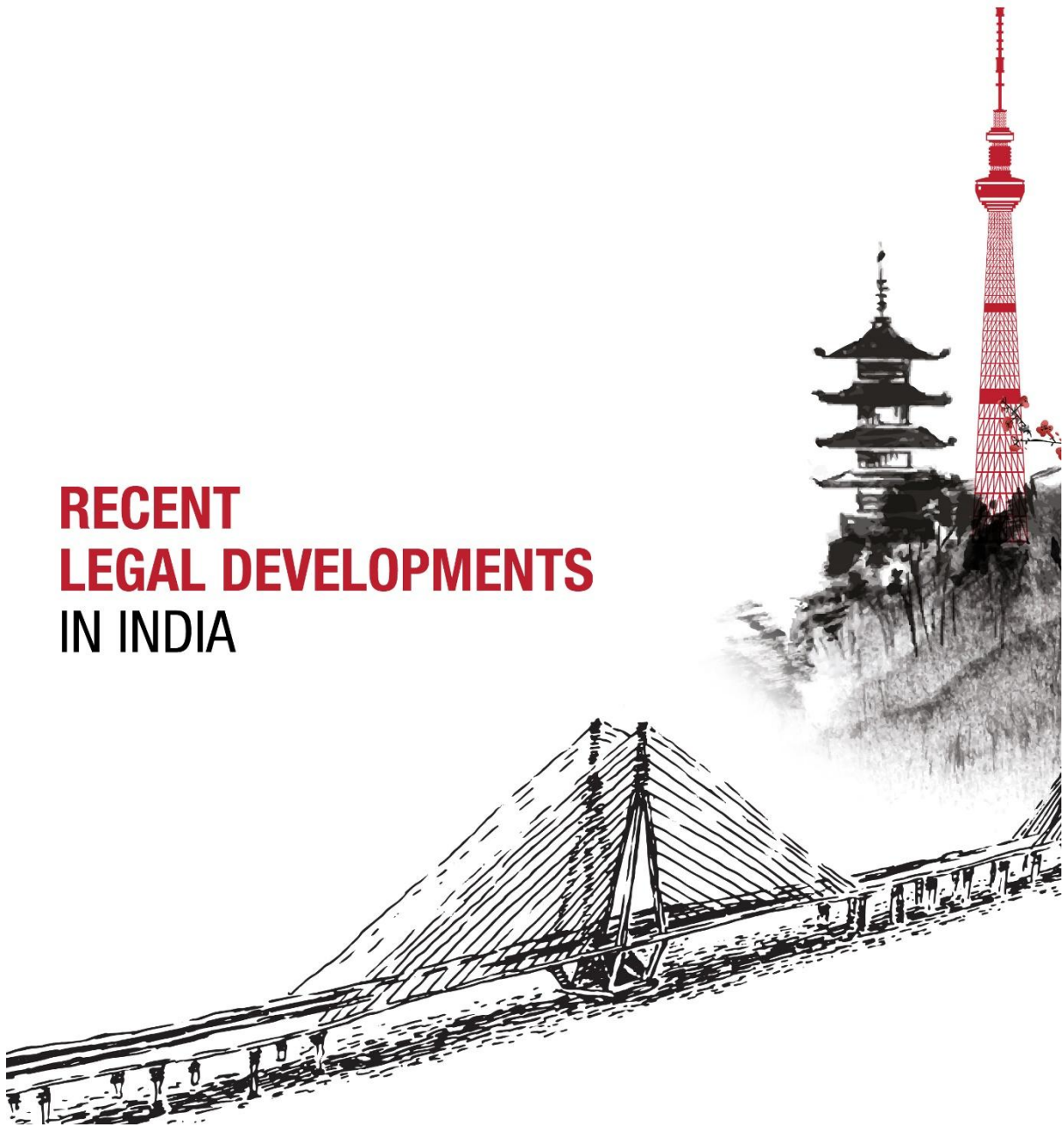


June 2018

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LEGAL DEVELOPMENTS
IN INDIA**



