

Monthly Policy Review

November 2013

Highlights of this Issue

[GDP increases 4.8%, fiscal deficit at 84.4% of budget estimate \(p. 2\)](#)

India's GDP increased by 4.8% during July-September, 2013, driven by services output. Fiscal deficit reached 84.4% of budget due to higher total expenditure.

[MoEF notifies parts of Western Ghats as ecologically sensitive areas \(p. 3\)](#)

The Ministry of Environment and Forests has demarcated specific areas in the Western Ghats as Ecologically Sensitive Areas and has listed the types of projects that will be prohibited in these areas.

[SC holds that registration of FIR for a cognizable offence is mandatory \(p. 7\)](#)

The Supreme Court has upheld that the registration of an FIR is mandatory if the information discloses the commission of a cognizable offence.

[Ministry of Corporate Affairs releases fifth and sixth sets of draft Company Rules \(p. 6\)](#)

The draft Rules pertain to winding up of companies and cost records and cost audit.

[Draft Rules on Manual Scavenging Act released \(p. 4\)](#)

The Act prohibits manual scavenging and the construction of insanitary latrines. The draft Rules pertain to minimum safety norms for individuals cleaning septic tanks and the procedure for surveying insanitary latrines.

[RBI allows unlisted Indian Companies to raise funds abroad \(p. 12\)](#)

The RBI allows unlisted Indian companies incorporated in India to raise capital abroad without listing in India.

[Standing Committee submits report on IMC Amendment Bill and MHC Bill \(p.7, 8\)](#)

The Standing Committee on Health and Family Welfare has submitted its recommendations on the Indian Medical Council (Amendment) Bill, 2013 and the Mental Health Care Bill, 2013.

[RBI releases Scheme for Setting up Wholly Owned Subsidiaries by Foreign Banks \(p.10\)](#)

The scheme lists conditions under which foreign banks may conduct business via wholly owned subsidiaries.

[TRAI issues consultation paper on Direct-to-Home licences \(p. 16\)](#)

The Telecom Regulatory Authority of India has issued a supplementary consultation paper on issue/extension of Direct-to-Home licences covering issues like cross-holding, licence fee and migration to a new regime.

[Sports Ministry invites comments on a draft Bill related to match fixing \(p. 10\)](#)

The draft Bill defines sporting fraud and prescribes penalties for manipulating results. Comments are invited up to December 3, 2013.

[Cabinet clears Bachelor of Science Community Health Programme \(p. 10\)](#)

This initiative was earlier opposed by the Standing Committee on Health and Family Welfare.

December 2, 2013

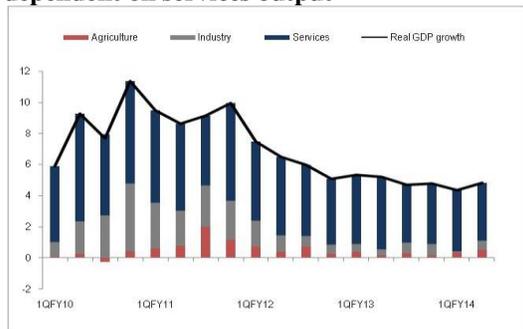
Macroeconomic Developments

Saumya Vaishnav (saumya@prsindia.org)

GDP increases 4.8%, fiscal deficit at 84.4% of budget estimate

India's real GDP at factor cost for the second quarter of 2013-14 (July to September) increased by 4.8% over the corresponding quarter in 2012-13.¹ GDP in the previous quarter had grown 4.4% over 2012-13. Compared to the second quarter of 2012-13, agricultural output grew 4.6%, industrial output grew 2.3% while services grew at 5.9%. Agriculture and industry contributed 0.5 and 0.6 percentage points to the GDP growth respectively. Services continued to be the highest contributor with 3.7 percentage points to the GDP growth.

Figure 1: GDP growth increases 4.8%, dependent on services output



Sources: MOSPI; PRS.

In the first seven months of 2013-14, revenue receipts of the central government were 43.2% of the Budget Estimates (BE), same as in the corresponding period in the previous year.² However, total expenditure of the government in was at 55.4% of BE, an increase from 52.3% in the previous year. The government has reached 92.9% of its budgeted revenue deficit and 84.4% of its budgeted fiscal deficit for this financial year, higher than in the previous year. The central government targets to have the fiscal deficit within 4.8% of the GDP.³

Table 1: Fiscal Outcomes from April to October 2013 (in Rs crore)

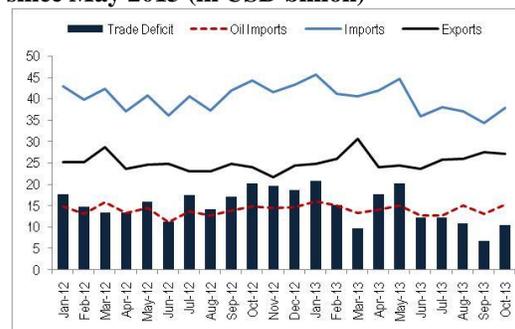
Issue	April-October 2013	Apr-Oct 2013-14 (as % of BE)	Apr-Oct 2012-13 (as % of BE)
Revenue Receipts	4,56,041	43.2%	43.2%
Tax Receipts	3,56,526	40.3%	43.3%
Total Expenditure	9,22,009	55.4%	52.3%
Revenue Deficit	3,53,010	92.9%	81.4%
Fiscal Deficit	4,57,886	84.4%	71.6%

Sources: Controller General of Accounts; PRS.

Declining trend of trade deficit; WPI and CPI inflation increase further

India's trade deficit has been declining since May 2013. The deficit was at USD 10.6 billion in October 2013 against USD 6.8 billion in September 2013 as shown in Figure 1.⁴ This is a decline of 47.7% from its October 2012 value of USD 20.2 billion. Compared to October 2012, imports declined 14.5%, exports increased 13.5%, and oil imports increased 1.7% in October 2013. Trade deficit is the main component of the current account deficit (CAD) which the government hopes to contain at 3.8% of GDP this fiscal year.

Figure 2: Trade deficit has been declining since May 2013 (in USD billion)



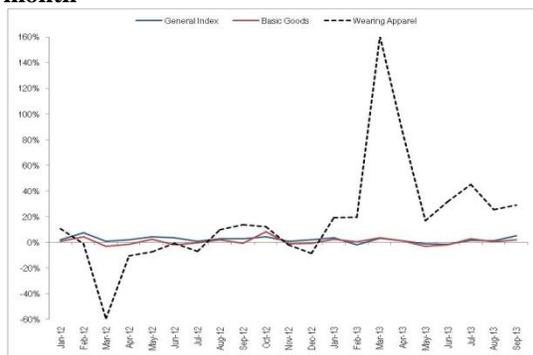
Sources: Ministry of Commerce; PRS.

The Index of Industrial Productivity (IIP) increased 2.0% during September 2013, above its September 2012 level. Production of basic goods and intermediate goods increased 5.4% and 4.1% respectively. Capital goods production declined 6.8%. Consumer goods production increased 0.6%, with production of consumer durables decreasing 10.8% and that of consumer non-durables increasing by 11.3%.

As can be seen from Figure 2, wearing apparels was the item that experienced the most buoyant output growth in September 2013, and increased

29.2% above September 2012.⁵ Excluding this industry group, IIP would have increased 1.3%.

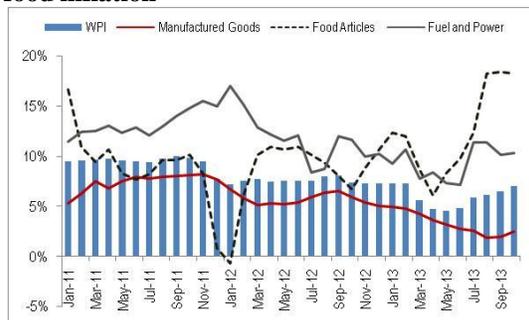
Figure 3: IIP increases for third consecutive month



Sources: RBI; PRS.

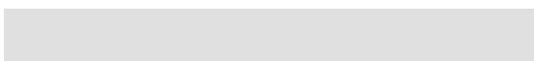
Wholesale Price Index (WPI) inflation increased for the fifth successive month. WPI rose to 7.0% in October 2013 (year-on-year) from 6.5% in September 2013.⁶ Food inflation has been increasing at around 18.2% for the past three months, and continues to drive WPI inflation. Manufactured goods inflation increased 2.5% in October from 2.1% in September.

Figure 4: WPI inflation increases driven by food inflation



Sources: RBI; PRS.

The Consumer Price Index (CPI) inflation for October 2013 (year-on-year) was 10.1%, an increase of 9.8% from September 2013.⁷ The CPI inflation was driven by inflation in the foods, beverages and tobacco commodity group, which increased to 12.3% in October 2013 from 11.3% in September 2013.



Environment

Jhalak Kakkar (jhalak@prsindia.org)

MoEF notifies parts of Western Ghats as ecologically sensitive areas

On November 13, 2013, the Ministry of Environment and Forests (MoEF) issued a direction under the Environment Protection Act, 1986, demarcating specific areas in the Western Ghats as Ecologically Sensitive Areas (ESA) and listing the types of projects that will be prohibited in these areas.⁸ Projects that have been prohibited include: (a) mining, quarrying and sand mining, (b) thermal power plants, (c) building and construction projects of 20,000 sq. m. area and above, (d) township and area development projects with an area of 50 ha and above or with built up area of 1,50,000 sq. m. and above, and (e) specified highly polluting industries.

Last month, the MoEF had decided ‘in principle’ to declare parts of the Western Ghats as ESAs. The MoEF’s decision was based on an acceptance of the recommendation of the High Level Working Group (Chairman: Dr. K. Kasturirangan) that submitted its report in April 2013.

The Working Group has identified approximately 37% (60,000 sq km) of the Western Ghats as ESAs. The ESA is spread across six states of the Western Ghats region: Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu.

The MoEF’s direction will come into force immediately. Projects whose application was received by the MoEF or the appraisal committees before the Working Group report was put on the MoEF website (in April 2013) will be dealt with as per the rules applicable at that time. Violation of the MoEF’s direction will be dealt with through appropriate legal action under the Environment (Protection) Act, 1986.

For details of the recommendations of the Working Group accepted by the MoEF, see [here](#) for the PRS Monthly Policy Review for October 2013.

Outcome of climate change negotiations in Warsaw

The United Nations Climate Change Conference in Warsaw was held between November 11 and 23, 2013. This was the annual session of the parties to the 1992 United Nations Framework

Convention on Climate Change (UNFCCC). Some of the key decisions at the conference include:⁹

Ground for future talks: At the Conference, a timetable was outlined to guide negotiations over the next two years for a final agreement to cut emission levels in 2015. During the 2011 negotiations at Durban, it had been agreed that countries would enter into a legally binding treaty to address global warming. The terms of the future treaty are to be defined by 2015 and become effective in 2020. This agreement is known as the ‘Durban Platform’ and is significant as for the first time it includes developing countries such as China and India, as well as the United States which refused to ratify the Kyoto Protocol.

‘Common but differentiated responsibility’ was a key founding principle of the UNFCCC that implies that there should be a division of responsibility between the developed and developing countries. At the Warsaw Conference, developing countries led by China and India, insisted on the rewording of the Durban Platform, to reflect this stance. The Durban Platform will form the basis of negotiations going forward. The relevant part of the text states that “All nations should initiate or intensify domestic preparations for their intended nationally determined *contributions*”. ‘Contributions’ replaced ‘commitments’, implying voluntary actions instead of mandatory actions for cutting emission levels.

Loss and damage mechanism: The decision was made to set up an international mechanism for ‘loss and damage’. This mechanism will mobilise and secure funds, technology and capacity building activities to address loss and damage in developing countries most vulnerable to the effects of climate change.

