January 2025

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Guidelines for Research Analysts/Investment Advisers

SEBI, *vide* circulars dated January 8, 2025, has prescribed the guidelines to be adhered to by Research Analysts ("**RAs**")/Investment Advisers ("**IAs**"), pursuant to the SEBI (Research Analysts) (Third Amendment) Regulations, 2024 and SEBI (Investment Advisers) (Second Amendment) Regulations, 2024, respectively. Some of the key provisions are as follows:

1. the deposit to be maintained by RAs/IAs, will be based on the maximum number of clients of the RA/ IA on any day of the previous financial year, as follows: (a) up to 150 clients - INR 1,00,000 (Indian Rupees one lakh); (b) 151 to 300 clients - INR 2,00,000 (Indian Rupees two lakh); (c) 301 to 1,000 clients - INR 5,00,000 (Indian Rupees five lakh); (d) 1,001 clients and above - INR 10,00,000 (Indian Rupees ten lakh). The deposit amounts made by RAs are required to be maintained with a scheduled bank and marked as a lien in favour of the RA Administration and Supervisory Body ("**RAASB**"), while deposits made by IAs are required to be marked as lien in favour of the Investment Adviser Administration and Supervisory Body ("**IAASB**"). Existing RAs are required to ensure compliance with these deposit requirements by April 30, 2025, while the date to ensure compliance for existing IAs is June 30, 2025;

2. a partnership firm registered as a RA/IA, where no partner of the firm has the minimum qualification and certification requirements provided under the respective principal regulations, must apply for registration as a RA/IA in the form of a limited liability partnership or a body corporate by September 30, 2025;

3. RAs/research entities and IAs are required to disclose to their clients the extent of use of artificial intelligence tools in providing research services/investment advice at the time of disclosing the terms and conditions of the research services/entering into the agreement and make such additional disclosure whenever required. In the context of existing clients, RAs/IAs are required to comply with this disclosure requirement by April 30, 2025; and

4. IAs may also provide financial planning services to their clients, which may include investment advice related to products or services not under the purview of SEBI. When providing investment advice in relation to such products and services not under the purview of SEBI, the IA is required to make a disclosure to the client and take appropriate declarations and undertakings from the client that such products/services and the services of the IA in respect of such products/services do not come under regulatory purview of SEBI and that no recourse is

available to the client, with SEBI, for their grievances related to such products/services or services of the IA in respect of such products/services.

Revised and revamped nomination facilities in the Indian securities market

SEBI, *vide* circular dated January 10, 2025, has revised the norms for nomination for demat accounts and Mutual Fund ("**MF**") folios, with the intention of preventing the generation of unclaimed assets in the Indian securities market. The circular is divided into 2 (two) sections, with section A reiterating the existing norms to ensure a uniform approach across the securities market, and section B providing the revamped norms. Some of the key provisions of section B are as follows:

1. investors must provide personal identifiers of nominee(s), which is limited to Permanent Account Number, driving license number or the last 4 (four) digits of Aadhaar;
2. investors can nominate up to 10 (ten) persons in the account/folio;
3. power of attorney holder(s) of the investor cannot nominate;
4. upon transmission of joint account/folio, the nominees must have the option to either continue as joint holders with the other nominees or open separate single account/folio for their respective portion;
5. nominees are required to act on behalf of incapacitated investors. The regulated entity will provide the investors having single holding/account/folio, the option to:
    a) empower, any 1 (one) of the nominees (excluding minor nominee) to operate the investor's account/folio, if the investor is physical incapacitated, but still has the capacity to contract;
    b) specify either the percentage or absolute value of assets in the account/folio that can be encashed by such nominee; and
    c) change the mandate of the nominee any number of times without any restriction;
6. direction to Asset Management Companies ("**AMCs**") of MFs, their registrars to an issue and share transfer agents, and depository participants, for operation of accounts in case of an incapacitated investor are:
    a) an officer of the regulated entity must visit the incapacitated investor in person to ascertain that the investor has the capacity to contract;
    b) for uniformity in dealing with incapacitate investors and those with special needs or sick or old investors in the securities market, the depositories and Association of Mutual Funds in India ("**AMFI**") will place a common standard operating procedure; and
    c) the power of attorney holder of an investor can continue to transact in the account/folios of an investor, subject to the applicable norms;
7. for transmission of assets to the registered nominee(s), the regulated entity will require self-attested copy of death certificate of the deceased investor; due completion, updating or reaffirming of the Know Your Customer ("**KYC**") of nominee/s; due discharge from the creditors if there are subsisting credit facilities secured by a duly created pledge;
8. the regulated entities must transfer assets from the nominee(s) to the legal heir(s) of an investor, when approached by either party and must obtain suitable declaration from the nominee(s) while effecting transmission;
9. regulated entities must have the prescribed online mechanism for existing and new investors, who want to opt-out of nomination; and
10. Annexure – A of the circular provides the format for nomination form for demat accounts and MF folios.

