



NEWSLETTER

December 2023

TABLE OF CONTENTS

Capital Market	03
05	Competition Law
Dispute Resolution	7
10	Employment Law
Energy & Infrastructure	14
18	Fintech
International Trade/WTO	23
25	Media and Entertainment
Ministry of Corporate Affairs (MCA)	28
30	RBI and FEMA
RERA	32
33	Technology Law
White-Collar Crime	35



SIMPLIFICATION AND STREAMLINING OF OFFER DOCUMENTS OF MUTUAL FUND SCHEMES¹

SEBI has issued a [circular](#) dated November 1, 2023, to revamp the format of Scheme Information Document (“SID”). On suggestions of AMFI and Mutual Fund Advisory Committee, the revised format streamlines the dissemination of information to investors, rationalizes preparation of SID and facilitates its periodic updating. The previous Circular dated May 23, 2008 and [Master Circular²](#) May 19, 2023 specifying certain format, now stand modified.

The revised format for SID, Key Information Memorandum (“KIM”) and Statement of Additional Information (“SAI”) to be implemented as Updated format w.e.f. April 01, 2024. A draft SID shall be filed with SEBI in order to adopt the revised format before or on March 31, 2024. In case, SIDs already filed with SEBI (but the final observation has not been given by SEBI) or SIDs filed with SEBI and the final observation has already been received from SEBI (which was launched on or before March 31, 2024), then old format of SID can be filed with SEBI, given that the existing SIDs are updated by April 30, 2024 with data as on March 31, 2024. And all such revised SIDs are to be made available on SEBI, AMFI and AMCs websites.

Format 5A in the Master Circular (dated May 19, 2023) is revised as given in the Annexure of this circular. As per this circular, the top 10 portfolio holdings of the scheme shall be disclosed through a web link, which shall be hosting the relevant data. After revision of the previous Master Circular, disclosure of the aggregate investment by AMC’s Board of Directors and Other Key Personnel is to be provided in SAI of the MF scheme, which was similar to Fund Manager(s) before. There shall also be detailed disclosures made in SAI in enabling provision of SID for creation of segregated portfolio. According to this circular, provisions, for

stipulation of swing pricing framework, are required to be in SID along with detailed disclosures made in SAI by AMCs. And as per this circular, AMCs are now required to disclose risk-o-meter of Benchmark on front page of initial offering application form, SID and KIM; as well as on common application form (accompanying information about the scheme).

Within two months from the issue date of the current circular, AMFI shall make changes, after consulting SEBI, in formats of KIM and SAI, this must be in line with revised SID format.

This circular came into effect immediately, i.e. November 1, 2023.

PROCEDURAL FRAMEWORK FOR DEALING WITH UNCLAIMED AMOUNTS LYING WITH ENTITIES HAVING LISTED NON-CONVERTIBLE SECURITIES AND MANNER OF CLAIMING SUCH AMOUNTS BY INVESTORS³

SEBI has issued a [circular](#) dated November 8, 2023, which standardises and provides a framework to define the manner in which transfer of the unclaimed amounts (under Listing Obligations and Disclosure Requirements Regulations if any interest/ dividend/ redemption amount not been claimed for thirty days) by listed entity to Escrow Account, and it also gives the process which is to be followed by an investor for making a claim of such unclaimed amount. This framework has been stated in Annexure of this circular.

Previously, the Regulation did not provide for a framework to define the process or manner of such transfer of unclaimed amounts. This circular makes the change in manner of handling such unclaimed amounts. The circular further lays out the manner in which the unclaimed amounts, which remain unclaimed for seven years in the

¹ SEBI/HO/MRD/POD-III/CIR/2023/165

² SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74

³ SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/176

Escrow Accounts, are to be managed and transferred to the Investor Education and Protection Fund (“IEPF”), and claimed thereof by the investor, in case such accounts are of a listed entity which are not companies.

Under the IEPF Regulation, the unclaimed amounts credited to IEPF shall be utilised to refund to the listed entities, in regard to their making payment to eligible and identifiable investors and making a claim to the Fund, for which an application needs to be made by investors to listed entities which shall process the claim and seek refund from the Board. The framework for the procedure to be followed for transfer of such unclaimed amounts is provided in Annexure of this Circular.

SEBI has directed Stock Exchanges, Issuers and Depositories to comply with the conditions laid down in this circular and put in necessary systems and infrastructure for implementation of this circular; and this circular also requires them to disseminate the provisions of the circular on their websites, this move is to ensure communication and create awareness among the investors. Stock Exchange is also required to make listed entities as well as issuers of listed Non-Convertible Securities aware of the provisions of this circular and make consequential changes to their respective by-laws.

Listed entities with unclaimed amounts in the Escrow Account for less than 7 years, as of February 29, 2024, must begin calculating interest on those amounts starting March 1, 2024. The interest will be calculated in accordance with the provisions of Annex – A of this circular. Listed entities that are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as of February 29, 2024, must transfer those unclaimed amounts to the Investor Protection and Education Fund (IPEF) by March 31, 2024. The transfer must be made in accordance with the provisions of Annex – B of this circular.

