advocates & solicitors

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 January 2024 till June 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 sector.

Listing of equity shares by public companies on international exchanges

The Ministry of Corporate Affairs ("**MCA**"), through its notification dated October 30, 2023, brought about an amendment to Section 23 of the Companies Act, 2013 ("**Companies Act**")[1]. This amendment outlined in Section 5 of the Companies (Amendment) Act, 2023 allows public companies to issue a specific class of securities for the purposes of listing on permitted stock exchanges in permissible jurisdiction. However, there were no defined framework/regulations for listing such securities on permitted stock exchanges. On January 24, 2024, MCA and the Ministry of Finance ("**MoF**"), notified the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 ("**Listing of Equity Shares in Permissible Jurisdictions Rules**") and amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**Amendment Rules**") respectively.

[1] Section 23 of the Companies Act, 2013 – "…. *(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.*

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

Copyright © 2024 JSA | all rights reserved

Norms for listing equity shares in the permissible jurisdictions

The Listing of Equity Shares in Permissible Jurisdictions Rules:

1. identify the International Financial Services Centers ("**IFSC**") in India (GIFT City) as the permissible jurisdiction, and NSE International Exchange (NSEIX) and India International Exchange (India INX) as the permitted stock exchanges.
2. specify that the following companies are not eligible for issuing its equity shares for listing in permissible jurisdictions:
    a) it is registered under Section 8 or declared as Nidhi under Section 406 of the Companies Act;
    b) it is a company limited by guarantee and also having share capital;
    c) it has any outstanding deposits accepted from the public as per Chapter V of the Companies Act and rules made thereunder;
    d) it has a negative net worth;
    e) it has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor, which are not made good, and if made good a period of 2 (two) years has not lapsed since the date of making good the default;
    f) it has made any application for winding-up under the Companies Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 and in case any proceedings against the company for winding-up or for resolution or winding-up is pending;
    g) it has defaulted in filing of an annual return under Section 92 or financial statement under Section 137 of the Companies Act; and
    h) these Amendment Rules apply to unlisted public companies and listed public companies, provided they adhere to regulations framed by SEBI, or the International Financial Services Centers Authority ("**IFSCA**") and the requirement of unlisted public companies are required to file the prospectus in e-Form LEAP-1 within 7 (seven) days after finalisation, along with the specified fees, and ensure compliance with Indian Accounting Standards while preparing accounting statements.
3. The Amendment Rules brought about the following changes:
    a) new definitions such as 'international exchange'[2], 'listed Indian company'[3], 'permissible holder'[4] and 'permissible jurisdiction'[5] are introduced;
    b) permissible holders as defined under Schedule XI, are allowed to invest in equity shares of Indian companies listed or to be listed on an international exchange under the 'Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme', as outlined in Schedule XI of the Amendment Rules;
    c) Schedule XI specify conditions for the issue and listing of equity shares for public Indian companies, subject to compliance with prohibited activities, sectoral caps, and other

[2] International exchange means the permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to the Amendment Rules.

[3] Listed Indian company means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression "unlisted Indian company" will be construed accordingly.

[4] permissible holder means (a) a holder of equity shares of the Company which are listed on International Exchange, including its beneficial owner:
Provided that such a holder who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.
Explanation 1.- For the purposes of this clause, permissible holder is not a person resident in India.
Explanation 2.- The permissible holder, including its beneficial owner, shall be responsible for ensuring compliance with this requirement. The public Indian company, in its offer document, by whatever name called in the permissible jurisdiction, shall make a disclosure to this effect.
(b) a permissible holder may purchase or sell equity shares of an Indian company listed on an international exchange subject to limit specified for foreign portfolio investment under these rules.

[5] Permissible jurisdiction means such jurisdiction as notified by the Central Government under sub-clause (f) of sub-rule (3) of rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005

Copyright © 2024 JSA | all rights reserved

prescribed rules. It emphasises that equity shares issued on an international exchange must be in dematerialised form and rank *pari passu* with those listed on recognised stock exchanges in India. It also outlines specific laws that must be complied with for issuing or offering equity shares on international exchanges;

d) eligibility criteria for public listed companies, existing shareholders, listed companies, and public unlisted companies looking to issue or offer equity shares on international exchanges;

e) the Indian companies having its equity shares listed on the internation exchange must ensure voting rights are exercised by permissible holders or through their custodian following instructions from such permissible holder; and

f) the listed companies issuing equity shares or exiting shareholder offering equity shares on a recognised stock exchange in India, should be issued at a price not less than the price applicable to a corresponding mode of issuance of equity shares to domestic investors under the applicable laws. However, in case of initial listing of equity shares on the international exchange, the issue price or price for transfer of equity shares should be determined by a book-building mechanism as may be permitted by the international exchange and should not be less than the fair market value under the applicable rules and regulation under the Foreign Exchange Management Act, 1999.

This regulatory framework from the MCA clears the path for unlisted public companies to explore the option of direct listing at GIFT City. However, SEBI is yet to provide further regulations for listed companies, it is evident that MCA's rules place a strong emphasis on defining eligibility criteria, with certain disqualifications, signaling a crucial distinction for companies eyeing international market access.

Alternative investment funds

Amendments to the Securities and Exchange Board of India (AIF) Regulations, 2012

Holding investments in dematerialised form and appointment of custodian

Securities and Exchange Board of India ("**SEBI**"), *vide* notification dated January 5, 2024, and circular dated January 12, 2024, introduced changes aimed at refining the regulatory framework governing Alternative Investment Funds ("**AIFs**"). The key provisions are as follows:

1. The SEBI (AIF) Regulations, 2012 ("**AIF Regulations**") are amended to provide that AIFs must hold their investments in dematerialised form. However, this does not apply to:

   a) investments by AIFs in such type of instruments which are not eligible for dematerialisation;

   b) investments held by a liquidation scheme of the AIFs that are not available in the dematerialised form; and

   c) such other investments by AIFs and such other schemes of AIFs as may be specified by the SEBI.

   SEBI further specified that investments made by an AIF on or after October 1, 2024, must be held in dematerialised form. This requirement does not apply to schemes of AIFs whose tenure ends on or before January 31, 2025, and schemes of AIFs which is in extended tenure as on the date of the circular. The investments made prior to October 1, 2024, are exempted from the requirement of being held in dematerialised form, except where: (a) the investee company of the AIF are mandated under applicable law to facilitate dematerialisation of its securities; and (b) the AIF, on its own, or along with other SEBI registered intermediaries/entities which are mandated to hold their investments in dematerialised form, exercises control over the investee company. These investments must be held in dematerialised form on or before January 31, 2025.

2. The AIF Regulations are amended to provide that the sponsor or manager of the AIF must appoint a custodian registered with SEBI for safekeeping of

Copyright © 2024 JSA | all rights reserved

the securities of the AIF. The custodian for a scheme of an AIF must be appointed prior to the date of first investment of the scheme. Existing schemes of Category I and II AIFs having corpus less than or equal to INR 500,00,00,000 (Indian Rupees five hundred crore) and holding at least 1 (one) investment as on the date of this circular must appoint custodian on or before January 31, 2025. The custodian which is an associate of the sponsor or manager can act as a custodian for that AIF only when all the following conditions are met:

a) the sponsor or manager to have a net worth of at least INR 20,000 crore (Indian Rupees twenty thousand crore) at all points of time;

b) 50% or more of the directors of the custodian do not represent the interest of the sponsor or manager or their associates;

c) the custodian and the sponsor or manager of the AIF are not subsidiaries of each other and do not have common directors; and

d) the custodian and the manager of the AIF sign an undertaking that they will act independently of each other in their dealings of the schemes of the AIF.

In case of AIFs with custodians that are associates of their manager or sponsor, the managers of such AIFs must ensure compliance with above conditions on or before January 31, 2025.

AIF regulations amended to ensure investor protection

SEBI, *vide* notification dated April 25, 2024, issued the SEBI (AIFs) (Second Amendment) Regulations, 2024, amending the AIFs Regulations. The key provisions are as follows:

1. Category I AIFs and Category II AIFs can 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 the prescribed conditions by SEBI;
2. AIFs, manager of the AIFs and key management personnel of the manager must exercise specific due diligence, with respect to their investors and investments, to prevent facilitation of circumvention of laws specified by SEBI;
3. the liquidation period for a scheme of an AIF that is expired or is expiring within 3 (three) months, can be granted an additional liquidation period, subject to certain conditions as specified by the SEBI;
4. AIFs cannot launch any new liquidation scheme after the notification of these amendments;
5. provisions relating to the dissolution period are inserted. The term ‘dissolution period’ is defined to mean the period following the expiry of the liquidation period of the scheme for the purpose of liquidating the unliquidated investments of the scheme of the AIF. The scheme entering into a dissolution period must file an information memorandum with SEBI through a merchant banker. The dissolution period of a scheme of an AIF must not be more than the original tenure of the scheme and must not be extended in any manner upon expiry of the dissolution period. The scheme of the AIF must not accept any fresh commitment from any investor and must not make any new investment during the dissolution period; and
6. the unliquidated investments of the AIF scheme that are not sold by the expiry of the dissolution period will be mandatorily distributed in-specie to the investors, as specified by the SEBI.

Foreign investment in AIFs

SEBI, *vide* circular dated January 11, 2024, revised the foreign investment provisions in the Master Circular for AIFs dated July 31, 2023 (“**AIF Master Circular**”) to incorporate the revised thresholds for determining beneficial ownership. The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 were amended last year revising the thresholds for determining beneficial ownership from 25% to 10% for companies and from 15% to 10% for trusts. Pursuant to the amendment, the manager of an AIF must ensure, at the time of on-boarding investors, that the investor, or its beneficial owner is not included in the sanctions list and is not a resident in the country identified in the public statement of Financial Action Task Force (“**FATF**”) as:

Copyright © 2024 JSA | all rights reserved

1. a jurisdiction having a strategic anti-money laundering or combating the financing of terrorism deficiencies to which counter measures apply; or
2. a jurisdiction that is not made sufficient progress in addressing the deficiencies or is not committed to an action plan developed with the FATF to address the deficiencies.

   Further, in case an investor, who has already been on-boarded to scheme of an AIF, does not meet the revised condition, the manager of the AIF must not drawdown any further capital contribution from such investor for making investment, until the investor meets the said condition.

Investments in AIFs by regulated entities

To address the concerns relating to investments by Regulated Entities ("**REs**") and to ensure uniformity in implementation among REs, the Reserve Bank of India ("**RBI**"), *vide* circular dated March 27, 2024, advised the following:

1. downstream investments referred to in paragraph 2(i) of the circular dated December 19, 2023 ("**2023 Circular**"), will exclude investments in equity shares of the debtor company of the RE, but will include all other investments, including investment in hybrid instruments;
2. provisioning in terms of paragraph 2(iii) of the 2023 Circular will be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme;
3. paragraph 3 of the 2023 Circular applies only to AIFs without downstream investment in debtor companies of the RE. If the RE invested in subordinated units of an AIF scheme with downstream exposure, it must comply with paragraph 2 of the 2023 Circular. Further, the proposed deduction from capital in the 2023 Circular will be equally distributed across Tier-1 and Tier-2 capital, and the reference to investment in subordinated units of the AIF Scheme includes all forms of subordinated exposures, including investment in the nature of sponsor units; and
4. investments by REs in AIFs through intermediaries such as fund of funds or Mutual Funds ("**MFs**") are not included in the scope of the 2023 Circular.

Changes in terms of private placement memorandum of AIFs

1. SEBI, *vide* circular dated April 29, 2024, eased the requirement of intimation of changes in the terms of AIFs through merchant bankers. Pursuant to the SEBI AIF Master Circular, intimation with respect to any change in the terms of Private Placement Memorandum ("**PPM**") of AIF was required to be submitted to SEBI through a merchant banker along with a due diligence certificate from the merchant banker. Certain changes in the terms of PPM, such as, changes made in the write-up on market opportunity/ Indian economy/industry outlook, track record of investment manager, risk factors, legal regulatory and tax consideration, do not need to be submitted through a merchant banker and can be filed directly with SEBI. Similarly, changes with respect to, information such as contact details (address, phone number etc.) of AIF, sponsor, manager, trustee or custodian, auditor, registrar and share transfer agents, legal advisor or tax advisor, size of the fund/scheme, information related to affiliates, commitment period, key investment team, key management personnel (except if the changes are due to change in control of manager and sponsor), advisory boards, expenses, disclosures, and other factual and routine updates need not be filed through a merchant banker.
2. Further, large value funds for accredited investors are exempted from the requirement of intimating any changes in the terms of PPM through a merchant banker. They can directly file any changes in the terms of PPM with SEBI, along with a duly signed and stamped undertaking by CEO of the manager of the AIF (or such other person with equivalent role/ position) and compliance officer of the manager of the AIF, in a pre-specified format.

Registration of AIFs

1. SEBI, *vide* notification dated May 10, 2024, issued a commencement notification for certain provisions of the SEBI (AIFs) (Second Amendment)

Copyright © 2024 JSA | all rights reserved

Regulations, 2023. These amendments pertain to the eligibility criteria of AIFs for the purpose of the grant of certificate to an applicant. Accordingly, to meet the eligibility criteria, the key investment team of the manager of AIFs must have at least 1 (one) key personnel with relevant certification as specified by the SEBI.

2. Subsequently, SEBI, *vide* their circular dated May 13, 2024, issued the certification requirement for the key investment team of manager of AIF. The criteria to obtain the prescribed certification by at least 1 (one) key personnel of the key investment team of manager of AIF, is applicable to all the applications for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024. Further, existing schemes of AIFs and schemes of AIFs whose applications for launch of schemes are pending with SEBI as on May 10, 2024, must comply with the requirement of obtaining the certification on or before May 9, 2025.

The ever-increasing regulatory oversight on AIFs

In addition to direct regulatory oversight on the AIFs itself, AIFs are also indirectly impacted by various other statutory and regulatory restrictions or conditions that are applicable to the underlying legal form of the AIF, the investors in the AIF or the investment portfolio of the AIFs. Some of the statutory and regulatory amendments affecting AIFs are discussed below.

1. **Significant beneficial ownership and AIFs**

   Under the AIFs Regulations, an AIF can be established or incorporated in the form of a trust or a company or a Limited Liability Partnership ("**LLP**") or a body corporate.

   After trusts, LLPs are the most preferred legal form for an AIF, since LLPs are more beneficial from a tax perspective and with lesser compliance requirements than a company.

   However, LLPs are also being subjected to additional compliance requirements.

   One compliance/disclosure requirement imposed on the LLPs is pursuant to the LLP (Third Amendment) Rules, 2023 and the LLP (Significant Beneficial Owners) Rules, 2023 (**"SBO Rules"**). As per the SBO Rules, the LLP is required to take necessary steps to find out if any individual qualifies as a 'Significant Beneficial Owner' ("**SBO**") in relation to the LLP. If such SBO are identified, then the LLP must cause such individual to make a declaration in Form No. LLP BEN-1.

   As per one of the exemptions available under the SBO Rules, the aforesaid requirements will not apply to the extent the contribution in the LLP held by an investment vehicle registered with SEBI, such as an AIF. Thus, if an AIF is a partner in the LLP, the SBO Rules will not apply in respect of such AIF partner.

   However, where the AIF is set up as an LLP, then the SBO Rules will apply in relation to such AIF.

   Accordingly:

   a) an AIF (set up as an LLP) is required to issue a notice to a non- individual partner in Form No. LLP BEN-4, seeking information in accordance with sub-section (5) of section 90 of the Companies Act, if such non-individual partner holds atleast 10% of such AIFs:

      i) contribution;

      ii) voting rights; or

      iii) right to receive or participate in the distributable profits or any other distribution payable in a financial year;

      every individual who is an SBO in the AIF, is required to file a declaration in Form No. LLP BEN-1 with the AIF within 90 (ninety) days from the date of commencement of the SBO Rules (i.e., November 9, 2023);

      the SBO Rules define a 'significant beneficial owner/SBO' as an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in the LLP:

      i) indirectly or together with any direct holdings, not less than 10% of the contribution;

      ii) indirectly or together with any direct holdings, not less than 10% of voting rights in respect of the management or policy decisions in such limited liability partnership;

Copyright © 2024 JSA | all rights reserved

iii) right to receive or participate in not less than 10% of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings; or

iv) right to exercise or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

As per the explanation, if an individual does not hold any right or entitlement indirectly under sub-clauses (a), (b), (c) or (d) above, he will not be considered an SBO. The SBO Rules further define what would be considered as holding any right or entitlement 'directly' and what would be considered as holding any right or entitlement 'indirectly'.

As per the SBO Rules, if an individual (acting alone or together or through one or more persons or trust) is entitled to exercise or actually exercises, significant influence or control, in any manner other than through direct holdings alone, then such individual will be considered to be a SBO.

The term 'significant influence' is defined to mean "the power to participate, directly or indirectly, <u>in the financial and operating policy decisions of the LLP</u> but is not control or joint control of those policies." (emphasis added)

The SBO Rules mandate filing a declaration in Form No. LLP BEN-1 for individuals who become SBOs or change ownership. The AIF must also file a return in Form No. LLP BEN-2 within 30 (thirty) days of receipt of declaration in Form No. LLP BEN-1, along with prescribed fees. Additionally, the AIF must maintain a register of significant beneficial owners in Form No. LLP BEN-3, open for inspection during business hours.

It was not common for information of 1 (one) investor to be made accessible to other investors of the AIF.

Further, apart from the sponsors and managers of AIFs, the investors of the AIFs also undergo 'know your customer' verification. Given that AIFs are already regulated by SEBI, it is unclear whether applying the SBO Rules to AIFs was needed.

