KEY DEVELOPMENTS IN 2016-2017

I. MINISTRY OF COMMERCE AND INDUSTRY

1. Release of Consolidated Foreign Direct Investment ("FDI") Policy (DIPP Circular No. D/o IPP F. No. 5(1)/2015-FC-1 dated May 12, 2015

The Department of Industrial Policy and Promotion ("**DIPP**") on May 12, 2015 issued the new Consolidated FDI Policy enhancing the extant foreign direct investment framework. The significant changes that were introduced in this Consolidated FDI Policy, 2015 are as follows:

- Clarification pertaining to the requirement of Foreign Investment Promotion Board's ("**FIPB**") approval for acquisition of shares by a non resident under a scheme of merger/demerger/amalgamation, in an Indian Company providing that no prior approval shall be required where such a scheme is transpiring in an industry which is engaged in a sector covered under the automatic route.

- Allowing transfer of shares in a company from one non-resident to another non-resident (including Non Resident Indians ("**NRIs**")) in sectors falling under the automatic route without the requirement of prior approval of the government.

- Allowing issuance of shares/preference shares against lump sum technical know-how fee, royalty due for payment and issuance of equity shares against other funds payable by the investee entity, remittance of which does not require prior government or regulatory approval. However, such issuance shall be subject to:
  (a) pricing guidelines and sectoral caps as prescribed under the extant FDI Policy and;
  (b) compliance with the applicable tax laws.

- Allowing issuance of employee stock options under an employee stock option scheme by a company, which is engaged in the sectors falling under automatic route, to employees of its joint ventures/wholly owned subsidiaries, who are residents outside India without the prior government approval.

- Allowing additional foreign investment into an entity within an approved foreign equity percentage/or into a wholly owned subsidiary without obtaining any fresh government approval.

- Liberalization of foreign investment cap in the following sectors-
  a. Railways Sector: Upto 100% FDI was allowed under the automatic route in the Railways sector. Removal of Railway Transport from the list of prohibited sectors under the FDI Policy.
  b. Defence Sector: Enhancement of FDI cap in the Defence sector to 49% from the erstwhile 26% under the automatic route.
  c. FPIs/FIIs/QFIs are allowed to invest upto 74% in the Banking sector, provided there is no change of control and management of the investee company.

2. FDI in Insurance Sector vide Press Note No.3 (2015 Series) dated March 2, 2015

DIPP amended the extant FDI policy in respect of Indian insurance sector vide Press Note. 3 (2015 Series) and increased the cap on FDI inflow from 26% to 49%. The cap of 49% shall be inclusive of

BUDGET 2016-17

direct and indirect foreign investment and foreign portfolio investment. The amendments to the existing policy that were notified by the government are subject to following conditions:

- *Approval Route*: Total foreign investment in any Indian insurance company beyond 26% and upto a cap of 49% shall require prior approval of the government.

- *Applicability*: The Insurance sector shall now include (a) Indian insurance companies as defined under the Insurance Act, 1938; (b) Insurance brokers; (c) third party administrators; (d) surveyors and loss assessors; and (e) other insurance intermediaries appointed under the Insurance Regulatory and Development Authority Act, 1999.

- *Applicability to banking and other financial entities*: Entities, whose primary business is outside the purview of the Insurance sector and are functioning as an insurance intermediary shall be subject to the foreign equity caps applicable to their respective sectors provided that the revenues of such entities from their primary business constitute 50% of their total revenues in any financial year at all times.

- *Licenses:* FDI in the Insurance sector shall be subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license form Insurance Regulatory and Development Authority of India for undertaking insurance activities.

- *Ownership and Control*: An Indian insurance company shall ensure that the ownership and effective control of such company shall at all times remain in the hands of the resident Indian entities.

- Any increase of the foreign investment in an Indian insurance company shall be in accordance with the pricing guidelines specified by the Reserve Bank of India ("**RBI")** under the Foreign Exchange Management Act ("**FEMA**").

3. FDI in Pension Sector vide Press Note. 4 (2015 Series) dated April 24, 2015

The DIPP vide its Press Note. 4 (2015 Series), amended the extant FDI Policy to allow *49% FDI in* Pension sector. The government approved up to 26% FDI under the automatic route, and upto 49% FDI, under the government approval route, in Pension Funds subject to the following conditions:

- *Definition of Pension Fund*: Pension Funds shall have the same meaning prescribed to it under the Pension Fund Regulatory and Development Authority Act, 2013, being an intermediary which has been granted a certificate of registration by the Pension Fund Regulatory and Development Authority as a pension fund for receiving contributions, accumulating them and making payments to the subscribers.

- *Licenses***:** Foreign investment in Pension Funds shall be subject to obtaining necessary registrations from the Pension Fund Regulatory and Development Authority and compliance with the relevant provisions of the Pension Fund Regulatory and Development Authority Act, 2013.

- *Control and Ownership:* In an event the foreign equity investment involves control or ownership by the foreign investor or, transfer of control or ownership of an existing pension fund from resident Indian citizens and/or Indian companies owned and controlled by resident Indian citizens to such foreign investing entities by way of transfer or issuance of fresh equity shares on account

BUDGET 2016-17

of acquisition, merger, amalgamation etc., to non-resident entities, prior approval of the Foreign Investment Promotion Board in consultation with the Department of Financial Services shall be required. The onus of obtaining such an approval shall be on the Indian pension fund company.

4. Review of FDI Policy on investments by Non Resident Indians (NRIs), Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs) vide Press Note No. 7 (2015 Series) dated June 3, 2015

The government, vide Press Note No. 7 (2015 Series), reviewed and amended the FDI Policy pertaining to NRIs, PIOs and OCIs to bring about parity in investment norms of resident Indians and NRIs.

- *Definition of NRI*: Pursuant to the amendment, 'Non-Resident Indian' shall now mean an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955. 'Person of Indian Origin' cardholders issued by the Central Government shall be construed to be 'Overseas Citizens of India' cardholders for the purposes of foreign investment norms.

- *Investment by NRIs*: Investment by NRIs under Schedule 4 of (Transfer or Issue of Security by Persons Resident Outside India) Regulations shall be deemed to be domestic investment at par with the investment made by residents.

II. EXCHANGE CONTROL

1. RBI permits issuance of shares under Employee Stock Option Scheme and/or Sweat equity shares to persons resident outside India (RBI Circular: A.P. (DIR Series) Circular No. 4 dated July 16, 2015)

The RBI vide its circular dated July 16, 2015 permitted issuance of shares by an Indian company under Employee Stock Option Scheme ("**ESOP**") and/or sweat equity shares to its employees/directors who are resident outside India or employees/directors of its holding company/joint venture/wholly owned overseas subsidiary(ies), subject to the following conditions:

- The employee stock option schemes shall be subject to the regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014, as the case may be.

- The ESOP or the sweat equity shares issued to non-resident employees/directors should be in compliance with the sectoral cap applicable to the said company.

- Issuance of ESOP or the sweat equity shares in a company where foreign investment is under the approval route or to an employee or director being a citizen of Bangladesh/Pakistan shall require prior FIPB approval.

The issuing company shall furnish a return as per the Form-ESOP to the Regional Office concerned of the RBI under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of ESOP or sweat equity shares.

BUDGET 2016-17

2. **RBI prescribes a framework for issuance of Rupee denominated bonds overseas under the extant External Commercial Borrowing ("ECB") policy. [RBI Circular: A.P. (DIR Series) Circular No. 17 dated September 29, 2015 The broad contours of the framework are as follows:**

The RBI vide its circular dated September 29, 2015 laid down a framework to facilitate Rupee denominated borrowing from overseas under the extant ECB guidelines. Following are some of the significant features of the framework so proposed:

- *Eligibility of borrowers*: Any corporate or body corporate including Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) registered with Securities and Exchange Board of India are eligible to issue Rupee denominated bonds overseas.

- *Type of Instrument:* Only plain vanilla bonds issued in a Financial Action Task Force (FATF) compliant financial centres; either placed privately or listed on exchanges as per host country regulations, are eligible instruments under the framework.

- *Maturity:* Minimum maturity period of the bonds shall be 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum maturity period.

- *Amount:* Under the automatic route, bonds equivalent to the amount of USD 750 million per annum can be issued. Any issuance beyond the said limit shall require prior approval of the RBI.
- *Conversion:* The foreign currency - Rupee conversion shall be at the market rate on the date of settlement for the purpose of transactions undertaken for issue and servicing of the bonds.