Financial contributions: Developing countries emphasised that financial contributions need to be made to existing funding mechanisms before any discussions can be initiated on the post-2020 emission reduction actions. At the Conference, an additional USD 100 million has been promised to the Adaptation Fund by developed countries. This Fund was set up in 2008 to provide money for poorer countries to adapt to the impacts of climate change. The Green Climate Fund was created to fund adaptation to climate change and reduction of emission by poor countries. At the Conference it was agreed that the resource mobilisation from developed

countries, for the USD100 billion annual Fund, should begin.

Deforestation: Countries agreed to a result-based payment to developing countries which prevent deforestation. The money collected through contributions from developed nations will be used for increasing forest cover and managed by the World Bank’s Bio-Carbon Fund. The United Kingdom, Norway and the United States have cumulatively pledged USD 280 million to the Fund.

Social Justice and Empowerment

Sakshi Balani (sakshi@prsindia.org)

Draft manual scavenging rules released

The Ministry of Social Justice and Empowerment released draft Rules for the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 on November 7, 2013.^{10,11} The Act received the assent of the President on September 18, 2013 and shall come into force on December 6, 2013. The Ministry received comments on the draft Rules until November 18, 2013.¹² The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.

Key features of the draft Rules are:

- **Obligations of employer towards employees engaged to clean septic tanks or sewers:** The Act specifies that no person should be engaged for the hazardous cleaning of a septic tank or sewer, unless they are provided with the requisite protective gear and safety equipment.

The draft Rules list the protective gear that each employer should provide to his employee for the cleaning of septic tanks. This list includes equipment such as a safety belt, a normal face mask, hand gloves, and an emergency medical oxygen resuscitator kit. As per the draft Rules, the employer is also required to ensure certain safety precautions, which include:

- i. A minimum of two employees should be present during the duration of the

- sewer cleaning, of which one should be a supervisor;
 - ii. At least one trained and experienced employee should be present at all times during sewer cleaning;
 - iii. The atmosphere within the confined space must be tested for oxygen deficiency and toxic and combustible gas.
- **Survey of insanitary latrines:** The Act requires local authorities (municipality or panchayat, cantonment board, and railway authority) to conduct a survey of insanitary latrines and publish the list within two months of the commencement of the Act.

The draft Rules specify the manner in which this survey will be conducted. Every local authority shall constitute a committee under its Chief Executive Officer (CEO) to plan and monitor the survey. At least one member of the community of safai karamcharis shall be a member of this committee. The list of insanitary latrines prepared from the survey will be compared with data available from the Census to check for discrepancies and then be publicly displayed. A meeting will be held by the local authority to hear objections, after which a final list will be prepared.
- **Procedure for demolition or conversion of insanitary latrines:** The Act specifies that within 15 days of the publication of the final list of insanitary latrines, a notice will be given to the occupier to either demolish or convert the insanitary latrine. The occupier should complete conversion/demolition within six months of the commencement of the Act.

The draft Rules specify that once the occupier is given this notice, an Inspector appointed under the Act, will inspect the premises of the occupier and report the findings. If he finds that the latrine has not been demolished or converted within the stipulated time, it will be demolished by the local authority which will recover the cost from the occupier. The committee established to monitor the survey will submit a survey report, which will be submitted to the concerned ministry in charge of the schemes for the conversion of insanitary latrines. Eligible beneficiaries may then apply for financial assistance for conversion of latrines.

- **Identification of manual scavengers:** The Act mentions that if a municipality has reason to believe that persons are employed in manual scavenging, the CEO will conduct a survey to identify such persons.

The draft Rules specify that the existence of insanitary latrines in a municipality or panchayat as per the Census is sufficient reason to conduct a survey to identify manual scavengers. Awareness campaigns will have to be carried out at state, district, sub-division and town levels to invite manual scavengers to declare themselves. NGOs working for the welfare of safai karamcharis will also help with identification. Once a list has been prepared, in case of discrepancies, a house-to-house survey of insanitary latrines shall be carried out.

- **Quantum of cash assistance for rehabilitation of manual scavengers:** The Act specifies that identified manual scavengers be rehabilitated and given a photo identity card, an initial one-time cash assistance, scholarship for their children, skill training, subsidy and a concessional loan, and a residential plot and financial assistance.

The draft Rules mention that the quantum of initial cash assistance will be that provided under the central scheme, Self Employment Scheme for Rehabilitation of Manual Scavengers.

Expert Committee constituted on issues related to transgender community

Joyita Ghose (joyita@prsindia.org)

The Ministry of Social Justice and Empowerment constituted an Expert Committee to study problems faced by the transgender community in India and recommend measures to tackle the same in October 2013.¹³ The Committee has been asked to submit its report within three months of its constitution, that is, by January 2014. The Ministry received comments till November 22, 2013. The Committee is chaired by the Additional Secretary, Ministry of Social Justice and Empowerment.

Several problems related to the transgender community have been brought to the notice of the government, prompting the establishment of this Committee. In addition, two Public Interest Litigations (PILs) have been filed on issues related to the transgender community; one in the

Supreme Court of India and the other in the Bombay High Court.^{14,15}

The National Legal Services Authority petitioned the Supreme Court in October 2012 on issues such as granting equal legal rights to transgender persons and including a third category for transgender persons in identity documents such as election cards and driving licences.

According to news reports, in January 2012, Salvation of Oppressed Eunuchs petitioned the Bombay High Court seeking the protection of eunuchs and the amendment of section 375 of the Indian Penal Code dealing with rape, to include sexual assault against eunuchs. The respective courts are yet to adjudicate upon these PILs.

Corporate Affairs

Nithin Nemani (nithin@prsindia.org)

MCA releases fifth and sixth sets of draft Company Rules

The Ministry of Corporate Affairs, on November 21, released the fifth and sixth sets of draft Rules under the Companies Act, 2013.¹⁶ The Ministry has invited suggestions on the draft rules by December 6 for the sixth set and December 19 for the fifth set. The fifth set pertains to winding-up of companies and the sixth set pertains to cost records and cost audit.