This circular will come into effect from March 1, 2025. Upon implementation of this circular, existing investors will be provided with the opportunity to revise their choice of nomination.

Timeline for review of Environmental, Social, and Governance rating pursuant to occurrence of 'material events'

SEBI, *vide* circular dated January 17, 2025, has provided relaxations to ESG Rating Providers ("**ERPs**") in the timeline prescribed for review of Environmental, Social, and Governance ("**ESG**") ratings under the Master Circular for ESG Rating Providers. The relaxation comes pursuant to ERPs having highlighted operational challenges faced in undertaking the review of a large number of listed companies post the publication of Business Responsibility and Sustainability Reporting ("**BRSR**") by such companies. Accordingly, ERPs must carry out a review of the ESG ratings upon the occurrence of or announcement/news of material developments immediately, but not later than 10 (ten) days of occurrence of the said event. However, review of the ESG rating pursuant to publication of BRSR by the rated entity must be carried out immediately, but not later than 45 (forty-five) days of the publication of the BRSR.

Disclosure of 'Risk Adjusted Return'

SEBI, *vide* circular dated January 17, 2025, has directed AMCs to disclose the Information Ratio ("**IR**") for equity-oriented MF schemes, ensuring transparency in Risk Adjusted Return ("**RAR**"). To bring more transparency in disclosures made by AMC and aid better decision making by investors, the proposal of disclosure of IR as a financial metric to measure the RAR of a scheme portfolio, was placed for public consultation and deliberated in MF Advisory Committee ("**MFAC**"). Basis the recommendations, some of the key aspects decided upon are as follows:

1. MFs/AMCs must disclose the IR of a scheme portfolio on their website along with a performance disclosure, on a daily basis;
2. AMFI must ensure that such disclosures are made available on its website in a comparable, downloadable (spreadsheet) and machine readable format;
3. to bring uniformity across varied MFs, the SEBI circular prescribes the formula to be used for calculation of IR, including the "benchmark" to be used and method of calculation of daily portfolio return;
4. to ensure a better understanding of IR by investors, adequate steps must be undertaken by AMCs and AMFI to educate investors about RAR, IR and their significance in scheme performance evaluation; and
5. disclosures of IR provided on the websites of AMCs and AMFI are to be in the format as prescribed by SEBI.

This circular will come into force on April 17, 2025.

Format of due diligence certificate to be given by the debenture trustees

Pursuant to the SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2024, SEBI, *vide* circular dated January 28, 2025, has outlined the due diligence certificate format for Debenture Trustees ("**DTs**") handling unsecured debt securities. The following is specified in case of unsecured debt securities:

1. at the time of filing the draft offer document with the stock exchanges, the issuer must submit to the stock exchange, a due diligence certificate obtained from the DT as per the format specified in Annex–A of the aforesaid circular; and
2. at the time of filing of listing application, the issuer must submit to the stock exchange, a due diligence certificate obtained from the DT as per the format specified in Annex–B of the aforesaid circular.

