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Financial services insights: Tax & regulatory update

Vol 1 - May 2018

Content

Preface

Consistently growing at more than 7 per cent per annum, India is considered to be one of the fastest growing economies in the world. Over the next 10 years, India is expected to be one of the top three economic superpowers backed by its robust growth in the service sector, especially in the financial services space. In the past few years, due to economic reforms and key regulatory changes, India has received substantial foreign capital. This is evident from approximately 35 per cent growth in total foreign investments (i.e. under FDI and FPI route) in the nine-month period ended December 2017 compared to last year. The efforts of the government to remove multiple layers of approvals, and to process FDI proposals in a more streamlined and prompt manner has played an important role in the high foreign capital inflow into the country.

One of the key reform measures in relation to financial inclusion has been the successful launch and implementation of Jan Dhan Yojana. Under the said scheme, the government aims to give every household, access to banking facilities by offering them zero-balance bank accounts. As on March 2018, over 31 crore accounts have been opened under this scheme, including over 18 crore accounts opened in rural/semi-urban areas. The total deposits in Jan Dhan accounts as on 31 March 2018 was over 78,000 crore. Jan Dhan Yojana has been one of the most successful financial inclusion schemes so far that has significantly strengthened the financial service sector in India.

Post demonetisation and introduction of Goods and Services Tax (GST), shift in the investors' preference from gold and immovable property to capital markets, has led to an increase in the infusion of funds into Indian capital markets, thereby boosting returns to the investors. This is one of the reasons for the growth in the assets under management (AUM) of the mutual fund industry by 40 per cent in 2017 on a year-on-year basis.

Apart from mutual funds, Alternative Investment Funds (AIFs) have been another key source of pooled funds in India over the last few years. The growth rate in terms of increase in the AUM of the AIFs has increased by more than 70 per cent in 2017 on year-on-year basis. On account of rise in investments in the mutual funds and Category III AIFs, the brokerage industry in India has grown by more than 25 per cent. The Indian insurance industry is also growing at a fast pace. The total first year premium of life insurance companies grew around 20 per cent year-on-year in 2017.

With the advent of technology and need felt by some quarters for a low cost and secured currency for cross-border transactions, the concept of cryptocurrencies came to the fore. Given this, in the recent past, there have been more than a dozen crypto exchange being launched in India. However, given the possible misuse of this route for illicit activities, the government has discouraged the use of cryptocurrency. Having said this, considering the benefits, it is possible that the government may consider launching its own cryptocurrency using blockchain technology.

Insolvency and Bankruptcy Code (IBC) has been a significant reform introduced by the government which seeks to provide a resolution of the Non-Performing Assets in a time bound manner.

In order to achieve consistent high GDP growth and considering the importance of the financial services sector in the Indian economy, the government, over the past couple of years, has endeavoured to address the tax and regulatory issues faced by the industry to make India a more competitive economy and to provide easy access to the foreign capital into the Indian markets. Some of these steps include liberalising the SEBI FPI regulations, encouraging strategic investors to participate in Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs), revising the framework for resolving stressed assets, launching e-assessment procedures to bring more transparency in tax assessments, entering into new tax treaties with those jurisdictions with whom India do not have any tax treaty and amending various tax treaties in line with the BEPS action plans.

Grant Thornton's BFSI Quarterly Insight will keep various stakeholders in the industry abreast of key developments on tax and regulatory aspects in the financial services sector.

We hope you enjoy reading the first edition and look forward to your valuable feedback.

Key direct tax updates

a. India signs Double Taxation Avoidance Agreement with Hong Kong

(Press release dated 19 March 2018)

On 19 March 2018, Government of India and the Hong Kong Special Administrative Region (HKSAR) of People's Republic of China have signed an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

The key highlights of the aforesaid DTAA are as under:

- Capital gain arising on sale of shares of an Indian company to be chargeable to tax in India
- Capital gain arising on sale of Indian securities (other than shares eg. derivatives, debt securities, etc.) to be chargeable to tax in India
- Interest income to be taxed at the rate of 10 per cent subject to satisfying beneficial ownership test
- Fees for technical services payable to a resident of Hong Kong to be taxed at the rate of 10 per cent subject to satisfying beneficial ownership test
- Other income arising in India will be chargeable to tax in India

Our comments: Hong Kong is an important financial and trading partner for India and the absence of a treaty was impacting the fund flow between the two countries. Now with the DTAA between India and Hong Kong, it would help bolster the economic and trade ties between the two jurisdictions.

b. Revised Double Taxation Avoidance Agreement (DTAA) between India and Kenya notified:

(Press release dated 22 February 2018)

The Double Taxation Avoidance Agreement (DTAA) between India and Kenya was signed and notified in 1985. Subsequently, the DTAA was renegotiated and a revised DTAA was signed between both countries on 11 July, 2016. The revised DTAA has been notified in the Official Gazette vide Notification No. 11/2018 on 19 February, 2018.

