September 2024

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Foreign Venture Capital Investors

Amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000 and operational guidelines for Foreign Venture Capital Investors

SEBI, *vide* notification dated September 5, 2024, has notified the SEBI (Foreign Venture Capital Investors ("**FVCI**")) (Amendment) Regulations, 2024 amending the SEBI (FVCI) Regulations, 2000.

Some of the key amendments are as follows:

1. the term '*Bilateral Memorandum of Understanding with the Board*' is inserted to mean a bilateral memorandum of understanding between SEBI and any authority outside India that provides for information sharing arrangement as specified under Section 11(2)(ib) of the SEBI Act, 1992;
2. the term 'certificate' is inserted to mean a certificate of registration granted to a FVCI by the Designated Depository Participant ("**DDP**") on behalf of SEBI under the primary regulations;
3. provisions pertaining to application for grant of certificate as a FVCI, are amended stating that no person will buy, sell or otherwise deal in securities as a FVCI unless it has obtained a certificate granted by a DDP on behalf of SEBI;
4. the eligibility criteria of the applicant for grant of certificate of registration as a FVCI is amended, among other conditions the applicant must be an entity incorporated or established outside India or in IFSC;
5. FVCI certificates are permanent unless suspended, cancelled, or surrendered, and renewal fees must be paid every 5 (five) years; and
6. FVCI investments must be held in dematerialised form, ensuring greater transparency and efficiency in managing investments.

SEBI, *vide* notification dated September 26, 2024, has also issued operational guidelines for FVCIs and DDPs pursuant to the amendments.

Some of the key guidelines are as follows:

1. any FVCI failing to engage a DDP by March 31,2025, will not be permitted to make any further investment and will liquidate:
   a) investments in listed securities, by March 31, 2026; and
   b) other investments, by March 31, 2027;
2. remittance of the proceeds of such sale will be subject to compliance with applicable 'know your customer' requirements and requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Post liquidation of investments within the said time-period, the FVCI will apply for surrender of its registration within 30 (thirty) days;
3. an FVCI must maintain a list of beneficial owners in accordance with the Prevention of Money-laundering (Maintenance of Records) Rules, 2005;
4. every DDP will submit monthly reports on the applications received from FVCI applicants to SEBI in the prescribed format; and
5. DDP engaged by an existing FVCI will carry out registration related due diligence and assess the compliance of such an FVCI with the eligibility criteria within 6 (six) months from the date of engagement.

The amendments and the operational guidelines will come into effect from January 1, 2025.

Reporting by foreign venture capital investors

SEBI, *vide* circular dated September 13, 2024, revised the format for the quarterly report on venture capital activity to be submitted by an FVCI. From the quarter ending March 31, 2025, FVCIs will submit quarterly report in the revised format on the SEBI intermediary portal (SI Portal). The report must be submitted within 15 (fifteen) calendar days from the end of each quarter. FVCIs must submit the quarterly report irrespective of the fact that any investment is made or not during the quarter.

Amendments to certain provisions relating to public issue and listing of debt securities and/or non-convertible redeemable preference shares

SEBI, vide notification dated September 17, 2024, has notified the SEBI (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2024 amending the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. Pursuant to the notification, certain provisions relating to public issues and listing of debt securities and/or non-convertible redeemable preference shares are amended.

Some of the key amendments are as follows:

1. the draft offer document filed with the stock exchange(s) must be made public by posting the same on the website of the stock exchange(s) for seeking public comments for a period of 5 (five) working days (*previously this was 7 (seven) working days*) from the date of filing the draft offer document with stock exchange(s);
2. a public issue of debt securities or, non-convertible redeemable preference shares must be kept open for a minimum of 2 (two) working days (*previously this was 3 (three) working days*);
3. in case of a revision in the price band or yield, the issuer must extend the bidding (issue) period disclosed in the offer document for a minimum period of 1 (one) working day (*previously this was 3 (three) working days*);
4. issuers whose specified securities are listed on a recognised stock exchange having nationwide trading terminals must post the draft offer document filed with stock exchange(s) for 1 (one) day immediately after the date of filing the draft offer document with stock exchange(s); and

5. issuers opting to advertise the public issue through electronic modes must publish a notice, in an English national daily and regional daily newspaper with wide circulation at the place where the registered office of the issuer is situated, exhibiting a quick response (QR) code and link to the complete advertisement.

