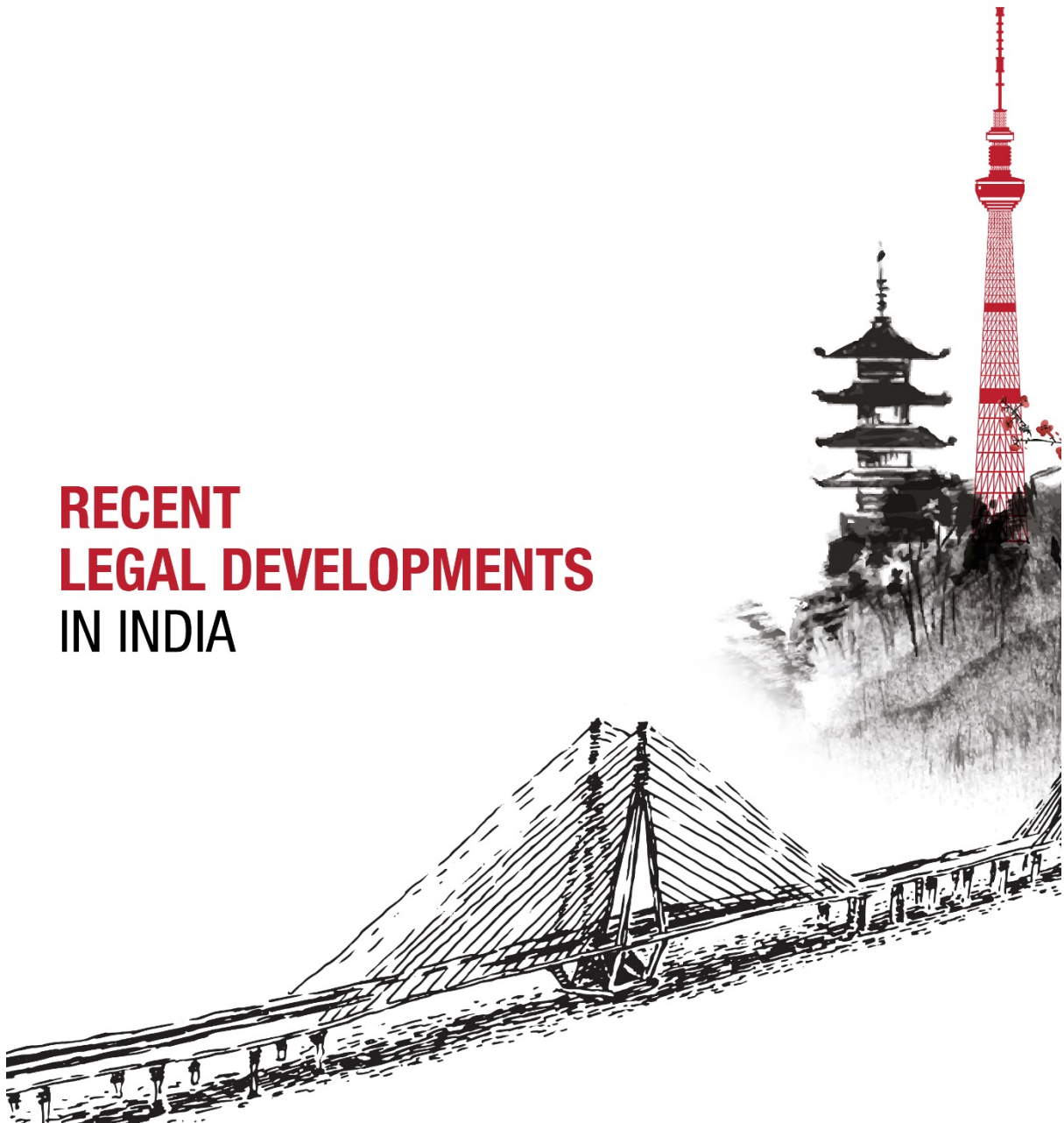


**RECENT  
LEGAL DEVELOPMENTS  
IN INDIA**



The IndusLaw 日本のニュースレター brings you the key regulatory and legal developments in various sectors in India.

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# INDUSLAW 日本のニュースレター

November 2016

## INDUSLAW

**INDUSLAW** is a multi-speciality Indian law firm with 15 partners and over 85 lawyers across four offices in Bangalore, Delhi, Hyderabad and Mumbai.

We advise foreign and domestic clients with respect to transactions, dispute resolution, business strategies and operations from the perspective of Indian laws and regulations.

Our clients are spread across several industry verticals and geographies. Our clients are typically financial institutions, investment funds, foreign multinationals operating in India, domestic corporations, growing Indian companies, start-ups, social enterprises and not-for-profit entities. These organizations usually look to us for sophisticated corporate & financial transactions and complex litigation & dispute resolution proceedings. We work with clients across various sectors including bio-tech, education, financial services, healthcare, hospitality, infrastructure, manufacturing, micro-finance, real estate & construction, rural services, retail including online retail, technology, travel & tourism, telecom and trading.

