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INDIA BUSINESS BULLETIN

MCA UPDATES

Ministry of Corporate Affairs (MCA) extends applicability of certain COVID-19 related measures up to December 2020

In light of the prevailing COVID-19 circumstances in India, the Ministry of Corporate Affairs (MCA) has extended the applicability of measures which are aimed at providing relief to stressed businesses and reducing compliance burdens, as summarised below:

- **Suspension of initiation of corporate insolvency resolution process has been further extended:** MCA has extended the suspension of fresh insolvency proceedings for a further period of three months, from 25 September 2020, i.e. till 25 December 2020. During this period no insolvency proceedings can be filed against corporate debtors for defaults arising on or after 25 March 2020 till the suspension persists.

- **Extension of Companies Fresh Start Scheme (CFSS), 2020 and LLP Settlement Scheme 2020 (LSS):** In view of the large-scale disruption caused by COVID-19 in India, MCA has extended the applicability of CFSS and LSS till 31 December 2020. Under the said schemes, defaulting and inactive entities can avail reduced fees and exemption from additional fees/ penalties for defaults in order to revive and grant a fresh start to their stressed business operations.

- **Extension of scheme for relaxations in charge-related forms:** As part of MCA's move to reduce compliance burden on entities, the scheme for relaxation of time for filing charge-related forms has been extended till 31 December 2020.

- **Extension of time for allowing companies to conduct board meetings and general meetings through video conferencing:** With a view to enhance ease in carrying out operations and to ensure social distancing, the MCA has now extended the permission to conduct board meetings and extra-ordinary general meetings through video conference or other audio-visual means, or to transact items through postal ballot, up to 31 December 2020.

LEGISLATIVE UPDATES

New Defence Acquisition Procedure unveiled which enhances ease of doing business in India

After incorporating comments and suggestions from concerned stakeholders during the past year, the Ministry of Defence, Government of India has unveiled the new Defence Acquisition Procedure 2020 (DAP 2020) which is aimed at furthering India's initiative of 'Make in India' and enhances ease of doing business in India for the Defence sector. The following are the key new measures of the DAP 2020, which will come into effect from 01 October 2020:

- **New Category of Buy (Global Manufacture in India):** The DAP 2020 encourages foreign entities to setup manufacturing/maintenance entities though its subsidiaries in India by including a new category for 'manufacture of either entire/part of the equipment or spares/assemblies/sub-assemblies/maintenance, repair and overhaul (MRO) facility for the equipment through its subsidiary in India'.

- **Introduction of 'leasing':** The DAP also introduces a new category to allow leasing of assets without owning, which would enable getting defence equipment at affordable rates and also substitute huge initial capital expenditures.

- **Offset guidelines:** The DAP 2020 amends the offset obligations (i.e. requirement for foreign vendors to invest part of contract value in India) wherein preference will be given to manufacture of complete defence product over components. Additionally, offset clauses shall also not be imposed if the deal is done through inter-government agreement, government to government deals or an ab-initio single vendor.

Companies Amendment Act 2020 notified by the Government of India

The Companies Amendment Act, 2020 (the "**Companies Amendment**") has been notified which seeks to modify the framework of the Companies Act, 2013 (the "**Companies Act**"). Among various changes, the Companies Amendment is also slated to ease compliance framework and litigation burden on companies by diluting various penalties for offences that are considered procedural and technical in nature.

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The Companies Amendment, being issued in the wake of India's battle of COVID-19, is overall aimed at reducing litigation and compliance burden on distressed companies in India and may effectively change the compliance requirements of a company in furtherance of India's goal of "ease of doing business".

Once the enforcement of the provisions of the Companies Amendment is notified, the following would be the key amendments to the Companies Act:

- **Exemption from certain Corporate Social Responsibility (CSR) requirements:** Under the Companies Act, prescribed companies are required to spend 2% of their three-years average profit on CSR activities. The Companies Amendment now provides exemption from forming CSR committee for companies whose CSR obligation is less than INR 50 Lakhs in a financial year and also allows companies to set off any excess amounts spent in CSR in a financial year towards their CSR obligations in subsequent financial years.

- **Dilution of offences:** The Companies Amendment makes certain changes to the penalisation of certain offences under the Companies Act. Such changes include removal of penalty for certain offences, removal of imprisonment in certain offences and reduction in quantum of penalty for certain offences.

- **Exemption from declaring Beneficial Shareholding:** The Companies Amendment empowers the Central Government to issue specific rules which can exempt certain classes of companies from complying with the provisions of declaring beneficial shareholding and maintaining registers as provided under the Companies Act.

- **Periodic Financial reporting can be prescribed for Unlisted Companies:** The Companies Amendment empowers the Central Government to issue rules which can require certain classes of companies to prepare and file periodic financial results and to undertake audit or review of such results.

- **Exclusion of companies from definition of 'listed company':** The Companies Amendment empowers the Central Government to issue rules in consultation with the Securities and Exchange Board of India to determine and exempt certain companies from the definition of 'listed company'.

- **Direct Listing of Securities in Foreign territories:** The Companies Amendment grants power to the Central Government to allow certain categories of public companies to list securities in foreign jurisdictions as per specific rules to be prescribed.

