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Letter from India

So what's turning IP heads?

In India, it's the accession to the Madrid Protocol. Readers are likely familiar with the treaty. The Indian variable really is how efficiently the Trade Mark Office copes once applications start coming in on July 8, 2013. Also, the Nexavar compulsory license has successfully withstood scrutiny by the Delhi High Court. Then there's the Novartis trial, or rather the conclusion of it. Alas the apex court ruling has failed to quell the debate on whether Section 3(d) is good law or bad law or even its exact parameters. On another note, if it is a third party impinging on your commercial interests which bothers and no statutory relief is in sight, fret no more. Resort could be had to the common law tort of unfair competition, explicitly recognised in a recent case involving rights over real time cricket scores. This heady mix and more is the stuff of the next few pages.

May is also INTA season. And in the trade mark space, the new global Top Level Domains are reigning conversations. .com and .org will soon be joined by .search, .money, .paris and hundreds more. Created and controlled by private players, these new domains are a costly affair. But clearly the perceived benefits are huge. Donuts, the largest gTLD applicant, has filed 307 applications for a whopping USD 57 million! Where business minds wander, so do mischief makers. New bulwarks have been designed to keep cybersquatters at bay - ICANN has come out with the 'Uniform Rapid Suspension' system to supplement the UDRP and 'Trademark Clearinghouse'. Applicants proposing to allow public use of the new domains offer additional defences such as compiling a list of protected marks for scrutinising dubious actors. It is recommended that IP owners tweak brand protection strategies early on in the domain rush - an aggressive enforcer will likely deter more than a squatter or two.

Will the exponential increase in gTLDs and the ensuing proliferation of second level domains affect the way the Internet operates? Probably not. What will change is the way people find information on the Internet and how businesses structure their online presence. We've got your back. You'd best keep your eye on the ball.

At a Glance

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Firm Buzz

‣On April 1, 4 Managing Associates at the firm were elevated to the position of Partner-designates. They are Shukadev Khuraijam, Vineet Rohilla and Swarup Kumar from the patents department as well as Gaurav Mukerjee from trade marks.

‣Capabilities of the patents team were also augmented recently with the addition of 5 specialists to its biochemistry, biomedical, pharma, and mechanical divisions.

‣Remfry participated in the 2nd India IP & Innovation Forum organized by Managing IP magazine (MIP) on March 7, 2013. Experts from our pharmaceutical group conducted a panel discussion on the very topical and complex issue of 'Pharmaceutical Patents: Case studies and future implications'.

‣We kept up our winning streak by being adjudged MIP's *'IP Firm of the Year - Prosecution (India)'* for the 4th year running. Also, India Business Law Journal declared the firm a winner in the category of *'Intellectual Property (India)'* and Asia IP magazine awarded us top prize in the *'Trademarks (India)'* category.

‣The BRICS IP Initiative co-founded by Remfry held its 5th conference at the John Marshall Law School in Chicago on May 10 and 11. During the event, an array of presentations were made on IP law and developments in the BRICS nations.

TRADE MARKS

Keeping Watch for Jaguar

The mark 'Jaguar' was sought to be registered by Manufacture Des Montres Jaguar, S.A. in respect of 'watches and parts thereof' (Class 14 goods). Jaguar Cars Ltd. took objection and the firm filed an opposition. This was initially dismissed by the Registrar of Trade Marks mainly on the grounds that the car maker did not furnish evidence of having used the 'Jaguar' mark for watches in India - it appeared to have used the trade mark only in respect of 'clocks fitted to the dash board of their cars' and that too sparingly. We appealed this decision before the IPAB.

