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**EDITORIAL**

**SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) - TOUGH BUT INEFFECTIVE REGULATOR - SERIOUS ISSUES OF INVESTORS' PROTECTION, MARKET VIGILANCE AND MARKET MANIPULATION**



CA Vinod Jain\*

The Securities and Exchange Board of India (SEBI) was constituted in early 90's to bring in regulation and development of the capital market and also to protect the interest of the investors.

**Significant Achievements:**

SEBI has been able to bring out very significant achievements in the field

of technical upgradation of the market, improved transparency, introduction of latest capital market products and to provide a detailed legal and regulatory framework for regulations of market intermediaries, insider trading, takeover code and several other similar areas including a feather in their cap in introducing de-materialization of shares and transparent trading through a national electronic network. The concept

Most of the investors are shying away from the market as manipulation is rampant in Indian capital market. Someone has to take the responsibility of investors' exodus from the Indian capital market.

of Unique id and tracking of all trades at the end of investor are highly appreciable.

**Stock Exchanges:** SEBI has also brought out significant changes in ownership, management and regulation of stock exchanges. SEBI has however, not been able to find out a solution to issue of non working regional stock exchanges and OTCEI. The investors in companies which are exclusively listed only on these exchanges are severely suffering without any action at the end of SEBI. SEBI has

Mandatory valuations and independent audit by Chartered Accountants appointed by regulator for all public limited listed/to be listed companies, mutual funds, Banks and Insurance company is needed. Also the concept of additional dilution of capital need to be introduced to address the greed of promoters.

also miserably failed to act and provide a proper ownership and management framework to the existing operating stock exchanges and has permitted the

disinvestment, even in the favour of nonresident foreign investors, without responding to the question as to how can a regulator (stock exchange) can be privatized or listed?

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**FOREIGN DIRECT INVESTMENT- ISSUES AND CONCERN-POLITICAL INTERVENTION NEEDED**

The Government of India recently decided to put on hold a Cabinet decision vide which, it was proposed to permit multinational corporations to invest in retail sector. We congratulate the top leadership of the government as well as all parties forming part of UPA as well as those who are in the opposition to take such an active interest for this crucial matter and announcing a decision to put the Cabinet decision on hold.

The Foreign Direct Investment in retail is actually not needed by the country and all the arguments regarding absence of adequate infrastructure for transportation, storage and distribution of food items and other items of necessity, is

required to be addressed by the government by permitting freedom of movement, storage and trading of all agricultural produce and essential items freely across the country. The government need to take special initiatives to provide concessional financing and taxation incentives besides direct subsidy for creation of cold-storages, warehouses, transportation, infrastructure and setting up of large number of mandis, free from any kind of market fees or taxes on the agriculture produce. There should be complete freedom to the agriculturists to sell their produce to any one, anywhere without any mandi tax and other levies on the agriculturists or on the buyers.

*Contd. ....on page 8*

**LATEST IN FINANCE****1.0 FIIs NRIs ALLOWED TO REPATRIATE IDF MONEY**

The Reserve Bank of India (RBI) has decided to allow Non-Resident investors, including Foreign Institutional Investors (FIIs), to repatriate investments in rupee and Foreign Currency-Denominated Bonds issued by Infrastructure Debt Funds (IDFs) registered as Non-Banking Financial Companies (NBFCs) as also of rupee-denominated units issued by IDFs set up as SEBI-registered domestic MFs.

The investors can be sovereign wealth funds, multilateral agencies, pension funds, insurance funds and endowment funds or High Networth Individuals (HNI), which are registered with Securities and Exchange Board of India (SEBI) as eligible Non-Resident investors in IDFs.

1. The original or initial maturity of the securities at the time of first investment by an NRI shall be five years subject to a lock in period of 3 years. However they can trade among themselves within this lock-in period.
2. Foreign currency denominated bonds issued by IDFs would have to comply with conditions of Foreign Exchange Management Act (FEMA) guidelines and regulations for External Commercial Borrowing (ECB).
3. All Non-resident investment in IDFs, other than NRIs, (in both rupee and foreign currency denominated securities) would be within an overall cap of \$ 10 billion only. For NRIs there is no such restriction.
4. Refinance by IDF would be up to 85% of the total debt covered by the concession agreement. IDFs set up as MFs would invest minimum of 90% of its funds in debt securities of infrastructure companies or SPVs across all infrastructure sectors, project stages and project types.

