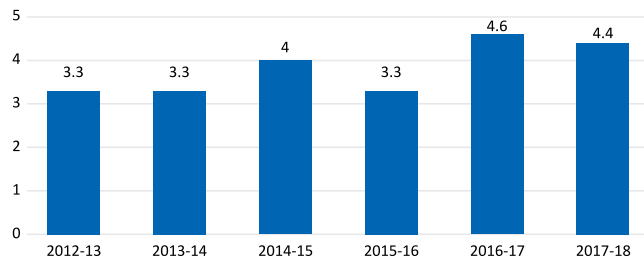


The Economy

An analysis of the evolving economic scenario indicates that while the fundamentals of the economy are good and long term growth projections remain in the range of 7-8 per cent p.a., there are some worrying signals including high oil prices, rupee depreciation and strengthening US currency.

The quick estimates of Index of Industrial Production (IIP) released recently by CSO for the month of July stands at 125.8, 6.6 % higher as compared to July 2017. The cumulative growth for April-July 2018 over the corresponding period last year was 5.41%.

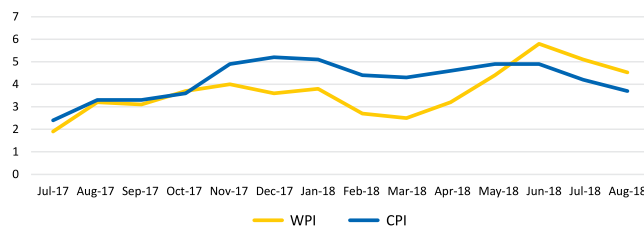
Index of Industrial Production (in %)



	Apr - 18	May - 18	June - 18	July - 18
Monthly IIP Growth {% y-o-y}	4.8	3.2	7.0	6.6

On the Inflation front, the consumer price index for August 2018 stood at 3.69% against 4.17% a month earlier. However, one has to view this with caution since weightage of fuels in the index is quite low (where major increase has been witnessed) as against food items where prices have been under control.

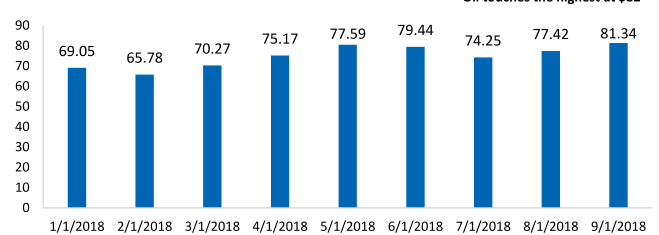
WPI and CPI Inflation Rate (in %)



The Prime Minister in his recent address at the foundation laying ceremony of India International Convention Centre said that the size of the Indian economy will double to \$ 5 trillion by 2022 with manufacturing and agriculture contributing \$ 1 trillion each.

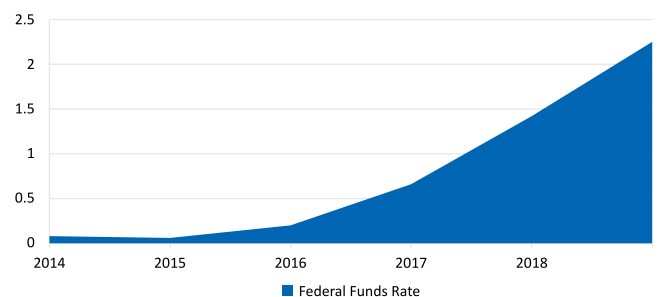
Against this optimistic overall long term outlook, we need to continuously engage ourselves on the emerging concerns which inter alia include declining rupee (going down to as low as Rs 72.81 per US\$ on 26 September), increasing fiscal deficit, high oil prices and expectation of further tightening of monetary policy in the US.

