been received by assessee on its own right as beneficial owner of same, such royalty income was to be subjected to tax at concessional tax rate at 10 per cent

Where interest income was earned by assessee-Singaporean company from Indian company being its beneficial owner and it had been remitted to Singapore though not in instant year, it was taxable at concessional rate of taxes

Transfer Pricing Case Laws

By CA Manoj Kumar Mittal, +91-9810764620

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

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.)

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.)

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.

[2013] 35 taxmann.com 341 (Bangalore - Trib.)

Where AE of assessee entered into four agreements with Power Grid Corporation of India Limited (PGCIL) and later on it with consent of PGCIL had assigned portion of onshore contract to assessee, assignment agreement between AE and assessee had all ingredients of an international transaction within meaning of section 92B and price paid for such transaction had to pass ALP test

Where it was highlighted by assessee that there was no opportunity of being heard by TPO before proposing adjustment, issue of determination of ALP was remanded to TPO to afford opportunity to assessee.

Corporate Laws
By Advocate PK Mittal, +91-9811044365

SARFAESI Law:

Debts assigned by non-banking financial institutions to bank are not covered under definition of 'borrower' in section 2(f) of the above act and bank cannot proceed for recovery of such debts u/s 13(4) of the same act.

Kotak Mahindra Bank Ltd. v. Trupti Sanjay Mehta and Ors. [2016] 134 CLA 499 (Bom.)

Recovery of Debts due to Banks and Financial Institutions Act, 1993:

The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 of the SARFAESI Act, 2002 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder. If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13. If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the

measures specified under sub-section (4) of section 13 to recover his secured debt. **Gugan Paper Mills Ltd. V. The Presiding Officer, Debts Recovery Tribunal and Ors. MANU/TN/2831/2016**

Sick Industrial Companies (Special Provisions) Act, 1985:

When all the financial affairs of a company are directly under the supervisory control of BIFR, the power to decide whether it has since then lost the jurisdiction or not, is also in the exclusive domain of BIFR. BIFR alone is empowered to determine whether net worth has become positive as a result of which it would cease to have such jurisdiction. Any inquiry into such issue regarding net worth by anyone outside the Act including civil court, would be against the express intent of the Act and would lead to incongruous and undesired results. **Ghanshyam Sarda V. Sashikant Jha and Ors. MANU/SC/1498/2016**

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

Notification & Circular No.	Date of Issue	Subject
1. Circular No. CIR/IMD/FPIC/123/2016 MANU/SDIP/0008/2016	November 17, 2016	Subject: Review of requirement for copy of PAN Card to open accounts of FPIs 1. Please refer to SEBI circular no. CIR/MIRSD/01/2013 dated January 04, 2013 and CIR/MIRSD/07/2013 dated September 12, 2013. 2. Based on representations received from stakeholders and to further ease the PAN verification process at the time of account opening of FPIs, it is decided that the intermediaries can verify the PAN of FPIs online from website

		<p>authorised by Income Tax department at the time of account-opening for FPIs. However, FPIs need to provide the copy of PAN card within 60 days of account-opening or before remitting funds out of India, whichever is earlier to their intermediaries.</p> <p>3. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.</p> <p>4. A copy of this circular is available at the links "Legal Framework → Circulars" and "Info for → F.P.I" on our website. The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.</p>
<p>2. Circular No.- CIR/IMD/DF- 1/122/2016 MANU/SREG/0028/2016</p>	<p>November 11, 2016</p>	<p>Subject: Clarification on aspects related to day count convention for debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008</p> <p>1. SEBI vide circular no. SEBI/CBM/BOND/2/2007/13/04 dated April 13, 2007 had provided for the launch of trading platform for the corporate bond market. Further, SEBI, vide Circular no</p>

CIR/IMD/DF/18/2013 dated October 29, 2013 had clarified certain issues pertaining to primary issuance of debt securities. SEBI vide the aforesaid circular dated October 29, 2013, had inter-alia specified that the cash flows emanating from the debt securities shall be mentioned in the prospectus/disclosure document, by way of an illustration.