June 2018

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1. 海外直接投資

RBI¹、および、SEBI²による通達

1.1. FPIによる債券投資に対する基準を改定

インド準備銀行（RBI）は2018年4月27日および5月1日に2通の通達を出し、海外関係投資家（FPI）による債券投資の制限を改訂した。

これらの通達は、以下に挙げる通り、FPIによる債券投資の運用面に幅広く影響を与える主要な変更点を通知するものである (a) 残存期間条件の変更 (b) 中央政府債券への投資制限の引き上げ (c) オークションメカニズムの中止 (d) 特定の募集に対する集中および投資家の制限の導入 (e) FPIが投資可能な証券の種類の説明。

1.2. インドの上場会社への海外投資の制限を監視する新たなインフラ

インド準備銀行（RBI）はインド証券取引委員会（SEBI）と協議し、インドの上場会社への海外直接投資（FDI）の制限を監視する新たなシステムを導入した。監視メカニズムを運用可能にする上で必要なインフラとシステムは受託者により利用することが可能になる。FDIのインドの上場会社への投資の制限を監視するこの新しいシステムは2018年5月18日から運用されている。

2. 会社法

2.1. 2017年会社法（修正）の特定の規定の通知

中央政府は2017年会社法（修正）の17の規定が2018年5月7日に発効すると発表した。

2.2. 修正された規定の通達

¹インド準備銀行（RBI）はインドの中央銀行である。インド経済の金融政策の規制を主な任務とする。

²インド証券取引委員会（SEBI）は証券における投資家の利益を守り、1992年インド証券取引委員会法の規定に従って、証券市場の発展の推進、および、規制を行うために設立された。

中央政府は以下の修正規定の通達を行った:

- (i) 2018年会社修正規定（証券の目論見書および証券の分配）
- (ii) 2018年会社第二修正規定（重役の任命および資格）
- (iii) 2018年会社修正規定（役員会および役員会の権力）
- (iv) 2018年会社修正規定（監査および監査人）
- (v) 2018年修正規定（株式資本および社債）
- (vi) 2018年会社修正規定（定義の詳細の明記）
- (vii) 2018年会社第二修正規定（登録場所および料金）

2.3. MCAによるCSRの説明

インド企業省（MCA）は2013年会社法の135（5）節に対する第一の条件を明確化した。この条件は、企業が企業の社会的責任（CSR）に割り当てられた資金の使い方において、現地および近郊の地域を優先するべきだと命じており、実質ともに順守する必要があると規定している。

3. 課税

3.1. 中央税務局がインドおよびクウェート間の二重課税回避協定を修正する協定を通達

収入への課税に関する二重課税を回避するため、および、脱税を予防するため、2006年6月15日に調印された既存のインドとクウェート間の二重課税回避協定（DTAA）を修正する協定が2017年1月15日に調印された。当該の協定は2018年3月26日に発効し、2018年5月4日に官報で通知された。

本協定はDTAAの情報交換に関する規定を国際的な標準に更新している。さらに、本協定はクウェートから得た課税目的の情報をクウェートの管轄権を有

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する当局に権限を与えられた別の法執行機関と共有すること、また、その反対も同様に認める。

3.2. **デリー政府がデリーGST法の下、初の控訴局を通達**

デリー政府は2017年デリー物品およびサービス税法（デリーGST法）の下、初の控訴局の通達を行った。ここでは委員長（国税）が控訴局の役目を果たす追加の委員を認可し、デリーGST法の107節の下、控訴を受理する。

3.3. **2018年関税監査法に関する通達**

中央税務局は2011年輸入者および輸出者法を前提とした以前の現地事後調査に代わる2018年関税監査法の通知を行った。

3.4. **スタートアップのエンジェル投資家への所得税控除**

2018年5月24日、中央税務局は、証明総合行政委員会による承認に従い、投資家からの株式発行に対する報酬が受け取られている場合、非公開会社への株式投資の割増金の所得税の支払いを控除する通知を行った。本通達は2018年4月11日から発効していると思われる。

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1. FOREIGN DIRECT INVESTMENT

1.1. REVISED NORMS FOR INVESTMENTS IN DEBT INSTRUMENTS BY FPIs

INTRODUCTION

The RBI³ has undertaken a detailed review of the current regulations governing debt investment by Foreign Portfolio Investors (“FPIs”) with the objective of simplifying the process of investments into debt instruments by FPIs in India.

