

INDIA LEGAL UPDATE is a journal of Singhania & Partners which offers a legal perspective on the new business climate and opportunities in India in keeping with the existing laws, current happenings and events in Corporate India.



**LEGAL
SUITE**

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Fast Track Exit Scheme for Companies

By Vikas Goel & Neha Goyal

The Fast Track Exit Scheme (FTE) introduced by the Ministry of Corporate Affairs (MCA) on 07.06.2011 in order to allow companies, other than defunct companies, to have an easy exit by getting their names struck off from the Register of Companies.

The Ministry of Corporate Affairs has introduced the Fast Track Exit Scheme (FTE) on 07.06.2011 in order to allow companies, other than defunct companies, to have an easy exit by getting their names struck off from the Register of Companies. The Scheme is a modification of the erstwhile Easy Exit Scheme (EES) with new guidelines.

The Easy Exit Scheme was introduced by the Ministry of Corporate Affairs (MCA) to allow defunct companies to have an easy exit by getting their Company's name struck off from the Register of Companies, if they were inoperative since their incorporation or commenced business and became inoperative later. However, there are many other companies registered under the Companies Act, 1956 which commenced operation but later became inoperative or were inoperative since incorporation or were operative but later became defunct. To allow such companies the benefit of such a scheme, the MCA has introduced new guidelines, as under. It is to be noted that these guidelines have been implemented from 03.07.2011.

Under Section 560 of the Companies Act, 1956, the Registrar of Companies may strike off the name of companies on satisfying the conditions mentioned therein. The present practice for a company to get its name struck off is that such Company has to apply to the Registrar of Companies in e-form 61 and all pending statutory returns are required to be filed along with e-form 61.

For the purposes of this scheme, a Defunct Company is defined as a company which has nil assets and liability, has not commenced any business activity or operation since incorporation or is not carrying over any business activity or operation for the last one year before making the application under FTE. Further, any defunct company which has an active status or is identified as dormant by the Ministry of Corporate Affairs may apply for getting its name struck off from the Register of Companies. However, any defunct company which is a Government Company is required to submit a 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application for striking off its name.

THE PROCEDURE

1. An application has to be made by a Defunct Company (as defined above) in Form FTE, annexed electronically on the MCA portal accompanied by a filing fee of INR 5,000.
2. In case the application in Form FTE is not being digitally signed by any of the Directors or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a Director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically.
3. In all cases, the Form FTE shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice.
4. In case the applicant's name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice along with their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.
5. The company shall disclose pending litigations if any, involving the company while applying under FTE.
6. Further, if the pending prosecutions are only for non-filing of Annual Returns under Section 159 and Balance Sheet under Section 220 of the Companies Act, 1956, such application may be accepted, provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.
7. The Form FTE shall be accompanied by an affidavit as prescribed under the scheme, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a particular date (which should be specified) and then discontinued its operations.
8. The Form FTE has to be also accompanied by an Indemnity Bond, duly notarized, as prescribed, to be given by every director individually or collectively, to the effect that any losses, claims and liabilities on the company will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies.
9. In case of foreign nationals and NRIs, the Indemnity Bond and Affidavit have to be notarized as per their respective country's law.
10. The Company shall also file a Statement of Accounts, as prescribed, prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice.
11. In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form FTE and in the prescribed forms in place of name and other details of the directors and also to sign the said documents before filing.

THE EXCEPTIONS

The Fast track exit mode is however not extended to the following companies, namely:

- (i) Listed companies
- (ii) Companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws
- (iii) Companies registered under Section 25 of the Companies Act, 1956
- (iv) Vanishing companies, which means a company, registered under the Companies Act, 1956 and listed with the Stock Exchange and which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.
- (v) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court.
- (vi) Companies where order under Section 234 of the Companies Act, 1956 has been issued by the Registrar and reply there to is pending or where prosecution if any, is pending in the court.
- (vii) Companies against which prosecution for a non-compoundable offence is pending in court.
- (viii) Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same.
- (ix) A company having secured loans.
- (x) A company having management dispute.
- (xi) A company in respect of which, filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority.
- (xii) A company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.