RESERVE BANK OF INDIA (RBI)

Streamlining the methods of payment and reporting for investments by persons residing outside India

RBI, *vide* notification dated January 15, 2025, has issued the Foreign Exchange Management (Mode of Payment and Reporting of Non- Debt Instruments) (Third Amendment) Regulations, 2025, amending the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, in relation to mode of payment and remittance of sale proceeds for persons resident outside India. Accordingly, 'banking channels' will include any Rupee vostro accounts, including special Rupee vostro accounts, permitted to be held by a person resident outside India under Foreign Exchange Management (Deposit) Regulations, 2016 ("**Deposit Regulations**"). Some of the key provisions are:

1. for purchase or sale of equity instruments of an Indian company by a person resident outside India:
    a) the amount of consideration must be paid as inward remittance from abroad through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations;
    b) the amount of consideration includes issue of equity shares by an Indian company against any funds payable by it to the investor and swap of equity instruments or equity capital. Equity instruments must be issued to the person resident outside India making such investment within 60 (sixty) days from the date of receipt of the consideration;
    c) if such equity instruments are not issued within 60 (sixty) then the investment amount will be refunded to the person concerned by outward remittance through banking channels or by credit to his repatriable foreign currency or Rupee account, within 15 (fifteen) days from the date of completion of 60 (sixty) days;
    d) Indian company issuing equity instruments may open a foreign currency account with an authorised dealer in India in accordance with Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016; and
    e) sale proceeds (net of taxes) of the equity instruments may be remitted abroad or credited to the investor's repatriable foreign currency or Rupee account maintained as per the Deposit Regulations;
2. investment by Foreign Portfolio Investors ("**FPIs**"):
    a) the amount of consideration will be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee ("**SNRR**") account maintained in accordance with the Deposit Regulations;
    b) the foreign currency account must be used exclusively for transactions under Schedule II of Foreign Exchange Management (Non- Debt Instruments) Rules, 2019; and
    c) sale proceeds (net of taxes) of equity instruments and units of Real Estate Investment Trusts ("**REITs**"), Infrastructure Investment Trusts ("**InvITs**") and domestic MF may be remitted outside India/credited to the foreign currency account/SNRR account of the FPI;
3. investment in a Limited Liability Partnership ("**LLPs**"):
    a) payment by an investor towards capital contribution of an LLP will be made by way of an inward remittance through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations; and
    b) the disinvestment proceeds may be remitted outside India or may be credited to any repatriable foreign currency or Rupee account of the person concerned maintained as per the Deposit Regulations;

4. investment by a Foreign Venture Capital Investor ("**FVCI**"):
    a) the amount of consideration will be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a SNRR account maintained in accordance with the Deposit Regulations; and
    b) the sale/maturity proceeds (net of taxes) of the securities may be remitted outside India or may be credited to the foreign currency account or a SNRR account of the FVCI;
5. investment by a person resident outside India in an investment vehicle:
    a) the amount of consideration will be paid by the person concerned as inward remittance from abroad through banking channels or by way of swap of shares of a special purpose vehicle or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations; and
    b) the sale/maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to any repatriable foreign currency or Rupee account of the person concerned, maintained in accordance with the Deposit Regulations;
6. investment in Indian Depository Receipts ("**IDRs**"):
    a) the regulations cater to specific categories of investors, such as Non-Resident Indians ("**NRIs**"), Overseas Citizens of India ("**OCIs**"), and FPIs, outlining distinct payment methods. NRIs/OCIs may invest in the IDRs out of funds held in their Non-Resident External (NRE)/Foreign Currency Non-Resident (FCNR) bank account, while FPIs can utilise foreign currency or SNRR accounts, maintained in accordance with the Deposit Regulations; and
    b) redemption/conversion of IDRs into underlying equity shares of the issuing company must be in compliance with the Foreign Exchange Management (Overseas Investment) Rules, 2022;
7. issue of convertible notes by an Indian start-up company
    a) Indian startups issuing convertible notes to a person resident outside India must receive the amount of consideration by inward remittance through banking channels or by debit to any repatriable foreign currency or Rupee account of the person concerned, maintained in accordance with the Deposit Regulations; and
    b) repayment or sale proceeds may be remitted outside India or credited to any repatriable foreign currency or Rupee account of the person concerned.