- *End-Users:* The proceeds against issuance of rupee denominated bonds can be used for all purposes except for the following:
  (a) Real estate activities other than for development of integrated township / affordable housing projects;
  (b) Investing in capital market and using the proceeds for equity investment domestically;
  (c) Activities prohibited as per the FDI guidelines;
  (d) On-lending to other entities for any of the above objectives; and
  (e) Purchase of land.

3. **Investment by Foreign portfolio Investors (FPI) in corporate bonds (RBI circular: A. P. (DIR Series) Circular No. 31 dated November 26, 2015]**

The RBI vide its circular dated November 26, 2015 reviewed the investment norms for FPIs in Non-Convertible Debentures ("**NCDs**")/Bonds and permitted FPIs to acquire NCDs/bonds which are under default, either fully or partly, in the repayment of principal on maturity or principal installments in the case of bonds. In relation to the same, RBI revised the maturity period of such NCDs/bonds, restructured based on negotiations with the issuing Indian company, to be three years or more. However, such acquisition of NCDs/bonds under default by FPIs shall be subject to disclosures made by such FPIs to the Debenture Trustees regarding their offer to the existing debenture holders/beneficial owners from whom they are acquiring the NCDs/bonds. Further, such an investment by the FPIs shall be subject to the overall limit prescribed for corporate debt from time to time.

BUDGET 2016-17

4. **Review of Policy in relation to extension of credit facilities to overseas Step-down Subsidiaries of Indian Corporates (RBI Circular: RBI/2015-16/279 DBR.IBD.BC.No.68/23.37.001/2015-16) dated December 31, 2015)**

The RBI vide its circular dated December 31, 2015 reviewed and modified guidelines permitting banks in India to extend funded and/or non-funded credit facilities to step-down subsidiaries of the overseas subsidiaries of Indian companies that may not be wholly owned, subject to the following conditions:

- Banks may extend funded and/or non-funded credit facilities to the step-down subsidiaries of Indian companies including to those beyond the first level, to finance the projects undertaken abroad.

- The immediate overseas subsidiary of the Indian company must be directly controlled by the Indian parent company through any of the modes of control recognised under the Indian Accounting Standards and the Indian parent company must directly hold a minimum 51% stake of the immediate subsidiary.

- All the step-down subsidiaries, including the intermediate ones, must be wholly owned subsidiary of the immediate parent company or its entire shares shall be jointly held by the immediate parent company and the Indian parent company and / or its wholly owned subsidiary. The immediate parent should, wholly or jointly with Indian parent company and / or its wholly owned subsidiary, have control over the step-down subsidiary.

- Banks shall make additional provision of 2% (in addition to country risk provision that is applicable to all overseas exposures) against standard assets representing all exposures to the step-down subsidiaries, to cover the additional risk arising from complexity in the structure, location of different intermediary entities in different jurisdictions exposing the Indian company, and hence the bank, to greater political and regulatory risk.

III. SECURITIES EXCHANGE BOARD OF INDIA ("SEBI")

1. **Clarification for grant of registration as a Foreign Portfolio Investor ("FPI") to Registered Foreign Venture Capital Investors (FVCI) (SEBI Circular no. CIR/IMD /FIIC/05/2015 dated June 12, 2015)**

SEBI vide its circular date June 12, 2015 laid down framework for an entity registered as FVCI under the SEBI (Foreign Venture Capital Investors) Regulations, 2000 for grant of registration as a FPI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 ("**FPI Regulations**"). The registration shall be subject to the following conditions:

- The applicant entity shall comply with the eligibility criteria prescribed under the SEBI (Foreign Portfolio Investors) Regulations, 2014.

- The entity shall maintain a clear bifurcation of the funds or securities which are raised, allocated or invested under the respective registrations.

- The entity shall have the same custodian for its activities as FPI and FVCI, however separate accounts shall be maintained with the custodian for execution of trades under the respective registrations.

BUDGET 2016-17

- Reporting of transaction shall be in accordance with regulations applicable under the specific registration.
- The securities held under FVCI and FPI registrations should be clearly segregated.
- All the conditions applicable to the entity under the respective registrations shall be complied with at the level of the segregated funds and activities with respect to the specific registrations.
- The entity shall comply with all the investment restrictions as stipulated under the FPI Regulations and SEBI Circular No. CIR/IMD/FIIC/20/2014 dated November 24, 2014. Further, the entity shall comply with the provisions of FVCI Regulations, FPI Regulations and circulars issued by SEBI in relation to the same from time to time.

