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A GREAT LEAP FOR LITIGANTS

N K Gupta
Founder & Managing Partner

A few days back, The Bar Council of India (BCI) and its counterparts in England and Wales agreed to a Memorandum of Understanding (MoU), which verifies that Indian lawyers and law firms can access English and Welsh legal services, with some limitations in place.

In a bid to enhance the capabilities and expertise of Indian lawyers and law students, the Bar Council of India (BCI) has recently signed a Memorandum of Understanding (MoU) with the Bar Council of England & Wales. This groundbreaking agreement establishes a platform for a reciprocal exchange program, enabling lawyers and law students from both countries to collaborate and benefit from diverse learning opportunities. This development holds great significance for Indian lawyers and can potentially elevate the quality of litigation in India.

Bar Council of India's Transformative Shift

The Bar Council of India (BCI) has made a groundbreaking decision to allow foreign lawyers and law firms to practice in specific areas of law within the country. This move represents a significant departure from the traditional restrictions and marks a transformative shift in India's legal landscape. By embracing global integration, the BCI aims to bring international expertise and diverse perspectives to the Indian legal system.

The decision holds immense implications for the legal profession and the economy. Opening the doors to foreign lawyers and law firms is expected to attract foreign investment and stimulate economic growth. This move expands the range of legal services available to clients, bringing specialized expertise in international arbitration and intellectual property rights.

The BCI acknowledges the importance of maintaining a strong regulatory framework to balance international participation with the interests of domestic lawyers and law firms. Ethical practice, adherence to professional standards, and client protection will remain critical priorities. Guidelines and regulations are anticipated to ensure a fair and transparent environment for all legal professionals.

As the country embraces a more dynamic and diverse legal profession, it can better cater to the evolving needs of clients in an interconnected world.

Enhancing Legal Skills and Expertise

The MoU between the BCI and the Bar Council of England & Wales facilitates the participation of Indian lawyers and law students in exchange programs that expose them to the legal systems and practices of England & Wales. This presents a unique opportunity to gain invaluable insights into international legal frameworks, comparative legal analysis, and diverse litigation approaches.

By immersing themselves in different legal systems, Indian lawyers can broaden their perspectives, acquire new methodologies, and adopt best practices from other jurisdictions. Such exposure can significantly enhance their legal skills and expertise, enabling them to better serve their clients and contribute to the overall improvement of India's legal system.

Professional Networking and Collaboration

The MoU promotes collaboration and networking opportunities between legal professionals from both countries. It opens avenues for Indian lawyers to connect with their counterparts in England & Wales, enabling the establishment of meaningful professional relationships and potential collaborations on cross-border cases and legal projects.

Engaging with international legal experts exposes Indian lawyers to new perspectives, innovative legal strategies, and emerging areas of law. It also assists in building a robust global professional network, which is vital in today's interconnected legal landscape.

Improving Litigation Quality in India

The exchange program initiated by the MoU holds immense potential to enhance the quality of litigation in India. Exposure to the practices and approaches followed in England & Wales empowers Indian lawyers to adopt a more client-centric approach, develop efficient case management skills, and enhance their oral advocacy abilities.

Furthermore, the exchange program encourages Indian law students to pursue higher education and specialized courses in international law and dispute resolution, which are highly sought after in today's globalised legal arena. The exposure gained through these exchange programs contributes to the development of a skilled and competent pool of lawyers in India capable of handling complex and diverse litigation matters.

According to Thomson Reuters reports, In UK, there has been a significant increase in demand for specific practice areas. **The areas of Mergers & Acquisitions, Corporate, and Tax witnessed an average demand growth of 7.5% or more compared to the pre-pandemic levels in 2019.** Furthermore, compared to 2020, these practice areas showed even stronger growth, as anticipated. However, it is worth noting that certain practice areas, like Litigation & Disputes and Real Estate, have yet to fully recover to the demand levels seen before the pandemic.

The increased demand in the UK offers Indian lawyers opportunities for professional development, international collaborations, career advancement, specialisation, and adopting best practices. Leveraging these opportunities can enhance skills, expand networks, and contribute to the growth of the legal profession in India.

DUE DILIGENCE WHILE UTILIZING AI IN CORPORATE OPERATIONS

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Principal Director

AI is revolutionizing corporate operations, presenting unprecedented opportunities for efficiency, innovation, and growth. However, as AI becomes deeply embedded in business processes, organizations need to exercise due diligence to ensure the ethical and responsible use of this influential technology. This article delves into the significance of due diligence in utilising AI in corporate operations, emphasizing the need to protect success while mitigating potential risks.

In AI integration, due diligence involves a methodical and thorough evaluation of the technology's potential impact, risks, and ethical considerations before implementation. It entails a meticulous assessment of data sources, transparency of algorithms, bias mitigation, adherence to legal compliance, and privacy protection. By conducting comprehensive due diligence, companies can proactively tackle challenges and optimise the advantages of AI implementation.

In the midst of an AI arms race, Open Al Inc., the creator of ChatGPT, finds itself embroiled in a lawsuit accusing the company of stealing vast amounts of personal data for profit-driven AI model training. The lawsuit alleges that OpenAl secretly scraped 300 billion words from the internet, including personal information obtained without consent. This high-profile case underscores the critical importance of due diligence when deploying AI in corporate operations to safeguard privacy and mitigate potential risks.

Unveiling the Alarming Violation

Anonymous individuals behind the lawsuit argue that OpenAl violated privacy laws and put civilization at risk. They claim that the company collected private information from various sources without individuals' knowledge or consent. Fearing retaliation, the plaintiffs remain anonymous, seeking class-action status and estimating potential damages at a staggering $3 billion, affecting millions of people.

The Significance of Due Diligence

This lawsuit serves as a stark reminder that robust due diligence is paramount when utilising AI. Companies must prioritise privacy and adhere to established protocols for data acquisition and usage. Rather than resorting to unethical practices like data theft, organizations should embrace transparent and responsible data collection, respecting user consent and privacy rights.

Safeguarding Personal Information

OpenAI's case highlights the inherent risks of mishandling personal information. Corporations must recognize the value of personal data and the potential harm arising from its unauthorized use. Implementing strong privacy policies, encryption measures, and secure data storage systems enables organisations to protect personal information, ensuring compliance with privacy regulations and building trust with customers and stakeholders.

Legal and Ethical Ramifications

This lawsuit raises not only legal concerns for OpenAI but also implicates other entities, such as Microsoft, planning to invest billions in the company. It underscores the need for comprehensive due diligence within a company's operations and in evaluating potential partners or investments. Adhering to legal and ethical standards is crucial to avoid reputational damage, legal repercussions, and financial liabilities.

Extracting Lessons from the Lawsuit

Corporates can glean valuable insights from this lawsuit. Prioritizing thorough due diligence before implementing AI technologies is imperative. Scrutinising data acquisition practices, ensuring compliance with privacy laws, and emphasizing ethical considerations are vital steps. By exercising due diligence, companies can protect themselves from legal complications, mitigate privacy risks, and foster a culture of trust and transparency.

Conclusion

The lawsuit against OpenAI is a stark reminder that integrating AI into corporate operations necessitates rigorous due diligence. Companies must prioritize privacy, adhere to legal and ethical standards, and prevent unauthorised use or theft of personal information. By doing so, organizations can harness the potential of AI while safeguarding privacy, building trust, and avoiding costly legal battles. In an era where data privacy is increasingly valued, due diligence is a legal requirement and a strategic step toward responsible and sustainable AI implementation.

ENFORCEABILITY OF AN UNSTAMPED\ARBITRATION AGREEMENT

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The issue of enforceability of an arbitration clause contained in an unstamped/ insufficiently stamped agreement has been the subject of various judicial pronouncements. Conflicting decisions have been delivered by various High Courts, and even the Supreme Court ("SC") did not lay down a conclusive position. Recently though, a five-judge bench of the apex court, through its judgment in N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited ("NN Global"), finally settled the law on the enforceability of arbitration agreements contained in unstamped/ insufficiently stamped arbitration agreements.

Briefly put, the facts, issues involved, and the findings given by the Hon'ble Supreme Court in N.N. Global reported as MANU/SC/0445/2023 are as under:

Facts of the case:

The facts of the above-mentioned case were that the Petitioner and Respondent No.1 had entered into a sub-contract which included an arbitration clause. Certain disputes arose, and the Respondent No.1 invoked the Bank Guarantee provided by the Petitioner. A Suit was then filed by the Petitioner in regards to said invocation, and the Respondent No.1 filed an Application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") and sought for referral of disputes to arbitration. However, the Commercial Court, before which the Respondent had preferred an Application under Section 8 of the Act, dismissed it. Against the dismissal of the said Application, the Respondent No.1 preferred a Writ Petition before the Hon'ble High Court of Bombay and one of the issues before the Hon'ble High Court was that the arbitration agreement was not enforceable as the sub-contract was unregistered and unstamped. The High Court rejected the findings of the Commercial Court and, through its judgment held that there was a valid arbitration agreement between the parties and allowed the Application under Section 8 of the Act. The Petitioner preferred an Appeal before the Hon'ble Supreme Court wherein it was observed that the law laid down in "SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co Pvt. Ltd." and "Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited" that non-payment of stamp duty on the commercial contract would make the arbitration agreement invalid and unenforceable in law, is not the correct legal position.

However, considering that Garware was affirmed by a co-ordinate bench of 3 judges in judgment titled “Vidya Drolia And Ors. v. Durga Trading Corporation”, the Supreme Court considered it fit to refer the question to a constitution bench of the Supreme Court.

The issue before the Constitution Bench of the Supreme Court:
Can an arbitration clause in a contract, which is legally required to be registered and stamped, still be considered valid and enforceable if it has not been properly registered and stamped?

Held:
The Constitution bench of the Supreme Court by a 3:2 majority, held that the view taken in SMS Tea Estates, as followed in Garware, represents the correct position in law. It was further held that N.N. Global (decision by a bench of three judges) was wrongly decided, as much as it overruled SMS Tea.
It was further held by the majority that an unstamped instrument, which is exigible to stamp duty, containing an arbitration clause, cannot be said to be a contract enforceable in law within the meaning of Section 2(h) of the Indian Contract Act, 1872 ("the Contract Act") and is, therefore, not enforceable under Section 2(g) of the Contract Act.
Although the majority view appreciated that a court in an Application under Section 11 of the Act is only required to examine and ascertain the existence of an arbitration agreement, it was held that an unstamped/ under-stamped agreement is effectively void and, therefore, the test of existence does not stand satisfied.
Going a step further, it was also held that a court acting under Section 11 of the Arbitration Act is duty bound to act in terms of Section 33 of the Stamp Act and impound the unstamped contract. It was clarified that the court could proceed further with the Section 11 Application only once the defect in payment of stamp duty is cured.

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APPROVAL FROM AUTHORITY U/S 151 OF IT ACT: A FORMALITY OR A JURISDICTIONAL REQUIREMENT?

Puneet Agarwal
Sr. Partner

Vide the Finance Act'2021, w.e.f. 01.04.2021, significant amendments were carried out in provisions of reopening of assessment [in S. 147 to S. 151].

As per the provisions in force, the jurisdictional notice u/s 148 provides that no notice for reassessment shall be issued unless the AO has obtained prior approval from the Specified Authority. Similarly, Section 148A(d) provides that Order under the said section shall be passed with the previous approval of the Specified Authority.

The specified authority as per S. 151 are:
i. If 3 years or less than three years have elapsed from the end of the relevant AY: Principal Commissioner or Principal Director or Commissioner or Director,;
ii. If more than 3 years have elapsed from the end of relevant AY: Principal Chief Commissioner, Principal Director General, Chief Commissioner, or Director General,.
The Hon'ble SC, in the case of UOI v. Ashish Agarwal 2022 SCC Online SC 543 while validating the Notices issued post 31.03.2021 under the unamended Section 148, held that the Notice shall be deemed to have been issued u/s 148A(b) and whatever rights available to assessee under the Finance Act'2021, shall be open.

