

CLIENT UPDATE

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1. BANKING & FINANCE

BANKING LAWS AMENDMENT BILL, 2012

Both houses of Parliament have passed the Banking Laws (Amendment) Bill, 2011 (the “**Bill**”). This Bill seeks to amend the existing (a) Banking Regulation Act, 1949; (b) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; and (c) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

The salient features of the Bill are as follows:

1. Banking companies have now been permitted to issue preference shares, subject to guidelines to be issued by the Reserve Bank of India (“**RBI**”).
2. The Bill empowers RBI to increase the cap on voting rights to 26% per shareholder, from the present 10% per shareholder, in a phased manner.
3. RBI has been empowered to accord its approval for the acquisition of 5% or more shares in a banking company by any person (together with persons acting in concert), subject to such terms and conditions as it deems fit. RBI has also been empowered to restrict a banking company from effecting a transfer of shares, and in the event a transfer has already occurred, to disentitle the transferee from exercising any voting rights. This provides statutory recognition to guidelines issued by RBI which gave RBI similar powers.
4. RBI will now have the power to take over the management and administration of a banking company by ‘superseding’ its board of directors by appointing an administrator to assume all the duties and functions of the board of directors. RBI must exercise this power in consultation with Government of India and record reasons in writing for such action, which can be for a maximum period of up to 12 months. Although the section applies to all “banking companies” (which by definition includes branches in India of foreign banks), it is not yet clear whether (and how) this power may be applied with respect to Indian branches of foreign banks.

2. CORPORATE

THE COMPANIES BILL, 2012

The Lok Sabha on December 18, 2012 passed the much-awaited Companies Bill, 2011 (the “**Bill**”), paving the way for a new, modern company law. The Bill is aimed at improving corporate governance and contains provisions to strengthen regulations for corporate as well as auditing firms. Once enacted as law, it will replace the Companies Act, 1956.

The salient features of the Bill are as follows:

1. The concept of a One Person Company and dormant companies has been introduced. A One Person Company will be a private limited company.
2. A private company can have a maximum of 200 members, up from 50 in the Companies Act, 1956.
3. The term ‘private placement’ has been defined to bring clarity.
4. A company may issue preference shares for a period exceeding twenty years for infrastructure projects subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders.
5. Every company shall deliver debenture certificates within six months of allotment.
6. Every company belonging to such class or classes of companies as may be prescribed shall have whole-time key managerial personnel.
7. Concept of independent directors has been introduced for the first time in company law. All listed companies shall have at least one-third of the board as independent directors.
8. An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the board and other meetings and profit related commission as may be approved by the members. An independent director shall not be entitled to any stock option.
9. For the first time the duties of directors have been defined in the Bill. If a director of the company contravenes the newly introduced provisions, such director shall be punishable with a fine which shall not be less than one lakh Rupees but which may extend to five lakh Rupees.
10. Every contract or arrangement entered into with a related party shall be referred to in the Board’s Report to the shareholders along with the justification for entering into such contract or arrangement.
11. Every company having a net worth of Rupees 5000 crore or more, or turnover of Rupees 1000 crore or more or a net profit of Rupees 5 crore or more during any financial year shall constitute a Corporate

Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

12. The board of every company shall ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
13. A company can make investments through not more than two layers of investment companies, unless otherwise prescribed. This shall not affect a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country or a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
14. The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.
15. To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means.
16. Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Bill and the Rules made there under. The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.
17. A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of the sixth annual general meeting. However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
18. The Bill makes provision for cross border amalgamations between Indian companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.
19. No compromise or arrangement shall be sanctioned by the National Company Law Tribunal (the “**Tribunal**”) unless a certificate by the Company’s Auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under clause 133 of the Bill¹.

¹ **Clause 133 Central Government to prescribe accounting standards:** The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

3. TAXATION

DOUBLE TAX AVOIDANCE AGREEMENT BETWEEN INDIA AND UK AMENDED

The Government of India and UK signed a Protocol amending the Convention between India and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect of Taxes on Income and Capital Gains. This Protocol amends the earlier Convention that was signed in New Delhi on January 25, 1993.

The Protocol provides for extension of benefits of the Convention to the income derived by a partnership, estate, or trust, to the extent the income derived is subject to tax in that State as the income of a resident, either in its hands or its partners or beneficiaries.

The Protocol incorporates in the Convention, provisions for effective exchange of information between tax authorities of the two countries in line with latest international standards including exchange of banking information and supplying of information irrespective of domestic interest. It now also provides for sharing of information to other agencies with the consent of the supplying State.

There would now be a new article in the Convention on assistance in collection of taxes. This article also includes provisions for taking measures of conservancy. The Protocol also incorporates into the Convention anti-abuse (limitation of benefits) provisions to ensure that the benefits of the Convention are not misused. Both the countries would further enter into MOUs to expedite exchange of information and assistance in collection of taxes.

The Convention, as amended by this Protocol, will provide tax stability to the residents of India and U.K. and will facilitate mutual economic cooperation between the two countries. It will also stimulate the flow of investment, technology and services between India and U.K.

4. TRADE & INVESTMENT

LOANS TO NON RESIDENTS / THIRD PARTIES AGAINST SECURITY OF NON RESIDENT (EXTERNAL) RUPEE ACCOUNTS/ FOREIGN CURRENCY NON RESIDENT (BANK) ACCOUNTS DEPOSITS

RBI has permitted Authorised Dealers Category-1 banks ('ADs') to sanction rupee loans in India, or foreign currency loans outside India, to either the account holder, or to a third party to the extent of the balance in the Non Resident (External) Rupee Accounts ('NR(E)RA')/Foreign Currency Non Resident (Bank) ('FCNR(B)') accounts/deposits, subject to margin requirements. The position has been revised from the original position under Foreign Exchange Management (Deposit) Regulations, 2000, as hereunder:

	Existing provision	Proposed provision
Rupee loans in India		
Loans against NR(E)RA /FCNR(B) Fixed Deposits	Rs. 100 lakhs ceiling applicable	Rupee loans to be allowed to depositor/third party without any ceiling subject to usual margin requirements.
Foreign Currency loan in India/ outside India		
Loans against NR(E)RA /FCNR(B) Fixed Deposits	Rs. 100 lakhs ceiling applicable	Foreign Currency loans to be allowed to depositor/third party without any ceiling subject to usual margin requirements.

EXPORT OF GOODS AND SOFTWARE – REALISATION AND REPATRIATION OF EXPORT PROCEEDS – LIBERALISATION

The RBI vide A.P. (DIR) Series Circular No. 40 dated November 1, 2011 had enhanced the period from six months to twelve months for the realisation and repatriation to India of the full value of the export proceeds in respect of goods or software exported. The aforementioned relaxation was valid till September 30, 2012.

The RBI vide A.P. (DIR) Circular No. 52 dated November 20, 2012 has now extended the aforementioned relaxation period till March 31, 2013. The said relaxation comes into effect from October 1, 2012. Provisions relating to period of realization and repatriation to India of the full value of goods or software exported by a unit situated in a Special Economic Zone, as well as the exports made to warehouses established outside India, remain unchanged.

LIAISON OFFICE ("LO")/BRANCH OFFICE ("BO") IN INDIA BY FOREIGN ENTITIES – REPORTING TO INCOME TAX AUTHORITIES

The RBI vide A.P. (DIR Series) Circular No. 55 dated November 26, 2012 has explained that LO and BO are required to furnish copies of the Annual Activity Certificates ("AAC") to the Director General of Income Tax (International Taxation). The AACs so submitted should be accompanied by audited financial statements.