

CLIENT UPDATE

June 2014

EXECUTIVE SUMMARY

CORPORATE

Corporate Social Responsibility Rules, 2014 were released by the Ministry of Corporate Affairs. Companies that meet thresholds provided in the rules are required, *inter alia*, to contribute at least 2% (two percent) of their average net profits during the three immediately preceding financial years.

The scope of what constitutes “pecuniary relationship” between a company and its directors for the purposes of determining whether a director is “independent” has been clarified.

FOREIGN EXCHANGE

Renewal or rollover of an existing guarantee which forms part of the total financial commitment of an Indian party will not be treated as a fresh financial commitment, provided that the existing guarantee was issued in terms of the prevailing Foreign Exchange Management Act, 1999.

TELECOM

Private firms including telecom companies come under the ambit of the Comptroller and Auditor General.

BANKING & FINANCE

The Reserve Bank has released final guidelines on ‘Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders’. This is a framework for revitalising distressed assets in the economy.

INFRASTRUCTURE

The Competition Commission imposed a fine of INR 1,77,30,000 (Indian Rupees One Crore Seventy Seven Lakhs and Thirty Thousand) on Coal India Ltd. for anti-competitive behaviour.

EMPLOYMENT

The Supreme Court has held that the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.

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I. CORPORATE

1. The Corporate Social Responsibility (“**CSR**”) provisions of the Companies Act, 2013 apply to every company which:
 - a. has a net worth of INR 5,000,000,000 (Indian Rupees Five Billion) or more; or
 - b. has a turnover of INR 10,000,000,000 (Indian Rupees Ten Billion) or more; or
 - c. has made a net profit of INR 50,000,000 (Indian Rupees Fifty Million) or more; and foreign companies that have branch or project offices in India that meet the requirements mentioned above.

A company that satisfies the aforesaid requirements has to comply with certain prescribed CSR obligations including contribution of at least 2% (two percent) of the average net profits of the company made during the three immediately preceding financial years, with preference being given to local areas around which the company operates and formulation of a CSR policy and constitution of a CSR committee.

2. Independent Directors (“**IDs**”) are those directors, who do not have a **material pecuniary relationship** with the company, its promoters, management or subsidiary(ies) which may affect the independence of their judgment. Section 149 of the 2013 Act gives us complete information on the concept of IDs. It has been clarified by the Ministry of Corporate Affairs (“**MCA**”) that “pecuniary relationship” between a company and its IDs would not cover the following:
 - a. Transactions in the ordinary course of business at arm’s length price; and
 - b. Receipt of remuneration, from one or more companies (by way of fee), reimbursement of expenses for participation in board and other meetings and profit related commission approved by the members.
3. The MCA has made it compulsory for a company which has a paid-up share capital of INR 5,00,00,000 (Indian Rupees Five Crore) or more to have a whole-time company secretary.

II. FOREIGN EXCHANGE

The Reserve Bank of India (“**RBI**”) has, by a circular dated January 3, 2014, prescribed that the renewal or rollover of an existing/original guarantee which forms part of the total financial commitment of an Indian party under Regulation 6 of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2004 will not be treated as a fresh financial commitment, provided that: the existing/original guarantee was issued in terms of the prevailing Foreign Exchange Management Act, 1999, there is no change in the end-use of the guarantee (i.e. facilities are to be availed by the joint venture, wholly owned subsidiary, or step down subsidiary of the guarantor), there is no change in any of the terms and conditions of the guarantee, including the amount of the guarantee, but excluding the validity period, reporting of the rollover guarantee is done as a fresh financial commitment; and any enforcement or regulatory body investigating the Indian party is kept informed about the rollover of the guarantee. Non-fulfilment of any of the above conditions will require the Indian party to obtain prior RBI approval for the rollover of the existing guarantee through the designated authorised dealer bank.

III. TELECOM

The Supreme Court has held in the case of *Association of Unified Telecom Service Provider v. Union of India*, Special Leave Petition (Civil) No.1804 of 2014 that private firms including telecom companies will come under the ambit of the Comptroller and Auditor General (“CAG”). The order has brought all private companies using natural resources on the basis of a revenue-sharing arrangement with the government within the scrutiny of CAG.

IV. BANKING & FINANCE

On January 20, 2014, the RBI released the final guidelines on ‘Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy - Non- Performing Assets Guidelines’ (“NPA Guidelines”). The NPA Guidelines have definitive provisions for banks and non-banking financial companies requiring a corrective action plan that will incentivise early identification of problem cases, timely restructuring of accounts that are considered viable, and prompt steps by banks for recovery or sale of unviable accounts.

V. INFRASTRUCTURE

In *Maharashtra State Power Generation Company Ltd. vs. Mahanadi Coalfields Ltd. & Ors* 2013 Comp LR 910 (CCI) the Competition Commission of India (“CCI”) imposed a fine of INR 1,77,30,000 (Indian Rupees One Crore Seventy Seven Lakhs and Thirty Thousand) on Coal India Ltd. (“CIL”) for anti-competitive behaviour. According to CCI, unfairness emanates from the fact that CIL is in a position to influence the terms and conditions of Fuel Supply Agreements that it enters into and has inclined them in its favour. There has been an attempt to formulate the contract with unequal non-benign effect on the buyer and therefore, CIL’s Fuel Supply Agreements are in contravention of Section 4 of the Competition Act, 2002.

VI. EMPLOYMENT

The Supreme Court decided the status of casual labour/daily wager/temporary employee in *Nand Kumar v. State of Bihar* (2014) 5 SCC 300 and stated that daily wagers are not appointees in the strict sense of the term “appointment”. The scheme of alternative appointment framed for regular employees cannot confer similar entitlement on daily wagers of the same organization. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant.