

# REAL ESTATE/INFRASTRUCTURE PROJECTS – COMPANIES ACT, 2013 PERSPECTIVE

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Companies Act, 2013 (“the Act”) recognises the importance of “Infrastructural Projects” or “Infrastructural Facilities”. A separate Schedule (Schedule VI) as attached to the Act has been specifically dedicated to it, covering, inter alia, the following aspects of the Corporate world :

## (A) Issue and redemption of Preference Shares :

Section 55 of the Act, inter alia, provides, that a Company limited by shares and if authorized by its Articles may issue redeemable Preference Shares which are liable to be redeemed within a period not exceeding twenty (20) years from the date of their issue.

Provided that a Company may issue Preference Shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders.

## (B) Loan and Investment by Company :

Section 186 of the Act, inter alia, provides conditions for making loan, investments and / or providing security/guarantee, viz, quantum, rate of interest, etc. by the Companies.

However, Section 186(11) exempts almost all the relevant provisions of Section 186 for the companies engaged in the business of providing infrastructural facilities.

## (C) Deposit :

Rule 2(1)(c)(xii)(c) of the Companies (Acceptance of Deposits) Rules, 2014, inter alia, exempts any amount received in the course of, or for the purposes of, the business of the Company, as advance, accounted for in any manner whatsoever, received in connection with consideration for arrangement, provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement.

## (D) Schedule VI :

The term “infrastructural projects” or

“infrastructural facilities” includes the following projects or activities:—

- (1) Transportation (including inter modal transportation), includes the following:—
  - (a) roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;
  - (b) rail system, rail transport providers, metro rail roads and other railway related services;
  - (c) ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;
  - (d) aviation, including airports, heliports, airlines and other airport related services;
  - (e) logistics services.
- (2) Agriculture, including the following, namely:—
  - (a) infrastructure related to storage facilities;
  - (b) construction relating to projects involving agro-processing and supply of inputs to agriculture;
  - (c) construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.
- (3) Water management, including the following, namely:—
  - (a) water supply or distribution;
  - (b) irrigation;
  - (c) water treatment.
- (4) Telecommunication, including the following, namely:—
  - (a) basic or cellular, including radio paging;
  - (b) domestic satellite service (i.e., satellite owned and operated by an Indian company for providing telecommunication service);

- (c) network of trunking, broadband network and internet services.
- (5) Industrial, commercial and social development and maintenance, including the following, namely:—
  - (a) real estate development, including an industrial park or special economic zone;
  - (b) tourism, including hotels, convention centres and entertainment centres;
  - (c) public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
  - (d) construction of educational institutions and hospitals;
  - (e) other urban development, including solid waste management systems, sanitation and sewerage systems.
- (6) Power, including the following:—
  - (a) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;
  - (b) transmission, distribution or trading of power by laying a network of new transmission or distribution lines.
- (7) Petroleum and natural gas, including the following:—
  - (a) exploration and production;
  - (b) import terminals;
  - (c) liquefaction and re-gasification;
  - (d) storage terminals;
  - (e) transmission networks and distribution networks including city gas infrastructure.
- (8) Housing, including the following:—
  - (a) urban and rural housing including public / mass housing, slum rehabilitation, etc;
  - (b) other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.
- (9) Other miscellaneous facilities/services, including the following:—
  - (a) mining and related activities;
  - (b) technology related infrastructure;
  - (c) manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;
  - (d) environment related infrastructure;
  - (e) disaster management services;
  - (f) preservation of monuments and icons;
  - (g) emergency services (including medical, police, fire and rescue).
- (10) such other facility service as may be prescribed.