Simplifying fund transfers for non-residents with business interests in India

RBI, *vide* notification dated January 15, 2025, has issued the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025, amending the Deposit Regulations. Some of the key provisions are:

1. authorised dealers in India and their branches abroad can accept deposits from persons resident outside India;
2. the transfer of funds, for all bona fide transactions, between repatriable Rupee accounts maintained in accordance the Deposit Regulations is permitted; and
3. amendments made to SNRR accounts:
    a) non-residents with business interests in India can open SNRR account with an authorised dealers in India or their overseas branches for the purpose of putting through permissible current and capital account transactions with a person resident in India in accordance with the rules and regulations framed under the Foreign Exchange Management Act, 1999 ("**FEMA**"), and for putting through any transaction with a person resident outside India;

b) units in International Financial Services Centres ("**IFSCs**") can open SNRR accounts with an authorised dealer in India (outside IFSC) for their business-related transactions outside IFSC; and

c) the tenure of the SNRR account must be concurrent to the tenure of the contract/period of operation/the business of the account holder.

Flexibility provided to exporters in managing their foreign currency account

RBI, *vide* notification dated January 15, 2025, has issued the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025, amending the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015, in relation to opening, holding and maintaining a foreign currency account outside India. A person resident in India, being an exporter, may open, hold and maintain a foreign currency account with a bank outside India, for realisation of full export value and advance remittance received by the exporter towards export of goods or services. Funds in this account may be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds after adjusting for forward commitments, provided that the realisation and repatriation requirements under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 are met.

Steps to encourage cross border transactions in Indian Rupees

RBI, *vide* press release dated January 16, 2025, promotes settlement of cross border transactions in Indian Rupees and local/national currencies. The following changes have been made in the extant FEMA regulations:

1. overseas branches of authorised dealer banks will be able to open Indian Rupee ("**INR**") accounts for a person resident outside India for settlement of all permissible current account and capital account transactions with a person resident in India;
2. persons resident outside India will be able to settle bona fide transactions with other persons resident outside India using the balances in their repatriable INR accounts such as SNRR account and special Rupee vostro account;
3. persons resident outside India will be able to use their balances held in repatriable INR accounts for foreign investment, including FDI, in non-debt instruments; and
4. Indian exporters will be able to open accounts in any foreign currency overseas for settlement of trade transactions, including receiving export proceeds and using these proceeds to pay for imports.

Guidelines on settlement of dues of borrowers by Asset Reconstruction Companies

RBI *vide* circular January 20, 2025, has prescribed guidelines on settlement of dues payable by the borrowers of Asset Reconstruction Companies ("**ARCs**"). Some of the key provisions are as follows:

1. ARCs are mandated to frame a board-approved policy for settlement. The board-approved policy must, *inter alia*, cover aspects such as cut-off date for one-time settlement eligibility, permissible sacrifice for various categories of exposures while arriving at the settlement amount, methodology for arriving at the realisable value of the security;
2. the net present value of the settlement amount should be not less than the realisable value of securities;

3. it is recommended that settlement payments be made in one lump sum. However, if borrowers cannot pay the entire amount agreed upon in one instalment, the settlement proposal should be in line with and supported by an acceptable business plan (where applicable), projected earnings and cash flows of the borrower;

4. settlement of accounts pertaining to a borrower having aggregate value of more than INR 1,00,00,000 (Indian Rupees one crore) in terms of outstanding principal in the books of transferor/s at the time of acquisition by the ARC must be done as per board-approved policy, subject to the following conditions:

   a) the borrower's dues settlement proposal must be reviewed by an Independent Advisory Committee ("**IAC**"), consisting of professionals with technical, finance, and legal backgrounds. The IAC after assessing the borrower's financial position, recovery timeline, and projected earnings, must give its recommendations to the ARC regarding settlement of the dues; and

   b) the board of directors, including independent directors (at least 2 (two)) or a committee, considers the IAC's recommendations and decides on the settlement. This decision, along with the reasoning behind it, must be formally recorded;