- **Winding up:** The key points under the winding up rules are as follows:

- i. **Winding up by the Tribunal:** As per the Act, a company may be wound up by the National Company Law Tribunal, either through an initiative of the Tribunal or through a petition by the company or its creditors.

The draft Rules specify that if the petition is made by a company, it shall be accompanied with a statement of its affairs. Upon filing of the petition, it shall be listed before the Tribunal for admission and a date for hearing shall be fixed.

The Tribunal shall appoint either an Official Liquidator or a liquidator from the panel maintained by the central government as a Company Liquidator for the purpose of winding up a company. The Company Liquidator

shall, upon order of the Tribunal, take charge of all properties of the company.

The Company Liquidator alone shall be entitled to call and realise any uncalled capital and to collect arrears due on calls made prior to winding up. His accounts must be filed with the Tribunal twice a year.

- ii. **Voluntary winding up:** The Act provides that a company may wind up voluntarily after the expiry of the period for its duration or due to a provision in its articles that it should be dissolved upon occurrence of a certain event.

The draft Rules specify that any money not immediately required for winding-up shall be invested by the Company Liquidator in government securities or in interest bearing deposits in the State Bank of India or any other nationalised bank.

- iii. **Rules applicable to every mode of winding up:** As per the Act, people who are owed money by the company have a right to claim the amount from the liquidator. The draft Rules specify that the Company Liquidator shall give a notice of 14 days by means of a newspaper advertisement to the creditors to prove their debts or claims. He shall examine every proof within 30 days and shall admit or reject the proof in whole or in part. The creditor concerned has the option to appeal to the Tribunal if he is dissatisfied with the decision.

Payments towards wages and salaries shall be made in priority to all other debts. After the affairs of a company have been fully wound up and the final accounts have been audited, the Company Liquidator shall apply to the Tribunal for dissolution orders. The balance amount lying in the hands of the Company Liquidator shall be deposited in the Company Liquidation Dividend and Undistributed Assets Account.

- **Cost records and cost audit:** The key points under the cost audit rules are as follows:
 - i. **Companies required to include cost records:** The draft Rules require companies in strategic sectors, those

regulated by a sectoral regulator or central government ministry and other companies including heavy manufactured goods to include cost records (pertaining to material, labour or other items) in their books of account. These rules do not apply to companies which are export oriented having more than 75% of their revenue in the form of earnings in foreign exchange.

In case of a multi-product or multi-service company, the requirement shall apply to a product or service for which the individual turnover is Rs 100 crore or more. In case of a company producing one specific product, the requirement shall apply to companies having a net worth of Rs 500 crore or more or having turnover of Rs 100 crore or more.

- ii. **Cost auditors:** Every company required to include cost records is also required to get the records audited by a cost auditor. The cost auditor is required to forward his report to the Board of the company within 180 days from the close of the company's financial year.

Law and Justice

Prianka Rao (prianka@prsindia.org)

SC holds that registration of FIR for a cognizable offence is mandatory

On November 12, 2013, a five judge bench of the Supreme Court upheld that the registration of an FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973 (the Code), if the information discloses commission of a cognizable offence.¹⁷ Further, no preliminary inquiry is permissible in such a situation.

Section 154 of the Code lays down that information related to cognizable offences will be recorded in writing by an officer of a police station, and duly signed by the person, free of cost. If the officer refuses to do so, the aggrieved may approach the Superintendent of Police concerned.

The question before the Supreme Court was whether a police officer is bound to register an FIR upon receiving any information relating to commission of a cognizable offence under

Section 154 of the Code or if the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same.

SC dismisses review petition against its judgment that barred persons in jail from contesting elections

In July 2013, the Supreme Court, had interpreted provisions of the Representation of the People Act, 1951 and held that a person who is in 'lawful custody' (including under trials, those in police or judicial custody), is not entitled to contest elections to Parliament or state assemblies. The Act stated that only 'electors' may contest these elections. The Court equated 'elector' with those who have the right to vote. As persons in lawful custody cannot vote, it concluded that they are not permitted to contest the elections.¹⁸

The central government filed a petition for review of the order of the Supreme Court. However, before this petition was heard, Parliament amended the Act in September 2013.

The amendment stated that even if a person is prohibited from voting due to being in police custody or in jail, as long as his name is entered on the electoral roll he shall not cease to be an elector. This implies that he can contest in the election. The amendment was passed with retrospective effect, from July 10, 2013, when the Supreme Court verdict was passed.

Consequently, the Supreme Court dismissed the review petition filed by the centre against its July 2013 verdict. It held that it was not necessary to look into the issue in view of amendment in law by Parliament.¹⁹

Health

Mandira Kala (mandira@prsindia.org)

Standing Committee submits report on the IMC (Amendment) Bill, 2013

The Standing Committee on Health and Family Welfare has examined the Indian Medical Council (Amendment) Bill, 2013 and submitted its report on November 20, 2013.²⁰ The Bill was introduced in the Rajya Sabha on August 19, 2013.

The Bill was brought in to replace an Ordinance notified on May 23, 2013, to amend the Indian

Medical Council Act 1956. On September 28, 2013 the central government promulgated the Indian Medical Council (Amendment) Second Ordinance.

The Committee has made the following recommendations:

- The Bill provides the central government with the power to direct the MCI on policy matters including amending and revoking regulations made by the Council. This power is deemed to be final. The Committee was of the view that this provision gave the central government sweeping powers to influence the functioning of the MCI that could affect its independent decision making and autonomy. The Committee stated that while there is need for a regulatory mechanism to ensure that the MCI functions in the right manner, it disapproved of the central government controlling the autonomy of the MCI.
- According to the Bill, the term of the MCI is four years. The Committee noted that the Ministry had not given any justification for reducing the term of office from five years to four years. The Committee recommended that since other bodies under the Ministry have a five year term the Bill be amended to provide the MCI with a term of five years.
- The Bill specifies the conditions under which the central government can remove the President and Vice-President of the MCI. These include among others, abusing his position in performance of the duties specified under this Act or wilfully or without sufficient cause failing to comply with directions issued by the central government and in public interest. The Committee was of the view that giving the central government such powers could jeopardise the autonomy of the Council. The Committee recommended that the powers of removal should not be given to the central government and should remain confined to the MCI.
- The Indian Medical Council (Amendment) Second Ordinance amends the definition of universities to exclude deemed universities from being represented in the MCI. The Committee recommended that this provision be withdrawn as it was not justified to exclude medical colleges affiliated with deemed universities from sending their representative to the MCI. The Committee suggested one representative each from the states with five or more deemed universities

may be elected to the MCI and for deemed universities that are less than five in a state could together send one representative.