2. **Guidelines on overseas investments by AIFs/VCFs (SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015)**

Overseas Investment by Venture Capital Funds (VCFs) registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996

SEBI vide its circular dated October 1, 2015 modified its earlier circular SEBI/VCF/Cir. No 1/98645/2007 dated August 09, 2007 and enhanced the investment market for registered VCFs. Significant changes under the circular are:

- VCFs are permitted to invest upto 25% of the investible funds of the VCF in Offshore Venture Capital Undertakings which have an Indian connection. VCFs shall submit their proposal for investment in offshore venture capital undertakings to SEBI for its prior approval.
- Any investment in joint venture/wholly owned subsidiaries overseas is prohibited.
- Any investment structure undertaken by the VCFs, involving Foreign Direct Investment (FDI) under the Overseas Direct Investment (ODI) route, shall be subject to FEMA and the regulations thereunder and other guidelines prescribed by the RBI from time to time.
- VCFs shall adhere to RBI guidelines on opening of branches/subsidiaries/Joint venture/undertaking investment abroad by Non Banking Financial Companies ("**NBFCs**"), where more than 50% of the funds of the VCF have been contributed by a single NBFC.

Overseas investment by Alternative Investment Funds ("**AIFs**")

The RBI, vide its circulars A.P (DIR Series) Circular No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively, prescribed a framework for overseas investment by the AIFs. In furtherance to the same, SEBI, vide its circular dated October 1, 2015, laid down the following guidelines for overseas investment by the AIFs:

- AIFs shall invest in equity and equity linked instruments only of offshore venture capital undertakings, subject to overall limit of USD 500 million. Such an investment shall not exceed 25% of the investible funds of the scheme of AIFs.

BUDGET 2016-17

- Investments shall be made only in those offshore venture capital undertakings which have an Indian connection, i.e back end operations or research and developments are being undertaken in India. AIFs shall submit their proposal for investment to SEBI for its prior approval. No separate approval from the RBI shall be required.

- The allocation of the investment limits should be done on 'first come-first serve' basis, depending on the availability in the overall limit of USD 500 million.

- The AIFs shall, within 6 months from the date of approval of SEBI, shall make the allocated investments in the offshore venture capital undertakings. In an event, the investment is not made within the stipulated period, SEBI may allocate such unutilized funds to the other applicants.

- The investment made by AIFs shall be subject to Notification No. FEMA 120/RB-2004 dated July 7, 2004 {Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004} including amendments thereof and guidelines issued by RBI from time to time.

- Any investment in joint venture/wholly owned subsidiaries overseas is prohibited.

- AIFs shall adhere to RBI guidelines on opening of branches/subsidiaries/Joint venture/undertaking investment abroad by NBFCs, where more than 50% of the funds of the AIF has been contributed by a single NBFC.

- Any investment structure under taken by the AIFs, involving Foreign Direct Investment (FDI) under the Overseas Direct Investment (ODI) route, shall be subject to FEMA and the regulations thereunder and other guidelines prescribed by the RBI from time to time.

SEBI clarified that for the purposes of such investment by AIFS, "Offshore Venture Capital Undertakings" shall mean a foreign company whose shares are not listed on any of the recognized stock exchanges in India or abroad. Further, it was clarified, that the tenure of any scheme of the AIF shall be calculated from the date of final closing of the scheme.

3. **Investments by Foreign Portfolio Investors in government Securities (SEBI Circular: CIR/IMD/FPIC/8/2015 dated October 6, 2015.**

SEBI vide its circular dated October 6, 2015 modified the limits for investment by FPIs in government securities. These guidelines have been issued by SEBI in furtherance to the Medium Term Framework for FPI Limits in government Securities as announced by the RBI in its fourth bi-monthly Policy Statement for the year 2015-16, dated September 29, 2015. It was decided that the limits for PFI investment in debt securities shall henceforth be announced and fixed in rupee terms. The broad contours of the guidelines are:

- The investment cap for FPIs in Central Government Securities shall be increased to INR 129,900 crore and INR 135,400 crore on October 12, 2015 and January 01, 2016 respectively from the existing limit of INR 124,432 crore.