PROCEDURE TO BE FOLLOWED BY THE REGISTRAR OF COMPANIES

- (a) The Registrar of Companies (ROC) on finding an application in order, is required to give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved.
- (b) The ROC is also required to put the name of applicant(s) and date of making the application(s) under fast track exit mode, on daily basis, on the MCA portal, giving thirty days' time for raising objection, if any, by the stakeholders to the concerned Registrar.
- (c) In case of companies like Non-Banking Financial Company, Collective Investment Management Company which are regulated by other Regulator(s) namely RBI, SEBI, the ROC at the end of every week, is required to send intimation of such companies availing fast track exit mode during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing fast track exit mode during that period to the office of the Income Tax Department giving thirty days' time for their objection, if any.
- (d) After the prescribed period of thirty days, the ROC, on being satisfied that the case is otherwise in order, is required to strike its name off the Register and is also required to send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company will stand dissolved from the date of publication of the notice in the Official Gazette. The decision of the ROC in respect of striking off the name of company shall be final.



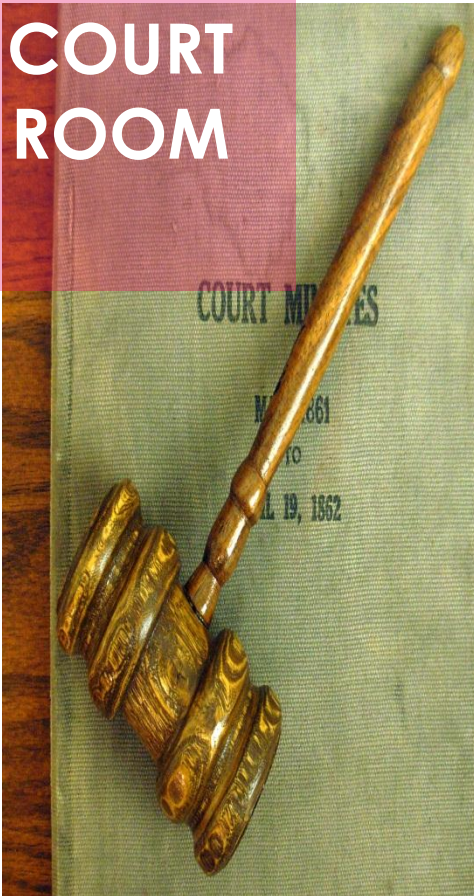
SUBSEQUENT DEVELOPMENTS

The MCA has now on 01.07.2011 also proposed the procedure to relax exit norms for not-for-profit companies (companies under Section 25 of the Companies Act, 1956) to allow them to de-register without having to follow the burdensome regulations and take advantage of the FTE scheme provided they fulfil and satisfy the prescribed criteria. This move has come on account of the Ministry receiving representation from various stakeholders to develop a procedure for striking off names under Section 560 of the Companies Act, 1956 of non-profit companies which have been granted licence under section 25 of the Companies Act, 1956.

Companies granted licenses under Section 25 are those which normally receive contributions in the form of donations, contributions among others for charitable activities. According to the proposed guidelines, a company should have passed a resolution in its General Meeting to apply to the ROC to strike off name and which should have been approved by all its members / shareholders. Further, to take benefit of the Scheme, the company should not have commenced any activity or operation since its incorporation or should have stopped activities for more than 3 years, or not received any donation, grants or contribution from anyone other than its members.

