



Volume VII • Issue I • Year 2009

DSK Legal Knowledge Center

Updates on

- Corporate
- Banking and Finance

CORPORATE

A. Filing of Statutory Documents and other Transactions by Companies in Electronic Mode

The Ministry of Corporate Affairs (“MCA”), vide notification dated September 7, 2009¹, has amended the Scheme for Filing of Statutory Documents and other Transactions by Companies in Electronic Mode (“Scheme”) and the amendment has come into force from September 13, 2009. Some of the amendments made are as follows:

- stamp duty payment facility on Forms 1, 5, 44 and Memorandum and Article of Association is available on line

through MCA portal² for 22 State Governments and Union territory Administrations (as of right now); and

- January 1, 2010 is the cut off date for a company, having registered office in a State which has authorized the Central Government to collect stamp duty on its behalf, to compulsorily make payment electronically for stamp duty.

The MCA has also amended the Companies (Electronic Filing and Authentication of Documents) Rules, 2006 vide notification dated September 7, 2009³ to reflect the above.

¹ S.O. 2276 (E)

² www.mca.gov.in

³ G.S.R. 642(E)

B. Advance Remittance for Import of Services

RBI, vide notification dated October 5, 2009⁴, has clarified that the increase in the limit for advance remittance (from USD 100,000 to USD 500,000 or its equivalent)⁵ for all admissible current account transactions for import of services without bank guarantee is not applicable for a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments. Hence approval from the Ministry of Finance for advance remittance of an amount exceeding USD 100,000 or its equivalent for import of services without bank guarantee would continue to be required.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR10051009.pdf>

C. Press Note 7 (2009 Series)

The Department of Industrial Policy and Promotion ("DIPP"), vide Press Note 2 (2008) ("PN2") issued the guidelines for foreign investment in Commodity Exchanges. DIPP, vide Press

⁴ RBI/2009-10/175 A.P. (DIR Series) Circular No.10

⁵ RBI/2008-09/158 A.P.(DIR Series) Circular No. 15;
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/86797.pdf>

Note 7 (2009 Series), has directed all Commodity Exchanges to adhere to the conditions of PN2 by March 31, 2010. In addition, Commodity Exchanges are required to furnish a status report to DIPP disclosing the foreign investment in the Commodity Exchange as on September 30, 2009.

For more information please refer to

<http://siadipp.nic.in/policy/changes.htm>

BANKING AND FINANCE

A. Guidelines on Classification of Exposures as Commercial Real Estate ("CRE") Exposures

The Reserve Bank of India ("RBI"), vide circular dated September 9, 2009⁶, has issued the final guidelines on classification of CRE Exposures. The circular stipulates that based on the principles and the examples provided therein, banks should be able to determine whether an exposure is CRE or not and should record a reasoned note justifying the classification. Further, in the event the exposure has multiple classifications, such as CRE, Infrastructure Lending, Capital Market Exposure, etc., in all regulatory reporting to the RBI, the

⁶ RBI/2009-10/151 DBOD.BP.BC.No. 42 /08.12.015/ 2009-10

exposure is required to be reported under all relevant classifications, with a footnote to avoid double counting, and would attract all regulatory concessions and limits, if any, applicable to the classifications. The guidelines have come into effect as of the date of the said circular.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FCRETC090909.pdf>

B. Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

RBI, vide circular dated September 11, 2009⁷, has made certain amendments to the Master Circular dated July 01, 2009⁸ on KYC norms / AML standards/ CFT/Obligation of banks under Prevention of Money Laundering Act 2002. The amendments concern the following:

- (i) Preservation Period of Records: (a) maintenance of records of domestic and international transactions; and (b) maintenance of records pertaining to the identification of

⁷ RBI/2009-10/152 DBOD. AML.BC. No.43 /14.01.001/2009-10

⁸ DBOD.AML.BC. No.2/14.01.001/ 2009-10

the customer and his address, obtained while opening the account and during the course of business relationship.

- (ii) Accounts of Politically Exposed Persons (“PEPs”): requirement of obtaining approval and conducting customer due diligence (“CDD”) on the account in the event an existing customer or the beneficial owner of an existing account subsequently becoming a PEP;
- (iii) Principal Officer: access to customer identification data and other CDD information by the Principal Officer and other appropriate staff as well as reporting directly to the senior management or to the Board of Directors.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CIRCFT110909.pdf>

C. Foreign Currency Account by diplomatic missions- Credit of Visa Fees

RBI, vide circular dated September 14, 2009⁹, has permitted diplomatic missions to credit the visa fees collected in India in Indian rupees by way of transfer from the rupee account to the accounts maintained in foreign currency by the diplomatic

⁹ RBI/2009-10/156 A. P. (DIR Series) Circular No.08

missions, in addition to proceeds of inward remittances received from outside India through normal banking channels.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIRS140910.pdf>