- The investment cap for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government Securities shall be increased to INR 36,600 crore and INR 44,100 crore

BUDGET 2016-17

on October 12, 2015 and January 01, 2016 respectively from the existing limit of INR 29,137 crore.

- A separate additional limit of INR 3,500 crore would be released on October 12, 2015 and January 01, 2016 respectively, for investment by all FPIs in State Development Loans (SDL).

- A security wise limit 0f 20% of the amount outstanding under each Central Government Security has been put in place, which shall take effect from October 12, 2015. The existing FPI investments in the Central Government securities where aggregate FPI investment is over 20% may continue. However, fresh purchases by FPIs in these securities shall not be permitted till the corresponding security-wise investments fall below 20%.

- The Central Government securities in which the aggregate FPI investment is more than 20% of the outstanding would be placed in a negative investment category in which fresh investments would not be permitted.

- In partial modification to Para 2 of SEBI circular CIR/IMD/FIIC/19/2014 dated October 09, 2014, all future investments by Long Term FPIs, including the limits vacated when the current investment by a Long Term FPI runs off either through sale or redemption, shall be required to be made in Central Government securities having a minimum residual maturity of 3 years.

4. **Mandatory requirements/Exit Policy for Commodity Derivatives Exchanges (SEBI Circular: CIR/CDMRD/DEA/01/2016 dated January 11, 2016)**

The Ministry of Finance, vide Gazette Notification S.O. 2630 (E) dated September 24, 2015 had delegated the powers exercisable by it, inter alia under Section 7 of Forward Contracts (Regulation) Act, 1952 to SEBI. Pursuant to the same, SEBI vide its circular dated January 11, 2016 clarified certain operational guidelines and exit policies for all such commodity derivative exchanges as defined under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporation) (Amendment) Regulations, 2015. Salient features of the guidelines are:

- The commodity derivative exchange, where there is no trading operation on the platform for more than 12(twelve) months shall be liable to exit.

- All national Commodity Derivatives Exchanges shall continuously meet the turnover of INR 1000 Crore per annum. The Regional Commodity Exchanges shall ensure at least 5% of the nation-wide market share of the commodity, principally traded on their platform. Failing to meet the above criteria for consecutive 2 years, the Regional Commodity Exchange shall be liable to exit.

- In the event a recognized commodity derivatives exchange, for any reason suspends its trading operations, it shall resume its trading only after prior approval of SEBI and subject to maintain adequate and effective trading systems, clearing and settlement systems, monitoring and surveillance mechanisms, risk management systems and compliance with all other regulatory requirements stipulated by SEBI from time to time.

- Surrender by any commodity derivatives exchange proposes of its recognition voluntarily or whose recognition is proposed to be withdrawn by SEBI, the concerned Exchange shall be comply with the following:

BUDGET 2016-17

- The concerned commodity derivatives exchange shall not alienate any assets of the exchange without taking prior approval of SEBI.
- The concerned commodity derivatives exchange shall be permitted to distribute its assets subject to conditions and guidelines as laid down in this circular and other circulars issued by SEBI, government, or any other statutory authority, from time to time.
- For the purpose of valuation of the assets of the commodity derivative exchange, a valuation agency shall be appointed by SEBI. All the valuation charges in this regard shall be paid by the concerned exchange.
- The concerned exchange shall transfer the Investor Protection Fund or any such fund to the SEBI Investor Protection and Education Fund.
- The concerned exchange shall pay the dues outstanding to SEBI and the annual regulatory fee and any other fee as may be prescribed by this Circular.
- The Sale / distribution / transfer of assets / winding up of such exchanges / companies shall be subject to the applicable laws in force.
- In case of de-recognition and exit, the stock exchange shall contribute up to 20% of its assets (after tax) towards SEBI Investor Protection and Education Fund (IPEF) for investor protection and in order to cover future liabilities, if any. The contribution may be decided by SEBI taking into account, inter alia, the governance standards of the commodity derivatives exchange and estimation of future liabilities.

IV. BANKING

1. The Insolvency and Bankruptcy Code, 2015. ("Code")

The Finance Minister on December 21, 2015 introduced the Insolvency and Bankruptcy Code ("Code") to create a unified framework for resolving insolvency and bankruptcy in India. The broad contours of the Code are:

- Provision of an Insolvency Process Resolution ("IRS") has been provided, which shall be initiated by either the debtor or the creditor and completed within a maximum period of 180 days from the date of registration of the case. However, this period may be extended by 90 days if 75% of the financial creditors agree.