In the event a company has obtained any special status from any authority such as the Department of Income Tax, Commissioner of Charity or any other organisation or Department of Central Government, State Government, Municipal Body or any recognised authority, then a "No Objection Certificate" has to be obtained from the concerned authority. Further, besides the existing assets, if any new asset has to be transferred to a similar company before applying to ROC for striking off the name; the company should have filed its all up-to-date balance sheets and annual returns, and the latest balance Sheet should show nil assets or liabilities. The Directors are required to file an affidavit and indemnity bond as required under FTE guidelines and a certificate has to be taken from practicing Chartered Accountants or Company Secretary or Cost Accountant certifying the compliances by the company. As per the company law, when such a company winds up, any asset or property is transferred to "any other such company having objects similar to the objects of this company". Members or the High Court can determine the company to which the assets have to be transferred. The MCA had invited comments on the proposed guidelines by July 15, 2011 from all persons, as such the proposal is still pending implementation.

COURT ROOM



Scope of inquiry under amended section 202(1) of Cr.Pc

By Vikas Goel and Neha Goyal

In one of the recent matters handled by the firm, an issue arose before the Delhi High Court on the implications of the 2005 Amendment to Section 202 of the Cr.P.C. The amended sub-section (1) of section 202 Cr.P.C. states that where the accused resides beyond the jurisdiction of the Court, the Magistrate shall enquire into the case himself or direct investigation to be made by a police officer or any other person he thinks fit, before summoning the accused. The Court ruled in favor of the firm and held that the procedure prescribed by the amendment for conduction of inquiry was chiefly for cases where the offence is sought to be proved only by way of oral testimony as there are more chances of filing false complaints in such cases. However, where the offence is sought to be proved from documents, there is no necessity to conduct a full fledged inquiry particularly when the documents per se establish commission of such offence. The Special Leave Petition before the Supreme Court was dismissed as withdrawn thereby rendering finality to the judgment.

FACTUAL BACKGROUND

Boortmalt NV, a foreign company, filed a complaint in Delhi against its Managing Director Abhishek Agarwalla, a resident of NOIDA, U.P. and 15 others (hereinafter referred to as the "Accused") for hatching a criminal conspiracy and cheating the complainant company of several crores of rupees under Sections 420 /406/120B of IPC. The Ld. Metropolitan Magistrate summoned three of the accused under section 420 IPC. The said order was assailed by Abhishek Agarwalla (Petitioner / Accused) in a Revision Petition before the Delhi High Court on the preliminary ground that the Ld. MM had failed to comply with the provisions of Section 202 Cr.P.C. whereunder the Court was required to postpone the issue of process and had to conduct an enquiry either himself or direct investigation to be made by the police into the allegations as the accused was residing beyond the area in which the court had jurisdiction.

LEGAL ISSUES

The issue before the Court was whether the amendment¹ to Section 202 Cr.P.C. makes its obligatory on the part of the Magistrate to hold an enquiry in all complaint cases before summoning the accused, where the accused resides beyond its jurisdiction. The Petitioner contended that as the inquiry was not done in the present case, the order was bad in law. Boortmalt NV was represented by Singhania and Partners in the case. We relied upon the judgment of Supreme Court in Kewal Krishnan Versus Suraj Bhan ¹ among others and contended that the documents prima facie established the guilt of the accused and as holding of enquiry was merely part of the procedure under Section 202 Cr.P.C., non-observance of the said procedure would not vitiate further proceedings unless prejudice caused to the accused is established.

**2011 III AD (Delhi) 1:
MANU/DE/0553/2011**

By Act No.25 of 2005

1980 Supp. SCC 499

2002(2) SCC 230

FINDINGS

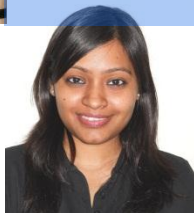
Upon considering the relevant provisions and the law, the High Court observed that there are two types of cases in which complaints are filed, namely, those where the offence is of technical nature and is sought to be proved from documents and oral evidence is given to prove such documents by exhibiting them and by deposing particulars as to their execution. There are also those cases where offence is proved only from oral testimony. To illustrate the dichotomy, an example was given of a complaint under Section 138 of Negotiable Instruments Act in case of the former type and physical hurt, threat in the case of latter. In the former type, commission of the offence has to be inferred only from the documents and the enquiry under Section 202 Cr.P.C. has to be limited to scrutiny of the documents and recording of statement of the complainant and cannot go beyond that. However, in the latter type, such an enquiry and investigation by the court is necessary in order to avoid harassment to persons residing outside the jurisdiction of the court due to false complaints being filed, which was the object of the amendment made in 2005.

