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Semi-Annual Corporate Law Compendium 2024

July – December 2024

Semi-Annual Corporate Law Compendium 2024

Introduction

This Compendium consolidates the key regulatory updates, notifications and developments in the corporate sector which were circulated as JSA Newsletters/Prisms during the calendar period from July 2024 till December 2024. It also consolidates the key regulatory updates, notifications and developments circulated as JSA Prisms in the real estate, media, consumer protection, financial technology and Information Technology ("**IT**") sector.

Please ***click here*** to access the Semi-Annual Corporate Laws Compendium – January 2024 to June 2024.

The Securities and Exchange Board of India

Charges levied by Market Infrastructure Institutions

The Securities and Exchange Board of India ("**SEBI**"), *vide* circular dated July 1, 2024, clarified that the charge structure of the Market Infrastructure Institutions ("**MII**") must be uniform and equal for all their members instead of the slab-wise charge which is dependent on the volume or activity of the members. It is mandatory for MIIs to comply with additional principles while designing the processes for charges levied on their members, such as:

1. MII charges to be recovered from the end client should be 'True to Label' i.e., if certain MII charge is levied on the end client by members (i.e. stock brokers, depository participants, Clearing Member ("**CM**")), it should be ensured by MIIs that the same amount is received by them;
2. the new charge structure designed by MIIs must give due consideration to the existing per unit charges realised by MIIs so that the end clients are benefitted with the reduction of charges; and
3. MIIs are directed to redesign the existing charge structure and associated processes to comply with the circular and communicate the status of implementation to SEBI.

Dispatch of consolidated account statements for all securities assets

SEBI, *vide* circular dated July 1, 2024, modified the Master Circular on Depositories ("**MCD**") dated October 6, 2023, to provide for email as the default mode of dispatch for Consolidated Account Statements ("**CAS**"). The modifications include as follows:

1. CAS are required to be dispatched by email to all the investors whose email addresses are registered with the depositories and Asset Management Companies ("**AMC**")/Mutual Funds ("**MF**") -registrar and transfer agents. Investors who prefer physical copies can opt to receive them upon request. Quarterly SMS notifications are to be sent to investors, confirming the email address used for CAS dispatch;
2. CAS are to be sent to the investor through email on monthly basis for any transaction in any of the demat accounts of the investor or in any of their MF folios; and
3. depository participants must send at least 1 (one) annual statement of holding through email in respect of accounts with no transaction and nil balance even after the account remained in such state for 1 (one) year.

Mutual Funds

Restrictions on investments

SEBI, *vide* notification dated July 2, 2024, issued the SEBI (MFs) (Amendment) Regulations, 2024 ("**Amendment Regulations**"), amending the SEBI (MFs) Regulations, 1996 ("**MF Regulations**"). The MF Regulations provide that no MF scheme can make any investment in the listed securities of group companies of the sponsor which is in excess of 25% of the net assets. The Amendment Regulations inserted an exception which provides that investments by equity-oriented exchange traded funds and index funds can be made, subject to conditions as may be specified by SEBI.

Further, SEBI, *vide* issued circular dated July 8, 2024, streamlined the prudential norm for passively managed MF schemes by providing conditions for investment in securities of group companies of the sponsor of MFs. Some of the conditions for such investments are as follows:

1. equity oriented exchange traded funds and index funds, based on widely tracked and non-bespoke indices, can make investments in accordance with the weightage of the constituents of the underlying index, subject to an overall cap of 35% of Net Asset Value ("**NAV**") of the scheme, in the group companies of the sponsor;
2. widely tracked and non-bespoke indices are those that are tracked by passive funds or act as primary benchmark for actively managed funds with collective Assets Under Management ("**AUM**") of INR 20,000 crore (Indian Rupees twenty thousand crore) and above; and
3. the list of indices based on the prescribed criteria must be determined on half yearly basis as per the specified AUM threshold as on March 31 and September 30 respectively.

AMC to identify and deter potential market abuse

SEBI, *vide* notification dated August 2, 2024, issued the SEBI (MFs) (Second Amendment) Regulations, 2024, amending the MF Regulations to include provisions relating to identification and deterrence of potential market abuse. The term 'market abuse' is defined to include manipulative, fraudulent and unfair trade practices which may contravene Section 12A of the SEBI Act, 1992 or any of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or the SEBI (Prohibition of Insider Trading) Regulations, 2015. Some of the key provisions are as follows:

1. an AMC must put in place an institutional mechanism, as may be specified by the SEBI, for the identification and deterrence of potential market

abuse including front-running and fraudulent transactions in securities;

2. the chief executive officer or managing director or such other person of equivalent or analogous rank and chief compliance officer of the AMCs are responsible and accountable for implementation of such an institutional mechanism for deterrence of potential market abuse, including frontrunning and fraudulent transactions in securities; and
3. asset AMCs must also implement a whistleblower policy providing confidential reporting channels and protection for whistleblowers.

Subsequently, *vide* circular dated August 5, 2024, SEBI directed AMCs to put in place an institutional mechanism for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities. This mechanism must consist of enhanced surveillance systems, internal control procedures, and escalation processes such that the overall mechanism is able to identify, monitor and address specific types of misconduct, including front running, insider trading, misuse of sensitive information. The mechanism must ensure the following:

1. the chief executive officer or managing director or such other person of equivalent or analogous rank and chief compliance officer of the AMCs is responsible and accountable for implementation of the institutional mechanism for deterrence of potential market abuse;
2. AMCs must develop and implement systems and procedures to generate and process alerts in a timely manner; and
3. while processing of alerts, AMCs must consider and review all recorded communications including chats, emails, access logs of dealing room and CCTV footage. AMCs must maintain and monitor entry logs to the AMCs' premises.

Inclusion of MF units in the SEBI (Prohibition of Insider Trading) Regulations, 2015

On November 24, 2022, SEBI amended the SEBI (Prohibition of Insider Trading) Regulations, 2015 to provide specific safeguards against insider trading in the units of MFs. A new Chapter IIA was inserted titled 'Restrictions on Communication in Relation to and Trading by Insiders in the Units of MFs'. SEBI, *vide* notification dated October 22, 2024, issued a circular to streamline the implementation of the amendments relating to MFs. The circular was applicable from November 1, 2024. Some of the key provisions of the circular are as follows:

1. Asset Management Companies ("**AMCs**") must disclose the details of the holdings of designated persons of AMCs, trustees and their immediate relatives on aggregate basis from November 1, 2024, on a quarterly basis. The holdings as on October 31, 2024, must be disclosed on the platform of the stock exchanges by November 15, 2024. Thereafter, for all subsequent calendar quarters AMCs must provide the information within 10 (ten) calendar days from the end of the quarter;
2. details of all the transactions in the units of its own MFs, above the threshold amount which aggregates to a value in excess of INR 15,00,000 (Indian Rupees fifteen lakh), in a transaction or a series of transactions over any calendar quarter, executed by the designated persons of AMC, trustees and their immediate relatives must be reported by the concerned person to the compliance officer of AMC within 2 (two) business days from the date of transaction; and
3. all transactions reported under Regulation 5(E)(2) and any violations of SEBI (Prohibition of Insider Trading) Regulations, 2015 must be disclosed as per the specified format.

Investments in overseas MFs/unit trusts by Indian MFs

To facilitate ease of investment in overseas MFs/Unit Trusts ("**UTs**"), bring transparency in the manner of investment, and enable MFs to diversify their overseas investments, SEBI, *vide* circular dated November 4, 2024, permitted Indian MF schemes to invest in overseas MF/UTs that have exposure to Indian securities. Some of the key aspects are as follows:

1. while investing in overseas MF/UTs that have exposure to Indian securities, the Indian MF schemes must ensure that the contribution of all investors of the overseas MF/UT is pooled into a single investment vehicle, with no side-vehicles

including segregated portfolios, sub-funds or protected calls. Further, all investors in the overseas MF/UT must have *pari-passu* and *pro-rata* rights in the overseas MF/UT;

2. overseas MF/UT must be managed by an independent investment manager/fund manager who is actively involved in making all investment decisions for the fund ensuring that the investments are made autonomously by the investment manager/fund manager. Further, overseas MF/UTs must disclose their portfolios at least on a quarterly interval to the public to maintain transparency, and there must not be any advisory agreements between Indian MFs and underlying overseas MF/UTs, to prevent conflict of interest;

3. at the time of making investments (both fresh and subsequent), Indian MF schemes must ensure that the underlying overseas MF/UTs do not have more than 25% exposure to Indian securities. Subsequently, if the exposure by an underlying overseas MF/UTs to Indian securities exceeds 25% of their net assets, an observance period of 6 (six) months from the date of publicly available information of such breach must be permitted to Indian MF schemes for monitoring of any portfolio rebalancing activity by the underlying overseas MF/UT;

4. if the Indian MF scheme(s)/AMC fails to rebalance the portfolio of the scheme in line with aforesaid requirements, then after the 6 (six) month liquidation period, the company must:

    a) not be permitted to accept any fresh subscriptions in concerned Indian MF Scheme;

    b) not be permitted to launch any new scheme;

    c) not levy exit load, if any, on the investors exiting such scheme(s); and

5. the Indian MF scheme(s) must be exempted from the requirement of a fundamental attribute change for any change in underlying overseas MF/UT, subject to the prescribed conditions.

Disclosure of expenses, half yearly returns, yield and risk-o-meter of schemes of MFs

SEBI, *vide* circular dated November 5, 2024, mandated MFs to disclose expenses, half-yearly returns, and yield separately for direct and regular plans and introduced a colour scheme for the risk-o-meter, depicting risk levels, effective from December 5, 2024. Some of the key provisions are as follows:

1. the expenses disclosed must contain separate disclosures for total recurring expenses for direct and regular plans, apart from the disclosure of total recurring expenses of the scheme. Returns during the half year and compounded annualised yields respectively must be separately disclosed for direct and regular plans. For all other regulatory disclosures where expenses, expense ratio, returns and/or yield of the schemes are required to be disclosed, separate disclosures must be made for both regular and direct plans. To standardise the format for the half-yearly financial statement for MF schemes are to be finalised by the Association of MF in India, in consultation with SEBI;

2. the Master Circular for MFs dated June 27, 2024, is modified. In addition to the existing labels relating to the 6 (six) levels of risk for MFs, the risk-o-meter must also be depicted using the prescribed colour schemes for the respective levels of risk. The colour designations range from 'low risk' (green) to 'very high risk' (red); and

3. any changes to the risk levels must be communicated to unitholders *via* notice, email, or SMS, with both the previous and revised risk levels disclosed for comparison.

Valuation of repurchase transactions by MFs

SEBI, *vide* circular dated November 26, 2024, introduced new valuation metrics for repurchase transactions by MFs, ensuring uniformity and transparency in valuation methodology of all money market and debt instruments. This is going to address the concerns of unintended regulatory arbitrage that may arise due to different valuation methodology adopted, the valuation of repurchase transactions by MFs including tri-party repo with tenor of upto 30 (thirty) days must be valued at mark to market basis.

Investments in short-term deposits with banks (pending deployment) must be valued on cost plus accrual basis. The valuation of all repurchase transactions and all money market and debt securities (including floating rate securities valued at average of security level prices) must be obtained from valuation agencies. If the security level prices given by valuation agencies are not available for a new security, then such security may be valued at purchase yield/price on the date of allotment/purchase.

Introduction to Specialized Investment Fund and MF Lite

SEBI, *vide* notification dated December 16, 2024, issued the SEBI (MFs) (Third Amendment) Regulations, 2024, amending the SEBI (MFs) Regulations, 1996. New Chapter VI-C pertaining to Specialized Investment Fund ("**SIF**") and Chapter XI pertaining to MF Lite are inserted. Some of the key provisions are as follows:

SIF:

1. from April 1, 2025, any registered MF may be granted an approval to establish a SIF subject to the eligibility criteria specified by SEBI;
2. a SIF must not accept from an investor (except for 'accredited investors') an investment amount less than INR 10,00,000 (Indian rupees ten lakh) across all investment strategies in the manner as may be specified by SEBI;
3. unless otherwise prescribed by SEBI, the launch of SIF investment strategies must follow the procedure prescribed for MFs;
4. an investment strategy under SIF cannot invest more than 20% of its NAV in debt instruments comprising money market instruments and non-money market instruments issued by a single issuer. This limit may be extended to 25% of the NAV of the investment strategy with prior approval of SEBI, trustees and board of directors of the AMC subject to certain conditions;
5. SIF should own more than 15% of any company's paid-up capital carrying voting rights under all its investment strategies, subject to certain conditions;
6. any investment strategy of a SIF must not invest more than 10% of its NAV in the equity shares and equity-related instruments of any company;
7. all investment strategies under SIF must not own more than 20% of units issued by a single issuer of Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvIT**"), subject to certain conditions;
8. an investment strategy under SIF must not invest:
    a) more than 20% of its NAV in the units of REITs and InvITs; and
    b) more than 10% of its NAV in the units of REIT and InvIT issued by a single issuer;
9. AMCs are required to ensure that there is clear differentiation between the offerings of the SIF and MFs, whereas, the trustee must ensure that the AMC has the necessary expertise, internal control systems and risk management mechanism to invest in and manage investments; and
10. the offer documents of the SIF must contain disclosures which are adequate for investors to make informed investment decisions, in the manner as may be specified by SEBI.

MF Lite:

1. the sponsor/applicant should have a 'sound track record' (as per the criteria prescribed therein) and general reputation of fairness in all business transactions to be eligible for the grant of certificate of registration as a MF Lite;
2. an existing shareholder holding 10% or more shareholding/voting rights in an existing AMC of the MF may be allowed to hold 10% or more shareholding/voting rights in a MF Lite AMC belonging to a group entity of the same sponsor;
3. the MF Lite AMC must have a net-worth of at least INR 35,00,00,000 (Indian Rupees thirty-five crores) deployed in assets specified by SEBI, which may be reduced to INR 25,00,00,000 (Indian Rupees twenty-five crores) if the MF Lite AMC has profits for 5 (five) consecutive years. Where the sponsor does not fulfil the requirements at the time of making application, the applicable net worth requirement for the MF Lite AMC must be INR 50,00,00,000 (Indian Rupees fifty crore);

4. MF Lite AMCs are not permitted to undertake any business activity other than advisory services to pooled assets in respect of passive investments, unless approved by SEBI; and
5. an existing MF that intends to only launch MF Lite schemes may surrender its existing registration and migrate as a MF Lite subject to the conditions and the manner specified by SEBI.

Subsequently, SEBI, *vide* circular dated December 31, 2024, issued MF Lite framework to cater specifically to passively managed MF schemes, which intends to encourage more players in the market, reduce compliance requirements, foster investment diversification, and enhance market liquidity. Some of the key provisions are as follows:

1. under phase- 1 of implementation, the MF Lite framework are to be applicable to a selected range of passive MF schemes, primarily those based on domestic equity indices, domestic debt indices, gold and silver Exchange Traded Funds ("**ETFs**"), Fund of Funds ("**FoFs**") based on only gold or silver ETFs and certain specified overseas ETFs and FoFs,;
2. among the pooled investment vehicles, only the private equity funds can sponsor an MF Lite, subject to certain conditions, such as:
    a) the applicant private equity (scheme/fund) is itself a body corporate or, a body corporate set up by a private equity. The applicant body corporate may be set up in India or abroad; and
    b) the applicant private equity or its manager have a minimum of 5 (five) years of experience in the capacity of fund/investment manager and experience of investing in the financial sector, where it should have managed committed and drawn-down capital of not less than INR 2,500 crore (Indian Rupees two thousand five hundred crore) as on the date of its application made to SEBI;
3. MF Lite AMC must abide by net worth requirements under Chapter IV (Constitution and management of AMC and custodian) of The SEBI (MF) Regulations, 1996, as and when the total AUM of the MF Lite AMC exceeds INR 1 lakh crore (Indian rupees one lakh crore). In such instances, the MF Lite AMC are not required to launch any new scheme or take further subscriptions to existing schemes, until it meets the net worth requirement; and
4. 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 any modified obligations, credit enhancements or embedded options which can increase the liquidity risk of the instrument on a continuous basis and such investments must be unencumbered.

Offer document of MF schemes simplified

SEBI, *vide* circular dated December 20, 2024, stated that the Scheme Information Document ("**SID**"), on which observations are issued by SEBI, must be uploaded on the SEBI website for at least 8 (eight) working days for receiving public comments on the adequacy of disclosures made in the document. Thereafter, AMCs may file the final offer documents (SID and key information memorandum) in line with the provisions of clause 1.1.3.3 of the SEBI Master Circular on MFs dated June 27, 2024.

Alternative Investment Funds

Information to be filed by schemes of Alternative Investment Funds

SEBI, *vide* circular dated July 9, 2024, issued a clarification regarding the information to be filed by schemes of Alternative Investment Funds ("**AIFs**") availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs. The clarification states that:

1. any scheme of an AIF entering dissolution period must file an information memorandum along with a due diligence certificate with SEBI through a merchant banker in the manner specified by SEBI. The information memorandum must be submitted before the expiry of the liquidation period or additional liquidation period of the scheme, as the case may be;
2. schemes of AIFs that have expired or are expiring within 3 (three) months, on or before July 24, 2024, may be granted an additional/fresh liquidation period, on submitting information to SEBI in the prescribed format, subject to certain conditions; and
3. in specie distribution of investments of a scheme of an AIF must be carried out after obtaining approval of at least 75% of the investors by value of their investment in the scheme of the AIF.

Registration of migrated Venture Capital Funds

SEBI, *vide* notification dated July 18, 2024, issued the SEBI (AIF) (Third Amendment) Regulations, 2024. The key amendments are as follows:

1. Venture Capital Funds ("**VCFs**") may seek registration as migrated VCFs in terms of Chapter III-D, within 12 (twelve) months from July 18, 2024;
2. SEBI may specify enhanced regulatory reporting and other measures for VCFs that do not seek registration as a migrated VCF; and
3. a new chapter (Chapter III D), is inserted for migrated VCFs and schemes launched by such funds, providing:
    a) the procedure for grant of certificate;
    b) eligibility criteria;
    c) prohibition on inviting subscription from the public;
    d) issue of placement memorandum or subscription agreement; and
    e) conditions for investment by migrated VCFs.

Streamlining operational practices for AIFs

SEBI, *vide* notification dated August 6, 2024, issued the SEBI (AIF) (Fourth Amendment) Regulations, 2024, amending the SEBI (AIF) Regulations, 2012 ("**AIF Regulations**"). Some of the key amendments are as follows:

1. a Large Value Fund ("**LVF**") for accredited investors is permitted to extend its tenure up to 5 (five) years (earlier this was 2 (two) years), subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Further, the extension in tenure of any existing scheme of a LVF for accredited investors are subject to such conditions specified by SEBI; and
2. Category I and Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the 'Harmonised Master List of Infrastructure' issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions specified by SEBI.

Further, *vide* circular dated August 19, 2024, SEBI issued guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs for accredited investors. Category I and Category II AIFs (subject to the prescribed conditions) are allowed to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies. They must maintain 30 (thirty) days cooling off period between 2 (two) periods of borrowing, which must be calculated from the date of repayment of previous borrowing. An LVF may extend its tenure up to 5 (five) years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and subject to the prescribed conditions, such as:

1. existing LVF schemes who have not disclosed definite period of extension in their tenure in the private placement memorandum or whose period of extension in tenure is beyond the permissible 5 (five) years, must align the period of extension in tenure with the requirement above, within 3

(three) months i.e., on or before November 18, 2024; and

2. while realigning the period of extension in tenure, LVF schemes must have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Modification in framework for valuation of investment portfolio of AIFs

SEBI, *vide* circular dated September 19, 2024, issued modifications to the valuation framework for AIFs under the AIF Regulations. 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 are prescribed under MF Regulations must be carried out as per the norms prescribed under the MF Regulations;

2. valuation of securities which are not covered above, are to 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, are 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 such entity or company must be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India ("**IBBI**") and 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.

Specific due diligence of investors and investments of AIFs

SEBI, *vide* notification dated October 8, 2024, has outlined specific due diligence requirements for AIFs, their managers, and key personnel on investors and investments. These include:

1. carrying out due diligence for investments from countries sharing land borders with India, in line with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. For every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by investors, necessary due diligence as per the implementation standards formulated by the Standard Setting Forum for AIFs must be carried out prior to the investment;

2. necessary due diligence is carried out prior to availing benefits to Qualified Institutional Buyers ("**QIBs**") (under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018) and Qualified Buyers ("**QBs**") (under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) for every scheme of AIFs having an investor, or investors belonging to the same group, who contribute(s) 50% or more to the corpus of the scheme. AIFs must ensure that investors who are not eligible for QIB or QB status do not avail of the benefits through the AIF;

3. if an investor of the scheme is an AIF, or a fund set up outside India or in International Financial Services Centres ("**IFSCs**") in India, then the criteria check for investor(s) regulated by the Reserve Bank of India; and

4. reporting of any existing investments that fail the due diligence checks or confirm compliance by April 7, 2025.

