Issue 6

NEWSLETTER

Legal, Compliance and ESG

4 October 2019

Dear Readers,

We bring to your reading and attention following topics:

A) LEGAL AND REGULATORY UPDATES: ---------- 1

I. Constitution of Company Law Committee (Order dated 18.09.2019) ---------- 1

II. Ministry of Finance announces deduction in Corporate tax rate. ---------- 1

III. Reduction in risk weight for consumer credit except credit card receivables' ---------- 2

IV. "Partial Credit Guarantee Scheme" ---------- 2

B) FAQs on Power of Attorney ---------- 2

C) ESG: High ESG Standards Mean Higher Profits ---------- 4

A) LEGAL AND REGULATORY UPDATES:

I. Constitution of Company Law Committee (Order dated 18.09.2019)[1]

In line with the Government's objective of promoting Ease of Doing Business to law abiding corporates and also to address emerging issues having impact on the working of corporates in the country, MCA has constituted a Company Law Committee for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

II. Ministry of Finance announces deduction in Corporate tax rate. [2]

i. In order to promote growth and investment, a new provision has been inserted in the Income Tax Act with effect from FY 2019-20 which will allow any domestic company an option to pay income-tax at the rate of 22 per cent subject to condition that they will not avail any exemption/incentive. The effective tax rate for these companies shall be 25.17 per cent inclusive of surcharge & cess. Also, such companies shall not be required to pay Minimum Alternate Tax (MAT).

ii. In order to attract fresh investment in manufacturing and thereby provide boost to 'Make-in-India' initiative of the Government, another new provision

[1] For more details please refer the below link: http://www.mca.gov.in/Ministry/pdf/Constitution CLC_18092019.pdf

[2] For more details please refer the below link: https://www.incometaxindia.gov.in/news/thetaxation_laws_amendment_ordinance_2019_20_9_19.pdf

has been inserted in the Income Tax Act with effect from FY 2019-20 which will allow any new domestic company incorporated on or after October 1, 2019 making fresh investment in manufacturing, an option to pay income tax at the rate of 15 per cent.

iii. This benefit is available to companies which do not avail any exemption/incentive and commences their production on or before March 31, 2023. The effective tax rate for these companies shall be 17.01 per cent inclusive of surcharge & cess. Also, such companies shall not be required to pay MAT.

iv. A company which does not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate. However, these companies can opt for the concessional tax regime after expiry of their tax holiday/exemption period.

v. After the exercise of the option they shall be liable to pay tax at the rate of 22 per cent and option once exercised cannot be subsequently withdrawn. Further, in order to provide relief to companies which continue to avail exemptions/incentives, the rate of MAT has been reduced from existing 18.5 per cent to 15 per cent.

vi. In order to provide relief to listed companies which have already made a public announcement of buy-back before 5 July 2019, it is provided that tax on buy-back of shares in case of such companies shall not be charged.

III. Reduction in risk weight for consumer credit except credit card receivables'[3]

RBI decided to reduce the risk weight for consumer credit, including personal loans, but excluding credit card receivables, to 100%.

IV. "Partial Credit Guarantee Scheme"[4]

On August 13, 2019, the Ministry of Finance introduced "Partial Credit Guarantee Scheme" offered by Government of India to Public Sector Banks for purchasing high-rated pooled assets from financially sound Non-Banking Financial Companies Housing Finance Companies. The Scheme came into effect from August 10, 2019. The Scheme is effective till earlier of a) a six-month period commencing from August 10, 2019, or b) till such date by which Rupees One lakh crores assets gets purchased by the PSB under the Scheme.

B) FAQs on Power of Attorney

1. **What are the different types of Power of Attorney in India?**
   General Power of Attorney: Used when the power of Attorney is granted by a person to his agent to act on behalf of him, generally. It can include, authorization to operate bank accounts, register property on behalf of the principal etc.
   Special or Specific Power of Attorney: This type is executed when the principal wishes to grant powers to the Attorney to act on his behalf only for specific tasks/areas.
2. **Is there any restriction on who one should choose as their Attorney?**

[3]For more details please refer the below link https://m.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11684

[4] For more details please refer the below link: https://pib.gov.in/newsite/PrintRelease.aspx?relid=192618

There are no limitations under the law that will restrict you from appointing a specific person as your Attorney.