In this context, the RBI in consultation with the SEBI⁴ revised the limits of debt investments by FPIs at the end of April 2018, by issuing 2 (two) notifications on April 27, 2018 (“Circular 1”) and on May 1, 2018 (“Circular 2” and together with Circular 1, the “Circulars”).

These Circulars notified the following key changes which will affect operational aspects of FPI investments in to debt, broadly: (a) revising of minimum residual maturity requirement; (b) increasing the limit for investment in central government securities; (c) discontinuing the auction mechanism; (d) introducing concentration and investor-wise limits for particular subscriptions; and (e) clarifying the type of instruments that FPIs can invest in.

IMPACT OF THE CIRCULARS

Revision of minimum residual maturity requirements

Currently, FPIs are required to invest in to debt with a minimum residual

maturity of 3 (three) years. In order to bring consistency across debt categories, the RBI has now withdrawn this requirement for investment in all categories of debt, central government securities, state development loans and corporate bonds.

This relaxation is permitted subject to the condition that investment in securities by an FPI, in either of these categories, where the residual maturity is less than 1 (one) year, will not exceed 20% (twenty percent) of the total investment of that FPI at any point in that category, on a continuous basis.

Further, the RBI has clarified that all securities with residual maturity of less than 1 (one) year will be reckoned for the 20% (twenty percent) limit, regardless of the maturity of the security at the time of purchase and if investments in securities with less than 1 (one) year residual maturity, as on May 2, 2018, is more than 20% (twenty percent) of total investment in any category, then FPIs will bring such share below 20% (twenty percent) within a period of 6 (six) months from the date of Circular 2.

In this regard, FPIs will ensure that no further additions are made to the portfolio of securities either through fresh purchases or through roll-down of investments with current tenor of more than 1 (one) year, until the share of such portfolio of securities falls below 20% (twenty percent) of the total investment in that category.

Increase in limit for investment in central government securities

In October 2015,⁵ the aggregate FPI investments in any central government security was capped at 20% (twenty

³ 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.

⁴ The Securities and Exchange Board of India or SEBI was established to protect the interests of investors in securities and to promote the development of, and to regulate the securities market in accordance with the provisions of the Securities and Exchange Board of India Act, 1992.

⁵ Available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FP92CFEDEFD4B24242B65E44C749A4CA87.PDF>

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percent) of the outstanding stock of that security. FPIs are now permitted to invest in central government securities for up to 30% (thirty percent) of the outstanding stock of that security.

Discontinuation of auction mechanism

The Clearing Corporation of India Limited has commenced online monitoring of the utilisation of central government securities utilisation limits and henceforth, the RBI has decided to discontinue the auction mechanism with effect from June 1, 2018.

Concentration and investor-wise limits

In addition to the relaxation of the minimum residual maturity requirements, it should be noted that investment by any FPI, including investments by related FPIs (being all FPIs registered by a non-resident entity), will not exceed 50% (fifty percent) in a single corporate bond (or entities related to that single corporate). Further, an FPI will not permit exposure of more than 20% (twenty percent) of its corporate bond portfolio in a single corporate (or a related entity).

If the current investment exceeds these limits, Circular 1 stipulates that no further investments will be permitted in that particular corporate, until these stipulations are met.

Moreover, any new FPI which is registered after April 27, 2018, will be required to adhere to these conditions within 6 (six) months from the commencement of its investments.

Furthermore, concentration limits for investment by FPIs (including related FPIs) in debt have been prescribed, where the limit for long term FPIs is 15% (fifteen percent) of the prevailing investment limit for that particular category of debt; and that for other FPIs is 10% (ten percent) of the prevailing

investment limit for that particular category of debt.