- Creation of an Insolvency and Bankruptcy Fund where any person who has contributed to the fund may apply for withdrawal, in case of proceedings against him. It allows a corporate debtor to initiate insolvency resolution process once it has defaulted on a debt.

- Establishment of a Board containing 10 members which shall include representatives from the Central Government and RBI to supervise the insolvency resolution in the country.

- Adjudication of grievances through two separate tribunals related to insolvency, bankruptcy and liquidation of different entities under the law have been proposed:
  i. National Company Law Tribunal having jurisdiction over companies and limited liability partnerships, and
  ii. Debt Recovery Tribunal having jurisdiction over individuals and partnership firms.

- Stringent punishment of imprisonment of up to five years or a fine of up to one crore rupees, has been prescribed for an offence committed by a debtor under corporate insolvency.

BUDGET 2016-17

V. INSURANCE:

1. The Insurance Laws (Amendment) Act, 2015 ("Act")

The Insurance Laws (Amendment) Act, 2015 ("**The Amendment Act**") was enacted on 23rd March, 2015, to remove archaic and redundant provisions in the legislations and incorporate certain provisions to provide Insurance Regulatory and Development Authority of India ("**IRDAI**") with the flexibility to discharge its functions more effectively and efficiently. The salient features of the Act are provided below:

- Enhancement of the foreign investment cap in an Indian Insurance Company from 26% to 49% with the safeguard of Indian ownership and control.
- Regulation of health insurance on a stand-alone basis with the objective to give the health insurance business priority through a more focused regulatory regime.
- Enabling capital raising through new and innovative instruments under the regulatory supervision of IRDAI.
- Allowing the properties in India to be insured with a foreign insurer with prior permission of IRDAI, which was earlier to be done with the approval of the Central Government.
- Establishment of the Life Insurance Council and General Insurance Council to act as self-regulating bodies for the insurance sector.
- Prescribing higher penalties ranging from up to INR 1 crore to INR 25 crores for violations under the provisions of the Act, including mis-selling and misrepresentation by agents/insurance companies.
- Life insurance policies to become unchallengeable after the expiry of three years from the date of expiry.

VI. INFRASTRUCTURE

1. Creation of National Investment and Infrastructure Fund

The Ministry of Finance on August 20, 2015 vide circular number 10/33/2014 laid down the framework for setting up of National Investment and Infrastructure Fund ("**NIIF**") for enhancing growth and investment in infrastructure projects and revival of stalled projects. On December 28, 2015 NIIF was registered as a Category II Alternative Investment fund with SEBI.. The significant functions and structures of NIIF as stipulated in the circular are as follows:

- The initial authorized corpus of NIIF shall be INR 20,000 out of which 49% shall be contributed by the government directly.
- Set up as a Category II Alternative Investment Fund, NIIF shall be eligible for a 'pass-through' status under the Income Tax Act.

BUDGET 2016-17

- NIIF shall provide equity support to the Non-Banking Financial Companies (NBFCs) and Financial Institution (FIs) engaged in financing of infrastructure projects. NIIF shall also prepare a shelf of such infrastructure projects and providing advisory services.

- NIIF shall employ market based selection criteria to extrapolate commercial viability of the infrastructure projects and exercise full autonomy in the selection of projects.

2. **Setting up of Public Private Partnership Model ("PPP") of Infrastructure development (Source: Press Release, Ministry of Finance, dated December 28, 2015)**

In the wake of Budget 2015, a committee was set up to review and revitalize the PPP model of Infrastructure Development. The committee vide its report stipulated the following suggestions:

- The report suggested provisions for improved fiscal reporting practices and sophisticated modelling techniques to assess probabilities of risks and the need to provision for them.

- Constitution of an Infrastructure PPP Project Review Committee ("IPRC") to evaluate and assess any "Actionable Stress" in any Infrastructure Project developed in PPP mode beyond a notified threshold value.

- Cancellation of projects that have not achieved a prescribed percentage of progress on the ground, resolving such issued through public funds and rebidding of the same projects once such issues have been resolved

- Setting up of Sector specific institutional frameworks to address issues for PPP infrastructure projects, and encourage use of PPPs in sectors like railways, urban etc.

