O.P. KHAITAN & CO.

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NEWSLETTER

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INSIDE THIS ISSUE:

Dear Reader,

We thank you for your consistent patronage and believe in our firm and capabilities. We appreciate your wonderful response with your valuable feedbacks. With this encouragement we bring you the July Issue (2012) of our Newsletter.

The monthly newsletter is essentially dedicated to make our readers updated on the significant changes/ occurrences in the different sectors of Indian legal and regulatory system. This newsletter includes various updates on RBI, FEMA, Anti– Corruption Laws , External Affairs etc.. We hope to serve you through this newsletter and trust our endeavor to fortify our bonds together…

Thanks & Regards

OPK Team

CORPORATE & TRANSACTIONAL

Regulatory Framework for Unclaimed Deposits

Despite the instructions, State and Central Co-operative Banks / Regional Rural Banks have not been pro-active in tracing customers linked with unclaimed deposits/inoperative accounts. Also, the need to identify the owners of these unclaimed deposits/inoperative accounts is closely linked to KYC due diligence. State and Central Co-operative Banks / Regional Rural Banks were advised that they should display the list of unclaimed deposits/inoperative accounts which are inactive/ inoperative for ten years or more on their respective websites. The list so displayed on the websites must contain only the names of the account holder(s) and his/ her address in respect of unclaimed deposits/inoperative accounts, etc. On a review, with a view to further strengthen the regulatory framework for inoperative accounts and unclaimed deposits, State and Central Co-operative Banks / Regional Rural Banks have been advised to put in place a Board approved policy on classification of unclaimed deposits; grievance redressal mechanism for quick resolution of complaints; record keeping; and periodic review of such accounts.

Financial Literacy Centres

Since the Model Scheme has been in operation for quite some time, it was decided to evaluate it in terms of its efficacy and impact on the spread of Financial Literacy in the country. Accordingly, a study on the functioning of the Financial Literacy Counselling Centres (FLCC) has been conducted through a nationwide sample survey of 30 FLCCs spread across 16 States. The findings of the study indicate the limitations of the model scheme in scaling up the financial literacy efforts in the desired manner. Some of the findings of the study are given below:

- All FLCCs are located in Urban and Semi Urban areas.
- Awareness of existence of FLCC among local populace is limited.
- FLCCs are mostly serving walk in clients, whereas outdoor literacy drives by FLCCs are exceptions.
- The literacy material available at FLCCs is generally the publicity material pertaining to various products of sponsor banks.
- Even though 53% of the FLCCs are run by separate Trusts/Societies formed for the purpose, these are actually working as institutions of sponsor banks due to their dependence for funding and administrative support. Thus, FLCCs are not in a position to maintain arms- length distance from sponsor bank as envisaged in the Model Scheme.

In view of the above and with the objective of scaling up Financial Literacy efforts manifold, it has now been decided to modify the existing FLCC Scheme. While the existing FLCCs would continue to function with a renewed focus on financial literacy, Lead banks are advised to set up Financial Literacy Centres (FLCs) in each of the Lead District Manager (LDM) Offices in a time bound manner. Further, financial literacy activities will also be undertaken by all the rural branches of Scheduled Commercial Banks including RRBs. The Head/ Controlling Offices of the concerned banks would monitor the financial literacy efforts undertaken by their FLCs/Branches through periodic reporting and also by resorting to random on-site visits.

FLCs

- Efficacy and impact of financial literacy in the country was evaluated.
- No FLCC is functioning in the rural areas.
- Existing FLCC Scheme has been modified.
- It will lead to opening of 630 plus FLCs in all the districts.
- FLCs and rural branches of banks should maintain record in the form of a register containing details such as name, gender, age, profession, contact details, whether banked or unbanked, details of services availed etc.

White Label ATMs in India

It has been decided to permit non-bank entities incorporated in India under the Companies Act 1956, to set up, own and operate ATMs in India. Non-bank entities that intend setting up, owning and operating ATMs, would be christened "White Label ATM Operators" (WLAO) and such ATMs would be called "White Label ATMs" (WLAs). They will provide the banking services to the customers of banks in India, based on the cards (debit/credit/prepaid) issued by banks. The WLAO's role would be confined to acquisition of transactions of all banks' customers and hence they would need to establish technical connectivity with the existing authorised shared ATM Network Operators / Card Payment Network Operators. Non-bank entities would be permitted to set up WLAs in India, after obtaining authorisation from RBI under the Payment and Settlement Systems (PSS) Act, 2007.