The RBI has additionally relaxed these limits by proposing one-time measures for investments currently exceeding the newly prescribed concentration limit.

Type of instruments

Lastly, it should be noted that the RBI has clarified that FPIs are permitted to invest in treasury bills issued by the central government but are restricted from investing in partly paid instruments.

INDUSLAW VIEW

The increase in limits on FPI investments along with the easing of minimum residual maturity from 3 (three) years to 1 (one) year is a welcome move and should stimulate FPI investment into India's corporate debt markets, assuming stability of the Rupee or the ability to effectively hedge at commercially acceptable rates.

However, the potential impact of the exposure and concentration limits on the bond market, which is struggling with lower demand and rising yields remains to be seen. Issuers of corporate debt will now presumably have to have at least 2 (two) subscribers for any debt issue, in order to meet the new requirement, limiting a single FPI to no more than 50% (fifty percent) of any single corporate debt issue. How these revisions will affect funding structures by particular FPIs (such as the multi-lateral funding agencies and the foreign development banks) using these instruments to fund particular project development, remains to be seen.

Furthermore, introducing exposure limits could potentially impact the ability of new FPI entrants into the market, as a cap on 20% (twenty percent) exposure to a particular

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corporate issuer would necessarily mean that the FPI would have to have at least 5 (five) investments in play. This might not be practical or achievable for certain FPI entrants in the short term, and it remains to be seen how existing FPIs will have to re-balance their portfolios in order to achieve this requirement.

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Full text of the Circular 1 is available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT16864DC2602F2834E29A64D4ADF6D41EA80.PDF>, and

Circular 2 is available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/170FPI85A621943FC94443AB5B7373E1F34667.PDF>

1.2. NEW INFRASTRUCTURE FOR MONITORING FDI LIMITS IN LISTED INDIAN COMPANIES

The RBI, in consultation with SEBI has put in place a new system for monitoring foreign investment (“FDI”) limits in listed Indian companies, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, shall be made available by the depositories.

All listed Indian companies are required to provide specified information on FDI to the depositories before May 15, 2018.

Defaulting listed Indian companies will not be able to receive FDI and will be non-compliant with Foreign Exchange Management Act, 1999 (“FEMA”) and regulations thereunder.

The new system for monitoring FDI limits in listed Indian companies was made operational from May 18, 2018.

Earlier, the RBI received data on investment made by FPIs and Non-resident Indians (“NRIs”) on stock

exchanges from *custodian* banks and *Authorised Dealer* Banks for their respective clients.

The full text of the notification from RBI is available at <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11270&Mode=0>.

Full text of the circular from SEBI is available at https://www.sebi.gov.in/legal/circulars/apr-2018/monitoring-of-foreign-investment-limits-in-listed-indian-companies_38575.html, with its amendment dated April 27, 2018 available at https://www.sebi.gov.in/legal/circulars/apr-2018/amendment-to-sebi-circular-no-imd-fpic-cir-p-2018-61-dated-april-5-2018-on-monitoring-of-foreign-investment-limits-in-listed-indian-companies_38813.html

2. COMPANY LAW

2.1. NOTIFICATION OF CERTAIN PROVISIONS OF THE COMPANIES (AMENDMENT) ACT, 2017

Seventeen provisions of the Companies (Amendment) Act, 2017, took effect on 7 May, 2018.

The circular is available at http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentNoti_07052018.pdf

2.2. NOTIFICATION OF AMENDED RULES

The Central Government recently notified amendment rules relating to the marketing and allotment of securities, the appointment of directors, meetings of the board, auditors, share capital and debentures and other corporate issues, pursuant to the following rules

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018

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This amendment has omitted rules 4, 5 and 6 from the Companies (Prospectus and Allotment of Securities) Rules, 2014.

The amendment rules are available at http://www.mca.gov.in/Ministry/pdf/CompaniesProspectusRules_07052018.pdf

Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018

This amendment has inserted a sub-clause in rule 5 listing out additional requirement for an independent director.