**2.0 RBI NORMS ON CDS BECOME OPERATIONAL**

The Reserve Bank of India (RBI) has operationalised the new guidelines on credit default swap (CDS), directing market participants to report such trades within 30 minutes to the Clearing Corporation's online repository.

The Reserve Bank of India (RBI) also said that it is advised that all market makers shall report their CDS trades in corporate bonds within 30 minutes of the trade to the Clearing Corporation of India Ltd (CCIL) trade repository CCIL Online Reporting Engine (CORE) beginning December 1, 2011.

**Credit Protection**

CDS provides credit protection to corporate bond buyers, as the sellers of the swaps guarantee the credit-worthiness of the product. Thus, the risk of default is transferred from the holder of the fixed income security to the seller of the swap.

The Reserve Bank of India (RBI) observed that the objective of introducing CDS on corporate bonds is to provide market participants a tool to transfer and manage credit risk in an effective manner through redistribution of risk.

**3.0 RBI INITIATES ACTION TO CONSERVE FOREX RESERVES**

The Reserve bank of India (RBI) has already swung into action. It has asked corporates to immediately bring in the proceeds of their External Commercial Borrowings (ECBs) for rupee expenditure in India, such as local sourcing of capital goods, on-lending to self-help groups (SHGs) or for micro-credit, payment for spectrum allocation, and so on.

**4.0 SEBI ALLOWS MFs TO PARTICIPATE IN REPO CORP DEBT SECURITIES**

Market regulator the Securities and Exchange Board of India (SEBI) has allowed mutual funds to invest in repo, or short-term repurchase of forward contract, of corporate debt securities with a ceiling of 10% of the net assets of the concerned scheme.

**5.0 BANKS TO OFFER HIGHER RETURNS ON NRI DEPOSITS TO LURE DOLLARS**

The Reserve Bank of India (RBI) allows banks to give 125 bps over Libor against a mark - up of 100 bps to Non Resident Indian.

**6.0 RBI BRINGS MFIs UNDER DIRECT CONTROL**

The Reserve Bank of India (RBI) formally brought Micro Finance Institutions (MFI) under its direct regulation by classifying these as a new category of Non-Banking Financial Company (NBFC). The move follows the recommendations of the Malegam committee report of January and is expected to clear any ambiguity on who has responsibility for monitoring the sector. The guidelines say NBFC-MFIs will be non-deposit taking finance companies having minimum net owned funds of ₹5 crore, with not less than 85 per cent of net assets in the nature of 'qualifying assets'.

**7.0 RBI TO LOOK INTO LOAN RATE HIKES**

The Reserve Bank of India (RBI) said that the central bank would look into why banks were raising loan rates by such hefty amounts when their costs were not going up in the same proportion.

Reserve Bank of India also said that we find that banks are increasing rates by 2.5% when the cost of funds is going up by just 1%.



## EDITORIAL

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**SECURITIES AND EXCHANGE.....**

**Market Manipulation:** The capital market administration is undertaken by SEBI with the help of several committees. These committees are primarily represented by concerned market intermediaries and vested interests. The independent professionals, academics, media and intellectuals are in great minority. This has resulted into bring in a regulatory framework which on the face of it looks very dynamic and modern but actually failed miserably on the basic requirement of investors' protection. For example:

**Primary Market:** The primary market regulation has permitted issuance of shares with free pricing and by disclosing various risk factors. Several requirements of book runners, lead book runners, underwriting and similar other requirements have been provided, but without any effective result. SEBI initiatives and prescriptions have increased the cost of raising capital from about 2 to 3 percent to 10 to 15 percent of the amount raised from the public. The public issue of less than Rs. 100 crore has become unviable, due to unnecessary restrictions, regulations and mandatory intermediaries.