2. **Evergreening and AIFs**

The RBI's circular dated December 19, 2023, seeks to restrict evergreening of debt by banks/non-banking financial companies through investments in AIFs. While the intent behind this circular is well received, the implications seem far reaching.

3. **Dematerialisation of units issued by AIFs**

a) In October 2018, dematerialisation of shares of unlisted public companies was mandated. In October 2023, dematerialisation of shares of private companies (that are not small companies) is mandated. SEBI, in its consultation paper dated February 3, 2023, proposed dematerialisation of units issued by the AIF. The consultation paper did acknowledge the concerns raised by the Alternative Investment Policy Advisory Committee ("**Committee**") in its meeting held on October 11, 2022. While in-principal agreeing with the proposal of dematerialisation of AIF units, the Committee also raised certain concerns such as (i) administrative hassle/ burden for foreign investors to open demat account; and (ii) transferability of AIF units without the knowledge or control of the managers of AIFs.

b) The AIF Regulations are amended and notified on June 15, 2023, to include regulation 10(aa) which requires AIFs to issue units in dematerialised form subject to the conditions specified by SEBI from time to time.

c) This was followed by the SEBI circular dated June 21, 2023, which stipulated the dates for dematerialisation of units already issued or to be issued.

Further, recognising the possibility of unauthorised transfer of dematerialised units, SEBI, in its circular dated June 21, 2023, clarified that the terms of transfer of AIF units held by an investor will continue to be governed by the terms of fund documents. However, the transfer restrictions under the fund documents may not be adequate, and the managers of AIFs may consider putting in place adequate mechanisms that restrict unauthorised transfer of units.

d) A subsequent SEBI circular dated December 11, 2023, specifies process and stipulates timelines to be followed for crediting the existing units or new units that are to be issued, in demat form, in cases where investors are yet to provide their demat account details

Copyright © 2024 JSA | all rights reserved

to AIFs and also in cases where investors have provided their demat account details to AIFs. The circular *inter alia* provides as under:

i) units already issued by schemes of AIFs to existing investors who have not provided their demat account details, are required to be credited to a separate demat account named "Aggregate Escrow Demat Account". This account is permitted for the sole purpose of holding demat units of AIFs on behalf of investors. New units to be issued in demat form must be allotted to such investors and credited to the Aggregate Escrow Demat Account. As and when such investors provide their demat account details to the AIF, their units held in Aggregate Escrow Demat Account should be transferred to the respective investors' demat accounts within 5 working days. No transfer of units of AIFs from/within Aggregate Escrow Demat Account will be allowed, except as above.

ii) the last date for completion of credit of demat units to (x) demat accounts of investors who have provided demat account details, and (y) Aggregate Escrow Demat Account, for those who have not provided demat account details is January 31, 2024 for schemes with corpus ≥ INR 500,00,00,000 (Indian Rupees five hundred crore) (as on October 31, 2023) and May 10, 2024 for schemes with corpus < INR 500,00,00,000 (Indian Rupees five hundred crore) (as on October 31, 2023);

iii) units of AIFs held in the Aggregate Escrow Demat Account can be redeemed. The proceeds can be distributed to respective investors' bank accounts with full audit trail of such transaction.

iv) the AIF industry and depositories are required to adopt implementation standards formulated for compliance with the circular, by the Standard Setting Forum for AIFs ("**SFA**"), along with the 2 (two) depositories jointly, in consultation with SEBI. Such standards will include formats for information to be maintained by managers of AIFs with respect to holdings and transactions in the Aggregate Escrow Demat Account and reporting thereof to depositories and custodians. In this regard, CDSL Central Depository Services (India) Limited and the National Securities Depository Limited have already issued instructions in relation to opening of the Aggregate Escrow Demat Account in the month of December 2023.

v) managers of AIFs are required to adhere to such implementation standards. Such standards are required to be published on websites of the depositories and the industry associations which are part of the SFA, i.e., Indian Venture and Alternate Capital Association, PEVC CFO Association and Trustee Association of India, within 45 (forty-five) days of issuance of the aforesaid circular.

As per the aforementioned circulars, all existing and new investments in AIFs must be held in dematerialised form.

While demat of securities and units may not be a cumbersome process, opening of demat accounts by investors, especially by foreign investors or non-resident Indians can be time-consuming.

The process/implementation standards issued from time to time with respect to the* Aggregate *Escrow Demat Account and related matters should provide some relief and direction to the AIF industry.

4. **Dematerialisation of investments held by AIFs**

In its meeting held on November 25, 2023, SEBI required AIFs to hold their investments in dematerialised form. SEBI *inter alia* approved the following amendments to be made to the SEBI (AIFs) Regulations, 2012 (the amendments are still to be made):

a) Any fresh investment made by an AIF after September 2024 must be held in dematerialised form.

b) The existing investments made by AIFs made prior to September 2024 are exempted from the aforesaid requirement, except in the following cases:

   i) Where the investee company is mandated under applicable law to facilitate dematerialisation of its securities.

Copyright © 2024 JSA | all rights reserved

Given that all private companies (that are not small companies as per the audited financial statements of the period ended March 31, 2023) are also required to dematerialise their securities by September 2024, most of the existing investments made by the AIFs are likely to not benefit from this exemption.

ii) Where the AIF, on its own, or along with other SEBI registered intermediaries/entities which are mandated to hold their investment in dematerialised form, has control in the investee company.

The exemption will also apply to:

i) liquidation schemes of AIFs;

ii) schemes of an AIF whose tenure (not including permissible extension of tenure) ends within 1 (one) year from the date of this requirement is notified; and

iii) schemes of an AIF which are in extended tenure as on the date this requirement is notified.

5. **Appointment of custodian**

Previously, only Category I and II AIFs with a corpus of more than INR 500,00,00,000 (Indian Rupees five hundred crore) and Category III AIFs were required to appoint a custodian. However, in its meeting held on November 25, 2023, SEBI mandated that all AIFs must appoint a custodian. In this regard, SEBI permitted an associate of manager or sponsor of the AIF to act as a custodian, subject to conditions that are similar to those prescribed under the SEBI MFs Regulations, 1996 in relation to appointment of a related party of sponsor of a MF as its custodian.

Some of these measures are aimed at digitisation and strengthening investor protection, which are welcome. However, it is hoped that such measures do not add to the ever-increasing operational costs of the AIFs, which ultimately get passed on to the investors.

Framework for short selling

SEBI, *vide* circular dated January 5, 2024, issued a broad framework for short selling in the Indian securities market. Some of the key provisions are as follows:

1. naked short selling is not permitted in the Indian securities market and accordingly, all investors have to honor their obligation of delivering the securities at the time of settlement;
2. a scheme for Securities Lending and Borrowing will be put in place to provide the necessary impetus to short sell;
3. securities traded in the Futures and Options segment will be eligible for short selling; and
4. institutional investors must disclose upfront at the time of placement of order whether the transaction is a short sale.

Offer for sale

Framework for offer for sale of shares to employees

SEBI, *vide* circular dated January 5, 2024, introduced a framework to provide an option for promoters to offer shares to employees in offer for sale ("**OFS**") through the stock exchange mechanism, with effect from February 22, 2024. It is an additional option to the existing procedure of OFS to employees outside the exchange mechanism. The procedure for offering shares through stock exchanges is detailed in the circular. The maximum bid amount will be INR 5,00,000 (Indian Rupees five lakh) and each employee will be eligible for an allotment of equity shares up to INR 2,00,000 (Indian Rupees two lakh).

Amendments to the bidding process for employees participating in OFS

SEBI, *vide* circular dated June 14, 2024, issued modifications in the framework for OFS of shares to employees. The SEBI circular dated January 23, 2024, issued the framework for offering of shares to the employees in an OFS through stock exchanges. This framework is modified to the effect that employees must place bids on T+1 day at cut-off price of T Day (*earlier, the bids were placed at the cut-off price of T+1 day*). The provisions of the circular will come into force from July 14, 2024.

Copyright © 2024 JSA | all rights reserved

Guidelines for returning of draft offer document and its resubmission

On February 6, 2024, SEBI issued 'Guidelines for returning of draft offer document and its resubmission' ("**Guidelines**")[6]. SEBI had observed that some draft offer documents filed with the Board for public issue/ rights issue of securities lack in compliance with instructions provided under Schedule VI of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR regulations**") which require revisions/changes, thus leading to longer processing time. To ensure the completeness of the offer document for investors and provide greater clarity and consistency in the disclosures and for the timely processing, SEBI decided to issue the Guidelines. The Guidelines emphasise that adequate disclosures by the issuer and the timely processing of the offer documents are important for the spirit of the primary market. The draft offer document should be scrutinised basis the broad Guidelines and any documents not in compliance with the instructions provided under Schedule VI of the ICDR Regulations and the Guidelines, will be returned to the issuer. The broad parameters set out in the Guidelines are as follows:

1. The draft offer document should be drafted in simple language with clear visual representation of data ensuring short, definitive and unambiguous statements, use of conventional words, active voice, tabular presentation or bullets and avoiding multiple negatives;

2. The draft offer document is presented in a clear, concise, and intelligible manner while ensuring with clear and concise sections, paragraphs and sentences, descriptive headings and subheadings. Legal and technical terminology and clarifications of technical should be avoided and technical terms, if used, are clarified if needed to explain the issuer's business or other matters in simpler terms;

3. The issuer of the draft offer document must avoid complex presentations, vague, ambiguous or imprecise explanations, complex information quoted or copied from legal documents unless accompanied with clear and concise explanation, repetition of disclosures in different sections of the documents unless required otherwise and any inconsistency in numbers, data, facts in the draft offer document;

4. The risk factor should be worded in simple, clear and ambiguous language to clearly communicate the risk to the investor;

5. The draft offer document would necessitate substantial revision or addenda on key disclosures on account of regulatory interpretation or clarification sought on the draft offer document;

6. The draft offer document should be clearly understandable without relying on the general rules and conditions;

7. No regulatory authority or enforcement agencies should express material concerns with regard to the issue or the draft offer document; and

8. If any pending litigation matters in any court or tribunal impact the eligibility criteria provided under the ICDR Regulations for the issue/ draft offer document filed by the issuer, then such information must be mentioned in the draft offer document.

The Guidelines further state that there is no requirement for the payment of any fees on account of the draft offer document and the requirement for paying the applicable fees for the changes, in terms of the changes specified in Schedule XVI of the ICDR Regulations for the updated offer document. However, in case of non-submission of the draft offer document, there will be no refund of the filing fees.

The issuer and the lead manager must resubmit the offer document only after addressing the insufficiency in the draft offer document and ensuring it complies with the provisions of the ICDR Regulations. Upon resubmission, the Issuer must within 2 (two) days make a public announcement as specified in the ICDR Regulations and disclose the resubmission. The issuer will also make a written intimation to its sectoral regulators informing them of the return resubmission of the draft offer document.

SEBI vide the issuance of these Guidelines have brought about stricter checks and balances emphasising the need for compliance with disclosure requirements under Schedule VI of the ICDR

[6] Circular number SEBI/HO/CFD/PoD-1/P/CIR/2024/009

Copyright © 2024 JSA | all rights reserved

Regulations and have laid down a streamlined process for the rejection and resubmission of the draft offer document.

Infrastructure investment trusts/ real estate investment trusts

Revised pricing methodology for privately placed infrastructure investment trusts

SEBI, *vide* circular dated February 8, 2023, revised the pricing methodology for institutional placement by privately placed Infrastructure Investment Trusts ("**InvITs**"). The floor price for institutional placement for privately placed InvITs will be the new asset value per unit of such InvIT. The institutional placement by public InvIT will continue to be at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the 2 (two) weeks preceding the relevant date.

Subordinate units to be issued by privately placed InvITs upon acquisition of an infrastructure project

SEBI, *vide* notification dated May 27, 2024, issued the SEBI (InvIT) (Amendment) Regulations, 2024, amending SEBI (InvIT) Regulations, 2014 ("**2014 Principal Regulations**"). Some of the key amendments are as follows:

1. a new term "**subordinate unit**" is defined to mean an instrument issued by an InvIT which can be reclassified as an ordinary unit, where ordinary unit hods the same meaning as the term unit in the 2014 Principal Regulations;
2. under the mandatory requirement for eligibility criteria of registration of an InvIT, there is only 1 (one) class of units, and all units carry equal voting rights and distribution rights. The unitholder(s) holding not less than 10% of the total outstanding units of the InvIT, are entitled to nominate 1 (one) director on the board of directors of the investment manager and are required to comply with stewardship code specified in Schedule VIII of the 2014 Principal Regulations;
3. under the right and responsibility of the sponsor and sponsor group(s), for the purpose of calculating the minimum unitholding requirements, subordinate units cannot be considered in computing total outstanding units of the InvIT and are not eligible for meeting the minimum unitholding requirement;
4. no InvIT can raise funds through public issue if any subordinate units are issued and are outstanding;
5. a new chapter (*Chapter IVA*) is inserted regarding the framework for issuance of subordinate units; and
6. the investment manager must disclose the unitholding pattern for ordinary units and subordinate units separately as specified by the SEBI.

Guidelines for small and medium real estate investment trusts

SEBI, *vide* notification dated March 8, 2024, introduced the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2024 ("**Amended REIT Regulations**"), outlining provisions for Small and Medium ("**SM**") Real Estate Investment Trusts ("**REITs**"). The key provisions are as follows:

1. **Amended definition of REIT:** The definition of 'REIT' is substituted to mean 'a person that pools INR 50,00,00,000 (Indian Rupees fifty crore) or more for the purpose of issuing units to at least 200 (two hundred) investors so as to acquire and manage real estate asset(s) or property(ies), that would entitle such investors to receive the income generated therefrom without giving them the day-to-day control over the management and operation of such real estate asset(s) or property(ies)';
2. An explanation is added to the definition of 'REIT' stating that a REIT will include a SM REIT. Further, it is clarified that, any company which acquires and manages real estate asset(s) or property(ies) and offers or issues securities to the investors, will not be construed as a REIT;
3. Eligibility criteria for formation of SM REITs: The Amended REIT Regulations prescribe certain eligibility criteria for the formation of SM REITs. Some of the key eligibility criteria are: (a) the applicant for registration of a SM REIT must be the investment manager on behalf of the REIT; (b)

Copyright © 2024 JSA | all rights reserved

separate persons must be designated as investment manager and trustee of the SM REIT, and they should not be associated with each other; (c) the investment manager must (i) be clearly identified in the application for grant of registration and offer document; (ii) have a net worth of at least INR 20,00,00,000 (Indian Rupees twenty crore), out of which at least INR 10,00,00,000 (Indian Rupees ten crore) must be in the form of positive liquid net worth; (iii) have experience of at least 2 (two) years in the real estate industry or real estate fund management. Alternatively, the investment manager can employ at least 2 (two) key managerial personnel, each possessing at least 5 (five) years' experience in real estate industry or real estate fund management; (iv) clearly describe the proposed activities of SM REIT at the time of making the application for registration; (d) the SM REIT and the parties to the SM REIT are fit and proper persons in terms of the SEBI (Intermediary) Regulations, 2008; and (e) the rights of unit holders are *pro rata* and *pari passu* and no unit holder should enjoy superior voting rights;

4. **Conditions pertaining to initial offer of scheme by SM REIT:** The SM REIT must make an initial offer of a scheme within 3 (three) years from the date of registration. The Amended REIT Regulations also prescribe the conditions to be complied with for the initial offer of a scheme, such as: (a) the investment manager must identify the assets proposed to be acquired or disclose relevant details such as features of the real estate assets in the draft offer document; (b) the minimum price of each unit of the SM REIT must be INR 10,00,000 (Indian Rupees ten lakh) or such amount as may be prescribed by SEBI; (c) the value of the real estate assets proposed to be acquired in each scheme should be at least INR 50,00,00,000 (Indian Rupees fifty crore); (d) the investment manager must file the draft scheme with SEBI through a merchant banker; (e) the draft scheme filed with SEBI will be made public for inviting comments by hosting it on the website of SEBI, designated stock exchanges and merchant bankers associated with the issue, for not less than 21 (twenty-one) days.

5. **Investment Conditions:** The SM REIT's scheme is mandated to invest at least 95% of the value of its assets in completed and revenue-generating properties. It is prohibited from investing in under-construction or non-revenue-generating real estate assets. However, up to 5% in value of the scheme's assets can be invested in unencumbered liquid assets such as investment in MF, fixed deposit;

6. **Mode of fund raising:** The SM REIT scheme may raise funds from any investor whether Indian or foreign by the way of issuance of units. However, the investment by foreign investors is subject to the guidelines of the RBI and the Government of India ("**GoI**");

7. **Minimum public unitholding and delisting:** The minimum offer and allotment to the public in each scheme of the SM REIT must be at least 25% of the total outstanding units of such scheme. The minimum public holding for the units of each scheme of SM REIT must be satisfied failing which action may be taken by SEBI and the designated stock exchange including delisting of units.

Foreign Portfolio Investors

Additional disclosures by foreign portfolio investors

SEBI, *vide* notification dated March 20, 2024, amended the criteria listed under para 8 of the circular dated August 24, 2023[7] ("**FPI Circular**") wherein it is decided that foreign portfolio investors ("**FPIs**") having more than 50% of its Indian equity Asset Under Management ("**AUM**") in a corporate group will not be required to make the additional disclosures as specified in the FPI Circular, subject to compliance with all of the following conditions:

1. the apex company of such corporate group has no identified promoter;

2. the FPI holds not more than 50% of its Indian equity AUM in the corporate group, after disregarding its holding in the apex company (with no identified promoter); and

[7] SEBI/HO/AFD/AFD – PoD – 2/CIR/P/2023/14

Copyright © 2024 JSA | all rights reserved

3. the composite holdings of all such FPIs (that meet the 50% concentration criteria excluding FPIs which are either exempted or have disclosed) in the apex company is less than 3% of the total equity share capital of the apex company.