Rights of investors of a scheme of an AIF

SEBI, *vide* notification dated November 18, 2024, notified the SEBI (AIF) (Fifth Amendment) Regulations, 2024, amending the AIF Regulations.

Regulations 20(21) and 20(22) are inserted dealing with the rights of investors of a scheme. Some of the key amendments are as follows:

1. the investors of a scheme of an AIF must have rights, *pro-rata* to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment, except as may be specified by SEBI. The rights of investors of schemes of an AIF issued prior to this amendment, which are not *pro-rata* to their commitment to the scheme and not exempted by SEBI, must be dealt with in the manner specified by SEBI; and
2. the rights of investors of a scheme of an AIF, other than that specified above, must be *pari passu* in all aspects. However, differential rights may be offered to select investors of a scheme of an AIF, in the manner as may be specified by SEBI, without affecting the interest of other investors of the scheme. This requirement does not apply to LVF for accredited investors. Further, any differential right already issued by an AIF to select investors of a scheme of an AIF, prior to this amendment must be dealt with in the manner as specified by SEBI.

Investors in an AIF scheme must have rights proportional to their commitment in each investment of the scheme

SEBI, *vide* circular dated December 13, 2024, introduced significant changes under the AIF Regulations, to amend the *pro-rata* and *pari-passu* rights of investors of AIFs, so as to protect the interests of investors within AIFs. This amendment aims to enhance transparency and fairness in the treatment of investors. Some of the key provisions are as follows:

Pro-rata rights:

1. Investors in a scheme of an AIF have rights proportional to their commitment in each investment and distribution of proceeds.
2. The above rule excludes investors excused or excluded from an investment or those who default on their contribution.

Further, flexibility is provided for the following entities to accept returns lesser or share losses more than their *pro-rata* rights:

1. manager or sponsor of the AIF;
2. multilateral or bilateral development financial institutions;
3. State Industrial Development Corporations; and
4. entities established or owned or controlled by the Central Government or a State Government or the Government of a foreign country, including Central Banks and Sovereign Wealth Funds.

Pari-passu rights:

1. Investors' rights in a scheme of an AIF are equal in all aspects, with certain exceptions for differential rights offered to select investors.
2. Differential rights in a scheme of an AIF must not affect other investors' rights and must be transparently disclosed in the private placement memorandum ("**PPM**"). The AIFs, managers of AIFs and their key management personnel must ensure the following while issuing differential rights to select investors.
3. Differential rights must be provided only in accordance with the implementation standards formulated by standard setting forum.
4. Following must be disclosed in the PPM:
   a) eligibility criteria for an investor to avail each differential right; and
   b) any investor meeting the specified eligibility criteria for a differential right may opt to avail such right.

Applicability on Existing AIFs:

1. Existing AIFs with priority distribution models must comply with new regulations and cannot accept fresh commitments or make new investments unless exempted.
2. LVFs for accredited investors, whose PPM is filed with SEBI for launch of scheme before December 13, 2024, may avail exemption from the requirement of maintaining *pari-passu* rights,

subject to certain disclosures and waivers as mentioned in the circular.

Classification of Corporate Debt Market Development Fund as Category I AIF

SEBI, *vide* circular dated December 13, 2024, clarified that Corporate Debt Market Development Fund is classified as Category I AIF.

Modification to enhanced supervision of stock brokers and depository participants

SEBI, *vide* circular dated July 4, 2024, modified the timelines for submission of annual audited accounts/net worth certificate by stock brokers and depository participants. The timelines for submission of annual audited accounts/net worth certificate by stock brokers/depository participants is revised to October 31 of the relevant year (earlier this was September 30).

REIT and InvIT

Framework for unit-based employee benefit scheme introduced for REIT and InvIT

SEBI, *vide* notifications dated July 11, 2024, and July 12, 2024, issued the SEBI (InvITs) (Second Amendment) Regulations, 2024 and the SEBI (REITs) (Second Amendment) Regulations, 2024 respectively. The amendments aim to provide a structured approach to offering unit-based benefits, promoting employee participation and safeguarding the interests of all stakeholders involved in REITs/InvITs. Some of the key provisions are as follows:

1. the term 'employee unit option scheme' is inserted to mean a scheme under which the investment manager grants unit options to its employees through an employee benefit trust;
2. the term 'liquid asset' is inserted to mean cash, units of overnight or liquid MF schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds;
3. the manager/investment manager may, at its discretion, offer unit-based employee benefit scheme for its employees based on the units of the REIT/InvIT, subject to compliance with the provisions of chapter IVA/Chapter IVB of the respective principal regulations;
4. Chapter IVA/ Chapter IVB (*Framework for Unit Based Employee Benefit Scheme*) is inserted in the respective principal regulations; and
5. a new schedule is inserted in the respective principal regulations, pertaining to minimum provisions in trust deed, such as details of the trust, powers and duties of trustee, mode and manner of dissolution of the trust.

Board nomination rights to unitholders of REITs/InvITs

SEBI, *vide* 2 (two) circulars dated August 6, 2024, amended the Master Circulars for REITs and InvITs both dated May 15, 2024 ("**Master Circulars**"), in relation to the right to nominate a nominee director. The Master Circulars provided that eligible unitholder(s) are entitled to nominate 1 (one) unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate 1 (one) or more directors on the board of directors of the manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the manager or lender to the manager or the REIT/InvIT (or its holding company(ies) or special purpose vehicle(s)), then such entity in its capacity as unitholder, is not entitled to nominate or participate in the nomination of a unitholder nominee director.

Pursuant to the amendment, a proviso is inserted stating that the above restriction relating to the right to nominate a unitholder nominee director are not applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993.

On August 22, 2024, SEBI further amended the Master Circulars, by amending provisions related to the review of statement of investor complaints and timeline for disclosure of statement of deviation(s). Some of the key amendments are as follows:

1. all complaints including SEBI Complaints Redress System (SCORES) complaints received by the InvITs/REITs must be disclosed on the website of the InvIT/REITs and must also be filed with the recognised stock exchange(s). The statement must be placed, on a quarterly basis (*earlier, this was to be reviewed before submission to the stock exchange*), before the board of directors/governing body of the investment manager/manager and the trustee for review; and
2. pursuant to such review, the statement must be submitted to the stock exchange(s) along with the submission of the financial results (earlier such submission was to be made within 21 (twenty-one) days from the end of each quarter).

SEBI (REIT) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, notified the SEBI (REIT) (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% of the total voting unitholders must be obtained required for undertaking crucial decisions affecting 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.

SEBI (InvIT) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, notified the SEBI (InvIT) (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.

Relaxation from certain provisions for units allotted to an employee benefit trust by InvIT and REIT

SEBI, *vide* 2 (two) notifications dated November 13, 2024, made some relaxations and aligned distribution timelines for REITs and InvITs to promote ease of doing business. Some of the key changes made under both the notifications are as follows:

1. the 1 (one) year lock-in on units allotted to persons other than the sponsor(s), the 6 (six) months lock-in on pre-preferential issue unitholding of the allottees, and allotment related restrictions on preferential issue of units are not applicable to the units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme; and

2. the manner of distribution of unclaimed or unpaid amounts is provided. Where a distribution is made by the investment manager within the timelines specified under respective InvIT/REITs regulations, but the payment to any unitholders has remained unpaid or unclaimed, the investment manager must, within 7 (seven) working days from the date of expiry of the prescribed timelines, transfer such unclaimed amounts to an escrow account to be opened by it on behalf of the InvIT/REIT in any scheduled bank. Such account are to be termed as the 'Unpaid Distribution Account'.

Prohibition of transaction through mule account

SEBI, *vide* notification dated July 28, 2024, issued the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2024, which amends the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. Transactions through mule accounts to indulge in manipulative, fraudulent and unfair trade practice are deemed to be considered as manipulative, fraudulent and unfair trade practice. The term 'mule account' is inserted to mean a trading account maintained with a stock broker or a dematerialised account or bank account linked with such trading account in the name(s) of a person, where the account is effectively controlled by another person, whether or not the consideration for transactions in the account are paid by such other person.

Foreign Portfolio Investors

Amendment to additional disclosures by Foreign Portfolio Investors

SEBI, *vide* circular dated August 1, 2024, amended the Master circular for Foreign Portfolio Investors ("**FPI**"), Designated Depository Participants ("**DDP**") and Eligible Foreign Investors' dated May 30, 2024

("**Master Circular**"), that mandated additional disclosures for FPIs. Pursuant to the amendment, university funds and university related endowments, registered or eligible to be registered as Category I FPI, are not required to make the additional disclosures as prescribed under the 'Master Circular, subject to the following conditions:

1. Indian equity AUM being less than 25% of global AUM;
2. global AUM being more than INR 10,000 crore (Indian Rupees ten thousand crore) equivalent; and
3. appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

The eligible jurisdictions with respect to the exemption granted to university funds and university related endowments must be as specified by SEBI from time to time.

Simplified registration for FPI

To facilitate ease of onboarding for FPI and reduce duplication of available information, SEBI, *vide* circular dated November 12, 2024, eased the registration process. Some of the key features are as follows:

1. while onboarding FPI applicants belonging to the categories prescribed under paragraph 2 of the circular, they may be provided with an option to fill the entire Common Application Form ("**CAF**") or fill an abridged version of the CAF where they fill only those fields that are unique to them;
2. in case applicant opts for this abridged version of CAF, the remaining fields must either be auto populated from the information available in the CAF module or must be disabled;
3. while using the available information, an explicit consent to use the same and a confirmation that all the details other than those mentioned in the abridged version of CAF remain unchanged, must be obtained from the applicant; and
4. designated depository participants, upon receipt of information from the applicant, must update the details in CAF against the application number of the applicant for future reference purposes. Further, they must also ensure that the CAF module hosted on the website of the depository reflects complete information (information filled in by applicant and that auto-populated) and facilitates seamless fetching of the same.

All depositories, custodians, and designated depository participants are advised to make necessary changes in their systems to effect the changes proposed under this circular.

The provisions of this circular are effective from February 12, 2025.

FPIs cannot issue offshore derivative instruments with derivatives as underlying

SEBI, *vide* circular dated December 17, 2024, issued measures to address regulatory arbitrage with respect to Offshore Derivative Instruments ("**ODIs**") and FPIs, with segregated portfolios *vis-à-vis* FPIs. This circular introduces several key measures to enhance transparency, reduce risks, and strengthen the regulatory framework for ODIs and FPIs. Some of the key highlights of this circular are as follows:

1. **Modification of FPI Master Circular:**
    a) FPIs are required to issue ODIs only through a separate dedicated FPI registration with no proprietary investments, except for government securities;
    b) FPIs must not issue ODIs with derivatives as reference/underlying; and
    c) FPIs are prohibited from hedging their ODIs with derivative positions on stock exchanges in India, and ODIs must be fully hedged with the same securities on a one-to-one basis.
2. **Additional disclosures requirements:**
    a) ODI subscribers meeting specific criteria must disclose granular details of ownership, economic interest, or control up to the level of natural person;
    b) Exemptions from disclosures *inter alia* include government-related investors, public retail funds, certain exchange-traded funds, and university funds; and

   c) Additionally, ODI subscribers with over 50% of their equity ODI positions tied to securities of a single Indian corporate group are exempt from additional disclosures, subject to the conditions prescribed in the circular.

3. **Operational Measures:**

   a) ODIs with derivatives as underlying must be redeemed within a year. No renewals are permitted for the same;

   b) ODIs with securities as underlying, hedged with derivatives, must be redeemed or hedged with the same securities within a year; and

   c) FPIs must obtain separate dedicated registration within a year if required.

4. **Compliance and Monitoring:**

   a) Depositories must implement systems to track ODI positions and ensure compliance with the new regulations; and

   b) FPIs and depositories must monitor and disclose ODI subscriber positions exceeding specified thresholds.

Amendments to the SEBI (Intermediaries) Regulations, 2008

Restrictions in dealing with other entities

SEBI, *vide* notification dated August 29, 2024, issued the SEBI (Intermediaries) (Amendment) Regulations, 2024 amending the SEBI (Intermediaries) Regulations, 2008 ("**Principal Regulations**"). A new chapter, Chapter IIIA', dealing with restrictions in having association with certain persons, is inserted. Some of the key provisions are as follows:

1. no person regulated by SEBI or the agent of such a person is going to have any direct or indirect association, with another person who provides advice or any recommendation in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by SEBI to provide such advice or recommendation; or makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person is permitted by SEBI to make such a claim (this is not applicable in respect of an association through a specified digital platform); and

2. the person regulated by SEBI must ensure that any person associated with it, or its agent does not engage in the activities mentioned above without the necessary permission.

Further, SEBI *vide* notification dated August 29, 2024, issued the SEBI (Depositories and Participants) (Second Amendment) Regulations, 2024 amending the SEBI (Depositories and Participants) Regulations, 2018. Chapter VIIA, dealing with restrictions in having association with certain persons, is inserted. Some of the key provisions are as follows:

1. no depository or its agent, must have any direct or indirect association, with another person who provides advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by SEBI to provide such advice or recommendation; or makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person is permitted by SEBI to make such a claim (this is not applicable in respect of an association through a specified digital platform); and

2. the depository must ensure that any person associated with it or its agent does not engage in the activities mentioned above without the necessary permission.

Procedure for summary proceedings against certain entities

SEBI, *vide* notification dated December 5, 2024, issued the SEBI (Intermediaries) (Second Amendment) Regulations, 2024, amending the Principal

Regulations. Pursuant to this amendment, Regulation 30A of the Principal Regulations is substituted to detail the procedure of summary proceedings. Some of the key provisions are as follows:

1. it is, inter alia, applicable to entities such as a stock broker, a CM, a depository participant and a person which has admitted violating any of the provisions of the securities laws or directions, instructions or circulars issued by SEBI;
2. the competent authority must issue a notice to communicate the grounds for initiation of the proceedings of cancellation of certificate of registration, to which the noticee is required to make submission(s), within 21 (twenty-one) calendar days from the date of receipt of the notice (only through a written response);
3. the competent authority must endeavor to pass an order within 21 (twenty-one) calendar days from the date of receipt of the written submissions of the noticee or the date of expiry of the time period granted by the competent authority to file the written submissions. Further, no opportunity of personal hearing is be granted while disposing of the proceedings initiated;
4. the competent authority can pass an appropriate order for cancellation or suspension of the certificate of registration of the noticee or any other order, as it deems fit; and
5. copy of the order passed must be sent to the noticee, the stock exchange(s)/clearing corporation(s)/depository(ies) and must be uploaded on their respective websites as well as on SEBI's website.

Venture Capital Funds

Modalities for migration of VCFs

SEBI, *vide* notification dated August 19, 2024, issued modalities for migration of VCFs registered under the erstwhile SEBI (VCFs) Regulations, 1996 to the SEBI (AIFs) Regulations, 2012.

To initiate the migration, VCFs must submit an application to SEBI, including the original certificate of registration and the prescribed information as per the notification. The deadline for this application is July 19, 2025.

Conditions for migration:

1. schemes whose liquidation period has not expired can migrate provided they continue with the same tenure upon migration;
2. VCFs having at least 1 (one) scheme which is not wound up post expiry of its liquidation period can migrate only if they do not have any unresolved investor complaints and get an extra year to liquidate;
3. the tenure of the migrated schemes either continues as per the original disclosure in the private placement memorandum or, if no definite tenure was disclosed, the tenure must be determined before the migration application with the approval of 75% of investors by value; and
4. VCFs that do not opt for migration and whose liquidation period has not expired must be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under SEBI (AIFs) Regulations, 2012. Further, VCFs having at least 1 (one) scheme whose liquidation period has expired is subject to appropriate regulatory action for continuing beyond the expiry of their original liquidation period.

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, 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 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 is going to 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.

Pursuant to the amendments, SEBI, *vide* notification dated September 26, 2024, issued the operational guidelines for FVCIs and DDPs. Some of the key guidelines are as follows:

1. any FVCI failing to engage a DDP by March 31,2025, is not permitted to make any further investment and must 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 is subject to compliance with applicable 'Know Your Customer' ("**KYC**") 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 must 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 must submit monthly reports on the applications received from FVCI applicants to SEBI in the prescribed format; and
5. DDP engaged by an existing FVCI is required to 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.

Reporting by FVCI

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 must 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.

Issue of non-convertible securities

Reduction in denomination of debt securities and non-convertible redeemable preference shares

SEBI, *vide* circular dated July 3, 2024, amended Chapter V (Denomination of issuance and trading of non-convertible securities) of the SEBI master circular dated May 22, 2024, for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper. It is applicable to all issues of debt securities and non-convertible redeemable preference shares on private placement basis. These amendments are made to lower the ticket size of debt securities so as to encourage more non-institutional investors to participate in the corporate bond market which would enhance liquidity. These amendments include:

1. permitting issuers to issue debt securities or non-convertible redeemable preference shares on a private placement basis at a face value of INR 10,000 (Indian rupees ten thousand) subject to the certain conditions, such as:
    a) the issuer must appoint at least 1 (one) merchant banker;

b) the debt security or non-convertible redeemable preference share must be interest/dividend bearing security paying coupon/dividend at regular intervals with a fixed maturity without any structured obligations;

c) credit enhancements, such as guaranteed bonds, partially guaranteed bonds, standby letter of credit backed securities, must be permitted;

d) credit rating agencies must verify the documentation related to the specified support considerations to ensure that the support is unconditional, legally enforceable and has a lower probability of default on a continuous basis till the time such instruments are outstanding; and

e) the issuer may raise funds through tranche placement memorandum or key information document at a face value at INR 10,000 (Indian Rupees ten thousand), for shelf placement memorandum or general information documents; and

2. trading lot of listed debt security issued on private placement basis and non-convertible redeemable preference share issued on private placement basis, which are traded on a stock exchange or over-the-counter, will always be equal to the face value.

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, 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.

Usage of Unified Payments Interface by individual investors in public issue of securities

SEBI, *vide* circular dated September 24, 2024, 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 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 was applicable from November 1, 2024.

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

SEBI, *vide* notification dated September 25, 2024, 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 proposes delisting through fixed price process, the acquirer must provide a fixed delisting price which must 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 must 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 is 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; and

   b) in case delisting is proposed through the fixed price process; the total consideration is 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 must 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 is going to, 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.

Trading supported by blocked amount in secondary market

To provide protection to the investors from the default of the Trading Member ("**TM**")/CM, SEBI, *vide* Master Circular on Stock Exchanges and Clearing Corporations dated October 16, 2023, had introduced a supplementary process for trading in secondary market based on blocked funds in investors bank account, instead of transferring them upfront to the TMs. Pursuant to the same, SEBI, *vide* circular dated November 11, 2024, stated the following:

1. in addition to the current mode of trading, the Qualified Stock Brokers ("**QSBs**") must provide either the facility of trading supported by blocked amount in the secondary market (cash segment) using unified payments interface block mechanism or the 3-in-1 trading account facility, to their clients;

2. Stock Exchanges and Clearing Corporations are advised to make necessary amendments to the relevant bye-laws, rules and regulations and to

bring the provisions of this circular to the notice of the market participants;

3. 3-in-1 trading account facility offered/to be offered by the TMs must have the following features:
   a) integration of the trading account with the demat and bank accounts of the client;
   b) blocking of funds, to the extent of the obligation, in the bank account of the client on placement of buy orders. In case the buy orders are not executed the funds blocked are released;
   c) blocking of securities in the demat account of the client on placement of sell orders. In case the sell orders are not executed, the block on the securities is removed; and
   d) the pay-in (transfer of Funds / securities) blocked at the time of order placement, from the bank/demat account of the client is carried out post market hours and is upstreamed to the Clearing Corporation. The client earns interest on the available funds till the pay-in; and
4. clients of the QSBs are going to have the option, to either continue with the existing facility of trading by transferring funds to TMs or opt for either of the facilities above, as provided by the QSBs.

The provisions of this circular came into effect from February 1, 2025.

