Note on

RECENT LEGAL DEVELOPMENTS

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BANKING AND FINANCE

Microfinance

The Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Act, 2011, which aims at curtailing coercive practices by microfinance institutions, came into effect on January 01, 2011.

Key provisions of the Act are as follows:

1. No micro financing institution ("**MFI**") can recover interest on the loan advanced by it to any borrower in excess of the principal amount. All loans in respect of which an MFI has realized from the borrower, an amount equal to twice the amount of the principal shall stand discharged and the borrower can obtain a refund of the excess money paid by him;
2. All MFIs have to be registered with the government within thirty days. An MFI which is not registered cannot grant a loan;
3. No member of a self help group ("**SHG**") can be a member of more than one SHG. If a person is a member of more than one group then that person has the option to retain the membership of one SHG;
4. No MFIs shall seek any security from a borrower by way of pawn, pledge or security for a loan;
5. MFIs will need prior approval for grant of further loans to SHGs or their members if the SHGs already has an outstanding loan from a bank;
6. Every MFI shall submit a monthly statement to the registering authority before the 10th of every month with the list of borrowers, loan given to each one and the interest charged by them;
7. The registering authority has the power to require production of records or documents and power of entry, seizure and inspection.

Guidelines on Fair Practices Code for Lenders

By way of a circular dated November 12, 2010, RBI has mandated that banks "*must disclose 'all in cost' inclusive of all …. charges involved in processing / sanction of loan application in a transparent manner to enable the customer to compare the rates / charges with other sources of finance*". The RBI clarified that banks must disclose to a borrower, all information about fees/charges and other costs payable in relation to any loans at the time of a borrower applying for a loan. In addition to requiring that such fees/charges are non-discriminatory, information relating to prepayment options and charges, penalty clauses, conversion charges, interest reset clauses and any other information that affects a borrower, is also required to be fully disclosed to a potential borrower.

TELECOMMUNICATIONS

The Telecom Regulatory Authority of India ("**TRAI**"), on December 1, 2010 issued the Telecom Commercial Communications Customer Preference Regulations, 2010 ("**TCCCP Regulations**"), which specify various measures that can be taken by a telecom consumer against telemarketers in order to curb

unsolicited commercial communications. The TCCCP Regulations cover both commercial calls as well as SMSs. Key features of the TCCCP Regulations are as follows:

1. The TCCCP Regulations mandate registration of both customers (with the service providers) and telemarketers (in a national registry, to be set up). There are two categories under which a consumer may be registered: fully blocked category (in which case the consumer will not receive *any* communications from telemarketers) and partially blocked category (in which case the consumer will only receive text messages with respect to the service category opted for by the consumer). There are seven categories from which the customer can choose:

    a. Banking/insurance/financial products/credit cards;
    b. Real estate;
    c. Education;
    d. Health;
    e. Consumer goods and automobiles;
    f. Communication/broadcasting/entertainment/IT; and
    g. Tourism and leisure.

2. Telemarketers are required to enter into an agreement with the telecom licensees in order to obtain telecom resources. One of the terms of the agreement requires telemarketers to make a security deposit with the telecom licensees, and in case of any default from telemarketers, the service provider is required to deduct certain amounts in the manner prescribed in the TCCCP Regulations. The defaulting telemarketers will be liable to pay increasing amounts with every additional default. Upon the commission of an offence for the sixth time, the telemarketer will be blacklisted by TRAI, all its resources will be disconnected for a period of two years and its license will be cancelled by TRAI.

3. A separate numbering series (70XXXXXXXX) will be allocated for telemarketers, so that all telemarketing calls can be easily identified.

4. The TCCCP Regulations mandate that no commercial communication, even for unregistered customers, shall be sent between 9.00 pm to 9.00 am, so as not to disturb the customers at night.

INSURANCE

In order to ensure better control over the outsourcing of activities by insurers, the Insurance Regulatory and Development Authority ("**IRDA**") issued guidelines on outsourcing by insurance companies on November 8, 2010 (the "**Outsourcing Guidelines**"). The Outsourcing Guidelines classify the activities of insurers into two broad categories *i.e.*, 'core activities' and 'non-core activities'. The definition of 'core activities' is inclusive, covering underwriting, product design, actuarial functions, investment, premium collections, data storage (physical and image), cheque pickup and banking of cheques, admitting or repudiation of all claims, bank reconciliation, policy servicing (except registering complaints / grievances / enquiries), approving advertisements, appointment of surveyors and loss assessors, fund accounting (including net asset value calculations) compliance with anti-money laundering legislations, know your customer related regulations and all other activities not specified as

‘non-core activities’. The ‘non-core activities’ have been defined, *inter alia,* as facility management *i.e.* housekeeping, security, office boys *etc.*, provident fund trust, internal audit, internal / branch / concurrent audit *etc.*, website development and management, pay roll management, human resource services, service tax consultancy and support, tax deduction at source filing, compliance with labour laws, data entry (including scanning, indexing services), printing and posting of reminders and other documents, pre-employment medical checkups, call centre and outbound calling for registering complaints or answering enquiries, claim processing for overseas medical insurance contracts and telemarketing. Outsourcing of core activities has been prohibited, and only non-core activities may be outsourced.

