



JSA Corporate InVision

July 2023

DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT)

Validity of industrial license extended pursuant to Press Note 1 of 2023

The DPIIT has, in supersession of Press Note No. 5 (2014 series), notified Press Note No.1 (2023 Series) dated July 21, 2023 (“**2023 Press Note**”). The 2023 Press Note updates the validity period and other guidelines for granting industrial licenses under the Industries (Development and Regulation) Act, 1951 (“**IDR Act**”). The validity period of new/ existing industrial licenses is extended from 3 (three) years to 15 (fifteen) years for all licenses granted under the IDR Act. The said extension aligns with the validity of the licenses issued for defence items which were initially revised to 15 (fifteen) years and extendable to 18 (eighteen) years as per Press Note No. 10 (2015 Series) in view of the long gestation period under defence contracts). An extension of 3 (three) years may be granted on top of the 15 (fifteen) years as per the guidelines provided in the 2023 Press Note.

For a detailed analysis, please refer to the [JSA Prism of July 28, 2023](#).

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Amendments to regulations relating to Mutual Funds (“MFs”)

The SEBI, *vide* circular dated July 7, 2023, has introduced a framework to enhance the penetration of the MF industry, and to facilitate new types of players to act as sponsors of MFs, an alternative set of eligibility criteria is introduced. This is with the objective of facilitating fresh flow of capital into the industry, fostering innovation, encouraging competition, providing ease of consolidation and easing exit for existing sponsors. The key provisions are as follows:

- Asset Management Companies (“AMCs”) must deploy the minimum net worth required either in cash, money market instruments, government securities, treasury bills, repo on government securities, or in listed AAA rated debt securities without bespoke structures/ structured obligations, credit enhancements or embedded options or any other structure/ feature which increase the liquidity risk of the instrument on a continuous basis and such investments must be unencumbered;
- in case of change in control of an existing AMC due to acquisition of shares, the sponsor can fund the cost of acquisition out of borrowings and the minimum incremental capital contribution required in the AMC must not be funded through borrowings and will be funded only out of the net worth of the acquirer. The sponsor’s stake in an AMC must be free from encumbrances;

- among the pooled investment vehicles, only the private equity funds can sponsor a MF; and
- an AMC can become a self-sponsored AMC subject to the prescribed conditions. Post disassociation, the upper limit of shareholding for any financial investor must be below 10%.

The SEBI, vide circular dated July 7, 2023, has also detailed the core responsibilities and other responsibilities of the trustees of a MF. The provisions of this circular will come into force with effect from January 1, 2024. Some of the responsibilities set out are as follows:

- Core responsibilities of trustees: trustees are mandated to exercise due diligence on specific “core responsibilities.” These include ensuring fairness in fees and expenses charged by AMCs, reviewing AMC performance vis-à-vis peers or benchmarks, preventing mis-selling and increasing asset management integrity, mitigating conflicts of interest, avoiding unfair advantages for associates or group entities, addressing conflicts of interest, and preventing market abuse;
- Third party assurances: trustees can rely on professional firms, such as audit firms, legal firms, and merchant bankers, as third-party fiduciaries. These entities conduct due diligence on behalf of trustees, ensuring compliance with regulations, operational independence of AMCs, custodial responsibilities, and net worth reviews. This approach enhances transparency and accountability;
- Unit Holder Protection Committee (“UHPC”): the UHPC is responsible for overseeing MF schemes, adopting market best practices, ensuring compliance with regulations, and addressing investor grievances and
- Appointment of independent directors: trustee companies must appoint independent directors as chairpersons of their board of directors within a period of 6 (six) months from January 1, 2024.

Vide circular dated July 20, 2023, the SEBI has decided to permit the launch of multiple Environmental, Social and Governance (“ESG”) schemes with different strategies by MFs. Any scheme under the ESG category can be launched with one of the following strategies (i) Exclusion; (ii) Integration; (iii) Best-in-class & Positive Screening; (iv) Impact investing; (v) Sustainable objectives; and (vi) Transition or transition related investments. A minimum of 80% of the total Assets Under Management (“AUM”) of ESG schemes must be invested in equity and equity related instruments of that particular strategy of the scheme. Further, an ESG scheme must invest at least 65% of its AUM in companies which are reporting on comprehensive Business Responsibility and Sustainability Reporting (“BRSR”) and are also providing assurance on BRSR Core disclosures. MFs must clearly disclose the name of ESG strategy in the name of the concerned ESG fund/scheme. The board of directors of AMCs must certify the compliance of ESG schemes with the regulatory requirements in the annual report of the scheme.

Pricing of units of Infrastructure Investment Trusts (“InvITs”) and Real Estate Investment Trusts (“REITs”)

The SEBI, vide circulars dated July 5, 2023, has amended the provisions relating to the pricing of units in an institutional placement of units by listed REITs and InvITs. It provides uniform pricing for frequently and infrequently traded units. The institutional placement must be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the 2 (two) weeks preceding the relevant date. The InvIT/ REIT may, however, offer a discount of not more than 5% on the price so calculated, subject to approval of unitholders through a resolution.