3. **If a person grants Power of Attorney to an agent, whether his/her own rights to manage affairs cease?**
   No. he/she has absolute right to manage their own rights even after they appoint a legal Attorney. This arrangement does not transfer powers unilaterally to the agent. They're only sharing it.
4. **What happens if the grantor of POA dies while this deed is active?**
   All powers granted to the Attorney is naturally revoked by law. The Attorney will not be able to act on behalf of the grantor. If there is a Will in place, it will come into force.
5. **How to Make A General Power of Attorney By NRI?**
   If a person is staying outside India and have properties or financial transactions within India, they can give the power to transact and deal with the properties or banking or tax payment etc. to any trustworthy and reliable person in India. Such person can be their close relatives or friends. One should follow the following steps:
   a. Get the Power of Attorney drafted.
   b. The person making the deed, the Grantor, should sign all pages of the deed.
   c. Get the deed notarized and apostilled in the country of residence.
   d. This attested deed should be sent to a known person in India.
   e. Finally, the person to whom the deed is sent should get it registered from the local Sub-Registrar office or Sub-Divisional Magistrate office in India, by paying the appropriate registration and stamping charges applicable in that state.
6. **What should be included in the Power of Attorney deed**?
   While making the General Power of Attorney from outside India, make sure that your deed includes these details:
   a. Grantor's Details– The name, age, foreign address, Indian address and occupation of the person making the deed should be mentioned first.
   b. Attorney's Details– The name, age, address, father's name and occupation of the person in whose favour the deed has been made should be mentioned.
   c. Reason for the POA– You have to state why you are making this deed and for what purpose. For e.g. To buy or sell or rent out your properties in India, since you are staying abroad etc.
   d. Date of Commencement -You should clearly mention when the POA comes into force.
   e. Signature– The Grantor has to sign in all the pages and also in the last page.
7. **Points to know while making the Power of Attorney**
   a. The person making the deed should be mentally capable of making the deed. A mentally unsound person cannot make a Power of Attorney deed.
   b. Registration of the deed is mandatory at the Sub-Registrar office if the power of attorney is given to deal with any immovable property.
   c. Revocation: A Power of attorney can be revoked at any time at the will of the grantor.
8. **When a person gives the power to my Attorney to buy property does it mean he can buy it in his name?**
   No, the Attorney can buy the property only in your name if you have mentioned that he can purchase any property on your behalf, in the deed of General Power of Attorney. If he is buying his personal property from his money, he can do so but buying on your behalf means he has to buy it in your name only.

C) ESG: High ESG Standards Mean Higher Profits[5]

Some 17 per cent of the US equity market, $6.6 trillion in value, is now held by funds specifically seeking to invest in stocks with a good record on environmental, social and governance (ESG) criteria.

This upsurge in ESG investment is partly because investors increasingly demand that companies behave ethically and govern themselves well, as a matter of principle. Investors will no longer turn a blind eye to poor records on greenhouse gas emission or labour standards, or cosy old boys' clubs in the boardroom. But is also a sound investment strategy.

ESG investing now goes far beyond avoiding a negative list of companies or sectors. High ESG compliance lowers risk and hence the cost of capital, improves margins and increases stock-ratings. Increasingly consumers chose to buy brands associated with ESG values, resulting in pricing power. A study published by Harvard Business School found that firms following a high-sustainable strategy outperformed those with a low-sustainable strategy by 46 per cent.

India's record on ESG compliance is mixed. There are examples of the highest standards from long before ESG became a focus globally. Tatas have been committed to extraordinary levels of social responsibility since the days of Jamsetji and have long lived up to high ethical standards. Newer companies like Infosys and HDFC Bank have demonstrated genuine leadership in corporate governance.

Yet, much of corporate India has failed consistently to do what is right. A series of scandals and controversies has dented the reputation of India and that of some of our best-known companies. In too many instances, the interest of promoters continue to be favoured against those of wider shareholders. Boards have often failed to demand performance and to link rewards to delivery.

The treatment of employees and record on health and safety have been poor overall. Environmental standards have been low and levels of corruption too often disturbingly high. The 2018 report on Corporate Governance in India by Institutional Investor & Advisory Services (IIAS), covering the top one hundred listed companies, assessed only three companies as leaders on governance (HDFC Bank, Infosys and Wipro). The performance of five companies was rated as just basic. The best performing tended to be widely-held companies, followed by MNCs then family-controlled companies. PSUs were typically poor on these scores.

The suspicion must be that the overall performance among small and mid-cap companies is worse than that of the large companies. We need an accepted index to measure ESG performance across all listed stocks to assess compliance and demonstrate improvement.

No doubt, ESG compliance has improved in recent years, not least as policy-makers and regulators have demanded change. India's record on renewable energy has been strong. The Companies Act 2013 increased the rights of minorities, addressed related party transactions and introduced the requirement to spend two per cent of profit on social responsibility. Listing requirements and codes of corporate responsibility have been updated. Boards are now more diverse and independent.

Shareholders, led by the institutions, have demonstrated an increased willingness to exercise their rights and even vote against managements' resolutions. In 2012-13, institutional investors

[5] http://www.businessworld.in/article/High-ESG-Standards-Mean-Higher-Profits/09-09-2018-159411/

failed to participate in voting for 52% of resolutions; by last year this had fallen to 11%. In 2017, according to InGovern, forty-five of the top one hundred companies had at least one resolution receive at least 20% votes against by shareholders. Shareholder protest has forced a change of direction or management in a series of examples including at Fortis, Raymond, Infosys and the Tata Group.

It is in all of our interests to have better managed companies which deliver more, in better ways, for shareholders, customers and society. While there is evidence of positive change, the pace and scale of improved ESG compliance needs urgently to be elevated a notch and spread from the best companies throughout corporate India.

Boards and shareholders both have a responsibility to play a greater role in demanding better and more consistent performance from management. If they do not rise to the challenge, future failures will trigger greater regulation from the government. Let owners, directors and executives put their houses in order, raise standards and reporting, and deliver greater value before higher compliance costs are imposed or control is wrenched away from them.