The Court relying on the judgment of Kewal Krishnan (supra) and Rozy and Anr. Versus State of Kerala¹ observed that although the word "shall" couches the procedure prescribed as a mandatory provision to be followed by the Magistrate, it is a procedural law and as such has to be read in context of Section 200 Cr.P.C. which enables the Magistrate to issue process without holding an enquiry. Further, an inquiry under section 202 is itself discretionary one giving an option to examine or not to examine the witnesses, and as such the procedure has to be read accordingly.

The Court held that in the present case, as the disclosure of commission of the offence was based only on documentary evidence produced by the complainant and its oral testimony, and as it was prima facie clear from the documents themselves that the commission of the offence under Section 420 IPC had taken place, no further enquiry was required to be made by the Magistrate and the order of summoning the accused did not suffer from any infirmity. Hence the petition was dismissed by the High Court.



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NEWSQUEST

By Sunayna Jaimini

Outbound FDI spurts 144% as companies snap up assets overseas

Overseas direct investments by Indian firms rose 144% during the last fiscal at \$43,929.18 million over the fiscal 2010 as they pumped money into their subsidiaries, bought companies and acquired technologies and brands. This is the highest outbound investment by Indian firms since fiscal 2008 when it stood at \$20,947.16 million, according to the Reserve Bank of India data. A fair number of these activities were for acquisition of not very large firms, with mainly mid-sized Indian companies buying small entities across the world. These acquisitions may have been made to access existing clients of the company being bought or technology or for acquisition of established brands, etc. This is because firms are trying to establish manufacturing centres close to the product markets.

[SOURCE](#)

Secretaries' panel approves tough riders for retail FDI

Emerging consensus is that all state capitals be covered. The Union government's committee of secretaries (CoS) on foreign direct investment (FDI) in multi-brand retail has put a number of tough conditions. The CoS had earlier approved in principle the proposal to allow up to 51 per cent FDI in the sector. Now, the conditions it has decided include minimum investment, limiting the presence of foreign retailers to a few cities and wide powers to state governments to decide if they want to allow such stores. There are also clauses to protect small-scale enterprises and local shops.

[SOURCE](#)

India-New Zealand FTA likely by March 2012

New Zealand has recently remarked that it expects to conclude the negotiations for a Free Trade Agreement (FTA) with India by March next year with the target of trebling bilateral commerce to \$3 billion by 2015. It is noted both the sides have already completed about five rounds of negotiations. It is expected to be signed by March 2012. However, the conclusion would depend on the quality of agreement and negotiations. The two countries hope to treble their bilateral trade to \$3 billion from the current \$1.2 billion. The negotiations for India and New Comprehensive Economic Cooperation Agreement had (the official name for FTA) started last year. It is noted that the two countries can cooperate in several segments, including agriculture, pharmaceuticals, dairy products, research and development, tourism and films.

[SOURCE](#)

India offers \$1 trillion investment opportunities: Gopalan

India's infrastructure financing requirements and the new manufacturing policy being finalized will open up \$1 trillion opportunities for global investors over the next five years. India plans to invest \$1 trillion on infrastructure, which is critical for sustaining high economic growth. The Government is in the final stages of formulating a manufacturing policy to increase the share of manufacturing to 25% of the GDP, up from the current level of about 16-17%. Besides simplifying the process of doing business in India, the Government is also contemplating tax sops for investors in the proposed policy.

[SOURCE](#)

Mining bill: states to get to call bids

The new mining bill will empower state governments to hand out leases, take up prospecting and exploration activities before mines and call for bids for commercial utilisation of mineral deposits such as coal and iron ore. The Group of Ministers (GoM), which vetted the draft Mines and Minerals (Development and Regulation) Bill 2011 a fortnight ago, has given its nod for authorising and incentivising state governments take up "prospecting and exploration, so that adequately prospected ore bodies can be put on bid." Prospecting is the act of physically searching for minerals or mineral specimens. The Cabinet is expected to discuss the Bill in the next 15 days.