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## A. Foreign Direct Investment - Notifications by DIPP<sup>1</sup> and RBI<sup>2</sup>

### 1. RBI

#### Foreign Exchange Management (Manner of receipt and payment) Regulations, 2016

The Foreign Exchange Management (Manner of receipt and payment) Regulations, 2016 have been enacted with a view to supersede and repeal the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000; Foreign Exchange Management (Receipt from, and payment to, a person resident outside India) Regulations, 2000 and Foreign Exchange Management Notification (Transactions in Indian rupees with residents of Nepal or Bhutan) Regulations 2000. These regulations will govern the receipt and payment of foreign exchange with respect of certain specified stakeholders.

The regulations may be accessed at the following link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10653&Mode=0>

#### Foreign investment in Other Financial Services

The Government of India has decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulator viz. Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India in this regard. Such foreign investment shall be subject to conditionalities, including minimum

<sup>1</sup> Department of Industrial Policy and Promotion or DIPP is the nodal government authority having the primary responsibility to promote foreign direct investment in India.

<sup>2</sup> Reserve Bank of India or RBI is the central bank of India. Its primary responsibility is to regulate the monetary policy of the Indian economy.

capitalisation norms, as specified by the concerned Regulator/ Government Agency.

Please also find the link to the press release:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10650&Mode=0>

#### Investment by a Foreign Venture Capital Investor (FVCI) registered under SEBI (FVCI) Regulations, 2000

With a view to further liberalise and rationalise the investment regime for FVCIs and to give a fillip to foreign investment in the startups, the Government of India has sought to amend Schedule 6 of Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2000, through Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2016. The list of entities as provided in Schedule 6 is sought to be revised pursuant to this amendment.

Please also find the link to the press release:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10649&Mode=0>

#### External Commercial Borrowings (ECB) by Startups

The Reserve Bank of India has released its eligibility criteria for permitting Startup enterprises to access loans under ECB framework. The guidelines comprehensively provide the criteria which needs to be fulfilled for being eligible to raise external commercial borrowing from AD-I category banks.

Please also find the link to the press release:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10667&Mode=0>

### 2. SEBI

#### SEBI (Investment Advisers) Regulations, 2013

SEBI has issued a consultation paper on October 07, 2016 inviting public comments to the proposed clarifications to be issued in

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relation to SEBI (Investment Advisers) Regulations, 2013 (“Investment Advisers Regulations”). The proposals include re-look at the exemptions granted to mutual fund distributors and certain persons engaged in providing investment advice from seeking registrations. The proposal includes a mandate that investment advisory services to be provided by banks, NBFCs only through a separate subsidiary. The consultation paper also seeks to define the term “investment product” and includes restrictions on providing of trading tips.

The press release can be accessed at the following link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1475839876350.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1475839876350.pdf)

### Disclosure by listed insurance companies

SEBI vide Circular no. CIR/CFD/DIL/115/2016 dated October 24, 2016 has prescribed that listed insurance companies shall submit the following disclosures for quarters ending 30<sup>th</sup> September, 2016 and 31<sup>st</sup> December, 2016 in the formats, as specified by the IRDAI:

- i. Format for quarterly financial results
- ii. Format for Reporting of Segment wise Revenue, Results and Capital Employed along with the quarterly results.

The circular can be accessed at the following link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1477287349972.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1477287349972.pdf)

### SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI vide its circular no. SEBI/HO/CFD/CMD/CIR/P/2016/116 dated October 26, 2016 has issued instructions in respect of the “Freezing of Promoter and Promoter group Demat accounts for Noncompliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015”.

SEBI, vide Circular No.CIR/CFD/CMD/12/2015 dated November 30, 2015, had prescribed the uniform fine structure for non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) and Standard Operating Procedure for suspension and revocation of trading of specified securities. However, SEBI observed that some of the non-compliant listed entities have not paid the fines levied by the recognized stock exchange(s). As such, in order to ensure effective enforcement, it has been decided in consultation with recognized stock exchanges to freeze the holdings of their promoters and promoter group entities in the manner specified in the said circular.

The circular can be accessed at the following link:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1477480389564.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1477480389564.pdf)

### FDI

#### Investment by Foreign Portfolio Investors (FPI) in Government Securities

The limits for investment by FPIs in Central Government Securities for the next half year are proposed to be increased in two tranches, each of Rs. 100 billion from October 3, 2016 and January 2, 2017 respectively.

Further, the limits for State Development Loans (SDLs) are proposed to be increased in two tranches, each of Rs.35 billion, from October 3, 2016 and January 2, 2017 respectively.

The notification can be accessed at the following link:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT72CBFD86AAB2614474AE0E0FC09734CE7B.PDF>

**RBI seeks Feedback on Draft Framework for approving Indian Parties investing in Overseas Startups through Overseas Technology Fund.**

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The Reserve Bank of India (RBI) has today placed on its website for comments/feedback, the proposed draft framework for according approval to Indian parties investing in overseas startups through an overseas technology fund under the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, as amended from time to time. Comments / feedback on the draft framework may be e-mailed on or before October 12, 2016.