Modification in framework for valuation of investment portfolio of Alternative Investment Funds

SEBI, *vide* circular dated September 19, 2024, has issued modifications to the valuation framework for Alternative Investment Funds ("**AIFs**") under the SEBI (Alternative Investment Funds) Regulations, 2012. Accordingly, the Master Circular for AIFs dated May 7, 2024, is amended. Some of the key amendments are as follows:

1. valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**"), must be carried out as per the norms prescribed under the MF Regulations;
2. valuation of securities which are not covered above, will be carried out as per valuation guidelines endorsed by any AIF industry association, which in terms of membership represents at least 33% of the number of SEBI registered AIFs;
3. SEBI also extended the timeline for AIFs to report valuation data based on audited accounts of investee companies from 6 (six) to 7 (seven) months. Further changes include harmonising valuation norms for thinly traded and non-traded securities by March 31, 2025;
4. change in methodology/approach within the valuation guidelines/valuation norms prescribed for AIFs, will not be construed as a 'Material Change'. However, upon such change, the valuation of the investment carried out based on valuation methodologies/approaches, both old and new, must be disclosed to the investors to ensure transparency; and
5. the eligibility criteria for independent valuer for a partnership entity or company is as follows: (a) such entity or company must be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India; and (b) the deputed/authorised person(s) of such 'Registered Valuer Entity', who undertake(s) the valuation of investment portfolio of AIFs, must have a membership of the prescribed institute.

Usage of unified payments interface by individual investors in public issue of securities

SEBI, *vide* circular dated September 24, 2024, has issued clarification that all individual investors applying in public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments through intermediaries, where the application amount is upto INR 5,00,000 (Indian Rupees five lakh), must use only Unified Payments Interface ("**UPI**") for the purpose of blocking of funds and provide their bank account linked UPI ID in the bid-cum-application form submitted with the intermediaries. Further, individual investors will continue to have the choice of availing other modes (*viz*. through self-certified syndicate banks and stock exchange platform) for making an application in the public issue. This circular will be applicable from November 1, 2024.

SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2024

SEBI, *vide* notification dated September 25, 2024, has notified the SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2024 amending the SEBI (Delisting of Equity Shares) Regulations, 2021.

Some of the key amendments are as follows:

1. provisions relating to voluntary delisting through fixed price process are introduced for companies whose shares are frequently traded. Consequential amendments made to provisions relating to the bidding mechanism and deposit of escrow amount;
2. provisions dealing with computation of floor price of the equity shares proposed to be delisted and fixed delisting price are inserted. In case the acquirer has proposed delisting through fixed price process, the acquirer must provide a fixed delisting price which will be at least 15% more than the floor price;
3. special provisions for delisting of investment holding company are introduced. Regulation 38A details the manner in which the delisting of equity shares of a listed investment holding company pursuant to a scheme of arrangement must be undertaken;
4. when delisting is proposed upon acquisition, acquirer will open an interest bearing escrow account with a Scheduled Commercial Bank, not later than 7 (seven) working days from the date of obtaining the shareholders' approval, and deposit there in an amount equivalent to 25% of the total consideration, calculated as below:
    a) in case delisting is proposed through reverse book building process; the total consideration will be calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, if any given by the acquirer whichever is higher;
    b) in case delisting is proposed through the fixed price process; the total consideration will be calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the fixed delisting price offered by the acquirer;
5. before making the detailed public announcement, the acquirer will deposit in the escrow account, the remaining consideration amount being 75% of the total consideration amount; and
6. the acquirer through the manager to the offer will, within 2 (two) working days from the closure of the bidding period or the tendering period, make a public announcement in the same newspapers in which the detailed public announcement of these regulations was made, of the success or failure of the fixed price delisting process or the reverse book building process and also disclose the discovered price accepted by acquirer, in the event of success of the reverse book building process.

SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024

SEBI, vide notification dated September 26, 2024, has notified the SEBI (Infrastructure Investment Trusts ("InvITs")) (Third Amendment) Regulations, 2024 amending the SEBI (InvITs) Regulations, 2014. The amendments relate to the trading lot for trading units, timeline for making distributions, as well as the voting threshold.

Some of the key amendments are as follows:

1. with respect to listing of privately placed units, trading lot for the purpose of trading of units on the designated stock exchange must be INR 25,00,000 (Indian Rupees twenty-five lakh) (earlier this was INR 1,00,00,000 (Indian Rupees one crore));
2. for distributions made by the InvITs and the holding company and/or special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (earlier this was 15 (fifteen) days from the date of such declaration);
3. the voting threshold specified under the principal regulations must be calculated based on the unit holders present and voting and consent of at least 60% of the total voting unitholders must be obtained for undertaking crucial decisions affecting the InvIT's structure, management, and activities under Regulation 22(5);

4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI; and
5. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically. They must also ensure a business continuity plan in addition to a disaster recovery site to maintain the integrity of data and transactions during disruptions or emergencies.

SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, has notified the SEBI (Real Estate Investment Trusts ("**REITs**")) (Third Amendment) Regulations, 2024 amending the SEBI (REITs) Regulations, 2014. The amendments relate to the timeline for making distributions as well as the voting threshold.

Some of the key amendments are as follows:

1. for distributions made by the REITs and the holding company and/or special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this was 15 (fifteen) days from the date of such declaration*). Concerning distributions made by the scheme of small and medium REIT and special purpose vehicles, such distributions must be made within 5 (five) working days from the record date (*earlier this was 7 (seven) working days from the date of such declaration*);
2. the voting threshold specified under the principal regulations must be calculated based on the unit holders present and voting; and consent of at least 60% (sixty per cent) of the total voting unitholders must be obtained required for undertaking crucial decisions affecting the REIT's structure, management, and activities under Regulation 22(6);
3. for all unit holder meetings, the manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI; and
4. REITs are permitted to hold a meeting for unit holders after providing shorter notice, so long as consent is obtained in writing or electronically:
    a) in case of an annual meeting, by not less than 95% of the unit holders entitled to vote thereat; and
    b) in case of any other meeting, by majority of the unitholders in number are entitled to vote and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting.

RESERVE BANK OF INDIA (RBI)

Discontinuation of submission of liberalised remittance scheme monthly return

RBI, *vide* circular dated September 6, 2024, discontinued the requirement for submission of Liberalised Remittance Scheme ("**LRS**") monthly return by AD Category-I banks. Accordingly, from the reporting month of September 2024, AD Category-I banks will not submit the LRS monthly return. However, AD Category-I banks will be required to upload only transaction-wise information under the LRS daily return at the close of business of the next working day on the Centralised Information Management System (CIMS) portal. In case no data is to be furnished, AD Category-I banks will upload a 'NIL' report.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024

IBBI, vide notification dated September 24, 2024, notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024.

Some of the key amendments are as follows:

1. the choice of an insolvency professional to act as an authorised representative by a financial creditor in a class in Form CA must not be considered, if the Form is received after the time stipulated in the public announcement; and
2. till the application for appointment of the authorised representative for a class of creditors is under consideration before the adjudicating authority, the prescribed insolvency professional will act as an interim representative for such class of creditors, and is entitled to attend the meetings of the committee and have such rights and duties as that of an authorised representative.

MINISTRY OF CORPORATE AFFAIRS (MCA)

Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024

MCA, *vide* notification dated September 9, 2024, has notified certain amendments to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Some of the key amendments are as follows:

1. the copy of legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction must be accompanied with: (a) a notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and (b) a no objection certificate from all legal heirs other than claimants, stating that they have relinquished their rights to the claim for transmission of securities, duly attested by a notary public or by a gazetted officer;
2. the value of the securities as on the date of application must be quantified by the applicant on the basis of the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value must be quantified basis on the face value or the maturity value of the security, whichever is more;
3. a foreign national or non-resident Indian will be permitted to provide self-declaration of securities lost or misplaced or stolen which will be duly notarised or apostilled or consularised in their country of residence, along with self-attested copies of valid passport and overseas address proof;
4. the value of the securities as on the date of application will be quantified by the applicant based on the closing price of such securities at any one of the recognised stock exchange a day prior to the date of such submission in the application, for listed securities and for unlisted securities, the value will be quantified basis on the face value of the maturity value of the securities, whichever is more; and
5. the company will take special contingency insurance policy from the insurance company towards the risk arising out of such claim in respect of verification report or the revised verification report.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