The amendment rules are available at http://www.mca.gov.in/Ministry/pdf/AppointmentDirectorsRules_07052018.pdf

Companies (Meetings of Board and its Powers) Amendment Rules, 2018

This amendment has inserted a proviso after rule 4 providing that other directors may participate in the meeting through Audio Visual - Video Conferencing which means if quorum through physical participation has not been achieved it can be done through the above. Further, a new rule 13 has been inserted.

The amendment rules are available at http://www.mca.gov.in/Ministry/pdf/CompaniesBoardsPowersRules_07052018.pdf

Companies (Audit and Auditors) Amendment Rules, 2018

This amendment has omitted the explanation and proviso to sub-rule 7 of rule 3 and rule 9. The Amendment Rules have further amended rule 14.

The amendment rules are available at http://www.mca.gov.in/Ministry/pdf/AuditAuditorsRules_07052018.pdf

2.3. **CSR CLARIFICATION BY THE MCA**

The Ministry of Corporate Affairs has clarified that the first proviso to Section 135(5) of the Companies Act, 2013, which lays down that the company shall give preference to *local* areas and areas around it where it operates, for spending amounts earmarked for CSR activities, has to be followed in letter and in spirit.

Full text of the circular is available at http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf

3. **TAXATION**

3.1. **CENTRAL BOARD OF DIRECT TAXES NOTIFIES THE PROTOCOL AMENDING THE DOUBLE TAXATION AVOIDANCE AGREEMENT BETWEEN INDIA AND KUWAIT**

A protocol amending the existing Double Taxation Avoidance Agreement (“DTAA”) between India and Kuwait signed on June 15, 2006 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income was signed on January 15, 2017.

The protocol entered into force on March 26, 2018 and was notified in Official Gazette on May 4, 2018.

The protocol updates the DTAA for exchange of information as per international standards. Further, the protocol enables the sharing of information received from Kuwait for tax purposes with other law enforcement agencies, with authorisation of the competent authority of Kuwait and vice versa.

Full text of the notification is available at <https://www.incometaxindia.gov.in/Li>

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[sts/Press%20Releases/Attachments/710/Press-Release-CBDT-notifies-Protocol-amending-Double-Taxation-Avoidance-Agreement-7-5-2018.pdf](https://www.induslaw.com/Press%20Releases/Attachments/710/Press-Release-CBDT-notifies-Protocol-amending-Double-Taxation-Avoidance-Agreement-7-5-2018.pdf).

3.2. **DELHI GOVERNMENT NOTIFIES FIRST APPELLATE AUTHORITY UNDER DELHI GST ACT**

The Delhi Government has notified the first appellate authority under the Delhi Goods and Services Tax Act, 2017 (“Delhi GST Act”) wherein the Commissioner (State Tax) authorized all the Additional Commissioners to perform the functions of Appellate Authority to hear appeals under section 107 of the Delhi GST Act.

The Government also notified the Proper Officers (as defined in the Delhi GST Act) for performing functions under sections 129 and 130 of the Delhi GST Act, relating to detention and confiscation of vehicles during transit.

3.3. **CUSTOMS AUDIT REGULATIONS, 2018 NOTIFIED**

The Central Board of Indirect Taxes and Customs has notified the Customs Audit Regulations, 2018 in supersession of the erstwhile On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011.

In the new regulations, the scope of ‘audit’ and the selection on risk evaluation has been widened.

Full text of the new regulations is available at <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt45-2018.pdf>

3.4. **ANGEL INVESTORS IN STARTUPS GET INCOME TAX EXEMPTION**

The Central Board of Direct Taxes on May 24, 2018 issued a notification exempting payment of income tax on

the premium amount in equity investments in closely held private companies, if the consideration has been received for issue of shares from an investor in accordance with approval granted by the Inter-Ministerial Board of Certification.

This notification is deemed to have effect from April 11, 2018.

For a company to qualify for the exemption under this notification, its aggregate amount of paid-up share capital and share premium after the proposed issue of shares should not exceed INR 10 crores.

Full text of the notification is available at https://www.incometaxindia.gov.in/communications/notification/notification_24_2018.pdf.

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