Investment by Indian parties in overseas technology funds which further invest in overseas startups, does not meet the eligibility norms for making the overseas direct investment under the automatic route in terms of Regulation 6 or 7 of Notification No. FEMA 120 dated July 07, 2004, as amended from time to time. It is proposed that the Reserve Bank will deal with such requests under the approval route in terms of Regulation 9 of the same Notification, which enables an Indian party to seek prior approval if they do not satisfy the eligibility norms for automatic route.

The notification can be accessed at the following link:

<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR8180AF7AEA1FDE3431EAE072A3EDBB2054F.PDF>

## **Simplification of the process of dealing with matured but unpaid ECB**

RBI has through its notification 'External Commercial Borrowings (ECB) - Extension and conversion' dated October 20, 2016 simplified the process of dealing with matured but unpaid ECB. It has decided to delegate the powers to designated AD Category-I banks to approve requests from borrowers for extension of matured but unpaid ECB, and to approve cases of conversion of matured but unpaid ECB into equity, subject to the following conditions: (a) No additional cost is incurred; (b) Lender's consent is available; (c) Reporting requirements are fulfilled. Further, if the ECB borrower has availed credit facilities from the Indian banking system including overseas branches/subsidiaries, any extension of tenure / conversion of unpaid

ECBs into equity (whether matured or not) shall be subject to applicable prudential guidelines issued by RBI and such conversion shall also be subject to consent of other lenders, if any, or at least information regarding conversions shall be exchanged with other lenders of the borrower.

## **B. Infrastructure Sector Updates**

### **Amendment to the Ministry of New and Renewable Energy (MNRE) Guidelines for selection of 3000 MW Grid-connected solar photovoltaic power projects under National Solar Mission Phase II, Batch II, Tranche I - State Specific Bundling Scheme**

Section 3.5 (A) titled "Qualification Criteria for Shortlisting of Bids/Projects - Financial Criteria" of the MNRE Guidelines earlier read as follows:

*"Infusion: Minimum paid-up share capital will be Rs. 1.2 crore per MW. 20% of the paid up share capital shall be infused at the time of signing of PPA and 50% at the time of Financial Closure and shall be supported with the relevant bank statements. Remaining will have to be infused before commissioning."*

The amendment, effective from 30 September 2016, now requires the solar power developers to demonstrate/infuse capital in the form of Equity for an amount of at least Rs. 1.2 crore/MW. 20% of the infusion shall be done at the time of signing of the power purchase agreement and 50% at the time of Financial Closure and such infusion shall be supported with the relevant bank statements. The remaining amount will have to be infused before commissioning. The amendment specifically states that share premium will also form an integral part of the Equity, provided the same is realised in cash or cash equivalent - however, this condition is not applicable in case of listed companies.

### **Waiver of Inter-State Transmission Charges and Losses on Transmission of Electricity generated from Solar and Wind Sources of Energy**

In exercise of powers conferred under Section 3 (3) of the Electricity Act, 2003, the Central Government had notified the revised Tariff

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Policy (published vide Gazette of India - Extraordinary, Part - I, Section - I dated 28 January 2016). Pursuant to Para 6.4 (6) of the revised Tariff Policy, the Ministry of Power has issued an order dated 30 September 2016 in relation to waiver of inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy. The order notifies as follows:

(a) For generation projects based on solar resources, no inter-state transmission charges and losses will be charged for use of inter-state transmission system by such projects commissioned till 30 June 2017 in accordance with Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2015. This waiver will be available for a period of 25 years from the date of commissioning of such projects.

(b) For generation projects based on wind resources, no inter-state transmission charges and losses will be levied on transmission of electricity through the inter-state transmission system for sale by such projects commissioned till 31 March 2019. This waiver will be available for a period of 25 years from the date of commissioning of such projects and only for the projects involving execution of power purchase agreements for sale of electricity to the DISCOMs for compliance with their renewable purchase obligations.

Please note that the waivers discussed above will only be available to wind and solar energy

projects awarded through competitive bidding process.

It can be further accessed at the following link:

[http://powermin.nic.in/sites/default/files/webform/notices/waiver\\_of\\_inter\\_state\\_transmission\\_charges\\_and\\_losses.pdf](http://powermin.nic.in/sites/default/files/webform/notices/waiver_of_inter_state_transmission_charges_and_losses.pdf)

#### **Amendments to the Electricity Rules, 2005**

The Ministry of Power has proposed amendments to the Electricity Rules, 2005 relating to captive generating plants. The definition of 'ownership' is proposed to be amended so as to include 'full rights' with respect to shares such as value of shares, sharing of profit/dividends, capital appreciation etc. If notified, the amendment to the Electricity Rules would no longer allow equity holding structures where different classes of shares are created for the captive user.

The notice can be accessed at the following link:

[http://powermin.nic.in/sites/default/files/webform/notices/proposed\\_amendment\\_in\\_electricity\\_rules\\_2005.pdf](http://powermin.nic.in/sites/default/files/webform/notices/proposed_amendment_in_electricity_rules_2005.pdf)

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