5. settlement of accounts pertaining to a borrower having aggregate value of INR 1,00,00,000 (Indian Rupees one crore) or below in terms of principal outstanding in the books of transferor/s at the time of acquisition by the ARCs must follow the criteria set in their board-approved policy subject to the following:

   a) any official who was part of the acquisition (as an individual or part of a committee) of the concerned financial asset must not be part of processing/approving the proposal for settlement of the same financial asset, in any capacity; and

   b) a quarterly report on such settlements will be submitted to the board/IAC. The board is required to establish a reporting format that covers the trend in accounts subjected to compromise settlement, separate breakdown of accounts classified as fraud or wilful default, amount-wise, acquisition authority-wise, and business segment/asset-class-wise grouping of such accounts, and the extent and timelines of recovery in such accounts;

6. settlement of dues payable by the borrowers classified as frauds/wilful defaulters will be done, regardless of the amount involved, and ARCs can proceed with such settlements without affecting ongoing criminal proceedings against such borrowers; and

7. ARCs pursuing recovery proceedings under a judicial forum must obtain a consent decree from the relevant judicial authorities before any settlement with the borrower is made.

   Accordingly, Para 15 (*Settlement of dues payable by the borrower*) of the Master Direction – RBI (ARCs) Directions, 2024 is amended.

Private placement of non-convertible debentures with maturity period of more than one year by Housing Finance Companies

RBI, *vide* circular dated the January 29, 2025, has modified the Master Direction – Non-Banking Financial Company – Housing Finance Companies (Reserve Bank) Directions, 2021 stating that the guidelines applicable to NBFCs for issuance of non-convertible debentures ("**NCDs**") on private placement basis (with a maturity of more than 1 (one) year) will *mutatis mutandis* apply to Housing Finance Companies ("**HFCs**"). Accordingly, the existing guidelines under Chapter XI of the Master Direction – Non-Banking Financial Company – HFC (Reserve Bank) Directions, 2021 stand repealed. The revised guidelines are applicable to all fresh private placements of NCDs (with maturity more than 1 (one) year) by HFCs from January 29, 2025.

Framework for imposing monetary penalty and compounding of offences under the Payment and Settlement Systems Act, 2007

RBI, *vide* circular dated January 30, 2025, has updated its framework for imposing monetary penalties and compounding offences under the Payment and Settlement Systems Act, 2007 ("**PSS Act**") in view of the Jan Vishwas (Amendment of Provisions) Act, 2023. Some of the key provisions are as follows:

1. the framework outlines various contraventions that can result in penalties, such as unauthorised operation of payment systems, false statements, failure to comply with RBI directions, disclosure of prohibited information, non-compliance with data storage norms and contravention of any provisions of the PSS Act or any of it requirements;
2. RBI is empowered to impose a penalty not exceeding INR 10,00,000 (Indian Rupees ten lakh) (*earlier this was INR 5,00,000 (Indian Rupees five lakh)*) or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, in case of contraventions/defaults of the nature mentioned in sub-sections (2), (3) and (6) of section 26 of the PSS Act. Where such contravention or default is a continuing one, a further penalty up to INR 25,000 (Indian Rupees twenty five thousand) for every day after the first during which the contravention or default continues, can also be imposed;
3. only material contraventions will be taken up for enforcement action in the form of imposition of monetary penalty or compounding of offences. The materiality of a contravention would be determined based on various factors including:
    a) severity of contravention in terms of degree of breach of norms/limits (isolated, localised, extensive, widespread);
    b) period and frequency of a similar contravention during the past 5 (five) years;
    c) seriousness of the contravention, percentage of amount involved in the contravention vis-à-vis total value of transactions handled by the contravener during the period under consideration;
    d) amount involved in the contravention; and
    e) submission of wrong/false/incomplete compliance;
4. RBI is duly authorised to compound contraventions, not being an offence punishable with imprisonment only or with imprisonment and fine. Accordingly, contraventions mentioned in Sections 26 (1), 26 (3), 26 (4), 26 (5) and 26 (6) of the PSS Act are covered for the purpose of compounding;
5. the compounding amount for penalties will be calculated using the same basis as penalties. It can be 25% less than the fine/penalty amount imposed under the PSS Act. If repeated contraventions occur within 5 (five) years, compounding can be increased by 50% of the calculated amount, subject to statutory limits. This is in line with the principles of penalties; and
6. in the event of failure to pay the compounding amount within the stipulated time of 30 (thirty) days, it will be deemed/treated as if the contravention has not been compounded, and the applicant may become liable for being criminally proceeded with before the court of competent jurisdiction and/or such other action as the RBI may deem fit in accordance with law. Further, the applicant would not be entitled to file another application for compounding the contravention in respect of which the compounding order was passed.