Roadmap-Provision of Banking Services in Villages with Population below 2000

Government of India has been emphasizing the need for transferring all state benefits including Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) wages and various cash subsidies to beneficiaries by direct credit to their bank accounts. The implementation of Electronic Benefit Transfers (EBT) is expected to be more advantageous as the benefits would reach quickly in the hands of the beneficiaries without any leakages. It would also save the Government the administrative cost presently being incurred in cash disbursements of social benefits. However, the prerequisite for successful implementation of EBT is availability of door step banking services throughout the country as beneficiaries are spread across all the villages. Thus, in order to replace the present system of cash based disbursement with the direct credit to bank accounts of beneficiaries and its disbursement at their door step through ICT based BC model, the availability of Business Correspondent (BC) is necessary in all villages. The objective is to provide a bank account to every household/person throughout the country. Hence, banks should endeavour to have a BC touch point in each of the villages in the country, to start with, through provision of EBT services, initially, at least once a fortnight. Under above roadmap, 74,414 such unbanked villages were identified and allocated to various banks for opening of banking outlets, out of which banks have opened banking outlets in 74,199 (99.7 per cent) villages by March 2012.

Merchant Discount Rates (MDR) structure for debit card transactions

The Merchant Discount Rate (MDR) for debit and credit cards has hitherto been similar in India. The debit card is a secured product with the card usage being linked to the availability of funds in the accounts of the customers. Accordingly, in consultation with the stakeholders, it has been decided to cap the MDR for transactions undertaken with debit cards as under::

- not exceeding 0.75% of the transaction amount for value up to INR 2000/-;
- not exceeding 1% for transaction amount for value above INR 2000/-.

This directive is issued under section 18, of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007) and will be effective from 1st July, 2012.

Draft guidelines for General Anti Avoidance Rules

After exhaustive deliberations and broad based discussions with the officers, representatives of FII's, members of the advisory committee and others stake holders, certain recommendations were made. The proposals for inclusion in the guideline are:

- The committee suggested that in order to avoid the indiscriminate application of the GAAR provisions and to provide relief to small taxpayers, there should be monetary threshold for invoking the GAAR provisions.
- The committee is of the opinion that adequate safeguards should be provided to ensure that principles of natural justice were not violated and there is transparency in the procedures.
- The CIT should make a reference to the Approving Panel within 60 days of the receipt of the objection from the assessee and in case of the CIT accepting the assessee's objection and being satisfied that provision of chapter X-A are not applicable, the CIT shall communicate his decision to the AO within 60 days of the receipt of the assessee's objection..
- There should be one Approving Panel, which shall be situated at Delhi. Subsequently, the CBDT should review the number of Approving Panels required on the basis of the workload in the FY 2014-15.
- The Approving Panel should comprise of three members, out of which, two members should be of the level of Chief Commissioners of Income Tax and the third member should be an officer of the level of Joint Secretary or above from the Ministry of Law. All the members should be full time members.

- The provisions of GAAR will apply to the income accruing or arising to the taxpayers on or after 1st April, 2013.

Industrial Growth and Environmental Conservation Not Mutually Exclusive

CII | World Bank

The Confederation of Indian Industry and The World Bank Group signed a Memorandum of Understanding (MoU) on 27th June, 2012, entering into an agreement to establish the India Wildlife Business Council (IWBC). The objective of the IWBC is to promote tiger and biodiversity conservation in the context of sustainable development and to improve the dialogue between business, conservation stakeholders as well as decision-makers. The International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC) – which comprise the "World Bank Group" – and CII will work together to create and support the IWBC, which will serve as an institutionalized platform for collaboration.

