

CHANGING ENVIRONMENT AND REFORMS

In India, significant reform oriented measures have been undertaken to improve ease of doing business in India and bring positive changes in the business environment and to enhance the business oriented environment. Some of the recent key reforms are discussed herein below:

INCORPORATION OF COMPANIES:

The Companies Act, 2013 ('the Act') Chapter II read with the Companies (Incorporation) Rules, 2013 ('the Rules') deal with the procedure related to incorporation of companies. The Act permits incorporation of One Person Company in addition to Private Limited and Public Limited Companies. As per the Act and the Rules, persons desirous to form a company are required to make an application to the Registrar of Companies for reservation of name of the proposed company. For registration of companies, certain documents are required to be filed, alongwith requisite fee, with the Registrar of Companies *inter alia* including the following: (a) Memorandum and Articles of Association of the proposed company, (b) a declaration that all requirements of the Act have been duly met, (c) an affidavit from subscribers to the memorandum and first directors in the articles. Registrar of Companies issues a certificate of incorporation and the company comes into existence from the date mentioned in the certificate of incorporation. Companies having obtained the certificate of incorporation need to have a registered office within 15 days from the date of incorporation.

Furthermore for simplifying the registration procedure, an integrated process for incorporation is also introduced with effect from 01-05-2015 wherein a single form, i.e Form No. INC-29, needs to be filed with Registrar of Company for obtaining DIN, reservation of name, incorporation of company and appointment of directors of the proposed company.

In the beginning of the year 2016, a Central Registration Centre ('CRC'), having territorial jurisdiction across India has been established for carrying out or discharging the function of processing and disposal of applications for reservation of names by companies under the provisions of the Act. Later, additional powers were granted to CRC conferring functional jurisdiction of processing and disposal of e-forms and all related matters pertaining to registration of companies having territorial jurisdiction all over India. Through another notification, Central Government amended the Companies (Incorporation) Rules, 2014 pursuant to which certain names which were earlier considered to be undesirable for incorporation of a company under the Companies Act, 2013 are now allowed to be applied, such as: (i) name which is not in consonance with the principal objects of the company as set out on the memorandum of association; (ii) name which is vague or an abbreviated name; (iii) name which is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal. The notification also removed the need for change of name if the company has changed its activities which are not reflected in its name.

Further to amend the Act, the Companies (Amendment) Bill, 2016 ('The Bill') has been introduced in Lok Sabha on 16th March, 2016 as part of efforts to address difficulties faced by stakeholders and to improve the ease of doing business in India. The Bill, approval of which is still pending in the Lok Sabha, and has been referred to the Parliamentary Standing Committee, seeks to bring certain changes in the Act including amendments pertaining to incorporation of companies. The Bill attempts to hold every member of the company, who are cognizant of the fact, severally liable for the payment of the whole debts of the company contracted in case of business being carried by less than seven persons (in case of public company) or less than two members (in case of private company) for more than six months. The Bill also seeks to allow companies to pursue any lawful activity but in case the objects mentioned in the Memorandum are specific in nature, then the business activities of a company shall have to be in strict pursuance of those specific object/objects. Furthermore requirement to have a registered office within fifteen days has been relaxed to thirty days.

FOREIGN DIRECT INVESTMENT

In its initiative of 'Make in India' program, the present government has been liberalizing the foreign investment policy. Foreign Investment in India is governed by the Foreign Exchange Management Act,

1999 which prescribe inter-alia mode of investments, manner of receipt of funds, pricing guidelines, reporting requirements, etc. Consolidated FDI Policy formulated by Department of Industrial Policy and

Promotion (DIPP), Ministry of Commerce and Industry, Government of India, which is issued on a yearly basis, embodies a policy framework on Foreign Direct Investment in India.