**Free Pricing:** There are several studies conducted by the ICAI, ANMI and several other intellectual groups, which clearly indicate that more than 85% of the public issues are so heavily priced that most of the investors loose 50% to 75% of the invested amount in a matter of few days to few months, without any significant changes in company fundamentals. There are only few exceptional issues by real genuine promoters, who had undertaken issues at realistic prices providing reasonable return to investors.

SEBI has completely failed to analyze and understand the manipulated practice undertaken by the promoters to jack up expectations from the corporate in the investors' mind manipulating valuation, profits and top line, without bringing in adequate value. In large number of cases the funds are diverted or misused, without any action on the part of SEBI or any other regulator. There is complete freedom to an open loot by grey market operators and licensed intermediaries from the issue proceeds. Pre dated transactions, buy back commitments, stop gap bridge loan to complete the issue and then diversion are open secrets in most of the issues but no action. SEBI even permit public issue by tax defaulters, promoters under investigations or under criminal prosecution and companies with clearly manipulated accounts and financial statements. Due diligence by merchant bankers is only a farce.

**Secondary Market:** The secondary market position is precarious and in a large number of cases several miscreants are manipulating the prices of various scrips and shares. No action is seen at the end of SEBI or any of the stock exchanges, at the time when manipulation is going on. There are large number of cases which are registered after few days or few months, a number of which are also compromised by SEBI in their consent scheme. SEBI and stock exchanges openly permitted code changes up to 2% and prescribed nominal fee (penalty) for breach. No action is taken on open manipulation either on failing officials or on manipulators.

There are large number of market manipulators and insider traders which are active in the Indian market places and in spite of complete access to the entire trading mechanism and even knowledge about who is buying, who is selling, and on what price and of what quantity, that neither SEBI nor stock exchange working under their active guidance are able to nab the culprits in time and stop the manipulation when investors are suffering. SEBI only undertake a detailed long drawn investigation, followed by very ineffective penalty or consent fee. Confidential market information is freely available to market manipulators, which is unduly used by them against the interest of the investors.

**SEBI Need to Act**

The Securities and Exchange Board of India need to rise up and take effective and efficient action so that the faith of the investors can be revived.

**FINANCIAL INDICATORS**

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
<b>3 Month LIBOR</b>	0.546	0.44	0.34	0.25
<b>3 Month MIBOR</b>	9.67	9.49	9.41	9.71
<b>SENSEX</b>	16002	17362	16867	18269
<b>NIFTY</b>	4801	5116	5059	5486
<b>CRR</b>	6	6	6	6
<b>REPO</b>	8.5	8.5	8	7.25
<b>REVERSE REPO</b>	7.5	7.5	7	6.25
<b>Gold (per 10 gm)</b>	28673	28584	28176	22559
<b>Silver (per kg)</b>	55213	56595	65165	54515
<b>Crude (USD/bbl)</b>	108.09	97.38	112.77	118.78
<b>Rs. vs USD</b>	53.4	49.78	46.38	44.72
<b>Rs. vs Euro</b>	70.44	68.82	64.48	64.72
<b>Rs. vs Yen</b>	68.58	64.16	59.87	55.83
<b>Rs. vs RMB</b>	8.36	7.88	7.28	6.89
<b>Rs. vs Pound</b>	83.33	68.82	74.01	72.93
<b>MCX Aluminium</b>	106.25	105.15	108.65	117.95
<b>MCX Copper</b>	409.60	377.65	409.3	404.95

\*As on 13th December 2011

(Sources: Bloomberg, NSE, BSE, RBI)





### AUDIT

#### 1.0 SEBI REVISES ANNUAL SYSTEM AUDIT RULES FOR MARKET PARTICIPANTS

Revising the rules for the annual system audit of stock exchanges and depositories, market regulator Securities and Exchange Board of India (SEBI) said that an auditor can perform a maximum of three successive audits only.