Brent crude Prices



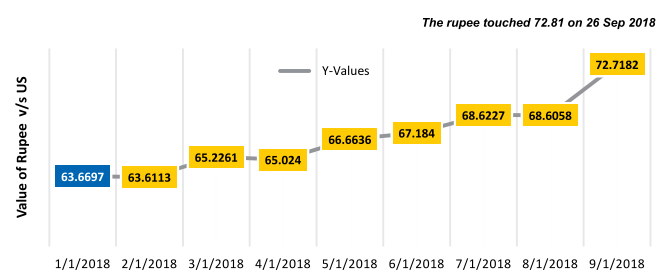
The international oil prices are likely to remain high as the OPEC is not expected to increase production and the US sanctions on Iran, which will come into force in November.

US Federal Fund Rates



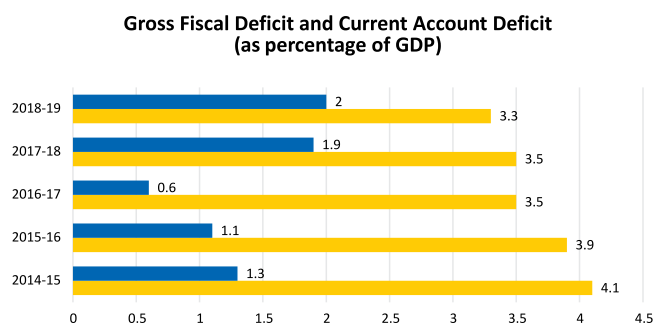
Against the backdrop of improved growth figures, along with low unemployment and stable inflation, the US Federal Reserve on September 27 announced an expected rate increase, its third in the year. Fresh economic forecasts also released recently showed most policy makers expect the Fed to raise rates further in the months ahead.

THE RUPEE - DOLLAR EXCHANGE RATE



While there are various predictions of the rupee value varying from 68-75 to a US\$, the Government and Reserve Bank are

continuously monitoring the situation and are expected to take remedial action as and when warranted.



The Government is confident of keeping the fiscal deficit to 3.3% in the current year, as reiterated by the Finance minister Arun Jaitley.

Seized of the situation, the Government on September 15 announced a series of measures to check the CAD, increasing FDI inflows and containing the Rupee slide. These included:

- A review of mandatory hedging condition for infrastructure loans and permitting manufacturing sector entities to avail of external commercial borrowings upto \$ 50 million with a minimum maturity of one year.
- Propose to remove exposure levels of upto 20% on an FDI bond portfolio to a single corporate group and 50% to a single company.
- Scrapping withholding tax on Masala Bond – rupee denominated debt sold overseas.
- Restricting non-essential imports and promoting exports – on September 26, the Government raised import duties on 19 items including air conditioners, refrigerators, washing machines, footwear, and jewellery and aviation fuel. These items accounted for an import bill of Rs 86000 crores in FY 18.

We feel that while immediate measures, including market intervention, are needed to generate a positive sentiment, one has to accept that there are no short cuts to increasing the overall competitiveness and productivity in the economy. The industry needs to have access to finances at a competitive rates as also support infrastructure and skills to remain competitive in the international market.

Legally Speaking

ARBITRATION & CONCILIATION (AMENDMENT) BILL, 2018

The Lok Sabha passed the Arbitration and Conciliation (Amendment) Bill, 2018 on 10th August 2018. The objective of the bill is to make Arbitration a preferred mode of settlement of commercial disputes and making India a hub of international arbitration.

The proposed amendments are based on the recommendations of a high-level committee constituted by the Central Government under the chairmanship of Justice B.N. Srikrishna, former Judge of the Supreme Court of India. The committee was mandated to give its recommendations on the promotion

of institutional arbitration in India and to identify areas critical to the dispute resolution through arbitration. Following were the main terms of reference to the committee:

- To examine the effectiveness of existing arbitration mechanism by studying the functioning and performance of arbitral institutions in India;
- To devise a road map to promote institutional arbitration mechanisms in India; and
- To evolve an effective and efficient arbitration ecosystem for commercial dispute resolution and suggest reforms in the Arbitration and conciliation Act, 1996.