2. SEBI was is in receipt of a representation from the market participants, wherein it was stated that different conventions are being followed with respect to calculation of interest payments on debt securities, multiple standards and different holiday calendars are considered for leap year calculations and payment of interest and maturity proceeds respectively.

3. Based on the discussions with different stakeholders, following clarifications are made:

a) If the interest payment date falls on a holiday, the payment may be made on the following working day however the dates of the future coupon payments would be as per the schedule originally stipulated at the time of issuing the security. In other words, the subsequent coupon schedule would not be disturbed merely because the payment date in respect of one particular

		<p>coupon payment has been postponed earlier because of it having fallen on a holiday.</p> <p>b) In order to ensure consistency for interest calculation, a uniform methodology shall be followed for calculation of interest payments in the case of leap year, which shall be as follows: In case of a leap year, if February 29 falls during the tenor of a security, then the number of days shall be reckoned as 366 days (Actual/Actual day count convention) for a whole one year period, irrespective of whether the interest is payable annually, half yearly, quarterly or monthly etc. It is thus emphasized that for a half yearly interest payment, 366 days would be reckoned twice as the denominator; for quarterly interest, four times and for monthly interest payment, twelve times.</p> <p>c) In order to ensure uniformity for payment of interest/redemption with respect to debt securities, it has been decided that interest/redemption payments shall be made only on the days when the money market is functioning in Mumbai.</p>
<p>3. Circular No.- CIR/MIRSD/120/2016 MANU/SSMD/0020/2016</p>	<p>November 10, 2016</p>	<p>Subject: Uploading of the existing clients' KYC details with Central KYC Records Registry (CKYCR) System by the registered</p>

intermediaries

1. This has reference to SEBI circular no. CIR/MIRSD/66/2016 dated July 21, 2016 on operationalisation of Central KYC Records Registry (CKYCR) wherein the registered intermediaries were directed to upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 01, 2016.

2. Government of India, vide its letter dated October 04, 2016, has directed as follows with regard to KYC details of existing and new individual clients:

a. Registered intermediaries have to update their IT systems as well as register all new accounts of individuals in accordance with the CKYCR template, mandatorily by October 31, 2016.

b. Mutual funds and Intermediaries other than mutual funds may follow the following time lines in respect of uploading KYC data of the existing individual clients with CKYCR.

i. Mutual funds may ensure 30% completion of uploading of existing KYC data by November 30, 2016, another 30% of KYC data by January 31, 2017 and the rest 40% data by March 31, 2017.

ii. Intermediaries other than mutual funds may ensure 50% completion of uploading of

		<p>existing KYC data by November 30, 2016 and the remaining 50% of KYC data by December 31, 2016.</p> <p>3. The Stock Exchanges and Depositories are directed to:</p> <p>a. bring the provisions of this circular to the notice of the Stock Brokers and DPs, as the case may be, and also disseminate the same on their websites;</p> <p>b. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another, as considered necessary;</p> <p>c. monitor the compliance of this circular through half-yearly internal audits and inspections; and</p> <p>d. communicate to SEBI, the status of the implementation of the provisions of this circular.</p> <p>4. In case of mutual funds, compliance of this circular shall be monitored by the Boards of Asset Management Companies and the Trustees and in case of other intermediaries by their Board of Directors.</p>
<p>4. Circular No.- SEBI/HO/MIRSD/MIRSD 4/CIR/P/2016/119 MANU/SCRR/0001/2016</p>	<p>November 1, 2016</p>	<p>Subject: Enhanced Standards for Credit Rating Agencies (CRAs)</p> <p>1. SEBI constituted a committee on "Strengthening the Guidelines and Raising Industry Standards for</p>

Credit Rating Agencies (CRAs)", which included representatives from all the CRAs. The objective of the Committee was to deliberate upon measures and guidelines to bring about greater transparency in the policies of the CRAs, enhance the standards followed by the industry and, thereby, facilitate ease of understanding of the ratings by the investors.