SEBI Buy-Back Regulations amended

SEBI, *vide* circular dated November 20, 2024, notified the SEBI (Buy-Back of Securities) (Second Amendment) Regulations, 2024 amending the SEBI (Buy-Back of Securities) Regulations, 2018. Some of the key amendments are as follows:

1. a buy-back offer must open not later than 4 (four) working days from the date of public announcement (earlier this was the record date);
2. in case any member of the promoter/promoter group has declared its intention to not participate in the buy-back, the shares held by such member of the promoter/promoter group are not be considered for computing the entitlement ratio;
3. the restriction on issuance of any shares or other specified securities including by way of bonus till the date of expiry of buy-back period for the offer is not applicable to any issuance in discharge of subsisting obligations through conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares;
4. a new proviso is added under Regulation 24(i)(b), Schedule II and Schedule IV requiring that the relevant details and the potential impact of subsisting obligations must be disclosed; and
5. the cover page of the letter of offer should explicitly cover following details:
   a) the entitlement ratio for small and general shareholders; and
   b) web-link to website of the registrar and share transfer agent for shareholders to check their entitlement under the buyback.

Withdrawal of master circular on issuance of no objection certificate for release of 1% of issue amount

SEBI, *vide* circular dated November 21, 2024 (applicable immediately), dispensed with the requirement to deposit 1% of the issue size available for subscription to the public with the designated stock exchange by the issuer company under Regulation 38 (1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. Further, the Master Circular dated November 7, 2022, on Issuance of no-objection certificate for release of 1% of issue amount also stands withdrawn. Stock exchanges must frame a joint standard operating procedure for release of 1% security deposit that were deposited with stock exchanges by the issuer prior to these amendments.

Modifications made to the eligibility and operational requirements of merchant bankers

SEBI, *vide* notification dated November 29, 2024, issued the SEBI (Merchant Bankers) (Amendment) Regulations, 2024 amending the SEBI (Merchant Bankers) Regulations, 1992. Some of the key amendments are as follows:

1. an applicant for grant of certificate as a merchant banker must have a minimum of 2 (two) persons in its employment, who are professionally qualified in finance or law or accountancy or business management;
2. any change in information submitted while seeking registration must be intimated to SEBI within 7 (seven) working days of such change; and
3. if a merchant banker is called upon to subscribe to the securities of a body corporate, it must subscribe to the said securities prior to the finalisation of the basis of allotment (earlier this was 45 (forty-five) days of receipt of intimation).

The scope of 'connected person' in relating to insider trading expanded

SEBI, *vide* notification dated December 5, 2024, issued the SEBI (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024, amending the SEBI (Prohibition of Insider Trading) Regulations, 2015. The term 'connected person' is amended to include 'relative' instead of 'immediate relative', expand their scope and bring in more individuals and entities with access to unpublished price-sensitive information. The term 'relative' is defined to mean

1. spouse of the person;
2. parent of the person and parent of its spouse;
3. sibling of the person and sibling of its spouse;
4. child of the person and child of its spouse;
5. spouse of the person mentioned at (3) above; and
6. spouse of the person mentioned at (4) above.

Further, it clarifies that anyone with access to unpublished price-sensitive information is an insider, regardless of how they gained access.

Introduction to Environment, Social and Governance Debt Securities

SEBI, *vide* notification dated December 11, 2024, notified the SEBI (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2024 ("**NCS Amendment Regulations**"), for amending the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). Pursuant to the NCS Amendment Regulations, SEBI introduced the concept of 'Environmental, Social and Governance Debt Securities' ("**ESG Debt Securities**") under Regulation 2(1)(oa) of the NCS Regulations, which includes securities such as social bonds, sustainability bonds and sustainability linked bonds, and green debt securities. To avoid an overlap, the NCS Amendment Regulations also omits Regulation 26 of the NCS Regulations (which related to issuance of green debt securities).

SEBI is also expected to introduce certain conditions which are to govern the framework for issuance and listing of ESG Debt Securities.

Industry standards on reporting of Business Responsibility and Sustainability Report Core

SEBI, *vide* circular dated December 20, 2024, outlined industry standards for the reporting of the Business Responsibility and Sustainability Report ("**BRSR**") Core. These standards, developed by the Industry Standards Forum, aim to facilitate the standardisation and ease of implementation of BRSR Core disclosures under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") and is applicable for the financial year 2024-25 and onwards.

Amendment to the LODR Regulations

SEBI, *vide* notification dated December 12, 2024, notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 ("**LODR Amendment Regulations**"), for significantly amending the LODR Regulations. The LODR Amendment Regulations are made effective from December 31, 2024, except for certain provisions relating to secretarial audit, which is effective from April 1, 2025. Some of the key provisions of the LODR Amendment Regulations are as follows:

Related Party Transactions ("RPTs"):

1. RPTs must not include the following: (a) corporate actions by subsidiaries provided by the subsidiaries of the listed entity; (b) acceptance of current account deposits and saving account deposits by banks in compliance with the directions issued by RBI or any other central bank in the relevant jurisdiction from time to time; and (c) retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable/offered to all employees and directors;
2. remuneration and sitting fees paid by listed companies or its subsidiaries to its director, key managerial personnel or senior management, except who is part of promoter or promoter group no longer require the approval of the audit committee (if the same are not material);
3. the members of the audit committee, who are independent directors, may ratify RPTs within 3 (three) months from the date of the transaction or in the immediate next meeting of the audit committee (whichever is earlier), subject to the following conditions:
    a) the value of the RPT whether entered into individually or taken together, during a financial year must not exceed INR 1,00,00,000 (Indian Rupees one crore);
    b) the transaction is not material;
    c) rationale for inability to seek prior approval for the transaction must be placed before the audit committee at the time of seeking ratification; and
    d) the details of ratification must be disclosed along with the RPT disclosures submitted with the stock exchanges; and
4. the transactions in the nature of statutory dues, statutory fees or statutory charges entered into between an entity and the Central Government or any State Government or any combination thereof are exempted as an RPT. Further, transactions between a public sector company and the Central Government or any State Government or any combination thereof are also exempted.

Compliance Officers:

1. compliance officer of a listed entity must be in the whole-time employment of such listed entity. Further, the compliance officer must not be more than one level below the board of directors;
2. compliance officer of the listed entity is designated as key managerial personnel; and
3. any vacancy in the office of the compliance officer of a listed entity in respect of which a resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 is approved, must be filled within a period of 3 (three) months of such approval.

Directors:

1. a person can be appointed as the non-executive director of a listed entity until the age of 75 (seventy-five);
2. in case a listed entity wants to appoint a person of more than 75 (seventy-five) years as its non-executive director, the shareholders of such listed company are required to pass a special resolution to that effect, in which case the explanatory statement annexed to the notice for such motion must indicate the justification for appointing such a person as the non-executive director; and
3. in case there is a vacancy in the committees of the board of directors of a listed entity, such vacancy must be filled within 3 (three) months or by the date of the vacancy's occurrence, whichever is earlier.

Investor Grievance Redressal:

A listed entity must file with the recognised stock exchange(s), on a quarterly basis, a statement detailing the redressal of investor grievances in such form and within the timelines as may be specified by SEBI.

Transfer of shareholdings, transmission of shareholdings and their effect on change in control

SEBI *vide* circular dated December 27, 2024, issued clarifications with respect to transfer of shareholding among immediate relatives and transmission of shareholding in respect of investment advisers, research analysts and know your client registration agencies. The circular outlines scenarios where the transfer or transmission of shareholding will or will not result in a change of control of the entity. Some of the key provisions are as follows:

1. in case of unlisted body corporate intermediary: transfer of shareholding among immediate relatives will not result into change in control. Transfer of shareholding by way of transmission to immediate relative or not, will not result into change in control;

2. in case of a proprietary firm type intermediary: the transfer of the business/capital by way of transmission to another person is considered as change in control and the legal heir/transferee must obtain prior approval to obtain the fresh registration; and

3. in case of partnership firm type intermediary: inter-se transfer amongst the partners, where there are more than 2 (two) partners in the partnership firm, will not be construed to be change in control. Where the partnership firm consists of 2 (two) partners only, the same will stand as dissolved upon the death of 1 (one) of the partners.

Easing the insider trading norms

SEBI, *vide* circular dated December 30, 2024, allowed market participants to subscribe to non-convertible securities without being constrained by the trading window restrictions. The trading window restrictions are not applicable to subscription to the issue of non-convertible securities, carried out in accordance with the framework under the SEBI (Prohibition of Insider Trading) Regulations, 2015. The trading window restrictions are not applicable in respect of transactions, such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or such other transactions which are undertaken in accordance with the mechanisms as may be specified by SEBI.

Ease of doing business for listed entities

SEBI, *vide* circular dated December 31, 2024, modified certain provisions of the SEBI Master Circular dated November 11, 2024, on compliance with the LODR Regulations by listed entities. Some of the key provisions are as follows:

1. Integrated Filing ("**IF**") is introduced to facilitate ease of filing and compliance for listed entities for:

   a) governance - periodic filing such as statement on redressal of investor grievances and compliance report on corporate governance must be submitted within 30 (thirty) days of the end of the quarter; and

   b) financial - periodic filing such as disclosure of RPTs, disclosure of outstanding default on loans/debt securities, statement of deviation and variation and financial results must be submitted within 45 (forty-five) days of the end of the quarter and 60 (sixty) days from end of the last quarter and financial year;

2. the new system takes effect from the filings for the quarter ending December 31, 2024, and is applicable for subsequent filings;

3. acquisition of shares or voting rights by listed entities in an unlisted company, aggregating to 5% or any subsequent change in holding exceeding 2%, imposition of fine or penalty and updates on ongoing tax litigations or disputes must be disclosed on a quarterly basis in the format specified as part of the IF;
4. disqualifications for appointment or continuation of a secretarial auditor and services that a secretarial auditor of a listed entity cannot render are detailed;
5. listed entities must comply with the following requirements for disclosure of Employee Benefit Scheme documents and the secretarial compliance report (issued by a peer reviewed company secretary) must include a confirmation on compliance with these requirements:
    a) the scheme document must be uploaded on the website of the listed entity after obtaining shareholder's approval;
    b) the uploaded documents must have all the relevant information to be disclosed to shareholders as per SEBI regulations; and
    c) in case of any redaction of information, the rationale for redacting information from the documents and the justification as to how such redacted information would affect competitive position or reveal commercial secrets of the listed entity must be placed before the board of directors for their consideration and approval;
6. formats for corporate governance report, financial results, statement of deviation, RPT etc. are updated according to the IF;
7. fines are introduced for non-compliance with the timelines specified in Section 31A(3)(a) of the LODR regarding reclassification of promoter/promoter group entity as public; and
8. timelines for disclosure of material events/information are updated.

The Reserve Bank of India

Review of framework for domestic money transfer

The Reserve Bank of India ("**RBI**"), *vide* circular dated July 24, 2024, issued certain revisions to the framework for domestic money transfer given the multiple digital options for funds transfer. Some of the key changes in the framework are as follows:

1. for the case pay-out service, the remitting bank must obtain and keep a record of the name and address of the beneficiary;
2. for the cash pay-in service:
    a) remitting banks/business correspondents must register the remitter based on a verified cell phone number and a self-certified 'Officially Valid Document' as per the Master Direction – KYC Direction, 2016;
    b) every transaction by a remitter must be validated by an additional factor of authentication; and
    c) remitting banks and their business correspondents must conform to provisions of the Income Tax Act, 1961 for cash deposits.

Further, the guidelines on card-to-card transfer are excluded from the purview of this framework. This framework came into effect from November 1, 2024.

Foreign Exchange Management

Release of foreign exchange for miscellaneous remittances

1. RBI *vide* circular dated July 3, 2024, addresses the changes in the release of foreign exchange for miscellaneous remittances by Authorised Dealers ("**AD**") in foreign exchange. The circular rescinds previous guidelines that permitted the release of foreign exchange for current account transactions up to USD 25,000 (US Dollars twenty-five thousand) or its equivalent based on a simple letter without requiring Form A2 or other documentation. Instead, ADs are required to obtain Form A2 in either physical or digital format for all cross-border remittances, irrespective of the transaction amount.

2. This change aims to streamline regulatory compliance and operational procedures. AD must ensure compliance with the Foreign Exchange Management Act, 1999, ("**FEMA**"), specifically Section 10(5) of FEMA, to verify that the transactions adhere to FEMA provisions.

Central Government notifies key amendments to the Foreign Exchange Management (Debt Instruments) Rules, 2019

RBI, *vide* notification dated August 7, 2024, issued the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024, amending the Foreign Exchange Management (Debt Instruments) Regulations, 2019. Pursuant to the amendment, persons resident outside India are permitted to purchase or sell sovereign green bonds in IFSC in India. The amount of consideration for purchase of sovereign green bonds issued by the Government must be paid out of inward remittance from abroad through banking channels or out of funds held in a foreign currency account maintained in accordance with the regulations issued by RBI and/or the International Financial Services Centre Authority ("**IFSCA**"). The sale/maturity proceeds, net of taxes, as applicable, of instruments held by persons resident outside India may be remitted outside India.

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 are 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 must upload a 'NIL' report.

Sovereign green bonds included as specified securities under the Fully Accessible Route

RBI, *vide* various circulars, specified categories of Government Securities that are eligible for investment under the Fully Accessible Route ("**FAR**"). Further to this, RBI, *vide* circular dated November 7, 2024, designated sovereign green bonds of 10 (ten) year tenor issued by the Government of India ("**GoI**"), in the second half of the fiscal year 2024-25 as 'specified securities' under the FAR.

Reporting of foreign exchange transactions to Trade Repository

RBI, *vide* circular dated November 8, 2024, issued a clarification regarding reporting of foreign exchange transactions to the Trade Repository ("**TR**"). Some of the key features are:

1. to ensure completeness of transaction data in the TR for all foreign exchange instruments, the reporting requirement must include foreign exchange spot (including value cash and value tom) deals in a phased manner. Accordingly, transactions in the following foreign exchange contracts involving Indian Rupees or otherwise ("**FX Contracts**"), must now be reported to the TR:
   a) foreign exchange cash;
   b) foreign exchange tom; and
   c) foreign exchange spot.
2. there is going to be no requirement of matching transactions with overseas counterparties and

client transactions in the TR as the overseas counterparties and clients are not required to report/confirm the transaction details; and

3. AD are responsible for ensuring the accuracy in respect of transactions reported and must ensure that the outstanding balances between their books and the TR are reconciled and subjected to concurrent audit on an ongoing basis.

Money changing transactions are not in the scope of the directors and must be governed by the Master Direction – Money Changing Activities dated January 1, 2016.

Inter-bank FX contracts undertaken by AD are reported to the TR with effect from February 10, 2025, as per the following timelines:

1. inter-bank FX contracts involving INR must be reported in hourly batches within 30 (thirty) minutes from completion of the hour. This is applicable to all contracts executed 60 (sixty) minutes prior to closure of Clearing Corporation of India Ltd's ("**CCIL**") reporting platform for the day and any contract executed subsequent to closure of CCIL's reporting platform for the day must be reported by 10 a.m. of the following business day; and
2. inter-bank FX contracts not involving INR executed up to 5 p.m. on any given day should be reported by 5:30 p.m. of that day. Such contracts executed after 5 p.m. should be reported by 10 a.m. of the following business day.

The following FX Contracts executed with clients must be mandatorily reported as per the following timelines:

1. FX Contracts with the value equal to or exceeding the threshold limit of USD 1,000,000 (US Dollars one million) and equivalent thereof in other currencies with effect from May 12, 2025;
2. FX Contracts with the value equal to or exceeding the threshold limit of USD 50,000 (US Dollars fifty thousand) and equivalent thereof in other currencies with effect from November 10, 2025; and
3. FX Contracts executed with clients should be reported before 12:00 noon of the following business day.

Reclassification of FPI to Foreign Direct Investment

RBI, *vide* circular dated November 11, 2024 ("**Circular**") introduced a operational framework for reclassification of FPI to Foreign Direct Investment ("**FDI**"). This reclassification applies when an FPI by an investor exceeds the prescribed threshold of 10% of the total paid-up equity capital of the Indian investee company on a fully diluted basis.

While the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**") mandated that FPIs exceeding the prescribed threshold must be divested failing which it would be treated as FDI, there were no guidelines regulating the reclassification of such FPIs into FDI. The Circular provides clarity regarding this reclassification process while ensuring that such conversion is in adherence to the operational framework outlined in the Circular. The directions under the Circular have become operative with immediate effect.

Key considerations

For reclassification of FPI by an investor into FDI, the operational framework provides the following:

1. the facility of reclassification is only permitted in sectors that do not prohibit FDI;
2. the investor must obtain necessary approvals from the GoI, including approvals required for investment from land bordering countries, to ensure that the acquisition beyond the prescribed limits is made in accordance with the provisions applicable to FDI). This includes ensuring compliance with the relevant entry route, sectoral caps, investment limits, pricing guidelines, and other conditions under the NDI Rules. Additionally, the investor must obtain the concurrence of the

Indian investee company to ensure that the investee company also complies with the provisions and conditions applicable to FDI, prior to acquiring equity instruments above the prescribed threshold;

3. any FPI choosing reclassification must notify its custodian; and

4. the custodian will freeze the purchase transactions by the FPI investor in the Indian investee company, until the reclassification is complete. If the necessary approvals/concurrence have not been obtained by the investor, the investment beyond the prescribed threshold must be compulsorily divested within 5 (five) trading days from the date of settlement of the trades causing the breach.

Post-reclassification

The entire investment held by the FPI must be reported within the timelines specified under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019. Following the reporting, the investor must submit a request to its designated custodian to transfer the equity instruments of the relevant Indian company from its demat account maintained for holding of FPIs into its demat account maintained for holding FDI.

Upon completion of all aspects of the reclassification process, the custodian will unfreeze the equity instruments and process the request. The date of breach when the FPI exceeds the prescribed threshold is considered as the date of reclassification. Note that the entire investment of the FPI investor in the Indian company is considered as FDI and will continue to be treated as FDI even if the investment falls below 10% subsequently.

Introduction of corollary changes by SEBI

SEBI, in a circular also dated November 11, 2024, recognised the reclassification of FPI to FDI in compliance with the extant foreign exchange rules and related circulars. Upon receiving an investor's request on intent to reclassify, the custodian must inform SEBI and freeze any further purchase transactions by the investor in the equity instruments of the Indian company until the reclassification process is completed in the manner prescribed by RBI. Once the investor submits a request to transfer its equity holdings from the FPI demat account to a demat account designated for holding FDI investments, the custodian must process the transfer, provided that all reclassification reporting requirements, as prescribed by RBI under the framework, are duly completed.

Conclusion

RBI framework aims to improve India's investment climate by reducing complexities, and encouraging foreign investors to stay engaged with the Indian market. It is also likely to make India a more attractive destination for foreign capital, particularly for large investors who want to avoid divestment once they exceed the 10% threshold. By making it easier for investors to reclassify their shareholdings, RBI is also encouraging more strategic, long-term investments rather than short-term, speculative portfolio investments.

Amendment to framework for facilitating small value digital payments in offline mode

RBI, *vide* circular dated December 4, 2024, updated the Framework for Facilitating Small Value Digital Payments in offline mode in order to increase the limit for UPI Lite to INR 1,000 (Indian Rupees one thousand) per transaction (*from the earlier limit of INR 500 (Indian Rupees five hundred) per transaction*), with INR 5,000 (Indian Rupees five thousand) being the total limit (*from the earlier limit of INR 2,000* (*Indian Rupees two thousand*)) at any point in time.

UPI access for Prepaid Payment Instruments through third-party applications

RBI, *vide* circular dated December 27, 2024, enabled UPI payments (a) from full 'KYC', and (b) to full KYC, Prepaid Payment Instruments ("**PPIs**") through third-party UPI applications to provide more flexibility to the customers of full-KYC PPIs. This enables full-KYC PPI holders to make and receive UPI payments through the mobile application of third-party UPI applications. This move enables interoperability for full-KYC PPIs.

MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA

The Ministry of Corporate Affairs

E-adjudication platform for penalties

The Ministry of Corporate Affairs ("**MCA**"), *vide* notification dated August 5, 2024, issued the Companies (Adjudication of Penalties) Amendment Rules, 2024, amending the Companies (Adjudication of Penalties) Rules, 2014. Some of the key amendments are as follows:

1. provisions pertaining to 'Adjudication Platform' are inserted stating that all proceedings (including issue of notices, filing replies or documents, evidence, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and regional director under the principal rules must take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose;
2. if the email address of any person (to whom a notice or summons required to be issued), is not available, the adjudicating officer will send the notice by post at the last intimated address or address available in the records and the officer must preserve a copy of such notice in the electronic record in the e-adjudication platform; and
3. Form No. ADJ (*Memorandum of Appeal*) is substituted.

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

MCA, *vide* notification dated September 9, 2024, 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 notarised indemnity bond from the legal heir or claimant to whom the securities are transmitted; and 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 is permitted to provide self-declaration of securities lost or misplaced or stolen which are to 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 must 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 and for unlisted securities, the value must be on 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.