#### 2.0 HC APPOINTS SS KOTHARI MEHTA TO REVIEW LILLIPUT AUDIT

The Delhi High Court (HC) appointed SS Kothari Mehta & Company as the new auditor for Lilliput Kidswear, and asked it to review the company audit earlier carried out by SR Batliboi. The court also appointed the arbitrator to settle the dispute between Lilliput and its private equity (PE) investors, Bain Capital and TPG.

#### 3.0 SEBI SEEKS REGULATOR TO MONITOR AUDITORS

Market regulator Securities and Exchange Board of India (SEBI) has called for the creation of an independent regulator to oversee auditors, a move that is being opposed by the Institute of Chartered Accountants of India (ICAI), the accounting regulator promoted by an act of parliament that regulates the auditing profession at present.

### CORPORATE LAW

#### 1.0 90% OF SHAREHOLDING IN VALUE CAN DECIDE DELISTING

The Securities Appellate Tribunal (SAT) has interpreted the special provisions for small companies in delisting regulations 2009 in favour of Trichy Distilleries and Chemicals Ltd. and has directed the Madras Stock Exchange (MSE) to allow delisting of the equity shares of the company. The limited issue before SAT was whether the condition for delisting involved the consent of 90 per cent of the public shareholders in number or shareholders holding 90 per cent of the public shareholding in value, irrespective of their numbers.

On examination of the issue, SAT came to the finding that to avoid certain patent absurdities wherein a miniscule minority can hold up the process consented to by the majority, shareholders holding 90 per cent of the public shareholding in value irrespective of numbers can give consent to delist the company.

#### 2.0 COMPANIES BILL CLEARED

The Companies Bill 2011, with tighter disclosure norms, stricter penal provisions, greater shareholder democracy and introducing the concept of Corporate Social

Responsibility, for the first time, was cleared by the Cabinet. The Bill will replace the existing companies Bill, 2009.

#### 3.0 ARBITRATION CLAUSE SURVIVES EVEN IF THE MAIN CONTRACT LAPSES

The Supreme Court (SC) has ruled that even if the main contract is terminated, the arbitration clause will survive.

*Decided Case:* Reva Electric Car Co. Ltd. vs. Green Mobil.

#### 4.0 CAPITATION FEE PENALTY RAISED TO ₹1 CR

The Government has increased the penalty on educational institutions for charging capitation fees to ₹50 lakh.

The Cabinet also approved the change in the name of the Bill to Prohibition of Unfair Practices in Higher Educational Institutions Act, 2011. This brings all higher education institutions under the ambit of the Bill, barring agricultural institutions.

#### 5.0 EMPLOYEES CANNOT BE FORCED TO WORK IN NEW FIRM

The Supreme Court (SC) has stated that when a company is sold or transferred to another, workers of the first transferor company cannot be compelled to join the transferee company against their wishes and without their consent.

### CAPITAL MARKET

#### 1.0 ₹5-CR MINIMUM ALLOTMENT PROPOSED FOR ANCHOR INVESTORS IN PUBLIC ISSUES

The Securities and Exchange Board of India (SEBI) has decided to prescribe a minimum allotment size of ₹5 crore for anchor investors in public issues.

SEBI also decided to prescribe a maximum number of anchor investor's slab-wise.

The regulator has decided to specify a maximum tenor of 12 months for warrants issued along with public and rights offerings to prevent their possible misuse. Issuers would be required to provide details of fund utilisation both in the offer document and on a continuous basis.

A separate set of disclosures for venture capital and Private Equity (PE) funds that form part of a promoter group in investee companies will be prescribed. This is to do away with the constraints of investee companies regarding disclosure about these PE/VC funds.

The SEBI board has doubled the net worth requirements for debenture trustees from ₹ one crore to ₹two crore. This is to be done over two years.

SEBI has also mandated that listed entities submit business responsibility reports as part of their annual reports in line with the key principles spelt out by the Ministry of Corporate Affairs (MCA).



## 2.0 COMPLETE 25% OF BUYBACK OFFER: SEBI

The Securities and Exchange Board of India (SEBI) wants companies making offers for buyback of own shares to make a firm commitment to buy at least 25 per cent of such buyback offers.