2. With a view to implementing the recommendations of the said Committee, the guidelines as annexed to this Circular are being issued. These guidelines cover the following broad areas:

I. Formulation of Rating Criteria and rating processes and public disclosure of the same.

II. Accountability of Rating Analysts

III. Standardisation of Press Release for rating actions.

IV. Functioning and evaluation of Rating Committees/Sub-Committees.

V. Disclosure of ratings in case of non-acceptance by an issuer

VI. Disclosure in case of delay in periodic review of ratings.

VII. Policy in respect of non-cooperation by the issuer.

VIII. Strengthening and enhancing the relevance of Internal Audit of CRAs, viz. appointment and rotation of auditors and scope of the audit.

3. The CRAs shall effectively implement these guidelines within 60 days from the date of issue of

		<p>this circular.</p> <p>4. The CRAs shall at all times observe high standards and fairness in conduct of the business and any act of omission or commission in contravention of the provisions of clauses 12 and/or 23 of Code of Conduct, as specified under Third Schedule of the SEBI (Credit Rating Agencies) Regulations, 1999, in letter or spirit, may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.</p>
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SEBI Laws

By Advocate P.K. Mittal, +91-9811044365

- ✚ The public interest demands that, violators who have knowledge or have consented or have connived in the act or omission which constitutes violation of the provisions related to the deemed public issue, be made accountable to the investors by way of refunding the money collected from them. **In Re: Equinox Infratech Limited and Ors. MANU/SB/0269/2016**
- ✚ Mumbai SAT held that SEBI is empowered to take action, under PFUTP Regulations, 2003, against any person if his act constitutes fraud on the securities market, irrespective of the fact that any investor has actually become a victim of such fraud or not. **PAN Asia Advisors Ltd. and Ors. V. SEBI MANU/SB/0254/2016**

- ✚ Guj. HC held that if the resulting Transferee company becomes a listed company after transfer, it is required to comply with the applicable SEBI regulations with regard to already existing ESOPs of the Transferee Co. **In Re: Arvind Limited MANU/GJ/2286/2016**

Civil Laws

By Advocate Praveen K Mittal, +91-9810826436

- ✚ **SC: Upholds Sec. 138 proceedings where director dishonoured cheque issued as 'security' for company's loan**

SC dismisses appeal filed by Director (Appellant-Director), upholds Delhi HC's order, rules that dishonour of post-dated cheque given for repayment of loan installment, which is described as 'security' in loan agreement, is covered by Sec. 138 of Negotiable Instruments Act; Notes that company had obtained loan from Respondent Co. and Appellant-Director had issued post-dated cheques by way of security and on company's default to repay, the cheques were dishonoured when presented; Interprets 'security' as referred in the agreement as 'cheques being towards repayment of installments', holds that **"once loan was disbursed and installments have fallen due on date of the cheque as per agreement, dishonour of such cheques would fall u/s 138. The cheques undoubtedly represent the outstanding liability"**; SC observes that crucial question to determine the applicability of Sec. 138 is whether cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability; Holds that cheques which were subject matter of the said complaint were towards partial repayment of the dues under loan agreement; Relies on its own ruling in HMT Watches Ltd. Vs M.A. Abida and Madras HC's ruling in Balaji Seafoods Exports (I) Ltd. Vs Mac Industries Ltd., states that **"while dealing with quashing petition, the Court has ordinarily to proceed on basis of averments in complaint; Defence of accused cannot be considered at this stage. Court considering the prayer for**