The committee gave its report in July 2017. It, inter-alia, recommended for the establishment of an independent body for grading of arbitral institutions and accreditations of arbitrators. Based on the recommendations of the committee, the bill under consideration was introduced in Lok Sabha.

As stated in the Statement of Objects and Reasons appended to the Bill, the salient features of the Bill are as under:

- To amend section 11 of the act relating to “Appointment of Arbitrators” so as to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the “arbitral institutions” designated by the Supreme Court or High Court;
- In case where no graded arbitral institutions are available, the Chief Justice of the concerned High Court shall maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions;
- To insert a new part 1A to the Act for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators, etc.;
- To amend section 23 of the Act relating to “Statement of claim and defence” so as to provide that the statement of claim and defence shall be completed within a period of six months from the date the arbitrator receives the notice of appointment;
- To provide that the arbitrator, the arbitral institutions and the parties shall maintain confidentiality of information relating to the arbitral proceedings and also protect the arbitrator or arbitrators from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings; and
- To clarify that section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, is applicable only to the arbitral proceedings which commenced on or after 23.10,2015 and to such court proceedings which emanate from such arbitral proceedings, to address the divergent views given by various courts.

The Bill is yet to be passed by Rajya Sabha. Once enacted, the amendments proposed in the Bill will go a long way in promoting institutional arbitration in India and further streamline the arbitration process by removing the practical difficulties in applicability of the amendments made in the

Taxation matters

Income Tax

a) Delay of 589 days in filing appeal condoned if there was no malafide intention and delay was on account of clerk's mistake

In this case, the appeal could not be filed before the ITAT within 60 days because the employee of the company forgot to do so, and later on realizing the mistake, filed the appeal. The ITAT, in this case, after considering the Affidavit of the employee has held that there was no malafide intention of the company in not filing the appeal in time and therefore, the delay of 589 days in filing the appeal was condoned by the ITAT and appeal was heard on merits.

[Jakson Ltd. v. ACIT – ITAT Delhi] (ITA No. 6432/Del/2014 dated 27.09.2018)

b) Software expenses to be treated as revenue in nature if it facilitated trading operation of assessee

Assessee incurred expenditure towards software expenses and claimed it as revenue in nature. AO rejected the claim of assessee stating that expenditure was capital in nature as it gave an enduring benefit. High Court was of the view that not every advantage of enduring nature is capital and if the advantage consists merely facilitating assessee's trading operations or enabling management and conduct of assessee's business to be carried on more efficiently or more profitably by leaving fixed capital untouched, expenditure would be on revenue account. High Court further held that in view of the fact that advanced technology software becomes obsolete within short intervals, expenditure incurred by assessee towards software expenses was to be treated as revenue expenditure and not as capital expenditure.

[CIT v. Lakshmi Vilas Bank Ltd. – Madras High Court] (97 taxmann.com 105)

c) Expenditure incurred on education of partner in foreign country was allowable if it was linked with business of firm

The firm was carrying on engineering consultancy profession for leading Indian corporate clients. One of the partner's son joined the firm in April 2000 after completing his B.E. degree. He took active part in conduct of business of firm. He was sent to Australia for higher education and expenditure was claimed by assessee firm as business expenditure. The Court observed that the post graduate course in Australia was directly related to the profession carried out by the firm. It was also noticed that the professional fee received by the firm had substantially increased and several important contracts were secured by the firm after completion of post graduate degree by said partner. Therefore, the Court concluded that expenditure incurred by assessee firm was to be allowed as business expenditure.

International Tax

a) The benefit of capacity utilization adjustment could not have been denied to the assessee only for the reason that data of comparables was not available

In this case, the capacity utilization adjustment was rejected by the TPO / AO to account for the differences in capacity utilization of the assessee vis-à-vis the comparable companies. The Tribunal in this case has held that in case appropriate adjustments cannot be made to the uncontrolled transactions due to lack of data, the adjustments should be made on the tested party to read the provisions of transfer pricing regulations in harmony. The ITAT has further concluded that in the absence of availability of capacity utilization data of comparables, it would be appropriate if the TPO collates the same by exercising his powers under Section 133(6) of the Act.