## INSURANCE

### 1.0 PENSION PLANS TO HAVE GUARANTEED MATURITY BENEFIT FROM DEC 1: IRDA

If you are buying a pension-linked insurance plan, you will soon know the guaranteed maturity benefit at the time of buying.

All the insurance-linked pension products will provide a guaranteed maturity benefit in about amounts from December 1.

In the guidelines for pension products issued, the Insurance Regulatory and Development Authority (IRDA) said that the assured benefit could be utilized on the vesting date or on the date of surrender or on date of death.

The life insurers can offer pension products both in the unit and non-unit-linked segments and in the form of variable insurance pension products, besides individual and group categories.

### 2.0 10-YR-OLD INSURERS MUST LIST WITHIN A YEAR

Promoters of life insurance companies may have to make a public offer within a year of completing a decade of operations with the regulator keen on nudging these companies towards a diversified ownership. Insurance companies will be required to list within six to nine months of completing 10 years.

### 3.0 MOTOR POLICIES MUST HAVE NOMINEE NAMES: IRDA

In order to streamline settlement of claims by insurance companies, the Insurance Regulatory Development Authority (IRDA) has made it mandatory for persons seeking motor insurance to mention the name of nominee at the time of buying the policy. As per a circular sent to the insurance companies, IRDA has asked to ensure that the name of nominee is mentioned in the policy document at the time of giving cover for private vehicles. The directive follows disputes relating to settlement of claims by insurance companies in the event of death of the policyholder.

## TAXATION

### 1.0 RBI ASKS BANKS TO ACCEPT PPF DEPOSIT UP TO ₹1 LAKH A YEAR

The Reserve Bank of India (RBI) asked banks to accept deposits up to ₹1 lakh under the Public Provident Fund (PPF). As many as 25 public and private sector bankers accept deposits under the PPF scheme. Recently, the government has raised the annual investment ceiling in PPF savings to ₹1 lakh from the present limit of ₹70,000. The interest rate on PPF has also increased to 8.6 per cent from 8 per cent.

### 2.0 I-T DEPT SEEKS SC VIEW ON STATUS OF 'GOODWILL'

The income tax department has sought the Supreme Court's intervention in deciding whether "goodwill" is an intangible asset entitled for depreciation.

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### **3.0 NO TAX ON SELLING HOUSE JOINTLY OWNED WITH SPOUSE**

The Delhi High Court (HC) held that full exemption under Section 54F of the Income-Tax Act, 1961, should be allowed even if the new property is purchased in joint name, if the tax-payer was the real owner, that is, if he has funded the entire cost of the property.

### **4.0 ALTERNATE MINIMUM TAX ON LLPS WILL CONTINUE IN DTC**

The Alternate Minimum Tax (AMT) on Limited Liability Partnerships (LLPs) and concessional rate of tax on dividend received from overseas subsidiaries of Indian companies will continue even in the proposed Direct Taxes Code (DTC).

### **5.0 AUTHORITY FOR ADVANCE RULING ORDERS CAPITAL GAINS EXEMPTION FOR ARDEX INVESTMENT**

An appellate tax tribunal has ordered capital gains tax exemption for a Mauritius company which wanted to sell stake in an Indian company to another overseas firm. The Authority for Advance Ruling (AAR), a quasi-judicial body which gives advice on tax matters in advance of the actual transaction has said that the exemption holds good even if the company is set up in Mauritius for the purpose of avoiding capital gains tax in the country.

### **6.0 CAN'T LINK BENEFITS OF I-T DEDUCTIONS TO DIRECT EMPLOYMENT: HC**

The Bombay High Court (HC) has ruled that the Income-Tax Department cannot deny the benefits of deduction to the assessee companies on the ground that they must directly employ ten or more workers in their establishments. The court dismissed the plea of the revenue which said the benefits of deduction under the income-tax law cannot be extended to the assessee employing the stipulated number of the workers through the agency or contractors. A bench comprising Justice JP Devadhar and Justice AR Joshi said that the condition imposed under Section 80IB(2)(iv) of the Act (Income Tax Act, 1961) is that the assessee must employ ten or more workers in the manufacturing process/production of articles or things and it is immaterial as to whether the workers were directly employed or employed by hiring workers from a contractor.