Post the judgement in Ashish Agarwal, the CBDT, which is an Income Tax authority as per S. 116(a) issued Instruction No. 1/2022 dated 11.05.2022 wherein in Para 6.2, provided that for the AY 2016-17 and 2017-18, for issuance of notice u/s 148, specified authority for obtaining approval, shall be as per S. 151(i), i.e., PCIT, Principal Director or Commissioner of Director, since Notice u/s 148 is within three years from the end of the relevant assessment year.

As per S. 119, the Authorities under the Income Tax are bound by the instruction issued by the CBDT, therefore Notices u/s 148 and Orders u/s 148A(d) for the AY 2016-17 and 2017-18 have been issued by the Authorities with the prior approval from specified authority as per S. 151(i).
Note: For AY 2016-17 & 2017-18, 3 years elapsed on 31.03.2020 and 31.03.2021, respectively.

Relief by Hon'ble Delhi High Court

The Validity of Notices issued for AY 2016-17 and 2017-18 after taking the approval of specified authority as per S. 151(i) has been challenged and pending before the Hon'ble Delhi High Court in the lead matter titled Twylight Infrastructure v. ITO W.P.(C) 16524/2022. Several other issues have been tagged with this lead petition.

The Hon'ble Delhi High Court, while granting interim relief by staying the operation of reassessment Notices, observed that the error of not taking the approval of proper authority specified u/s 151 goes to the root of the jurisdiction of the concerned authority.

Way Forward

The instruction dated 11.05.2022 is issued in the teeth of S. 151 as also against the judgement in Ashish Agarwal. The reason why such instructions were given is unclear from the education itself.

The approval from the specified authority is not a formality, and it goes to the root of the jurisdiction of the concerned authority; the Hon'ble Delhi High Court has already taken cognizance of the same; therefore, in case any assessee has been served such notices/orders/assessment orders, then Assessee have the option to challenge the reassessment proceedings before the Writ Court on the ground of jurisdiction.

GOODS AND SERVICES TAX - JUNE 2023

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BURDEN TO PROVE IN REVENUE LAWS:

9.1 "The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to discharge the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. If a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods and genuineness of transactions by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC."

10 "..... for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non, and those above can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has been delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc."

11 At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit.

Afore-stated are the observations of the Supreme Court in the case of **State of Karnataka vs. ECOM Gill Coffee Trading (P) Ltd. dated 15 March 2023** in relation to the Karnataka VAT Act in view of specific provisions contained in Section 70 for burden to prove upon the purchasers.

These observations would equally apply to the GST Act, given similar provisions in Section 155 of the CGST Act, 2017. The section reads, "**Where any person claims that he is eligible for an input tax credit under this Act, the burden of proving such claim shall lie on such person**."

Responsibility of Buren to prove has also been cast upon the Assessee in various provisions under the Income Tax Act, 1961, such as Section 158BA, 158BB, 221, 271, 273B, etc. Thus, the Courts might ask the assessee to prove the genuineness of the purchases and the expenses.

Thus, it is an acute condition when the statute casts the responsibility of burden of proof upon the person/assessee claiming the concession or exemption. The load can be established through the substantive evidence; thus, it casts the responsibility upon the claimant of exemption to preserve this evidence without deviation.

APPLICABILITY OF NEW TCS RATE POSTPONED: IMPLEMENTATION DATE EXTENDED TO OCTOBER 1, 2023

Anil Gupta
Senior Mentor

Date for applicability of new TCS rate extended to 1st October 2023: Now new Tax Collection at Source (TCS) rule will come into effect from October 1, 2023, as per Notification dated June 28, 2023.

The increase in TCS rates, **which were to effect from 1st July 2023, shall now be effective from 1st October 2023**. As such, till 30th September 2023, earlier rates (before amendment by the Finance Act 2023) shall continue to apply.

Finance Bill/Act, 2023, had raised Tax Collection at Source (TCS) on foreign remittance through Liberalised Remittance Scheme (LRS) to 20% from the existing 5% except in some instances. The higher rate of TCS was earlier scheduled to be effective from July 1, 2023.

THE AI ACT: ENSURING RESPONSIBLE AND FAIR USE OF AI IN THE EU

On Wednesday, 14th of June, the European Parliament approves AI Act, paving the way for the final Enactment and Regulation in its legislative process. After this, negotiations between the EU Commission, the Council of Europe, and the EU Parliament will commence, producing the final AI Act that will be enforced.