[IKA India Pvt. Ltd. v. DCIT – ITAT Bangalore] (ITA No. 2192/Bang/2017 dated 17.09.2018)

b) No Permanent Establishment (PE) of Japanese company could be established if its supervision period in India was of less than 180 days

High Court in its order held that where period of supervision under contract between assessee, a Japanese company, and Indian company did not exceed period of 180 days, it would not constitute a supervisory PE in terms of Article 5(4) of India-Japan Double Tax Avoidance Agreement (DTAA). The SLP filed by the Revenue against the judgment of the High Court has been dismissed by the Supreme Court holding that there was no ground to interfere with the order of High Court

[CIT v. Sumitomo Corporation – Supreme Court] (96 taxmann.com 612)

c) Arm's Length Price (ALP) of an international transaction is to be determined without considering any benefit accrued to the assessee

In this case, assessee availed business support services from its associated enterprise (AE) and segregated these services under 12 heads. According to Transfer Pricing Officer (TPO), either services received were in the nature of shareholder services or duplication of services or no benefit was received or there was no evidence of assessee having received such services at all. TPO, therefore, determined ALP of these services at Nil. The Tribunal has held that TPO was required to simply determine ALP of international transaction, unconcerned with the fact if any benefit accrued to assessee and thereafter, AO was required to decide the deductibility of this amount under the Act. ITAT further observed that to determine as to whether a transaction is at ALP or not is not dependent on whether transaction results in an increase in assessee's profit. Thus, considering the above, ITAT concluded that the action of AO and TPO could not stand.

[Exxon Mobil Lubricants (P.) Ltd. v. ACIT – ITAT Delhi] (97 taxmann.com 43)

Goods and Services Tax

- a) **Supply of solar inverter, controller, battery and panels would be covered under “Solar Power Generating System”**

Uttarakhand Authority of Advance Ruling (AAR) in case of Eapro Global Limited held that the supply of solar inverter, controller, battery and panels would be covered under ‘Solar Power Generating System’ as a whole and thus, the entire supply would fall under composite supply, being taxable at 5% as being “composite supply” u/s 2(30) of CGST Act. Thus, AAR holds same in case of solar inverters and solar panels supplied together for generation of power from sunlight as well. Also, the aforesaid findings are applicable for both manufacturers and traders engaged in said supply.

[Eapro Global Ltd. – AAR Uttarakhand] (97 taxmann.com 563)

- b) **No concessional rate allowed to Government entity for business purpose on construction of electricity distribution lines**

Madhya Pradesh AAR in the case of a wholly owned subsidiary of MP Power Management Co. Ltd. engaged in construction of electricity distribution lines, substations and other infrastructure for sale of electricity, holds that the applicant is liable to pay tax at 18% (CGST + SGST). Despite of fact that the applicant’s holding company is wholly owned by Govt. of MP and Govt. of MP having full control over the applicant, such applicant is not covered under definition of Govt. entity. With reference to the Memorandum of Association of applicant, it was observed that projects under various Govt. schemes are carried out for business purposes, hence, benefit of concessional 12% GST rate (CGST + SGST) shall not be available under Notification No. 24/2017 – Central Tax (Rate) read with Notification No. 31/2017. Thus, AAR holds that said contract qualifies as ‘works contract’ and is taxable under Sr. No. 3 of Notification No. 11/2017 – Central Tax (Rate).