Central Government notifies key amendments to the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016

MCA *vide* notification dated September 9, 2024, ("**Notification**") introduced a significant development in reverse flipping regulations under the Companies

(Compromises, Arrangements, and Amalgamations) Amendment Rules, 2024, ("**Amendment**"). This Amendment establishes new compliance guidelines for merger where the transferor foreign company, incorporated outside India, is a holding company, and the transferee company, incorporated in India, is its wholly owned subsidiary. Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, ("**Principal Rules**") allowed overseas companies to merge with Indian companies, provided they obtain prior approval from RBI and the National Company Law Tribunal ("**NCLT**"). However, with the introduction of Rule 25A(5) through this Amendment, the requirement for obtaining approval of the NCLT is not required and the merger can be undertaken as per fast track merger process under Section 233 of the Companies Act, 2013 ("**CA 2013**"). Therefore, the inclusion of the new clause (5) in Rule 25A of the Principal Rules through this Amendment allows for a more seamless and expeditious merger or amalgamation of a foreign holding company with its wholly owned Indian subsidiary in accordance with the fast-track merger scheme outlined in Section 233 of the CA 2013.

Key amendments under the Notification

Approval of RBI: Both the foreign holding company and the Indian wholly owned subsidiary is required to obtain prior approval from RBI before initiating any merger or amalgamation process.

1. Compliance with Section 233 of CA 2013: The merger can be undertaken under the fast track merger process as provided under Section 233 of CA 2013. This is a positive step as the holding company and its subsidiary(ies) can fast track its merger and not follow the earlier mandated approval of the NCLT which is more time consuming comparatively.
2. Application to the Central Government: The transferee Indian company must submit an application to the Central Government under Section 233 of the CA 2013, following the procedures specified in Rule 25 of the Principal Rules. This step involves the submission of necessary documents and declarations for approval. As per sub-section (3) of Section 233 of the CA 2013, the powers of the Central Government are delegated to Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.
3. Declaration for holding company incorporated in a country sharing a land border with India: If the holding company is incorporated in a country that shares land border with India, then the transferee company at the stage of making an application under Section 233 of the CA 2013, must provide a declaration as specified under sub-clause (4) of Rule 25A of the Principal Rules.

Conclusion

This Amendment marks a significant shift in regulatory practices, aimed at simplifying the reverse flipping process between a foreign holding company and its wholly owned subsidiary company incorporated in India. By removing the need for NCLT clearance, the new rules provide clarity on compliance requirements while ensuring necessary oversight through approvals from RBI and the Central Government. This move not only alleviates the burden of lengthy approvals but also signals a commitment to fostering a more conducive environment for investments in India.

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, notified certain amendments to the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**P&A Principal Rules**"). Rule 9B (2) of the P&A Principal Rules, states that a private company (other than a small company), 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 is inserted to this Rule 9B (2) of the P&A Principal Rules, 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 P&A Principal Rules.

Companies (Adjudication of Penalties) Second Amendment Rules, 2024

MCA, *vide* notification dated August 5, 2024, issued the Companies (Adjudication of Penalties) Amendment Rules, 2024, which mandated all proceedings of adjudicating officer and Regional Director must take place in electronic mode only through the e-adjudication platform developed by the Central Government. These amendments have come into force from September 16, 2024. MCA, *vide* notification dated October 9, 2024, added a proviso to the rules to state that proceedings pending before the adjudicating officer or Regional Director prior to the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024 will continue as per provisions of the rules existing prior to amendment.

The Competition Commission of India

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 came into effect from September 10, 2024. A quick snapshot of the key provisions that were notified are:

Deal value thresholds and its 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: 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 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 is 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.
3. **For digital services[1]:**
   a) 10% or more of the target's business users or end users are in India; or

   b) the target's GMV in India in the 12 (twelve) months preceding the trigger event is 10% or more of its global GMV; or

   c) the target's turnover in India, in the preceding financial year is 10% or more of its global turnover.

[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.

All deals which were signed prior to September 10, 2024, but have not been consummated or are 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 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 is 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
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.

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

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 does 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 MF.
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;
   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 the other 2 (two) conditions being met.
3. **Acquisition of additional shareholding/creeping acquisition:**
   a) Scenario 1: Not leading to more than 25% shareholding/voting rights:
      i) 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:
            - control of a target enterprise;
            - right or ability to appoint a director or an observer on the board for the first time; and
            - 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.
      ii) It is clarified that, in case of overlaps between the business activities of the Parties:
         A. the exemption is available, provided the additional/incremental shareholding acquired by a single or a series of smaller acquisitions does not exceed 5%.
         B. the exemption is not available, in cases where the additional/incremental

[3] Horizontal or vertical or complementary overlap.

shareholding exceeds 5%; or the shareholding of the acquirer or its group crosses 10%because of the additional/incremental acquisition .

b) 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.

c) 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 mergers and amalgamations; and 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.

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उद्योग मंत्रालय
MINISTRY OF
COMMERCE
AND INDUSTRY
सत्यमेव जयते

The Ministry of Commerce and Industry

Procedure for adjudicating penalties

The Ministry of Commerce and Industry ("**MoCI**"), *vide* notification dated December 13, 2024, issued the Industries (Development and Regulation) Manner of Holding Inquiry and Appeal Rules, 2024, that aims to establish a structured mechanism for addressing contraventions under the Industries (Development and Regulation) Act, 1951 ("**Act**"), by introducing detailed provisions for inquiries, penalties, and appeals. Some of the key provisions are as follows:

1. any person may file a complaint as per Form 1 to the adjudicating officer (District Magistrate or the Additional District Magistrate) regarding any contravention committed under Section 24 (*Penalties*) of the Act;

2. Rule 4 outlines the process of holding of inquiry for the purpose of adjudication of penalties on receipt of any complaint under Section 24A (*Penalty for false statements*) of the Act. The adjudicating officer must issue a show cause notice to the person in Form 2, explaining legit contraventions. Further, opportunities of defence are provided to the alleged person, and the proceedings must be concluded within 6 (six) months by the adjudicating officer;

3. an appeal under Section 24B (*Appeal*) of the Act can be made to the appellate authority in Form 4 within a period of 30 (thirty) days from the date of receipt of the order and the appellate authority

must dispose of the appeal within 60 (sixty) days from the date of appeal; and

4. every order under these rules, are dated, signed and communicated to all the parties. All sums realised by way of penalties under these rules are credited to the Consolidated Fund of India.

Jan Vishwas (Amendment of Provisions) Act, 2023

The Jan Vishwas (Amendment of Provisions) Act, 2023 ("**JVA**") amends certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business:

1. MoCI, *vide* notification dated July 29, 2024, states that the entries in JVA with respect to the Patents Act, 1970, the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999, are in force with effect from August 1, 2024.

2. MOCI, *vide* notification dated July 30, 2024, states that the entries in the JVA with respect to the Copyright Act, 1957, are in force with effect from August 1, 2024.

3. MoCI, *vide* notification dated August 14, 2024, states that the entries in the JVA with respect to the Marine Products Export Development Authority Act, 1972, are in force with effect from August 16, 2024.

4. The Ministry of Agriculture and Farmers Welfare, *vide* notification dated July 31, 2024, states that the entries in the JVA with respect to the Agricultural Produce (Grading and Marking) Act, 1937, are in force with effect from July 31, 2024.

5. The Ministry of Health and Family Welfare, *vide* notification dated August 19, 2024, states that the entries in the JVA with respect to the Pharmacy Act, 1948, are in force with effect from December 31, 2024.

6. The Ministry of Finance ("**MoF**"), *vide* notification dated August 1, 2024, states that the entries in the JVA with respect to the Public Debt Act, 1944, are in force with effect from August 1, 2024.

7. MoF *vide* notification dated August 1, 2024, states that the entries in the JVA with respect to Public Debt Act, 1944, are in force with effect from August 1, 2024.

8. MoF, *vide* notification dated August 13, 2024, states that the entries in the JVA with respect to the Prevention of Money laundering Act, 2002, are in force with effect from August 13, 2024.

वित्त मंत्रालय
MINISTRY OF
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सत्यमेव जयते

The Ministry of Finance

Central Government notifies key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019

The Department of Economic Affairs of MoF, *vide* notification dated August 16, 2024 ("**MoF Notification**") introduced key amendments to the NDI Rules. The amendments follow from the Union Budget announcement to simplify rules and regulations governing FDI and ODI.

Key amendments under the MoF Notification

1. **Cross-Border Share Swaps**: The MoF Notification introduced a set of 2 (two) amendments with the aim of simplifying cross-border share swaps and providing for the transfer or issue of equity instruments of an Indian company in exchange for foreign company equity instruments. The accompanying press release notes that these amendments are going to facilitate the global expansion of Indian companies through mergers, acquisitions, and other strategic initiatives, enabling them to reach new markets and grow their presence worldwide:

2. **Swaps involving transfer of equity instruments of Indian company:** A new rule i.e. Rule 9A is introduced in the NDI Rules which deals with a swap involving the transfer of equity instruments of an Indian company between a resident and non-resident. The MoF Notification states that such transfer may be effected by way of any of the

following 2 (two) swaps: (i) a swap of equity instruments of another Indian company, and (ii) a swap of equity capital of a foreign company in compliance with the Overseas Investments Rules ("**OI Rules**"); and

3. **Swaps involving issuance of equity instruments of Indian company:** Previously, Schedule I to the NDI Rules (sub-paragraph (d) of Paragraph 1) allowed for a limited swap structure – i.e. where an Indian company issued equity instruments to a non-resident against swap of equity instruments of another Indian company. The MoF Notification explicitly permits such issuance to also be effected against swap of equity capital of a foreign company in compliance with the OI Rules. The MoF Notification also clarifies that if government approval is applicable for the aforesaid transfer or issuance, then such approval is still required to be obtained.

4. **Downstream investments by OCI-owned entities**: Previously, the Department for Promotion of Industry and Internal Trade ("**DPIIT**") had, by way of Press Note 1 of 2021 issued in March 2021 ("**PN-1**"), clarified that any downstream investments into an Indian investee entity by an Indian entity owned and controlled by NRIs on a non-repatriation basis, would not be considered as indirect foreign investment. Such investments into the investee were therefore treated as if they were investments by a resident, thereby removing the applicability of conditions such as entry route, sectoral caps, pricing guidelines, etc. The MoF Notification incorporated the aforesaid exemption contained in PN-1 into the NDI Rules. Further, it extends the aforesaid treatment to investments by Indian entities owned and controlled by OCIs.

5. **Transfer of equity instruments of an Indian company between non-residents**: Rule 9(1) of the NDI Rules deal with transfer of equity instruments of an Indian company by way of sale or gift by a non-resident (not being an NRI, OCI or OCB) to another non-resident, subject to certain conditions. Prior to the MoF Notification, it was stipulated by way of a proviso that prior government approval must be obtained for any such transfer in case the Indian company is engaged in a sector that requires government approval ("**sector-specific approval**"). The MoF Notification amended this proviso to state that the government approval must be obtained in all cases where government approval is applicable. Therefore, the amendment appears to clarify the need not only for any sector-specific approvals but also for government approvals pursuant to Press Note 3 of 2020 (i.e. where transferee is an entity in a country which shares a land border with India ("**Neighbouring Countries**") or has a beneficial owner which is situated in or is a citizen of such Neighbouring Countries).

6. **FDI in White-Label ATMs**: The table in Schedule I to the NDI Rules which details entry routes, sectoral caps, and other conditions for investments in various sectors has also undergone change. Previously, the table in the NDI Rules contained no specific entry for foreign investment in White Label ATMs ("**WLAs**") even though the Consolidated FDI Policy of 2020 ("**FDI Policy**") permitted up to 100% FDI under the automatic route subject to compliance with certain conditions. The MoF Notification introduced a specific entry for WLAs in the NDI Rules which brings it in line with the FDI Policy. Further, the MoF Notification included an additional condition for foreign investment in WLAs – i.e. FDI in WLAs would be subject to specific criteria and guidelines issued by RBI under the Payment and Settlement Systems Act, 2007.

7. **Government approvals for FPI investments**: Previously, Schedule I of the NDI Rules incorporated a 'lower of' construct to determine if government approvals were required for FPI investments in Indian companies. Prior to the MoF Notification, it stated that government approval or compliance with the sectoral conditions was not required if the aggregate FPI investments in such company was up to 49% of its paid-up capital or the stipulated sectoral or statutory cap for investments, whichever is lower, if such investment does not result in transfer of ownership or control from residents or to non-residents. With the MoF Notification, the 'lower of' construct is removed. Accordingly, government approvals and compliance with sector-specific conditions are no longer needed for investments up to the sectoral or statutory cap, if such investment in the Indian company does not result

in transfer of ownership or control from residents or to non-residents.

8. **Definitions of 'control' and 'startup company'**: The MoF Notification brought about changes in certain definitions, thereby ensuring alignment with other laws. Pursuant to the MoF Notification, the term 'control' will have the meaning assigned to it under the CA 2013, thereby ensuring alignment between the CA 2013 and the NDI Rules. Further, 'control' with respect to a Limited Liability Partnership ("**LLP**") means a right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP. Further, the definition of a 'startup company' is updated to refer to private companies incorporated under the CA 2013 and identified under the DPIIT notification number G.S.R. 127 (E) issued on February 19, 2019.

Conclusion

The amendments introduced pursuant to the MoF Notification signify a welcome and much-awaited initiative. They not only remove certain limitations that previously existed under the cross-border investment framework but also bring regulatory clarity to the rules governing FDI and ODI. Particularly, the amendments relating to cross-border share swaps are expected to provide an important push for non-cash strategic transactions undertaken by Indian companies.

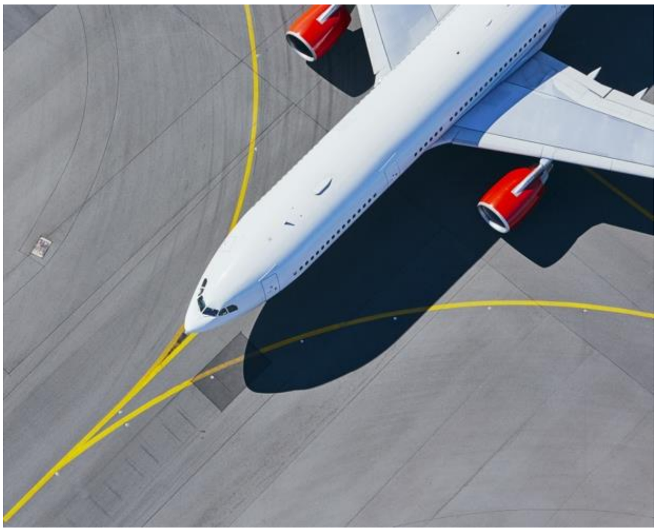
IBBI

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 CA 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.



Aviation

Highlights of Budget 2024 with focus on Aviation and Power

While the interim budget promised various incentives for Civil Aviation industry such as expansion of airports and introduction of new air routes, the Union Budget for 2024-25 ("**Budget 2024**"), seems to have focus on developing the Maintenance, Repair and Overhaul ("**MRO**") facilities in India.

In the power sector, Budget 2024 demonstrates decision of the GoI's to give a boost to the renewable energy sector in India. The Ministry of New and Renewable Energy is allocated INR 19,100 crore (Indian Rupees nineteen thousand and one hundred crore), while INR 16,394.75 crore (Indian Rupees sixteen thousand three hundred and ninety-four point seven five crore) is allocated to the total solar energy segment, INR 851,00,00,000 (Indian Rupees eight hundred and fifty-one crore) to wind and other renewable sources and INR 600,00,00,000 (Indian rupees six hundred crore) on National Green Hydrogen Mission. The major takeaways from the Budget 2024 for aviation and power are discussed below:

Aviation

1. New airport is required to be constructed in Bihar for which additional allocation of capital investment is provided by the GoI.
2. The GoI must obtain the legislative approval for 'Variable Capital Company Structure' for efficient and flexible financing for leasing of aircrafts and pooled funds of private equity through this structure.
3. To support domestic aviation and boat and ship MRO, the GOI has offered to extend the period for export of goods imported for repairs from 6 (six) months to 1 (one) year.
4. The GOI has extended the time limit for re-import of goods under warranty from 3 (three) to 5 (five) years.
5. The budget allocation for UDAN (*Ude Desh Ka Aam Nagrik*) regional connectivity scheme is cut by 60% and fixed at INR 502,00,00,000 (Indian Rupees five hundred and two crore) from its previous record-high grant of INR 1,244 crore (Indian Rupees one thousand two hundred and forty-four crore). This funding aims at rejuvenating unused and underused airports in tier-2 and tier-3 cities.
6. The allocations for the Director General of Civil Aviation and the Bureau of Civil Aviation Security are also reduced and currently stand at INR 302,64,00,000 (Indian Rupees three hundred and two crore and sixty-four lakh) and INR 89,00,00,000 (Indian Rupees eighty nine crore).
7. The GOI will present the Bhartiya Vayuyan Vidheyak 2024 in the upcoming monsoon session, which is going to replace the existing Aircraft Act 1934, providing provisions for ease of doing business in the civil aviation sector.
8. The first schedule to the Customs Tariff Act, 1975 is being amended to create new tariff lines in respect of defence products, technical textiles, sustainable blended aviation fuel, products used in Indian semiconductor machines, e-bicycles, natural menthol, printer cartridge etc. This is to align the tariff lines with world customs organisation classification and better identification of goods. These changes came into effect from October 1, 2024.

Power

1. Policy document prepared for energy transition pathways for ensuring employment, growth and environment sustainability in power sector.
2. The GOI to promote pumped storage project for storage of electrical power generated through renewable energy sources.
3. The GOI to encourage Research and Development ("**R&D**") in small and modular nuclear reactors. The GOI to partner with private players for Bharat small reactors, R&D in Bharat Small modular reactors and new technologies for use of nuclear energy for power generation.
4. The GOI to introduce indigenous technology for Advanced Ultra Super Critical Thermal Power plants with much higher efficiency.
5. The joint venture between National Thermal Power Corporation and Bharat Heavy Electricals Limited will set up 800 MW (eight hundred megawatt) commercial power plant using aviation science technology.
6. Power projects, including setting up of a new 2400 MW (two thousand four hundred megawatt) power plant at Pirpainti, are taken up at a cost of INR 21,400 crore (Indian Rupees twenty-one thousand and four hundred crore).
7. Development of indigenous capacity for production of high-grade steel and other materials to benefit the power sector as well.
8. The GOI to expand the list of material/instruments used for solar plants which are exempted from basic customs duty.
9. Submission of the final mega power project certificate is extended from 120 (one hundred and twenty) months to 156 (one hundred and fifty-six) months, from the date of assent to the Finance (No.2) Bill 2024.

Ease in the process of drone ownership

The Ministry of Civil Aviation, *vide* notification dated August 23, 2024, issued the Drone (Amendment) Rules, 2024, amending the Drone Rules, 2021 to simplify the procedure for registration and de-registration/transfer of drones. Form D-2 relating to registration of drones and Form D-3 relating to de-registration or transfer of drones are amended to include, proof of identity and proof of address, such as a voter's ID card, ration card or driving license, in addition to Indian passport number.

Bharatiya Vayuyan Vidheyak, 2024

On December 5, 2024, the Parliament passed the Bharatiya Vayuyan Vidheyak, 2024 ("**New Aircraft Act**")[4] replacing the Aircraft Act, 1934 ("**Aircraft Act**"), with an aim to modernise India's Aviation regulatory framework to align with international standards. The New Aircraft Act also aims to address emerging challenges in the aviation ecosystem including technological advancements, safety and consumer protection etc.

The New Aircraft Act retains the regulatory structure *qua* (a) Directorate General of Civil Aviation ("**DGCA**") – for performing regulatory functions and overseeing safety; (b) Bureau of Civil Aviation Security ("**BCAS**") - for overseeing security; and (c) Aircraft Accidents Investigation Bureau ("**AAIB**"), for investigation of aircraft accidents. These authorities must continue to operate under the Central government's supervision.

The New Aircraft Act introduces several key changes that are expected to significantly impact the Indian Aviation sector.

