

LEGAL UPDATE: INDIA

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Registered Venture Funds to exit at mutually-agreed price

The Reserve Bank of India, on January 8, 2001 relaxed its rules for foreign venture funds registered with the Securities and Exchange Board of India whereby these funds could exit from the Indian company at a mutually-agreed price without its prior approval. Prior to this relaxation, the price at which a foreign fund could exit from its investments was capped based on a formula.

Additional surcharge of 1% for domestic companies notified

The Government, on January 12, 2001, notified the Taxation Laws (Amendment) Bill 2000, which proposes to increase the surcharge on corporate tax from 10% to 11%. The Act will come into force with immediate effect.

Now, domestic companies will be required to pay 11% surcharge on corporate tax for the assessment year 2001-2002. The increased surcharge is intended to form a corpus for the Nation Centre for Calamity Management which is being set up by the government to monitor natural calamities like cyclone, drought, flood, earthquakes etc.

SEBI relaxes IPO norms

The Securities and Exchange Board of India on December 22, 2000, decided to permit companies from

all sectors to go for a public issue by offering just 10% of their equity instead of the current minimum of 25%. The board further decided that the minimum offering size be Rs. one billion and has also retained the existing limit of Rs. 2 million securities (excluding reservations, firm allotment promoters' contribution). Earlier, this facility was available only to information technology, media and infrastructure sector entities. Further, it has also removed the restriction of minimum public offering issue size of Rs. 250 million in case of an initial public offering (IPO) through the book building route.

GoM opens FDI floodgates

The group of ministers (GoM) on foreign direct investment (FDI) cleared a slew of proposals, including 100% FDI in operating subsidiaries of non-banking financial companies (NBFC) and in bulk drug manufacturing. Royalty payments may be permitted in the NBFC sector on a case to case basis. The group has also proposed 100% FDI through the automatic route in the hotels and tourism sectors.

DoT relaxes bandwidth norms for ISPs and internet national gateways

The Department of Telecom (DoT), in an attempt to increase the supply of bandwidth in the country, has permitted all private Internet Service Providers (ISPs) to apply for bandwidth, over and above the earlier limit of 8 mbps per gateway. All ISPs, who have received

HIGHLIGHTS

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- ☛ **SEBI relaxes IPO norms**
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- ☛ **5% Service Tax for Internet Service Providers mooted**
- ☛ **Consolidation of financial statements to be compulsory from April 1, 2001.**
- ☛ **Printing, ads set to get 100% foreign equity**
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- ☛ **Draft Communications Convergence Bill, 2000 approved by Group of Ministers**
- ☛ **FII's get nod to invest in Commercial Paper**
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- ☛ **The Companies (Amendment) Act, 2000**
- ☛ **TRAI recommendations on WLL mobile telephony gets DoT nod**
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- ☛ **SEBI lets Indian Companies manage overseas funds**
- ☛ **High Level Committee approves raising FII limit to 49%.**

approvals for their earlier international gateways and have an in-principle agreement with the DoT, are eligible to apply for more bandwidth, following this development.

Moreover ISPs who have their own satellite based international internet gateways, may now offer bandwidth to other ISPs. Prior to this, only ISPs setting up international internet gateways using submarine cables were permitted to offer their international bandwidth to other ISPs. This move will now give ISPs a choice of multiple international gateways.

5% Service Tax for Internet Service Providers mooted

The Ministry of Finance may impose a service tax of 5 % on all Internet Service Providers (ISP) in the Union budget.

The proposed service tax, if imposed, will affect retail internet access rates in the country. Most ISPs will pass on the burden to consumers. Since subscribers accessing dial-up accounts use pre-paid packages, this move would adversely affect the ISPs revenues. ISPs are still exploring the possibility of working out feasible access rates for users, if the tax is imposed.

The Internet Service Providers Association of India (ISPAI) has been lobbying for exemptions in customs duty and income tax for software services. The ISPAI has opposed the move to impose the tax in a letter addressed to the finance ministry.

Consolidation of financial statements to be compulsory from April 1, 2001.

The Institute of Chartered accountants of India (ICAI) on January 5, 2001 came out with a draft of the proposed accounting standards on consolidated financial statements. The Securities and Exchange Board of India (SEBI) has made it mandatory for listed companies to follow those accounting standards for consolidating accounts w.e.f. April

1, 2001. A Company having one or more subsidiaries would have to present consolidated financial statements. The accounting standard will apply to all subsidiaries except in those cases where control of the parent on a subsidiary is intended to be temporary or where a subsidiary operates under severe long term restrictions which significantly impairs its ability to transfer funds to the parent.