[M.P. Power Management Co. Ltd. – AAR Madhya Pradesh]

- c) **Food, soft drinks and snacks supplied in Snack Bar and Food Court at Mall/Multiplex cannot be treated as ‘outdoor catering’**

Madhya Pradesh AAR holds that food, soft drinks and snacks supplied in Snack Bar and Food Court at Malls/Multiplexes shall be chargeable to 5% GST, stating that such supply cannot be treated as outdoor catering chargeable to 18% by any stretch of imagination. The AAR further clarified that ITC of GST paid on goods purchased viz. vitrified tiles, marble granite etc. and works contract services for purpose of maintenance of mall building is disallowed under Section 17(5) of CGST Act. AAR concluded that mere statement that a specific expenditure is not being capitalized will not make the applicant eligible for ITC.

[Jabalpur Entertainment Complexes P. Ltd. – AAR Madhya Pradesh] (97 taxmann.com 587)

- d) **Abhivahan Shulk collected by Forest Division for carrying forest produce taxable at 18%**

Uttarakhand AAAR has upheld the decision of AAR holding ‘Abhivahan Shulk’ (Transit Fee) charged and collected by Forest Division in respect of forest produce carried by a person to be subject to GST at 18%. The AAAR held that the rates of Abhivahan Shulk are fixed on quantity of forest produce transported and in return to such fees, forest department is providing service of maintaining/regulating forest produce and ensuring continued availability and its safe transit, which services are restricted to particular class of people registered with forest department and paying fee under ‘The Uttarakhand Transit of Timber and Other Forest Produce Rules, 2012’. AAAR holds that such Govt. fees is covered under the definition of service and supply envisaged u/s 2(102) and 7 of CGST Act.

[Divisional Forest Officer – AAAR Uttarakhand] (97 taxmann.com 565)

News Round up

Insolvency & Bankruptcy Code

Government wants IBC, and not ARCs & AMCs, to be its main tool against bad loans (The Economic Times)

The government wants to deploy Insolvency & Bankruptcy Code (IBC) as the main tool for bank debt resolution and is not keen on the use of asset reconstruction companies (ARCs) and proposed asset management companies (AMCs).

IBBI working on group insolvency norms (Financial Express)

IBBI Chairman MS Sahoo has said the process of putting in place the norms on group insolvency is underway. The IBBI is also working on a framework for cross-border insolvency cases. “There is an insolvency law committee that is examining the comments. Based on that it will submit the report and thereafter government will take a call on the norms on cross-border insolvency cases,” he said.

Power projects heading to NCLT may get to retain fuel supply pacts (The Economic Times)

Stressed thermal assets that are referred to the insolvency court may retain their coal and power supply and long-term transmission network access rights. The high-level empowered committee, constituted by the Prime Minister’s Office, considered these special dispensations to the troubled projects to help their lenders recover a fair value. Power projects referred to the National Company Law Tribunal (NCLT) lose their fuel supply agreements (FSAs) with Coal India Ltd, power purchase agreements (PPAs) with state governments, and long-term transmission contracts with Power Grid Corp of India.

SEBI

Sebi allows NRIs, resident Indians, OCIs to invest in India via FPI route (Business Standard)

The Securities and Exchange Board of India (Sebi) on Friday diluted its controversial circular issued on April 10, which laid down the know-your-client (KYC) and ownership norms for foreign portfolio investors (FPIs). In a reversal of stance, the market regulator has allowed both resident and non-resident Indians (NRIs), along with overseas citizens of India (OCIs), to invest in Indian markets through the FPI route, subject to certain conditions. The earlier circular virtually barred individuals with India connection from investing or managing a foreign fund.

Trade

India's trade with neighbours only 31% of total potential: World Bank (Business Standard)

India's current trade in goods with its neighbouring countries in the South Asian region is a mere 30.65 per cent of the potential trade of \$ 62 billion, which can be boosted if certain restrictions on the current trade, like tariffs, port restrictions and other non-tariff barriers can be eased, a report from the World Bank said. Currently, India's actual trade in South Asia accounts for \$19.1 billion which is just three per cent of its total global trade at \$637.4 billion and around \$43 billion below the potential.