[SOURCE](#)

India a hotspot for solar VCs

Solar energy, a growing favourite with venture capitalists worldwide in a \$100 billion), has another favourite now—India. Private equity firms putting their money on solar power equipment components such as modules, cells and wafers are now looking at the country, moving away from advanced markets. As much as \$100 million has flowed into India's solar energy sector in the past 18 months. In 2011, the sector has received more than \$45 million. The tremendous scale-up in solar power generation globally has infused encouragement to spur investments in India. The World Bank's private sector lending arm, the International Finance Corporation (IFC) is also eyeing India's solar sector. Soon, a number of financial institutions will enter India to offer funds who are presumed to emerge as the most active participants in the growth of industry.

[SOURCE](#)

India pitches for stake in \$50 bn pharma market in China

With China set to open up \$50 billion pharmaceutical market, India has made a strong pitch, saying the burgeoning Indian pharma sector could step in for supplying affordable lifesaving medicines to its neighbor. China is one of the world's fastest growing drug market with an expected value \$50 billion. India's advantage in the pharmaceutical sector could make it the ideal choice for China's sourcing of affordable, cost-effective and lifesaving drugs. The opening of the sector has provided an unprecedented opportunity to the Indian companies as the Chinese government has set an ambitious target of bringing virtually all the population within the healthcare insurance framework by 2020. For Chinese companies looking to manufacture in India, FDI in manufacture of drugs and pharmaceuticals is freely permitted up to 100% under the automatic route. India already offers tax concessions to pharmaceutical sector, including tax holidays for industrial operations established in free trade zones, deduction of profits earned from exports, liberal depreciation allowances, deduction of capital R&D expenditure and relief on all contributions to approved domestic research institutions. While making a strong appeal to Chinese government and opening up of the pharma sector in China would also help reduce the trade imbalance. India has a strong footing in the field; its overall pharmaceutical exports, which touched \$12 billion last year, are projected to rise to \$20 billion by 2015. With \$70 billion worth of drugs expected to go off patent in the US in the coming years, India is well positioned to play an important role in the resulting new generics markets.

[SOURCE](#)

India-Mauritius DTAA review to not impact FDI in long run

According to Govt. of India Officials, Review of India's three-decade old double tax avoidance agreement (DTAA) with Mauritius will not impact foreign direct investment inflows to the country in the long run. Talks for reviewing the DTAA are likely to begin in July or August. While the government has been pressing for re-negotiating DTAA with Mauritius seeking to plug the loopholes and revenue leakages, some experts have raised concerns that the move may impact foreign direct investment (FDI) into the country. Nearly 42% of FDI into India is routed through Mauritius. Likewise about 40% of the FII fund flow into the country is believed to be routed through the island nation. A large majority of them are third country investors, who use the DTAA for saving capital gains tax.

[SOURCE](#)

DIPP proposes downstream route to bypass FDI caps

The commerce & industry ministry has come out with a solution to the vexed issue of allowing 49 per cent foreign direct investment (FDI) in multi-brand retail. It has floated a proposal that FDI in multi-brand retail -- besides other restricted sectors such as defence, media and civil aviation -- be allowed in the form of downstream investment by entities having FDI up to 49 per cent, that is, those owned and controlled by Indians. The plan will be discussed at an inter-ministerial meeting by the end of this month. Under the present rules, downstream investment by an entity owned and controlled by a resident Indian is not considered FDI. Thus, technically, such downstream companies are allowed to "invest in any sector" without restriction. DIPP issued a discussion paper on June 23 that suggested doing away with all FDI caps below 49 per cent. In other words, it said entities with up to 49 per cent FDI should be allowed to invest in any sector provided they were owned and controlled by Indians. Even though it seems a major change of policy, it's been on the table since February 2009, when Press Notes 2, 3, 4, which are now part of the Consolidated FDI Policy, were issued.

