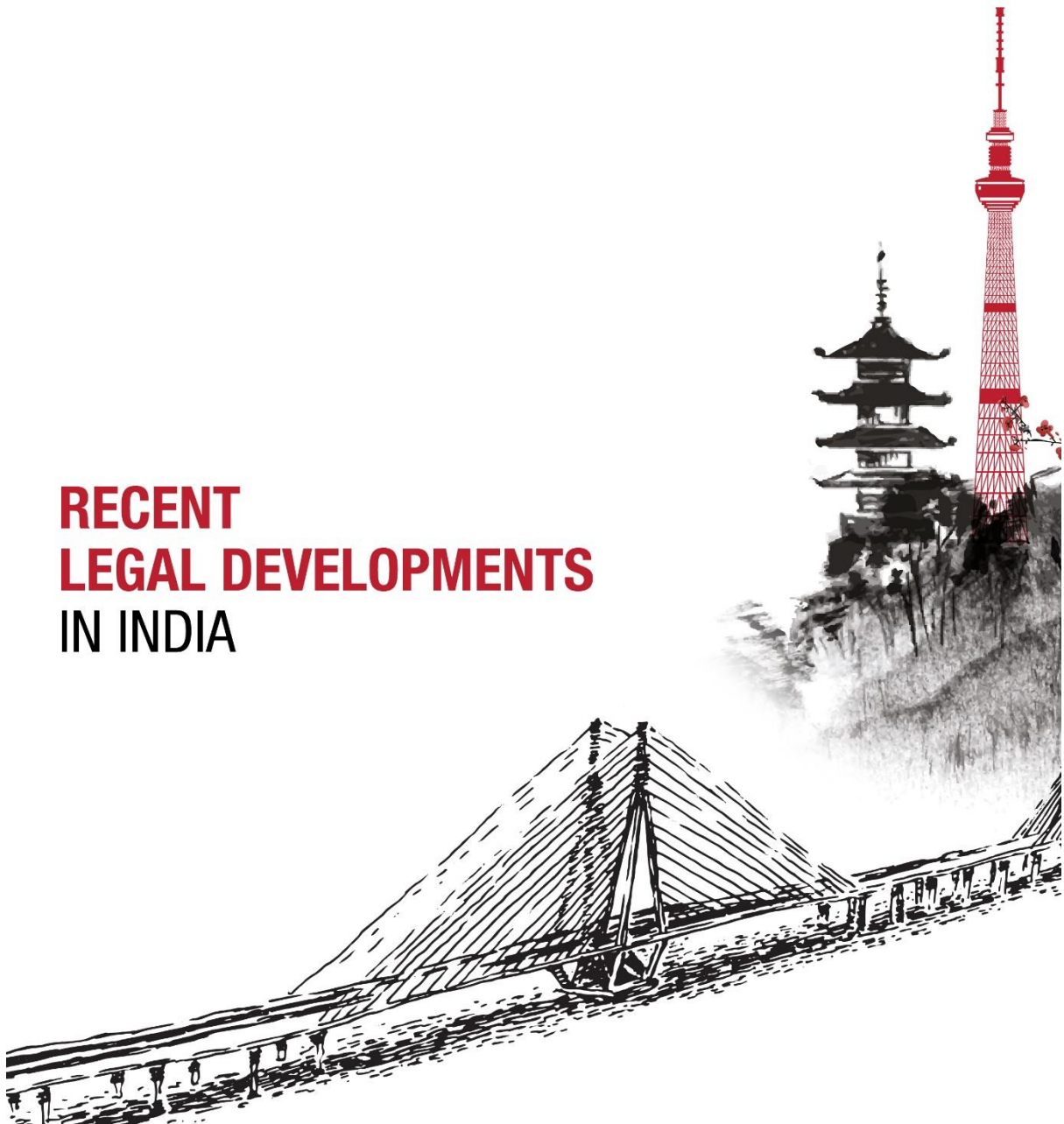


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**RECENT  
LEGAL DEVELOPMENTS  
IN INDIA**



April 2018

The IndusLaw 日本のニュースレター brings you the key regulatory and legal developments in various sectors in India.

## **INDUSLAW**

**INDUSLAW** is a multi-speciality Indian law firm with 24 partners and over 100 lawyers across four offices in Bangalore, Delhi, Hyderabad and Mumbai.

We advise foreign and domestic clients with respect to transactions, dispute resolution, business strategies and operations from the perspective of Indian laws and regulations.