COMPETITION LAW

The Competition Commission of India (“**CCI**”) passed its first final order on December 2, 2010. In the case of *Neeraj Malhotra v. Deustche Post Bank Home Finance & Ors*., CCI has dealt with the issue of prepayment penalties levied by banks and Non Banking Finance Companies (“**NBFCs**”) on housing loans and has held that the charging of prepayment penalties by banks, NBFCs and housing finance companies is not in violation of the Competition Act, 2002 (“**Competition Act**”). It was alleged that several leading banks and NBFCs were following a practice and taking decisions in concert to levy a penalty on borrowers, ranging between 1 per cent and 4 per cent of the outstanding principal amount if borrowers wished to prepay or foreclose their home loans. This penalty discouraged borrowers from switching over their loans to other lenders who were offering loans at a cheaper rate of interest and increased the effective rate of interest payable by the borrowers. It was alleged that such a practice caused an appreciable adverse effect on competition in India. It was also alleged that lenders providing home loans were abusing their dominant position within the public domain by imposing unfair and discriminatory conditions while providing loans.

CCI did not find any ‘agreement’ among such lenders to charge prepayment penalties. Furthermore, in light of economic evidence produced by the home loan providers showing that in fact the home loan market had registered growth during the period when collusion was alleged, such prepayment penalties could not be held to cause an appreciable adverse effect on competition in India.

Two members of CCI did not agree with this majority decision, and in two separate dissenting orders, held that there were various violations of the Competition Act by home loan lenders.

CAPITAL MARKETS AND SECURITIES LAW

In line with the objective of enhancing the quality of disclosures made by listed entities, the Securities and Exchange Board of India (“**SEBI**”) has effected certain amendments to the Equity Listing Agreement (“**LA**”) with respect to various continuous disclosures made by listed entities by way of its circular dated December 16, 2010. Some of the key amendments are as follows:

1. Entities which seek listing of their securities post-IPO shall mandatorily submit their shareholding pattern as per Clause 35 of the LA one day prior to the date of listing, in order to ensure public dissemination of updated shareholding pattern. The stock exchanges shall upload the same on their websites before commencement of trading in the said securities. Furthermore, all cases wherein a change in capital structure due to restructuring exceeds +/- 2% of the paid up share

capital of the entities, the listed entities shall file a revised shareholding pattern with the stock exchanges within 10 days from the date of allotment of shares pursuant to such change in the capital structure.

2. Disclosure in respect of listed companies that have issued depository receipts ("**DRs**") outside of India, are now required to be segregated into two categories: those pertaining to the 'promoter / promoter group' and those pertaining to the 'public'. The objective is to reveal the actual promoter stake in companies that have issued DRs.

3. Amendments have been made to Clause 40A of the LA in order to align it with the amended Securities Contracts (Regulation) Rules, 1957 ("**SCR Rules**"). The Government of India had previously amended the SCR Rules, and fixed a minimum 25 per cent public shareholding for all listed companies (except public sector companies that are allowed a 10 per cent floor). In order to align the requirements in the LA with the amended SCR Rules, the LA has been amended to provide that listed companies comply with the requirements specified in Rule 19(2) and Rule 19A of the SCR Rules, Earlier, the listing agreement, too, had a 25 per cent public shareholding requirement, but with several relaxations. SEBI has also specified the methods by which companies can raise their public shareholding in order to comply with the SCR Rules, which are: (i) by issuing fresh shares; (ii) by an offer for sale by the promoters; or (iii) by the promoters selling in the secondary market.

4. In order to enable investors to manage their cash/securities flows efficiently and to enhance process transparency, it has been decided to mandate companies to have a pre-announced fixed pay date for payment of dividends and for credit of bonus shares.

5. A new Clause 53 has been inserted in the LA, which will be applicable with immediate effect, requiring listed companies to disclose details of agreements with media companies (involving equity issuance) on such companies' websites; and notify the relevant stock exchanges of such agreements for public dissemination.

6. Listed companies are required to maintain a functional website that contains certain basic information about them, duly updated for all statutory filings (including agreements entered into with media companies, if any). This requirement will be applicable with effect from April 1, 2011.