- The Bill allows Overseas Citizens of India to practice medicine in India. The Committee was of the view that abundant safeguards should be provided in terms of screening tests to ensure quality in medical practitioners.
- Under the Bill, the establishment of a new medical college or starting a new course of study requires the prior permission of the central government. The Committee was of the view that in addition the permission of the state government should also be obtained.

Standing Committee submits report on the Mental Health Bill, 2013

The Standing Committee on Health and Family Welfare has examined the Mental Health Care Bill, 2013 and submitted its report on November 20, 2013.²¹ The Bill was introduced in the Rajya Sabha on August 19, 2013. The Bill repeals the Mental Health Act, 1987.

The Committee made the following recommendations:

- The Bill states that every mentally-ill person shall have the right to make an advance directive that states how he wants to be treated for the illness during a mental health situation and who his nominated representative shall be. If a mental health professional/relative/care-giver does not wish to follow the directive while treating the person, he *may* make an application to the Mental Health Board to review/alter/cancel the advance directive. The Committee suggested that it should be mandatory for them to make an application to the Board to review the decision to not follow the advance directive.
- The Bill states that a person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code. The Committee observed that decriminalising suicide is an important step, yet persons may attempt suicide for reasons not related to their mental health. The Committee recommended that the Bill be amended to state that anyone attempting suicide will be presumed to have severe stress at the time and shall not be liable to prosecution and punishment.

- The Committee observed that more than 18 provisions of the Bill require expenditure from the Consolidated Fund of India, yet the Financial Memorandum of the Bill states that it is difficult to estimate the cost of implementing provisions in the Bill. The Committee was of the view that states have limited resources and therefore it is the duty of the central government to ensure funding that should also be reflected in the Demand for Grants.
- The Bill states that the Insurance Regulatory Development Authority shall endeavour to ensure that all insurers make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness. The Committee suggested that the word 'endeavour' be deleted from the clause.
- The Bill provides for the establishment of Mental Health Review Boards in the districts of a state. The composition of the Board includes two members who shall be mental health professionals of whom at least one is a psychiatrist. The Committee was of the view that the second mental health professional should be a qualified medical practitioner.
- The Bill states that a person's current or past treatment for mental illness shall not be a ground for divorce. The Committee suggested that this provision of the Bill be withdrawn as marital or divorce matters are governed by other personnel laws. Creating such a provision would require consequential changes in marital laws that should be undertaken as a separate exercise.

Cabinet clears Bachelor of Science Community Health Programme

According to news reports, the Cabinet has approved the Ministry of Health and Family Welfare's proposal to start a new three year Bachelor of Science Community Health Programme in state universities.²² The three year programme is expected to create a specialised cadre of Community Health Officers who will be posted at rural sub-centres to provide basic health care.

Earlier this year in March 2013, the Standing Committee had opposed the introduction of the course and had recommended that the government address the shortage of health care

professionals in rural areas in the following ways:²³

- Establish more medical colleges and increase the intake of MBBS graduates and mandate a compulsory one year rural posting for all medical graduates;
- Increase intake of nursing graduates in nursing schools and post more nursing graduates in rural sub-centres;
- Appoint graduates and post graduates in the Ayurveda, Yoga & Naturopathy, Unnani, Siddha and Homeopathy stream for service in rural areas.

Youth Affairs and Sports

Mandira Kala (mandira@prsindia.org)

Ministry invites comments on Prevention of Sporting Fraud Bill, 2013

On November 13, 2013, the Ministry of Youth Affairs and Sports placed the Draft Prevention of Sporting Fraud Bill, 2013 in the public domain. The Ministry has invited feedback on the draft Bill up to December 3, 2013.²⁴ The draft Bill seeks to prevent and combat sporting fraud in national and international sporting events.

The key features of the draft Bill are:

- A person is said to commit the offence of sporting fraud in relation to a sporting event, if he directly or indirectly: (a) manipulates or attempts to manipulate sports results in order to obtain any economic or other advantage, (b) deliberately misapplies the rules of the sport to remove or reduce the uncertainty normally associated with the results of the event, (c) willfully fails to perform to his true potential, (d) discloses insider information, and (e) fails to disclose knowledge or attempt of sporting fraud.
- For manipulating the results or willfully failing to perform to his true potential the person is liable for imprisonment up to five years and fine up to Rs 10 lakh or five times the economic benefit derived from the sporting fraud, whichever is greater. For disclosing insider information or failing to disclose knowledge of sporting fraud the person is liable for imprisonment of up to three years and fine of Rs three lakh or three

times the economic benefits derived from sporting fraud, whichever is greater.

- An attempt to commit or abetting the sporting fraud will be liable for the same punishment as that of committing the offence.

Pharmaceuticals

Alok Rawat (alok@prsindia.org)

Pharmaceuticals Purchase Policy for pharmaceutical-sector CPSEs

The Cabinet has approved the Pharmaceuticals Purchase Policy for the next five years.²⁵ The policy aims at ensuring optimum utilisation of the installed capacity of the pharmaceutical-sector Central Public Sector Enterprises (CPSEs) and availability of quality medicines at low prices.

