

# CLIENT UPDATE

July 2015

## EXECUTIVE SUMMARY

The following legal developments have been discussed in this document:

1. *RBI's Strategic Debt Restructuring Scheme*: This facilitates conversion of outstanding loans into a majority shareholding in the defaulting company
2. *Amendment to the Companies (Incorporation) Rules, 2014*: The process of incorporation has been simplified somewhat
3. *MCA Notification Granting Exemptions in the Applicability of Certain Provisions of the Companies Act, 2013 to Private Companies*: Private companies have been exempted from a number of requirements of the Companies Act, 2013
4. *Amendment to Companies (Declaration and Payment of Dividend) Rules, 2014*: Certain restrictions on declaration of dividends have been lifted
5. *Introduction of the Black Money Act*: This new statute has been passed to keep in check the unaccounted/black/parallel economy

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## 1. RBI STRATEGIC DEBT RESTRUCTURING SCHEME

The Reserve Bank of India (“**RBI**”) has introduced the strategic debt restructuring scheme (“**SDR Scheme**”), by way of which banks will have the option to convert outstanding loans and interest into equity shares.

- This option may be exercised by the banks in an event where the borrower is unable to achieve the viability milestones and/or adhere to critical conditions stipulated in the restructuring package.
- The objective of invoking the SDR Scheme is to permit the lenders to collectively acquire 51% or more of the equity shares issued by the borrower and replace the management team/ promoter group in the event of repeated default.

## 2. AMENDMENTS TO THE COMPANIES (INCORPORATION) RULES, 2014

The process of incorporation of a company in India has been simplified through certain key amendments to the Companies (Incorporation) Rules, 2014. Specifically, the forms for application and allotment of a director identification number, application for name approval and application for incorporation of company have been consolidated into a single form.

## 3. MCA NOTIFICATION GRANTING EXEMPTIONS IN THE APPLICABILITY OF CERTAIN PROVISIONS OF COMPANIES ACT, 2013 TO PRIVATE COMPANIES

Several changes to the Companies Act, 2013 (the “**Act**”) have been brought about by the passing of the Companies (Amendment Act), 2015. Further, by way of a notification dated June 5, 2015, the Ministry of Corporate Affairs has prescribed several exemptions for private companies from the requirements of various sections of the Act including:

- Provisions relating to Notice of General Meeting, Explanatory statements, Quorum, Chairman of the Meeting, Proxies, Restrictions on voting rights, Voting by show of hands, and Demand for a poll as contained in section 101 to section 107 and section 109; and
- Provisions dealing with restrictions on powers of Board in respect of sale, lease of undertaking, borrowings in excess specified limits, making of investments etc. as contained in section 180.

## 4. AMENDMENT TO COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014

The MCA has, by way of notification dated May 29, 2015, amended the Companies (Declaration and Payment of Dividend) Rules, 2014. Rule 3(5), which specified that a company can only declare dividend when it has carried over previous losses and depreciation not provided in previous year or years are set off against the profit of the company of the current year, has been deleted.

## 5. BLACK MONEY ACT

On May 26, 2015, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act (“**Black Money Act**”) was brought into force through Presidential asset. The Black Money Act seeks to keep in check the unaccounted/black/parallel economy that exists in India and bring such monies to account. Illegal incomes that were previously taxed under the Income Tax Act will now be taxed under this Black Money Act. Taxpayers will need to declare details of any foreign assets held by them as a part of their income tax returns, and cover undisclosed assets not declared by the taxpayer in their returns.

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