In order to promote cross-border flow of investments and technology, the revised DTAA provides for reduction in withholding tax rates as per following:

Nature	Existing Rate	Revised Rate
Dividend	15 %	10 %
Royalties	20%	10%
Fees for management, professional and technical services	17.5%	10%

c. CBDT issues instructions for conduct of assessment proceedings electronically

(Instruction No. 01/2018, dated 12 February 2018)

With the intention of reducing the interface between tax department and taxpayers, the government had introduced scheme of e-assessments in 2016 on a pilot basis which was further extended in 2017. As part of this pilot, the department has been issuing e-notices for scrutiny assessments to the assessees. In order to provide clarity and widen the ambit on 'E-proceedings', the Central Board of Direct Taxes (CBDT) has issued an internal instruction for its departmental officers on conduct of assessment proceedings in scrutiny cases, electronically.

The CBDT has issued an instruction that proceedings in all pending scrutiny assessment except for search-related assessment cases shall be conducted only through the 'E-proceeding' functionality. Further, where the taxpayer objects to conduct of assessment proceedings electronically, it has been directed to keep such cases on hold.

d. CBDT notifies new 'Centralised Communication Scheme'

(Notification No. 12/2018/F.No. 370142/22/2017-TPL dated 22 February 2018)

The Finance Act 2017 introduced the scheme for centralised issuance of notice to persons required to furnish information or documents for the purpose of verification, which may be relevant to any inquiry or proceeding under Income-tax Act, 1961 (the 'Act'). In this regard, the CBDT has notified a new Centralised Communication Scheme (CCS) for issuing e-notices.

Under this scheme, notice shall be issued to a person vide email or by placing a copy in the registered account on the web portal of CCS followed by an intimation through SMS and the person shall not be required to appear before the designated authority at the Centralised Communication Centre in connection with any proceedings.

e. CBDT issues clarifications on taxation of LTCG proposed in Finance Bill 2018

(Press Release dated 4 February 2018)

The Finance Act 2018 has levied 10 per cent long term capital gain (LTCG) tax on transfer of following securities (hereinafter collectively referred to as 'listed securities'), which were exempt till now:

- Equity shares in a company listed on a recognised stock exchange
- Units of equity oriented mutual fund
- Units of business trust

The proposal provides grandfathering of gains accrued on such investments till 31 January 2018 through an enhanced cost of acquisition formula. In this regard, CBDT has issued clarifications in the form of Frequently asked Questions (FAQ) vide letter dated 1 February 2018.

In the said FAQ, CBDT has reiterated provisions of the new LTCG tax in a simplified manner with illustrations. Further, it has also clarified that cost of acquisition of bonus and right shares acquired prior to 1 February 2018 shall be at fair market value as on 31 January 2018. It has also been clarified that tax is required to be deducted at source in case where the payee is a non-resident.'