- Setting up of an institution for invigorating private investments in infrastructure, providing guidance for a national PPP policy and developments in PPP, and implementation of a well-founded risk management structure.

VII. FINANCIAL MARKETS

1. **Merger of Forward Markets Commission ("FMC") with Securities and Exchange Board of India ("SEBI"), (SEBI Press Release, dated September 28, 2015)**

Union Finance Minister on unveiled the integration of Forward Market Commission ("**FMC**") with the **SEBI** on September 28, 2015. This synergy between the norms of commodities, derivatives and securities has been brought about for effective regulation of the Commodities derivatives market and enhance functioning of the commodities derivatives exchanges and its brokers.

Pursuant to the said merger, the government vide Finance Cat, 2015 amended the Securities Contracts (Regulation) Act, 1956, and repealed Forward Contracts (Regulation) Act, 1952 with efeect from September 29, 2015.

A separate Commodity Derivatives Market Regulation Department has been constituted by SEBI in wake of the merger for the regulation of commodity derivatives, market policies and risk management.

BUDGET 2016-17

2. **Setting up of Public Debt Management Agency (PDMA) (Source: News Article Livemint, dated February 26, 2016)**

In view of integrating the domestic debt management and the external borrowings mechanism, the government envisaged setting up of a non-statutory Public Debt Management Agency (PDMA).
The setting of PDMA shall require amendment in the extant Reserve Bank of India Act, 1934 ("**RBI Act**")

VIII. MINISTRY OF CORPORATE AFFAIRS

1. **The Companies (Amendment) Act, 2015 ("The Amendment Act")**

The government notified the Companies (Amendment) Act, 2015 on May 25, 2015. In the wake of ease of doing business in India, the Amendment Act seeks to bring about certain procedural relaxations in the extant corporate regime. The broad contours of the Act are as follows:

- *No Minimum paid up share capital*: The requirement for the minimum paid-up share capital on INR 1,00,000 (in case of a private company) and INR 5,00,00 (in case of a public company) has been alleviated.

- *Related Party Transaction*: The Amendment Act stipulated relaxations in the procedural norms for Related Party Transactions. The requirement of obtaining shareholder's approval by way of a special resolution has been replaced by an ordinary resolution. Further, in relation to related party transactions between a holding company and its subsidiary having consolidated accounts, the requirement of procuring a special resolution has been alleviated.

- *Common Seal*: Requirement for a common seal has been made optional and signature of the Director has been made acceptable in lieu of a common seal.

- Commencement of Business: The Companies have been exonerated from filing declarations in relation to (i) declaration by a director that minimum paid-up share capital has been paid; and (ii) company has filed verification of registered office with the Registrar of Companies prior to commencement of business or exercising any borrowing power

- *Violation of provisions in relation to deposits*: Stringent penalties have been introduced for Directors of Companies that invite or accept or renew deposits in contravention to provisions of the Companies Act, 2013. The defaulting company shall be liable for fine of a minimum amount of INR 10,000,000 extending upto INR 100,000,000 in addition to the amount of deposit or part thereof, along with interest. Further, every officer of the company in default shall be punishable with imprisonment which may extend upto 7 years or with a fine amounting to a minimum of INR 2,500,000 extending upto INR 20,000,000 or both.

BUDGET 2016-17

- *Resolutions filed with the Registrar*: The Amendment Act prescribes a prohibition on public inspection of Board Resolutions in particular relating to business strategies of the company, filed with the Registrar.

- *Declaration of dividends:* The Amendment Act stipulates a restriction on declaration of dividend by a Company for a financial year and states that no company shall declare dividend for a financial year unless losses and depreciation have been set-off against the profits of the company, in the year it proposes to declare a dividend.

2. Exemptions provided to Private Companies under Companies Act, 2013

The Ministry of Corporate Affairs ("MCA") vide its notification dated June 5, 2015 stipulated certain exemptions to Private Companies from the provisions of the Companies Act, 2013. The exemptions liberalized the following procedural requirements **:**

- *Related Party Transactions*: Under Section 2(76) of the Companies Act, 2013 ("Act"), a holding company, subsidiary, associate company (including a joint venture company) and a subsidiary of a holding company to which the company is also a subsidiary would not be considered as related parties for the purposes of section 188(1). This exemption will also permit members of the company interested in the contract or arrangement to vote on the resolutions for authorizing the related party transaction.