The proposal to open up the defence sector to 49 per cent FDI has been stuck with the Ministry of Defence over security issues. DIPP says it is important to allow FDI in the sector as defence production in the country is not in a healthy state and too much dependence on imports will cripple the sector. If FDI in defence is allowed, companies such as EADS and Dassault which have strategic interests in India will be able to enter into partnerships with companies owned and controlled by Indians by investing up to 49 per cent in them. FDI into the country declined 9 per cent to \$6.51 billion during January-April 2011 over the same period last year. In January-April 2010, the country received FDI worth \$7.14 billion. In 2010-2011, FDI inflows were \$19.42 billion compared to \$25.83 billion in 2009-2010.

[SOURCE](#)

India central bank allows issue of shares under FDI scheme

India's central bank said it has decided to permit the issuance of equity, preference shares under the government route of the foreign direct investment scheme for some categories. Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI as per the notification.

[SOURCE](#)

India, Malaysia FTA to be effective from 31st June 2011

The free trade agreement (FTA) between India and Malaysia has come into force from 31st June 2011, giving Indian professionals like accountants, engineers and doctors access to the key South-East Asian nation.

In addition, exports of items of considerable interest to India, like basmati rice, mangoes, eggs, trucks, motorcycles and cotton garments, will attract lower or no duty in Malaysia with the implementation of the Comprehensive Economic Cooperation Agreement (CECA). It said sensitive sectors like agriculture, fisheries, textiles, chemicals and automobiles have been given protection from imports without duty or with significant cuts. The agreement will also help boost cross-border investment between the two countries, which achieved bilateral trade of \$10 billion in the 2010-11 fiscal. An agreement for freeing trade in goods has already been implemented with the 10-nation Association of Southeast Asian Nations (Asean). The pact with Malaysia will lead to tariff liberalization beyond the India-Asean FTA commitments, which were implemented by both countries on 1 January 2010.

[SOURCE](#)

Land acquisition, FDI in retail, insurance top PM's reform agenda

Prime Minister Manmohan Singh has flagged amendments to land acquisition law, allowing more foreign investment in retail trading and insurance and introduction of good and services tax (GST) as the key reforms agenda of the government. The Insurance Bill is being reviewed by the parliamentary standing committee headed by former finance minister Yashwant Sinha, Singh's predecessor in North Block, and indications are that the panel might not support the move to raise the foreign investment cap. In case of retail, where a proposal to allow global chains to enter the Indian market is awaiting government decision, PM sought to push the case for allowing foreign investment arguing that it would help improve supply-chains and distribution of food supply. FDI apart, management of scarce natural resources, especially land, and checking leakages in the subsidy mechanism appeared to be on top of the PM's agenda. In the backdrop of nationwide protests over land being taken over by corporate houses for constructing industrial and infrastructure projects as also for real estate, Singh said the policies will need to be amended.

[SOURCE](#)

CCI asks NSE to pay US\$12.33 mn penalty, stop unfair pricing

Pronouncing NSE guilty of abusing dominant market position, the Competition Commission has asked the bourse to pay a penalty of US\$12.33 mn within 30 days

and also immediately stop subsidising its services. In its order, the competition watchdog said that there was "a clear intention on the part of NSE to eliminate competitors in the relevant market." Accordingly, the CCI has imposed a penalty of US\$12.33 mn, which is 5% of the bourse's three-year average turnover, the order said. In addition, NSE has been directed to "cease and desist from unfair pricing, exclusionary conduct and unfairly using its dominant position in other markets to protect the relevant CD (currency derivative) market with immediate effect." CCI also asked NSE to maintain separate accounts for each segment with effect from April 1, 2012, and modify its zero price policy in the CD market and levy appropriate transaction costs within 60 days. The exchange has also been asked to provide its brokers free choice to select the trading software systems for the CD segment, under the overall supervision of market regulator Sebi. The CCI order follows a complaint filed by its rival MCX-SX, which had accused NSE of abusing its dominant market position to corner business in CD segment. The final order from CCI follows a majority order passed by the Commission on 25 May, along with which it had also issued a notice to the bourse before quantifying the penalty. The maximum penalty prescribed for such an offence is 10% of the average turnover, but the CCI decided on a penalty of only 5% of penalty. However, a majority order is considered enforceable under the regulations. The CCI order came after a year-long probe by CCI, which began after MCX-SX filed a complaint on November 16, 2009. The CCI sought a detailed probe into the matter by its Director General, which submitted its report in September 2010.