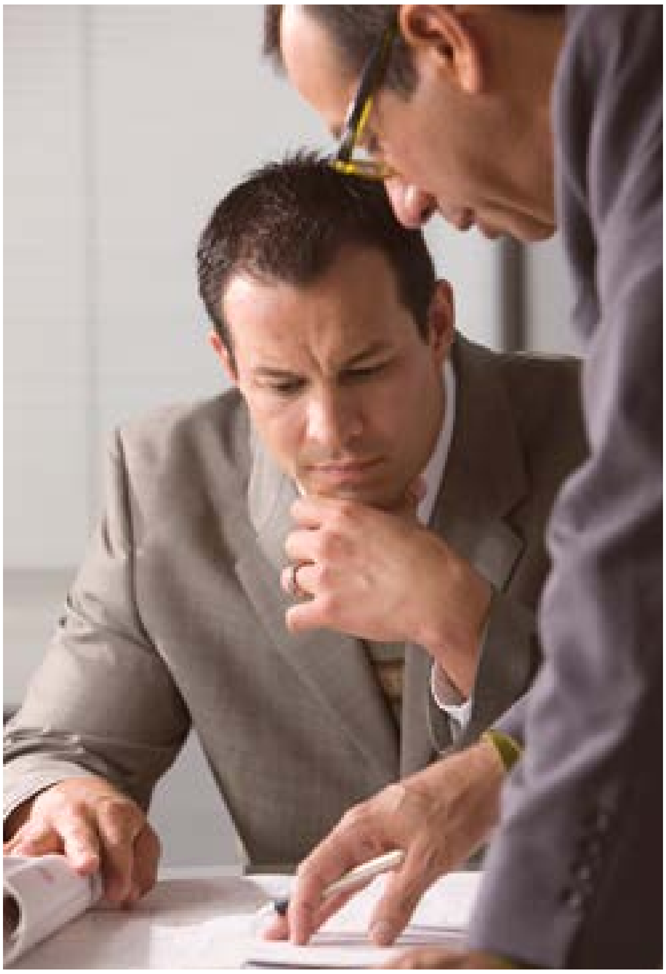
Our comments: Issue of an illustrative clarification immediately after announcement of the introduction of LTCG tax on listed securities was a welcome move and it reiterates commitment of the government to usher in an era of stakeholder involvement and avoidance of litigation.

f. Indian Advance Pricing Agreement Regime moves forward with signing of 16 APAs by CBDT in March 2018

(Press Release dated 4 April 2018)

The CBDT has entered into 14 Unilateral Advance Pricing Agreements (UAPA) and 2 Bilateral Advance Pricing Agreements (BAPA) during the month of March, 2018. The 2 bilateral APAs have been entered into with the United States of America. With the signing of these agreements, the total number of APAs entered into by the CBDT has gone up to 219. This includes 199 Unilateral APAs and 20 Bilateral APAs. A total of 67 APAs (9 Bilateral and 58 Unilateral) have been signed in the FY 2017-18.

The 16 APAs entered into during March, 2018 pertain to various sectors of the economy like Telecommunication, Information Technology, Automobile, Pharmaceutical, Beverage, Trading, Manufacturing and Banking, Finance & Insurance.



Direct Tax - Key jurisprudence

a. AB Holdings, Mauritius-II, In Re, [2018] 90 taxmann.com 177 (AAR)

A significant part of foreign direct investment in India has been routed through intermediary holding jurisdiction such as Mauritius and Singapore. The availability of benefit under a tax treaty to these intermediary holding companies has been a subject matter of extensive litigation in India.

In this case, the Authority for Advance Rulings (AAR) has analysed availability of benefit under the India-Mauritius Double Taxation Avoidance Agreement and the AAR took a contrary view in the two transactions for sale of Indian company's shares by two Mauritian group companies by allowing treaty protection in one transaction and denying the same in other transaction.

In the case where treaty benefits was denied by the AAR, it was observed by the AAR that the Mauritian company was not the actual owner of the shares, but it was only acting as a benami or a name-lender of the Group. Accordingly, such share transfer transaction was held to be a colourable device and denied the treaty benefits.

In arriving at the conclusion, the AAR analysed various documentary evidence like minutes of board meetings, flow of consideration, share purchase agreement, accounting entries of both companies to factually differentiate both transactions.

Our comments: The ruling signifies the importance of robust documentation and the need for undertaking a careful factual evaluation in transactions. It is interesting to note that the ruling is pertaining to pre-GAAR era and even then the treaty benefit has been denied based on judicial anti-avoidance precedents.

b. Commissioner of Income tax vs. Vasisth Chay Vyapar Limited, Supreme Court of India [2018] 90 taxmann.com 365 (SC)

The assessee, an NBFC, had advanced certain Inter-Corporate Deposits (ICD) to another company. As no interest could be received on such deposits for more than six months, in terms of directions given by the Reserve Bank of India (RBI), the taxpayer treated the said ICDs as NPA and did not offer interest income on ICDs.

However, the tax officer imputed interest on said ICDs to income of the assessee by applying mercantile system of accounting. The tax officer contended that RBI directives could not override the provisions of the Act. The CIT(A) affirmed the order of the tax officer.

