



## **INDIAN LEGAL AND BUSINESS UPDATE**

*AUGUST 1-AUGUST 31, 2010*

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### **1. Parliament passes Civil Nuclear Liability Bill**

Parliament has passed the Civil Liability for Nuclear Damages Bill 2010. It provides for 1500 crore rupees (USD 340 million) of liability cap on suppliers in case of a nuclear accident and paves the way for India to have nuclear commerce with the international community. It provides for that the operator will have a right to recourse with supplier only after paying the compensation to the victims promptly.

Replying the debate on the bill the minister of state for science and technology Prithviraj Chavan asserted that one of the main objectives of this legislation is to ensure prompt payment to the victims in case of a nuclear accident. He noted that in case changes are needed in the legislation in future, government is open for it. Mr. Chavan added that the compensation of 1500 crore rupees is at par with the United States.

Mr. Chavan said that the passage of this bill will open up vast opportunities for India to meet the growing energy demand and prove a booster in maintaining the tempo of growth. The Bill was taken up for discussion in the Lok Sabha last week after government evolved a consensus on the contentious issues with the main Opposition. Immediately after the introduction of the bill in the Budget session of Parliament it was referred to the Parliamentary standing committee on science and technology. The committee after holding discussions with opposition and other stake holders recommended 18 amendments. These amendments were incorporated in the Bill after cabinet nod.

### **2. Direct Taxes Code (DTC)**

The much awaited Direct Tax Code has been finally introduced in the Parliament for deliberation by the Parliamentary standing committee on Finance.

The original draft was released in August 2009 and evoked mixed reactions from tax payers across industry. The Central Board of Direct Taxes (CBDT) then issued a Revised Discussion Paper in June 2010 after considering the views of various business houses, forums and the general public.

Individuals and companies can expect some relief in the Direct Taxes Code (DTC) with the government planning to widen personal income tax slabs, enhance the exemption limit and remove levies on corporate tax.

The Direct Tax Code was intended to simplify the Income tax regime and reduce litigation – in its current form it is more voluminous than the present Income Tax Act and bodes increased litigation.

### **3. Government dilutes 25 per cent public float norms**

The government has diluted the guidelines on public shareholding by lowering the minimum public float requirement for state owned enterprises to 10 per cent against 25 per cent prescribed earlier. On June 4, the government had notified rules that made it mandatory for all listed companies, including public sector enterprises, to have a minimum public float of 25 percent.

Besides, it provided freedom to private sector companies by dispensing with the rules that required entities with less than 25 percent public shareholding to dilute at least 5 per cent stake annually. Under the new rules, government as well as private companies can raise the public shareholding level within three years without any annual floor.

‘Public Shareholding’ means equity shares of the company held by the public and not the shares which are held by custodians against depository receipts issued overseas. It will not include the promoter, promoter group, subsidiaries and associates of a company. Public shareholding of 25 per cent was also required before the June amendment, but stock exchanges and SEBI were given powers to relax the norms for PSUs and companies in information technology, media, entertainment and telecommunications sectors.

### **4. New foreign contribution law**

The revised Foreign Contribution Regulation Bill has been passed by Parliament. It will enable the Union government to better track foreign funds to non-government bodies (NGOs).

Existing law says NGOs have to be registered to be eligible to receive foreign aid. But under the new law, replacing the earlier one of 1976, all these NGOs will now have to also be working for the “national interest” to be eligible to get aid. The term hasn’t been defined.

The new law has made it mandatory for NGOs to renew their FCRA registration every five years. Under the law, NGOs have to file annual returns on their foreign flow receipts and expenses or lose their registration. The latter provision is already there in existing law, but many don’t observe it. In 2008, of 34,803 registered associations under FCRA, only 18,796 filed receipts or returns with the home ministry.

Under the new law, the FCRA registration of such organizations which don’t file returns would automatically be cancelled after every five years. And for three years, they would not be able to

re-apply.

## **5. Government moves the Trademarks (Amendment) Bill, 2009 in Rajya Sabha**

The government has moved the Trademarks (Amendment) Bill, 2009, that ensures India's accession to the Madrid Protocol providing for registration of Indian trademarks in 84 countries under a single-window system.