What is the AI Act?

The AI Act is a set of comprehensive rules to promote the responsible and fair use of AI technology in the EU market.

Its purpose isn't to shield Europe from abstract threats like Artificial General Intelligence (AGI) or dystopian scenarios where AI takes over the world.

Instead, to put it briefly, the AI Act aims to introduce the following:

- due diligence obligations in the development of the AI system from the outset;
- mechanisms to verify the correctness of the decision; and
- avenues to hold individuals accountable if the decision is found to be incorrect.

Applicability of the AI Act

The AI Act has a broad reach, encompassing various people within and beyond the EU. It applies to the rights and welfare of consumers and citizens within the EU who engage with AI systems. Ex. Tech innovators seek to sell their AI systems, and NGOs plan to incorporate AI Act. Thus, organisations and governments must adhere to the Act's rules to operate in Europe regardless of location.

Businesses Face Demanding Requirements under the AI Act:

The AI Act serves as a wake-up call for companies to ensure their AI systems' safety, clarity, and respectfulness.

1. Risk-based approach: AI systems are classified into risk categories based on their potential impact. High-risk AI systems face stricter requirements, while systems posing an unacceptable risk are prohibited.

2. Prohibited practices: The act stops AI systems that manipulate human behaviour, exploit vulnerabilities, or support social scoring. It bans biometric categorisation, predictive policing, and facial image scraping.

3. High-risk AI systems: Businesses using high-risk AI systems must meet requirements on transparency, data quality, documentation, human oversight, and robustness.

4. Foundation models and general-purpose AI: Providers of foundation models and general-purpose AI systems face extensive documentation, transparency, and registration obligations.

5. Supervision and oversight: The European Artificial Intelligence Board (EAIB) offers guidance and ensures consistent application of the AI Act. Member states designate authorities responsible for monitoring compliance.

6. Fines and penalties: Non-compliance can lead to significant fines, reaching up to 7% of the global annual turnover of the responsible entity.

Key concerns:

• Lack of clarity: The Act's requirement for "high-quality data" lacks a precise definition, potentially creating loopholes.

• Enforcement challenges: Similar to the GDPR, enforcing the AI Act may face initial challenges, including inconsistent application and resource constraints.

Timeline:

• Negotiations among the Council of Europe, EU Parliament, and European Commission are underway for the final approval of the AI Act.

• The Act is expected to come into force by the end of 2023, followed by a two-year grace period for businesses to prepare.

Preparing for the AI Act:

• The AI Act is part of a global movement towards trustworthy and responsible AI.

• The Council of Europe is also developing the AI Convention, establishing binding principles and rules for AI across its member states.

• Businesses should view the AI Act as an opportunity to align with ethical AI standards and prepare for the future of AI governance.

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PERFORMER'S RIGHTS IN INDIA: PROTECTING THE ARTISTS AND THEIR CREATIVE, HARD WORK

In entertainment, performers bring stories to life, captivate audiences, and create memorable experiences. Whether it's actors on the silver screen, musicians on stage, or dancers in production, their talent and hard work deserve recognition and protection. Recently, performer's rights have gained significant importance in India, with efforts being made to safeguard the interests of these artists and ensure their creative contributions are duly acknowledged and compensated.

In India, the protection of performers' rights is primarily governed by the Copyright Act 1957, amended in 2012 to address performers' concerns. Every performer is given a special right known as the “performer’s right” for their performance, and that freedom of the performer shall subsist until fifty years from the year, the arrangement is made, as mentioned under section 38 of the Act.

Economic rights:

Performers have exclusive rights to control the commercial use of their performances and be compensated relatively under section 38A of the Copyright Act.

- Right of Reproduction: The exclusive right to control the duplication of their performances, including creating copies.
- Right of Distribution and Rental: The exclusive right to control the distribution and rental of their performances through physical copies or digital distribution channels.
- Right of Communication to the Public: The right to decide whether their performances can be broadcasted, publicly shown, or streamed.

To enforce these rights, the Copyright Act recognises the need for performers to enter into agreements with producers, broadcasters, and other users of performances.