Custodians and depositories must track the utilisation of this 3% limit for apex companies, without an identified promoter, at the end of each day. When the 3% limit is met or breached, depositories must make this information public before the start of trading on the next day. Thereafter, for any prospective investment in the apex company by FPIs, that meet the 50% concentration criteria in the corporate group, the FPIs will be required to either realign their investments below the 50% threshold within 10 (ten) trading days or make additional disclosures prescribed in the FPI Circular.

Limits for investment in debt and sale of credit default swaps by FPIs

The RBI, *vide* their circular dated April 26, 2024, sets out the investment limits for the financial year 2024-25, which are as follows:

1. the limits for FPI investment in Government Securities ("**G-Secs**"), State G-Secs ("**SGSs**") and corporate bonds will remain unchanged at 6%, 2%, and 15%, respectively, of the outstanding stocks of securities for 2024-25;
2. all investments by eligible investors in the 'specified securities' must be reckoned under the fully accessible route;
3. the allocation of incremental changes in the G-Secs limit (in absolute terms) over the 2 (two) sub-categories – 'General' and 'Long-term' – is retained at 50:50 for 2024-25;
4. the entire increase in limits for SGSs (in absolute terms) is added to the 'General' sub-category of SGSs; and
5. the aggregate limit of the notional amount of credit default swaps sold by FPIs is 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of INR 2,54,500 crore (Indian Rupees two lakh fifty-four thousand and five hundred crore) is set out for 2024-25.

Flexibility in payment of registration fee, dealing with securities after expiry of registration and revised timelines for disclosure of material changes

SEBI, *vide* notification dated May 31, 2024, has issued the SEBI (FPI) (Amendment) Regulations, 2024 ("**FPI Amendment Regulations**") amending the SEBI (FPIs) Regulations, 2019. The amendments provide flexibility to FPIs in dealing with securities after expiry of registration, payment of registration fee and relax the timelines for disclosure of material changes/events. These amendments are incorporated in the Master Circular for FPI, Designated Depository Participants ("**DDPs**") and Eligible Foreign Investors dated May 30, 2024 ("**FPI Master Circular**"), *vide* circular dated June 5, 2024. The key amendments are as follows:

1. **Payment of registration fee:** An FPI must pay the prescribed registration fees, for every block of 3 (three) years, before the beginning of such block. However, if the FPI pays the registration fees along with the late fee within a period of 30 (thirty) days from the date of expiry of the preceding block, it will be deemed to have paid the registration fee in a complaint manner.
2. **Dealing in securities post expiry of registration:**
    a) an FPI whose certificate of registration is not valid as on the date of commencement of the FPI Amendment Regulations and is holding securities or derivatives in India, is allowed to sell such securities or wind up their open position in derivatives in India within 360 (three hundred and sixty) days from June 3, 2024;
    b) if an FPI has not paid the registration fees and the late fees, if applicable, and continues to hold securities or derivatives in India, then it can sell the securities or wind up their open position in derivatives in India within 360 (three hundred and sixty) days from the date of expiry of 30 (thirty) days (referred in para 1 above); and
    c) an FPI whose certificate of registration is not valid and who has not sold off the securities or wound up their open position in derivatives in India within the prescribed timelines will be deemed to have written off the securities.

Copyright © 2024 JSA | all rights reserved

3. **Timelines for disclosure of material changes/events:**

   The procedure for disclosing certain material changes/events is modified. Earlier, an FPI had to, within 7 (seven) working days, inform SEBI and/or the DDP in case:

   a) any previously submitted information was found to be false or misleading in any material respect;

   b) of a material change in the information previously furnished by them, including any direct or indirect change in its structure or ownership or control or investor group; or

   c) of any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it.

4. Pursuant to the FPI Amendment Regulations, in the event of the occurrence of the material changes/events mentioned above, the FPI must inform SEBI/the DDP in writing, in the following manner:

   a) 'Type I' material changes, which include critical material changes that render the FPI ineligible for registration, require FPI to seek fresh registration, render FPI ineligible to make fresh purchase of securities or impact any privileges or exemptions granted to the FPI, must be notified within 7 (seven) working-days of the occurrence of the change and the supporting documents must be provided within 30 (thirty) days of such change; and

   b) 'Type II' material changes, which include any material changes other than those considered as 'Type I' material changes, must be notified and supporting documents must be provided within 30 (thirty) days of such change.

Changes to the eligibility criteria of FPI

SEBI, *vide* notification dated June 26, 2024, has issued the SEBI (FPI) (Second Amendment) Regulations, 2024 ("**FPI Second Amendment**") amending the SEBI (FPI) Regulations, 2019. The amendment provides flexibility to Non-Resident Indians ("**NRIs**"), Overseas Citizens of India ("**OCIs**") and Resident Indian Individuals ("**RIIs**") in the amount of their contribution in the corpus of an FPI. These amendments are incorporated in the FPI Master Circular, *vide* circular dated June 27, 2024. NRIs or OCIs or RIIs may be constituents of the applicant subject to the following conditions:

1. the contribution of a single NRI or OCI or RII must be below 25% of the total contribution in the corpus of the applicant;
2. the aggregate contribution of NRIs, OCIs and RIIs in the corpus of the applicant must be below 50% of the total contribution in the corpus of the applicant. However, this does not apply to an applicant regulated by the IFSCA and based in IFSCs in India. Accordingly, NRI, OCIs and RIIs can have up to 100% aggregate contribution in the corpus of an FPI based in IFSCs in India regulated by IFSCA subject to the conditions stipulated in the FPI Master Circular;
3. the contribution of RIIs must be made through the Liberalised Remittance Scheme notified by the RBI and must be in global funds whose Indian exposure is less than 50%; and
4. the NRIs, OCIs and RIIs must not be in control of the applicant.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Extension in the timeline for verification of market rumors by listed entities

SEBI, *vide* circular dated January 25, 2024, provided an extension in timeline for verification of market rumours by listed entities. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") require top 100 (one hundred) listed entities by market capitalisation and thereafter the top 250 (two hundred and fifty) listed entities by market capitalisation to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI. The timeline to confirm or deny the market rumours was extended to June 1, 2024, for top 100 (one hundred) listed entities by market capitalisation and, till

Copyright © 2024 JSA | all rights reserved

December 1, 2024, for top 250 (two hundred and fifty) listed entities by market capitalisation.

Amendments to the LODR Regulations

SEBI, *vide* circular May 17, 2024, issued the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024. Some of the key amendments are as follows:

1. every recognised stock exchange must, at the end of the calendar year i.e., December 31, prepare a list of entities that have listed their specified securities ranking such entities on the basis of their average market capitalisation from July 1 to December 31 of that calendar year;
2. the meetings of the risk management committee must be conducted in such a manner that on a continuous basis not more than 210 (two hundred and ten) days (earlier this was 180 (one hundred and eighty) days) should elapse between any 2 (two) consecutive meetings;
3. where the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up a vacancy of chief executive officer, managing director, whole time director or manager, then the vacancies must be filled up by the listed entity at the earliest and in any case not later than 6 (six) months from the date of vacancy;
4. if a placement is done according to the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, no intimation regarding the determination of issue price in a qualified institutions placement is required; and
5. the promoter, director, key managerial personnel or senior management of a listed entity are obligated to provide adequate, accurate and timely response to queries raised or explanation sought by the listed entity for complying with the disclosure of market rumours, including prompt intimations with the stock exchange.

Mutual Fund

Appointment of fund manager for MF schemes investing in commodities and overseas securities

To enhance ease of doing business, SEBI, *vide* circular dated April 30, 2024, modified certain provisions of the Master Circular for MFs dated May 19, 2023. The key modifications are as follows:

1. for commodity-based funds, appointment of a dedicated fund manager is optional;
2. the requirement to appoint a dedicated fund manager for making the prescribed overseas investments is optional; and
3. in case where a person is appointed as a fund manager, he should have adequate expertise and experience to manage investments in commodities market or in overseas securities, as the case may be; and the board of the asset management companies will be responsible to ensure compliance and reporting regarding the same to the trustees, on a periodic basis.

Fund manager for MF schemes investing in commodities and overseas securities

SEBI, *vide* circular dated April 30, 2024, amended the master circular for MFs dated May 19, 2023. Some of the key changes are as follows:

1. the requirement to appoint a dedicated fund manager for making the prescribed overseas investments by schemes is optional (earlier this was not optional); and
2. in case where a person is appointed as a fund manager for commodity-based funds and for making prescribed overseas investment, the board of the Asset Management Companies will be responsible for: (a) ensuring that the person appointed should have adequate expertise and experience to manage investments in commodities market, and (b) reporting the same to the trustees, on a periodic basis.

Industry standards on verification of market rumours

SEBI, in order to facilitate the ease of doing business, *vide* notification dated May 21, 2024, issued a circular for the requirement to verify market rumours and is applicable to the top 100 (one hundred) listed entities with effect from June 1,2024 and to the top 250 listed

Copyright © 2024 JSA | all rights reserved

entities with effect from December 01, 2024. The Industry Standard Forum comprising from representatives from ASSOCHAM, CII and FICCI on a pilot basis has formulated industry standards in consultation with SEBI for effective implementation of the requirement to verify market rumours under Regulation 30(11) of SEBI LODR Regulations. Stock Exchanges are advised to bring the contents of this circular to the notice of their listed entities and ensure its compliance.

Disclosure of events or information by a company regarding buy-back of shares or other specified securities

SEBI, *vide* notification dated May 17, 2024, issued the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2024 amending the SEBI (Buy-Back of Securities) Regulations, 2018. Some of the key amendments are as follows:

1. any company may buy-back its shares or other specified securities in physical form in the open market through a stock exchange provided that the effect on the price of the equity shares of a company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) (*disclosure of events or information: The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange*) of the LODR Regulations, for the determination of the volume weighted average market price; and

2. any company may buy-back its shares or other specified securities through the book-building process provided that the effect on the price of the equity shares of a company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) (*disclosure of events or information: The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange*) of the LODR Regulations, for the calculation of the lower end of the price range.

Amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

SEBI, *vide* notification dated May 17, 2024, issued the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024 amending the ICDR Regulations, with an aim to expand the scope of entities eligible to contribute towards capital issues, especially by non-individual public shareholders and entities within the promoter group holding at least 5% of the post-issue capital. Some of the key amendments are as follows:

1. under minimum promoters' contribution, if the post-issue shareholding of the promoters is less than 20%, any non-individual public shareholder holding at least 5% of the post-issue capital or any entity forming part of promoter group other than the promoter(s), may contribute to meet the shortfall in minimum contribution as specified for the promoters;

2. specified securities acquired by any non-individual public shareholder holding at least 5% of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s) during the preceding one year at a price lower than the price at which specified securities are being offered to the public in the initial public offer will not be eligible for the computation of minimum promoters' contribution;

3. for the computation of minimum promoters' contribution, equity shares arising from the conversion or exchange of fully paid-up compulsorily convertible securities, including depository receipts, that are held by the promoters at least 1 (one) year prior to the filing of the draft offer document forming part of promoter group other than the promoter(s) will be eligible, provided full disclosures of the terms of conversion is made, and they are converted into equity shares prior to filing of the red herring prospectus; and

4. with respect to the period of subscription, in case of a force majeure event, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of 1

Copyright © 2024 JSA | all rights reserved

(one) working day (*earlier this was 3 (three) working days*).

Amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

SEBI, *vide* notification dated May 17, 2024, issued the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024. Pursuant to the amendment, while determining the offer price, the effect on the price of the equity shares of the target company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) of the LODR Regulations.

Audiovisual presentation of disclosures made in public issue offer documents

SEBI, *vide* circular dated May 24, 2024, permitted the salient disclosures made in the draft red herring prospectus, red herring prospects and price band advertisement for public issues, to be made available in Audiovisual ("**AV**") format for ease in understanding the features of public issues. Such AV format must be prepared and placed in the public domain for all main board public issues. The same will initially be in bilingual format i.e. English and Hindi. The contents of the AV must be as per the prescribed guidelines, such as:

1. the duration of each bilingual version of the AV must be approximately 10 (ten) minutes;
2. the total duration of the AV must be equitably distributed to cover material disclosures made under various sections of the Draft Red Herring Prospectus and Red Herring Prospects viz. about the company, risk factors, capital structure, objects of the offer, business of the issuer, promoters, management, summary of financial information, litigations, material developments and terms of the offer; and
3. the content of the AV must be factual, non-repetitive, non-promotional and must not be misleading in any manner.

The provisions of the circular will become a mandatory requirement from October 1, 2024.

Revised eligibility criteria for launching commodity futures contracts

SEBI, *vide* notification dated May 30, 2024, revised the eligibility criteria for launching commodity futures contracts as prescribed under the Master Circular dated August 4, 2023 ("**Master Circular**"). Some of the key provisions are as follows:

1. all derivative contracts approved by SEBI, are allowed to be traded in the respective stock exchange(s) on a continuous basis without requiring further approval unless SEBI advises/directs otherwise;
2. all proposals of stock exchange for launch of new contract must be accompanied by complete information covering all the points appended at Annexure P of the Master Circular;
3. contract specifications on stock exchanges, except those allowed for modification at the exchange level, must not be altered without prior approval. Any changes in contract specifications require the stock exchange to notify market participants in advance. Once contracts have commenced, no terms can be changed without SEBI's prior approval;
4. stock exchanges must launch contracts within 6 (six) months of SEBI approval or apply for fresh approval if they fail to do so; and
5. contracts for continuous trading in agri-commodities must adhere to the lean month expiry policy and will be subject to SEBI's direction. The stock exchange must ensure that deposited commodities comply with regulations from other authorities such as Food Safety Standard Authority of India, Agmark, BIS, in addition to approved quality standards.

Enhanced anti-money laundering/terrorist financing compliance guidelines for registered intermediaries

Copyright © 2024 JSA | all rights reserved

SEBI, *vide* master circular dated June 6, 2024, has issued the guidelines on Anti-Money Laundering ("**AML**") Standards and Combating the Financing of Terrorism ("**CFT**")/Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 ("**PMLA**") ("**PMLA Guidelines**"). The PMLA Guidelines stipulate the essential principles for combating Money Laundering ("**ML**") and Terrorist Financing ("**TF**") and provide detailed procedures and obligations to be followed and complied with by all the registered intermediaries. The PMLA Guidelines will also apply to the branches of stock exchanges, registered intermediaries and their subsidiaries situated abroad, especially, in countries which do not apply, or insufficiently apply, the recommendations made by the FATF. The PMLA Guidelines outline the following key points:

1. **Establishment of policies, procedures and controls**: Intermediaries must establish appropriate policies, and procedures to prevent and detect ML and TF. This includes appointing a principal officer responsible for AML/CFT compliance and designating a person as a 'Designated Director' in terms of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005. Further, Intermediaries must adopt written procedures to implement AML provisions envisaged under the PMLA.
2. **Customer Due Diligence ("CDD"):** Intermediaries are required to conduct thorough CDD, including verifying the identity of clients and beneficial owners using reliable and independent client identification and verification procedures, periodic update of all documents and information on clients and beneficial owners.
3. **Client acceptance policies and client identification procedure**: Enhanced due diligence measures / safeguards are required for special category clients, those classified as high-risk. The KYC policy must specify the client identification procedure to be carried out at different stages i.e. while establishing the relationship, while carrying out transactions for the client or when the intermediary has doubts regarding adequacy / veracity of previously obtained client identification data.
4. **Reporting of suspicious transaction**: Intermediaries must report suspicious transactions to the Financial Intelligence Unit-India as per the specified formats and timelines.
5. **Record keeping**: Adequate records of transactions, CDD documents, and other relevant information must be maintained for a minimum of 5 (five) years.
6. **Procedure for freezing of funds, financial assets etc.**: Stock exchanges and registered intermediaries must ensure no accounts are held in the name of individuals/entities who are suspected of having terrorist links under the list periodically circulated by the United Nations Security Council.
7. **Employee training**: Regular training programs for employees must be conducted to ensure they are aware of AML/CFT procedures.

Market Infrastructure Institutions

SEBI introduces financial disincentives for surveillance lapses at Market Infrastructure Institutions ("MIIs")

SEBI, *vide* circular dated June 6, 2024, has issued the Framework of Financial Disincentives for Surveillance Related Lapses ("**SRL**") at MIIs, ("**Framework**"). The key provisions of the Framework are as follows:

1. the amount of financial disincentives will be determined on the basis of total annual revenue of the MII, as an indicator of the size and impact of the MII on the market ecosystem, during the previous financial year as per the latest audited consolidated annual financial statement and the number of instances of SRL during the financial year;
2. the financial disincentive(s), if imposed, will be credited by the MII within 15 (fifteen) working days, to the Investor Protection and Education Fund;
3. MIIs must report surveillance activities, including abnormal or suspicious activities, and promptly implement decisions from surveillance meetings. Non-compliance or delays can result in financial penalties;
4. the Framework will not be applicable to matters/instances wherein it has:

Copyright © 2024 JSA | all rights reserved

a) made market wide impact; or

b) caused losses to a large number of investors; or

c) affected the integrity of the market; and

d) any such matter will be subject to appropriate proceedings under the Securities Contracts (Regulation) Act, 1956 or SEBI Act, 1992 or Depositories Act, 1996;

5. the Framework will be applicable for any SRL occurring on or after July 1, 2024.