Immediate Steps Needed to Revive Economy : Mr. Adi B Godrej

"The Indian Industry in one voice has raised its deep concern on the current state of Indian Economy and as CII we urge the Government to take immediate steps to revive economic growth. There was a unanimous call for fiscal, monetary and administrative actions that could be game changing for the Indian Economy. One such measure that could be game changing is fast tracking implementation of GST, which by itself could add up to 1.5% additional growth to GDP", said Mr Adi B Godrej, President, CII. Mr Godrej was interacting with the media after more than 75 senior leaders of Indian Industry met at the National Council of CII on 5th June, 2012. Commenting on the state of the economy and industry, the issues highlighted were low investment rate due to high interest rates, depreciating rupee affecting input costs, high inflation affecting input costs and demand, deteriorating global economic conditions affecting export markets and lack of availability of credit and decline in credit flow to industry. In addition, the CEOs also raised their concern on issues such as infrastructure bottle-necks, land acquisition issues, environmental and procedural delays affecting implementation of projects. The CII ASCON Monitor that surveys more than 35,000 companies through their respective sectoral associations affiliated to CII also revealed similar issues impacting GDP growth..

CCI to foster competition and protect the markets from anti competitive practices

Corporate Affairs Minister Dr. M. Veerappa Moily said "*The Competition Commission of India compliments Sectoral Regulators and there is no question of encroachment on the jurisdiction of Sectoral Regulators*". On the issue of the Regulatory overlap with other sectoral regulators such as Banking, Telecom etc., Dr. Moily clarified that only the Bank Mergers and Acquisitions (M &A's) are proposed to be exempted from Competition Commission of India scrutiny under the Banking Law Amendment Act which the Cabinet recently approved. Dr. M. Veerappa Moily stated that while the job of a Sectoral Regulator is to facilitate conditions that are conducive to competition, the Competition Commission of India is to regulate and to ensure that there is a healthy competition in the market. The Corporate Affairs Minister also informed that after detailed deliberations, the Draft National Competition Policy is ready and necessary steps are being taken for submission of Note to cabinet. The proposed National Competition Policy envisages the Cabinet Committee on Competition to provide necessary directions and guidelines to various Ministries and Departments of Government of India on steps to be taken to engender the 'Competition Culture'.

ANTI CORRUPTION LAWS

Corruption and Tax Evasion

Submission of applications on- line and making available their status online, will lead to transparency and adherence to the system of first – come - first-served. If all transactions are done electronically, through Bank account, the corruption level is bound to decline.

"*India can grow 9-10% p.a. by taking progressive steps*" said Shri R. Sri Kumar, Vigilance Commissioner, Central Vigilance Commission. He suggested that corruption can be tackled through a multi pronged approach as follows:-

- Simplification of rules, regulations, archaic laws, procedures and processes.
- Re-distribution of man power in Govt./ Public Sector Enterprises, in order to provide adequate man power support from those Govt. Departments/ organizations, where officials have little or no work.
- A curb on the use of discretionary power would help in reduction of corruption.
- Government's decision to enact Public Procurement Law would help in streamlining systems and procedures for public procurement.
- The poor need to be subsidized. There is a need to prevent leakages in the system of providing assistance/ subsidy to the poor.
- Punish the corrupt quietly and appropriately.
- Land records should be computerized in all States and Union Territories, to detect cases of benami ownership.
- Enactment of laws to confiscate assets acquired out of bribe money.
- Political consensus has to emerge on electoral reforms particularly funding of elections at every level..

EXTERNAL AFFAIRS

Fourth Session of Indo-Ukrainian Inter-Governmental Commission

Minister of State for External Affairs, Shri E. Ahamed, led an inter-ministerial delegation to Ukraine for the Fourth Session of the Indo-Ukrainian Inter-Governmental Commission on Trade, Economic, Scientific, Technological, Industrial and Cultural Cooperation, in Kyiv, after a gap of nine years. At the Fourth Session, the two sides reviewed the current status and future prospects of cooperation in trade and investment, heavy engineering, fertilizers, pharmaceuticals, mining and metallurgy, science and technology, power generation, transportation, agriculture, education, culture and tourism. Major decisions taken during the Session include the setting up of Joint Working Groups in mining and metallurgy, pharmaceuticals and healthcare, and, fertilizers. The two sides expressed satisfaction with the ongoing multi-sectoral bilateral cooperation. Both sides, however, emphasized the need to tap the vast untapped potential of cooperation in various sectors. The constructive deliberations during the Fourth Session had been a major step forward in charting the way ahead in this regard.

O.P. KHAITAN & CO.
SOLICITORS & ADVOCATES

WWW.OPKHAITAN.COM

Khaitan House

B-1, Defence Colony,

New Delhi—110024, India.