On further appeal, the Income Tax Appellate Tribunal (ITAT) held in favour of the taxpayer and deleted the addition made by the AO.

The Delhi HC held in favour of the assessee that income in the hands of NBFCs is to be recognised as per the RBI prudential norms regardless of the fact even if they deviate from the mercantile system of accounting. The Hon'ble SC confirmed the order of Delhi HC and accordingly, rejected Revenue's appeal against the order of the Delhi HC.

Our comments: The ruling provides much awaited certainty to NBFCs in relation to the taxability of the interest accruing on loans classified as NPAs. Thus, similar to banks and other financial institutions, NBFCs could now consider taking a view that income from NPAs would be taxable on receipt basis.

c. Emami Infrastructure Ltd. vs. Income-tax Officer, Ward 12 (1), Kolkata [2018] 91 taxmann.com 62 (Kolkata - ITAT.)

The Act provides exemption from tax on gains arising from transfer of capital asset from a Holding company to its 100 per cent subsidiary company and vice-versa, if the transferee company is an Indian company.

In this regard, an issue arises is that whether a transfer of capital asset, by a Holding company to a second step down 100 per cent subsidiary company, is eligible for the above exemption. The Kolkata bench of ITAT held that a second step down 100 per cent subsidiary should be regarded as a subsidiary company and hence should be eligible for the aforementioned exemption from capital gain tax under the Act. The ITAT further held since the transaction is not subject to capital gain tax, capital loss on the said transfer would not be eligible for carry forward.

Our comments: The ITAT was faced with divergent rulings of Bombay HC in the case of Petrosil Oil and Gujarat HC in the case of Kalindi Investment. In absence of any jurisdictional HC ruling on the issue, the ITAT chose to rely on the Bombay HC decision. In view of the aforementioned conflicting HC orders, the issue should be finally settled by the Apex Court.

d. Maxopp Investment Ltd. vs. Commissioner of Income-tax, New Delhi [2018] 91 taxmann.com 154 (SC)

The Act provides that if any expenditure is incurred in earning exempt income, such expenditure shall not be allowed as a deduction. The Supreme Court (SC), in the case of Maxopp Investment Ltd, has analysed the issue of disallowance of such expenses where income is earned from shares acquired for gaining control over the investee company or where shares are held as 'stock-in-trade'.

The SC disregarded taxpayer's argument that section 14A and Rule 8D will not apply if the "dominant intention" was not to earn dividends, but to gain control of the company or to hold as stock-in-trade and accordingly, held that the section 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. Only that expenditure which is "in relation to" earning dividends can be disallowed under section 14A.

e. Pr. CIT vs. M/s. International Metro Civil Contractors - TS-175-HC-2018(BOM)

Assessee had entered into various international transactions with three of its JV partners. Out of these, few transactions pertained to the allocation of HO expenses by the JV partners to the taxpayer. The agreement between the taxpayer and all the JV partners permitted the JV partners to allocate their HO expenses to the taxpayer to the extent of 8.50 percent of the turnover of the taxpayer. Furthermore, the allocation of HO expenses to the taxpayer could not exceed 8.50 per cent of JV partners' portion of contract receipts of the JV. Apart from the above, the JV partners had also incurred certain other direct expenses on behalf of the taxpayer, which were recovered on the cost-to-cost basis.

During the course of assessment, the TPO determined NIL ALP for the above HO expenses on the following grounds:

- More than 85 percent of the work under the contract with DMRC was already assigned on the back-to-back basis to various sub-contractors, including JV partners, and therefore, in respect of such sub-contract, no further overheads could exist.
- When the JV partners were already recording the direct expenses incurred on behalf of the taxpayer separately, the separate cross charge of HO expenses to the extent of 8.50 percent of the JV's turnover was not justified.
- The taxpayer had not furnished any details/ evidence regarding nature of the HO expenses to justify the allocation made.

On appeal, the CIT(A) ruled in favour of the taxpayer, observing that the TPO was unable to bring any comparable data on record to indicate that HO expenses were excessive, i.e., TPO did not perform any benchmarking exercise. Concurring with the above view, the ITAT upheld the order of the CIT(A). Aggrieved, the Revenue filed an appeal before the Bombay High Court (BHC).