MCA, *vide* notification dated September 9, 2024, has notified certain amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Accordingly, provisions pertaining to compliance requirements for mergers involving foreign companies are inserted. Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation:

1. both the companies must obtain the prior approval of the Reserve Bank of India;
2. the transferee Indian company must comply with the provisions of Section 233 of the Companies Act, 2013 ("**CA 2013**");
3. the application must be made by the transferee Indian company to the Central Government under Section 233 of the CA 2013 and provisions of Rule 25 of the principal rules apply to such application; and
4. the declaration referred to in Rule 25A (4) of the principal rules must be made at the stage of making application under Section 233 of the CA 2013.

Government notifies changes to Indian merger control regime

On September 9, 2024, the GoI notified provisions of the Competition (Amendment) Act, 2023 ("**Amendment Act**") relating to merger control in India and rules governing the exempted transactions ("**Exempted Transaction Rules**"). The Competition Commission of India ("**CCI**") also notified the Competition Commission of India (Combinations) Regulations, 2024 ("**Combination Regulations 2024**"). The Amendment Act, the Exempted Transaction Rules and the Combination Regulations 2024 have come into effect from September 10, 2024. A quick snapshot of the key provisions that have been notified are:

Deal value thresholds and it's computation:

The Amendment Act introduced a provision on deal value threshold ("**DVT"**) pursuant to which, a transaction which is not notifiable to the CCI basis existing jurisdictional thresholds (asset and turnover criteria), would be notifiable if: (a) the value of the transaction exceeds INR 2,000 crore (Indian Rupees two thousand crore) (approx. USD 240,000,000 (US Dollars two hundred and forty million)); and (b) the target enterprise has '*substantial business operations in India*' ("**SBOI**"). The Combination Regulations 2024 set out the methodology for assessing the '*value of transaction*' and scope of the SBOI.

1. **Value of the transaction:** The value of the transaction must include '*every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise*'.
2. **SBOI:** The target enterprise will be deemed to have SBOI if:
   a) target's gross merchandise value ("**GMV**") for the 12 (twelve) months preceding the trigger event in India is 10% or more of its global GMV and more than INR 500,00,00,000 (Indian Rupees five hundred crore) (approx. USD 60,000,000 (US Dollars sixty million)) in India; or
   b) target's turnover during the preceding financial year, in India is 10% or more of its global turnover derived from all products and services and more than INR 500,00,00,000 (Indian Rupees five hundred crore) (approx. USD 60,000,000 (US Dollars sixty million)) in India.

For digital services[1]:

1. 10% or more of the target's business users or end users are in India; or
2. the target's GMV in India in the 12 (twelve) months preceding the trigger event is 10% or more of its global GMV; or
3. the target's turnover in India, in the preceding financial year is 10% or more of its global turnover.

All deals which were signed prior to September 10, 2024, but have not been consummated or have been partly consummated, will need to be assessed for the applicability of DVT.

Standard of 'control' diluted

The interpretation of the term 'control' forms one of the cornerstones of the merger control rules. The Amendment Act codifies '*material influence*' as a standard for control. CCI, by way of its decisional practice, clarified that control includes *'material influence'* in addition to *de facto* and *de jure* control and interpreted it as the presence of factors that enable an entity to influence the affairs and management of another enterprise. These factors include majority shareholding, veto rights (attached to minority shareholding), board representation, contractual covenants, etc.

No standstill obligations for on-market purchase

The Amendment Act permits the implementation of open offers or on-market purchases subject to certain conditions. The Combination Regulations 2024 clarify that in the case of such transactions:

1. the acquirer must notify the transaction within 30 (thirty) calendar days from the date of first acquisition of shares pursuant to an open offer or completion of such on-market purchases;[2]
2. the acquirer can exercise the following rights prior to receipt of the CCI approval:
   a) availing economic benefits such as dividends or any other distribution, subscription to rights issue, bonus shares, stock-splits and buy-backs; or
   b) exercising voting rights only in matters relating to liquidation and/or insolvency proceedings.