The provisions of this circular shall come into effect from March 1, 2024.

MOST IMPORTANT TERMS AND CONDITIONS (MITC)⁴

The [circular](#) issued by SEBI dated November 13, 2023, to highlight the critical aspects of the broker-client relationship, under the “[Master Circular for Stock Broker](#)⁵” dated May 17, 2023, the broker is required to provide the clients with a copy of certain documents free of charge, such documents are Account Opening Form, documents mentioning Rights and Obligations, Risk Disclosure Documents, Guidance note, Policies and Procedure and Tariff Sheet. The clients might miss on the critical aspects of the broker-client relationship in these voluminous documents.

⁴ SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/180

⁵ SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/71

Now, to avoid such scenarios and for clients’ convenience to understand, the broker shall inform a standard Most Important Terms and Conditions (“MITC”), which is to be acknowledged by the client. Brokers’ Industry Standards Forum (“ISF”), in consultation with SEBI, shall publish the form, nature of communication, documentation and detailed standards for implementation of MITC by January 01, 2024. In case of failure for the same, the SEBI, at its own discretion, may publish these standards. Accordingly, amendments have been made in the Master Circular.

The implementation and compliance for new clients by market participants shall be April 01, 2024. As for the existing clients, the MITC shall be informed via email or other suitable communication by June 01, 2024.

Stock Exchange is required to bring the provisions of this circular to the notice of stock brokers and post the same on their website, along with the implementation standards, the status of implementation should be communicated to SEBI on monthly basis. They are also required to make relevant amendments to existing law(s) for implementation of the provisions of this circular.

This circular came into effect immediately, i.e. November 13, 2023.

SIMPLIFIED NORMS FOR PROCESSING INVESTOR’S SERVICE REQUESTS BY RTAS AND NORMS FOR FURNISHING PAN, KYC DETAILS AND NOMINATION⁶

SEBI has issued a [circular](#) dated November 17, 2023, which has done away with the provisions mandating the freezing of folios lacking PAN cards, KYC, and nomination details for all holders of physical securities. The [Master Circular](#)⁷ dated May 17, 2023, was revised. The term “freezing/ frozen” has been deleted. And as per this circular, it shall be mandatory for all holders of physical securities in listed companies to furnish PAN, Nomination, Contact details, bank account details and specimen signature for their respective corresponding folio numbers. This circular provides that if any of the above mentioned documents are not provided then all such folios shall be frozen by the Registrar and Transfer Agent (“RTA”) by October 1, 2023.

SEBI has directed stock exchanges, depositories, RTAs, and listed companies to comply with this change and adjust their relevant regulations and operational instruction accordingly.

This circular came into effect immediately, i.e. November 17, 2023.

⁶ SEBI/HO/MIRSD/POD-1/P/CIR/2023/181

⁷ SEBI/HO/MIRSD/POD-1/P/CIR/2023/70



The following are the main highlights in the Competition Law space for the month of November:

CCI APPROVES BUPA SINGAPORE HOLDINGS PTE. LTD. AND NIVA BUPA HEALTH INSURANCE COMPANY LIMITED DEAL THROUGH GREEN CHANNEL

The CCI has granted its approval for the secondary purchase of shares by Bupa Singapore Holdings Pte. Ltd. (Acquirer) in Niva Bupa Health Insurance Company Limited (Target) from Fettle Tone LLP (“Proposed Transaction”). Post-consummation of the Proposed Transaction, the Acquirer’s shareholding in the Target is set to increase to approximately 63%.

The Acquirer is an investment holding company, and the subsidiary of BUPA (British United Provident Association Limited), which is an international healthcare group, active in care homes, health centers, dental centers and hospitals, health insurance, workplace health services, health assessment and chronic disease management services. The Target is in the business of underwriting health insurance in India, providing insurance policies relating to critical illness, personal accident, and overseas medical insurance.

Apart from the Acquirer’s and BUPA’s existing interest in the Target, the Proposed Transaction raised no risk of any horizontal overlap or existing and/or potential vertical or complimentary relationship between the two parties and it is anticipated that the same will not raise competition concerns, allowing the relevant product and geographic markets to remain unaffected. Therefore, accordingly, the transaction was notified under the Green Channel Filing.

THE COMPETITION COMMISSION OF INDIA LAUNCHES MARKET STUDY ON CEMENT SECTOR IN INDIA

The CCI has initiated a comprehensive pan-India Market Study on the Cement sector, recognizing its pivotal role in critical areas like housing and infrastructure. Given the sector’s substantial impact on the economy, the study aims to gain insights into the functioning and competitiveness of the cement market across different regions in India.

The investigation, independent of any ongoing cases, will focus on several objectives, including analyzing market structure, trends in pricing, production, capacity utilization, and profitability. Additionally, the study seeks to understand pricing dynamics in both trade and non-trade segments, identifying determinants of price movements. Through a combination of secondary research and stakeholder consultations, the CCI aims to gather qualitative and quantitative information, engaging with relevant parties nationwide.