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1. 対外直接投資-届出書<sup>1</sup>
  - 1.1. 取引信用状に関する裏書状（「LoU」）及び約定状（「LoC」）の継続不能

インド準備銀行は、インドへの輸入のための貿易信用のため、ADカテゴリーI銀行によるLoU/LoCの発行を廃止した。インドへの輸入に対する貿易信用に関する信用状および銀行保証書は、「保証および共同承諾」に関する銀行規制マスターサーキュラー部（Department of Banking Regulation Master Circular）に従うことを条件に、引き続き発行することができる。
2. 会社法
  - 2.1. 会社（拡張業務報告用語に関する文書及び様式の届出）改正規則（2018年）

当社及び連結子会社は、平成30年3月8日に「事業報告用語による書類及び様式の届出」改訂規則（以下「改訂規則」という。）を公告する。

改訂規則は、2015年の（拡張事業報告言語における文書及び様式の届出）規則及び2011年の（拡張事業報告言語における文書及び様式の届出）規則に基づく財務諸表の提出を行った会社は、その後の年度において当該種類の会社に該当しない場合であっても、財務諸表等の届出を継続することを義務付けている。
  - 2.2. 会社口座規則改正（2014年）

中央政府は、2018年2月27日付の通知を、2018年会社規則（口座）修正規則、2014年会社規則（口座）修正規則の規則10を通じて行う。この改正により、2015年インド会計基準（Companies Accounting Standards）規則に準拠することが義務付けられている会社は、e-Form

AOC-3Aで財務諸表を転送することが義務付けられた。

### 2.3. 2013年会社法第132条第3項及び第11項のMCA通知サブセクション

MCAは、2013年会社法第132条第3項及び第11項に、国家財務報告機関の会長、委員、秘書役及びその他の従業員の任命方法及びその他の職務取引条件について通知した。同時に、MCAは、議長および委員の任命方法およびその他の職務取引条件に関する2018年国家財務報告院規則（議長および委員の任命方法およびその他の職務取引条件）も通知した。

最終的に、NACASは国家財務報告当局に置き換えられる。

### 3. 知的財産権

#### 3.1. CROCS INC. USA v. LIBERTY SHOES LTD. 他

デリー高等裁判所（「裁判所」）は、最近、Crocs Inc. USA（「原告」）が様々なインドの靴取引業者に対して提出した暫定差止命令の申請を却下した。これにより、登録が原告に有利に付与される前に、保護を求める意匠の先行公告があったと判断した。さらに、裁判所は、原告の登録意匠は無効であり、取消しの責任を負うと判示した。

<sup>1</sup> Reserve Bank of India (RBI) はインドの中央銀行である。その主な責任はインド経済の金融政策を規制することである。

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1. **Foreign Direct Investment - Notifications by RBI<sup>2</sup>**

1.1. **DISCONTINUANCE OF LETTERS OF UNDERTAKING (“LOUs”) AND LETTERS OF COMFORT (“LOCs”) FOR TRADE CREDITS**

The RBI vide its circular dated March 13, 2018 has discontinued the practice of issuance of LoUs/ LoCs by AD Category –I banks, for trade credits, for imports into India, with immediate effect. Letters of credit and bank guarantees for trade credits for imports into India may continue to be issued subject to compliance with the provisions contained in Department of Banking Regulation Master Circular dated July 1, 2015 on “Guarantees and Co-acceptances”, as amended from time to time.

Full text of the circular is available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11227&Mode=0>.

2. **Company Law**

2.1. **COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE) AMENDMENT RULES, 2018**

**NEW FRAMEWORK**

The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018 (“**Amendment Rules**”) were notified on March 8, 2018 in the Gazette of India.

The Amendment Rules specify that the companies that have filed their financial statements under the Companies (Filing

of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 (“**2015 Rules**”), and Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011 (“**2011 Rules**”), will be required to continue filing their financial statements and other documents even though they may not fall within those classes of companies in the succeeding years.

**PREVIOUS FRAMEWORK**

The 2015 Rules mandate that listed companies, companies with a paid-up capital of INR 5 crores or above, companies with a turnover of INR 500 crores and other companies covered under the 2011 Rules are required to file their financial statements and other documents with the Registrar of Companies in e-Form AOC-4 XBRL.

**REASONS FOR THE CHANGE**

The Amendment Rules provide clarity regarding whether companies that previously fell within the categories of companies mentioned in the 2011 Rules and 2015 Rules would still be required to file the forms in the prescribed format in the succeeding years if they do not continue to fall within the categories of companies that have been prescribed.

Full text of the Amendment Rules is available at [http://www.mca.gov.in/Ministry/pdf/CompaniesXBRL0803rule\\_15032018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesXBRL0803rule_15032018.pdf).