Held by the BHC:

- The BHC noted that the CIT(A), as well as the ITAT, have given a detailed finding of fact, which was not controverted by the revenue authorities.
- The BHC held that the issue raised by the revenue is essentially in the nature of the question of fact. Accordingly, no substantial question of law arose for TP matter for High Court's consideration.

Our comments: It is interesting to note that the commercial rationale of allocation for HO expenses was not discussed in this ruling. However, considering the long-standing history of TP adjustment in case of inbound services, it is important that taxpayers maintain adequate and robust back-up documentation to demonstrate satisfaction of various arm's length tests such as need-benefit test, rendition test, computation test, etc. Furthermore, in the present case, the argument that payments were made under a JV contract, where one may say that JV partners were independent parties at the time of entering in the agreement, (and hence the payments essentially reflect terms agreed between independent parties) was not brought up.

Indirect tax

Nine months of Goods and Services Tax (GST), journey so far:

The long awaited GST was implemented 1 July 2017, while the trade and common man were still getting ready to absorb the impact of the changes. Even after nine months the general sentiment is that there is a lot to be done for the law to be simplified. The government has been proactive in addressing various issues on regular basis, seeking active involvement of industry and all stakeholders. A brief synopsis of the key steps that have been taken by the government are as follows:

- **Easing compliances**

Compliance burden and various technical challenges faced by industry were addressed, by introduction of simplified summary return in form GSTR-3B.

- **Rationalisation of GST rates**

Revamping of GST rates, by significantly reducing the list of goods covered in the 28 per cent bracket and rationalising the rates on essential goods.

- **Protection of consumers**

Forming of National Anti-Profiteering Authority to safeguard the interest of consumers and to ensure that the benefit of savings under GST is passed on to them.

- **Introduction of e-way bills system**

Introduction of the e-way bill system to regulate movement of goods and curb tax evasion.

- **Steps towards simplifying the GST returns**

Government has reached out to trade and industry to provide inputs to simplify the complex and multiple GST returns into a simple one pager return.

- **Providing clarity on issues from time to time**

Credit should also be given to the government for issuing various clarifications from time to time to provide clarity on issues faced by the industry.

Key GST updates during January 2018 to March 2018

- **Exemption extended to reinsurance services provided to notified insurance schemes that were already exempt**

Initially, general insurance and life insurance companies enjoyed GST exemption in relation to insurance provided to certain notified insurance schemes. Now, this exemption has been extended to reinsurance companies that provide reinsurance services to general insurance/life insurance companies in relation to certain notified insurance schemes that enjoyed GST exemption.

- **Insurance agent to have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938**

The term 'insurance agent' has now been inserted in the reverse charge related notification (13/2017 CGST- Rate dated 28 June 2017) and have been given the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938. By virtue of this amendment it becomes clear that, services received from corporate agents are excluded from the purview GST payable under reverse charge.

- **Clarification on taxability on Priority Sector Lending Certificate (PSLC)**

In a clarification dated 1 March 2018, it has been stated that PSLC are akin to freely trade-able duty scrips, Renewable Energy Certificates, REP license or replenishment license.

In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18 per cent under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.

Key regulatory updates

SEBI updates

a. Easing of access norms for investment by Foreign Portfolio Investors
(CIR/IMD/FPIC/26/2018 dated 15 February, 2018)

On 15 February 2018, SEBI had issued circular on easing access norms for investment by FPIs. The erstwhile provision and the updated provision is discussed hereunder:

Change in local custodian/ DDP	
Change of designated depository participant (DDP) was permitted based on SEBI's approval. In case of change in DDP by FPIs, both old and new DDP is required to carry out passable due diligence.	There is no SEBI approval required for change of DDP.
Rationalisation of procedure for submission of declarations and undertakings	
At the time of payment of registration fee for continuance, FPI was required to submit declaration and undertaking in respect of PCC/MCV structures and information regarding investor group.	In case of no change in structure, DDP may rely on the specific declaration from the FPI that there is no change in the information at the time of payment of renewal fee.
No approval for FOC transfer of assets in case of FPIs having MIM structure	
The Free of Cost (FOC) transfer between investment managers in an MIM was subject to SEBI approval.	The DDP shall process FOC transfer of assets between FPIs having same PAN who are registered as MIM with SEBI.
Simplification of process for addition of share class	
In case of an addition of share class, FPI had to obtain prior approval from DDP.	Prior approval of DDP is not required for addition of share class if a common portfolio of Indian securities is maintained across all the share classes and the broad-based criteria is fulfilled at the portfolio level. However, in case of segregated portfolio, prior approval of DDP is required for addition of new class. Also, in case segregated portfolio is maintained, every share class/ fund/sub-fund would need to separately fulfil broad-based criteria.
Permitting FPIs having MIM structure to appoint multiple DDPs	
FPIs with MIM structures were permitted to obtain multiple FPI registrations, provided they appoint the same DDP.	FPIs having multiple registration with MIM structures are permitted to appoint multiple DDPs.
Private/merchant bank allowed to invest on behalf of their clients	
Private bank/merchant banks were permitted to undertake proprietary investments only.	Private/merchant banks are now permitted to invest on behalf of their investors provided it submits a declaration that: • Details of beneficial owners are available and provided as and when required by the regulators; and • They do not have any secrecy arrangement with investors and secrecy laws do not apply to the jurisdictions in which such private or merchant bank is regulated. The banks will also be allowed to undertake proprietary investment by taking separate registration.
Clarifications on conditional registration	
The facility of conditional registration was available to newly-established funds only.	The facility of granting conditional registration is extended to existing funds, proposing to convert as India dedicated funds. Existing funds will be given 90 days to achieve broad based status as against 180 days provided to newly-established funds.

Our comments: The circular is a welcome move as SEBI has considered most of the recommendations provided by the stakeholders, especially the ones related to easy access norms for FPIs.

b. SEBI released clarification on investment by FPI Category II

(CIR/IMD/FPIC/47/2018 dated 13 March 2018)

On 15 February 2018, SEBI had issued a circular easing access norms for foreign investors to participate in Indian capital markets. In an extension to the above, on 13 March 2018, SEBI issued a clarificatory circular in relation to certain FPIs falling under Category II.

The collective investment vehicle of private banks/merchant banks investing on behalf of clients need to satisfy below mentioned conditions:

- KYC norms of the clients should be fulfilled;
- The Beneficial Owners (BO) of the clients should be identifiable;
- The client or their BO should not be a Resident Indian/NRI/ Overseas Citizen of India;
- The client should not be resident of a country identified in the public statement of Financial Action Task Force as:
  - A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
  - A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.
- The client should not have an opaque structure;
- The collective investment vehicle of the bank should be broad-based (more than 20 investors and with no investor having over 49 per cent stake).

In addition to the above, the conditions of providing details of beneficial owner on request by SEBI and no secrecy arrangement between client and bank should also be satisfied.

Regulated broad-based insurance/reinsurance companies:

It is clarified that investment in India by insurance/ reinsurance companies must be maintained as an undivided common portfolio. Segregated portfolio or investor/policy-holder level investment structure shall not be permitted.

Other appropriately regulated persons permitted as Category II (Cat. II FPIs viz. asset management companies, investment managers/advisers, portfolio managers, broker-dealer and swap-dealer):

- Investment out of proprietary funds are permitted;
- Investment of clients' funds permitted under a separate registration as:
  - an ODI issuing FPI; or
  - after fulfilling the condition of being broad-based and having a common portfolio;
- Asset management companies having thematic portfolios can have segregated structure if each theme is broad-based.

c. Restriction of offshore trading in Indian Indices

(Press release dated 9 February, 2018)

Indian exchanges, through a licensing arrangement, provide market and securities-related feed to index providers for creating indices. Such Indices are licensed by index providers to prospective licensee, including foreign exchanges or foreign trading platforms, who in turn use the same to provide products for trading and settlement on such foreign trading platforms. However, it has been observed by the Exchanges, that for various reasons the volumes in derivative, trading based on Indian securities (including indices) have reached large proportions in some of the foreign jurisdictions, resulting in migration of liquidity from India. This is not in the best interest of Indian markets.

Hence, to safeguard the interests of Indian markets, the Exchanges issued the said press release addressing the issues relating to the licensing of indices to foreign exchanges/ platforms. As per the press release, it has been decided that Exchanges shall cancel licensing agreements for providing indices and securities-related data feed services to all foreign exchange and trading platforms with immediate effect, subject to the notice period mentioned in the respective licensing agreements. Further, it has been clarified that licensing agreement with exchange or trading venue in International Financial Services Centre (IFSC) operating in India shall not be cancelled.