The IPAB set aside the Registrar's order stating it was full of infirmities and exhibited pronounced bias. It held that the mark 'Jaguar', owned by Jaguar Cars, is a luxury brand which has been used extensively for a long period of time all over the world, including in India. Jaguar Cars' earliest Indian registration for 'Jaguar' dated back to 1945 and the Registrar's finding of lack of evidence of use and advertisement of the said mark was contrary to the material on record. In fact, there was clear evidence to show that the trade mark 'Jaguar' was being used by the car maker in respect of watches as well. In the IPAB's view, the extraordinary evidence of fame on record established that Manufacture Des Montres Jaguar, S.A. had copied the 'Jaguar mark'. Keeping in mind all statutory and proprietary rights vesting in favour of Jaguar Cars, the Registrar's conclusion of 'Jaguar' not being a well-known mark in India was dismissed as a 'reckless and illegal conclusion'. Per the IPAB, the fact that Jaguar is a common dictionary word, did not give license to a third party to grab the same for adoption and abuse it without regard to market realities. In fact, even the plea that other third party owned 'Jaguar' trade marks coexisted on the Register of Trade Marks was held to be a futile defence.

Škoda is a Famous Auto

One Stone International Private Limited was found using trade marks /artworks belonging to Škoda Auto a.s. in respect of automobile repair services etc. On behalf of Škoda Auto a.s. and Škoda Auto India Private Limited, we filed a suit against One Stone in the High Court of Bombay for infringement of trade mark, copyright and passing off. An interim injunction was successfully obtained post filing the suit.

Perusing the documents on record and the evidence led by Škoda, the court recently passed an *ex-parte* decree against One Stone holding it guilty of misrepresentation, confirming the injunction and granting punitive damages of INR 50,000 (approx. USD 950). Significantly, Škoda trade marks - ŠKODA, LAURA, OCTAVIA, FABIA and SUPERB - were held to be well-known trade marks.

Written Communications Trump Web Notices

In the case of *The Institute of Cost Accountants of India vs. The Registrar of Trade Marks Mumbai & Anr.*, the Institute had applied to register its trade mark 'CMA' on October 1, 2010. On March 30, 2011, it addressed a letter to the Registrar inquiring about the lack of a response despite repeated enquiries. Much later - on March 13, 2012 - the Institute noticed a letter/Examination Report uploaded on the Trade Mark Registry's website. Dated September 19, 2011, the report was addressed to its counsel stating the Institute's application had been examined and that it had a month's time to reply, failing which, its application would be deemed 'abandoned'; however, no written communication had been forwarded to the Institute or to its counsel.

Given the circumstances, the Institute requested the Registry to treat March 13, 2012 as the date on which it learnt of the examination of its application. It also asked for a hearing to be appointed in the matter. No response was forthcoming from the Registry. This led the Institute to file a writ of mandamus in the High Court of Bombay seeking a direction to the Registry to fix a date of hearing in respect of its trade mark application. Allowing the petition, the court observed that in terms of objections raised at the time of examination of a trade mark, the Trade Marks Rules, 2002 mandate that "*...the Registrar shall communicate such objection or proposal in writing to the Applicant*". Thus, merely posting the examination report online did not constitute statutory compliance and the Registrar was bound to give written intimation of its objections to the Institute. Accordingly, knowledge of the Examination Report could be imputed to the Institute only on the date on which it noticed the report on the Registry's website - March 13, 2012 - and the trade mark office could not term the Institute's application as 'abandoned', regardless of the date of publication of the report on its website.

The Devil is in the Detail

Union of India & Others vs. Malhotra Book Depot once again highlights the necessity of complying strictly with the statute books.

Malhotra Book Depot was the proprietor of the registered mark 'MBD' in Class 16. In the midst of proceedings to stem infringement of its trade mark, it came to light in 2010 that, in fact, the trade mark 'MBD' had not been renewed post November 23, 1984. However, it was also seen that the mandatory statutory notice under Form O-3 - intimation from the trade mark office that the mark was coming up for renewal - had not been served by the Trade Marks Registry. This led Malhotra to file a writ petition with the High Court of Delhi (a constitutional remedy) seeking a direction to the Registrar of Trade Marks to restore and renew the 'MBD' mark.

The Registrar contested. Among its arguments were the pleas that the writ petition suffered from delay and laches as the renewal of the mark was 26 years overdue; that the mark was removed following due process; and that removal of the trade mark had been notified in a trade mark journal. In its opinion, Malhotra was attempting to benefit from the fact that the Trade Marks Registry did not have records dating back to 1984 to establish dispatch of the O-3 notice to the registrant.