Moral Rights

Moral rights are distinct from economic rights and pertain to performers' personal and non-economic interests in their performances. Section 38B of the Copyright Act covers performers' rights to preserve their integrity and reputation. The following provisions are included:

- Right of Attribution: The right to be identified as the performers of their works by claiming authorship and being credited for their performances whenever they are used or presented to the public.
- Right of Integrity: The right to object to any distortion, mutilation, or modification of their performances that could harm their reputation. This right safeguards the integrity of their performances and prevents unauthorised alterations that may affect their works' artistic or aesthetic quality.

It's important to note that moral rights cannot be given away or transferred. They belong to the performer and are meant to safeguard their artistry and reputation throughout their performances.

In conclusion, performers' rights in India are vital for safeguarding the interests of artists and ensuring that their creative contributions are respected and valued. The Copyright Act, with its economic and moral rights provisions, provides a legal framework for protecting performers. However, continued efforts are needed to address piracy and lack of awareness. By promoting awareness, implementing effective enforcement mechanisms, and encouraging fair practices in the entertainment industry, India can create an environment that genuinely values the performers.

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DOWNSTREAM INVESTMENT: A FORM OF INDIRECT FOREIGN INVESTMENT (PART 1)

A Non-resident can either invest directly (foreign direct investment) or indirectly (via an entity established in India) in equity instruments of an Indian entity.

Keywords:

Downstream Investment: Downstream investment means an indirect foreign investment through an FOCC.

Foreign-owned and controlled company (FOCC): An Indian entity owned and controlled by a person residing outside India (PROI). The PROI is the beneficial owner of more than 50% of a company's capital instruments. This can also include to mean that the beneficial owner has the ability to appoint a majority of the directors and control the management and policy decisions of the company.

Purpose:

The Downstream Investment framework was introduced by the Reserve Bank of India (RBI) to keep a check on indirect foreign investments in India. The framework requires Indian entities that are owned and controlled by non-residents to file a form DI whenever they make a downstream investment in another Indian entity. The RBI uses the information collected through the Downstream Investment framework to monitor the indirect flow of foreign investment into India and to ensure that it is in line with the government's FDI policy.

Indirect Foreign Investment:

As per master directions on Foreign Investment in India (the "Master Directions") published by the RBI under RBI/FED/2017-18/60 FED contain provisions relating to Indirect Foreign Investment dated 4 January 2018, Master Direction No. 11/2017–18.

'Indirect Foreign Investment' is downstream investment received by an Indian entity from:

(a) another Indian entity (IE) which has received foreign investment and which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India; or

(b) an investment vehicle whose sponsor or manager or investment manager is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India.

Downstream Investment:

The Master Directions on Foreign Investment in India (the "Master Directions") published by the RBI under RBI/FED/2017-18/60 FED contain provisions relating to the downstream investment dated 4 January 2018, Master Direction No. 11/2017–18.

'**Downstream Investment**' is defined in 9.1.13 of the Master Directions as an investment made in the equity instruments or capital, as applicable, of another Indian entity.

- By a company in India that has taken in foreign capital; or
- A vehicle for investing

The Foreign Exchange Management Act, 1999 and the rules and regulations promulgated thereunder (collectively, "FEMA"), specifically Rule 23 of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (the "NDI Rules"), provides a framework for downstream investments.

NDI Rules prescribe different requirements for downstream investments made by FOCC that have received foreign investment and are not controlled by Indian residents or are controlled by persons resident outside India.

For instance, A, an Indian entity, invests in B. Here A is a foreign-owned and controlled company (FOCC). Therefore, the foreign entity has made an indirect foreign investment through an Indian entity (A) into another Indian entity (B).

It also covers cases where a foreign entity holds a majority of the voting power through investments, stock ownership, or the ability to influence the company's management. An FOCC is what we refer to as an Indian entity. According to Rule 11 of the FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, it will be viewed as an indirect foreign investment, and the FOCC will need to file Form DI with the Reserve Bank of India within 30 days of the date of the allocation of the equity instruments and shall also notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).

In this article, we have only discussed the basics of Downstream Investment and what it is all about and more intricacies will be dealt with in the coming articles.

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