D. Finance for Housing Projects –Disclosure of Information on Mortgage of Property

RBI, vide notification dated August 27, 2009¹⁰ and September 14, 2009¹¹, has directed all Scheduled Commercial Banks (“SCBs”) and Regional Rural Banks (“RRBs”), respectively that while granting finance to specific housing / development projects, the banks shall stipulate, as a part of the terms and conditions, certain requirements to be met by the builder / developer / company as detailed in the said notification. SCBs and RRBs are also required to ensure that funds should not be released unless the builder/ developer/ company fulfill the said requirements.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/HFC270809.pdf>

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FHP140909.pdf>

E. Fraud Risk Management System in banks – Role of Chairmen / Chief Executive Officers

RBI, vide notification dated September 16, 2009¹², has instructed Chairmen and Chief Executive Officers (“CEOs”) of all Scheduled Commercial Banks (excluding RRBs) to (i) focus on the “Fraud Prevention and Management Function”; that (ii) the fraud risk management and fraud investigation function must be owned by the bank’s CEO, its Audit Committee of the Board and the Special Committee of the Board, atleast in respect of high value frauds; and (iii) banks should frame internal policy for fraud risk management and fraud investigation function reflecting the above.

The said notification lists certain measures that banks may undertake in order to ensure effective quick investigation, monitoring and follow up of frauds.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/DRAC160909.pdf>

¹⁰ RBI/2009-10/131 DBOD.No. Dir (Hsg). BC.31/ 08.12.001/2009-10

¹¹ RBI/2009-10/155 RPCD.CO.RRB.BC.No. 21 /03.05.33/2009-10

¹² RBI/2009-10/159 DBS. CO. FrMC. BC. No. 7 /23.04.001/2009-10

F. RBI approval required for acquisition/transfer of control of non-banking financial company (“NBFCs”) accepting deposits

RBI, in order to verify and ensure that 'fit and proper' character of the management of NBFCs is being continuously maintained, vide notification dated September 17, 2009¹³, has mandated that any take over / acquisition of shares of a deposit taking NBFC (“NBFC-D”) or merger/amalgamation of a NBFC-D with another entity or any merger/amalgamation of an entity with a NBFC-D that would give the acquirer / another entity control of the NBFC-D, would require prior permission of RBI.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/FCC160170909.pdf>

G. Introduction of Interest Rate Futures- NBFCs

RBI, vide notification dated September 18, 2009¹⁴, has decided that NBFCs may, as clients, participate in the designated interest rate futures exchanges recognized by SEBI, subject to RBI /

SEBI guidelines in the matter, for the purpose of hedging their underlying exposures.

For more information please refer to

http://rbidocs.rbi.org.in/rdocs/notification/PDFs/C1611RF_180909.pdf

H. Combating financing of terrorism- Unlawful Activities (Prevention) Act, 1967- Obligation of banks

RBI, vide notification dated September 17, 2009¹⁵, has directed the Chairmen and Chief Executive Officers of all Scheduled Commercial Banks excluding RRBs, financial institutions and local area banks to strictly follow the procedure laid down in the Unlawful Activities (Prevention) Act, 1967 (“UAPA”) and the Order dated August 27, 2009 (“Order”) detailing the procedure for implementation of Section 51A of the UAPA relating to the purposes of prevention of, and for coping with terrorist activities and ensure meticulous compliance to the Order issued by the Government.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/UAPA170909.pdf>

¹³ RBI/2009-10/162 DNBS (PD) CC.No. 160/03.10.001/2009-10

¹⁴ RBI/2009-10/165 DNBS.PD.CC.No.161/3.10.01/ 2009-10

¹⁵ RBI/2009-10/166 DBOD. AML.BC. No. 44 /14.01.001/2009-10

I. Issue of Bank Guarantee on behalf of service importers

RBI, vide circular dated October 5, 2009¹⁶, has increased the limit for issue of guarantee by AD Category-I banks from USD 100,000 to USD 500,000 or its equivalent in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, subject to fulfillment of certain conditions including that the guarantee is to secure a direct contractual liability arising out of a contract between a resident and a non-resident. However, in the case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments, approval from the Ministry of Finance for issue of guarantee for an amount exceeding USD 100,000 or its equivalent would be required.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR11051009.pdf>

¹⁶ RBI/2009-10/176 A.P. (DIR Series) Circular No.11

Contact Details: dsklegal.knowledgecenter@dsklegal.com

Mumbai Office
4th Floor, Express Towers,
Nariman Point,
Mumbai 400 021
India
Tel: (91 - 22) 6658 8000
Fax: (91 - 22) 6658 8001

Delhi Office
46, Aradhana, Chanakyapuri,
New Delhi 110 066
India
Phone : (91 - 11) 2687 1122; 2687 1133;
2687 1144
Fax : (91 - 11) 2687 1155

Disclaimer

The update is intended for your general information only. The information and opinions contained in this document are derived from public sources which we believe to be reliable and accurate but which, without further investigation, cannot be warranted as to their accuracy, completeness or

correctness. It is not intended to be nor should be regarded as legal advice and no one should act on such information without appropriate professional advice. DSK Legal accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.