### **7.0 INTERNATIONAL TAXATION/TRANSFER PRICING**

- The Mumbai ITAT bench in Asst DIT vs. Neo Sports Broadcast Pvt. Ltd. has held that payment for "live telecast" of event is not "royalty" nor arising from "business connection".
- The Mumbai ITAT bench in ACIT vs. Maersk Global Service Centre (India) P. Ltd. has held that

if TPO does not give cogent reasons to reject a comparable, it must be presumed to be comparable & DR cannot argue to the contrary

### **8.0 DEDUCTION UNDER CHAPTER VIA**

- The Bangalore ITAT bench in Anil H. Lad vs. DCIT has held that Loss & Depreciation of eligible unit prior to "initial assessment year", if set-off against other income, cannot be notionally carried forward for purposes of section 80IA(5).
- The Mumbai High Court in CIT vs. Jyoti Plastic Works Pvt. Ltd. has held that for claiming deduction u/s. 80-IB "workers" need not be "employees", even persons employed through agency would be workers for the purposes of this section.

### **9.0 SECTION 147**

- The Mumbai High Court in CIT vs. K. Mohan & Co. has held that for the purposes of section 147, retrospective amendment does not mean failure to disclose material facts.
- The Mumbai High Court in The Indian Hume Pipe Co. Ltd. vs. ACIT has held that for purposes of section 147, "Full & true disclosure of material facts" means "specific" disclosure of "each" fact
- The Delhi High Court in Atma Ram Properties Pvt. Ltd. vs. DCIT has held that AO must specify what facts are failed to be disclosed. Lapse by AO is no ground for reopening u/s 147 if primary facts are disclosed.

### **10.0 TDS**

- The Delhi ITAT bench in ITO (TDS) vs. Indian Oil Corporation has laid down the Tests to distinguish "transportation contract" from "hire contract" for TDS under 194I or 194C

### **11.0 OTHERS**

- The Delhi High Court in Maxopp Investments Ltd. vs. CIT deciding on 21 appeals has held that No S. 14A or Rule 8D Disallowance can be made without showing how assessee's calculation is wrong and only real expenditure can be disallowed
- The Mumbai High Court in CIT vs. Manuja J. Shah has held that Indexed cost of gifted assets has to be determined with reference to previous owner for the purposes of computing capital gains
- The Delhi High Court in CIT vs. Manish Buildwell Pvt. Ltd. has held that if the CIT (A) acts on an application under Rule 46A for admission of additional evidence, then the requirement of giving the AO an opportunity as per Rule 46A(3) is mandatory..
- The Mumbai High Court in CIT vs. The Stock and Bond Trading Company has held that Penalty/ Fine for violation of procedural law is not hit by Explanation to s. 37(1) and the same is allowable as deduction.





## LIMITED LIABILITY PARTNERSHIP - AN ATTRACTIVE CONSTITUTION OF CA FIRMS

The institute has come out with a guideline dated 4th November, 2011 permitting-

1. All existing CA firms can convert themselves into LLP;
2. New CA firms can be constituted as Limited Liability Partnership.

### Process :

1. LLP Registrar will approve the name of the CA Firm, subject to necessary approval from ICAI, as the name of the firm will include the word "Chartered Accountant" or "Chartered Accountants";
2. Form 117 re approval of firm name in terms of Regulation 190 and Form No. 18 re constitution/reconstitution of firm is to be submitted to the Institute.
3. The existing Firms registered with ICAI can get the similar name approved for the LLP conversion, subject to approval by the Registrar of LLP.
4. The seniority of the Firm, upon conversion into LLP shall be maintained.
5. The existing regulations of the Institute regarding the name allotment will continue to apply to LLP Firms also.
6. In case more than one Firm have same or similar name, and one of the firm get converted into a LLP, rest of the firms are required to be closed.
7. Even proprietorship firms can also be converted to LLP. This will need admission of at least one more partner.