Key highlights of the New Aircraft Act

1. **Expands the scope of regulation under the New Aircraft Act to include aircraft 'design', 'manufacture', and 'maintenance':** The New Aircraft Act introduces new definitions such as 'design', 'maintenance' and 'manufacture'. The terms 'design' and 'maintenance' are being used for the first time. This creates regulatory certainty for Maintenance, Repair, and Overhaul ("**MRO**") sector thus, leading to more investments and creating a foundation for an atmanirbhar Bharat.
2. **Streamlines license process for aviation personnels**: Radio Telephone Operator Restricted certificate ("**RTORC**") and licence testing process which was earlier conducted by the Department of Telecommunications , are to be conducted by DGCA. This RTORC/license process is required to be undertaken by aviation personnels including aircraft maintenance engineers, flight despatchers and pilots to operate all radio frequencies and equipment on an aircraft. This ensures a single-window clearance process as aviation personnel can now secure all their certificates (including this one) from one authority.
3. **Aligns with international conventions**: The Central Government is empowered to make rules on matters relating to implementation of (a) Convention on International Civil Aviation,1944; (b)RTORC; and (c) licences under the International Telecommunication Convention. This ensures that best global aviation practices are followed in India and at the same time also enhances India's reputation in the international aviation community.
4. **Introduces second tier of appellate mechanism**: Presently, the decisions of Adjudicating Officer *re*. disputes/penalties under the Aircraft Act may be appealed before an Appellate Officer (appointed by the Central Government). The New Aircraft Act introduces an additional level of appeal against the decisions of the First Appellate Officer – which will now lie before the Second Appellate Officer. This ensures transparency and compliance with the principles of natural justice.
5. **Appeal against orders of DGCA and BCAS:** Under the New Aircraft Act, appeals against an order of DGCA or BCAS will lie before the Central Government. No further appeals against the Central Government orders is permitted. This ensures transparency and compliance of principles of natural justice.
6. **New penalties for dangerous flying and offences:** Violation of rules prohibiting slaughter and deposit of rubbish near airports are

[4] Received President of India's assent on December 11, 2024.

punishable with imprisonment up to 3 (three) years, a fine up to INR 1,00,00,000 (Indian Rupees one crore). The Central Government Is given discretion to specify civil or criminal penalties for violation of rules concerning regulation of activities related to aircrafts such as design, manufacturing, use, and trade, implementation of international convention etc. This is in line with the objective of ensuring safety and security for passengers.

7. **Economic and fare regulation in line with interests of consumers**: The New Aircraft Act empowers the Central Government to frame rules for economic regulation, including fare regulation for air transport services. Presently, the Central Government monitors the airfares through DGCA and airlines have liability to inform it before they decide a fare for a particular route in terms of Rule 135 of Aircraft Rules, 1937. In this regard, on December 5, 2024, Union Civil Aviation Minister Ram Mohan Naidu has announced that the Central Government is removing a provision in DGCA's Air Transport Circular 02 of 2010 (dated November 19, 2010) that allowed airlines to change prices within 24 (twenty-four) hours. The airlines are required to notify DGCA of ticket prices a month in advance, without being allowed the possibility of any changes/revisions. This mechanism helps to prevent unauthorised operation and protects consumers from exploitation while maintaining the financial viability of airlines.

Conclusion

Overall, the New Aircraft Act offers progressive and an ambitious step forward for the India's aviation sector. It not only strengthens the safety standards but also aligns with national initiatives like 'Make in India' and international best practices. However, there are also concerns with the New Aircraft Act regarding centralised power (lack of independence of regulatory authorities), environmental sustainability (which has not been directly addressed in the New Aircraft Act), lack of framework for aircraft leasing, absence of MRO specific provisions, loopholes in current consumer protection model (i.e. airfare guidelines not detailed, effective grievance redressal for consumers during airline's financial distress) etc. It is also important to address such concerns in order to fully unlock unprecedented growth and innovation in Indian Aviation.

The Ministry of Micro, Small and Medium Enterprises

Onboarding of companies on the Trade Receivables Discounting System platform

The Ministry of Micro, Small and Medium Enterprises, *vide* notification dated November 7, 2024, instructed all companies registered under the CA 2013 with a turnover of more than INR 250 crore (Indian Rupees two hundred and fifty crore) and all Central Public Sector Enterprises to get themselves onboarded on the Trade Receivables Discounting System ("**TReDS**") platforms. Further, the onboarding process on the TReDS platforms must be completed by March 31, 2025.

The Ministry of Home Affairs

Denial/refusal of applications of registration and renewal

The Ministry of Home Affairs, *vide* public notice dated November 8, 2024, outlines the reasons for the denial or refusal of registration and renewal applications under the provisions of the Foreign Contribution (Regulation) Act, 2010 ("**FCRA, 2010**") and/or the Foreign Contribution (Regulation) Rules, 2011 ("**FCRR, 2011**"). MHA has received representation from some of the associations stating that the reasons for denial of their application under FCRA, 2010/ FCRR, 2011 are not clear. Consequently, MHA has provided an illustrative list of reasons for denial of renewal/registration applications. Some of the key reasons for denial for renewal/registration applications are as follows:

1. if no activity is carried out by association or it has become defunct or the claimed activities could not be corroborated during field inquiry or if the field inquiry has revealed that no reasonable activity for welfare of society is undertaken by the association during last 2 (two) – 3 (three) years;
2. if prosecution for any offence pending against any office bearer(s)/member(s)/key functionary(ies) or any of the office bearer(s)/member(s)/key functionary(ies) is/are convicted under any law;
3. if the association is not responding to clarifications sought or has not provided the requisite information/document(s);
4. concealment of facts/information; and
5. if the association has diverted foreign contribution for carrying out anti-development activities or inciting malicious protests.

Some key reasons for denial that are specific to renewal applications are:

1. if the association has not utilised any foreign contributions during the last 5 (five) years for projects as per aims and objectives of the association;
2. if the association has not uploaded the annual returns of any of the previous 6 (six) financial years; and
3. if the association has violated any one or more of the provision(s) of the FCRA, 2010 or FCRR, 2011.

A few reasons for denial specific to registration applications are:

1. if the association has not fulfilled the criteria of spending a minimum amount of INR 15,00,000 (Indian Rupees fifteen lakhs) of its core activities for benefits of society during the last 3 (three) financial years; and
2. if the association is not in existence for 3 (three) years.

IFSCA

Guidelines for utilisation of office space or manpower or both by finance company(ies)/unit(s) undertaking ship leasing activity in IFSCs

On October 4, 2024, IFSCA released guidelines regarding the utilisation of office space or manpower for finance companies engaged in ship leasing activities within the IFSC. Some of the key aspects of the guidelines are as follows:

1. the proposed entity must qualify to be a 'group entity' of either the applicant entity or that of its parent entity. In such case, the applicant entity must submit duly filled application in the prescribed manner along with the one-time fee of USD 2,500 (US Dollars two thousand five hundred); and
2. the application as must be made before the incorporation of the proposed entity in the IFSC. Further, the proposed entity must be incorporated and its application for registration as a ship lessor must be received by IFSCA within a period of 6 (six) months from the date of receipt of approval, for which the approval must remain valid.

Clarifications in relation to investment restrictions on retail schemes set up in IFSCs

IFSCA, *vide* circular dated October 29, 2024, clarified that in case of investment by retail schemes in unlisted securities issued by an investment fund which is open-ended in nature, regulated by the concerned regulatory authority in its home jurisdiction and permitted for offering to retail investors in its home jurisdiction, the following ceilings/limits will not apply:

1. the ceiling of 15% investment of the total Asset Under Management ("**AUM**") of the scheme in unlisted securities in the case of an open-ended scheme;
2. the minimum investment amount of USD 10,000 (US Dollars ten thousand) for close-ended schemes investing more than 15% of AUM in unlisted securities;
3. the ceiling of 50% investment of AUM in unlisted securities in case of a close-ended scheme; and

4. the ceiling of 25% investments of AUM in the associates.

Further, in case of a retail scheme which is in the nature of a fund-of-funds scheme, the Fund Management Entity ("**FME**") must disclose in the offer document the details of the underlying scheme(s) wherein the investments are intended to be made and the nature of association, if any, that the FME has with the manager of the underlying scheme(s).

Framework for environmental, social and governance ratings and data products providers in the IFSC

IFSCA issued a circular dated October 30, 2024, outlining the framework for entities wishing to operate as Environmental, Social and Governance ("**ESG**") Ratings and Data Products Providers ("**ERDPP**") within the IFSC. Under the new framework, ERDPP entities must obtain registration with IFSCA. Such entities must be present in the IFSC by establishing a branch or forming a company or limited liability partnership or body corporate or any other form as permitted by IFSCA. Existing credit rating agencies already registered with IFSCA are permitted to offer ESG ratings without undergoing a separate registration process. Entities must maintain a minimum net worth of atleast USD 25,000 (US Dollars twenty-five thousand), appoint a principal officer and compliance and adhere to a code of conduct focusing on governance, transparency and conflict management. Additionally, ERDPPs are mandated to publish their rating methodologies and undertake an annual audit to uphold service quality and credibility.

IFSCA (Payment and Settlement Systems) Regulations, 2024

These regulations lay down the process of authorisation and operations of payment systems in IFSCs. Some of the key provisions are as follows:

1. every system provider must comply with the Principles for Financial Market Infrastructure issued by Committee on Payments and Market Infrastructures and International Organisation of Securities Commissions, and such other norms as may be specified by IFSCA;
2. every system provider must submit to IFSCA such returns, documents and other information as may be required and specified by IFSCA from time to time; and
3. every system provider must furnish to IFSCA, within 3 (three) months from the date on which its annual accounts are closed, a copy of its audited balance sheet as on the last date of the relevant year along with a copy of the profit and loss account and also a copy of the auditor's report.

Format and manner of seeking authorisation to commence or carry on a payment

The format and manner for applying to IFSCA for commencing or carrying on a payment system in an IFSC is specified. Every person desirous of commencing or carrying on a payment system in an IFSC must submit the prescribed application form and additional information/submissions to IFSCA.

Amendment to the Framework for aircraft lease with regard to transactions with person(s) resident in India

In order to facilitate the setting up of the aircraft leasing business in the IFSCs, IFSCA had issued a framework for entities to get registered as a finance company or a finance unit for undertaking aircraft lease transactions.

IFSCA, *vide* circular dated October 30, 2024, amended the framework with the insertion of a new clause relating to transactions with person(s) resident in India. It provided that no person(s) resident in India can sell, transfer, lease or otherwise dispose, any asset(s) covered under the framework, or a right or interest related to such assets, to a finance company undertaking aircraft leasing activity(ies), in circumstances where such assets, on or after its disposal, will be operated or used solely by person(s) resident in India or to provide services to person(s) resident in India. These restrictions will not apply where:

1. such disposal is to a lessor who is not a 'group entity' of such person(s); or

2. such disposal is to a lessor as part of sale and leaseback arrangement of such assets which are being imported into India for the first time.

Certain entities exempted from the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and KYC) Guidelines, 2022

IFSCA, *vide* circular dated November 18, 2024, exempted the following entities/activities from the applicability of the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and KYC) Guidelines, 2022 ("**Guidelines**"):

1. 'Global-in-House Centre' registered under the IFSCA (Global In-House Centres) Regulations, 2020;
2. 'International Branch Campus' or an 'Offshore Educational Centre' of a foreign university or a foreign educational institution registered under the IFSCA (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022;
3. 'Financial Crime Compliance Services Provider' registered under the IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024; and
4. a financial institution providing services only to the entities in its 'Financial Group' which are located in a country not identified in the public statement of financial action task force as 'High-risk jurisdictions subject to call for action'.

IFSCA, on November 22, 2024, further amended the Guidelines. Some of the key amendments are as follows:

1. the regulated entity must adhere to the countermeasures when called upon to do so by any international or intergovernmental organisation of which India is a member and accepted by the Central Government; and
2. a regulated entity which is part of a financial group must ensure that it provides its group-wide compliance, audit and anti-money laundering/countering the financing of terrorism functions of customer, account, and transaction information from its branches and subsidiaries, including information and analysis of transactions or activities which appear unusual, if such analysis is conducted, when necessary for the purposes of money laundering/terrorism financing risk management. Similarly, branches and subsidiaries should receive such information from these group-level functions when it is relevant and appropriate for effective risk management.

New regulations for registration of factors and the assignment of receivables within IFSC

IFSCA, *vide* circular dated November 18, 2024, issued the IFSCA (Registration of Factors and Registration of Assignment of Receivables) Regulations, 2024. These regulations aim to provide for the manner of granting certificate of registration to factors and filing of particulars of transactions with the Central Registry by a TReDS on behalf of the factors. Some of the key features of the regulations are as follows:

1. every Factor, intending to commence factoring business in an International Financial Services Centre must make an application to the IFSCA for grant of certificate of registration; a factor or entities other than factors, meeting such eligibility criteria as specified by the IFSCA, may undertake the factoring business with the assignor directly or through an International Trade Financing Services platform; and
2. the trade receivables financed through a TReDS must be filed with the Central Registry, by the concerned TReDS on behalf of the factor, within a period of 10 (ten) days, from the date of such assignment or satisfaction thereof, as the case may be.

Stringent measures against cybercrimes in India's new criminal justice system

On July 1, 2024, India's criminal justice system underwent a significant transformation with the introduction of 3 (three) new laws namely the 'Bharatiya Nyaya Sanhita, 2023' ("**BNS**") replacing the Indian Penal Code, 1860; the 'Bharatiya Nagarik Suraksha Sanhita, 2023' ("**BNSS**") replacing the Code of Criminal Procedure, 1973; and the 'Bharatiya Sakshya Adhiniyam, 2023' ("**BSA**") replacing the Indian Evidence Act, 1872 (collectively referred to as the "**New Criminal Laws**" or "**Legislations**"). These Legislations are intended to operate prospectively, meaning any crime committed until midnight of June 30, 2024, continues to be governed and prosecuted under the Indian Penal Code, 1860 ("**IPC**"), the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 (collectively referred to as the "**Old Criminal Laws**"). Consequently, the Old Criminal Laws remains relevant for several years until all pending investigations, inquiries, trials, appeals, and related proceedings are concluded.

With the Old Criminal Laws dating as far back as 1860, the Legislations mark a watershed moment in India's criminal justice system. The New Criminal Laws have introduced provisions aimed at adapting to the complexities of the digital age and deterring crimes that have flourished in the age of the internet. These Legislations also acknowledged the growing digital landscape and incorporated measures to better tackle the increasing rates of cybercrimes in India. While cybercrime is still not defined in the BNS, it is considered a catch-all phrase for offences involving technology such as hacking, phishing, and cyber-stalking.

Inclusion of cybercrime as 'Organised Crime'

A key introduction in the New Criminal Laws is the inclusion of 'Organised Crime' as a separate offence which defines organised crime as criminal activities, including cybercrimes and economic offences, committed by any person or a group of persons acting in concert, singly or jointly, either as a member or on behalf of an organised crime syndicate. With this, BNS envisages and aims to deter cybercriminals acting in groups or on behalf of syndicates which were missing under the IPC. While the IPC addressed cybercrimes like data theft or criminal conspiracy, it did not expressly consider the organised nature of these operations. Further, with such cybercrimes being penalised as organised crimes, punishments for such organised cybercrimes are more rigorous.

Usage of audio-video communications and electronic communication under various procedures

BNSS incorporated digital technologies and has expressly mandated use of 'audio-video communications' and 'electronic communication' in various procedures before the courts aiming to reduce delays in criminal proceedings. This change is brought in to decrease paperwork, reduce errors, and improve accessibility to case information for all parties involved. Under BNSS, witnesses and accused individuals can receive summonses through electronic communication. Investigating officers are authorised to record statements using audio-video technology, search and seizure operations can be recorded using audio-video equipment and even trials, inquiries, appeals and related proceedings, may be conducted *via* electronic mode. This implementation of electronic communications can streamline investigations and lead to faster enforcement against all crimes including cybercrimes.

Scope of certain sections extended to include activities performed through electronic platforms as crimes

Certain sections of BNS, such as those dealing with extortion, forgery or hate speech etc., are expanded to include such crimes being committed electronically *via* messages or social media platforms. Therefore, texts, emails, and social media posts sent by a person can be the basis on which that person is convicted of such crimes.

As an example, laws against hate speech (under Sections 196 and 197 of BNS) and laws against spreading misinformation that could disrupt public order (under Section 353 of BNS) are extended to include electronic communication as the medium for triggering such offences. This allows authorities to prosecute individuals who spread hate or incite violence through social media or other online forums and helps in better enforcement against the growing problem of fake news and online propaganda that can lead to social unrest. Further, definitions such as the meaning of obscene material under Section 294 of BNS are expressly extended to include content shared electronically, such as revenge porn or violent videos.

Through this expansion of expressly mentioning electronic communication in certain key sections, BNS aims to strengthen the legal framework and ensure that cybercriminals who exploit technology are identified faster and do not escape punishment. Furthermore, BNS has referenced the IT Act, 2000 ("**IT Act**") and BNSS for definitions of technological terms that are not expressly defined but used in BNS. This broader scope in recognising criminal activity across various electronic platforms enhances detection and deterrence of cybercrimes.

Recognition of electronic records as primary evidence

Section 57 of the BSA marks a significant reform towards tackling cybercrimes in India. This section recognises electronic records, encompassing digital documents, emails, social media posts, and more, as primary evidence in court proceedings. This represents a major leap forward from the past, where such evidence held a secondary status, requiring additional verification. Previously, relying on physical copies of digital evidence would significantly delay investigation and prosecution proceedings. However, Section 57 eliminates this barrier by granting electronic records primary evidence status. This allows courts to readily consider electronic records, potentially leading to faster and efficient disposal of cases, particularly in cybercrime scenarios where digital photographs, videos, and other multimedia evidence are often the key pieces of evidence and play a vital role in many cybercrime investigations.

While Section 57 of BSA recognises electronic records as primary evidence, Section 63 of BSA outlines the safeguards and provides specific guidelines for the admissibility of such evidence wherein electronic records are required to meet specific authenticity criteria before being admitted in court. Under section 63 of BSA, an electronic evidence is required to comply with the following key conditions to be admissible in a court of law the computer system that generated the record must have functioned properly during the relevant period; information similar to the electronic record in question must be routinely entered into the system; the electronic record must accurately reflect the data entered into the system; and the computer system are used for a legitimate business or activity during the relevant period. Further, the section acknowledges that information may be processed on multiple devices working together and treats such interconnected devices as a single unit for the purpose of meeting the admissibility criteria. Lastly, to introduce electronic records as evidence, a certificate needs to be submitted which is required to be signed by the person in charge of the computer or communication device or management of the relevant activities (whichever is appropriate) and an expert. This certificate is required to state how the record was produced, devices involved and confirm that the admissibility conditions are met.

This is meant to ensure validity of electronic evidence and prevent fabricated electronic records from influencing legal proceedings. Digital photographs, videos, and other multimedia evidence play a vital role in many cybercrime investigations. These guidelines establish clear standards for how such evidence can be collected, stored, and presented in court thereby ensuring reliability of such digital multimedia evidence in proving cybercrimes. By streamlining evidence collection, protecting witnesses, and ensuring the integrity of electronic records, this section paves the way for a more effective legal system in combating cybercrime and bringing perpetrators to justice.

Data privacy concerns

The emphasis on digital evidence and e-governance in the New Criminal Laws raises concerns about data privacy of individuals involved in the criminal justice system. While the use of technology can enhance efficiency and transparency, storage of such data also poses risk to individual's privacy rights. It is critical that such digital records are protected from cyber-attacks and data thefts. The government must ensure development of a well-equipped cyber security infrastructure and ensuring that such measures are balanced with strong privacy protection to keep public trust and safeguard individual privacy rights. It is important to note that the Digital Personal Data Protection Act, 2023 ("**DPDPA**"), published to safeguard personal data, exempts the requirements of notice and consent, among others, for the purposes of prevention, detection, investigation or prosecution of any offence or contravention of any law. For example, under the DPDPA, an individual has the right to withdraw his consent for processing of personal data but in case of data being processed by the State for purposes such as criminal investigation, such right cannot be exercised against the State.

Conclusion

The enactment of India's New Criminal Laws represents a significant stride towards modernising the country's legal framework, addressing contemporary challenges such as cybercrimes and adapting to the complexities of the digital age. By replacing the Old Criminal Laws, these reforms seek to foster transparency, accountability, and accessibility within the criminal judicial system. However, the successful integration of these laws is going to hinge upon effective implementation, robust enforcement, and continuous adaptation to societal needs.

Real Estate

The overhaul of the law relating to apartment ownership in Tamil Nadu

The law relating to the ownership and maintenance of apartments in Tamil Nadu was earlier governed by the Tamil Nadu Apartment Ownership Act, 1994 ("**1994 Act**") read with the Tamil Nadu Apartment Ownership Rules, 1997 ("**1997 Rules**"). However, the authorities under the 1994 Act and 1997 Rules were not notified. Consequently, the said law was not implemented in letter and spirit, and it remained as a dead letter.

Subsequently, the Government of Tamil Nadu enacted the Tamil Nadu Apartment Ownership Act, 2022 ("**2022 Act**"). However, the 2022 Act remained unnotified for the last 2 (two) years. The Government of Tamil Nadu notified March 6, 2024[5] as the date on which the 2022 Act has come into force. Accordingly, the 1994 Act stands repealed.