Printing, ads set to get 100% foreign equity

The government on January 30, 2001 proposed to permit 100% foreign investment in advertising and film sectors, uplinking hubs/stations, cable networks, FM stations and for scientific and academic journals. All of these will be through the automatic route.

The no foreign direct investment (FDI) status quo with regard to broadcasting and print media will remain unchanged. These decisions have been taken at a recent Group of Minister's meeting and will now be taken to the Cabinet for final approval.

Additional surcharge of 2% for all assessees

With a view to raise funds for the rehabilitation of the Gujarat earthquake victims, the Cabinet on February 1, 2001 approved the promulgation of an ordinance, to levy a surcharge of 2% on all assessees.

The amount will be collected through the levy of a 2 per cent surcharge on individuals and companies alike for the assessment year 2001-02 (i.e. fiscal year 2000-2001). By virtue of this additional levy, the effective rate of corporate tax would be 39.55 % (including surcharge of 13%). In case of individuals, the effective rate of tax in the highest bracket (i.e those

assessees whose income exceeds Rs one hundred and fifty thousand per annum) would be 35.1%.

Draft Communications Convergence Bill, 2000 approved

The Communications Convergence Bill (Bill) aimed at regulating the carriage and content of communications, has been approved by the Group of Ministers on January 17, 2001. The draft, consisting of about 100 clauses, has been released for public discussion and is expected to be placed before the Parliament with the suggested revisions before the end of the year.

The object of the Bill is to provide a facilitative regulatory regime for the convergence of technologies and services, to promote competition among and provide equal access to these services.

The draft Bill envisages the setting up of the Communications Commission of India (CCI) which would be *inter alia* vested with the power to:

- grant licenses for the following categories of services - network infrastructure facilities, network services, application services and content application services (which includes broadcasting).
- resolve disputes
- lay down conditions for fair equitable and non-discriminatory access to network facility and service.

Moreover, the Bill provides for a Spectrum Management Committee for overall management of spectrum. This Committee would assign spectrum for allocation by the CCI for non-strategic/commercial purposes.

The Bill would perform repeal:

- The Indian Telegraphs Act, 1885.
- The Indian Wireless Telegraphy Act, 1933.

- The Telegraph Wire Unlawful Possession Act, 1950.
- The Cable Television Networks (Regulation) Act, 1995.
- Telecom Regulatory Authority of India Act, 1997.

FII's get nod to invest in Commercial Paper

The Securities and Exchange Board of India has now decided to permit foreign institutional investors (FII's) to invest in corporate debt instruments.

Earlier 100% debt funds floated by FII's did not have recourse to short term corporate debt instruments like commercial paper and were restricted to instruments like guilts, treasury bills, bonds and debentures. The FIIs will now be permitted to park their short term funds in such instruments too, within a ceiling of the \$1.5 billion of total FII inflows for debt funds as laid down by the RBI.

Now with the availability of on-line computerised trading and demat of debt securities, FIIs can now buy debt securities in an easy and transparent manner. The current calendar year has seen a net inflow of \$1.1bn from FIIs. Of this, a sum of Rs 909 million has been invested by FIIs in January 2001 in debt securities.

Indian Government lifts ban on Ku band

The Radio, Television and Video Cassette Recorder Set Rules, 1997 have been amended through a gazette notification on January 13, 2001 removing the prohibition that was in force, which restricted the use of Ku band frequency operating in the bandwidth of 4800 mhz.

Pursuant to the above notification Direct-To-Home(DTH) broadcasting services have been permitted in India, subject to the following conditions:

- The total foreign investment including Foreign Direct Investment (FDI) and investment by Non-resident Indians (NRI), Overseas Corporate Bodies (OCB) and Foreign Institutional Investors (FII) shall not be more than 49% of the equity of the company providing DTH services (Company). In particular the FDI shall not exceed 20% of the total equity capital
- Broadcasting/cable network companies are prohibited from owning more than 20% of the equity of the Company.
- The Company must establish the uplink Earth Station in India within 12 months from the date of issue of license for DTH services.
- The Company can use the bandwidth capacity for DTH Service on both Indian as well as foreign satellites although proposals envisaging use of Indian satellites will be extended preferential treatment.
- The Company must carry channels of Prasar Bharti on the most favourable financial terms offered to any other channels.
- The DTH facility shall not be used for other modes of communication, including voice, fax, data, communication Internet etc. unless specific license for these value-added services has been obtained from the competent authority.