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MeitY)

MeitY releases draft Digital Personal Data Protection Rules, 2025

On January 3, 2025, MeitY issued a draft of the Digital Personal Data Protection Rules, 2025 ("**Draft Rules**") for public consultation, with public feedback submissions due by February 18, 2025. The Draft Rules provide clarifications on the implementation of the Digital Personal Data Protection Act, 2023 ("**DPDPA**"). Most notably, the Data Protection Board of India, which is the oversight agency under the DPDPA, will be constituted after the final rules are notified, following the conclusion of public consultation. Other provisions of the DPDPA will come into effect at a later stage, on such dates that will be specified in the final rules.

For a detailed analysis, please refer to the JSA Prism of January 6, 2025.

MINISTRY OF HOME AFFAIRS (MHA)

Extension of the validity of Foreign Contribution (Regulation) Act, 2010 registration certificates

MHA, *vide* public notice dated December 27, 2024, has extended the validity of registration certificates of the following categories of entities registered under the Foreign Contribution (Regulation) Act, 2010 ("**FCRA**"):

1. registered entities whose validity was previously extended till December 31, 2024, will stand extended till March 31, 2025; and
2. registered entities whose 5 (five) years validity period is expiring during the period of January 1, 2025, to March 31, 2025, and who have applied/will apply for renewal before the said expiry period, will stand extended up to March 31, 2025, or till the date of disposal of renewal application, whichever is earlier.

In the event of a refusal of the application for renewal of the certificate of registration of a registered entity, the validity of the certificate of registration will be deemed to have expired on the date of refusal of the application. Pursuant to such refusal, the previously registered entity will no longer be eligible to receive foreign contribution or utilise the foreign contribution received.

Intimation of foreign contribution by the recipient

MHA, *vide* notification dated December 31, 2024, has issued the Foreign Contribution (Regulation) Amendment Rules, 2024 ("**Amendment Rules**"), amending the Foreign Contribution (Regulation) Rules, 2011. As per the Amendment Rules, associations are permitted to carry forward the unspent portion of administrative expenses to the next financial year, after mentioning the reasons for such non-utilisation under Form FC-4. Consequently, Form FC-4, regarding intimation of foreign contribution by the recipient, is modified to include:

1. 'Transfer of Foreign Contribution part of income-tax refund from non-FCRA bank account', under the details of receipt of foreign contribution; and
2. 'Carry forward of unspent part of allowable administrative expenses in a financial year', under details of unutilised foreign contribution.

Penal action against non-governmental organisations receiving foreign funds without valid FCRA certificate

With regards to receipt or utilisation of foreign contribution without valid FCRA registration, in violation of provisions of the FCRA, MHA vide, public notice dated January 21, 2025, has warned that any transaction in FCRA accounts/FCRA utilisation accounts of non-governmental organisations whose FCRA certificate has been cancelled or ceased or the validity has expired would amount to violation of the FCRA and is liable for penal actions.

JSA UPDATES

The Supreme Court observes that it must specify whether a judgment is passed as a decision *inter se* parties or binding precedent

The Hon'ble Supreme Court of India ("**Supreme Court**") in a recent judgement dated January 10, 2025, in ***NBCC (India) Ltd. vs. State of West Bengal and Ors.***, referred the issue of whether a Micro, Small and Medium Enterprises ("**MSME**") can refer a dispute to the Micro and Small Enterprises Facilitation Council ("**Facilitation Council**") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**") regarding execution of a contract which was entered when the said MSME was not registered as an MSME under Section of the MSME Act to a bench consisting of 3 (three) Hon'ble Judges of the Supreme Court.