### Advantages :

The aforesaid decisions of the Council were long awaited and the following advantages can be availed of by the members of the Institute:

1. The limit of 20 on number of partners will not be applicable in case of LLP.
2. **Limited Liability** will ensure limited liability/risk.
3. The admission of partners, retirement or removal and other **rights, responsibilities of partners** will be governed by LLP Agreement and every time there will not be any need to execute fresh partnership deed.
4. The LLP so constituted will be a corporate entity with "**perpetual succession**" and its existence will not get affected by retirement or death of partner and will provide continuing goodwill to the heirs and successors.

### 5. Multi-disciplinary Firms

The Chartered Accountants Act is being amended to permit multi-disciplinary partnership and several other professions have been recognized for this purpose.

### 6. Flexibility :

The LLP law gives complete flexibility to the partners to define their mutual rights and responsibilities. The capital can be brought in and taken out freely.

7. **No Dividend Distribution tax** on distribution of profits by LLP. In fact capital gets generated in the hands of partners.

8. **Taxation:** The income received by the partners from the LLP will not be taxable in the hands of the partners, in case the same has attracted taxation in the hands of LLP. The income taxable in the hands of partners will be limited to salary and interest, allowed as a deduction in the hands of the LLP.

### 9. Dispute :

Any dispute among partners regarding constitution of the Firm and reconstitution, etc. will be completely set at rest as the LLP agreement shall be binding and shall prevail on all the partners. The LLP agreement can authorize one or more partners to admit new partners, retire, remove existing partners and also vary the profit sharing ratio and other rights among the partners, if so authorized by the LLP agreement. Even the LLP agreement can be modified based on such delegation to specified/ designated partners in terms of LLP agreement.

10. **Permission to undertake all activities as a Chartered Accountants Firm:** The LLP so formed, duly registered with ICAI and the LLP Registrar shall be entitled to undertake all activities which a Chartered Accountants Firm can undertake including accounting, audit, taxation, corporate laws and management consultancy services.

### 11. Liability for default of other partners :

The LLP Act has specifically provided that the firms or the partners are not liable for action undertaken by a particular partner outside authorization to the concerned partners or fraudulent or other unauthorized transaction.

We sincerely look forward for your comments and queries on the above. [vinodjain@inmacs.com](mailto:vinodjain@inmacs.com), [aicas.cfo@gmail.com](mailto:aicas.cfo@gmail.com)

**EDITORIAL**

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**FOREIGN DIRECT INVESTMENT.....**

**FDI in Real Estate :**

The government of India and the political parties may also please reconsider the policy on Foreign Direct Investments in real estate. The permission to non resident Indians to freely buy and sell properties in India up to any quantum is required to be regulated and monitored. Even the Foreign Direct Investment in real estate construction and development by foreign companies need to be regulated as the funds from foreign countries are being currently invested openly in buying agricultural land, even without change of land use for couple of months or couple of years.

The real estate prices have gone up by about 10 times in India after the Indian real estate was opened for foreign investors.

**Where we need FDI?**

FDI is actually needed in infrastructure sector including power, ports, roads etc. besides high technology and capital intensive Industries.

**Lack of RBI Monitoring:**

The RBI has not been monitoring the FEMA policies announced by government as well as the guidelines issued by RBI. A large number of Indian corporate as well as foreign investors are misinterpreting and misusing the liberal words of FDI guidelines, against the intention behind the liberalization. This is serious matter and requires immediate action at the end of the Government. It may be necessary for RBI to consider prescribing mandatory reporting compliance with FEMA Rules, Regulations and notifications by all investors duly certified by the Auditors.

**ICAI**

**1.0 CA INSTITUTE TO INK DEAL WITH NEW ZEALAND BODY**

The CA Institute plans to ink a Mutual Recognition Agreement (MRA) with the New Zealand Institute of Chartered Accountants (NZICA) in January next year. Mr G. Ramaswamy, ICAI president also said that we are in the final stages and the agreement may be signed during an international conference at Chennai on January 6-8.

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