Statutory committees at MIIs

SEBI, *vide* circular dated June 25, 2024, has revised the functions, composition and terms of reference of the statutory committees of MIIs. The committees are divided into different categories, such as functional, oversight, and investment. The key revisions are as follows:

1. the circular specifies the composition of each statutory committees and these *inter alia* non-independent directors (other than executive directors), Independent External Professionals (“**IEPs**”) along with Public Interest Directors (“**PIDs**”) and for certain committees key managerial personnels as well;
2. the total number of PIDs must not be less than the total number of other members of the Committee (including IEPs) put together. In case of Standing Committee on Technology, the total number of PIDs must not be less than the total number of other members of the Committee, excluding IEPs;
3. the chairperson of each statutory committee must be a PID, and who must have a casting vote;
4. IEPs must be individuals of integrity with no conflict of interest and should not be associated with the MII or its members in any manner;
5. a newly recognised stock exchange, clearing corporation and depository must submit a confirmation to SEBI within 3 (three) months from the date of their recognition regarding the formation and composition of statutory committees; and
6. members of statutory committees must adhere to the applicable code of conduct as per the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 and the SEBI (Depositories and mParticipants) Regulations, 2018.

The provisions of this circular has come into force from July 25, 2024.

Ease of doing investments for existing investors and unitholders

For ease of compliance and investor convenience, SEBI, *vide* circular dated June 10, 2024, has prescribed the following:

1. non-submission of ‘choice of nomination’ for demat accounts and MF folios would not result in freezing of such demat accounts or MF folios. However, new investors/unitholders must continue to provide ‘choice of nomination’ for demat accounts/MF folios;
2. security holders holding securities in physical form would be eligible for receipt of any payment including dividend, interest or redemption payment as well as to lodge grievance or avail any service request from the Registrar and Transfer Agents (“**RTA**”) even if 'choice of nomination' is not submitted by these security holders; and
3. payments including dividend, interest or redemption payment withheld presently by the listed companies/RTAs, only for want of ‘choice of nomination’ must be processed.

Special call auction mechanism for price discovery of scrips of listed investment companies and listed investment holding companies

SEBI, *vide* circular dated June 20, 2024, has put in place a framework for special call auction with no price bands’ for effective price discovery of scrips of listed Investment Companies (“**ICs**”) and listed Investment Holding Companies (“**IHCs**”). Some of the key provisions are as follows:

1. **Criteria for Identification of Eligible ICs and IHCs:**

   a) the scrip of ICs or IHCs must be listed and available for trading for a period of at least 1

Copyright © 2024 JSA | all rights reserved

(one) year and the said scrips should not be suspended for trading;

b) total assets of the company invested in scrips of other listed companies must be at least 50%;

c) the 6 (six) month Volume Weighted Average Price ("**VWAP**") of the scrip must be less than 50% of the book value per share of such company based on present value of their investments in shares of other listed companies. If the scrip has not traded in the previous 6 (six) months, the VWAP will be considered as zero;

2. **Procedure for Special call auction mechanism:**

a) stock exchanges will initiate special call auctions for eligible ICs or IHCs with no price bands, after giving a 14 (fourteen) day notice to the market;

b) special call option mechanism:

i) a call auction is successful if price discovery involves orders from at least 5 (five) PAN-based unique buyers and sellers;

ii) if the auction succeeds on any one exchange for a scrip listed on multiple exchanges, that exchange's price discovery forms the trading base at other stock exchanges;

iii) the special call auction mechanism will be provided only once in a year; and

iv) the first special call auction will be conducted in the month of October 2024 by stock exchanges based on the latest available audited financial statements of such companies.

Amendment to insider trading regulations

SEBI, *vide* notification dated June 25, 2024, has issued the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2024 amending the SEBI (Prohibition of Insider Trading) Regulations, 2015. Some of the key amendments are as follows:

1. the trading plan formulated by an insider must not entail commencement of trading on behalf of the insider earlier than 120 (one hundred and twenty) calendar days (*earlier this was 6 (six) months*) from the public disclosure of the plan;

2. the trading plan must set out the prescribed parameters for each trade to be executed, which must include either the value of the trade or the number of securities to be traded, the nature of trade, either specific date or time period (not exceeding 5 (five) consecutive trading days) (while previously the intervals at, or dates on which such trades would be effected was also required to be set out) and the price limit (which is an upper price limit for a buy trade and a lower price limit for a sell trade). If such price limit is set, the insider must execute the trade only if the execution price is within such limit and must not execute the trade if price is outside such limit; and

3. the compliance officer must approve or reject the trading plan within 2 (two) trading days (*earlier this was not prescribed*) of receipt of the trading plan and notify the approved plan to the stock exchanges on which the securities are listed, on the day of approval.

Stock brokers mandated to prevent fraud or market abuse

SEBI, *vide* notification dated June 27, 2024, has issued the SEBI (Stock Brokers) (Amendment) Regulations, 2024 amending the SEBI (Stock Brokers) Regulations, 1992. Chapter IVA is inserted providing for institutional mechanism for prevention and detection of fraud or market abuse. It elucidates upon the provisions pertaining to putting in place systems for surveillance of trading activities and internal control systems by stock brokers, the obligations of the stock broker and its employees in maintaining adequate surveillance systems, mechanism for escalation and reporting of suspicious activities, and establish implementation and maintenance of a documented whistle blower policy.

Participation of Indian banks on India International Bullion Exchange IFSC Limited

RBI, vide circular dated February 9, 2024, permits a branch/ subsidiary/ joint venture of an Indian bank in GIFT-IFSC to act as a Trading Member ("**TM**")/ Trading

Copyright © 2024 JSA | all rights reserved

and Clearing Member ("**TCM**") of IIBX, and Indian banks are authorised to import gold/silver to act as Special Category Client1 ("**SCC**") of India International Bullion Exchange IFSC Limited ("**IIBX**"). Prior to its branch/subsidiary/joint venture in GIFT-IFSC seeking TM/TCM status on IIBX, the parent bank must seek a no objection certificate from RBI. The TM/TCM must execute trades only on behalf of clients (without proprietary trading). As per the extant Foreign Trade Policy, the RBI grants annual import authorisation to banks for import of gold/silver. Such banks, in addition to the consignment model in domestic tariff area, are allowed to operate as a SCC on IIBX for import of gold/silver. The SCC must execute only buy trades on behalf of clients. Banks must ensure adherence to extant RBI instructions as contained in the Master Circular – Loans and Advances – Statutory and Other Restrictions dated July 1, 2015.

Draft Framework for Self-Regulatory Organisation(s) in the FinTech Sector

On January 15, 2024, the RBI issued the '*Draft Framework for Self – Regulatory Organisation(s) in the FinTech Sector*' ("**Draft Framework**") and has invited comments on the Draft Framework until the end of February 2024.

With the aim to promote responsible practices and ethical standards across the industry, the RBI has reiterated the role of the proposed FinTech self-regulatory organisations ("**SRO-FT**") in achieving a delicate balance between the potential of change brought by FinTechs and the idiosyncratic risks FinTechs pose to the financial system. Notably, the Draft Framework comes soon after the 'Draft Framework for comments Omnibus Framework for recognising Self-Regulatory Organisations (SROs) for REs of the RBI', which was issued by the RBI on December 21, 2023.

The RBI notes that the Draft Framework is not comprehensive in its approach to regulate the sector and some important aspects are yet to be determined, such as:

1. If the membership to the SRO-FT will be available only to REs, unregulated entities, or a combination of both?
2. If there be one SRO-FT for the entire FinTech sector, or several given the diverse nature of the sector?

While the above points will be subject to discussions, the broad features of the Draft Framework are as set out below:

Characteristics and Operations

The SRO-FT is envisaged as an entity that is truly representative of the sector it seeks to regulate, and should:

1. strive to achieve legitimacy and credibility to not only frame widely acceptable baseline standards and rules of conduct codes, but also to effectively monitor and enforce them;
2. foster learning and development of the sector, with a focus on assisting upcoming entities;
3. maintain the body's independence and ensure decision making without the influence of one particular member or a group of members;
4. build transparent and fair dispute resolution mechanisms to efficiently handle disputes and build a stable environment for the FinTech industry;
5. facilitate communication between the regulator and the industry players;
6. be empowered to investigate and take disciplinary action against its members for non-adherence to codes / standards / rules; and
7. serve as a repository of information in connection with its members' activities, to assist with research and policy making.

Eligibility and Membership

The entity applying for registration as an SRO-FT, should:

1. be set up as a company under Section 8 of the Companies Act, 2013, and the constitutional documents must categorically state as one of its aims as acting as an SRO-FT;
2. demonstrate sufficient net-worth and capability to act an SRO-FT and compliance with the 'fit and proper' criteria for the board of directors; and

Copyright © 2024 JSA | all rights reserved

3. possess a robust IT infrastructure and the ability to deploy technological solutions within a reasonable timeframe and can manage 'user harm' instances that are referred to it.

The Draft Framework also prescribes guidelines for the membership structure that the SRO-FTs can adopt. Membership should be voluntary and should represent the FinTech sector with membership across entities of all size, stage, and activities. In the event, the representation is not adequate at the time of application, a roadmap has to be included for achieving this. The fee structure for the membership should be reasonable, and non-discriminatory. The membership agreements should provide the SRO-FT authority to set rules, standards, codes of conduct, etc., for the members. It is important to note that SRO-FTs are not permitted to set up entities / offices overseas without the prior approval of the RBI.

Application Requirements

1. The RBI will invite applications for the SRO-FT either for the entire sector or for specific sub-sectors, as and when required.
2. The manner in which an application can be made to the RBI to act as an SRO-FT and the documents required are provided in detail in the Draft Framework.
3. If the applicant is deemed suitable, the RBI would issue a "*Letter of Recognition*" to the SRO-FT, subject to validity of certain conditions.
4. The recognition granted to the SRO-FT by the RBI would be subject to periodic review.

Functions and Responsibilities

1. The Draft Framework prescribes the additional functions and responsibilities that the SRO-FTs are supposed to discharge. These are in accordance with the requirements and goals listed in 'characteristics and operations' as set out earlier.
2. Broadly the functions can be divided into two categories: (a) towards the members of the SRO-FT; and (b) towards the RBI.
    a) The functions towards the members, *inter alia* include:
        i) setting standards, framing code of conduct, setting applicable industry benchmarks and baseline technology standards;
        ii) drafting standard agreements which may be used by the FinTech companies;
        iii) deploying suitable surveillance mechanisms for effective monitoring of the FinTech sector;
        iv) actively promoting understanding of statutory and regulatory requirements and promoting a culture of compliance;
        v) encouraging a culture of research and development within the FinTech sector to encourage responsible innovation; and
        vi) establishing a grievance redressal as well as dispute resolution framework for its members.
    b) The functions towards the RBI, *inter alia*, include:
        i) to provide update regarding the developments in the sector, including updated sectoral information, addressing regulatory concerns, and collaboratively working towards the overall development of the FinTech sector; and
        ii) to act as the collective voice of its members in engagements with the RBI.
    c) The RBI may audit the books of the SRO-FTs and require the SRO-FTs to provide additional information about the entities' operations.

Governance and management

The Draft Framework obliges SRO-FTs to uphold transparency, accountability, integrity, fairness, responsiveness, and compliance with applicable law, and requires the SRO-FTs, to:

1. be professionally managed, where at least one-third members of the board (including the chairperson) should not be actively associated with a FinTech entity;
2. have a framework for the ongoing monitoring of 'fit and proper' status of its director and providing

Copyright © 2024 JSA | all rights reserved

updates about any changes in the directorship or adverse change in its 'fit and proper' status;

3. possess adequately skilled human resources, and robust technical capability to monitor the sector; and
4. while self-regulation is the over-arching aim of the Draft Framework, the RBI has provided for the possibility of the appointment of an observer by it, to the board of the SRO-FT.

Conclusion

Regulatory support and encouragement to establish self-regulatory organisations for Fintech may be traced back to November 2017, when in the RBI Report of the Working Group on '*Fintech and Digital Banking one of the key recommendations*', was to encourage a self-regulatory body for FinTech companies. At the Global FinTech Festival (held in Mumbai in September 2023), the RBI Governor and Deputy Governor highlighted the need for FinTechs to establish an effective self-regulatory structure to adopt the best industry practices and ensure good governance. They shed light upon need for FinTechs to establish this self-regulatory structure themselves.

The regulatory approach followed by the RBI towards FinTech started with the '*wait and watch*' mode and slowly moved to passive and active regulations with opportunities to the industry to provide comments through consultations and discussion papers. The formation of the SRO-FT will be in line with the regulatory approach followed by the RBI and will enable FinTechs to convey and discuss their requirements in an organised manner. The RBI stated that the SRO-FT would be able to derive its strength from its membership – ensuring a true representation of the FinTech sector. For the SRO-FT to be effective, the roles of the regulators, relevant industry associations and FinTechs will need to be harmonious.

The SRO-FT would be able to set standards and rules for its members which will foster a perpetually developing FinTech environment. The responsibilities furnished to STRO-FT will allow it to act as the chamberlain, ensuring transparency and aiding growth and stability in the industry. There are clarifications required from the Draft Framework in relation to understanding the relationship between the SRO-FT and the RBI and the segregation of their powers. This is a welcome initiative by the RBI, in keeping up with the ever-evolving industry and envisions to provide an impetus to the FinTech ecosystem as to promote a competitive, accountable, and responsible FinTech industry.

RBI amends regulatory sandbox scheme and integrates the new data privacy law

The concept of a regulatory sandbox ("**RS**") involves regulatory authorities providing an environment for real-time testing of innovative products, services, and approaches. In the Indian FinTech industry, this concept originated from the efforts of the 2016 Inter-regulatory Working Group ("**WG**") established by the RBI. This group was formed to delve into the intricate details of FinTech and the regulatory landscape. It aims to equip regulators with the necessary tools to effectively respond to, regulate, and support India's rapidly evolving FinTech industry.

The WG released its report in 2018 and recommended setting up an enabling framework for regulatory sandbox ("**RS Framework**") laying the groundwork for experimentation and innovation in the FinTech sector. The release of the latest amendment on February 28, 2024, underscores the RBI's commitment to optimising the RS Framework based on the insights gained from practical experience and stakeholder engagement.

Among the revisions introduced in the latest amendment, one of the key inclusions of the requirement on sandbox entities were to comply with the Digital Personal Data Protection Act, of 2023 ("**DPDP Act**"). The DPDP Act was published by the GoI on August 11, 2023, and forms the new data protection framework and regulatory regime in India. However, as of February 2024, further actions on behalf of the GoI may be required to make the DPDP Act effective, including notifying the rules and regulations required for effective implementation and enforcement of the DPDP Act and repealing the earlier existing privacy rules.

What is the RS Framework?

The RS Framework permits limited-time testing of new financial services or products within a controlled setting. It aims to foster careful

Copyright © 2024 JSA | all rights reserved

innovation in financial services, enhance efficiency, and ultimately benefit consumers. Additionally, it enables participants to assess their product feasibility without a full-scale costly launch. The RBI may grant certain relaxations during testing, and upon successful completion of the RS allows for regulatory approvals and authorisations.

FinTech companies, startups, banks, financial institutions, limited liability partnerships, partnership firms, or other entities may apply for testing their products within the RS, allowing experimentation in areas where regulations may be absent or require temporary relaxation. The products eligible for testing within the RS are required to meet specific criteria and may include retail payments, money transfer services, digital know you customer (KYC) and identification services, and offerings related to regulatory technology or supervisory technology. However, products involving credit registry or information, crypto-assets, or those prohibited by the GoI are not eligible for testing within the RS.

Tweaks in the updated RS Framework

1. **Themed cohorts:** While the earlier framework would permit entry to RS entities based on the specified themes such as payments or financial inclusion, the revised framework allows cohorts to be theme neutral with products from various functions being eligible to apply.

2. **RS timelines:** The RBI extended the standard period for the RS process to run up to 9 (nine) months from the earlier 7 (seven) month period restriction.

3. **Fit and proper criteria for selection of applicants:** The RBI added 2 (two) new conditions to the fit and proper criteria envisaged under the RS framework. These conditions include:

   a) where the proposed product is similar to one that is already tested under RS and no innovation is envisaged, the same may not be considered eligible under RS; and

   b) entities will be allowed to enter into in-principle partnership arrangements, if any, with various stakeholders at the time of applying to the RS.

   Apart from this, the RBI has also included conditions that may lead to a selected applicant being disqualified from the RS. These new disqualifying scenarios include where the applicant has (i) furnished misleading or inaccurate information, or concealed material facts in its application; (ii) suffered any breach in the data security/ failed to address technical defects, if any, failure to develop or implement safeguards, or the entity goes into liquidation or has its regulatory license cancelled; and, (iii) been unable to start testing or enter into partnerships on time.

4. **Amendments in the RS process:** The RBI has undergone a significant change in the regulatory sandbox process, implementing revisions across its various stages. These changes aim to streamline operations, enhance participant engagement, and improve the overall effectiveness of the sandbox initiative. The following outlines the updated procedure that applicants may need to adhere to:

   a) Preliminary Screening: The FinTech Department ("**FTD**") of RBI, guided by the Inter-Departmental Group ("**IDG**") on RS, will oversee a comprehensive sandbox process from start to completion. FTD will assess applications and select suitable candidates according to the eligibility requirements and sandbox objectives. This phase is expected to last approximately 1 (one) month.

   b) Application assessment and shortlisting: The selected applications will be evaluated on certain criteria such as innovation, technological components, security measures, and other factors. Any regulatory adjustments sought by applicants will be assessed on a case-to-case basis. Subsequently, applicants will present their concepts to IDG overseeing the RS for advancement to the testing phase. This phase is expected to last for a duration of 6 (six) weeks.

   c) Formulation of test design and integration phase: Collaborating with the FTD, applicants will finalise the test design and define metrics to assess the benefits and risks of the proposed innovations. They may also collaborate with partners, if applicable, and make preparations for testing their product or service. This phase is projected to last over 6 (six) weeks.