Key features of the policy are:

- The policy will be applicable for 103 medicines for a period of five years. It will extend only to CPSEs under the administrative control of the Department of Pharmaceuticals, and their subsidiaries.
- The policy will be applicable to purchases by central government departments, Public Sector Undertakings and autonomous bodies and purchases by state governments under Central Sector Schemes such as the National Rural Health Mission, etc.
- The pricing of the products will be fixed by the National Pharmaceutical Pricing Authority using a cost based formula. The annual revision of prices will be linked to the Wholesale Price Index.
- The procuring entity will purchase from CPSEs and their subsidiaries subject to their meeting the manufacturing norms as per the Drugs and Cosmetic Rules, 1945.
- If the CPSEs fail to supply the medicines, the procuring entity may purchase them from other manufacturers. The CPSEs also have to pay damages or any other penalties as per the contract, for failure to supply.

Finance

Nithin Nemani (nithin@prsindia.org)

RBI releases Scheme for Setting up of Wholly Owned Subsidiaries by Foreign Banks

The Reserve Bank of India (RBI) released a Scheme for Setting up of Wholly Owned Subsidiaries by Foreign Banks in India on November 6, 2013.²⁶ The scheme was released in pursuance of the announcement made in RBI's Second Quarter Review of Monetary Policy 2013-14, which sought to promote the expansion of wholly owned subsidiaries of foreign banks by according near-national treatment to them.

According to the road map for presence of foreign banks in India, announced in 2005, foreign banks wishing to establish presence in India can choose to do so through a single point of presence, i.e., either through: (i) establishment of branches, or (ii) setting up of 100% wholly owned subsidiaries. However, currently foreign banks in India operate only through branches, i.e., no banks have opted for the wholly owned subsidiaries model so far.

According to RBI, the advantages of local incorporation through setting up wholly owned subsidiaries are, among others: (i) distinction between assets and liabilities of local bank and foreign parent, and (ii) effectiveness of control by local regulators.

The key provisions of the scheme are:

- **Cases in which registration as wholly owned subsidiary is compulsory:** Registration as a wholly owned subsidiary is compulsory for foreign banks which have commenced business after August 2010 or want to conduct business in future if: (i) the business is conducted in a jurisdiction with laws that give a preferential claim to depositors of home country in case of winding up, (ii) they do not have adequate disclosure requirements in their home jurisdiction, (iii) they have complex structures, or (iv) they are not widely held. Foreign banks to which the above conditions do not apply may conduct business either through wholly owned subsidiaries or through branches.

Further, foreign banks beginning operations in India after August 2010 that are systemically important, i.e. their assets on

Indian books exceed 0.25% of total assets of all scheduled commercial banks in India, are required to operate only through the wholly owned subsidiary model.

- **Approval of home regulator and reciprocity:** Setting up of a wholly owned subsidiary by a foreign bank should have the approval of the home country regulatory or supervisor. Further, a foreign bank can only operate in India as a wholly owned subsidiary if this treatment is reciprocated by its home country.
- **Near national treatment:** Under the scheme, a wholly owned subsidiary of a foreign bank will be given near national treatment with respect to opening of branches. It will be permitted to open branches in Tier 1 to Tier 6 centres (except at certain sensitive locations) without taking prior permission from the Reserve Bank of India. However, it has to adhere to certain conditions pertaining to opening branches in unbanked areas.
- **Checks on expansion of foreign banks:** Prior RBI approval will be required for capital infusion into existing wholly owned subsidiaries in case the capital and reserves of the foreign banks in India exceed 20% of the capital and reserves of the banking system.
- **Minimum capital requirement:** The initial minimum paid-up voting equity capital for a wholly owned subsidiary shall be Rs five billion. Further, the minimum net-worth of the foreign parent of the wholly owned subsidiary should be Rs five billion.
- **Composition of Board of Directors:** At least half the directors on the Board must be Indian citizens, non-resident Indians or persons of Indian origin.
- **Dilution of stake:** Wholly owned subsidiaries of foreign banks may dilute their stake to 74% or less in accordance with the FDI policy on foreign investment in the banking sector. Further, they are required to subsequently list themselves on stock exchanges in India.
- **Mergers and acquisitions:** Wholly owned subsidiaries of foreign banks may be permitted to enter mergers and acquisitions with any private sector bank in India subject to the overall foreign investment limit of 74%.

RBI accords recognition to industry associations of NBFC-MFIs as SROs

On the recommendation of the sub-committee set up to study the microfinance sector (Chairperson: Mr. Y.H. Malegam), the Reserve Bank of India (RBI) decided to accord recognition to industry associations of Non-Banking Financial Companies that are engaged in microfinance (NBFC-MFIs) as Self Regulatory Organisations (SROs).^{27,28} This has been done to ensure effective monitoring of NBFC-MFIs.

NBFC-MFIs are encouraged to voluntarily become members of at least one SRO. According to the RBI, membership of an NBFC-MFI in an SRO will be seen by borrowers and lenders as a sign of confidence. Further, the RBI has laid down certain conditions for an SRO to be recognised. Some of these conditions are:

- It should have at least one-third of the NBFC-MFIs registered as its members.
- It should formulate and administer a code of conduct.
- It should have a grievance redressal mechanism for the clients of the NBFC-MFIs.
- It should organise training and awareness programmes for its members and self-help groups.

SEBI releases proposed list of classes of companies allowed to file Shelf Prospectus

The Securities and Exchange Board of India (SEBI), on November 26, 2013, released a paper on classes of companies that are allowed to file a Shelf Prospectus for public issuance of non-convertible bonds.²⁹ SEBI invited public comments on or before December 2, 2013.

Every issuing entity is required to file a Prospectus with Registrar of Companies before making a public issue. A Shelf Prospectus allows a frequent issuer to make multiple public issues without filing for a Prospectus every time, within a specified period of validity not exceeding one year.