However, the acquirer and its group entities cannot exercise any influence on the target enterprise in any manner.

Reduced approval timelines

CCI now has 30 (thirty) calendar days (formerly 30 (thirty) working days) to form a *prima facie* view on a notified transaction. Where CCI fails to give a *prima facie* opinion on a transaction within 30 (thirty) calendar days, such transaction will be deemed to be approved. The overall timeline is also reduced from 210 (two hundred and ten) calendar days to 150 (one hundred and fifty) calendar days. These timelines can be extended if the information submitted in the merger notification is incomplete or the CCI requires additional information for its review.

Increased filing fee

The Combination Regulations 2024 have increased the filing fees for form I (short form) and form II (long form).

Type of notification form	Existing fee	Revised fee

[1] Digital service means the provision of a service or one or more pieces of digital content, or any other activity by means of an internet whether for consideration or otherwise to the end user or business user, as the case may be.

[2] In case of a series of on-market purchases, 30 (thirty) calendar days will be counted from the first on-market purchase transaction.

Form I	INR 20,00,000 (approx. USD 23,955)	INR 30,00,000 (approx. USD 35,933)
Form II	INR 65,00,000 (approx. USD 77,854)	INR 90,00,000 (approx. USD 107,797)

Definition of Affiliate modified

The Exempted Transaction Rules modify the definition of 'affiliate' which is relevant for the assessment of overlaps as well as determination of the Green Channel route.

Earlier definition	Revised definition
Direct or indirect shareholding of 10% or more; or	10% or more of the shareholding or voting rights of the enterprise; or
Right or ability to nominate a director or an observer to the board; or	Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; or
Right or ability to exercise any special right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder.	Right or ability to access commercially sensitive information (CSI) of the enterprise.

Exempted Transactions

The following categories of transactions will not require approval from the CCI. These rules replace the categories of transaction mentioned in (erstwhile) Schedule I of the Combination Regulations:

1. **Transactions in ordinary course of business**:
   a) acquisition of less than 25% of the total shares or voting rights of a target enterprise by an underwriter or a stockbroker; and
   b) acquisition of less than 10% of the total shares or voting rights of a target enterprise by a mutual fund.
2. **Acquisition of not more than 25% shareholding/voting rights**: Acquisition of shares or voting rights of not more than 25% of a target enterprise not leading to acquisition of control of a target enterprise qualify as 'solely as an investment' ("**SAI**") if:
   a) the acquirer does not acquire the right to appoint a director or an observer on a target enterprise; and
   b) the acquirer does not acquire the right to access CSI of a target enterprise; and
   c) there are no overlaps[3] between the business activities of the acquirer group (including its affiliates) and the target enterprise (including its affiliates) (together as "**Parties**") in India.

   In case of acquisition of less than 10%, CCI will not consider the overlaps between the Parties and hence, the benefit of this exemption can be availed, subject to other 2 (two) conditions being met.

[3] Horizontal or vertical or complementary overlap.

3. **Acquisition of additional shareholding/creeping acquisition**:

   Scenario 1: Not leading to more than 25% shareholding/voting rights:

   Exempts acquisition of additional shares or voting rights of a target enterprise by an existing shareholder or its group provided, the acquirer or its group:

   a) post the acquisition, does not hold more than 25% shares or voting rights of target enterprise; and

   b) does not acquire:

      i) control of a target enterprise;

      ii) right or ability to appoint a director or an observer on the board for the first time; and

      iii) right or ability to access CSI for the first time except where the acquirer or its group already has the right or ability to appoint a director.

   It is clarified that, in case of overlaps between the business activities of the Parties:

   a) the exemption will be available, provided the additional/incremental shareholding acquired by a single or a series of smaller acquisitions does not exceed 5%.

   b) the exemption will not be available, in cases where the additional/incremental shareholding exceeds 5%; or the shareholding of the acquirer or its group crosses 10%because of the additional/incremental acquisition .