Also, on September 24, 2024, the Government of Tamil Nadu enacted the Tamil Nadu Apartment Ownership Rules, 2024 ("**2024 Rules**") prescribing the form and manner of compliance under the 2022 Act and notified the district registrars of the registration department as 'Competent Authorities' and the Inspector General of Registration Department as 'Appellate Authorities' as defined under the 2022 Act. Further, the 2024 Rules provides for authorities under the town and country planning department as the 'Appropriate Authorities'.

Therefore, the earlier law governing the ownership and maintenance of apartments in Tamil Nadu, i.e., the 1994 Act and 1997 Rules, which remained unimplemented for 3 (three) odd decades is completely re-jigged by the 2022 Act and 2024 Rules.

The salient features of the 2022 Act and 2024 Rules are summarised below:

1. **It's declaration:** not deed of apartment: The 2022 Act mandates the submission of a declaration by the promoter or a majority of the apartment owners, as opposed to the 1994 Act, which mandated the registration of a deed of apartment by each individual apartment owner.
2. **Redevelopment of the existing project:** the redevelopment of existing project can be initiated under any of the following circumstances:
    a) the association either *suo moto* or on request of 1/4th of the apartment owners, must convene a special general meeting, and with the consent of 2/3rd of the apartment owners; or
    b) on certification by the Appropriate Authorities that the apartment is in a ruinous condition or poses risk to its residents or the public, the association must convene a special general

[5] G.O. Ms. No. 62, HUD Department, GoTN

meeting and pass a resolution for redevelopment;

c) pursuant to any of the above, the association will engage a promoter/consultant and prepare a detailed redevelopment report ("**DRR**"), which contains the details such as the carpet area, alternative accommodation, security deposit etc.;

d) the DRR must be placed before the association for its consideration. Upon approval of the DRR, the association finalises the commercial terms of redevelopment with the promoter and obtain the written consent of not less than $2/3^{rd}$ of the apartment owners confirming the terms of redevelopment;

e) after obtaining such written consent, the association is required to enter into an agreement for redevelopment with the promoter, i.e., Detailed Redevelopment Scheme ("**DRS**") which details the timelines for redevelopment, revision in undivided share of land, procedure for allocation of units etc.;

f) the DRS must be submitted to the Appropriate Authorities for its verification and authentication. Within 90 (ninety) days from the date of obtaining such authentication, the DRS is going to be registered with the jurisdictional sub-registrar office. Simultaneously, within 30 (thirty) days from obtaining such authentication, the association will serve notice to the existing apartment owners for the handover of vacant possession of their apartments; and

g) thereafter, the promoter will obtain the necessary planning approvals, building approvals and sanctioned plan from the Appropriate Authorities. Upon obtaining the sanctioned plan, the association and the promoter will allocate the units to the existing apartment owners and the promoter. The details of the allocation are to be submitted to the Appropriate Authorities, who will verify and acknowledge the same. Upon completion of the redevelopment, the redeveloped apartments must be handed over to the existing apartment owners by issuing a handover certificate.

3. **Codification of the prevailing market practices:**

a) Hitherto, the law relating to ownership, maintenance and conveyance of apartments was not extensively codified, but rather guided by the principles propounded by the Transfer of Property Act, 1882 ("**TOPA**"), other property related legislations and the jurisprudence set out by the courts. While the 1994 Act recognised an apartment to be a heritable and transferable asset, all other aspects related to apartments was not adequately dealt with thereunder;

b) with the change in trend and economic prosperity, the nature of development, the facilities and amenities of apartments were continuously evolving but unfortunately the law relating to apartments was not dynamic to keep in pace with the changing trends. The 2022 Act comes as a relief, which has codified the prevailing practices of purchase, sale and maintenance of apartments, such as:

i) the common areas and facilities available in the project, for example car parking, balconies etc. can be limited to the possession, control and maintenance of certain apartments;

ii) if a project has multiple phases, each phase will have their own association, and all such associations will form a federation of association for the purposes of maintenance and management of areas common to the entire project;

iii) the ownership of undivided share in the project land and common areas in the project are to be in proportion to the carpet area of that particular apartment. To state it otherwise, the ownership of built-up area cannot be disproportionate to that of underlying land and common areas;

iv) each apartment along with its undivided share in the land and common areas are deemed to be a separate property for the purposes of tax assessment on the land and building;

v) the 2022 Act provides for dealing with delinquent apartment owners. The association can initiate action against them to claim damages or injunctive relief;

vi) the 2022 Act provides for a grievance redressal mechanism to the apartment owners. It provides for filing a complaint against the association or the office bearers for non-performance of their functions and non-adherence to the law;

vii) all common expenses assessed but unpaid by the apartment owners will constitute a charge on their respective apartments. Such charge is subject to the claims of land revenue, land taxes payable to government and mortgages, if any; and

viii) if any apartment is conveyed, then the vendor and purchaser of such apartment must be jointly and severally liable for the payment of any unpaid common expenses till the date of conveyance.

4. **The other salient features of the 2022 Act and 2024 Rules are as follows:**

   a) the definition of apartment owners is inclusive of a person who has taken an apartment on lease for a period exceeding 30 (thirty) years. Additionally, the 2022 Act is also binding and applicable to the tenants, employees of apartment owners and any other person using the apartment or part thereof;

   b) the definition of apartment includes both residential and commercial apartments;

   c) the common expenses must be charged to the apartment owners in accordance with the undivided share owned by them in the common area and the facilities;

   d) the 2022 Act provides for a penal provision, i.e., any contravention of the provisions of the 2022 Act will result in the imposition of a penalty in the form of a fine; and

   e) the 2024 Rules mandates for the creation of a web portal for the filing of all relevant documents and forms.

Conclusion

The 2022 Act is a progressive legislation, which has brought certainty and clarity to various aspects of apartment ownership. This benefits all the stakeholders such as developers, promoters, landowners and homebuyers, in terms of development, acquisition, maintenance and conveyance of apartments. The concept of redevelopment of old apartments is a novel approach and has unlocked an ocean of opportunities for the existing apartment owners and the developers. The 2022 Act covered a wide field and encompasses various aspects of apartments, but missed a critical one, i.e., a resolution mechanism to resolve the disputes arising *inter-se* the apartment owners.

इलेक्ट्रॉनिकी एवं
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MINISTRY OF
ELECTRONICS AND
INFORMATION TECHNOLOGY
सत्यमेव जयते

The Ministry of Electronics and IT

Advisory by the Ministry of Electronics and IT for intermediaries to take down prohibited content

On September 3, 2024, the Ministry of Electronics and IT ("**MeitY**") issued an advisory ("**September 3rd Advisory**") to intermediaries, advising them to take prompt action in taking down prohibited content from their platforms.

The September 3rd Advisory directs intermediaries to initiate and complete the content takedown process as soon as it is deemed necessary, without awaiting the expiration of the time limits prescribed under the IDMEC Rules and to do so, proactively and at the earliest possible opportunity.

In issuing the September 3rd Advisory, the MeitY referenced an order of the Bombay High Court ("**Bombay HC**") in *National Stock Exchange of India Ltd. vs. Meta Platforms, Inc.*[6] ("**NSE vs. Meta**") where the Bombay HC directed Meta Platforms, Inc. ("**Meta**") and the other defendants to take down content within 10 (ten) hours of receiving a complaint from National Stock Exchange of India ("**NSE**").

Soon after the September 3rd Advisory, the MeitY also issued an advisory dated September 13, 2024 ("**September 13th Advisory**") which advised

[6] Interim Application (L) NO. 21456 of 2024 in Com IPR Suit (L) NO.21111 of 2024

significant social media intermediaries ("**SSMIs**") to: ensure accountability towards an open, safe, trusted and accountable internet; and compliance with additional obligations applicable to SSMIs, particularly publication of periodic compliance reports (regarding details of complaints received, action taken, number of links or information removed, or access disabled thereto as a result of engaging in proactive monitoring by deploying automated tools). The September 13th Advisory also requests SSMIs to publish such periodic compliance reports by the 10th of every month and forward the same to cyberlaw-meity@meity.gov.in.

Background on NSE *vs.* Meta

NSE had filed an interim application on the ground of urgency against Meta (operator of Facebook and WhatsApp) and other defendants (including the operator of Telegram) ("**Defendants**") to take down: unauthorised artificial intelligence generated videos of NSE managing director and chief executive officer, Mr. Ashishkumar Chauhan; and unauthorised content containing NSE's trademark.

NSE informed the Bombay HC that as and when it came across such content, it would report the same to Meta as a grievance and, consequently, the content would be removed. However, NSE submitted that the grievance redressal mechanism is time-consuming and impracticable in the long run, as during the period in which the fake videos are in circulation, there is a likelihood of grave and irreparable injury as investors may act on false information contained in the fake videos. NSE further submitted that the time taken by the Defendants to take down content is critical (in some cases, more than 17 (seventeen) days), since information in relation to the markets is extremely time-sensitive and investors are likely to act upon the same instantly.

Notably, the counsels for the Defendants, other than the operator of Telegram, were absent at the hearing when the Order was passed. The counsel for the operator of Telegram submitted that Telegram would be compliant with the IDMEC Rules, but Telegram cannot undertake adjudicatory or censorial function in identifying content that infringes NSE's intellectual property rights.

NSE argued that the timelines contained in the IDMEC Rules to take down content are advisory in nature, and considering the national importance of fraudulent content relating to the NSE, the Defendants must act with extreme urgency and remove unauthorised content at the earliest and not later than 10 (ten) hours. NSE also submitted that it would address all correspondence to the Defendants regarding content takedown from a designated email address.

Noting NSE's arguments, the Bombay HC held that Rule 3(1) of the IDMEC Rules requires intermediaries to undertake due diligence and make reasonable efforts to not host, display, upload, modify, publish, transmit, store, update or share any prohibited content, and consequently, the Defendants that are intermediaries are mandated to take prompt action on complaints received from entities such as NSE of their rights being violated. The Bombay HC also granted ad-interim relief to NSE directing the intermediary Defendants to take down prohibited content and dubious pages/profiles/accounts within 10 (ten) hours (and not exceeding 14 (fourteen) hours) from receiving a complaint from NSE.

Analysis of takedown provisions under IDMEC Rules

The IDMEC Rules are founded on the principles set by the Hon'ble Supreme Court of India ("**Supreme Court**"), in ***Shreya Singhal vs. Union of India***,[7] wherein it was held that it would not be reasonable to expect intermediaries to actively monitor users on their platforms. It noted that it is not feasible for platforms to judge the legitimacy of the millions of requests for content moderation that they receive.

The IDMEC Rules require intermediaries to take down content only upon receiving 'actual knowledge', in the form of a court order or order from authorities. Upon receipt of such an order, an intermediary must take down such content within 36 (thirty-six) hours. Additionally, intermediaries have an active obligation to take down content, within 24 (twenty-four) hours of receiving a complaint, which *prima facie* is of the nature of content which exposes the private area of an individual; shows such individual in full or partial nudity; depicts an individual in any sexual act or conduct; or is in the nature of impersonation in

[7] (2015) 5 SCC 1

electronic form (including artificially morphed images).

In the absence of 'actual knowledge' in the form of a court order or order from authorities; or a complaint relating to sexual/impersonating content, intermediaries are required to undertake 'reasonable' due diligence efforts to prohibit their users from hosting prohibited content on their platforms. However, in view of *Shreya Singhal vs. Union of India*, an intermediary cannot be held liable where it does not actively moderate its platform.

Further, the IDMEC Rules require intermediaries to act on grievances (including by voluntarily taking down content) reported to them within 72 (seventy-two) hours to 15 (fifteen) days, depending on the nature of the content to which the grievance relates. However, this does not impose a strict takedown obligation, which is limited to only takedowns on the basis of actual knowledge and sexual/impersonating content.

Implication of NSE vs. Meta on Shreya Singhal vs. Union of India and IDMEC Rules

The Bombay HC's order in *NSE vs. Meta* may not have implications on the precedent set by the Supreme Court in *Shreya Singhal vs. Union of India* and the principles contained in the IDMEC Rules.

The Bombay HC order does not impose a general obligation on all intermediaries to proactively moderate their platforms, but only requires specific intermediaries (i.e., the Defendants that are intermediaries) to take down content reported by a specific complainant (i.e., the NSE) through a specified email ID. The obligation to take down such content is similar to the obligation to take down content that is *prima facie* sexual/impersonating automatically (without adjudicatory or application of mind for censorship). Additionally, the 10 (ten) hour timeline set by the Bombay HC is an ad-interim measure set in view of the critical nature of the content in question and potential implications of the same, and not a general obligation for all intermediaries to comply with.

Advisories (such as the September 3rd Advisory) by the MeitY to intermediaries are also generally only advisory in nature and cannot be enforced without corresponding provisions contained in (binding) statutes, rules, regulations or other laws.

Conclusion

In conclusion, the Bombay HC's order in *NSE vs. Meta*, while significant, does not fundamentally change the established legal framework for social media intermediaries as outlined by the Supreme Court in *Shreya Singhal vs. Union of India* and the IDMEC Rules. The order specifically addresses Meta, requiring it to act quickly on complaints from the NSE without imposing a universal duty for all intermediaries to actively moderate content. However, the 10 (ten) hour removal requirement signals a growing expectation for intermediaries to respond promptly to urgent issues, which could lead to increased operational pressures. In any case, it is recommended for social media companies should implement effective content monitoring policies and grievance redressal mechanisms to avoid any potential scrutiny from the courts/regulator in the future.

Food and Consumer

Legal Metrology

To ensure compliance with the provisions of the Legal Metrology Act, 2009, the Government of India has issued notices to several quick-commerce firms. These notices relate to the production and sale of packaged goods and address instances of non-compliance with the Legal Metrology Act, 2009, and the Legal Metrology Packaged Commodity Rules, 2017 (collectively, "**Legal Metrology Law**"). Legal Metrology Law mandates the display of specific labelling and key product information on product packaging, such as the display of maximum retail price and expiration dates, to protect consumers. Regulatory bodies are currently examining compliance with these mandatory disclosures. It may be noted that home brands as well as third-party brands offered on quick commerce platforms ("**Platforms**") result in the Platforms being scrutinised by regulatory bodies. As such, this requires increased investment and oversight by the Platforms for ensuring compliance by the brands displayed on them.

Furthermore, in an effort to safeguard consumer interests, the regulatory body has inspected multiple fuel stations to ensure accurate fuel delivery. 16 (sixteen) cases are registered against fuel station owners for short delivery.

Curbing misleading advertisement and protecting consumer interest

Considering the order passed by the Supreme Court of India in ***Indian Medical Association and Anr. vs. Union of India and Ors.***, from earlier this year, all Food Business Operators ("**FBOs**") must comply with the directives aimed at curbing misleading advertisement and protecting consumer interest. Referencing the order, the Food Safety and Standards Authority of India ("**FSSAI**"), *vide* advisory dated November 11, 2024, has directed that a self-declaration must be submitted by the advertiser/advertising agency on the designated portal before any advertisement is printed/aired/displayed, certifying that its advertisement does not violate the Advertising Code prescribed under Cable Television Networks Rules 1994. The Broadcast Seva Portal is the platform for this for television and radio, while for print the platform is the Press Council of India's corresponding portal. Proof of uploading the self-declaration must be made available by the advertisers to the concerned broadcaster/printer/publisher/TV channel/electronic media for the records.

While the portals are active from earlier in the year, this advisory specifying submission of proof adds a layer of compliance for both the FBOs and the broadcaster/printer/publisher/TV channel/electronic media community.

FSSAI reinforces food safety compliance amongst e-commerce FBOs

FSSAI, *vide* press release dated November 12, 2024, aims to address concerns related to food safety, labeling, and consumer protection in the growing e-commerce food industry. A few key points are as follows:

1. FBOs are asked to ensure that products delivered to consumers have a minimum shelf life of 30% or 45 (forty-five) days before their expiry date;
2. e-commerce platforms must ensure that product claims and descriptions align with the information provided on product labels;
3. any FBOs operating on e-commerce platforms must possess a valid FSSAI license or registration;
4. FBOs must implement robust food safety and hygiene practices, including proper training for delivery personnel; and
5. e-commerce platforms must ensure that food items and non-food items are delivered separately to prevent cross-contamination.

Upon implementation, the above has a potential cost implication for e-commerce FBOs, as well as a potentially different experiential difference for the end user.

Mandatory Permanent Account Number compliance for FSSAI license/registration

FSSAI, *vide* order dated November 13, 2024, decided to link Permanent Account Number ("**PAN**") with FSSAI licenses and/or registrations. Existing licensed/registered FBOs, whose renewal or modification is not due in near future, must update their PAN details under the food safety compliance system user profile section. If any FBO applying for registration does not possess a PAN, a declaration is required to be given for non-possession of PAN.

Addition of food products under 'high risk food categories'

FSSAI, *vide* order dated November 29, 2024, decided that 'Packaged Drinking Water and Mineral Water' (for which Bureau of Indian Standards certification was mandatory prior to Food Safety and Standards (Prohibition and Restrictions on Sales) First Amendment Regulations, 2024 dated October 17, 2024, are to be treated under 'High Risk Food Categories'. Consequently, the Risk Based Inspection Scheduling policy for these products is modified to include mandatory inspection of manufacturers/processors before the grant of license/registration and mandatory inspection of FBOs, once a year.

Draft amendment to the Food Safety and Standards (Licensing and Registration of Food Business) Amendment Regulations, 2024

FSSAI, *vide* notification dated October 3, 2024, issued draft regulations to amend the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011. Comments on the draft were to be submitted by December 3, 2024. The proposed amendments are as follows:

1. a new provision on digitising the issuance of license and registration is provided. It aims to expedite the licensing and registration process by authorising the food authority to take decisions on automating the processes where verifications are possible through digital tools. If implemented well, this could reduce time and other related entry barriers into the food business industry; and
2. in the framework for general hygiene and sanitary practices to be followed by FBO considerations to be followed by primary milk producers are added. Primary production of milk intends to cover end consumer distribution by the milk producer itself, where milk production is typically *sans* milking machines. Given the additional governance and compliance added in this space, it remains to be seen if it has a corresponding effect (either positive or adverse) on the complementary industries such as subscription milk distribution platforms.

Draft Food Safety and Standards (Import) Amendment Regulations, 2024

To streamline the process of analysing imported food samples and ensure consistency in laboratory practices, FSSAI, *vide* notification dated October 3, 2024, issued draft regulations to amend the Food Safety and Standards (Import) Regulations, 2017. Comments on the draft were to be submitted by December 3, 2024. The proposed amendments are as follows:

1. the method of analysis of samples of food articles must be in accordance with the manuals adopted by the food authority. In case in case the method for analysing any parameter is not available in these manuals, the food laboratory can adopt a validated method of analysis prescribed by AOAC/ISO/Pearson's/Jacob/IUPAC/Food Chemicals CODEX/BIS/Codex Alimentarius/Woodmen/Winton-Winton/Joslyn or any other internationally recognised regulatory agencies; and
2. the laboratory analysis report on a sample can now be signed by a Food Analyst or Director of the notified laboratory or referral laboratory. Earlier, this had to be signed by the Food Analyst of the notified laboratory or referral laboratory.

Submission of proposals for setting up of multiproduct irradiation facilities under the scheme for integrated cold chain and value addition infrastructure against the expression of interest

Ministry of Food Processing Industries ("**MoFPI**"), *vide* public notice dated October 11, 2024, continued to invite submission of proposals for setting up of multiproduct irradiation facilities under the scheme for Integrated Cold Chain, Value Addition and Preservation Infrastructure (the "**Scheme**") against the expression of interest pursuant to their frequently asked questions issued on September 14, 2024. Under Clause 9(n) (*application filing and documents required*) of the Scheme, a firm letter of recommendation or a memorandum of understanding/agreement between applicant and the designated agency of Department of Atomic Energy for the supply of source of food irradiation must be submitted. The successful applicant(s) are required to submit the final memorandum of understanding within a period of 60 (sixty) days from the date of issue of the approval letter. Further, MoFPI *vide* circular dated October 21, 2024, provided extension of timeline for submission of proposals under the Scheme against the expression of interest up to 5:00 PM of November 21, 2024.