[SOURCE](#)

Government readies structure of debt funds for infrastructure

Government finalised the structure of infrastructure debt funds, an instrument it wants to use to source long-term debt to finance the country's infrastructure needs, saying they could be set up as companies or trusts, according to a finance ministry statement. India plans to pour \$1 trillion from next year to 2017 to expand its clogged road and rail network, build more power plants and ports, so it can overhaul its creaking infrastructure, long seen as hobbling faster growth in Asia's third-largest economy. The finance minister had in his budget speech for fiscal year 2011-12 announced the setting up of infrastructure debt funds (IDFs) to source long-term debt from both foreign and domestic investors, and also eased taxation rules to make IDFs more attractive to off-shore funds. If an IDF was set up as a trust, it would issue rupee denominated units which will mature in five years and will have to invest at least 90% of its investible resources in debt securities of infrastructure projects. Such IDFs would be regulated by the capital markets regulator, the Securities and Exchange Board of India.

Rural roads set to go PPP way with private funding

The ambitious plan to build a vast network of rural roads, hit by delays linked to a shortage of funds, is going the highways path. The government is planning to throw it open to the private sector under a public-private-partnership (PPP) model that would bring in investments on the one hand and assure reasonable returns to entrepreneurs on the other. The Pradhan Mantri Gram Sadak Yojana (PMGSY), which connects far-flung villages through all-weather roads to help farmers and agricultural trade, will likely take a leaf out of the the National Highway Development Programme (NHDPs). "The proposal for a PPP model to develop rural roads under PMGSY has the consensus of the Planning Commission as also the ministry of rural development," said a senior government official.

[SOURCE](#)

India, Lithuania sign double tax avoidance pact

India has signed a double taxation avoidance pact with Lithuania. This agreement provides for effective exchange of information between tax authorities of the two countries, including exchange of banking information. The double tax avoidance agreement (DTAA) was signed by Mr Prakash Chandra, Chairman of Central Board of Direct Taxes (CBDT), on behalf of the Indian Government and Mr Petras Simeliunas, Ambassador of Lithuania to India, on behalf of the Lithuanian Government. Lithuania is the first Baltic country with which India has signed a double tax avoidance pact. The DTAA provides that business profits will be taxable in the source State if the activities of an enterprise constitute a permanent establishment (PE) in the source State. The agreement provides for fixed place PE, building site, construction and installation PE, service PE, offshore exploration/exploitation PE and agency PE. Dividends, interest and royalties and fees for technical services will be taxed both in the country of residence and in the country of source. The low level of withholding rates for dividend (5 per cent and 15 per cent), interest (10 per cent) and royalties and fees for technical services (10 per cent) will promote greater investments, flow of technology and technical services between the two countries. The DTAA also has an article on assistance in collection of taxes. This article also includes provision for taking measures of conservancy. The agreement incorporates anti-abuse (limitation of benefits) provisions to ensure that the benefits of the agreement are availed of by the genuine residents of the two countries. The agreement also incorporates article concerning Associated Enterprises. This would enhance recourse to mutual agreement procedure to relieve double taxation in cases involving transfer pricing adjustments.