   Scenario 2: Holds 25% or more but not leading to 50% or more shareholding/voting rights:

   Exempts acquisition of additional shares or voting rights, wherein prior to the acquisition, the acquirer or its group holds at least 25% and post the acquisition, they do not hold 50% or more, provided the acquisition does not result in change in control of a target enterprise.

   Scenario 3: Holds 50% or more and acquiring additional shareholding or voting rights:

   Exempts acquisition of shares or voting rights, wherein prior to the acquisition, the acquirer or its group holds at least 50%, provided the acquisition does not result in change in control of a target enterprise.

4. **Asset acquisitions**: Exempts acquisition of:

   a) current assets (such as stock-in-trade, raw materials, stores and spares, trade receivables, etc.), provided these assets do not constitute the business of a target enterprise; and

   b) assets not related to acquirer's business activity or made SAI, not leading to control of a target enterprise selling the assets, provided these assets do not represent the substantial business operations of a target enterprise.

5. **Rights/bonus issue, buyback and stock splits**: Exempts acquisition of shares pursuant to bonus issue, stock splits, consolidation of the face value of shares, buybacks or rights issue provided that such acquisition does not result in change in control of a target enterprise.

6. **Intra-group transactions:** Exempts intra-group: (a) mergers and amalgamations; and (b) asset acquisitions, provided that there is no change in control of a target enterprise. However, no specific exemption for intra-group acquisition of shares/ voting rights is provided.

7. **Demergers:** Exempts demergers where the resulting company issues shares to the demerged company (or its shareholders) in proportion to their existing shareholding in the demerged company.

8. **Acquisition pursuant to merger remedies:** Exempts acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI in accordance with its order directing remedies/modifications.

Producer company gets extension of time to dematerialise its shares under the new amended Companies (Prospectus and Allotment of Securities) Rules, 2014

MCA, *vide* notification dated September 20, 2024, has notified certain amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**Principal Rules**").

Rule 9B (2) of the Principal Rules, states that a private company (other than a small companies), which as on last day of a financial year, ending on or after March 31, 2023, must, within 18 (eighteen) months of closure of such financial year, issue the securities only in dematerialised form and facilitate dematerialisation of all its securities in accordance with the provisions of the Depositories Act, 1996 and regulations made thereunder. A proviso has been inserted to this Rule 9B (2), stating that a producer company within a period of 5 (five) years of closure of such financial year, must comply with the provisions prescribed under Rule 9B (2) of the Principal Rules.

JSA UPDATES

Royalty under the Mines and Minerals (Development and Regulation) Act, 1957 is not 'tax'

On July 25, 2024, a 9 (nine) judge Constitution Bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in the case of ***Mineral Area Development Authority and Anr. vs. M/s Steel Authority of India and Anr. Etc.,*** by way of the majority opinion endorsed the power of States to levy tax and cesses on mining and mineral use activities. In a nutshell, it held that:

1. royalty under the Mines and Minerals (Development and Regulation) Act, 1957 is not in the nature of 'tax'. It is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights;
2. the liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;
3. the legislative power to tax mineral rights lies with the State legislatures. However, this right may be limited by the Parliament; and
4. States can adopt the mineral value of land as basis for levying tax on land and buildings, since this is an independent taxing power of States.

For a detailed analysis, please refer to the JSA Prism of September 4, 2024.

Supreme Court upholds the restrictive scope of its appellate jurisdiction under Section 125 of the Electricity Act, 2003

On August 27, 2024, the Supreme Court has rendered its final Judgment in ***Bangalore Electricity Supply Company Limited and Ors. vs. Hirehalli Solar Power Project LLP and Ors*. & Batch** ("**Judgment**"), wherein it has, *inter alia*:

1. reiterated that the scope of its jurisdiction under Section 125 of the Electricity Act, 2003 ("**Electricity Act**") is restricted only to deciding *"substantial questions of law"*;
2. reiterated that force majeure provisions in contracts are governed by Section 32 of the Indian Contract Act, 1872 ("**Contract Act**") and not Section 56 of the Contract Act; and
3. directed that late payment surcharge ("**LPS**") is explicitly rooted in the Power Purchase Agreements ("**PPA**s"), and hence, is in furtherance of the intention of the parties. Therefore, direction for payment of LPS need not be separately pleaded.

