



**INDIAN LEGAL AND BUSINESS UPDATE**  
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**1. Foreign Education Bill finally gets Union Cabinet's approval.**

After several years of debate, the Union Cabinet unanimously approved a Bill that would allow foreign education providers to set up campuses in India and offer degrees.

The Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialisation) Bill will allow foreign universities to invest at least 51 per cent of the total capital expenditure needed to establish the institute in India. Such institutes will be granted deemed university status under Section 3 of the Universities Grants Commission (UGC) Act, 1956.

The Bill aims to regulate the entry, operation and maintenance of quality assurance and prevention of commercialisation by foreign educational institutions, besides protecting the interest of the student community from sub-standard and 'fly by night' operators. The Bill is aimed at not only bringing in investment in the education sector, but also draw in foreign students, besides helping check the flight of Indians to study (then work and settle) abroad.

**2. Education is fundamental right for kids aged 6-14**

Education for children aged between 6 and 14 has finally become a fundamental right with the notification of the Right of Children to Free and Compulsory Education Act. While the notification is an important milestone, the government acknowledged that the real challenge lay in the effective implementation of the Act. In his short address, Mr. Singh referred to the need for all stakeholders to work together to realise the Right to Education (RTE), describing it as a "common national endeavour".

**3. FIPB tightens norms for FDI in sensitive sectors**

To improve the scrutiny of foreign direct investment (FDI) for sensitive sectors, the Foreign Investment Promotion Board (FIPB) has come out with a new set of norms for applicants. It would now be mandatory for foreign companies that wish to invest in telecom, defence and security services in India to provide details of all directors. Till now, while it was a desirable criterion for the companies seeking FIPB approval, the norm was mandatory only for telecommunications. However, in its new portal to be hosted for launching electronic filing of FIPB applications, this criterion would be mandatory for all applicants in these sectors.

The Finance Ministry had formally decided to launch online filing of FIPB applications. A separate website was being launched for FIPB exclusively. Till now, FIPB was hosted on the site of the Finance Ministry along with other departments. Besides, the requirement for furnishing details of all directors in foreign companies seeking to invest in India has been made mandatory for all sectors if the company has Chinese or Hong Kong registration or links.

#### **4. India to sign trademark protection treaty**

India would join the World Intellectual Property Organisation's (WIPO's) Madrid System for the International Registration of Marks this year. This would enable the owner of a registered trademark to protect his brand in the member countries. Though India has been holding consultations with WIPO for several years about joining the Madrid System, the government has now decided to join it.

#### **5. Supreme Court ruling on powers of regulatory commissions**

In a significant ruling, the Supreme Court has held that the legislative functions of a regulatory commission are beyond the jurisdiction of the quasi-judicial powers of its appellate tribunal.

A five member bench led by Chief Justice K G Balakrishnan dismissed the appeal filed by power trading companies in PTC India Ltd vs Central Electricity Regulatory Commission on 15 March 2010. The Apex court held that the Appellate electricity tribunal (APTEL) does not have the jurisdiction to decide on the validity of regulations framed by the Central Electricity Regulatory Commission (CERC), which enjoys the power to fix a cap on trading margins of power companies. A host of power trading companies had applied to the Supreme Court to challenge the CERC regulation which fixed trading margins at 4 paise per Kwh under Section 178 of the Electricity Act, 2003.

The ruling implies that CERC regulation could only be challenged before the High Court in exercise of its writ jurisdiction of judicial review. Though the verdict in this case was confined to electricity regulators, it may also have a bearing on other regulators such as the Telecom Regulatory Authority of India (TRAI), Securities and Exchange Board of India (SEBI) or the Competition Commission of India (CCI) and the powers of their respective appellate tribunals to challenge their regulators' powers.

#### **6. High Courts get back power to hear belated IT appeals**

The amendments brought in the Finance Bill has empowered the Income Tax (I-T) department to file about 12,000 appeals involving several thousand millions of rupees before the high courts, nullifying an earlier ruling by the Supreme Court. Two years ago, the Supreme Court held that the High Courts did not have the power to condone delay in filing appeals.

According to the amendment, the High Courts have the power to condone delay in filing appeals as per Section 260A of the IT Act. The amendment will be effected retrospectively from October 1998. The amendment follows I-T department's application to the Supreme Court challenging the Bombay High Court's ruling last year which rejected over 700 appeals.

## **7. High Court rules against TDS on all fees to foreign entities**

Delhi High Court has passed an order that an Indian company making a payment to an overseas entity is obliged to deduct tax only if the income of the foreign firm is liable to tax in India. This Delhi High Court ruling provides substantial relief to several companies making regular cross border payments. Interestingly, the Delhi High Court ruling differs from a Karnataka High Court judgement in the case of Samsung Electronics, in which the Karnataka High Court held that tax has to be deducted in India from all payments made to overseas entities.

The Delhi High Court ruling centered around costs reimbursed by the Indian subsidiary of the Netherlands-based Van Oord ACZ Marine Contractors. The income tax department directed Van Oord ACZ India to withhold the tax before paying its parent company.

The Delhi High Court pointed out that this was a case in which the income tax department had already allowed a refund of the amount withheld from a similar reimbursement in the past. Therefore, prima facie, the Dutch company was not liable to pay tax in India and hence it was not obligatory on the part of its Indian subsidiary to withhold tax. However, the Delhi High Court added that if, at a later stage, the income of the Dutch company became liable to tax in India, the I-T was vested with powers to initiate proceedings against the Indian subsidiary for not withholding tax.

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