**quashing does not adjudicate upon a disputed question of fact”:
SC [LSI-1215-SC-2016-(NDEL)]**

✚ SC: Corrects HC’s grave error, puts ABG Shipyard directors in dock over cheque-bouncing SC reverses HC ruling, upholds Magistrate's order issuing summons to ABG Shipyard directors for dishonouring cheque issued to Standard Chartered Bank (SCB) towards repayment of short term loan; HC quashed Magistrate’s order on the ground that there were no allegations made by the Bank against ABG Directors connecting them to affairs of company (as required by Sec. 141 of Negotiable Instruments Act); SC peruses SCB's complaint petition wherein the Bank sought to press its case against ABG directors in the following words .. **“The accused Nos.2 to 7 are the Chairman, Managing Director, Executive Director and whole time Director and authorized signatories of accused No.1 respectively. As such being the Chairman, Managing Director, Executive Director and Whole Time Director were and are the persons responsible and in charge of day to day business of the accused No.1 viz. When the offence was committed”**; Noting the said assertion in the complaint petition, apex court holds **“HC has fallen into grave error by coming to the conclusion that there are no specific averments in the complaint for issuance of summons against the said accused persons”**; Refers to a catena of apex court decisions on the subject, relies extensively on SC decisions in Gunmala Sales Pvt. Ltd & SMS Pharma: SC [LSI-1057-SC-2016-(NDEL)]

✚ Madras HC grants permanent injunction restraining Puneet Mehta (defendant) from using trademark ‘TECHNOPLUS’ which it holds phonetically and deceptively similar to ‘TEXMO’(Plaintiffs), despite distinguishable products- Observes that “to come to a conclusion whether one mark is deceptively similar to another, it would be enough if the impugned trademark bears such an overall similarity to the registered trademark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.” [LSI-1291-HC-2016-(MAD)]

- ✚ **Delhi HC grants permanent injunction restraining Dinesh Mahajan (Defendant) from using its automobile lubricants 'TAVOLINE', a trademark deceptively similar to 'VALVOLINE', the registered trademark of Ashland Licensing and IP LLC (Plaintiff), for the same goods-** States that the purpose of law of infringement is not to allow a person to pass off his goods and services as of another and to prevent a person from causing deception and confusion, and therefore the test of infringement may vary depending on trade, country or category of customers. **[LSI-1292-HC-2016-(DEL)]**
- ✚ **Section 48 read with sections 3 and 4 of the Competition Act, 2002 dealing with Vicarious Liability of person incharge, etc. incase of contravention by companies-** A company cannot be held guilty at the back of the person incharge or anyone else who may be sought to be made vicariously liable under sub-section (1) or (2) of section 48. Such person must have opportunity to contest the proceedings at the very threshold and cannot be deprived of the opportunity to plead and demonstrate that the company itself is not liable at all. **Ministry of Agriculture & Farmers Welfare v. Mahyco Monsanto Biotech (India) Ltd. [2016] 135 CLA 83 (CCI)**

Arbitration Laws

By Advocate Praveen K Mittal, +91-9810826436

- ✚ **Section 7 of the Arbitration and Conciliation Act, 1996 deals with requirements of a valid agreement as (i) there has to be an agreement, (ii) it has to be writing, (iii) agreement must bear the signatures of the parties concerned, (iv) such agreement must contain an arbitration clause:** SC held that the requirements for a valid, binding and enforceable arbitration agreement is that it should strictly satisfy the contents of section 7 as mentioned above. **Vimal Kishor Shah and Ors. V. Jayesh Kishor Shah and Ors. [2016] 134 CLA 412 (SC)**

- ✚ Will or trust deed does not partake of the nature of an agreement between parties. If will is held not to constitute an arbitration agreement, the trust deed also cannot be held to constitute an agreement despite containing arbitration clause in it. **Vimal Kishor Shah and Ors. V. Jayesh Kishor Shah and Ors. [2016] 134 CLA 412 (SC)**
- ✚ Arbitration and Conciliation Act does not exclude any category of disputes terming them to be non-arbitrable. So mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. **A Ayyasamy v. A Paramasivam and Others. [2016] 135 CLA 1 (SC)**

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