Simplified procedures for listed entities making private placements of non-convertible securities

The SEBI, vide notification dated July 3, 2023, has issued the SEBI (Issue and Listing of Non- Convertible Securities) (Second Amendment) Regulations, 2023, amending the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. The key amendments are as follows:

- a common Schedule I is introduced for disclosures to be made by an issuer seeking to list its non-convertible securities on a recognised stock exchange issued by way of both, public issue or private placement;
- the term 'senior management' has been introduced to mean members of the core management team of an issuer excluding the board of directors and includes the members of the management one level below the chief executive officer or managing director or whole-time director or manager and financial heads. Senior management is now also required to make certain disclosures relating to their financial or other material interest;
- introduction of a key information document and general information document. An issuer seeking listing of privately placed non-convertible securities must file a comprehensive general information document with the prescribed disclosures. A general information document will be valid for a period of 1 (one) year from the date of opening of the first offer of non-convertible securities made under that document. In case the issuer proposes to make any second or subsequent private placement offer of non-convertible securities, during the validity of the general information document or a shelf prospectus or a shelf placement memorandum, it must only file a key information document, which has limited disclosures and information; and
- issuers who have previously filed a general information document or a shelf prospectus for a public issue and proposes to list commercial paper during the validity period of the general information document/ shelf prospectus, can do so by only filing a key information document.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

Home buyers exempt from regulatory fees

The IBBI, *vide* notification dated July 20, 2023, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2023, clarifying that the regulatory fee of 0.25% on corporate insolvency resolution plans will not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.

MINISTRY OF FINANCE (MoF)

Guarantee Scheme for Corporate Debt ("GSCD")

The MoF, *vide* notification dated July 26, 2023, has introduced the GSCD to provide a guarantee cover against debt raised/ to be raised by the Corporate Debt Market Development Fund ("CDMDF"). CDMDF is a new category of Alternative Investment Fund created under the SEBI (Alternate Investment Funds) Regulations, 2012, for investing in corporate debt securities at times of market dislocation.

The guarantee will cover debt raised, along with interest accrued and other bank charges thereon, and must not exceed INR 30,000,00,00,000 (Indian Rupees thirty thousand crores). The GSCD will be initially for a period of 15 (fifteen) years from the initial closing date of CDMDF, extendable at the discretion of the Department of Economic Affairs in consultation with the SEBI. SEBI specified debt-oriented MF schemes and existing/ new asset management companies of specified debt-oriented MF can be eligible unitholders of CDMDF.

The framework for CDMDF is detailed in the notification as also in the SEBI circular dated July 27, 2023. CDMDF must deal only in the following securities during normal times: (a) low duration Government Securities; (b) Treasury bills; (c) Tri-party Repo on G-sec; and (d) Guaranteed corporate bond repo with maturity not exceeding 7 (seven) days. The securities purchased by CDMDF must have an investment grade credit rating and residual maturity not exceeding 5 (five) years on the date of purchase. CDMDF will not buy unlisted or below investment grade or defaulted debt securities or securities in respect of which there is a material possibility of default or adverse credit news or views.

JSA Updates

In considering whether an award should be enforced or not, courts should not re-appreciate the evidence which was placed before the arbitral tribunal

The Calcutta High Court (“**Calcutta HC**”), in *Jaldhi Overseas PTE Ltd. v. Steer Overseas Pvt. Ltd.*, has reiterated that while considering the issue of enforcement of a foreign award, the court must not (a) re-appreciate evidence; (b) substitute its own view with that of the arbitrator; or (c) review the matter afresh. Further, in a case where an arbitrator has rendered a finding (based on appreciation of the facts and evidence on record) that there existed an agreement and an arbitration clause, the court should not substitute its own view, unless it is manifestly evident that there existed no agreement.

For a detailed analysis, please refer to the [JSA Prism of July 3, 2023](#).

‘Venue’ cannot be treated as the ‘Seat’ if there exists a ‘significant contrary indicia’ in the contract

The Calcutta HC, in *Homevista Décor & Furnishing Pvt. Ltd. & Anr. v. Connect Residuary Pvt. Ltd.*, has ruled that if a place is designated as a ‘venue’ in the contract and there is another clause which confers exclusive jurisdiction to courts of some other place, then the latter is a clear ‘contrary indicia’. In other words, in such a situation, venue cannot be regarded as the seat.

For a detailed analysis, please refer to the [JSA Prism of July 3, 2023](#).

Bombay High Court holds that mere pendency of a Section 7 application under Insolvency and Bankruptcy Code, 2016 does not bar appointment of an arbitrator under Section 11 of the Arbitration Act, 1996

A single bench of the High Court of Bombay, in *Sunflag Iron & Steel Co. Ltd. v. M/s Poonamchand & Sons*, has held that appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 cannot be prevented on account of initiation of proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.

For a detailed analysis, please refer to the [JSA Prism of July 5, 2023](#).

Services rendered by advocates are ‘professional activities’; these services are not ‘commercial activities’ within the meaning of the Delhi Municipal Corporation Act, 1957, and thus not subject to tax

A Division Bench of the Delhi High Court (“**Delhi HC**”), in *South Delhi Municipal Corporation Versus B N Magon*, has held that under the Delhi Municipal Corporation Act, 1957 (“**DMC Act**”), ‘professional activity’ of lawyers is not included as a ‘commercial activity’ and as such, applying the rule of strict interpretation of taxation statutes, such activity is not subject to tax. The Delhi HC has further held that (a) ‘professional activity’ of lawyers does not fall within the category of either ‘commercial establishment’ or a ‘business activity’; and (b) there is no power to tax ‘professional activities’ carried out from residential buildings under the DMC Act.

For a detailed analysis, please refer to the [JSA Prism of July 5, 2023](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
**IFLR1000 APAC
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Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
9 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
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Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the
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