2.2. **AMENDMENT TO THE COMPANIES (ACCOUNTS) RULES, 2014**

<sup>2</sup> Reserve Bank of India or **RBI** is the central bank of India. Its primary responsibility is to regulate the monetary policy of the Indian economy.

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The Central Government vide its notification dated February 27, 2018 has through the Companies (Accounts) Amendment Rules, 2018 amended Rule 10 of the Companies (Accounts) Rules, 2014.

The amendment adds the requirement of companies which are required to comply with Companies (Indian Accounting Standards) Rules, 2015 to forward their statement in e-Form AOC-3A.

Full text of the notification is available at [http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRule\\_01032018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRule_01032018.pdf)

2.3. **MCA NOTIFIES SUB SECTIONS (3) AND (11) OF SECTION 132 OF THE COMPANIES ACT, 2013**

**NEW FRAMEWORK**

The MCA has, vide notification dated March 21, 2018 notified sub sections (3) and (11) of Section 132 of the Companies Act, 2013 relating to manner of appointment and other terms and conditions of service of chairperson and members as well as secretary and other employees of the National Financial Reporting Authority.

Simultaneously, the MCA has also notified the National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members Rules, 2018 (“**Rules**”) relating to manner of appointment and other terms and conditions of service of chairperson and members.

**PREVIOUS FRAMEWORK**

Under Section 210 A of the Companies Act, 1956 an advisory committee called ‘National Advisory Committee on Accounting Standards (“**NACAS**”) had been constituted to advise on the

formulation and laying down of accounting standards and auditing policies.

**IMPACT**

The NACAS will be replaced by the National Financial Reporting Authority.

The notification can be accessed at: [http://mca.gov.in/Ministry/pdf/comencementNotification2103\\_21032018.pdf](http://mca.gov.in/Ministry/pdf/comencementNotification2103_21032018.pdf)

3. **Intellectual Property Rights**

3.1. **CROCS INC. USA v. LIBERTY SHOES LTD. AND OTHERS**

**INTRODUCTION**

The High Court of Delhi (“**Court**”) recently dismissed applications for interim injunctions filed by Crocs Inc. USA (“**Plaintiff**”), against various Indian shoe traders, viz., M/s Liberty Shoes Ltd., M/s Relaxo Footwear Ltd., M/s Bioworld Merchandising India Ltd., M/s Bata India Ltd & Ors., M/s Action Shoes Pvt. Ltd. & Ors., M/s Aqualite India Limited & Anr. and M/s Kidz Palace & Ors. (“**Defendants**”), in different suits of design infringement filed by the Plaintiff against the Defendants in various lower courts in Delhi. All the suits and applications were transferred to and taken up together by the Court and this common judgment was passed thereby.

**BACKGROUND**

The Plaintiff, a famous footwear brand based out of the USA, had sought for restraint against the Defendants from manufacturing, marketing, supplying, selling etc., of footwear that was a replica of the registered design of clog-type slipper/shoes sold by the Plaintiff. The

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Plaintiff had registration of the said design from 2004.

The Defendants while contesting the claims alleged that the subject design registration of the Plaintiff was not valid and there was hence no infringement. It was argued by the Defendants that the Plaintiff's registered design when registered in 2004, was not a new or original design as a similar design was already in existence when the Plaintiff sought for the registrations. The Defendants also produced evidence showing prior publication of the design in question by the Plaintiff on its own website. The design was hence alleged to be in public domain, pursuant to which, the Defendants claimed that the registrations of the Plaintiff were liable to be cancelled.

#### **FINDINGS OF THE COURT**

At the outset, the Court analysed whether the registered design of the footwear of the Plaintiff were published prior to registration. Based on the evidence by the Defendants, the Court held that there was prior publication of the design prior to the registration being granted in favour of the Plaintiff. There was another party whose footwear's design was prior. It was also noted that the Plaintiff itself had published the design in question prior to its registration. On the question whether the design which had been registered by the Plaintiff with respect to the footwear were new or original, the Court held that the change in it was not sufficient to distinguish the new product from the existing one and could not hence be considered novel or original.

The Court laid down that the Plaintiff's registered design was invalid and liable to be cancelled. Hence, the Court dismissed interim injunctions filed by

the Plaintiff and imposed costs, including costs of two lakhs per Defendants towards the losses incurred by them due to the litigation.

Full text of the judgment is available at <https://spicyip.com/wp-content/uploads/2018/02/Crocs-vs.-Bata-Judgment.pdf>

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