Allowing the writ petition, the judge held that:

- The Registrar could remove a trade mark and advertise the factum of removal in the Trade Marks Journal only after notifying the registered proprietor of approaching renewal in the prescribed statutory format - that is, on Form O-3.
- Absent compliance with mandatory procedures set out in the Trade Marks Act, 1999 and accompanying rules, mere expiration of a registration by lapse of time and failure to renew did not lead to the conclusion that a mark could be removed from the Trade Marks Register.
- Since the mandatory O-3 notice had not been issued prior to removal of the 'MBD' mark, the application seeking its restoration and renewal could not be held as one barred by time.
- Accordingly, directions were issued to the Registry to grant restoration and renewal of the 'MBD' registration upon payment of requisite fees and compliance with formalities.

This judgment was appealed and the matter came before a Division Bench (comprising two judges) of the High Court. The Bench affirmed that methods of trade mark removal are specified in the statute and prescribed procedures apart, there is no other way in which a registered proprietor can be divested of proprietary rights in a registered mark. Also observed was the fact that the trade mark statute did not prescribe any limitation period for applying for restoration and renewal in a situation involving removal of a mark *sans* an O-3 notice. Dismissing the appeal, the Registrar was directed to restore/renew the trade mark in question.

Protecting its Domain

Tata Sons Ltd and its subsidiary Tata Infotech Ltd sued one Arno Palmen over registration of the domain name www.tatainfotech.in and won their case in the Delhi High Court recently.

Tata Sons Ltd is the principal investment holding company of the Tata Group - one of India's oldest (founded 1868) and largest conglomerates, with a footprint in over 80 countries and revenues close to USD 100 billion. Using the Tata mark since 1917, it currently owns several trade mark registrations and domain names comprising the word 'Tata', including tata.com and tatainfotech.com. Tata Infotech Ltd, is a pioneer in the field of information technology, and has been using the trade name and service mark 'Tata Infotech' since 1997. It also registered the domain www.tatainfotech.com in January 1998. In sum, it was claimed that the mark 'Tata' enjoys tremendous reputation in India, abroad and on the Internet, and that the right to use the mark vests exclusively in the Tata group of companies.

Meanwhile, Arno Palmen registered the domain name www.tatainfotech.in on February 21, 2005. Tata Infotech Ltd learnt of this from Palmen himself when he sent an email contending offer of a handsome sum for the sale of the said domain. To Tata, this smacked of Palmen's bad faith in registering a domain name comprising well-known Tata marks with the aim of taking unfair advantage from its misuse and/or harvesting illegal gains from its sale. To stem damage to its goodwill and business, Tata Sons Ltd filed a suit seeking permanent injunction against Arno Palmen restraining him from using the trade mark/domain name www.tatainfotech.in or any other mark/domain which was identical with or deceptively similar to Tata Sons' trade marks 'Tata' / 'Tata Infotech'.

The court held that Arno Palmen had knowledge that the Tata group was the legitimate owner and user of the trade mark 'Tata Infotech' and agreed with Tata Sons Ltd that his registration was in bad faith. Accordingly, Arno Palmen was restrained from conducting any business or dealing in any manner using the domain name www.tatainfotech.in. The court also asked Key-Systems GmBH, an ICANN accredited registrar for internet addresses, to cancel registration of the domain name www.tatainfotech.in which had been granted to Arno Palmen.

PATENTS

Glivec: The Epilogue

The Supreme Court pronounced its judgment in the Glivec case on April 1, 2013 thus concluding Novartis' 15 year effort to patent the beta crystalline form of imatinib mesylate in India.

The application for patenting Glivec was filed in 1998 ('a black box application'), and it was examined once the product patent regime came into force in 2005. Post examination, it met with several pre-grant oppositions. These were decided by the Controller in 2006 and the patent refused on many grounds including Section 3(d) of the Patents Act, 1970. On appeal, the Intellectual Property Appellate Board ('IPAB') reversed the Controller's ruling on all grounds except Section 3(d) {a provision unsuccessfully challenged earlier by Novartis as 'TRIPS+' and unconstitutional before the Madras High Court}. A special leave petition filed by Novartis brought the IPAB's decision for final adjudication before the Supreme Court in August 2009. The IPAB ruling was also appealed by Natco Pharma and Cancer Patients Aid Association (CPAA).