Our comments: The press release has come as a surprise to the foreign investors who till now have been trading heavily in the Indian Indices in the foreign exchanges. However, with this move, it is expected that the foreign investors who are keen to trade in the Indian securities/ indices would now either obtain a Foreign Portfolio Investor (FPI) license to trade in the Indian exchanges or consider trading in an IFSC, where the capital gains arising from derivative trading would henceforth be tax exempt. This would bring more liquidity and foreign funds into Indian Exchanges. There are expectations that Singapore Exchange will launch new Nifty-based contracts, either in alliance with NSE IFSC or on its own in Singapore.

d. Participation by Strategic Investor(s) in InvITs and REITs

(SEBI/HO/DDHS/CIR/P/2018/10 dated 19 January, 2018)

To make REITs and InvITs more attractive, SEBI has allowed strategic investors like registered NBFCs and international multilateral financial institutions to invest up to 25 per cent of the total offer size of such trusts.

The strategic investor(s) shall, either jointly or severally, invest not less than 5 per cent, but not more than 25 per cent of the total offer size.

The units subscribed by strategic investors, pursuant to the unit subscription agreement, will be locked-in for 180 days from the date of listing in the public issue. Further, SEBI has put in place operational modalities required for the participation by the strategic investors in REITs and InvITs.

e. SEBI tightens norms to check unauthorised trading by stock brokers

(SEBI/HO/MIRSD/DOP1/CIR/P/2018/54)

To strengthen regulatory provisions against unauthorised trades, SEBI has prescribed that all brokers shall execute trades of clients only after keeping evidence of client placing such order, which could be, inter alia, in the form physical record written and signed by client, telephone recording, email from authorised e-mail id, log for internet transactions, record of message through mobile phones and any other legal verifiable record.

Further, wherever the order instructions are received from clients through telephones, the stock broker shall mandatorily use telephone recording system to record instructions and maintain telephone recordings as part of its records.

The brokers would be required to maintain the said records for a minimum period for which the arbitration accepts investors' compliant, as notified from time to time.

IRDA updates

a. IRDA releases guidelines for investment by PE funds in Indian insurance companies

(IRDA/F&A/GDL/PEF/263/12/2017 dated 5 December 2017)

Insurance Regulatory & Development Authority (IRDA) has issued guidelines for investment by PE funds in Indian insurance companies as an 'Investor' or as a 'Promotor'. The guideline prescribes the condition to be fulfilled by the PE Funds for investing into Indian insurance companies either as 'Investor' or as a 'Promotor'.

The guidelines clarified that PE Fund includes an Alternate Investment Fund registered with SEBI or special fund formed for investment in approved entities by one or more persons.

Our comments: For PE funds flushed with capital, investment in insurance sector offer an attractive option as the industry has matured and offers lucrative returns. Accordingly, specific guidelines for PE funds to expand the scope of investors in an unlisted insurance company in the capacity of an investor or as promoters by IRDAI, is a welcome move which will provide alternate source of capital to the insurance sector.

b. IRDA issues new regulation for insurance brokers

(F. No. IRDAI/Reg/2/149/2018 dated 30 January 2018)

To supervise and monitor insurance broker as an insurance intermediary, IRDA has issued Insurance Regulatory and Development Authority of India (Insurance Brokers) Regulations, 2018. The said regulation contains provisions relating to registration, renewal of certificate of registration, payment of fees, procedure for issuance of certificate of registration, validity, etc. for insurance brokers.

RBI updates:

a. Discontinuance of Letters of Undertaking (LoUs) and Letters of Comfort (LoCs) for Trade Credits

(Notification No. RBI/2017-18/139 dated 13 March 2018)

The RBI discontinued issuance of LOUs and LOCs for trade credit for imports into India by Authorise Dealer – Category I banks with immediate effect. However, Letter of Credit and Bank Guarantees for Trade Credit for imports into India may continue to be issued, subject to compliance with the provisions contained in Master Circular on Guarantees and Co-acceptance issued by the Department of Banking Regulations.

b. RBI's revised framework for resolving stressed assets

(Notification No. RBI/2017-18/131 dated 12 February 2018)

The RBI has issued a notification outlining the revised framework for resolution of stressed assets substituting the existing framework with a harmonised and simplified generic framework.

c. RBI provides relief to MSME borrowers under GST regime

(Notification No. RBI / 2017-18 / 129 dated 7 February 2018)

As a measure of relief, RBI vide its circular dated February 7, 2018 has provided relief to GST registered MSME borrowers by extending their debt repayment deadline.