Copyright © 2024 JSA | all rights reserved

d) Testing Phase: The applicants are permitted to conduct trials of their products and services for up to 5 (five) months. Throughout this period, they are required to submit bi-weekly reports on the test outcomes to the FTD.

e) Evaluation Phase: The FTD will evaluate the test outcome reports in both quantitative and qualitative terms to determine the viability and suitability of the product or service within the RS Framework. This stage is anticipated to take 1 (one) month.

The proposed timelines for each stage are approximate and subject to change, as each stage entails multiple factors and interactions with stakeholders. The FTD will have the discretion to determine the timelines for each stage while striving to closely adhere to them, ensuring the timely achievement of the RS objectives.

Data-privacy-related changes: RS entities are required to handle all data within their possession or control in strict adherence to the regulations stipulated in the DPDP Act. This entails implementing suitable technical and organisational measures to ensure full compliance with the DPDP Act's provisions. Additionally, RS entities are tasked with establishing robust safeguards to prevent any potential breaches of personal data. These measures are essential to uphold the integrity and security of personal data and maintain trust within the regulatory sandbox environment.

Conclusion

By integrating the DPDP Act in the RS Framework, the RBI demonstrates a commitment to bolstering data protection measures and fostering responsible innovation. This proactive approach enhances consumer trust, provides clarity for industry players, and establishes a more secure testing environment. As we advance, the inclusion of DPDP Act within the RS Framework is poised to facilitate the development and deployment of innovative FinTech solutions, driving the sustainable growth of India's digital economy.

RBI's Master Direction on Bharat Bill Payment System

The RBI released the 'Master Direction – RBI (Bharat Bill Payment System ("**BBPS**")) Directions, 2024' on February 29, 2024 ("**BBPS Master Directions**"). With effect from April 1, 2024, the BBPS Master Directions will supersede the extant BBPS Guidelines and the applicable circulars. The BBPS Master Directions will govern the BBPS which regulates the payment system participants in the bill payments ecosystem involving payment and collection of bills through multiple channels using various forms of payment.

Key points under the BBPS Master Directions are set out below:

1. **Scope and Applicability**

The BBPS Master Directions will apply to the following:

a) Bharat Bill Pay Central Unit ("**BBPCU**") which is NPCI Bharat Bill Pay Limited, a wholly owned subsidiary of National Payments Corporation of India;

b) Bharat Bill Payment Operating Units ("**BBPOUs**"), which may either be a:

i) Biller operating unit ("**BOU**"), which onboards billers directly or through biller aggregators on the BBPS platform; or

ii) Customer operating unit ("**COU**") which onboards customers with a physical or digital interface to pay bills directly or through an agent institution. These entities may be banks, non-bank payment aggregators ("**PAs**"), or any other entity authorised as BBPOUs; and

c) Any entity (other than a biller) that is operating a system for payment of bills outside of the scope of BBPS.

Notably, a 'bill' is defined to include a notice for recharge of prepaid services and the customer's relationship with the biller must be validated through BBPS for such transactions.

2. **Authorisation Requirement**

Under the erstwhile regime, non-bank entities operating bill payments voluntarily sought authorisation from the RBI under the Payment and Settlement Systems Act, 2007 ("**PSSA**") to be registered as an authorised BBPOU. The scope of the BBPS Master Directions are expanded to cover all entities (other than billers) that were operating a payment system for bills outside of the BBPS and such entities must obtain authorisation under the

Copyright © 2024 JSA | all rights reserved

PSSA. While the earlier guidelines had specific criteria for eligibility for non-bank entities, the BBPS Master Directions do not provide specific eligibility criteria. It is unclear whether the same eligibility criteria as set out under the erstwhile regulations apply to all non-bank BBPOUs intending to obtain authorisation to operate as such.

Banks and non-bank PAs having prior authorisation as a payment system from the RBI which intend to operate as BBPOUs will not require a separate authorisation. They may intimate the Department of Payment and Settlement Systems, RBI, Central Office prior to the commencement of operations.

3. **Roles/obligations**

Indicative roles and responsibilities of BBPCU, BOUs and COUs as provided under the BBPS Master Directions are set out below:

a) BBPCU:

i) setting participation criteria and system operations rules;

ii) setting technical standards for participation in the system;

iii) providing guaranteed settlement of all transactions routed through BBPCU;

iv) ensuring all transactions have BBPS reference number from the payment initiation stage;

v) ensuring no funds in the system flow through any Technology Service Provider; and

vi) providing a framework for redressal of consumer disputes.

b) BOUs:

i) onboarding billers to BBPS;

ii) ensuring compliance to due diligence requirements in respect of onboarding of merchants prescribed in Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020 ("**PA Guidelines**");

iii) ensuring compliance to additional due diligence requirements which may be prescribed by BBPCU for specific biller categories; and

iv) ensuring due diligence of billers onboarded through biller aggregators.

c) COUs:

i) providing digital/physical interface to their customers, directly or through agent institutions;

ii) ensuring customers (including customers of their agent institutions) have access to all billers onboarded on BBPS;

iii) providing a system for raising disputes; and

iv) taking responsibility for the activities of its agent institutions, for which they have entered into agreement with the COU.

The roles and responsibilities of BBPCU, BOUs and COUs are fairly similar to their respective roles under the erstwhile regime vis-à-vis the BBPS Master Directions. That said, additionally:

d) BOUs must undertake a biller due diligence (including on billers onboarded through biller aggregators) in accordance with the PA Guidelines, resultantly also to comply with the RBI's Master Direction – Know Your Customer (KYC) Directions, 2016.

e) COUs are expected to provide the digital/physical interface to customers and ensure access to all billers.

4. **Settlements/Settlement Account**

Pursuant to the BBPS Master Directions, a non-bank BBPOU must create an escrow account exclusively for BBPS transactions, which should be operated in accordance with requirements under PA Guidelines. Settlement must be carried out only through a single/consolidated escrow account for all transactions instead of a nodal settlement account. The following transactions are permitted to be routed through the escrow account of COUs and BOUs:

a) Credit of funds collected from the customers/debit of funds due to billers;

b) Debit towards settlement of BBPS transactions;

Copyright © 2024 JSA | all rights reserved

c) Credit/debit of failed/disputed transactions;

d) Recovery of charges/commissions pertaining to bill payment transactions.

Notably, the BBPS Master Directions do not refer to the distinction between ON-US and OFF-US transactions.

5. **Grievance Redressal Mechanism**

BBPS Master Directions specify the guidelines governing the dispute resolution process and specify the following requirements:

a) BBPCU must create a dispute resolution framework for centralised end-to-end complaint management system in line with RBI's guidelines on Online Dispute Resolution (ODR) System for Digital Payments dated August 06, 2020 ("**ODR Regulations**") and BBPOUs must be integrated and handle dispute resolution in accordance with such framework.

b) BBPOUs to ensure compliance with timelines prescribed in RBI's circular on Harmonisation of Turn Around Time (TAT) and customer compensation for failed transactions using authorised Payment Systems dated September 20, 2019 ("**TAT Harmonisation**") in case of disputes.

Conclusion

The BBPS Master Directions represent a significant step towards a more robust and inclusive BBPS framework for stakeholders in India. The emphasis on streamlined settlements, and a centralised dispute resolution system aims to improve customer protection and overall efficiency. However, certain aspects (such as the eligibility criteria for authorisation) require further clarification, and procedural clarifications/directions may provide more guidance on the governance framework.

Opening of additional current account for settlement of import transactions

RBI, *vide* circular dated June 11, 2024, issued a new directive with a view to further enhance operational flexibility by permitting AD Category-I banks, maintaining Special Rupee Vostro Account, to open an additional special current account for its constituents for settlement of their import transactions in addition to their export transactions. Prior to this circular, AD Category-I banks were permitted to open an additional special current account for its constituents exclusively for settlement of export transactions.

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2024

The Insolvency and Bankruptcy Board of India ("**IBBI**"), *vide* notification dated February 12, 2024, issued the IBBI (Liquidation Process) (Amendment) Regulations, 2024, amending the IBBI (Liquidation Process) Regulations, 2016 ("**2016 Principal Regulations**"). Some of the key amendments are as follows:

1. the consultation committee can advise the liquidator on matters relating to: (a) review of marketing strategy in case of failure of sale of corporate debtor as a going concern; (b) continuation or institution of any suits or legal proceedings by or against the corporate debtor; and (c) extension of payment of balance sale consideration;

2. in all cases where the liquidator proposes to continue or initiate any legal proceeding, he must, after presenting the economic rationale for the proposal, seek the advice of the consultation committee;

3. in every meeting, the liquidator must present to the consultation committee: (a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any; (b) the consolidated status of all the legal proceedings; and (c) the progress made in the process;

4. where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he must consult the consultation committee and only on its advice he must run the affairs of the corporate debtor as a going concern to the extent approved;

5. where the liquidator is of the opinion that fresh valuation is required, the liquidator must facilitate a meeting wherein registered valuers must explain the methodology being adopted to arrive at

Copyright © 2024 JSA | all rights reserved

valuation to the consultation committee before finalisation of valuation reports and the liquidator must share the valuation reports with the members of the consultation committee after obtaining an undertaking that they will maintain the confidentiality of such reports and will not use the reports to cause an undue gain or undue loss to itself or any other person;

6. if there is deviation of 25% in the valuation of an asset class under regulation 35 (2) of the 2016 Principal Regulations from valuation under regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator must facilitate a meeting wherein the registered valuers must explain the reasons for the difference to the consultation committee;
7. wherever the corporate debtor has given possession to an allottee in a real estate project, such asset will not form a part of the liquidation estate of the corporate debtor; and
8. Form A (*Proforma for Reporting Consultations with Stakeholders*) is inserted.

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

IBBI, *vide* notification dated February 15, 2024, issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024, amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Some of the key amendments are as follows:

1. where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, must operate a separate bank account for each real estate project;
2. a resolution professional must convene a meeting of the committee before lapse of 30 (thirty) days from the last meeting;
3. the insolvency professional must place in each meeting of the committee, the operational status of the corporate debtor and must seek its approval for all costs, which are part of insolvency resolution process costs;
4. the information memorandum must contain the prescribed details of the corporate debtor including the fair value. However, the committee of creditors can decide not to disclose the fair value if it considers such non-disclosure to be beneficial for the resolution process;
5. the resolution professional after the approval of the committee of creditors may invite a resolution plan for each real estate project or group of projects of the corporate debtor;
6. the committee of creditors may consider the requirement of a monitoring committee for the implementation of the resolution plan.; and
7. with respect to the extension of the corporate insolvency resolution process period, the resolution professional must continue to discharge his responsibilities under the corporate insolvency resolution process, till the application for such extension is decided by the adjudicating authority.

Foreign Exchange Management

Easing of foreign direct investment norms in the space sector

The union cabinet chaired by the prime minister of India, on February 21, 2024, approved the amendment in the Foreign Direct Investment ("**FDI**") policy ("**FDI Policy**") on space sector ("**Amended Policy**"). Under the existing FDI Policy, FDI is permitted in the establishment and operation of satellites only through government approval. The Amended Policy seek to liberalise the FDI Policy provisions in space sector by prescribing liberalised entry route and providing clarity for FDI in the space sector *viz a viz* satellites, launch vehicles and associated systems or subsystems. The liberalised entry routes under the Amended Policy are aimed to attract potential investors to invest in Indian companies in space and to encourage collaboration between public and private entities. The specific amendments to the FDI Policy and the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 are awaited.

Early last year, the GoI introduced the Indian Space Policy, 2023 ("**Space Policy**"), which was formulated as an overarching, composite, and dynamic framework to implement the reform vision in the space sector. The Space Policy looks to (a) augment space capabilities; (b) enable, encourage, and develop a flourishing commercial presence in space; (c) use space as a driver of technology development and derived benefits in

Copyright © 2024 JSA | all rights reserved

allied areas; (d) pursue international relations; and (e) create an ecosystem for effective implementation of space applications among all stakeholders. Prescribing liberalised FDI thresholds for a variety of sub-sectors/activities, the union cabinet has eased the FDI policy on the space sector in tandem with the vision outlined in the Space Policy.

The entry routes for various sub-sectors/activities under the Amended Policy are as follows:

1. **Upto 74% under automatic route:** satellite manufacturing and operation, satellite data products and ground segment and user segment. Beyond 74% these activities are under government route.
2. **Upto 49% under automatic route**: launch vehicles and associated systems. Beyond 49% these activities are under government route.
3. **Upto 100% under automatic route:** for activities involving the manufacture of components and systems/sub-systems for satellites, ground segment, and user segment.

The Amended Policy and the Space Policy aim to create a flourishing commercial presence in space. The amendments are likely to result in increased foreign investment in the space sector in India. Such increased foreign investment have the potential of increased technology transfers thereby giving impetus to larger private participation and India's Make-in-India policies, that would in turn help in employment generation, and integrate Indian companies into the global space industry.

Amended definition of 'unit'

The MoF *vide* notification dated March 14, 2024, amended the definition of 'unit' under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. Rule 2(aq) defines the term 'unit' as the beneficial interest of an investor in an investment vehicle. An explanation is inserted to the definition that a unit will include a unit that is partly paid up, which is permitted under the regulations framed by the SEBI, in consultation with GoI.

Opening, holding and maintaining a Foreign Currency Account outside India

RBI, *vide* their notification dated April 19, 2024, issued the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2024, amending the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015. Pursuant to this amendment, funds raised through direct listing of equity shares of companies incorporated in India on international exchanges, which are either pending their utilisation or repatriation to India, can be held in foreign currency accounts with a bank outside India, subject to compliance with the conditions regarding raising of funds and resources. This condition was initially applicable only to funds/ resources raised by external commercial borrowings or American Depository Receipts or Global Depository Receipts.

Investments in other instruments of investment funds overseas

RBI, *vide* circular dated June 7, 2024, has amended the Foreign Exchange Management (Overseas Investment) Directions, 2022. The amendments are as follows:

1. the definition of 'Overseas Portfolio Investment ("**OPI**")' is amended to include investment (including sponsor contributions) in units or any other instrument issued by an duly regulated investment fund overseas. Prior to this amendment, investment was permitted only in units issued by an investment fund overseas. It is further clarified that the term 'investment fund overseas, duly regulated' also includes funds whose activities are regulated by financial sector regulator of the host country or jurisdiction through a fund manager; and
2. a person resident in India, being an Indian entity or a resident individual, may make investment (including sponsor contributions) in units or any other instrument issued by an investment fund or vehicle set up in an IFSC, as OPI. Prior to this amendment, such investment was permitted only in units issued by an investment fund or vehicle set up in an IFSC.

Amendments to performance requirements for warehouseman

The Ministry of Consumer Affairs, Food and Public Distribution, *vide* notification dated June 4, 2024, issued the Warehousing (Development and Regulation) Registration of Warehouses (Amendment)

Copyright © 2024 JSA | all rights reserved

Rules, 2024, amending Rule 27 of the Warehousing (Development and Regulation) Registration of Warehouses Rules, 2017. Pursuant to the amendment, a warehouseman must issue negotiable warehouse receipts in electronic form only, in the manner as determined by the Warehousing Development and Regulatory Authority ("**Authority**"). The Authority may itself function as a repository or register 1 (one) or more entities as repository, for creation and management of electronic negotiable warehouse receipts.

Ship leasing

Ship leasing activities in Special Economic Zone

The Ministry of Commerce and Industry ("**MoCI**"), *vide* notification dated March 14, 2024, introduced amendments to the Special Economic Zones ("**SEZ**") Rules, 2006 ("**SEZ Rules**") by issuing the SEZ (Second Amendment) Rules, 2024. Pursuant to the amendment, the scope of Rule 21B is broadened to include units dealing in ship leasing activities (*earlier it just included provisions related to units dealing in aircraft leasing activities*). A unit in an IFSC authorised to undertake aircraft or ship leasing activity, can utilise office space or manpower or both, of another unit set up in an IFSC authorised to undertake aircraft or ship leasing activity.

Clarification in relation to the permissible activities specified under the 'Framework for Ship Leasing'

The IFSCA, *vide* circular dated April 2, 2024, clarified that a lessor which has obtained a certificate of registration may undertake the permissible activities specified in clause 3 (E) (ii) of the 'Framework for Ship Leasing' ("**SL Framework**") (i.e. voyage charters, contract of affreightments, employment in shipping pools and all other legal commercial transactions for employment of ships) only if such lessor has absolute or lease hold right over the ship/ocean vessel.

Additional requirements for carrying out permissible activities SL Framework

IFSCA, *vide* circular dated May 8, 2024, outlined additional requirements for carrying out permissible activities by a finance company under the SL Framework. An applicant under the SL Framework or a lessor, who has obtained a certificate of registration under Regulation 3 of the IFSCA (Finance Company) Regulations, 2021, must not undertake transactions which involves transfer of the ownership and/ or leasehold right of a ship or ocean vessel from a person resident in India to an entity set up in the IFSC, for the purpose of providing services solely to person resident in India. However, the applicant or lessor may acquire a new ship or ocean vessel or enter into a new leasehold right contract with person resident outside India so as to cater to person resident in India.

Special Economic Zone

Changes made to the sourcing of gems and jewellery units

MoCI, *vide* notification dated February 5, 2024, amended the SEZ Rules by issuing the SEZ (Amendment) Rules, 2024. The amendment extends the sourcing option for gem and jewellery units by allowing them to obtain gold, silver or platinum through the nominated agencies or free of charge from foreign buyers and export thereof to the same foreign buyers.