Telecom

Telecom sector continues to reel under acute financial stress (The Economic Times)

Telecom sector weighed down by nearly Rs 8 lakh-crore debt and bruising price wars reflected in slumping revenue and operating income. The older incumbent carriers, in particular, have incurred heavy losses, with 4G entrant Jio being the sole profitable company. EBITDA of the industry declined 28% on-year in quarter ended June with older carriers suffering an 81% on-year crash. The stress level has triggered rapid sector consolidation with fringe players exiting and incumbent biggies Vodafone and Idea being forced to merge, leaving three players — newly-anointed Vodafone Idea, Bharti Airtel and Jio — as the only private ones vying for a 1.3-billion consumer market.

New telecom policy in the offing, to create 4 mn jobs (Business Standard)

“National Digital Communications Policy is likely to be placed in two weeks,” telecom secretary Aruna Sundararajan said on the sidelines of a BSNL event. The government has recently issued the National Digital Communications Policy (NDCP) which once approved will set road map for attracting investment of around Rs 6.5 trillion in the sector and create 4 million new job opportunities.

Spectrum auction for 5G likely to happen in later half of 2019 (The Economic Times)

Telecom Secretary Aruna Sundararajan on September 23 said auction of spectrum for 5G services is likely to happen in the later half of 2019. The 5G services would offer telecom companies better visibility into market dynamics and potential revenue streams of the next-generation mobile services, Sundararajan said.

Meanwhile industry executives and analysts, at the recently held 5G Congress have underscored the need for rolling out adequate infrastructure like spectrum and fibre while emphasising that the sector should aim to derive maximum benefits from 4G itself which is still being expanded in the country.

Ecommerce

Government forms panel to look at draft e-commerce policy issues (Mint)

The Government has reportedly set up a group of secretaries to look into various issues highlighted by different groups on the draft ecommerce policy. Headed by secretary in the department of industrial policy and promotion (DIPP), the members will include secretaries of the ministry of electronics and information technology and department of commerce, representatives of NITI Aayog and department of economic affairs as members of the group. Some of the issues on the agenda will be storing of user data, exclusively in India, predatory pricing and deep discounting.

Energy

India allows state refiners to use Iran tankers, insurance for oil imports (The Economic Times)

India is allowing state refiners to import Iranian oil with Tehran arranging tankers and insurance after firms including the country's top shipper Shipping Corp of India (SCI) halted voyages to Iran due to U.S. sanctions, sources said. New Delhi's attempt to keep Iranian oil flowing mirrors a step by China, where buyers are shifting nearly all their Iranian oil imports to vessels owned by National Iranian Tanker Co (NITC). The moves by the two top buyers of Iranian crude indicate that the Islamic Republic may not be fully cut off from global oil markets from November, when U.S. sanctions against Tehran's petroleum sector are due to start.

India needs stringent steps to maximise efficiency of coal plants (The Economic Times)

India requires stringent steps to ensure maximising the efficiency of its existing coal-fired power plants to achieve nationally determined contributions under the landmark 2015 Paris Climate Change Agreement, according to a report by the Indian Institute of Management-Ahmedabad. It favours retiring old coal plants, scaling up new and alternative fuels, reducing end-use energy demand and developing a coherent strategy for future energy system to manage risk and avoid stranded assets. A team led by Amit Garg has modelled three transition pathways which address some of key international and national debates on future of coal in a report “Coal transition in India: Assessing India's energy transition options”.

Centre planning integrated policy for chemicals, petrochem sectors (The Hindu Business Line)

In a bid to streamline and synchronise key industrial sectors of petrochemicals and chemicals, the Centre is working on a comprehensive integrated policy for the two sectors. Speaking on the sidelines of India Chem 2018 — Industry Meet in Ahmedabad on Tuesday, P Raghavendra Rao, Secretary, Department of Chemicals and

Petrochemicals, said the government is holding consultations with stakeholders to revamp and redraft the existing National Policy on Petrochemicals, which was formulated in 2007.