[SOURCE](#)

Supreme Court begins proceedings on Vodafone tax plea

The Supreme Court started hearing the British telecom giant Vodafone International Holdings BV's appeal against the Bombay High Court judgment that upheld the Indian tax authorities' jurisdiction over the 2007 Vodafone-Hutch cross-border deal that created Vodafone-Essar. The income tax department had slapped a tax bill of R12,000 crore (about \$2.6 billion) on Vodafone saying that as the buyer, it had to withhold the capital gains tax on its \$11.01-billion deal whereby it acquired 67% stake in Hutch-Essar (now Vodafone Essar) from Hong-Kong based Hutchison Telecom International's (HTIL) in February 2007. Hutchison controlled its Indian subsidiary through a Cayman Island company called CGP, whose shares were sold to Vodafone, the world's biggest mobile-phone company by sales. The landmark case assumes importance as it could have repercussions on other purchases of Indian assets by foreign companies.



Sunayna
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Associate

SYNAPSE

S&P, legal counsel to Spectral Services Consultants Pvt. Ltd for acquisition of the group by AECOM, US

S&P acted as legal counsel to Spectral, one of the top ranked industrial designer group engaged in providing state-of-the-art building design solutions for various projects comprising of SEZs, IT parks, airports, hotels, offices, hospitals and various other residential and institutional buildings, for advise on strategy, negotiation, documentation and regulatory issues involved in the acquisition of the group by AECOM, US



S&P, empanelled with IJM Corporation, Malaysia

S&P has been empanelled with IJM, a leading Malaysian group in construction, property development, manufacturing and quarrying, infrastructure concessions and plantations, for advising them on legal issues involved in the construction of a commercial complex at New Delhi. The scope of work includes advising client on contractual issues and also on various other issues like the issue of extension of time, imposition of liquidated damages and issuance of completion certificate under the contract.



S&P. legal Counsel to Feedback Ventures in a Shareholders and JV agreement

S&P is acted as legal counsel to Feedback Ventures Private Limited, a leading integrated infrastructure services company in India. Assisted in negotiations and drafting/execution of shareholder's agreement and share subscription agreement for proposed acquisition of 40% shareholding of the said Company by Brisa, an indirect wholly owned subsidiary of Brisa – Auto-Estradas de Portugal, S.A., the leading concession owner and operator of road transport infrastructure in Portugal.

Acted as counsel to Feedback Ventures Private Limited for Joint Venture agreement to be entered into between the client and a Nepalese company to undertake the business of providing consultancy and other services for the Infrastructure sector in Nepal through a Joint Venture Company to be set up in Nepal.



S&P, legal counsel for Flyington Freighters against Airbus S.A.S,

S&P is acting as legal Counsel for Flyington Freighter Pvt. Ltd, an Indian Cargo Operator, against Airbus S.A.S, an aircraft manufacturer with respect to dispute arising out of non-delivery of aircraft thereby having appreciable adverse effect on competition in India. We have acted as Flyington's counsel before the Competition Commission of India alleging violation of various provisions of the Competition Act, 2002. Some of the key issues dealt by us were with respect to abuse of dominant position by Airbus, restriction of market access, tying and bundling of products and imposing unfair conditions in purchase of aircraft. The work involved interpretation and application of various provisions of the Competition Act, 2002 including interpretation and application of the provisions relating to powers of Competition Commission of India with respect to investigation, penalty and enforcement of the Act. Besides representing Flyington before the Competition Commission of India, we are also handling its litigation before other forums in India as well as overseas.



S&P, legal Counsel to NHAI for their first ever e-tendering project.

S&P is acting as legal counsel to National Highways Authority of India (NHAI) for reviewing and vetting for e-tendering of RfP bids for the Vijaywada-Machilipatnam stretch on NH-9, AP. Drafting of the letter to be issued by NHAI to ITI Limited for certification that the Software Tender Wizard for e-tendering is compliant with the relevant provisions of the Information Technology Act, 2000 and CVC Guidelines on e-tendering and providing legal opinion as to whether e-tendering for the Vijaywada-Machilipatnam stretch complies with the provisions of the Information Technology Act, 2000, CVC Guidelines on e-tendering and the model RfP issued by the Planning Commission.



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