Financial products, services, and institutions to be included under IFSCs

MoF, *vide* notification dated February 28, 2024, amended the provisions of the SEZ Act, 2005 ("**SEZ Act**") and SEZ Rules. The key modifications are as follows:

1. a proviso is inserted to section 13 (2) (f) of the SEZ Act, stating that every approval committee must consist of a representative of the Developer concerned - Special invitee. Provided that for a unit requiring recognition, registration, license or authorisation by the IFSCA the Chairperson of the approval committee under section 13(2)(a) must be the 'Administrator (IFSCA)';

Copyright © 2024 JSA | all rights reserved

2. a proviso is inserted to the rule 17 (1) of the SEZ Rules, stating that an application seeking permission for setting up a Unit requiring recognition, registration, license or authorisation by the IFSCA must be made to the Administrator (IFSCA) in Form FA, and Form F will not be applicable to such Unit; and
3. Form FA (Consolidated Application Form) is inserted to the SEZ Rules.

Import, export, procurement or supply of aircraft engines by a unit in an IFSC

MoCI, *vide* notification dated June 6, 2024, has issued the SEZ (Third Amendment) Rules, 2024 amending the SEZ Rules. Rule 29A of the SEZ Rules prescribes the procedure to be followed by a unit in an IFSC approved by IFSCA for import or export or procurement from or supply to Domestic Tariff Area ("**DTA**") of aircraft. Under this amendment, the term 'aircraft' must be substituted to include 'aircraft or aircraft engine'. Consequently, units in an IFSC can import, export, procure or supply aircraft engines to/from a DTA.

Amendment made to the consideration of proposals for setting up of unit in SEZ

MoCI, *vide* notification dated June 20, 2024, has issued the SEZ (Fourth Amendment) Rules, 2024 amending Rule 18(4)(d) of the SEZ Rules. As per the said Rule, proposal for setting up units engaged in import of other used goods for recycling is not permitted, however, the proviso to the said Rule permits import of used goods for reconditioning, repair and re-engineering provided that the same are exported, and a one-to-one correlation with imports is maintained. As per the amendment, an additional proviso is inserted permitting non-hazardous metal and metal-alloy wastes in metallic, non-dispersible form, free of specified contaminants generated from the reconditioning, repair or reengineering of used goods, to be sold in the DTA upon payment of applicable customs duty. Please note that such supply will be considered as import and will be allowed only to the actual users or trader for use of actual users authorised by the State Pollution Control Board, subject to verification of specified documents by the customs authority.

Application of the Banking Regulation Act to financial products, services or institutions in IFSCs

MoF, *vide* notification dated February 28, 2024, applied certain provisions of the Banking Regulation Act, 1949 ("**Banking Regulation Act**"), with modifications, to financial products, financial services or financial institutions in IFSCs. The prescribed limits on holding shares in any company will not apply to an IFSC banking unit of a foreign bank for a transaction entered in the ordinary course of business or if the shareholding or interest acquired or held in the course of satisfaction of debts due to it, is disposed of within 5 (five) years. Further, the restrictions to grant any loans or advances or entering into any commitment for granting any loan or advances does not apply to those made by an IFSC banking unit of a foreign bank either (a) on the security of its own shares; (b) to or on behalf of any of its directors; (c) firms in which directors hold substantial interest or any company (not being subsidiary or registered under section 25 of the Companies Act, 1956 or a government company) or a director of a banking company who is an interested director (as a director, manager, managing agent, etc.); or (d) any individual in respect of whom any of its directors is a partner or guarantor.

Information Technology

Ministry of Electronics and Information Technology's advisory on deployment of AI models

On March 1, 2024, the Ministry of Electronics and Information Technology ("**MeitY**") issued an advisory ("**Advisory**") directing all intermediaries and platforms to label any under-trial/unreliable artificial intelligence ("**AI**") models, and to secure explicit prior approval from the government before deploying such models in India. This Advisory follows a strong response by MeitY considering the Google-Gemini row and also builds on an earlier advisory dated December 23, 2023 ("**December Advisory**") specifically targeting the growing concerns around propagated by AI Deepfakes and mandating communication of prohibited content to the users.

Copyright © 2024 JSA | all rights reserved

Provisions of the Advisory

The Advisory states that all intermediaries and platforms are to ensure that their AI-models, large language models (LLMs), generative AI/software(s) and algorithm(s) or computer resource does not permit any discrimination or threaten the integrity of the electoral process and to prohibit their users from contravening the provisions of the Information Technology ("**AI**") Act 2000 ("**IT Act**") and the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 ("**Rules**") which does not permit hosting, displaying, modifying, publishing transmitting, storing, updating or sharing unlawful content. Further, the Advisory also states that the use of under-testing/unreliable AI models of intermediaries and platforms on Indian internet is subject to prior explicit approval from the government and its deployment is dependent on a due diligence of the AI model's possible and inherent unreliability of the output generated which is to be informed to its users by way of a consent mechanism essentially containing the risks and consequences of dealing with such unlawful information. The Advisory has also requested AI platforms and intermediaries using its software or any other computer resource in such a manner to generate information that could be misused or considered deepfake to label such information with a unique metadata or identifier in a manner that such label, metadata or identifier can be used to identify that such information is generated by the AI system of the intermediary, identify the intermediary and the creator or first originator of such misinformation or deepfake. Moreover, this Advisory, very similar to the December Advisory, highlights the possibility of severe penal consequences to intermediaries, platforms and users in the event of non-compliance of the IT Act, Rules and criminal laws.

Clarifications on the Advisory

Further, the Minister for Electronics and Information Technology, Mr. Ashwini Vaishnaw and Minister of State, Mr Rajeev Chandrasekhar have confirmed that this Advisory is not binding and only encourages voluntary compliance to prevent legal action by consumers. Mr Rajeev Chandrasekharan has clarified that the Advisory is intended for significant /large platforms, not AI start-ups are required to seek prior approval from the government.

Conclusion

Although under Section 13 of the Rules, MeitY can issue appropriate guidance and advisory to publishers, it is unclear if MeitY is within its scope of the Rules to issue advisories specific to AI governance, thereby questioning its validity. The advisory, by its very nature, is not binding as held by a plethora of judgments of Indian Courts. The threshold for determining "significant/large platforms" and "start-ups" remains unclear. The parameters for evaluating "under-tested" and "unreliable" AI are not defined, thereby making voluntary compliance difficult.

Revised MeitY advisory on deployment of AI models

In light of the ambiguities arising in the Advisory, on March 15, 2024, MeitY issued a revised advisory on deployment of AI models ("**Revised Advisory**") which effectively replaces the Advisory without modifying the December Advisory. The Revised Advisory has done away with mandatory prior government approval, submission of action taken-cum status report, extended the scope of due diligence to all AI intermediaries and platform and retain certain requirements from the Advisory.

Provisions of the Revised Advisory

The Revised Advisory reinforces some requirements from the Advisory namely: (a) users need to be explicitly informed about the unreliability of the output by way of a "consent pop up" mechanism or any other equivalent mechanisms; (b) all intermediaries and platforms are required to inform the users about the ramifications of dealing with unlawful content; and (c) all intermediaries and platforms are required to utilise labels, metadata, or unique identifiers to identify content or information that is AI generated, modified, or created using synthetic information. The Revised Advisory also reiterates the importance of compliance with the IT Act and the Rules like the Advisory.

The Revised Advisory has introduced some changes, namely:

1. seeking explicit prior permission from the Government for the deployment of any unreliable or under tested AI models is done away with. Instead, unreliable or untested AI models are to be

Copyright © 2024 JSA | all rights reserved

made available to the users only after notifying them of the unreliability of the generated output.

2. the Revised Advisory has eased the requirement for submission of an action cum status report to be submitted.
3. the due diligence requirement extends to all intermediaries and platforms, including compliance requirements related to the use and deployment of AI tools by the intermediaries and platforms as opposed to "significant/large" platforms mentioned in the Advisory and the clarification issued thereafter;
4. the scope of "unlawful content" that all intermediary and platform should ensure is not published / hosted / displayed / transmitted / stored / updated or shared extends beyond the Intermediary Guidelines and the IT Act and also encompasses content that is deemed unlawful under other laws in force;
5. the Revised Advisory serves a reminder that the intermediaries, platform and its users may face penal consequences under criminal laws for non-compliance with IT Act and its rules;
6. the labelling requirements in the Advisory to be followed by the intermediaries and platforms has extended to include identification of not just the first creator or the originator of misinformation or deepfake but also the user or computer resource that has caused any change or modification to such information.

Conclusion

Although the Revised Advisory is seen as a welcome change, the ambiguity around the legal provision basis which MeitY issued such advisories raises questions about its enforceability and binding value. Similar to the Advisory, the measure for determining what is 'unreliable' or 'under-tested' still remains unclear thereby making compliance difficult. Though the requirement of intermediaries and platforms to label AI models is carried forward from the Advisory to the Revised Advisory with some changes, there is no clarity on what the acceptable forms of labelling are to be followed by the intermediaries and platforms. Further, the Revised Advisory, concurrently, mentions that a "consent pop-up" may be used to inform the users about the unreliability of the output generated when, the purpose of a "consent pop-up" is to obtain consent from the users and not just intimating about the fallibility of the output generated.

Patents (Amendment) Rules, 2024

MoCI, *vide* notification dated March 15, 2024, issued the Patents (Amendment) Rules, 2024. The key amendments are as follows:

1. the period within which an applicant must file the statement and undertaking regarding foreign applications is changed to 3 (three) months from the date of filing the application (*earlier this was 6 (six) months*);
2. a patent applicant may file 1 (one) or more further applications under Section 16 of the Patents Act, 1970 ("**Patent Act**") including in respect of an invention disclosed in the provisional or complete specification or a further application filed under section 16 of the Patent Act;
3. a request for examination under Section 11-B of the Patent Act must be made in Form 18 within 31 (thirty-one) months (*earlier this was 48 (forty-eight) months*) from the date of priority of the application or from the date of filing of the application, whichever is earlier; and
4. Rule 70A dealing with provisions with respect to certificate of inventorship is inserted.

Further, *vide* notification dated March 16, 2024, MoCI issued the Patents (Second Amendment) Rules,2024, inserting Chapter XIVA dealing with provisions related to *adjudication of penalties and appeals*. Form 31 (*Complaint for contravention or default of sections 120, 122 and 123 of the Patents Act, 1970*) and Form 32 (*Appeal against an order passed by the adjudicating officer*), were also inserted.

Prohibition of celebrity endorsement of illegal activities

Central Consumer Protection Authority ("**CCPA**"), *vide* circular dated March 6, 2024, issued an advisory on prohibition of advertising, promotion, and endorsement of unlawful activities prohibited under various laws in accordance with the Consumer Protection Act, 2019 ("**2019 Act**"). The advisory highlights that the guidelines for Prevention of Misleading Advertisements and Endorsements for

Copyright © 2024 JSA | all rights reserved

Misleading Advertisements, 2022 ("**2022 Guidelines**"), categorically prohibit advertisements of products or services prohibited under any prevailing law. It reiterates that the 2022 Guidelines apply to all advertisements, irrespective of the medium used and warns celebrities and influencers that any engagement in the promotion or advertisement of online gambling and betting, given its unlawful status, renders one equally liable for participating in an illegal activity. Through this advisory, CCPA cautions that any advertisement or endorsement of activities which are otherwise prohibited by law, such as betting or gambling, will be subject to rigorous scrutiny. If any violation of the 2022 Guidelines is found, stringent measures, as per the 2019 Act, will be initiated against involved, including manufacturers, advertisers, publishers, intermediaries, social media platforms, endorsers, and any other relevant stakeholders.

Rules for penalty under Cinematograph Act, 1952

Ministry of Information and Broadcasting ("**MIB**"), *vide* notification dated June 7, 2024, has issued the Cinematograph (Adjudication of Penalty) Rules, 2024.

The key provisions are as follows:

1. the authorised officer appointed under the said Rules can exercise the following powers, namely: a) enter the place of exhibition or authorise any officer to enter the place of exhibition and to report the violation; b) summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing; and c) order for evidence, including video surveillance footage, ticket scans or to produce any document, which in the opinion of the authorised officer may be relevant;
2. before adjudging the penalty, the authorised officer must issue a show cause notice to the person who is in default, to show cause within such period as may be specified in the notice (not being less than 15 (fifteen) days and not more than 30 (thirty) days from the date of service thereon), providing the reasons for which the penalty should not be imposed;
3. while determining the quantum of the penalty, the authorised officer must consider the nature of the violation, any quantifiable disproportionate gain or unfair advantage resulting from the violation, repetition of the violation, and balance of hardships;
4. an appeal against the order of the authorised officer may be filed in writing before the deputy secretary or director to the Central Government (where the authorised officer is the under-secretary) or the district magistrate of the relevant district (where the authorised officer is the additional district magistrate); and
5. all sums realised by way of penalties under the principal act must be credited to the Consolidated Fund of India.

Stamp duty amendments

Government of Karnataka amends the Karnataka Act 1957 by way of the Karnataka Stamp (Amendment) Act, 2023

The Government of Karnataka issued a notification on February 3, 2024, regarding the Karnataka Stamp (Amendment) Act, 2023 ("**2023 Amendments**") which currently cover several articles of Schedule 1 of the Karnataka Stamp Act, 1957. The existing rate of stamp duties on many instruments is revised with the intention of augmenting the revenue of the State.

Please note that the table below provides the revised stamp duties for only certain instruments and does not cover all the instruments for which revised stamp duties are specified.

Article Reference	Description of Instrument	Current Stamp Duty	Revised Stamp Duty
5(b)	Agreement or memorandum of an	INR 1 for every INR 10,000 or part thereof of the value of the security at	The cap of INR 1,000 is removed.

Copyright © 2024 JSA | all rights reserved

Article Reference	Description of Instrument	Current Stamp Duty	Revised Stamp Duty
	Agreement relating to the purchase or sale of a Government security	the time of its purchase or sale, as the case may be, subject to a maximum of INR 1,000.	
5(e)(ii)	Agreement in relation to sale of immovable property in part performance of a contract – where possession is not delivered	Ten paise for every INR 100 or part thereof on the market value equal to the amount of consideration subject to a maximum of INR 20,000 but not less than INR 500	Increased to Fifty paise for every INR 100 or part thereof on the market value equal to the amount of consideration. The cap of INR 20,000 is removed.
5(i-d) (ii)	Agreement relating to building works where the amount or consideration exceeds INR 10,00,000	INR 100 and in addition INR 100 for every INR 10,00,000 or part thereof in excess of INR 10,00,000, subject to a maximum of INR 500,000	INR 500 and in addition INR 500 for every INR 10,00,000 or part thereof in excess of INR 10,00,000. The maximum cap is increased to INR 10,00,000
6(1)(i)	Agreement relating to deposit of title deeds, where the loan amount does not exceed INR 10,00,000	0.1 % on the loan or debt amount subject to a minimum of INR 500	Increased to 0.5% of the loan amount subject to a minimum of INR 500.
6(1)(ii)	Agreement relating to deposit of title deeds, where the loan amount exceeds INR 10,00,000	0.2% on the loan or debt amount subject to a maximum of INR 10,00,000	Increased to 0.5% of the loan or debt amount. The maximum cap of INR 10,00,000 is removed
6(2)	Agreement relating to pawn or pledge or moveable property, where such pawn or pledge is made by way of security for the repayment of the money advanced or to be advanced by way of a loan or an existing debt or future debt – If such loan is payable on demand or otherwise		
(i)	Where the loan amount exceeds INR 100,000 but	0.1% of the debt amount.	Increased to 0.5% of the debt amount

Copyright © 2024 JSA | all rights reserved

Article Reference	Description of Instrument	Current Stamp Duty	Revised Stamp Duty
	does not exceed INR 10,00,000		
	Where the loan amount exceeds INR 10,00,000	0.2% of the debt amount subject to a maximum amount of INR 10,00,000.	Increased to 0.5% of the debt amount and the cap is removed.
11(b)	Arbitral award If the property which is the subject matter of award is a movable property and the amount or market value of the property as set forth in the award does not exceed INR 50,00,000	¾% of the amount or market value.	Increased to 1% of the amount or market value
	When the amount or market value of the property set forth in the award exceeds INR 50,00,000 but does not exceed INR 5,00,00,000	INR 37,500 + 1/2% of the amount or market value exceeding INR 50,00,000	Increased to 1% of the amount or market value
	When the amount or market value of the property set forth in the award exceeds INR 5,00,00,000	INR 37,500 + INR 2,25,000 + 1/4% of the amount or market value exceeding INR 5,00,00,000	Increased to 1% of the amount or market value
20(4) (i)	Amalgamation of companies, including a subsidiary amalgamating with parent company	3% on the market value of the property of the transferor company, located within the State of Karnataka and transferred to the transferee company; or an amount equal to 1% of the aggregate value of shares issued or allotted in exchange, or otherwise and in case of a subsidiary company, shares merged (or cancelled) with parent company. if any, paid for such amalgamation; whichever is higher, subject to a maximum of INR 25,00,00,000.	5% on the market value of the property of the transferor company, located within the State of Karnataka and transferred to the transferee company; or an amount equal to 5% of the aggregate value of shares issued or allotted in exchange, or otherwise and in case of a subsidiary company, shares merged (or cancelled) with parent company. if any, paid for such amalgamation; whichever is higher subject to a maximum of INR 25,00,00,00.