- **Finance Companies exempted from certain filing requirements:** The Companies Amendment provides exemptions to Non-Banking Financial Companies and Housing Finance Companies from filing requirements with the Registrar of Companies regarding resolutions pertaining to granting of loans, provisions or guarantees or security for a loan.

Amendments to the Foreign Contribution Regulation Act 2010 notified by Ministry of Home Affairs

The Government of India has notified and enforced the provisions of Foreign Contribution Regulation Amendment Act 2020 ("**FCRA Amendment**") with effect from 29 September 2020, which modifies the regulatory framework of the prevailing Foreign Contribution (Regulation) Act, 2010 ("**FCRA**"). The FCRA regulates the receipt and utilisation of foreign contributions or hospitality by specified persons in India from foreign sources and prohibits acceptance of such foreign contribution for activities that are detrimental to the national interest of India. The FCRA is pivotal for not-for-profit entities and other entities operating in India through foreign collaborations and funding.

With a view to curb the numerous instances where such foreign contribution was not utilised for its permitted purpose, and to address the rising cases of entities found to be not statutorily compliant with their annual filings and maintenance of accounts, the FCRA Amendment seeks to streamline the provisions of the regulatory framework by strengthening the compliance mechanism, and improving transparency and accountability in the utilisation of foreign contribution.

LABOUR LAW UPDATES

Upcoming rehaul of labour legislations in India with three new labour codes notified by the Indian Government

The Government of India has notified three new labour codes, namely, The Industrial Relations Code, 2020, The Code on Social Security, 2020 and The Occupational Safety, Health and Working Conditions Code, 2020 (collectively the "**Codes**"). Once the enforcement of the provisions commences, the Codes would lead to a significant rehaul of labour legislations in India as over 25 legislations are being repealed and consolidated within the Codes, including but not limited to Industrial Disputes Act, 1947, Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Maternity Benefit Act, 1961, Industrial Employment Standing Orders Act, 1946 etc. The main objective of the Codes is to simplify and modernise labour regulations while granting flexibility to employer as well as protecting labour interests. The key changes of the Codes broadly pertain to providing size-based thresholds for statutory compliances, recognition of trade unions, regulations for fixed term labour, reduction in compliance burden on employers, among many other changes.

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The Government of Telangana allows automatic online renewal of license under the Contract Labour (Regulation and Abolition) Act, 1970

In furtherance to India's objective to enhance 'Ease of Doing Business', the Government of Telangana has ordered that an automatic non-discretionary deemed renewal of license through online system shall be implemented which would not require a specific application for renewal and would only require timely payment of fee in routine intervals that would be prescribed.

INTELLECTUAL PROPERTY UPDATES

Intellectual Property Appellate Board (IPAB)'s Notice to Fix Royalties for Communication of Sound Recordings

In view of the pending applications filed by Music Broadcast Ltd. and other radio broadcasters, the IPAB through its public notice dated September 18, 2020 has informed about its intention to fix royalties for broadcast of sound recordings through radio and invited the suggestions of all the interested persons in this regard. A thirty-days' time period (i.e. till 18 October 2020) has been fixed to give suggestions, in writings, with adequate evidences for fixing the rate of royalties for broadcast of sound recordings and musical work through radio.

Amendments in procedural aspects of registration and protection of Geographical Indications of Goods

The Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade) by exercising its powers conferred under the Geographical Indications of Goods (Registration and Protection) Act, 1999 has issued the Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2020 ("**GI Amendment**") which came into effect on August 26, 2020. Highlights of the GI Amendment are:

- Application for the authorized user registration can now be solely "made by the Producer", which shall be accompanied by the statement of the case to establish how the applicant claims to be the producer of that particular registered Geographical Indications.
- Reduction in the fees for application as Authorized user and Renewal of registration as Authorized User. Corresponding changes are made in the respective prescribed forms.
- Form for issuance of a registration certificate as an authorised user has been deleted.

Patent infringement suits filed by InterDigital Inc. against Xiaomi

A US based mobile and video technology company, InterDigital has filed two patent infringement suits in the Delhi High Court against Xiaomi, a Chinese electronics company. After failed negotiations with Xiaomi, InterDigital filed the lawsuits which involve infringement of eight Standard Essential Patents owned by InterDigital relating to cellular 3G and 4G and H.265/HEVC (high efficiency video coding). InterDigital seeks an injunctive relief along with punitive and compensatory damages, unless Xiaomi agrees to a license on FRAND (fair, reasonable, and non- discriminatory) terms determined by the court. The cases are currently pending before the Delhi High Court.

Memorandum of Understanding (MOU) signed between India and Denmark for Intellectual Property (IP) cooperation

In order to exchange best practices in the IP sector, the Department for Promotion of Industry and Internal Trade, and Ministry of Commerce and Industry of the Government of India have entered into an MOU with the Danish Patent and Trademark Office, Ministry of Industry, Business and Financial Affairs of the Kingdom of Denmark.

The MoU, which was signed on 26 September 2020, lays the groundwork for a technical cooperation between India and Denmark and seeks to strengthen the protection of intellectual property rights for the mutual benefit of innovation and economic growth. The MoU would enable effective registration, protection and utilization of IP rights and better facilities and strategic exchange of IP know-how.

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