Currently, public financial institutions, public sector banks and scheduled banks are allowed to file a Shelf Prospectus. The Companies Act, 2013 permits SEBI to add to the list of eligible companies. This matter was taken up before the Corporate Bonds & Securitization Advisory Committee of SEBI. It has been proposed that

the following classes of companies shall additionally be eligible to file a Shelf Prospectus:

- Issuers authorised by the notification of the Central Board for Direct Taxes to make public issue of tax-free secured bonds.
- Infrastructure Debt Funds – Non Banking Financial Companies regulated by the Reserve Bank of India (RBI).
- Other NBFCs and listed issuers meeting all of the following criteria:
 - a. Their equities and and/or debt securities have been listed for a period of at least three years on a recognised stock exchange;
 - b. They have a net-worth of at least Rs 500 crore;
 - c. They have a consistent track record of making profits sufficient for payment of dividend - for the last three years in case of NBFCs and for the last five years in case of other listed issuers;
 - d. The bonds proposed to be issued have a rating of at least AA, as declared by a recognised credit rating agency;
 - e. No default on repayment of deposits or pending regulatory action by SEBI, RBI or any other regulatory authority.

Introduction of Risk Management System in exports

Saumya Vaishnava (saumya@prsindia.org)

An IT-based Risk Management System (RMS) was introduced for imports in November 2005. This trade facilitation measure was part of the Department of Revenue's Business Process Re-engineering initiative.³⁰ In continuation of this initiative, RMS is being introduced for custom clearance of export goods.³¹ This system will enable low-risk consignments to be cleared based on self-assessment of the declaration by exporters.

The system is expected to reduce dwell-time of export cargo at customs, reduce transaction cost, and bring India in line with global practices. RMS currently covers 11 customs stations at Bangalore, Chennai, Delhi, Hyderabad, Mumbai, Pune and Tuticorin, and is expected to extend to all EDI customs stations by the year end.

Unlisted Indian companies to list and raise capital abroad

Saumya Vaishnava (saumya@prsindia.org)

The Reserve Bank of India (RBI) has decided to allow unlisted Indian companies incorporated in India to raise capital abroad subject to certain conditions, without the earlier requirement of listing in India.³² This scheme will be implemented subject to a review after a period of two years. The funds raised can be used for retiring overseas debt or for other *bona fide* operations abroad. This move may help India contain its current account deficit.

Earlier unlisted Indian companies were required to have prior or simultaneous listing in India for raising capital in international markets as per the Foreign Exchange Management Regulations.

These unlisted companies can list only on exchanges abroad that are in International Organization of Securities Commissions (IOSCO)/Financial Action Task Force (FATF) compliant jurisdictions or in jurisdictions with which SEBI has signed bilateral agreements. The unlisted companies will also have to comply with RBI instructions on downstream investment of funds so raised.

IFC issues first tranche of its offshore rupee bond programme

The International Finance Corporation (IFC), a member of the World Bank group, had launched a USD one billion off-shore rupee denominated bond programme in October 2013.³³ Under the programme, IFC will issue rupee bonds and use the proceeds to finance private sector investment in India. On November 19, 2013, IFC issued the first tranche of USD 161 million under this programme.³⁴ The inaugural tranche has a tenure of three years, with a coupon rate of 7.8%, or 70 basis points above the yield on a three year Indian government bond.

Rural Development

Joyita Ghose (joyita@prsindia.org)

Kaam Mango Abhiyan launched under MGNREGA

The Ministry of Rural Development has launched a 'Kaam Mango Abhiyan' under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).³⁵ The campaign

seeks to increase awareness about MGNREGA entitlements and increase participation in the programme. According to the Ministry, the decline in demand for work under MGNREGA is not because of lack of demand but because demand has not been captured adequately.

The campaign will entail: (a) reaching out to every ward or habitation, enabling people to register, (b) training of officials, (c) mass awareness drives through ‘padyatras’, and (d) institutionalising a monthly ‘Rozgar Diwas’ in every panchayat to allow people to register their demands and grievances.

The campaign will involve the local, state and central governments, MGNREGA workers and civil society organisations. It will initially be implemented in six districts: Sitapur (Uttar Pradesh), Nashik (Maharashtra), Raichur (Karnataka), Katihar (Bihar), West Singhbhum (Jharkhand) and Sundergarh (Odisha). It will be launched nationally on February 2, 2014 (MGNREGA Day).

Home Affairs

Prianka Rao (prianka@prsindia.org)

GoM completes consultations on bifurcation of Andhra Pradesh

According to reports, the Group of Ministers (GoM) completed all consultations with stakeholders related to the bifurcation of the state of Andhra Pradesh, and the creation of the state of Telangana on November 18, 2013.³⁶ They are expected to submit their report shortly.

The third meeting of the GoM was held on November 7, 2013, where they discussed the revised status notes sent by the ministries and the departments of the central government.³⁷

The GoM has been set up to work out necessary legal and administrative measures related to the bifurcation of the state of Andhra Pradesh. This includes looking into issues including determination of the boundaries of the state of Telangana and the residuary state of Andhra Pradesh with reference to the electoral constituencies, judicial and statutory bodies, and other administrative units.

India and Vietnam sign Treaty on Transfer of Sentenced Prisoners

On November 1, 2013, the Home Minister of India and Minister of Public Security of Vietnam signed a treaty on transfer of sentenced prisoners.³⁸ The Treaty seeks to ensure that Indian prisoners imprisoned in Vietnam or vice-versa may serve the remaining part of their sentence close to their families. This is to facilitate the process of their social rehabilitation.

India has signed such agreements with the U.K., Mauritius, Bulgaria, Cambodia, Egypt, France, Bangladesh, Korea, Saudi Arabia, Iran, Sri Lanka, UAE, Maldives, Thailand, Turkey, Italy, Bosnia and Herzegovina, Israel and Russia. Negotiations have also been concluded with Canada, Hong Kong, Brazil, and Spain. These treaties have helped in the repatriation of 43 Indian prisoners from Sri Lanka, Mauritius and UK. Similarly seven prisoners of UK and France were repatriated to their respective countries.

In 1985, the Model Agreement on the Transfer of Foreign Prisoners was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Consequently, the Repatriation of Prisoners Act, 2003 was enacted in India.