Borrower eligible for relief provided by RBI:

Borrower fulfilling all the below mentioned conditions would be eligible for the relief provided under the aforementioned circular:

1. Borrower is classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006;
2. Borrower is registered under the GST regime as on January 31, 2018;
3. Borrower's account was standard as on August 31, 2017; and
4. The aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed INR 25 crore as on January 31, 2018.

Relaxation provided by RBI:

1. Eligible borrower shall be allowed to repay the overdue amount as on September 1, 2017 and payments due from September 1, 2017 to January 31, 2018 not later than 180 days from their original due date, without a downgrade in asset classification.
2. The circular requires the banks and the NBFCs to make a provision of 5 per cent against such exposures not classified as NPA in terms of the said circular and the provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/120 days' norm, as the case may be.

Our comments: One-time dispensation provided to MSMEs struggling due to GST implementation is a welcome move. This should assist MSMEs to manage their cash flows effectively and bring relief to banks and NBFCs with regard to the NPAs in MSME segment.

d. Overseas bank branches can refinance ECBs

(Notification No. RBI/2017-18/116 dated 4 January 2018)

Overseas branches and subsidiaries of Indian banks have been permitted to refinance external commercial borrowings (ECBs) of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the existing ECB.

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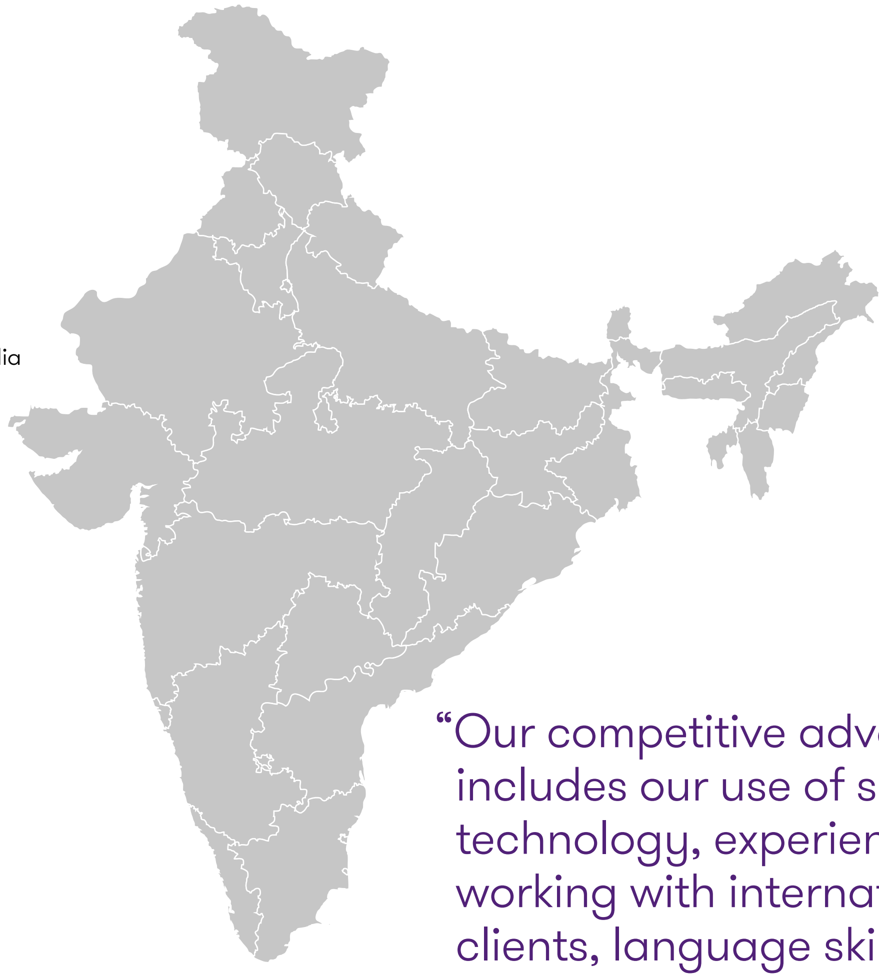

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Vishesh C Chandiok,
Chief Executive Officer, Grant Thornton India LLP

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