Copyright © 2024 JSA | all rights reserved

Article Reference	Description of Instrument	Current Stamp Duty	Revised Stamp Duty
20(4) (ii)	Reconstruction or Demerger of a Company	3% on the market value of the property of the transferor company, located within the State of Karnataka, and transferred to the resulting company; or an amount equal to 1% of the aggregate value of shares issued or allotted to the resulting company and in addition, the amount of consideration if any, paid for such demerger or reconstruction; whichever is higher subject to a maximum of INR 25,00,00,000.	5% on the market value of the property of the transferor company, located within the State of Karnataka, and transferred to the resulting company; or an amount equal to 5% of the aggregate value of shares issued or allotted to the resulting company and in addition, the amount of consideration if any, paid for such demerger or reconstruction; whichever is higher subject to a maximum of INR 25,00,00,000.
20 (7)	Conveyance relating to Transferable Development Rights	3% on the market value of the Transferable Development Rights equal to the market value of the corresponding portion of the property leading to such Transferable Development Rights.	Increased to 5%.
34 (c)(i)	An agreement relating to mortgage for every sum secured not exceeding INR 1,000	For every sum secured not exceeding INR 1,000 will be of INR 10	Increased to INR 50
34(c) (ii)	An agreement relating to mortgage wherein for every INR 1,000 or part thereof, secured in excess of INR 1,000	INR 10 plus INR 1 for every INR 1,000 or part thereof in excess of INR 1,000	Increased to INR 50 plus INR 5 for every INR 1,000 or part thereof in excess of INR 1,000
40A (B)	An agreement relating to reconstruction or amalgamation of Limited Liability Partnership	3% on the consideration or market value of the property whichever is higher of the transferor LLP located within the State of Karnataka.	Increased to 5% on the consideration or market value of the property whichever is higher of the transferor LLP located within the State of Karnataka.
44(b)	Reconveyance of mortgaged property where the consideration for which the property was mortgaged exceeds INR 1000	The stamp duty applicable was of INR 100	Increased to INR 200

Copyright © 2024 JSA | all rights reserved

Article Reference	Description of Instrument	Current Stamp Duty	Revised Stamp Duty
47(a)	An agreement relating to security bond or mortgage-deed, where in the amount secured does not exceed INR 1,000	Fifty paise for every INR 100 or part thereof	Increased to INR 2 for every INR 100 or part thereof
47(b)	An agreement relating to security bond or mortgage-deed, where in the amount secured exceeds INR 1,000	The stamp duty was of INR 200	Increased to INR 500
51	An agreement relating to surrender of lease in any other cases, except when the duty with which the lease is chargeable does not exceed INR 22.50	The stamp duty was of INR 100	Increased to INR 200

Amendments made to the stamp duty payable on various instruments in Tamil Nadu

The Government of Tamil Nadu ("**GoTN**") had passed an amendment act *i.e.,* the Indian Stamp (Tamil Nadu Amendment) Act, 2023 ("**Amendment Act**"), wherein the stamp duty payable in relation to certain instruments are revised. The revised stamp duty are effective from May 3, 2024.

S.No.	Instrument	Relevant Article of the Schedule I to the Act	Stamp Duty Prior to Amendment	Stamp Duty Pursuant to Amendment
1.	Adoption deed	3	INR 100	INR 1,000
2.	Affidavit including affirmation or declaration	4	INR 20	INR 200
3.	Agreement (Not otherwise provided for)	5(j)	INR 20	INR 200
4.	Articles of Association	10	INR 300	0.05% on the authorised share capital of the company subject to a maximum of INR 5,00,000

Copyright © 2024 JSA | all rights reserved

S.No.	Instrument	Relevant Article of the Schedule I to the Act	Stamp Duty Prior to Amendment	Stamp Duty Pursuant to Amendment
5.	Cancellation	17	INR 50 for instrument (any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided.	INR 1,000 for instrument (any instrument by which any instrument previously executed is cancelled), if attested whether it involves transfer of property or not and not otherwise provided for.
6.	Copy or Extract certified to be a true copy or extract by or by order of any public offer and not chargeable under the law for the tile being in force relating to Court fees	24(i)	INR 5	INR 100
7.		24(ii)	INR 20 in any other case	INR 100 in any other case
8.	Counterpart or Duplicate if the duty with which the original instrument is chargeable exceed five rupees or any other case	25(b)	INR 20	INR 500
9.	Lease where the period of lease is below thirty years	35(a)	1% on the rent, fine, premium or advance, if any payable.	1% on the rent, fine, premium or advance or security deposit, if any, payable.
10.	Lease where the period of lease is above thirty years and up to ninety-nine years	35(b)	4 % on the rent, fine, premium or advance, if any payable.	4 % on the rent, fine, premium or advance or security deposit, if any, payable.
11.	Lease where the period of lease is above ninety-nine years	35(c)	7% on the rent, fine, premium or advance, if any payable.	7% on the rent, fine, premium or advance or security deposit, if any, payable.

Copyright © 2024 JSA | all rights reserved

S.No.	Instrument	Relevant Article of the Schedule I to the Act	Stamp Duty Prior to Amendment	Stamp Duty Pursuant to Amendment
12.	Memorandum of Association	39	INR 200 if accompanied by Articles of Association (or) INR 500 if not so accompanied	INR 200
13.	Partition deed executed between non-family members	45(b)	4% for the amount of the value of the separated shares of the property	4% for the amount of the market value of the separated shares of the property
14.	Partnership	46A	INR 300	INR 1000
15.	Power of attorney executed solely for registration or admitting execution	48 (a)	INR 5	INR 500
16.	Power of attorney when authorising one person or more to act in a single transaction other than the case mentioned in clause 48(a)	48 (b)	INR 15	INR 500
17.	Power of attorney when authorising not more than five persons to act jointly and severally in more than one transaction or generally	48 (c)	INR 100	INR 1000
18.	Power of attorney when authorising more than five but not more than ten person to act jointly and severally in more than one transaction or generally.	48(d)	INR 175	INR 1000
19.	Power of Attorney to sell immovable	48(e)	5% on consideration	5% on market value

Copyright © 2024 JSA | all rights reserved

S.No.	Instrument	Relevant Article of the Schedule I to the Act	Stamp Duty Prior to Amendment	Stamp Duty Pursuant to Amendment
	property for consideration			
20.	Power of Attorney without consideration granted in favour of family member	48(f)	INR 20 for each person authorised	INR 1000
21.	Power of Attorney without consideration granted in favour of non- family member (*newly inserted*)	48(g)		1% on market value of the immovable property
22.	Power of attorney in any other case	48(h)	-	INR 1000 for each person authorised
23.	Reconveyance of Mortgaged Property	54(b)(i)	INR 80	INR 1000
24.		54(b)(ii)	INR 70	INR 1000
25.	Security Bond	57	INR 80	INR 500
26.	Revocation of Settlement	58(b)	INR 80	INR 1000
27.	Surrender of lease	61	INR 40	INR 1000
28.	Transfer relating to trust	62 (e)	INR 30	INR 1000
29.	Declaration of Trust	64 (a)	INR 180	INR 1000
30.	Revocation of Trust	64(b)	INR 120	INR 1000

In addition to the above, the explanation of the word 'family' as set out in Article 55 is also amended to include "the legal heirs of a deceased family member, if any". Further, the amended explanation of the word 'family' is also extended to articles 45(b), 46(b) and 48.

Conclusion

The Amendment Act is a significant revision to the stamp duty levied on various instruments to the prevailing times, which was otherwise levied on obsolete duty. Also, the extension of the definition of the word 'family' to other instruments will promote innovative and unique structures in Estate Planning and Real Estate Transactions.

Copyright © 2024 JSA | all rights reserved

Judgements/Orders

Self-certification mandated for advertisers

In the case of ***Indian Medical Association and Anr vs. Union of India and Ors***,[8] the Supreme Court of India ("**Supreme Court**") *vide* an order dated May 7, 2024 ("**May 7 Order**"), mandated advertiser/advertising agency to upload a self-declaration certificate on the lines contemplated in Rule 7 of the Cable Television Networks Rules, 1994 ("**Cable T.V. Rule**"). The self-declaration certificate is required to be uploaded on the Press Council of India's Portal for print and digital/online advertisements and on the Broadcast Seva Portal for television ("**TV**") and radio advertisements.

In line with the May 7 Order, MIB introduced a new facility on the Broadcast Seva Portal for TV and radio advertisements and on Press Council of India's portal for print and digital/internet advertisements, allowing advertisers to submit the self-declaration through these portals.

Brief Facts

1. In 2022, the Indian Medical Association filled a writ petition before the Supreme Court against Patanjali Ayurveda Limited ("**Patanjali**") for publishing advertisements that maligned allopathy, particularly during the COVID pandemic, and falsely claiming that its own ayurvedic products could completely cure certain diseases.
2. In December 2023, the Supreme Court recorded Patanjali's assurance to discontinue the advertisements that were identified as misleading. A day later, Patanjali's co-founder Baba Ramdev held an hour-and-a-half long press conference, wherein he refused to accept that Patanjali had made any misleading statements about its products. In his statement, he blamed practitioners of modern medicine for false campaigns against him and Patanjali. Despite its assurance, Patanjali continued to place questionable advertisements in the mainstream media.
3. Subsequently, the Supreme Court issued show cause notices to Patanjali seeking response on why contempt proceedings should not be initiated against them. Further, the Supreme Court temporarily banned Patanjali from releasing any advertisements. The Supreme Court eventually initiated contempt proceedings against Patanjali and ordered it to publish a public apology for defying the orders of the Supreme Court.
4. While discussing the conduct of Patanjali in the contempt proceedings, the Supreme Court highlighted the innumerable misleading advertisements that are published/displayed with little to nil accountability on the part of the manufacturers, promoters and advertisers. In order to deal with the significant risk these advertisements pose to the interest of the consumers, the Supreme Court impleaded the Ministry of Consumer Affairs, Ministry of Food and Public Distribution, MIB and Ministry of Electronics and Information Technology as parties to the proceedings to examine the steps taken by them to prevent abuse of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954, the Drug and Cosmetics Act, 1940 and the Consumer Protection Act, 1986 ("**1986 Act**").

Analysis and Findings

The Supreme Court, after considering the facts and position of the laws and regulations, gave the following directions:

1. Before an advertisement is printed/aired/displayed, a self-declaration certificate is required to be submitted by the advertiser/advertising agency on the lines contemplated in Cable T.V. Rule. The self-declaration certificate must be uploaded on the Broadcast Sewa Portal run under the aegis of MIB. As for the advertisements in the press/print media/internet, MIB is directed to create a dedicated portal. Immediately on the portal being activated, the advertisers/advertising agencies are required to upload the self-declaration certificate before any advertisement is issued in the press/print media/internet.

[8] W.P. (Civil) No. 645/2022

Copyright © 2024 JSA | all rights reserved

2. Proof of uploading the self-declaration is required to be made available by the advertisers to the concerned broadcaster/printer/publisher/television channel/electronic media for the records. No advertisements will be permitted to run on the relevant channels and/or in the print media/internet without uploading the self-declaration as directed above.
3. The above directions to be treated as the law declared by this Court under Article 141 of the Constitution of India. The directions are applicable prospectively.

MIB notification

In light of the May 7 Order passed by the Supreme Court, MIB *vide* its notification dated June 3, 2024, introduced a new facility on the Broadcast Seva Portal for TV and radio advertisements and on Press Council of India's portal for print and digital/internet Advertisements, allowing advertisers to submit the self-declaration through these portals. The certificate must be signed by the authorised signatory of the advertiser. The portals are activated from June 4, 2024.

The self- declaration certificate is required to be obtained by all advertisers and advertising agencies for all new advertisements that will be issued/telecast/aired/published on or after June 18, 2024. A buffer period of two weeks is provided to all stakeholders to familiarise themselves with the process of self-certification. Currently, advertisements which are ongoing do not require the self-declaration certification.

The self-declaration certificate is to certify that the advertisement: (a) does not contain misleading claims; and (b) complies with all relevant regulatory guidelines, including those stipulated in the Cable T.V. Rule and the Norms of Journalistic Conduct of Press Council of India. The advertiser must also provide proof of uploading the self-declaration certificate to the relevant broadcaster, printer, publisher, or electronic media platform for their records.

Conclusion

Prior to the May 7 Order, it was difficult to keep record of the advertisers/advertising agencies in India. The self-declaration will act as a centralised system to track and record advertisers/advertising agencies where, their authorised representative signing the self-declaration certificate must include their mobile number, email address, a detailed description of the product or service, the full script of the advertisement, a link to the audio/visual element for print advertisements, and the proposed date of broadcast or publication.

The Supreme Court aims to enhance accountability and transparency in advertising. However, since there is no regulatory authority to monitor any non-compliance of the directions nor are there any penal consequences for non-compliance, it may be difficult to make non-compliant advertisers/advertising agencies accountable.

Supreme Court recognises company as a person capable of sustaining action under the 1986 Act

The Supreme Court in ***M/s Kozyflex Mattresses Private Limited vs. SBI General Insurance Company and Anr.***[9] clarified that a company would be considered a 'person' under the 1986 Act and can file a complaint for deficiency of services under the 1986 Act.

Brief Facts

Kozyflex Mattresses Private Limited ("**Kozyflex**") purchased a 'Standard Fire and Special Perils' insurance policy from SBI General Insurance Company ("**SBI Insurance**"). 2 (two) weeks after the purchase of the policy, a massive fire incident took place at Kozyflex's factory. The next day Kozyflex intimated SBI Insurance of the incident, and eventually submitted an insurance claim of INR 3,40,00,000 (Indian Rupees three crore forty lakh) ("**Claim**"). SBI Insurance appointed investigators to independently assess and verify the claim. Basis the results of these assessments and verification, the investigators prepared a

[9] Civil Appeal No. 7966 of 2022

Copyright © 2024 JSA | all rights reserved

preliminary report and a final report (collectively, "**the Reports**"). Relying on the Reports, the Claim was repudiated on the ground that it was fraudulent and exaggerated. The Reports were not provided to Kozyflex. Aggrieved by the repudiation of the Claim, Kozyflex filed a complaint before the National Consumer Disputes Redressal Commission ("**National Commission**") under the 1986 Act, claiming deficiency in service by SBI Insurance ("**Complaint**"). On dismissal of the Complaint by the National Commission, Kozyflex approached the Supreme Court in appeal seeking remand of the Complaint to the National Commission for reconsideration on merits after giving Kozyflex an opportunity to rebut the findings in the Reports ("**Appeal**").

Submissions before the Supreme Court

Before the Supreme Court, Kozyflex contended *inter alia* that despite clarifying all the queries by the SBI Insurance appointed investigators, Kozyflex was never provided with the Reports, which were produced directly before the National Commission. Hence, Kozyflex was never given a chance to rebut the findings in the Reports.

On the other hand, SBI Insurance raised preliminary objections to the Appeal *inter alia* on the ground that the word '*company*' is not covered by the definition of '*person*' under the 1986 Act. Therefore, Kozyflex being a company is not entitled to file a complaint under the 1986 Act.

The Supreme Court, after considering the submissions made by the parties, rejected the preliminary objections raised by SBI Insurance.

The Supreme Court held that the definition of '*person*' provided in the 1986 Act is an inclusive and not an exhaustive definition. The 1986 Act being a beneficial legislation, a liberal interpretation must be given to its provisions to ensure that the legislative intent is not watered down. Further, the Supreme Court stated that the very fact that the definition of '*person*' under the 2019 Act was amended to include a body corporate, is by itself indicative of the legislature realising the incongruity of the definition of '*person*' under the 1986 Act with the purpose sought to be achieved by the statute.

Ultimately, the Supreme Court remanded the matter back to the National Commission for reconsideration on merits after Kozyflex is given an opportunity to rebut the findings of the Reports.

Conclusion

The 1986 Act defines a '*consumer*' to be any '*person*' who buys, hires, or avails of any goods or services for a consideration provided that such goods or services are not bought, hired, or availed for any commercial purpose.

The definition of a 'person' as provided under the 1986 Act is as follows:

" '*person*' ***includes***,–

a) a firm whether registered or not;

b) a Hindu undivided family;

c) a co-operative society;

d) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;"

The 1986 Act evidently makes no explicit mention of '*company*' or '*body corporate*' in its definition of '*person*' – an exclusion that is remedied under the 2019 Act. This difference between the 1986 Act and the 2019 Act has led to a series of decisions by the National Commission, disallowing actions brought by companies before it.[10]

As a result, companies were forced to approach civil courts for redressal of their grievances, despite such grievances being inherently in the nature of consumer disputes arising out of deficiency in services. Companies were thus precluded from enjoying the benefits of the fast-tracked summary procedure provided for the adjudication of such disputes. Parallelly, the civil courts, already under strain from immense pendency, were further burdened with the adjudication of disputes which should be adjudicated by the consumer dispute redressal forums.

[10] See *Shika Birla v. DLF Retailers Developers Ltd.*, National Consumer Disputes Redressal Commission CC/183/2012; *Satish Kumar Gajanand Gupta v. M/s Srushti Sangam Enterprises (India) Ltd.*, National Consumer Disputes Redressal Commission CC/296/2011; and *Shivom Projects Private Limited v. Toyota Kirloskar Motor Pvt. Ltd.,* National Consumer Disputes Redressal Commission CC/229/2014.

Copyright © 2024 JSA | all rights reserved

While admittedly a company or a body corporate does not find mention in the definition of person under the 1986 Act, it is a settled law that a company is to be considered a legal person, with an identity separate and distinct from its participants or decisionmakers. Therefore, dismissing actions merely on the basis that companies are not included in the definition of person under the 1986 Act, was a pedantic approach completely at odds with the legislative intent behind the statute.

