



INDIAN LEGAL AND BUSINESS UPDATE
OCTOBER 1-OCTOBER 31, 2010

1. Delhi High Court rules foreign nationals working in India are covered under the Indian labour laws

The Delhi High Court ruled that foreign nationals working in India were covered under the labour laws here. A division bench comprising Chief Justice A P Shah and Justice Manmohan gave this decision while hearing an appeal petition filed by news agency Associated Press (AP) to set aside a single Judge order, which ruled that foreign employees working in India were entitled to the labour law benefits here.

The case pertains to an American journalist Laurinda Keys Long, working with AP who was sacked in 2004 in India. She went to the labour court in 2005 claiming that her dismissal was without any reason. AP contended that the agency was managed by a company incorporated in the US and therefore, her employment conditions were governed exclusively by US laws.

Ms Long's contention was that since she was sacked in India, she is well covered within the laws here. AP should have sent her back to the US and then she would have been covered by the laws there.

The court said that since Long was working under the Indian rules here, she is protected by the Indian Labour Laws and directed AP to pay compensation to her. The agency challenged the labour court orders in the Delhi High Court and Justice Sanjeev Khanna in April also upheld the Labour commissioner's order and ruled that Long was well protected by the Indian Labour Laws.

2. Six ministries to decide on FDI retail

An inter ministerial panel will decide on the contentious issue of opening organized retail to foreign investment after examining stakeholder feedback to a discussion paper put out by the government. The committee will have representation from the department of industrial policy and promotion, department of commerce, department of economic affairs, agriculture ministry and ministry of micro, small and medium enterprises.

The DIPP had floated a discussion paper, raising various points of concern on the issue in July and had asked for stakeholders' comments on the same. After the inter ministerial committee firms up views on the issue, the matter will be sent to the commerce and industry ministry, which will then approach the Union Cabinet with a recommendation. At present, foreign companies can operate

the single brand retail format or in the wholesale cash-and-carry business with FDI cap of 51 percent.

3. Bar Exam for Law Graduates

A first ever All India Bar Examination for law graduates passing out in 2009-10 will be held on December 5, 2010. The Examination has been made mandatory by the Bar Council of India for students graduating in law starting academic year 2009-10. The Examination will be conducted in nine languages in 27 cities across India.

A Bar Council of India statement said the new Examination will test skills and basic knowledge 'critical for a new entrant to the practice of the profession of law. It is intended to check for eligibility, rather than expertise

4. Cabinet approves judicial accountability Bill

The Union Cabinet has approved the Judicial Standards and Accountability Bill, 2010. The Bill seeks to replace the Judges (Inquiry) Act, 1968, while retaining its basic features. The Bill provides a mechanism for enquiring into complaints against judges of the Supreme Court and High Courts. It also lays down judicial standards and requires the judges of the Supreme Court and the High Courts to declare their assets and liabilities.

A five-member oversight committee, headed by a former chief justice of India, would be formed to look into complaints of misconduct by judges. Currently, there is no legal provision for dealing with complaints filed by the public against judges of the Supreme Court and High Courts.

5. Overseas retail investors may be permitted to invest directly in Indian equity markets

The finance ministry is looking into a proposal that would allow overseas retail investors to invest directly in Indian equity markets. This is part of a review of the overall regime for the participation of foreign investors in primary and secondary markets.

The move was proposed by the UK Sinha committee, which recently submitted its report to the government. At present, foreign investors with a net worth of over USD 50 million can register as sub accounts of a foreign institutional investor and buy Indian stocks. Alternatively, they can come through India focused funds.

The UK Sinha committee had suggested a review of the registration norms for non resident individuals to bring about greater transparency. It had pointed out that under current SEBI regulations, individual investors need to have a net worth of not less than USD 50 million to register as a sub account of an FII.

6. Supreme Court rules woman in live-in relationship is entitled to all reliefs given in the Domestic Violence Act 2005

In a recent ruling, the Supreme Court has said that in live-in relationship, a woman is entitled to all reliefs, including maintenance under the protection of women under the Domestic Violence Act 2005. It ruled that Section 20 of the Act allowed the magistrate to direct the respondent to pay monetary relief to the aggrieved person who is the harassed woman, for expenses incurred and losses suffered by her.