To begin with, the apex court analysed the evolution of Indian patent law and studied the requisites of patentability that balance the conflicting objectives of protecting public health and safeguarding innovation. Note was taken of the fact that the indigenous pharmaceutical industry saw rapid growth in the period where product patents were not allowed and this had a positive effect on the availability of essential drugs at affordable prices in India and abroad.

Turning to specific arguments, it was Novartis' contention that Section 3(d) only operates *ex majore cautela* (out of abundant caution) and did not apply to its case as novelty and inventive step had been established. The court said this reasoning missed the distinction between the concepts of 'invention' and 'patentability'. The tests for 'invention' are laid down in Sections 2(1)(j) and 2(1)(ja) of the statute - novelty, inventive step and industrial application. If these are cleared, the invention is tested for 'patentability' wherein it must not fall under the list of non-patentable matters specified in Sections 3 and 4.

In terms of the invention claimed, the 'beta-crystalline form of imatinib mesylate' was stated as a derivative of the 'free base form called imatinib', which was disclosed by the Zimmerman patent filed by Novartis in the US in 1993. Further, according to Novartis, its patent application for 'beta crystalline form of imatinib mesylate' was two stages removed from the prior art. First came the invention of the 'salt imatinib mesylate' - per Novartis this invention was covered by the Zimmermann patent but not disclosed or enabled therein - from the free form of 'imatinib'. Thereafter, was invented the 'beta-crystalline form of imatinib mesylate' which made 'imatinib mesylate' suitable for oral administration. It also submitted that in certain circumstances involving pioneering inventions, a patent may be entitled to larger coverage than what is specifically disclosed therein. This argument was rejected and referring to the Zimmerman patent, an article published in 'Cancer Research' and Novartis' US FDA application for Glivec the court held that the 'salt imatinib mesylate' was a known substance and failed the test of inventiveness.

Thereafter, the 'beta crystalline form of imatinib mesylate' was put to test for patentability under Section 3(d) wherein "*the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance.......*" is non-patentable. Novartis had argued that the efficacy of the 'known substance' (imatinib or imatinib mesylate as the case may be) was not 'known' and therefore the question of showing enhanced efficacy of the 'beta crystalline form of imatinib mesylate' did not arise. First, the court held that Novartis' interpretation of the word 'known' was unacceptable both in law and on facts. Factually, the US FDA application, Zimmermann patent and the article referred to above made evident that the efficacy of 'imatinib' / 'imatinib mesylate' was known. Second, given that it had rejected Novartis' claim that the known substance immediately preceding the 'beta crystalline form of imatinib mesylate' was the 'free form of imatinib', Section 3(d) obliged Novartis to show 'enhanced efficacy' of the 'beta crystalline form of imatinib mesylate' not over 'imatinib in free base form' but 'imatinib mesylate'. In this regard, the court found no supporting material in the patent application or affidavits.

On the interpretation of the word 'efficacy' in Section 3(d), the court affirmed that 'in the case of a medicine that claims to cure a disease, the test for efficacy can only be therapeutic efficacy' and 'therapeutic efficacy' was to be judged strictly and narrowly. However, it did not qualify 'therapeutic efficacy' further and limited itself to stating that physico-chemical properties - more beneficial flow properties, better thermodynamic stability and lower hygroscopicity of imatinib mesylate - even though beneficial, could not be taken into account in the context of Section 3(d), as 'these properties have nothing to do with therapeutic efficacy'. On bio-

availability, the court observed that increased bio-availability could lead to enhancement of therapeutic efficacy but it must be specifically claimed and established by research data. This was found missing in Novartis' case.

Put together, the Supreme Court held that Novartis' patent application failed the tests of both invention and patentability. It refused Novartis' appeals and allowed the counter appeals filed by Natco Pharma and CPAA.