The Supreme Court's decision in *Kozyflex* (supra) has put a decisive quietus to this issue. In *Kozyflex* (supra), the Supreme Court appears to have adopted a purposive approach in analysing this issue, and correctly identified that the definition of '*person*' is inclusive and not exhaustive in nature. While doing so, it has delivered a progressive decision which is in sync with the objects sought to be achieved by the 1986 Act. This decision will ensure that a complainant being a 'company' will in and of itself, not be a reason to prevent it from initiating an action under the 1986 Act.

This decision is cognizant of the changing nature of business transactions in India and in our opinion, will benefit both companies (who can bring actions both under the 1986 Act and the 2019 Act), as well as civil courts (who can devote their attention to cases of inherently commercial nature which are battling for attention).

Supreme Court: Investments with returns in the form of interest are "commercial" transactions and outside the purview of the Consumer Protection Laws

In the case of ***Annapurna B. Uppin and Ors. vs. Malsiddappa and Anr.***[11] the Supreme Court held that investments such as those by which the complainant derives benefit in the form of interest is outside the summary jurisdiction of the 1986 Act.

Brief Facts

1. This judgement is delivered in the background of a consumer complaint filed by respondent no.1 ("**Complainant**") who had invested INR 5,00,000 (Indian Rupees five lakh) in the partnership firm which was repayable after 120 (one hundred and twenty) months with interest @ 18% p.a. The appellants (opposite parties) are the legal heirs of the managing partner of the firm.
2. The Complainant stated before the District Forum (DCDRF, Dharwad, Karnataka) ("**District Forum**") that he had sought premature release of the invested amount but was asked to wait till maturity. However, even upon maturity, the Complainant did not receive the amount. Aggrieved, he filed a consumer complaint alleging deficiency of service and claiming recovery of the invested amount. The Appellants, *inter alia*, objected to the Complainant being a "consumer" under the 1986 Act.
3. The District Forum allowed the complaint directing repayment of the invested amount of INR 5,00,000 (Indian Rupees five lakh), with simple interest of 18% for the 120 (one hundred and twenty) months, along with interest till realisation, compensation, and costs. Despite 2 (two) rounds of remand from the States Consumer Disputes Redressal Commission ("**State Commission**"), the District Forum allowed the complaint on the same terms.
4. The State Commission finally also dismissed the appeal against the decision of the District Forum. The National Commission also dismissed the revision petition filed before it. Aggrieved, the appellant (opposite parties) filed the civil appeal before the Supreme Court.

Issue

Whether commercial transactions (investments) are under the purview of the 1986 Act.

[11] SLP (C) No.11757 of 2022, Supreme Court

Copyright © 2024 JSA | all rights reserved

Findings and Rationale

The Supreme Court allowed the civil appeal and set aside the judgements of the District Forum, the State Commission, and the National Commission. The Supreme Court held that the complaint was not maintainable on the basis that:

1. The investment by the Complainant was for deriving benefit by getting an interest on the investment (at the rate of 18 % per annum). Therefore, it would be an investment for profit/gain.
2. It was a commercial transaction and therefore, it was outside the purview of the 1986 Act. Hence, the complaint was not maintainable.
3. Commercial disputes cannot be decided in a summary proceeding under the 1986 Act but the appropriate remedy for recovery of the said amount, if any, would be before the Civil Court.

As an aside, the Supreme Court also decided the complainant's contention regarding the liability of the legal heirs in dealing with assets and liabilities of the partnership firm. The Supreme Court reiterated that the legal heirs of a deceased partner (in a partnership firm) not becoming liable for the liabilities of the partnership upon the partner's death.

Conclusion

The bar on consideration of commercial transactions under the 1986 Act is inherent to the legislation. However, Courts have had to work around the nuance of whether a purchase or investment is for one's own use (or livelihood) or for a commercial purpose attributing profit motive, as only the latter is outside the purview of the 1986 Act. Even though the Consumer Protection (Amendment) Act 1993 (and the 2019 Act) introduced an explanation for what constitutes 'commercial purpose'[12], Courts have held to conclude whether a complainant is a 'consumer' there is no strait-jacket formula to decide if the use is commercial in nature. It would depend on the facts and circumstances of each case[13] by an evaluation of the evidence tendered by the parties[14].

Bombay High Court affirms jurisdiction of National Company Law Tribunal to direct Enforcement Directorate to release the attached properties after approval of resolution plan

In the case of ***Shiv Charan and Ors. vs. Adjudicating Authority and Anr.***[15], the Division Bench of the Hon'ble High Court of Bombay ("**Bombay HC**") *inter alia* upheld the powers of the National Company Law Tribunal, Mumbai ("**NCLT**") to direct the Enforcement Directorate ("**ED**") to release attached properties of a corporate debtor, after the approval of a resolution plan by the NCLT, in light of Section 32A of the Insolvency and Bankruptcy Code, 2016[16] ("**IBC**").

Brief Facts

Various first information reports were filed against DSK Southern Projects Private Limited ("**Corporate Debtor**") and its erstwhile promoters in October 2017 alleging cheating and criminal breach of trust which were 'scheduled offense' under the PMLA. Accordingly, in March 2018, the ED filed an Enforcement Case Information Report ("**ECIR**"). Pursuant to the ECIR, the ED attached certain assets of the Corporate Debtor by way of a provisional attachment. The provisional attachment was continued by the Adjudicating Authority under the PMLA *vide* its confirmatory order dated August 5, 2019. Subsequently, corporate insolvency resolution process ("**CIRP**") was initiated against the Corporate Debtor at the instance of a financial creditor. NCLT *vide* its order dated February 17, 2023 ("**Approval Order**"), approved a resolution plan by Mr. Shiv Charan, Ms. Pushpalata Bai and Ms.

[12] Section 2(7) Explanation (a), CP Act, 2019: The expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

[13] Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers & Ors., (2020) 2 SCC265

[14] Rohit Chaudhary & Anr. v. M/s Vipul Ltd., (2024) 1 SCC 8

[15] Writ Petition (L) No.9943 of 2023 along with Writ Petition (L) No.29111 of 2023. Judgement dated March 1, 2024.

[16] Section 32A of the IBC provides immunity to a corporate debtor and its assets from any prosecution, action, attachment, seizure, retention or confiscation, upon approval of a resolution plan by the NCLT, if such resolution plan results in the change in the management or control of the corporate debtor.

Copyright © 2024 JSA | all rights reserved

Bharti Agarwal (collectively referred to as the "**Resolution Applicants**"), and directed ED to release the attached properties of the Corporate Debtor. By way of a subsequent order dated April 28, 2023 ("**April 2023 Order**"), NCLT yet again directed ED to release the attached properties. However, the provisional attachment continued even after the commencement of CIRP of the Corporate Debtor, and further continued after approval of the resolution plan.

The Resolution Applicants filed a writ petition *inter alia* seeking directions to release the attached properties in light of the Approval Order. A counter-writ was filed by ED challenging the validity of the April 2023 Order passed by NCLT.

Issue

Whether NCLT has the jurisdiction to direct ED to release the attached property by invoking Section 32A of IBC?

Analysis and Findings

The Bombay HC made the following observations:

1. **Analysis of Section 32A of the IBC**

   At the outset, the Bombay HC analysed Section 32A basis which the April 2023 Order was passed by NCLT. It observed that Section 32A is a *non-obstante* provision and becomes applicable once a resolution plan is approved by the adjudicating authority. It further observed that Section 32A provides immunity to a corporate debtor for an offense committed prior to the commencement of the CIRP upon fulfilment of the following conditions:

   a) a resolution plan should be approved by the adjudicating authority;

   b) the promoters or those in the management or control of the corporate debtor prior to the commencement of CIRP, or any related parties of such persons, should be totally delinked from the management or control of the corporate debtor under the approved resolution plan;

   c) the Investigating Authority should not (based on material) have reason to believe that the new management had abetted or conspired for the commission of the offense in question; and

   d) in case of liquidation, the asset of the corporate debtor should be sold to a person who is not connected to the corporate debtor;

   However, the immunity under Section 32A is available only to the corporate debtor and its properties. The erstwhile management of the corporate will continue to remain liable to prosecution, and the corporate debtor will continue to cooperate with the enforcement agencies in the prosecution against its erstwhile management. The Bombay HC also took note of the case of *Manish Kumar vs Union of India*[17] wherein it was argued by the Union of India that the purpose of introducing Section 32A was to ensure that the new management starts on a clean slate basis.

   The Bombay HC noted that the conditions specified under Section 32A were complied with and accordingly held that the Corporate Debtor and its assets will be immune from any proceedings commenced prior to the commencement of the CIRP.

2. **Jurisdiction of the NCLT to direct ED to release the attached properties by invoking Section 32A of the IBC**

   In the instant case, it was argued by the ED that the jurisdiction of NCLT under Section 60(5) is limited to interpreting the IBC and ought not to traverse beyond the IBC and enter upon the domain covered by the PMLA.

   To address the argument raised by the ED, the Bombay HC proceeded to analyse Sections 31 and 60(5) of the IBC. It observed that Section 31 pertains to approval of the resolution plan by the adjudicating authority and as per the *proviso* to the section, prior to approving the resolution plan, the adjudicating authority should be satisfied that the resolution plan has effective provisions for its implementation. The Bombay HC noted that it was in exercise of its obligation under Section 31 to ensure effective implementation of the resolution

[17] (2021) 5 SCC 1

Copyright © 2024 JSA | all rights reserved

plan, that NCLT directed the ED to raise the attachment of the attached properties.

It further observed that Section 60(5) is also a *non-obstante* provision just like Section 32A and confers jurisdiction on NCLT to entertain or dispose of any question of law or fact arising in relation to the CIRP of a corporate debtor which includes the right to decide grant of immunity under Section 32A.

Accordingly, the Bombay HC rejected the argument raised by the ED and held as follows:

"*NCLT is well within its jurisdiction and power to rule that prior attachment of the property of a corporate debtor that is the subject matter of an approved resolution plan, must be released, if the jurisdictional facts for purposes of Section 32A exist.*"

Conclusion

By way of this judgment, the Bombay HC has comprehensively laid down the scheme under Section 32A of the IBC and has clarified that attachments made under the PMLA must be raised once the conditions under Section 32A of the IBC are met. This is in consonance with the legislative intent and objective of the IBC, by way of which a successful resolution applicant must be allowed to take over the affairs of a corporate debtor with a *clean slate* so as to avoid ghosts from the past emerging to confiscate the assets of the corporate debtor. Further, the Bombay HC clearly laid down the powers of NCLTs to decide upon such questions of facts and law, which is derived from Section 60(5) of the IBC.

Pertinently, the Bombay HC has refrained from dealing with the important question of whether upon imposition of moratorium under Section 14 of the IBC, attachments under the PMLA must be raised. Successful resolution applicants across the country are facing the ire of central and state agencies refusing to comply with the provisions of the IBC for reasons best known to them, thus leading to a situation where agencies pursue actions seemingly without due regard to the law of the land. It is imperative that the powers of agencies *vis-à-vis* the IBC be clarified so as to avoid situations where the objective of legislation is defeated due to the cavalier attitude of the state machinery.

A corporate guarantor cannot be absolved from its liability only because the guarantee is not invoked

In the case of ***Iskon Infra Engineering Private Limited vs. Central Bank of India***[18], the National Company Law Appellate Tribunal ("**NCLAT**") rejected the dissolution of a company undergoing voluntary liquidation on the ground that such a Company had extended corporate guarantees of substantial amounts for a principal borrower, and even though the guarantee is not invoked, the lenders could require a guarantor to perform its obligations.

Background

1. M/s Iskon Infra Engineering Private Limited ("**Company**") initiated voluntary liquidation under Section 59 of the IBC. The proceeding was at its final stage. The Company, through the liquidator filed a company petition under Section 59(7) of the IBC[19] seeking dissolution of the Company before the NCLT, New Delhi Bench – VI.

2. During the hearing of the Company Petition, NCLT issued notice to the registrar of companies ("**ROC**"). The report of the ROC revealed that the Company had extended corporate guarantees to one, M/s Abhinav Steels and Power Limited ("**Principal Borrower**") of more than INR 1,257 crore (Indian Rupees one thousand two hundred and fifty-seven crore) (approx.). The Principal Borrower had availed term loan facilities from a consortium of banks namely, Punjab National Bank ("**PNB**"), Oriental Bank of Commerce ("**OBC**") and Central Bank of India ("**CBI**").

3. The ROC further revealed that this guarantee was extended from 2010 onwards and that as on date,

[18] Company Appeal (AT) (Insolvency) No.323 of 2024, NCLAT, New Delhi

[19] *"Section 59 (7) - Where the affairs of the corporate person are completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person."*

there are 23 (twenty-three) charges against the Company and there is no satisfaction of charge by the Company or the liquidator.

4. NCLT also issued notices to PNB, OBC and CBI. CBI also filed its objection placing on record the details of the working capital term loan by the Principal Borrower which was secured by the Company's corporate guarantee. In view of these objections, NCLT dismissed the Company's petition.

5. The Company challenged NCLT's order before NCLAT on the grounds that the Company's corporate guarantee is not invoked by any of the financial creditors and no claim was filed before the liquidator. The liquidator argued that the liability against a corporate guarantor only arises once a guarantee is invoked.

Issue

Whether the Company can be dissolved (under voluntary liquidation) when it has extended corporate guarantees which are neither invoked, nor have any claims filed in that respect?

Findings and Rational

NCLAT dismissed the Company appeal and upheld the order of NCLT. NCLAT held that:

1. The fact that the guarantee was not invoked does not absolve the corporate guarantor from debt. NCLAT referred to the clauses of the guarantee deed between the Principal Borrower and the corporate guarantor to conclude that the corporate guarantor has extended a corporate guarantee and undertaken to pay the debts to the lenders. Under such clause, the corporate guarantor had agreed that the "*Lenders shall be at liberty to require the performance by the Guarantor of its obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations*".

2. The liability of a corporate guarantor is coextensive with the borrowers, and the lenders are at liberty to require the guarantor to perform its obligations.

3. NCLAT rejected the submission that there is no debt since the guarantee was not invoked or claims have not been filed. NCLAT held that guarantee continues to bind the Corporate Guarantor to discharge its liability. If the guarantee is not invoked within a particular date, it cannot be a ground for Company to be liquidated under Section 59 of the IBC.

Conclusion

This is a significant decision on the continuing liability of corporate guarantors even in situations where neither the guarantee will be invoked, nor the creditors have filed their claims before the liquidator.

Regulation 3(2) of the IBBI (Voluntary Liquidation) Regulations, 2017[20] requires a corporate person to declare (on affidavit) that the corporate person is not being liquidated to defraud any person. This judgement effectively expands the applicability of the existing safeguards by preventing indirect evasion of liability and serves as a deterrent for errant corporate guarantors resorting to voluntary liquidation to evade its liabilities.

---

[20] "*Regulation 3 (2) - Where a corporate person, other than a company, intends to liquidate itself voluntarily, a majority of the-*
(a) designated partners, if the corporate person is a limited liability partnership, or
(b) persons responsible for exercising its corporate powers, if the corporate person is not a company or a limited liability partnership shall make a declaration, verified by an affidavit stating that—
(i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
(ii) the corporate person is not being liquidated to defraud any person."

Copyright © 2024 JSA | all rights reserved

Corporate Practice

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

The authors of this Compendium are:

Dheeraj Nair
Partner

Divyam Agarwal
Partner

Gerald Manoharan
Partner

Madhurima Mukherjee Saha
Partner

Probir Roy Chowdhury
Partner

Sajai Singh
Partner

Shivpriya Nanda
Partner

Soumitra Majumdar
Partner

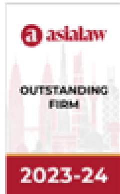
Tony Verghese
Partner

Varghese Thomas
Partner

Varun Sriram
Partner

Copyright © 2024 JSA | all rights reserved

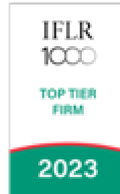
Ranked Among Top 5 Law Firms in India for ESG Practice



19 Practices and
19 Ranked Lawyers

18 Practices and
25 Ranked Lawyers

Outstanding
Energy and Infrastructure



12 Practices and
42 Ranked Partners
IFLR1000 APAC Rankings 2023

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

Recognised in World's 100 best competition practices of 2024

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

----

11 winning Deals in IBLJ Deals of the Year

----

12 A List Lawyers in IBLJ Top 100 Lawyer List

14 Practices and
38 Ranked Lawyers

Employer of Choice 2024

Energy and Resources Law Firm of the Year 2024

Litigation Law Firm of the Year 2024

Innovative Technologies Law Firm of the Year 2023

Banking & Financial Services Law Firm of the Year 2022

7 Ranked Practices,
16 Ranked Lawyers

Elite – Band 1 - Corporate/ M&A Practice

----

3 Band 1 Practices

----

4 Band 1 Lawyers,1 Eminent Practitioner

Ranked #1
The Vahura Best Law Firms to Work Report, 2022

Top 10 Best Law Firms for Women in 2022

7 Practices and
3 Ranked Lawyers

For more details, please contact km@jsalaw.com

www.jsalaw.com

Copyright © 2024 JSA | all rights reserved

Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This compendium is not an advertisement or any form of solicitation and should not be construed as such. This compendium has been prepared for general information purposes only. Nothing in this compendium constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. This compendium is a consolidation of only the relevant notifications/judgements circulated in the newsletters or as prisms. Please read the original documents of the notifications/ judgments. Please note that this compendium is not exhaustive. JSA and the authors mentioned in the compendium disclaim all and any liability to any person who takes any decision based on this publication.

Copyright © 2024 JSA | all rights reserved