Implementation of agreement signed between FSSAI, Ministry of Health and Family Welfare, Government of India and Bhutan Food and Drug Authority

To ensure the smooth import of food products from Bhutan to India, FSSAI, *vide* office order dated October 17, 2024, notified the format of the health certificate for import of food products into India intended for human consumption. The agreement signed between FSSAI and the Bhutan Food and Drug Authority ("**BFDA**") recognises the equivalence of the regulatory controls exercised by both authorities. The BFDA will issue a health certificate for food products exported to India, ensuring compliance with FSSAI requirements. The office order also provides a list of approved Bhutanese manufacturers and their scope of approval. Imported food consignments from these approved Bhutanese manufacturers must be accompanied by a valid health certificate issued by the BFDA. Further increase and cooperation in international standardisation of practices and certification is a positive for the industry. In particular, it may have a convenience factor for traders and distribution/marketplace platforms selling imported food products.

Food Safety and Standards (Prohibition and Restrictions on Sales) First Amendment Regulations, 2024

FSSAI *vide* notification dated October 17, 2024, amended the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011. The amendments are as follows:

1. Regulation 2.1.1 (5) provides that no person can either by himself or by any servant or agent sell a mixture of 2 (two) or more edible oils as an edible oil. An exception is carved out to provide that this restriction is not operative in respect of multi-source edible oil as specified under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 provided such multi-source edible oil is sold in a package weighing less than 15 (fifteen) litres;
2. the restriction on sale of ghee having less Reichert value than that specified for the area where it is sold is removed;
3. the restriction on the manufacture, sale, storing or exhibiting for sale of the following products under the Bureau of Indian Standards Certification Mark is removed (a) infant milk food, infant formula and milk cereal based weaning food, processed cereal based weaning food and follow up formula; (b) condensed milk sweetened, condensed skimmed milk sweetened, milk powder, skimmed milk powder, partly skimmed milk powder and partly skimmed sweetened condensed milk; (c) packaged drinking water and mineral water; and
4. the requirement that sealed package of blended edible vegetable oils and fat spread must bear the AGMARK certification mark is removed.

Central Consumer Protection Authority

Central Consumer Protection Authority issues the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024

The Central Consumer Protection Authority ("**CCPA**") notified the Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 ("**Guidelines**") on October 15, 2024, in furtherance to the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022. The Guidelines were framed after seeking comments from the public on the earlier released draft Guidelines and seeks to prevent companies from making false or misleading claims about the environment-friendly nature of their products and services.

Concept of environmental claims and greenwashing

The Guideline define 'environmental claims' to include any representation, in any form, suggesting environmentally friendly attributes aimed to convey a sense of environmental responsibility or eco-friendliness of goods (either in its entirety or as a component), the manufacturing process, packaging, the manner of use of the goods or its disposal or any service (or any portion thereof) or the process involved in providing the services. These claims may include, but are not limited to:

1. having a neutral or positive impact on the environment or contributing to sustainability;
2. causing less harm to the environment compared to an earlier version of the same product or service;
3. causing less harm to the environment than competing goods or services; and
4. being more beneficial to the environment or possessing specific environmental advantages.

The Guidelines also highlight that any aspirational or futuristic environmental claims may be made only when clear and actionable plans on how such objectives are sought to be achieved are developed.

'Greenwashing' means any deceptive or misleading practice, which includes concealing, omitting or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims or the use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful attributes. However, it excludes use of obvious hyperboles, puffery; or the use of generic colour schemes or pictures; either not amounting to any deceptive or misleading practice; or a company mission statement that is not specific to any product or service.

The Guidelines provide an illustration of what constitutes greenwashing and environmental claims.

A company's mission statement that 'its growth will be based on sustainability principles' will not be treated as an environmental claim. However, if the Company further adds to the above-stated statement 'and all its products are manufactured in sustainable manner', then such an environmental claim must be examined for greenwashing.

Applicability

The Guidelines are applicable to:

1. all environmental claims;
2. any manufacturer, service provider or trader whose goods/product/service is the subject of an advertisement; and
3. any advertising agency or endorser whose service is availed for the advertisement of such goods, product or service.

If any environmental claims are already regulated under any specific law, the Guidelines may be read as supplementary provision and not in derogation of such specific laws and where provisions of such other specific laws are in conflict with these Guidelines, then such specific law will prevail.

Substantiation of environmental claims

All advertisements making environmental claims must not use generic terms like 'clean', 'green', 'eco-friendly', 'eco-consciousness', 'good for the planet', 'minimal impact', 'cruelty-free', 'carbon-neutral', 'natural', 'organic', 'pure', 'sustainable', regenerative or other similar claims without adequate, accurate and accessible qualifiers and substantiation and adequate disclosures.

Advertisements must use consumer- friendly language and explain the meaning or implications when using technical terms like 'environmental impact assessment', 'GHG emissions' and 'ecological footprint'.

All environmental claims should be supported by evidence which is easily accessible and verifiable and based on independent studies or third-party certifications.

What constitutes adequate disclosures?

Any disclosures made in relation to environmental claims must be easily accessible to the consumers and should not contradict the relevant environmental claim.

Any person making an environmental claim by way of an advertisement or communication should disclose all detailed material information by inserting a QR Code or URL (or such other technology or digital medium) in such advertisements or communications.

While making disclosures in relation to environmental claims using data from research, both favourable and unfavourable observations should be highlighted.

The relevant advertisement or communication should specifically mention whether it refers to the goods (as a whole or part thereof), manufacturing process, packaging, manner of use of the goods or its disposal, or service (as a whole or part thereof) or the process of rendering the service.

Comparative environmental claims that compare 1 (one) product or service to another must be based on verifiable and relevant data and must disclose what specific aspects are being compared.

Disclosures regarding credible certification, reliable scientific evidence, internal verifiable evidence, certificates from statutory or independent third-party verification must be supported for specific environmental claims such as ‘compostable’, ‘degradable’, ‘free-of’, ‘non-toxic’, ‘100% natural’, ‘recyclable’, ‘refillable’, ‘renewable’, ‘plastic-free’, ‘plastic- positive’, ‘climate-positive’, ‘net-zero’ and other similar claims.

Guidance for making environmental claims

CCPA also issued a guidance note to further detail the nature of claims that are subject to scrutiny under the Guidelines.

Parameters	Explanation	Illustration
Truthfulness and accuracy	Environmental claims must be truthful, accurate and based on verifiable information, i.e., certificates by statutory/credible authorities or internal verifiable evidence.	Presenting a claim unaccompanied by requisite evidence or certification such as, ‘Our packaging is made from 100% recycled materials’ or ‘Energy-efficient technology for a greener tomorrow’
Clarity and unambiguity	Environmental claims must not use generic or technical terms without supporting studies or certifications.	Presenting a claim without adequate qualifiers/substantiation such as, ‘Go green with our product’ or ‘Harnessing the power of sustainable technology’ or ‘Made with minimal impact on the environment’
Fair and meaningful comparisons	Comparative environmental claims must be verifiable and based on relevant data.	Presenting a vague claim which misleads consumers by implying lack of safety of competitive products such as, ‘Chemical-free cleaning for a safer environment’ or ‘Our product is greener than the competition’
Absolute and relevant claims	If an environmental claim pertains to a specific feature, part or stage then the fact that such environmental claim relates only to such relevant feature, part or stage should be fully disclosed.	Advertising a bottle of hand-wash as ‘biodegradable’ without clarifying that only the hand-wash, and not the bottle, is biodegradable.

Parameters	Explanation	Illustration
Imagery sans substantive claims	Any form of visual environmental claim attempting to manipulate the consumer into believing that a product or service is environmentally responsible or eco-friendly, without providing relevant details or context.	A detergent advertisement showcasing a family in an open grass ground, with the tagline, 'Gentle on Clothes, Gentle on Nature' without necessary disclosures implies a connection between the product and an eco-conscious lifestyle.
Endorsements	Environmental claims suggesting endorsements/certifications that are (a) non-existent, (b) intentionally misleading, or (c) lack recognition from credible authorities	Labelling a product as 'certified organic' or 'recommended by leading environmental experts' or falsely implying that such product meets certain quality standards.

Conclusion

There is an increasing trend of inaccurate and misleading claims being made while marketing products, creating an illusion of environmental responsibility, in order to capitalise on consumers' growing environmental sensitivity. The Guidelines push for provision of correct information thereby enabling consumers to make informed choices. The Guidelines pose a significant step towards promoting transparency and accountability in environmental claims made in advertising, catering to the rising consumer interest in environmentally positive goods and services thus enhancing consumer trust.

Guidelines for Prevention of Misleading Advertisement in Coaching Sector, 2024

CCPA, *vide* notification dated November 13, 2024, issued guidelines aimed to safeguard students and the public from deceptive marketing practices such as false/misleading claims, exaggerated success rates, and unfair contracts that coaching institutes often impose on students. These guidelines apply to all forms of advertisements by any person including an endorser engaged in the coaching sector. The guidelines focus on regulating such false advertisements and impose obligations on persons engaged in coaching as well, when making advertisements. These obligations include, *inter alia* the following:

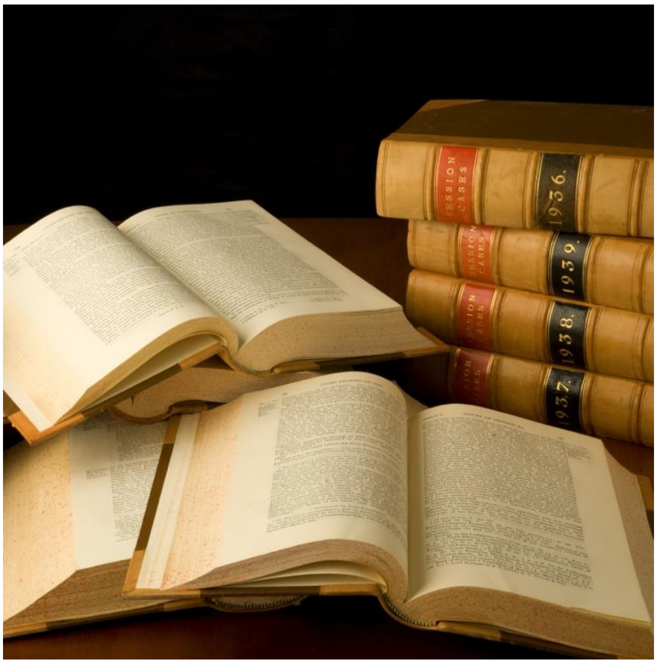
1. disclose important information such as rank secured, name and duration of the course; and
2. accurately represent the service, facilities, resources and infrastructure of the coaching centre.

It must be noted that usage of the phrase 'any person who is engaged in coaching' has the prospect of casting a wide net.

Ministry of Textiles

Extension of validity order of mandatory jute packaging of foodgrains and sugar

The Ministry of Textiles, *vide* order dated December 26, 2023, directed that sugar and food grains must be packed in jute packaging material for supply or distribution. This direction was valid till June 30, 2024. *Vide* order dated October 1, 2024, this timeline is now extended upto December 31, 2024, or until further orders, whichever is earlier.



CASE LAWS

Revocation of gift deeds: The Supreme Court's interpretation of Section 126 of TOPA

The Supreme Court in ***N. Thajudeen vs. Tamil Nadu Khadi and Village Industries Board***[8], examined the questions around revocation of a gift deed *inter alia* in terms of Section 126 of TOPA. At the outset, the Hon'ble Supreme Court concluded that the gift deed in question: (a) was accepted by the donee as stated in the deed itself; (b) had no provisions to indicate any agreement on its revocation under any circumstances or at will; and (c) was not in the form of a contract that could otherwise be rescinded. Accordingly, the test under Section 126 of TOPA were not satisfied for valid revocation, and the Supreme Court hence concluded that the revocation of the gift deed in the said matter was void *ab initio* and dismissed the appeal on that and other grounds.

Brief facts

The appellant in this case ("**Appellant**") executed a Gift Deed dated March 5, 1983 ("**Gift Deed**") gifting a property situated in Cuddalore district of Tamil Nadu in favour of The Tamil Nadu Khadi and Village Industries Board ("**Respondent**"). In terms of the Gift Deed, the property was gifted for the purpose of manufacturing *khadi-lungi, khadi* yarn, etc, with the condition that the Respondent must not transfer the said suit property for its own self-interest. The Appellant executed a Revocation Deed dated August 17, 1987 ("**Revocation Deed**") revoking the gift made pursuant to the Gift Deed.

The Respondent filed a suit for declaration of title and recovery of possession of the said property, which was dismissed by the trial court on the ground that the Gift Deed was not valid as it was never accepted and acted upon. The Respondent preferred an appeal before the district court, which reversed the order of the trial court and decreed the suit. In decreeing the suit, the district court held that the gift had been accepted, acted upon, was valid and that in the absence of any clause in the Gift Deed authorising revocation, the Gift Deed could not have been revoked. The second appeal filed by the Appellant before the Madras HC was dismissed. Thereafter, the Appellant filed a special leave petition before the Supreme Court.

Issues

The following substantive issues came up for consideration before the Supreme Court:

1. Whether the Gift Deed was accepted and the gift valid?
2. Whether the Gift Deed had been validly revoked *vide* the Revocation Deed?

Findings and analysis

On the first issue, the Supreme Court examined the Gift Deed and certain other facts to ascertain if the gift had been accepted. The Supreme Court noted that the Gift Deed itself stated that the gift stood accepted by the Respondent from the date of the Gift Deed and that the suit property had been accepted for the purpose of manufacturing khadi-lungi, khadi-yarn, etc. The Supreme Court determined that this was sufficient proof of acceptance. Further, the Supreme Court noted that pursuant to the acceptance of the Gift Deed, the Respondent had applied for the mutation of its name to the revenue authorities; and had also issued a memo on September 16, 1983, which proved that the Respondent had taken possession of the suit property and had proceeded to construct on it. Basis the

[8] Civil appeal no. 6333 of 2013

aforesaid, the Supreme Court concluded that the gift had been accepted and duly acted upon by the Respondent and hence cannot be held to be invalid for want of acceptance.

On the second issue relating to the revocation, the Supreme Court noted from the facts that: (a) as per the Gift Deed, neither the Appellant nor his legal heirs would have or continue to have any right or interest in the suit property from the time and date of the Gift Deed; (b) the gift was with the Appellant's full consent and from the date of the gift itself; and (c) the Respondent had accepted the suit property for the use and purpose specified therein. Accordingly, the Supreme Court concluded that the gift was absolute with no right reserved for its revocation in any contingency.

Further the Supreme Court held that a gift that is validly made can be suspended or revoked only under certain contingencies as contemplated under Section 126 of the TOPA. As per Section 126 of the TOPA: (a) a gift may be suspended or revoked, as agreed between the donor and donee, on the happening of any specified event which does not depend on the will of the donor; and (b) a gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Section 126 of the TOPA also states that a gift in which the parties agree that it can be revoked at the mere will of the donor is going to be void wholly or in part.

The Supreme Court analysed whether any of the contingencies under Section 126 of the TOPA are applicable to the present case and noted that: (a) there is no indication under the Gift Deed that the Appellant and the Respondent have agreed for the revocation of the Gift Deed for any reason, much less on the happening of any specified event. Hence the first exception permitting revocation of the Gift Deed was not attracted; and (b) the Gift Deed was not in the form of a contract that could be rescinded and hence the second exception was also not attracted. Basis the above, the Supreme Court held that the revocation was invalid and the Revocation Deed was *void ab initio* and of no consequence.

Separately, the Supreme Court also held that the non-utilisation of the suit property for the stated purpose (i.e. manufacturing khadi-lungi, khadi-yarn, etc.), and keeping it vacant, while being a disobedience of the object of the gift, by itself would not attract the power to revoke the Gift Deed. Particularly, such revocation would not be valid if there is no stipulation in the Gift Deed that the gift could be revoked if the suit property was not utilised for the stated purpose.

In addition to the aforesaid substantive issues, the Supreme Court also considered the Appellant's argument that the suit filed by the Respondent is barred by limitation since it was not filed within 3 (three) years from the date of Revocation Deed. On this issue the Supreme Court held that once the Gift Deed was validly executed and had resulted in the absolute transfer of title in favour of the Respondent, the same was not liable to be revoked, and as such the Revocation Deed was meaningless especially for the purposes of calculating the period of limitation for instituting the suit. In the case at hand, the Supreme Court noted that the suit was not simply for the declaration of title but rather for a further relief for recovery of possession. Accordingly, the Supreme Court held that in a suit for declaration of title, when an additional relief is claimed beyond the mere declaration, the declaration of title becomes ancillary to the primary relief sought. For the purposes of limitation, the suit is governed by the limitation period applicable to the additional relief claimed. As the further relief sought was for the recovery of possession based on title, the limitation would be 12 (twelve) years in terms of Article 65 of the Schedule to the Limitation Act, 1963. The Supreme Court hence held that the present suit was within the prescribed limitation period.

Conclusion

The Supreme Court thus held that in the present case since the Gift Deed was accepted and acted upon, it could not be revoked since there was no express right to do revoke included in the deed; and in any case the provisions under Section 126 of the TOPA were not satisfied for such revocation. Accordingly, the Revocation Deed was *void ab initio* and of no legal effect. The Supreme Court further noted that while the suit property was not used for the intended purpose (i.e. manufacturing of khadi goods), this by itself would not attract the power to revoke the Gift Deed since the Gift Deed did not stipulate revocation for non-utilisation of the suit property for the stated purpose.

The Supreme Court clarifies the law on registration and stamping of a sale certificate issued in pursuance of an auction sale by a court

The Supreme Court in its recent judgement in ***The State of Punjab and Another vs. Ferrous Alloy Forgings Private Limited and Ors***[9], held that a sale certificate issued under the Code of Civil Procedure, 1908 ("**CPC**") is not compulsorily registrable; no stamp duty in terms of the Indian Stamp Act, 1899 ("**Stamp Act**"), is payable when a copy of the certificate forwarded by the Registry of the Court to the registering authorities, for filing as required under the Registration Act, 1908 ("**Registration Act**"); and the requirement to pay stamp duty would arise only when the person in whose favour the sale certificate is issued, voluntarily presents the sale certificate for registration or when the sale certificate is used to establish right/title over the property, in any proceedings. This judgement of the Supreme Court is significant since it clarifies the law on stamping and registration requirements of a sale certificate issued under the CPC and settles the principle of law on passing of title in an auction sale under CPC.

Brief facts

Ferrous Alloy Forgings Private Limited ("**FAFPL**") was the purchaser of properties sold in a public auction conducted by the High Court of Punjab and Haryana High Court ("**P&H HC**") in the liquidation process of Punjab United Forge Limited. In terms of Order XXI, Rule 92 of the CPC, the sale was confirmed in favour of FAFPL by the P&H HC *vide* order dated October 10, 1996. An application was filed before the P&H HC by FAFPL seeking issuance of sale certificate, which *vide* order dated April 13, 1999[10] held that stamp duty is payable on the sale certificate as applicable to a conveyance. The Registrar of P&H HC ("**Registrar**") demanded FAFPL to pay stamp duty as applicable to a conveyance for issuing the sale certificate. Challenging the said directions of the Registrar, FAFPL filed a writ petition, wherein the division bench of the P&H HC held[11] that the Registrar does not have powers to collect the stamp duty on a sale certificate and the Registrar is merely required to issue the original sale certificate to the auction purchaser and forward a copy of the same to the jurisdictional Sub-Registrar as per the Registration Act. Challenging the said order, the Revenue Department preferred an appeal before the Supreme Court.

Decision of the Supreme Court

The Supreme Court dealt with various judicial precedents on the subject matters and held as under:

1. **Passing of title in an auction sale under CPC:** The Supreme Court relied on its judgment in *Municipal Corporation of Delhi vs. Pramod Kumar Gupta*[12] and held that the title to the property sold in an auction under the CPC passes on to the auction purchaser when the objections to the sale are disposed of, confirming the sale in terms of Order XXI, Rule 92 of the CPC. Upon such confirmation, the sale becomes absolute and the title is vested with the auction purchaser[13].
2. **Nature of a sale certificate:** The Supreme Court held that since the title passes upon confirmation under Order XXI Rule 92 of the CPC, the sale certificate issued thereunder is a mere formal declaration of the sale confirmation; and the sale certificate does not create or extinguish any title over the property. The Supreme Court, therefore, clarified that the sale certificate would not attract any stamp duty as applicable to an instrument of conveyance.
3. **Sale certificate is not compulsorily registrable:** The Supreme Court relied on Section 17(2)(xii) of the Registration Act and clarified that the sale certificate issued by the Registrar of the P&H HC in pursuance of a public auction is not a non-testamentary document requiring registration under Section 17(1) of the Registration Act. Therefore, it was held that a sale certificate issued under Order XXI, Rule 94 of the CPC is not compulsorily registrable. It was further clarified that the Registrar is merely required to forward a

[9] Judgement dated November 19, 2024, in C.A. No. 12527 of 2024. Neutral Citation 2024 INSC 890
[10] CA No. 554 of 1998
[11] Judgement dated November 28, 2013, in Civil Writ Petition No.11055 of 2001 (O&M)
[12] AIR 1991 SC 401.
[13] *Arvind Kumar vs. Govt. Of India and Ors* reported in (2007) 5 SCC 745

copy of the sale certificate to the jurisdictional Sub-Registrar in terms of Section 89(4) of the Registration Act for the purpose of filing the same in book 1. The Supreme Court relied on its earlier decision in *Inspector General of Registration and Another vs. G. Madhurambal and Anr*[14] and clarified that once the copy of the sale certificate is forwarded to the Sub-Registrar's office for filing in book 1, the same has the effect of registration and no further action is required.