In last two years, Government has brought significant FDI policy reforms in a number of sectors namely Defence, Construction Development, Insurance, Pension, Broadcasting Sector, Tea, Coffee, Rubber, Cardamom, Palm Oil Tree and Olive Oil Tree Plantations, Single Brand Retail Trading, Manufacturing, Civil Aviation, Credit Information Companies, Satellites- establishment/operation and Asset Reconstruction Companies opening the sector and relaxing the sectoral conditions.

Recently Department of Industrial Policy and Promotion has made major changes to the FDI policy vide Press Note 5 (2016 series) dated 24th June, 2016. Changes introduced in the policy include increase in sectoral caps, bringing more activities under automatic route and easing of conditionality for foreign investment in various sectors such as defence, civil aviation, retail trading, pharmaceuticals, private security agencies, *inter alia* including the following:

- i. Civil Aviation Sector: 100% FDI has been permitted under the automatic route in brownfield projects of airports. Earlier, in brownfield projects of airports, 74% FDI was permitted under the automatic route and beyond 74% under government approval was required.
- ii. Single Brand Retail Trading: Sourcing norms have been relaxed for a period of up to three years from the commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having "state-of-art" and "cutting-edge" technology, the relaxation is for another period of five years.
- iii. Food Processing: 100% FDI is permitted under government approval route for trading (including through e-commerce) of food products manufactured or produced in India.
- iv. Defence: 100% FDI is permitted in Defence sector wherein FDI upto 49% is allowed under automatic route and FDI beyond 49% is allowed under government route, when it is likely to result in access to modern technology or for other reasons to be recorded.
- v. Broadcasting Carriage Services: 100% FDI has been permitted under the automatic route in Teleports, Direct to Home, Cable Networks, Mobile TV, Headend-in-the Sky Broadcasting Services.
- vi. Private Security Agencies: FDI upto 74% has been permitted wherein FDI upto 49% is allowed under automatic route and FDI beyond 49% and up to 74% is allowed under government route.
- vii. Pharmaceuticals: 100% FDI is permitted under brownfield projects of pharmaceuticals wherein FDI upto 74% is allowed under automatic route and FDI beyond 74% is allowed under government route.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016:

The Insolvency and Bankruptcy Code, 2016 (the Code) was introduced in Lok Sabha on December 21, 2015 and was passed by the Upper House of the Parliament on 11 May 2016. The Code attempts to consolidate and amend the laws relation to the reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Prior to this code, there was no single law in India dealing with insolvency and bankruptcy.

The code designates NCLT and DRT as Adjudicating Authorities for corporate persons and firms and individuals respectively for resolution of insolvency, liquidation and bankruptcy. The code also provides for establishment of Insolvency and Bankruptcy Board of India for regulation of insolvency professionals, insolvency professional agencies and information utilities.

The Code also repeals the Presidency Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 and amend many of the existing statutes that govern insolvency proceedings such as the Indian Partnership Act, 1932, Central Excise Act, 1944, the Income Tax Act, 1961, the Customs Act, 1962, the Recovery of Debts Due to Banks and Financial Institutions Act, 1933, the Sick Industrial Companies

(Special Provisions) Repeal Act, 2003, the Limited Liability Partnership Act, 2008, the Companies Act, 2013 etc.

Key highlights of the code are:

- i. Corporate Insolvency Resolution Process: if any corporate debtor commits a default in payment of debt of minimum amount of Rs. 1,00,000, financial creditor, operational creditor or the corporate

debtor may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner prescribed in the Code. The corporate insolvency process shall be completed within a period of 180 days from the date of initiation of such process.

- ii. Liquidation: Adjudicating authority may pass an order requiring corporate debtor to be liquidated in certain circumstances.
- iii. The Code also allows fast track insolvency resolution process in respect of certain corporate debtors specified in the Code.
- iv. A corporate person who intends to liquidate itself voluntarily and has not committed any debt may initiate voluntary liquidation proceedings under the code.
- v. The Code also provides for insolvency resolution and bankruptcy for individuals and partnership firms in cases where the minimum default amount is one Rs. 1000 or more.

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