- *Voting Rights under Section 43 and Section 47:* Private Companies have exonerated from application of Section 43 and Section 47 where the the Memorandum of Association or the Articles of Association of such private company provides so, such that the preference shareholders are now permitted to vote on all the resolutions at par with the equity shareholders of a private company.

- *Reduction of time limit for rights issue:* Under Section 62 (1)(a)(i), the time period specified in the section to offer the shares can be reduced, if 90% of the members give their consent either in writing or in electronic mode.

- *Issue of shares to employees under Employee Stock Option Scheme ("ESOP"):* Under Section 62 (1)(b), the approval of the members of the company for the issuance of ESOPs is now required by way of an ordinary resolution instead of a special resolution.

- *Restriction on purchase by company or giving of loans by it for purchase of its own shares under Section 67(1):* Private Companies have been exempted from the applicability of provisions of Section 67(1) subject to the following conditions:
    - A body corporate has not invested money in the share capital of the private company;
    - Borrowings of the company from banks, financial institutions or body corporate should not exceed twice the amount of paid up share capital or Rs. 40 crores, whichever is lower; and
    - Such private company has not defaulted in the repayment of such borrowings at the time of making transaction.

BUDGET 2016-17

- *Acceptance of deposits by the company from its members:* Under Section 73(2), an exemption has been made to exclude requiring the approval of the members by way of ordinary resolution or fulfillment of any other conditions provided that the amount of deposit accepted by the private company does not exceed 100% of aggregate of paid-up capital and free reserves of the private company and the relevant filings with the Registrar of Companies.

- *Restrictions on powers of Board:* Under Section 180, where the exercise of certain powers such as to sell, lease or otherwise dispose of an undertaking was only with the consent of the company by a special resolution will now not be applicable to private companies.

- *Participation in meeting after disclosure of interest by director:* Under Section 184(2), now the Interested Directors of a private company can participate in the meeting, where a contract or arrangement is proposed in which he is directly or indirectly interested and vote in the said meeting only after the disclosure of his interest.

- *Loan to Directors:* Section 185 now allows loan to directors for the Private Company where,
    - No other body corporate has invested any money,
    - Borrowing of the company from bank, financial institution or body corporate is less than twice its paid up share capital or 50 crore rupees whichever is lower.
    - Private Company is not defaulted in repayment of borrowings as may exist on the date of the transaction under this section.

- *Vote by member who is a related party, to approve any contract entered by the Company:* Section 188 now permits the member of a private company who is also a related party to vote on the special resolution, to approve any such contract or arrangement which may be entered into by the company with a related party.

IX. Tax

1. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("Act")

On 13th May, 2015, the India Parliament ratified the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 which received assent from the President Mr. Pranab Mukherjee on 26th May, 2015. Under this act, *"undisclosed foreign income and asset"* is defined as the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India. The key features of this Act are given below:

- The Central Board of Direct Taxes and the existing hierarchy of tax authorities under the provisions of the Income Tax Act, including the appeals machinery prescribed thereunder, have been tasked with implementation of the new legislation.

- Provisions relating to exemption, deduction or minimization of tax liability by way of set off of losses under the Income Tax Act will not be available to any undisclosed foreign income or asset which shall be taxed at the rate of 30%.

BUDGET 2016-17

- Non-disclosure of any income or asset located outside India will attract a penalty equal to three-times the tax payable on the undisclosed foreign income and assets in addition to the tax.

- Not furnishing income tax returns for foreign income and assets or providing misleading information for such foreign income and assets will attract a penalty of Rs.10,00,000. Further, evasion of tax could attract rigorous imprisonment from three to 10 years along with a fine.

- A one-time amnesty scheme is provided under the Act for all persons who have not disclosed their foreign assets for taxation where the scheme requires the payment of tax at the rate of 30% together with a penalty equal to the total tax amount levied on the undisclosed foreign assets.

- The Act excuses the tax payer for the declaration made under the one-time amnesty scheme for prosecution under the Foreign Exchange Management Act, 1999; Income Tax Act; Wealth-Tax Act, 1957; Companies Act, 2013; or Customs Act, 1962. However, the amnesty scheme will not be applicable to any person who has been subjected to a search or when a notice of reopening is pending or information has been received by the tax authorities in respect of the undisclosed asset.

BUDGET 2016-17