In doing so, the Supreme Court dismissed the civil appeals and upheld an order passed by the Appellate Tribunal for Electricity ("**APTEL**") grating extension of the Scheduled Commissioning Date ("**SCD**") of the Solar Power Project ("**Project**"). Consequently, the tariff payable to Solar Power Developers ("**SPDs**") was restored to INR 8.40 (Indian Rupees eight Paise forty) per unit.

For a detailed analysis, please refer to the JSA Prism of September 6, 2024.

Supreme Court clarifies that an application seeking extension of arbitral tribunal's mandate under Section 29A of the Arbitration and Conciliation Act, 1996 can be filed even after the expiry of the mandate

In the recent case of ***Rohan Builders vs. Berger Paints*** ("**Rohan Builders Case**"), the Supreme Court has conclusively settled the long-standing issue concerning the time of filing an application for extension of time to render an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). While deciding the issue in the affirmative, the Supreme Court ruled that such an application can be filed even after the expiry of the prescribed time period.

For a detailed analysis, please refer to the JSA Prism of September 25, 2024.

Applicability of Section 5 of the Limitation Act, 1963 *vis-à-vis* the Maharashtra Stamp Act, 1958 to condone delay in stamp duty refund applications

A 2 (two) judge bench of the Hon'ble Bombay High Court ("**Bombay HC**") in ***Nanji Dana Patel vs. State of Maharashtra, Through Government Pleader and Others*** has upheld the applicability of Section 5 of the Limitation Act, 1963 ("**Limitation Act"**) to the Maharashtra Stamp Act, 1958 ("**Stamp Act"**) for the purpose of condoning delay in filing of refund application. The Bombay HC noted that there is nothing in the Stamp Act that excludes the applicability of the Limitation Act. Accordingly, the delay in filing the application for a refund was condoned, and the matter was remanded to the Inspector General of Registrar and Controller of Stamps to be considered *de novo* on merits, with a specific deadline of October 31, 2024.

For a detailed analysis, please refer to the JSA Prism of September 13, 2024.

Pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 is mandatory to file a counterclaim in a commercial suit

The single bench of the Hon'ble High Court of Delhi in ***Aditya Birla Fashion and Retail Limited vs. Saroj Tandon*** has held that pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 is a mandatory requirement, even in respect of counterclaims in a commercial dispute.

For a detailed analysis, please refer to the JSA Prism of September 20, 2024.

Seatbelt is the primary restraint mechanism in a vehicle and if a seat belt is not worn, the airbag would not deploy

In a significant judgment on the law relating to product liability in India, the Hon'ble National Consumer Disputes Redressal Commission ("**National Commission**") in the matter of ***Mohd. Hyder Khan vs. Mercedes-Benz India Private Limited and Anr.***, has ruled that an allegation of manufacturing defect must be established by cogent evidence and that compliance with Section 13(1)(c) of the Consumer Protection Act, 1986 is mandatory. The National Commission's judgment puts to rest and clarifies certain key aspects regarding functioning of airbags. It also

underscores the importance of seatbelts and that a vehicle's deformation pattern alone (i.e., physical damage) cannot be a deciding factor in airbag deployment.

For a detailed analysis, please refer to the JSA Prism of September 25, 2024.

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 emphasise 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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Associate

18 Practices and
25 Ranked Lawyers

7 Ranked Practices,
16 Ranked Lawyers

Elite – Band 1 -
Corporate/ M&A Practice
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3 Band 1 Practices
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4 Band 1 Lawyers,1 Eminent Practitioner

12 Practices and
42 Ranked Partners
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Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

14 Practices and
38 Ranked Lawyers

20 Practices and
22 Ranked Lawyers

Ranked Among Top 5 Law Firms in India for ESG Practice

Recognised in World's 100 best competition practices of 2024

Among Top 7 Best Overall Law Firms in India and
11 Ranked Practices
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11 winning Deals in IBLJ Deals of the Year
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Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024

Energy and Resources Law Firm of the Year 2024

Litigation Law Firm of the Year 2024

Energy - Law Firm of the Year (APAC)

7 Practices and
3 Ranked Lawyers

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