However, it did clarify that refusal of Novartis' invention under Section 3(d) should not mean that the section bars patent protection for all incremental inventions of chemical and pharmaceutical substances. It also emphasized that the judgment should not be construed to read that Section 3(d) stands to offset the introduction of the product patent regime in India. Yet the much anticipated clarification regarding the interpretation and applicability of Section 3(d) did not come. Absent a general interpretation on the meaning of 'efficacy', Section 3(d) remains a 'problem child' of Indian patent law!

Nexavar: The Story So Far

India's first compulsory licence was granted by the Patent Office in March 2012 when Natco Pharma - a local generic drug manufacturer - secured one for Nexavar, an anti cancer drug patented by German pharmaceutical giant Bayer.

All three grounds argued by Natco were upheld by the Controller - namely, inadequate supply of Bayer's drug, unaffordable pricing and non-working of the patented drug in India. 'Reasonable requirements of the public' were not met as Bayer's supply of Nexavar reached merely 2% of the Indian patient population. A month's dose was priced close to INR 2,80,000 (approximately US$ 5700) and this led to the observation that the 'drug was not bought by the public due to the fact that the price was not reasonably affordable to them'. Also, mere importation of Bayer's drug into India was found not to amount to 'working' under the Patents Act, 1970. The phrase 'worked in the territory of India' was interpreted to mean 'manufactured to a reasonable extent in India.'

Further, Natco was directed to pay Bayer a royalty calculated at 6% of its net sales each quarter, cap its drug price at INR 8,800 (approximately US$ 185) for a month's dose and distribute it free of charge to at least 600 disadvantaged patients each year. Natco was also directed to ensure that its drug was clearly differentiable from Bayer's in the marketplace and production was restricted to its own manufacturing facilities. Bayer, in turn, was permitted to grant licences to third parties.

Bayer appealed before the IPAB, which gave its ruling this March. In unprecedented fashion, the order was dictated in open court in a 7 hour marathon and the decision to grant the compulsory licence to Natco was upheld. Key points of the ruling are outlined below:

- To ascertain whether Bayer had met the 'reasonable requirements of the public' with respect to Nexavar, generic versions of 'Nexavar' marketed by Cipla (which was an alleged infringer) could not be taken into account.
- Priced close to USD 5700 for a month's supply, the Controller had correctly held that Nexavar's cost was excessive making the drug unavailable to the public at a reasonably affordable price.
- On the issue of working, the IPAB differed with the Controller to the extent that it indicated that importation of a drug could amount to working in certain instances.
- Royalty to be paid by Natco was upped from 6% to 7 % of net sales.
- Natco was also fined for misrepresentation of certain facts; one of them being the status of a patent application it had filed covering a process for preparing the same compound, that is, Nexavar.

Following the IPAB decision, Bayer has gone to press saying that it will agitate the matter in a writ petition before the Bombay High Court. Meanwhile, the broader question that continues to be asked is whether broad usage of compulsory licensing will effectively address India's health care needs? Balancing private monopoly with public good is important, but to ensure that the public actually sees the desired benefit, what is required is a coherent and practical health policy supported by the right structural framework.

UNFAIR COMPETITION

Indian Court Recognises the Tort of Unfair Competition

Star India Pvt. Ltd. ('Star') purchased a bouquet of rights, including 'mobile rights' and 'mobile activation rights' from the Board of Cricket Control in India ('BCCI') with regard to certain cricket matches organised by the latter. It was learnt that the defendants (essentially telecom service providers) were offering cellular subscribers (for a fee) real time score alerts *via* text messages. Star sued alleging violation of its exclusive rights and claiming relief

under the common law tort of unfair competition and commercial misappropriation/unjust commercial enrichment. Seminal case law relied upon by Star included *International News Service vs. Associated Press* - a famous US Supreme Court judgment ('the INS case') on unfair competition dating back to 1918 wherein it was held: "*The defendants acts of taking material acquired by the skill, organisation and money of the complainant and appropriating it and selling it as its own, is trying to reap where it has not sown and would thus constitute unfair competition.*"

In the first instance, the Delhi High Court decided in favour of the defendants. Star appealed and citing procedural infirmities, the Division Bench remanded the matter back to be heard by a different judge. This time the outcome was different.