Solar

Revenue dept withdraws circular on suspension of safeguard duty on solar cells (The Economic Times)

The revenue department has instructed its field formations to collect safeguard duty on imported solar cells, withdrawing its earlier direction issued a month ago regarding suspension of the levy. The decision to impose safeguard duty on 'solar cells whether or not assembled in modules or panels' was taken in view of a Supreme Court order, staying an earlier order of the Orissa High Court regarding the duty, the CBIC said in a circular.

Solar project developers seek reversal of cap in tariffs (The Economic Times)

Solar project developers have cautioned the government that the decision to cap tariffs in future auctions at Rs 2.50 per unit needs to be reversed because it will make projects unviable as their bids are determined by changes in module prices, currency risks and varied solar radiation across states.

Lenders reluctant to fund renewable energy projects in India (The Economic Times)

Lenders are becoming reluctant to fund renewable energy projects in the country, prompting power minister R K Singh to call all stakeholders on Wednesday to address the concerns of the sector. Falling tariffs, power evacuation issues, and non-performing assets in the thermal power sector are among key reasons behind lenders' flinching confidence in the clean energy sector, stakeholders said.

CERC allows GST as 'Change in Law' for solar projects, recovery of tax paid (Business Standard)

Putting an end to the confusion over the cost of new solar power projects under the goods and services tax (GST) regime, the Central Electricity Regulatory Commission (CERC) has allowed it to be covered under the 'Change in Law' clause of power contracts. The GST paid by the project developers can be recovered as a separate element on "one-time basis in a time-bound manner". The order comes in response to the applications filed by Azure Power and Prayatna Developers, a subsidiary of Adani Power. Till now, the companies were not sure as there was no legal approval from the sector regulator.

Automobiles

New National Auto Policy coming soon (The Economic Times)

A new National Auto Policy is currently being readied which will lay emphasis on reducing vehicular emissions as well as on green mobility, Heavy Industries Minister Anant Geete has

said. Also in the offing is the second edition of the Centre's Faster Adoption and Manufacturing of Electric and Hybrid Vehicles (Fame) programme which expires in December, Geete said in his inaugural address at the annual session here of the Automotive Component Manufacturers Association of India (ACMA).

Banking and Finance

RBI working on measures to further beef up cyber security in FY19 (The Economic Times)

In view of growing incidents of cyber frauds, the Reserve Bank is working towards further enhancing security mechanism as part of its agenda for this fiscal, especially when digital transactions are witnessing a significant rise. The central bank's agenda for 2018-19 include enhanced level of protection against cyber risks to ensure continuous safeguard against the changing contours of internet based security threats.

NIIF fast evolving into investment vehicle for building infra assets (Financial Express)

Singapore-based Temasek has invested US\$ 100 million in National Investment and Infrastructure Fund's 'Master Fund' and the NIIF is fast evolving into a major investment vehicle, Economic Affairs Secretary Subhash Chandra has said. NIIF, created in 2015, has two operational funds – the 'NIIF Master Fund' that invests directly into companies and a 'Fund of Funds' that invests in funds that are managed by third parties. It is also looking to launch a US\$ 2 billion long-term fund to finance various mega projects.

International News

China retaliates as US slaps tariffs (The Hindu Business Line)

China hit back at the US with tariffs on US\$ 60 billion worth of American goods, in a tit-for-tat move that came hours after President Donald Trump slapped 10 per cent tariffs on US\$ 200 billion worth of Chinese imports on September 18. The duties will rise to whopping 25 per cent at the end of the year, escalating the trade war with the world's second largest economy.

ASEAN gains from US-China trade war, turns into magnet for new factories (Business Standard)

No one wins from a trade war is a standard refrain among economists. Southeast Asian businesses are trying to prove that maxim wrong. The region is capitalising on a rush of new orders and production moves as firms reconsider their business in the US and China amid a deepening trade war. About one-third of more than 430 American companies in China have or are considering moving production sites abroad amid the tensions, according to survey results released on September 13 by AmCham China and AmCham Shanghai. Southeast Asia was their top destination.

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