The Companies (Amendment) Act, 2000

On December 14, 2000, the President of India gave his assent to the Companies (Amendment) Bill, 2000, which has now become an Act (The Act) which has amended

certain provisions of the existing Companies Act, 1956.

Certain important features of the Act are set forth below:

- The Act now provides that a company shall be permitted to issue shares with differential rights such as voting rights, dividend etc.
- A private company is now required to have a minimum paid up equity share capital of Rs. One Lakh and a public limited company is required to have a minimum paid up capital of Rs. 5 lakhs.
- Any offer or invitation made to 50 or more persons to subscribe to the shares or debentures or securities of a company shall be treated as a 'Public Issue' and attract the relevant provisions of the Companies Act, 1956 and the SEBI Regulations.
- Every listed public company making an initial public offering of any security for a sum of Rs. 100 million or more, would be required to issue the same only in dematerialized form.
- The Directors report under section 217 (2AA) of the Companies Act, 1956 shall also include a Directors' Responsibility Statement. This provision has been brought in to highlight the accountability of directors with a view to ensure good corporate governance.
- The Act has given the opportunity to small shareholders i.e shareholders who hold shares of nominal value which is less than Rs. 20,000 of a public company having a paid-up-capital of Rs. 50 million or more and 1000 or more small shareholders to have a Director elected in the manner as may be prescribed.

TRAI recommendations on WLL mobile telephony gets DoT nod

The Department of Telecommunications (DoT) on January 26, 2001 accepted the Telecom Regulatory Authority Of India's (TRAI) recommendations on the entry of basic telecom service providers into limited mobile services based on Wireless In Local Loop (WLL) technology.

Fixed line telephone operators are permitted to offer "limited mobile services" using WLL technology which would enable users to receive signals within a 25 to 30 kilometers radius.

However, cellular operators of India have challenged this decision and proceedings are currently pending before the Telecom Dispute Settlement Tribunal.

Direct interconnection permitted.

The Department of Telecommunications (DoT) on January 26, 2001 accepted the Telecom Regulatory Authority Of India's (TRAI) recommendations to allow direct connectivity amongst the service providers in a service area.

Earlier all operators were required to go through the DoT network to ensure interconnection. Now, the interconnection between the service providers shall be direct.

The number of points of interconnection between cellular mobile service operators and basic service operators shall be as per mutual agreement subject to compliance of prevailing determination, regulation or direction issued by TRAI under the TRAI Act 1997. The aforesaid provision would enable better services to the end consumers.

SEBI lets Indian Companies manage overseas funds

Indian portfolio managers will now be able to manage moneys raised overseas following a change in the Sebi (Foreign Institutional Investors) Regulations 1995.

The Indian portfolio managers will be granted a deemed foreign institutional investors (FII) status to allow them to manage assets raised from overseas investors. However, these deemed FIIs will not be allowed to avail of the benefits like convertibility with respect to their proprietary trading activities. Indian portfolio managers and approved asset management companies who are registered portfolio managers can get a deemed FII status.

High Level Committee approves raising FII limit to 49%.

The panel on capital markets on January 25, 2001 authorised the raising of limit with regard to holding in an Indian company by foreign institutional investors (FII). The initial limit was 40 % and the proposal to raise it to 49 % was admitted by the High Level Committee (HLC).

Once the concerned authorities sign the minutes of meeting of HLC, the finance minister would announce the hike in FII limit in his budget speech.

Calculating accounting Profits

The Institute of Chartered Accountants of India (ICAI) is set to issue new norms for calculating accounting profits, the same shall be mandatory for all companies with effect from April 1, 2001.

As per the norms the company's profit and loss statement would require to reflect all revenue and expenditure in the year of accrual. The same shall hold well for the purpose of calculating tax, where it can be deferred to subsequent years.

The proposed norm in form of a new accounting standard shall recognise the differences between taxable profit and accounting profit into permanent differences and timing differences. In case of timing differences, the impact on the amount of taxes to be charged against the revenues of the appropriate period shall be reflected in the books of accounts.

COMPLIMENTARY SUBSCRIPTIONS

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