4. **Stamping of sale certificates:** The Supreme Court held that the stamp duty in terms of Article 18 read with Article 23 of Schedule 1 to the Stamp Act will have to be paid on the original sale certificate, when the same is presented by the auction purchaser or when the certificate is relied on or used for any purpose to establish the title.

In addition to the above, the appellants had contended that FAFPL had alternate remedy of filing an appeal against the order of the Company Court in pursuance of which the Registrar issued the directions; and hence a writ petition was not maintainable. While rejecting this contention, the Supreme Court reiterated the position of law that availability of alternative remedy does not divest the writ jurisdiction of a High Court under Article 226 of the Constitution of India if the case warrant such interference.

Conclusion

The judgement consolidates and clarifies the position of law on the nature of the sale certificate as an instrument evidencing title; and stamping and registration requirements of a sale certificate issued by the officer of a Court for sale of properties through public auction under the CPC. This judgement resolves the conflicting views taken by the officers of various High Courts and consolidates the position of law on the subject. This judgement will assist the purchasers who acquire properties in public auctions conducted in execution proceedings.

[14] 2022 SCC Online SC 2079.
[15] W.A.(MD)No.1901 of 2021

'Right to be forgotten' vis-à-vis 'right to privacy' under Article 21 of the Constitution of India and under the DPDPA and its applicability on courts

The Hon'ble High Court of Madras, Madurai bench ("**Madras HC**") in ***Karthick Theodore vs. The Registrar General, Madras HC, IKanoon Software Development Pvt. Ltd., and Ors***[15], made a significant ruling examining:

1. the 'right to forgotten'/ 'right to be remembered well' vis-à-vis 'right to privacy' of an individual under Article 21 of the Constitution of India ("**Constitution**") and under the DPDPA; and
2. applicability of the DPDPA on courts in India, with an emphasis on courts maintaining a fine balance between aggregation of data required to perform their functions and protection of personal data so collected.

The judgment also analyses the framework of the DPDPA, privacy concerns in the internet age, and the proactive approach the courts must adopt to safeguard individuals' privacy while carefully considering personal interest *vis-à-vis* public interest.

In an appeal by Ikanoon Software Development Private Limited before the Supreme Court, the Supreme Court[16] passed a stay order dated July 24, 2024, on the directions contained in the impugned judgment of the Madras HC. Further, the Supreme Court clubbed the appeal with another matter pending before itself namely *Alka Malhotra vs. Union of India and Ors*[17] dealing with a similar issue.

Brief facts

The instant case arises out of a writ of mandamus filed by Mr. Karthick Theodore (the "**Appellant**"), seeking redaction of his name and personal details from a publicly accessible judgment dated April 30, 2014, in which he was acquitted of charges under Sections 417 and 376 of the Indian Penal Code, 1860 ("**Judgment**"). The Appellant argued that the continued availability of the Judgment online was causing significant harm to his personal and professional life, including the denial of a visa application. He claimed protection under the right to privacy, particularly the right to be forgotten.

[16] SLP (C) No. 15311/2024 and IA No. 150602/2024
[17] W.P.(C) No. 000019/2024

He also challenged Madras HC's previous order rejecting his plea for redaction. The Appellant argued that the unredacted Judgment's online presence served no public interest and unjustly affected his current life.

The Appellant cited the landmark judgment of the Supreme Court in *K.S. Puttaswamy and Anr vs. Union of India and Ors*[18], ("**Puttaswamy Judgment**"), asserting that the right to privacy is a fundamental right enshrined under Article 21 of the Constitution and includes the right to be forgotten. The Appellant also referred to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IDMEC Rules**"), which supports the removal of information by an intermediary that is invasive of an individual's privacy in specific circumstances.

The Appellant also placed emphasis on the judgment of the Supreme Court in the case of *XYZ Hospital*[19], wherein the court directed that the masking of personally identifiable information be done.

The respondents, on the other hand, emphasised the importance of public access to judicial records and argued that the court, as an institution of record, must preserve its judgments in their entirety and that the principle of open justice should prevail. Further, the reliance was placed on Madras HC's judgment in the case of *R. Rajagopal vs. State of Tamil Nadu*[20], where the Madras HC opined that '*the rule of privacy is subject to exception that publication becomes unobjectionable if it is based upon public records including court records*'.

Key issues

The Madras HC considered and analysed 3 (three) key issues:

1. Whether the Appellant's right to privacy under Article 21 of the Constitution and right to erasure of data under the DPDPA, include the right to have his name and details redacted from the Judgment?
2. What is the relevance and application of the newly enacted DPDPA on courts in the context of judicial records and privacy rights?
3. Does the principle of open justice and public access to court records override the Appellant's privacy concerns?

Findings and analysis

The Madras HC, after careful consideration of the arguments advanced, the objective of the DPDPA and its applicability on the courts, and placing reliance on the Puttaswamy Judgment, allowed the writ appeal and ordered the respondents to take down the Judgment wherein the personal details of the Appellant were publicly available online and redact the name and other details of the Appellant relating to his identity from the said Judgment and ensure that only the redacted Judgment is available for publication or for uploading online. The Madras HC also ordered that the full and unredacted version of the Judgment will continue to be part of the court record.

Key findings of the Madras HC

1. **The Puttaswamy Judgment:** The Madras HC specifically referred to paragraphs 615, 631 and 636 and paragraph 526 in the concurring opinions of Hon'ble Nariman J and Sanjay Kishan Kaul J, respectively, where the right to be forgotten was discussed in detail. The Madras HC held that the 'right to be forgotten' is an integral part of the 'right to privacy' under Article 21 of the Constitution. It further analysed in detail a data principal's right to erasure of personal data and a data fiduciary's obligation to erase personal data when the data principal withdraws consent or as soon as the purpose for which it was collected is no longer being served.
2. **Applicability of the DPDPA on courts:** The Madras HC held that a decision on the applicability of the DPDPA must lean in favour of inclusion rather than exclusion. It examined the non-applicability of the DPDPA and referring to Section 3(c)(ii)(B), held that for the DPDPA not to apply a court must be a person as defined under the DPDPA and should have an obligation for disclosure of personal data held by it. In the present case, the Madras HC was considered to be a person as defined under the DPDPA, but since it did not have an obligation to disclose personal data held by it, i.e., personal data belonging to the Appellant, it was held that the DPDPA would apply to courts. The Madras HC emphasised upon the

[18] 1 (2017) 10 SCC 1
[19] (1988 8 SCC 296)
[20] (1994 6 SCC 632)

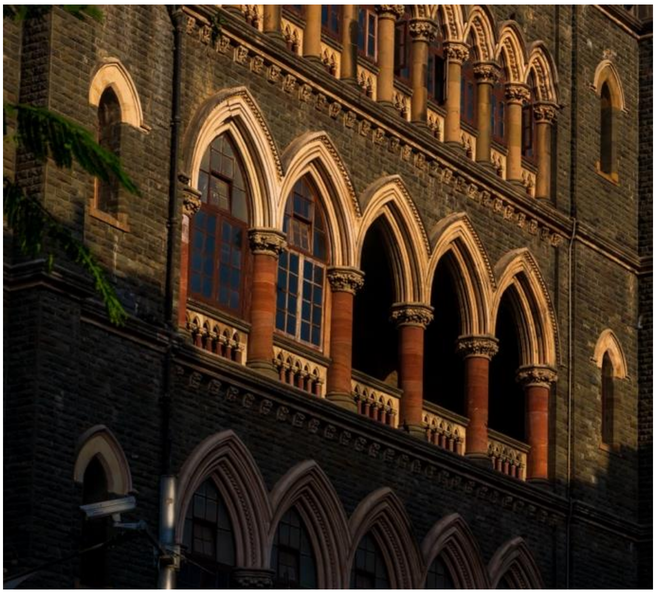
court's discretion to decide whether data held by it in its record can be made publicly available and ruled that courts are expected to perform a fine balancing act between aggregating data required to perform its functions and protecting personal data so collected. The Madras HC further considered courts to be 'data fiduciaries' under the DPDPA. However, it noted that the exemption provided under Section 17(1)(b) of the DPDPA makes Section 8(7), which provides for the erasure of personal data, inapplicable to courts, tribunals, and quasi-judicial authorities. However, it placed significance on the discretionary powers of the courts that they must exercise while making personal data available to the public.

3. **Balancing privacy and public interest:** The Madras HC acknowledged that while the principle of open justice is crucial, it does not automatically override the Appellant's privacy concerns, especially in the digital age where the permanence of online information can cause ongoing harm to an individual. The Madras HC recognised that the right to privacy, protected under Article 21 of the Constitution, must be considered in cases where the public availability of court records no longer serves a legitimate interest and may harm the individual's personal and professional life.

Conclusion

The appeal by Ikanoon Software Development Private Limited before the Supreme Court opens an interesting debate about the right to be forgotten (personal interest) versus public interest (documents available in court's record) in the context of ever evolving Indian privacy laws. The Supreme Court's final verdict in this regard is crucial to answer the substantial question of law concerning personal interest versus public interest, especially considering India has a system of open courts, forming part of the public sphere where individuals' claims of privacy do not subsist. Various High Courts have given conflicting decisions on this matter.

As India continues to develop its privacy framework, this decision of the Supreme Court will serve as a clear judicial approach with respect to public records and privacy rights.



Bombay HC decision on fact-checking rule and its implications

On September 26, 2024, the Bombay HC delivered a pivotal ruling in ***Kunal Kamra vs. Union of India***[21], striking down Rule 3(1)(b)(v) ("**Rule**") of the IDMEC Rules. This judgment holds significant implications for free speech, online content regulations and intermediary liability in India.

Overview of the Rule and challenge

The Rule, introduced by the GOI *vide* the 2023 amendments to the IDMEC Rules, empowered GoI to establish a central Fact-Checking Unit ("**FCU**") which would perform the role of verifying any content online pertaining to the business of the GoI. The Rule also imposed a duty on intermediaries like social media platforms and news websites to take down content flagged by the FCU to be 'false', fake' or 'misleading'. Any failure to do so would result in intermediaries losing their safe harbour protection under Section 79 of the IT Act, exposing them to liability for the third-party content hosted on their platform.

Brief facts

3 (three) separate petitions were filed before the Bombay HC to challenge the Rule by Kunal Kamra, the Editor's Guild of India, and the Association of India Magazines. The petitions argued that the Rule violated Articles 14 (equality before law), 19(1)(a) (freedom of

[21] Writ petition (L) no. 9792 OF 2023

speech and expression), and 19(1)(g) (freedom to practice any profession or carry on any occupation, trade or business) of the Constitution and Sections 79 (intermediary liability and immunity) and 87 (rule-making power of the Central Government) of the IT Act. They argued inter alia that the Rule could lead to censorship, empowering the GoI to act as the sole arbiter of truth regarding its own actions, and that phrases like 'fake', 'false', or 'misleading' were overly vague and broad.

Split verdict and judgment

The petitions were initially heard by a Division Bench of Justice G.S. Patel and Justice Neela Gokhale, resulting in a split verdict. Justice Patel struck down the Rule, holding it unconstitutional for violating Articles 14, 19(1)(a), 19(2), 19(1)(g), and 19(6) of the Constitution and Section 79 of the IT Act, while Justice Gokhale upheld it. The matter was then referred to a third judge, Justice A.S. Chandurkar, who affirmed Justice Patel's verdict and ruled in favour of striking down the Rule.

Justice Chandurkar agreed with Justice Patel's assessment that the Rule violated fundamental rights under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution and that it was *ultra vires* the IT Act. He placed reliance on several landmark judgments such as *Shreya Singhal vs. Union of India*[22] and *Kaushal Kishor vs. State of Uttar Pradesh*[23] to underscore the dangers of vague and overbroad restrictions on free speech. He reiterated that the expressions 'fake', 'false', or 'misleading' were undefined, making the Rule vague and overbroad. Without clear definitions, the Rule created a chilling effect on free speech, as it forced intermediaries to censor content out of fear of liability, while placing unchecked power in the hands of the GoI.

Key observations

Some notable observations in Justice Patel's verdict (affirmed by Justice Chandurkar) include:

1. **Class legislation:** Justice Patel observed that that the Rule created an unreasonable distinction between information related to the business of the GoI and other types of content (which related to individuals or news agencies). By offering special protection to the GoI's business through a dedicated fact checking mechanism, it granted the GoI an unfair advantage over content of other private players, such as individuals and business entities.
2. **Burden on intermediaries:** Justice Patel noted that the Rule unfairly shifted the responsibility for content accuracy from the originators (original creator) to intermediaries, entities that have no control over the content posted on their platforms. This placed an unreasonable burden on these platforms, as they would be held liable for failing to remove content flagged by the FCU and penalised with loss of intermediary safe harbour.

Additionally, the court pointed out that the expression 'fake' or 'false' or 'misleading' was overly broad, lacking specific guidelines or definitions. This opened the door for arbitrary interpretation, potentially stifling legitimate criticism or dissent under the guise of curbing misinformation.

Conclusion

The Bombay HC's ruling is a landmark moment for digital rights and free speech in India. By striking down the Rule, Bombay HC reinforced the idea that content regulation must be carefully balanced to avoid governmental overreach. The judgment highlights the importance of keeping checks and balances on the state's power to regulate online content, particularly when it pertains to the freedom of expression.

This ruling also broadens the implications for the digital ecosystem, as it prevents the GoI from overburdening intermediaries with policing content. By protecting the safe harbour provision, the court ensures that intermediaries will not be held accountable for third-party content without due cause and process. It also stresses the necessity for transparency and fairness in any fact-checking mechanism, especially when it relates to content about the GoI.

In conclusion, the verdict in *Kunal Kamra vs. Union of India* is a crucial step toward safeguarding free speech in India's rapidly evolving digital landscape, setting a precedent for the protection of fundamental rights in the face of growing state control over online content.

[22] (2015) 5 SCC 1

[23] Writ petition (criminal) No. 113 OF 2016

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***[24], 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 ("**Consumer Act**") 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.

Brief facts

The Appellant – Mohd. Hyder Khan ("**Appellant**"/"**Complainant**") had filed the appeal ("**Appeal**") under Section 19 of the Consumer Act against a judgement and order dated November 19, 2012, passed by the Hon'ble A.P. State Consumer Disputes Redressal Commission at Hyderabad ("**State Commission**") in Consumer Complaint No. 21 of 2010 ("**Complaint**").

The Appellant had filed the Complaint under Section 12 of the Consumer Act against Merecedes-Benz India Pvt. Ltd. ("**MB India**") and MB India's AD alleging manufacturing defect in the Appellant's vehicle, a Mercedez-Benz E280 CDI ("**Vehicle**") and deficiency in service on the part of the respondents. It was the Appellant's case that the Vehicle had met with an accident; despite the impact of collision, the driver front airbag or co-occupant front airbag did not deploy; and that, but for the deployment of the said airbags, the Appellant and the co-occupant would not have suffered any injury.

Though in its Complaint, the Appellant alleged manufacturing defect in the Vehicle and deficiency in service on the part of the respondents, he did not adduce any evidence in support of these allegations. On the other hand, much prior to the filing of the Complaint, the Appellant sold the Vehicle. Consequently, the respondents, therefore, could not carry out an inspection of the Vehicle which could have revealed if the airbags had any manufacturing defect. Likewise, the State Commission also did not get an opportunity to get the Vehicle inspected.

In the above background, in the absence of any evidence concerning manufacturing defect, the State Commission dismissed the Complaint filed by the Appellant. The Appellant challenged the judgment passed by the State Commission before the National Commission.

Issue before the National Commission

Whether the Vehicle (airbags) had any manufacturing defect, and whether the services rendered by the respondents were deficient?

Arguments advanced by the parties

The contentions of the Appellant before the National Commission were:

1. non-deployment of air bags was on account of a manufacturing defect. There was also a defect in the wipers and the steering wheel. It was contended that soon after the Vehicle was purchased, it was sent for repair works and replacement of the steering wheel in August 2009, which dislodged the air bags and it is for this reason that the airbags did not deploy;
2. the estimate of repairs, approximately INR 22,00,000 (Indian Rupees twenty-two lakh) indicated that the damage to the Vehicle was extensive. Reliance was placed on the judgment of the Supreme Court in *Hyundai Motor India Ltd. vs. Shailendra Bhatnagar*,[25] ("**Hyundai Judgment**") to contend that the principle of *res ipsa loquitur* should be applied in this case; and
3. the State Commission had erred in concluding that the seat belt had not been worn.

The contentions of MB India were as follows:

[24] First Appeal No. 10 of 2013, decided on September 20, 2024

[25] Civil Appeal No. 3001 of 2022

1. the State Commission had rightly dismissed the Complaint as there was no evidence to establish any manufacturing defect or deficiency in service;
2. after the repairs in August 2009, the Vehicle had been driven for nearly 3,000 (three thousand) kms without any complaints or defects being reported;
3. the accident and resultant injuries were due to rash and negligent driving, and not due to any defect;
4. appellant did not adduce any expert evidence to establish defect. Further, MB India too was not provided any opportunity to inspect the Vehicle as it was sold prior to the filing of the Complaint. Section 13 (1) (c) of the Consumer Act is mandatory and requires that if there is any allegation that goods are defective, the State Commission must get them inspected; the same, however, could not be done as there was nothing to inspect;
5. injuries suffered in the accident were minimised due to the intrinsic design of the Vehicle, which absorbed the impact of the accident. Even otherwise, the evidence adduced by the Appellant as regards the dental injury was dated prior to the accident, and therefore, could not be attributed to the accident;
6. the air bags did not deploy because the seat belt was not worn; and
7. the decision rendered in the Hyundai Judgment is distinguishable and not appliable to the present case. The Hyundai Judgement does not say that Section 13(1)(c) of the Consumer Act can be given a go-bye. Each decision is an authority for what it decides and not what can be logically deduced therefrom. The principle of res ipsa *loquitor* cannot be applied in the present case.

Findings by the National Commission

The National Commission dismissed the appeal filed by the Appellant and upheld the judgment of the State Commission. In arriving at this decision, the National Commission took into consideration the below factors:

1. no complaint had been lodged by the Appellant regarding defect/standard of performance even after driving the Vehicle for nearly 3000 (three thousand) kms, till the date of the accident;
2. the Appellant ought to have waited for the Vehicle to be inspected before selling it to a third party;
3. the surveyor's report, submitted by the surveyor to the insurance company, has also not been brought on record;
4. the air bags did not deploy since the seat belt was not worn;
5. as per the owner's manual, the seat belt is required to be fastened for the air bags to deploy. For this aspect, the National Commission also relied on the uncontroverted affidavit filed by the service manager of MB India's authorised dealership;
6. the Appellant had failed to establish manufacturing defect and/or that the air bags failed to deploy on account of such manufacturing defect. Section 13 (1) (c) of the Consumer Act was therefore not complied with; and
7. reliance by the Appellant on the decision of the Supreme Court in Hyundai Judgment is not correct. The principle of *res ipsa loquitor* cannot be applied in this case.

Conclusion

The judgment passed by the National Commission assumes significance and lays down the below important principles:

1. seatbelt is the primary restraint mechanism in a vehicle. If a seat belt is not worn, the airbag would not deploy, and this aspect is clearly mentioned in the owner's manual;
2. to prove that a good suffers from a defect, especially a manufacturing defect, testimony of an expert is necessary;
3. the principle of res ipsa loquitor cannot be applied. For this principle to apply, the facts have to speak for themselves. But if there are no such facts on record, the principle cannot be applied;
4. the damage pattern of a vehicle or the amount spent in repairing the vehicle cannot alone be determinative to apply the principle of res ipsa loquitor;
5. a crumple zone in a vehicle is designed to absorb, reduce and redirect the energy; and

6. the crumple zone of a vehicle is meant to crumple and this is to ensure that the integrity of the passenger compartment is maintained and protected. It is therefore a misconception that if a vehicle is badly damaged, airbags ought to have deployed.

Corporate Practice

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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	Ranked Among Top 5 Law Firms in India for ESG Practice	Recognised in World's 100 best competition practices of 2025

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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11 A List Lawyers in IBLJ A-List - 2024

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