The Madrid Protocol which is already signed by 84 countries, enables the signatories to register their trademarks at one place in one language and after paying only one fees.

A non-signatory has to file as many applications in as many languages and pay separate fees in individual nations where a trademark is proposed to be registered.

## **6. SEBI authorizes mobile trades**

In a move that would give a big boost to equity trading, the Securities and Exchange Board of India (SEBI) has permitted mobile trading and smart order routing (SOR) between stock exchanges. This effectively means that stock market investors will no longer have to call up a broker or log on to a computer to buy or sell shares. All they need is an internet enabled mobile phone to access a trading terminal from their broker to buy or sell shares or transfer funds from their bank accounts for the purpose.

## **7. Cabinet clears whistleblower protection bill**

The Union Cabinet has cleared a bill to protect whistleblowers and punish those exposing identity of people disclosing information. The proposed legislation, Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, provides the Central Vigilance Commission powers (CVC) of a civil court to hand down harsh penalty to people revealing identity of whistleblowers.

The CVC will be empowered to take action against those who reveal the identity of whistleblowers or those who threaten the whistleblowers while those who make frivolous complaints will also be liable to punishment.

In the recent past, several activists who exposed corruption by bureaucrats and political leaders have been killed or threatened by mafia elements. There has been a rise in the number of attacks on RTI activists across the country recently.

## **8. Reserve Bank sets stiff terms for new bank licences**

The Reserve Bank of India is considering a 50 percent cap on foreign investment in new banks with a 10-year lock in and keeping out corporate groups involved in real estate business. Banks are now allowed to have up to 74 percent foreign shareholding, of which 49 per cent can be held by foreign institutional investors and 24 per cent by non resident Indians. The government treats banks with more than 50 per cent foreign shareholding as non resident owned banks.

In its discussion paper on new private sector banks released on 11 August, 2010, the central bank has also suggested a higher capital requirement than the existing Rs. 300 crore (USD 65 million) for new bank licensees. RBI, which has sought feedback on the proposals by September 30, plans to give only a limited number of licences to promote financial inclusion and inclusive growth, while increasing competition and reducing costs.

Minimum capital requirement, shareholding of promoters and foreigners, permitting industrial and business houses, and non bank finance companies and a business model are among the areas where RBI has sought debate and feedback before it finalizes the new rules. Corporate groups seeking bank licences should have diversified shareholding and a bank promoted by the group should be 'ring-fenced' from other group companies, RBI suggested. Among other safeguards, boards of these companies must have a majority of independent directors and the chairman should be a part time post.

## **9. Parliament passes the Securities and Insurance Laws (Amendment and Validation) Bill, 2010**

Parliament has passed the Securities and Insurance Laws (Amendment and Validation) Bill, 2010 that seeks to further amend the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Securities and Exchange Board of India Act, 1992 to bring in a sort of 'super regulator' over these regulatory authorities.

The Bill seeks to set up a joint mechanism to address the issues of jurisdiction between the financial sector watchdogs. It provides for setting up a joint committee under the chairmanship of the Finance Minister, and with representations from the four financial sector regulators and the Finance Ministry. Reserve Bank Governor will be the vice-chairman of the joint committee.

The Bill when it gets assent by the President will replace the ULIP Ordinance issued by the Union government on June 18. The government issued the Ordinance after the capital markets regulator SEBI and insurance watchdog IRDA locked horns over regulation of Unit-linked insurance products (ULIPs) and could not seek a joint legal mandate to sort out the issue.

## **10. Bill to amend the Cinematograph Act, 1952.**

The amendment proposes that a separate Board of Television Programmes Certification should be set up to scrutinise and give appropriate certification to programmes telecast on television channels.

There has been a steep increase in the number of programmes telecast on television channels. The number of channels has also increased considerably over the years. However, there is virtually no scrutiny by any Government agency having regard to the nature, content and theme of the programmes.

At present there is a Central Board of Film Certification which sanctions films for public exhibition. These films are mostly screened in cinema halls. But the programmes telecast on television are not subject to such censor or regulation.

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