The defendants sought to fix Star's rights within the framework of the Copyright Act, 1957 and argued that at best, broadcasting rights and copyright over the cinematograph film of the cricket match or audio recording of the commentary etc. qualified for protection. Even remedy under common law was abrogated under Section 16 of the statute. Thus, rights claimed by Star did not exist as they were not recognized under any law or statute. They countered the claim of free-riding by arguing they had neither copied the actual content of Star's broadcast, nor provided access to audio or visual footage of the broadcast. It was further pointed out that match updates contained facts which are not afforded copyright protection. And in any event, the score alerts utilised by them were ones which had already entered the public domain. Constitutionally guaranteed free speech was yet another argument - information arising from a cricket match was public property and dissemination was in public interest. Plus, the infrastructure, efforts and skill to disseminate information was all theirs and thus, so were the profits.

The judge clarified that Star was seeking a remedy *de hors* the copyright statute and thus, the debate as to whether its rights could be located within the copyright matrix was irrelevant. Further, the case of *Mahabir Kishore & Ors. vs. State of Madhya Pradesh* established that the tort of unfair competition was not an alien concept. The English doctrine of unjust enrichment had been noted therein leading the Supreme Court to observe that "*the principle of unjust enrichment requires; first, that the defendant has been 'enriched' by the receipt of a 'benefit'; secondly, that this enrichment is 'at the expense of the plaintiff' and thirdly, that the retention of the enrichment be unjust. This justified restitution.*" A case involving near similar facts - *Marksman Marketing Services Pvt. Ltd. vs. Bharti Tele-Ventures Ltd. & Ors.* - had also seen the Madras High Court recognise (though not in clear legal language) unfair competition. In the instant case, BCCI's exclusive right to monetize its event as organiser, stemmed from the fundamental principle of equity and no statute was required to recognise such right. The judge borrowed from the INS case to add: "*The underlying principle is ... he, who has fairly paid the price, should have the beneficial use of the property.*" Star lay claim over some of these rights on the basis of its acquisition (for a considerable sum) of a number of rights at the BCCI auction. Providing competing services and generating revenue without purchasing a license from BCCI (or sub-license from Star) amounted to an act of unjust enrichment on the part of the defendants regardless of the fact that the infrastructure and skill for dissemination belonged to them.

Moreover, no merit was found in the defendants' argument that match information became freely available to the public at the very instant of its broadcast. Information emanating from cricket matches reached different classes of consumers - spectators at the stadium, those watching / listening on the television, radio or web and those with no access to live information - at different moments in time. The first category observed happenings in real time, the second received information after a slight lag - even if measurable only in micro-seconds, and the third had no access to a contemporaneous source of information. Each class paid a suitable premium to access information and the third category, also target customers in the instant case, were ready to pay between Rs. 2 or 3 per mobile update.

It was further stated that dissemination of contemporaneous match information qualified as constitutionally protected free speech to the extent that it was news worthy - fall of wicket; career milestones of a player etc. Dissemination of ball-by-ball updates at a premium did not fall within the ambit of protection.

In the end the judge recognised a quasi property right in 'real time scores' and Star succeeded in obtaining a limited interim injunction against the defendants. Absent a license, the defendants were restrained from disseminating contemporaneous match information for a fee. However, to accommodate the public's right to information, ball-by-ball reportage was permitted with a 15 minute delay. Recognizing the principle that 'stale news is no news', no restriction was placed *vis-a-vis* reporting newsworthy developments in real time. Finally, were the defendants to provide match information gratuitously, it was clarified that no case for 'unfair competition' would be made out for the element of 'commercial enrichment' would become missing.

Explicit recognition of the tort of unfair competition will quite likely increase the salability of events such as

sporting tournaments, cinema and music award ceremonies etc. However, the boundaries of expanding private revenue streams are expected to be drawn keeping the larger public good in mind. All in all, this ruling has opened up a whole new dimension for the IP fraternity.