The Supreme Court observed that the question of law under consideration in the present matter was not formulated, discussed and decided in any other judgment of the Supreme Court, including the 2 (two) substantive judgments under the MSME Act, i.e. *Silpi Industries vs. Kerala State Road Transport Corporation, (2021) 18 SCC 790* and *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Private Ltd., (2023) 6 SCC 401*. The Supreme Court further observed that:

1. the Supreme Court performs twin functions of decision making and precedent-making. Every judgment or order passed by the Supreme Court in disposing of appeals is not intended to be a binding precedent under Article 141 of the Constitution of India ("**Constitution**"). However, as every judgment or order of the Supreme Court is considered as a binding precedent by the High Courts and the Subordinate Courts, it is necessary for the Supreme Court to state whether a particular decision is to resolve the dispute *inter se* parties and provide finality or whether the judgment is intended to be a binding precedent under Article 141 of Constitution; and
2. Section 18 of MSME Act is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable 'any party' to refer the dispute to seek redressal.

For a detailed analysis, please refer to the JSA Prism of January 23, 2025.

The Supreme Court clarifies that compromise decrees asserting pre-existing rights are not subject to registration or payment of stamp duty

In the recent case of ***Mukesh vs. The State of Madhya Pradesh and Anr.***, the Supreme Court adjudicated on the issue of whether compromise decrees that assert pre-existing rights necessitate registration under the Registration Act, 1908 ("**Registration Act**") and are subject to stamp duty under the Indian Stamp Act of 1899 ("**Stamp Act**"). The Supreme Court analysed Section 17(2)(vi) of the Registration Act and held that any decree or order of a court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings) would not require compulsory registration. The Supreme Court further enlisted 3 (three) conditions which are required to be satisfied to fall under the exception of Section 17(2)(vi) of the Registration Act. The Supreme Court further held that stamp duty is not chargeable on an order/decree of the court as the same does not fall within the documents mentioned in Schedule I or I-A read with Section 3 of the Stamp Act.

For a detailed analysis, please refer to the JSA Prism of January 25, 2025.

The Supreme Court grants extension of the arbitral tribunal's mandate post-expiry of such mandate and clarifies the expression 'sufficient cause' employed under Section 29(A) of the Arbitration and Conciliation Act, 1996

In the decision of ***M/s Ajay Protech Pvt Ltd vs. General Manager and Anr.***, the Supreme Court held that after *Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Ltd.*, it is a settled legal position that an application to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") can be filed after the expiry of such mandate. Further, the Supreme Court noted that the determination whether there is 'sufficient cause' to grant such extension under the provision should be done to facilitate the efficiency of the arbitration process. The Supreme Court's decision goes a long way in providing clarity on relevant considerations for assessing whether there is 'sufficient cause' for the court to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration Act.

For a detailed analysis, please refer to the JSA Prism of January 24, 2025.

The Supreme Court clarifies applicability of Limitation Act, 1963 to petitions challenging arbitral awards

On January 10, 2025, the Supreme Court delivered a landmark judgment in ***My Preferred Transformation & Hospitality Pvt. Ltd. & Anr. vs. M/s Faridabad Implements Pvt. Ltd.***, addressing the issue of limitation for filing applications to set aside arbitral awards under Section 34 of the Arbitration Act. The Court examined the interplay between the Limitation Act, 1963 and Section 34(3) of the Arbitration Act, with a particular focus on whether the additional 30 (thirty) day condonable period provided under Section 34(3) of the Arbitration Act can be extended if it expires during court vacations. This decision has significant implications for arbitration in India, clarifying the scope of judicial discretion in condoning delays under the Arbitration Act.

For a detailed analysis, please refer to the JSA Prism of January 31, 2025.