Further, the two Ministers held bilateral talks on security matters, issues of training, capacity building, cyber security and crime, trans-national crime, terrorism and disaster management.

Shipping

Alok Rawat (alok@prsindia.org)

Standing Committee report on the Merchant Shipping (Second Amendment) Bill, 2013

The Standing Committee on Transport, Tourism and Culture (Chairperson: Mr. Sitaram Yechury) submitted its report on the Merchant Shipping (Second Amendment) Bill, 2013 on November 20, 2013.³⁹ The Bill was introduced in the Rajya Sabha on August 19, 2013 by the Minister for Shipping, Mr. G.K. Vasan. The Bill proposes to amend the Merchant Shipping Act, 1958, to bring it in conformity with the International Labour Organisation’s Maritime Labour Convention, 2006 (MLC).

Key observations and recommendations are:

- The benefits from the adoption of the MLC should reach the maximum number of seamen/seafarers, including those working on ships with gross tonnage below 500.
- Abundant care should be taken to ensure speedy issuance of Maritime Labour Certificates.
- The Bill adds new provisions regarding Declaration of Maritime Labour Compliance and Maritime Labour Certificate to be issued by the Director-General of Shipping and/or any his authorised representative. The Standing Committee suggested that the Bill should also specify the periodicity of such declaration and certificates.
- Trade unions should be recognised as important stakeholders in decisions regarding payment, leave, compensation, etc., to the seafarers.
- Section 436 of the Act specifies penalties for contravention of and/or non-compliance with various provisions of the Act. The Committee opined that the penalties imposed by Section 436 Act are inadequate and need to be raised substantially.
- The Shipping Master, responsible for the settlement of disputes between the seafarers and their employers under the Act, should be empowered to penalise the manning agents or the ship owners for non-payment of wages to seafarers.

Telecom

Alok Rawat (alok@prsindia.org)

TRAI releases consultation paper on revenue sharing for Calling Card Services

The Telecom Regulatory Authority of India (TRAI) has issued a supplementary consultation paper on revenue sharing arrangements for Calling Card Services (CCS).⁴⁰ A Calling Card allows the mobile/fixed-line subscriber to choose the carrier for National/International Long Distance (NLD/ILD) calls. TRAI has observed that most Telecom Service Providers (TSPs) have either not signed interconnection agreements with CCS providers or the interconnection tariffs are very high.

Therefore, TRAI has decided to invoke its powers under the Multi Operator Multi Service

Scenario Regulations, 2006 to specify the interconnection arrangement. Consequently, it initiated a consultation process for specifying the access charges to be paid to the originating TSP by CCS providers. TRAI asked stakeholders to submit their comments by November 28, 2013 and counter-comments by December 6, 2013.

TRAI invited comments on the following issues:

- **NLD vs. ILD:** Whether the CCS providers should pay access charges to the originating TSP only for ILD calls or for both NLD and ILD calls, and whether the originating access charges should be same for NLD and ILD calls.
- **Calculation of access charges:** The method that should be applied for calculating originating access charges and whether such charges should be same for mobile and fixed line services.
- **Roaming:** The issues that need to be addressed to ensure that CCS can also be used when a subscriber is availing the roaming facility.
- **Best practices:** Regulatory best practices in other countries regarding access charges for CCS.

Defence

Prianka Rao (prianka@prsindia.org)

INS Vikramaditya commissioned in Indian Navy

The fully refurbished 44,500 tonne carrier Admiral Gorshkov was commissioned into the Indian Navy as INS Vikramaditya at a ceremony in Severodvinsk in Russia on November 16, 2013.⁴¹

The Defence Minister of India has stated that this would significantly enhance the reach and capability of the Indian Navy. Further, he also said that this project has further strengthened the strategic partnership between India and Russia, which was a matter of the highest priority for both nations for mutual benefit and global peace and stability.

Tourism

Alok Rawat (alok@prsindia.org)

Facility of Collective Landing Permits for Group Tourists

The government has issued an order allowing Collective Landing Permit, i.e. Group Tourist Visa, for tourist groups at select airports and seaports.⁴² The facility will be available to foreign tourists in groups of four or more, sponsored by approved Indian travel agencies and with a pre-drawn itinerary.

The airports where this facility will be available are Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Kochi, Thiruvananthapuram and Goa. The seaports where this facility will be available are Marmagoa (Goa), Kochi, Calicut, Thiruvananthapuram, Mumbai, Nhava Sheva, Chennai and Kolkata. This facility shall not be available to the nationals of Afghanistan, China, Ethiopia, Iraq, Iran, Nigeria, Somalia, Sri Lanka and Pakistan, and foreign nationals of Pakistani origin.

Media

Alok Rawat (alok@prsindia.org)

TRAI releases supplementary consultation paper on DTH licences

The Telecom Regulatory Authority of India (TRAI) has issued a supplementary consultation paper on issue/extension of Direct-to-Home (DTH) licences.⁴³ It had earlier released a consultation paper on the issue on October 1, 2013. A DTH license allows the operator to provide broadcasting services directly to the end-user. TRAI has invited comments from stakeholders by November 25, 2013.

Key issues discussed in the paper are:

- **Cross-holdings:** Any entity already engaged in or controlling another entity engaged in broadcasting, cable network, Headend in the Sky (HITS), DTH or Internet Protocol television (IPTV) business should not be allowed to control a DTH licensee.
- **License fee:** License fee for DTH licence should be aligned with that for a Unified License, i.e. 8% of Adjusted Gross Revenue (AGR). Service tax and sales tax paid to the government should be excluded from AGR.
- **Migration fee:** Once the new licensing regime is operational, existing licensees could be provided with a migration scheme to ensure a level playing field. Such a migration should be allowed after payment of the applicable entry fee by the existing licensee. However, a rebate commensurate with the residual value of the entry fee for existing licence may be provided.
- **Migration approach:** TRAI has also invited suggestions on: (a) whether migration of existing licensees to new licensing regime should be optional or compulsory once the new licensing regime is notified, and (b) the amount of time to be given to the existing licensees for migration.

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