CORPORATE LAW

Developments in the Policy on Foreign Direct Investment

- Broadcasting: Phase-II of the digitization of cable television networks has been successfully implemented and commensurate changes have been introduced in the broadcasting sector to meet the demands of this growing industry. In a recent move, the foreign investment limit in teleports, direct-to-home (DTH) and cable networks was increased from 49% to 74%. Investment upto 49% is allowed under the automatic route, that is, without government approval. Investment between 49% to 74% requires prior approval from the government. In addition, FDI in 'mobile television' has also been permitted upto 74%. To maintain parity, investments upto 49% qualify for the automatic route whereas investments in the 49% to 74% band will be subject to prior government approval.
- Non-banking financial companies (NBFCs) setting up step down (operating) subsidiaries: Previously, only 100% owned NBFCs with minimum capitalisation of USD 50 million could set up step down subsidiaries for specific activities. There was no restriction on the number of operating subsidiaries and no requirement of bringing in additional capital. In a move to liberalise, the Government of India has now permitted NBFCs with foreign investment between 75% to 100% to set up step down subsidiaries for specific NBFC activities as well. Other terms and conditions remain unchanged.

Budget 2013-14

Key provisions in the Finance Bill, 2013 which may interest our readers are recapitulated below:

- To attract investment and quicken project implementation, any company investing Rs. 1 billion or more in plant and machinery during the period April 1, 2013 to March 31, 2015 in India, would be entitled to an 'investment allowance' totaling 15% of its investment.
- Recognizing the pivotal role of semiconductor wafer fabs in the eco-system of electronics manufacturing, several incentives to semiconductor wafer fab manufacturing facilities have been proposed. Levy of zero customs duty on the import of plant and machinery by such manufacturing facilities is one such incentive.
- To encourage repatriation of funds from overseas companies (to India), the concessional tax rate of 15% on dividends received by an Indian company from its foreign subsidiary shall continue for an additional year. Further, whilst paying out dividends to its shareholders, Indian companies are exempt from paying dividend distribution tax on the portion of dividends received from its foreign subsidiary.
- To correct the alleged anomaly between the rate of tax payable under the Indian Income Tax Act, 1961 and the various Double Taxation Avoidance Agreements (DTAA's), the rate of tax on payments by way of royalty and fees for technical services by non-residents has been increased from 10% to 25%. However, it has been clarified that the applicable rate will be the rate of tax as stipulated in the relevant DTAA.

Companies Bill, 2012

On December 18, 2012 the Companies Bill, 2012 was passed by the lower house of the Indian Parliament. This Bill seeks to replace the extant (Indian) Companies Act, 1956. Here are a few highlights:

- Corporate Social Responsibility will be mandatory for companies with:
    - a net worth of Rs. 1 billion or more; or
    - a turnover of Rs. 10 billion or more; or
    - net profit of Rs. 50 million or more during a financial year.

  Such companies must constitute a Corporate Social Responsibility Committee with 3 or more Directors, out of which at least one Director is to be an Independent Director. Further, at least 2% of average net profits from 3 immediately preceding financial years, are to spent by such companies in every financial year in pursuance of its Corporate Social Responsibility policy.
- For listed companies, at least one-third of the total number of Directors must be Independent Directors and further, the government may choose to prescribe the minimum number of Independent Directors for any class of public companies. Maximum term of an Independent Director is restricted to 5 years, subject to a maximum of two such terms.

- Incorporation of a single shareholder company has been permitted. Also, number of permissible shareholders in a private limited company has been raised to 200 as against the existing limit of 50.
- Appointment of at least one Director who is resident in India - that is, one who has stayed in India for at least 182 days in the previous calendar year - has been made mandatory for all companies.
- No listed company shall appoint:
  - an individual as auditor for more than one term of 5 consecutive years; and
  - an audit firm as auditor for more than two terms of 5 consecutive years.
- Other salient features include:
  - a uniform financial year for all companies (April 1 - March 31);
  - recognition of voting through electronic means;
  - director's remuneration is to be capped at 5% of a company's net profits; and
  - the concept of a dormant company has been introduced.

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'Letter from India' is intended to provide our clients and associates with information of general nature on legal issues and recent developments in the areas of intellectual property, foreign investment and corporate laws. It should not be relied upon as legal advice or opinion.