Phone: (+91) (11) 4650 1000

Fax: (+91) (11) 2433 7958, 4155 1590

E-mail: gkhaitan@opkhaitan.com

arihant@opkhaitan.com

AN OVERVIEW:

- Founded by Mr. O.P. Khaitan in 1990. Currently being managed by Mr. Gautam Khaitan as its Managing Partner;
- Well established, reputed, skilled and professionally managed full service Law Firm.
- Long associations with many International law firms in different jurisdictions.
- Quality of Legal Services - immaculate, consistent and impeccable.
- Our Members and Associates - Qualified from National and International Universities.
- Firm's Paramount Concept - "Clients' Satisfaction".
- Retained By - Several National and International Clients with Cross-Border Investment Objectives around the Globe.
- Key Focus – Cross-Border Mergers, Joint-ventures & Acquisition.
- 40 Lawyers + Paralegal and Support Staff of more than 40 people.
- The Office of the Firm-based in the prime location of South Delhi and is established in 4 floors totaling to 12,000 sq. fts. office space.
- The Firm is one of the exclusive members of several international networks of law-firms through which we ensure ready access to formal legal advice to our clients in other jurisdictions around the world.

"What if we can help those things that really matter…"

FROM OUR LAWYER'S DESK

Reviving the Rupee...

The Reserve Bank of India (RBI) has eased the norms for raising funds through External Commercial Borrowings (ECB) .ECB includes bank loans, suppliers' and buyers' credits, fixed & floating rate bonds (without convertibility) and borrowings from private sector windows of multilateral Financial Institutions such as International Finance Corporation. In India, ECB is permitted by the government to assist Indian corporate and Public Sector Units (PSUs) to get and additional source of funds for expanding the existing capacity as well as for fresh investments. The fresh measures taken by RBI have stimulated foreign currency inflows into the country. RBI has raised the limit for ECBs and Government Securities (G-Secs). This is another effort by the government to revive the slowing Indian economy and shore up rupee.

The limit of ECB has been hiked by USD 10 billion along with an increase in the limit of overseas investment in government bonds from USD 5 billion to USD 20 billion. The limit on both corporate and government bonds was increased by USD 5 billion back in November, 2011 taking the limit to USD 25 billion for Corporate bonds and USD 15 billion for Government bonds.

Now, Foreign Institutional Investors can invest USD 5 billion more in the G- Secs to USD 20 billion from USD 15 billion. Investment of USD 10 billion can be made by Foreign Institutional Investors without any residual maturity restrictions whereas another USD 10 billion can be invested subject to a residual maturity of three (3) years. Within the USD 15 billion investment limit in G-Secs initially, there was a sub-limit of USD 5 billion for Foreign Institutional Investors investment in bonds with a residual maturity of five years, while there was no residual maturity restriction for investments up to USD 10 billion. This substantiates the fact that the enhancement of the limit by USD 5 billion in the G-Sec came with a maturity of three (3) years as against five (5) years before.

Also, the Indian Company in the Manufacturing and Infrastructural sector having foreign exchange earnings shall avail ECBs for repayment of outstanding rupee loans towards capital expenditure and/or fresh rupee capital expenditure under the approval route. The overall ceiling in the above two sectors is USD 10 billion and the exporters in these sectors can avail ECBs for repaying outstanding loans towards capital expenditure with a minimum permissible amount limited to 50 % of the average annual export earnings for an individual company.

The rules were also relaxed for the long term investors like Sovereign Wealth Funds (SWFs), multilateral agencies, endowment funds, insurance funds, foreign central banks and pension funds who are now permitted to invest upto USD 20 billion in the government debts without registering as Foreign Institutional Investors. Such relaxations shall expand the foreign investor base for G-Secs.

To encourage foreign investment in long term infrastructural bonds, the government has also reduced the lock in period to one (1) year from three (3) years and the residual maturity to fifteen (15) months. RBI has also taken measures to tap investments by Qualified Foreign Investors (QFIs) by permitting them to invest in the mutual fund schemes that hold atleast 25% of their assets in the infrastructure sector subject to current USD 3 billion sub-limit.

The Reserve Bank in its attempt seems to be aiming at reduction of pressure on country's balance of payments and supporting the rupee. With the current reforms, we can all expect to see the stemming of the rupee on a sustainable basis, as the structural reforms by the RBI for bringing in the foreign flows shall show its positive effects for Rupee only in the time to come.

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