Gujarat High Court holds denial of earned leave encashment to be a violation of an employee's constitutional right

In the case of ***Ahmedabad Municipal Corporation vs. Sadgunbhai Semulbhai Solanki***, a single judge bench of the Gujarat High Court held that earned leave encashment cannot be denied by an employer and that depriving an employee of the same is a violation of his/her constitutional rights.

For a detailed analysis, please refer to the JSA Prism of January 25, 2025.

Jurisdiction of the Real Estate Regulatory Authority will not be ousted inspite of an arbitration clause in an agreement for sale

The Hon'ble Bombay High Court, while deciding a second appeal in the case of ***M/s. Rashmi Realty Builders Pvt. Ltd. vs. Mr. Rahul Rajendrakumar Pagariya and Ors.***, *inter alia* held that the jurisdiction of the Real Estate Regulatory Authority established under section 20 of the Real Estate (Regulation and Development) Act, 2016, will not be ousted notwithstanding an arbitration clause in the agreement entered into between the promoter and the allottees.

For a detailed analysis, please refer to the JSA Prism of January 16, 2025.

Karnataka High Court strikes down Central Government's Green Energy Open Access Rules and Karnataka Electricity Regulatory Commission's Green Energy Open Access Regulations as being ultra vires the Electricity Act, 2003

In a significant judgment, the Karnataka High Court, in the case of ***Brindavan Hydropower Pvt. Ltd. vs. Union of India and Ors.***, struck down Central Government's Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 and Karnataka Electricity Regulatory Commission ("**KERC**") (Terms and Conditions for Green Energy Open Access) Regulations, 2022 as being *ultra vires* the Electricity Act, 2003. This is bound to have a significant impact across the renewable energy space in the country.

For a detailed analysis, please refer to the JSA Prism of January 15, 2025.

KERC restrains distribution companies from levying Grid Support Charges on Captive Power Projects, including Solar Rooftop Photovoltaic Plants, till the commission determines such charges

On January 15, 2025, the KERC has passed an order restraining electricity supply companies from levying Grid Support Charges on Captive Power Plants including Solar Rooftop Photovoltaic Plants, till KERC determines the charges.

For a detailed analysis, please refer to the JSA Prism of January 20, 2025.

India mergers and acquisitions: Simplification of share swaps boosts structuring avenues and opportunities

Global trends reveal 'share swaps' have emerged as an attractive proposition for implementing Mergers and Acquisitions ("**M&A**") for several commercial, strategic and regulatory reasons. Several landmark transactions, both globally and in India, involving share-swap arrangements have been implemented. In India, the rules around cross-border share swaps have been considerably liberalised over the years. The era of liberalisation which started in 2015 when the foreign exchange rules permitted limited types of 'share-swaps' culminated with substantial liberalisation of the norms in 2024. Some of the remaining uncertainties have been further clarified, as recent as in January 2025. Only a handful of share-swap structures remain under the 'approval' route. This opens exciting new structuring opportunities for structuring M&A transactions, particularly for start-ups. Further, growth-stage companies with limited liquidity are often inclined towards swap routes for undertaking strategic acquisitions. The reforms are likely to provide a fillip to such companies for relocation to India ('reverse' flipping in common parlance).

For a detailed analysis, please refer to the JSA Prism of January 28, 2025.

Indian Food and Consumer Sector – The Way Forward: 2025

The food and consumer sector is a vital part of our economy as it is directly associated with inflation, impacting microeconomics on a wider scale. This sector is a bright spot, offering opportunities for global investors to join one of the fastest-growing economies in the world. With the first month of the calendar year in the books and the annual budget round the bend, this is an apt time to crystal ball gaze on what themes the remaining year could or should follow.

For a detailed analysis, please refer to the JSA Primer of January 31, 2025.

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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18 Practices and
41 Ranked Lawyers

7 Ranked Practices,
21 Ranked Lawyers

12 Practices and
50 Ranked Lawyers

14 Practices and
12 Ranked Lawyers

20 Practices and
22 Ranked Lawyers

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11 Ranked Practices
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11 A List Lawyers in IBLJ A-List - 2024

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