The study will be executed by a dedicated team at the CCI, supported by an external agency. Ultimately, the findings aim to provide a holistic understanding of the cement sector, identify obstacles to competition, and guide the CCI in formulating enforcement and advocacy priorities specific to the cement industry.

CCI APPROVES THE PROPOSED ACQUISITION OF 20.51% EQUITY SHARES OF IRSL AND THEIR SUBSEQUENT TRANSFER

The CCI in its press release, has stated that it has granted approval to the proposed acquisition of 20.51 per cent equity stake in Indo Rama Synthetics (India) Limited (IRSL) by Mr. Alope Lohia, a promoter of IRSL, from Brookgrange Investment Limited.

IRSL is engaged in the manufacture and supply of polyester fibres and filaments such as polyester chips, polyester fibres and polyester yarns.

The CCI has also approved the subsequent transfer of 20.51 per cent equity shares of IRSL to Ms. Urmila Lohia, another promoter of IRSL, by Mr. Alope Lohia. The transfer would be done by way of gift. A detailed order from the Commission regarding this transaction is anticipated.

APPROVAL OF ACQUISITION OF CERTAIN STAKE OF BALIC BY BLVPL, FROM AXA INDIA HOLDINGS AND THE ACQUISITION OF CERTAIN SHAREHOLDING OF BMSL BY BEL FROM SOCIETE BEAUJON

The CCI, in its press release, has stated that it has granted approval for two transactions within the Bharti group. In Proposed Transaction 1, Bharti Life Ventures Private Limited (BLVPL) will acquire a 49% stake in Bharti AXA Life Insurance Company Limited (BALIC) from AXA India Holdings, increasing its ownership to 100% and gaining sole control over BALIC. In Proposed Transaction 2, Bharti Enterprises Limited (BEL) will acquire a 48.54% stake in Bharti Management Services Limited (BMSL) from Societe Beaujon, a subsidiary of AXA, resulting in BEL holding 100% of BMSL and obtaining sole control. Both transactions collectively form the "Proposed Transaction."

BLVPL and BEL, as the Acquirers, are entities within the Bharti group. BLVPL is a private company, incorporated in India. It is a holding company and has its sole investment in BALIC. BEL is a public unlisted company incorporated in India. It is involved in the provision of management consultancy services.

The Targets in the Proposed Transaction are public unlisted companies incorporated in India. BALIC is involved in the life insurance sector, while BMSL, formerly in management consultancy, has not been operational in that field for the past two years and currently earns income from other sources. Detailed orders from the Commission regarding these transactions are awaited.

CCI APPROVES THE PROPOSED ACQUISITION IN SHADOWFAX TECHNOLOGIES PRIVATE LIMITED AND MIRAE GROUP ENTITIES

The CCI, in its press release, has approved the proposed acquisition of a minority stake in Shadowfax Technologies Private Limited (Target) by entities within the Mirae Group (Acquirers). The acquisition involves Mirae Asset Late-Stage Opportunities Fund (Mirae IV) acquiring a minority stake in Shadowfax (Share Acquisition).

Simultaneously, Mirae Asset Naver New Growth Fund I (Mirae I), Mirae Asset-GS Retail New Growth Fund I (Mirae II), Mirae Asset-Naver Asia Growth Investment Pte. Ltd (Mirae III), and Mirae IV will collectively acquire the right to appoint a director on the board of Shadowfax.

The Acquirers, undertaking venture investments, are controlled by the Mirae Asset Financial Group, a global financial group based in Seoul, South Korea. Shadowfax, the Target, specializes in providing logistics services, particularly third-party (3P) logistics services in India. A detailed order from the Commission regarding this transaction is anticipated.



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IT IS THE DUTY OF THE ADJUDICATING AUTHORITY TO PASS A REASONED ORDER WHILE REJECTING A RESOLUTION PLAN UNDER 31(2) OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

The Hon'ble Supreme Court in the case of *Ramkrishna Forgings Limited vs. Ravindra Loonkar & Anr*⁸ held that according to Section 31(2) of the Insolvency and Bankruptcy Code 2016 ("IBC"), the adjudicating authority could reject a resolution plan only if it fails to meet the requirement outlined in Section 31(1) of the IBC must not reject the resolution plan without giving a reasoned order or providing reasons for such rejection.

In the aforementioned case, the Hon'ble National Company Law Tribunal ("NCLT"), while adjudicating an application for resolution of plan, *vide* their order dated 01.09.2021, directed the Official Liquidator to reassess the assets of the corporate debtor while keeping the approval of the resolution plan in abeyance. The aforesaid order dated 01.09.2021 was subsequently affirmed by the Hon'ble National Company Law Appellate Tribunal ("NCLAT") *vide* order dated 19.01.2022.

Hon'ble Apex Court emphasized the importance for Hon'ble NCLT to function within the four corners of the IBC itself while having due regard to the extant circumstances. The Hon'ble Supreme Court held that NCLT can direct the re-valuation of assets but strictly within the domain permitted by IBC. Hon'ble Supreme Court found the order to be cryptic and bereft of detail. It further clarified that had the NCLT passed a reasoned order, it would not have interfered with the said order. The Hon'ble Apex Court relied upon *Kranti Associates Private Limited vs. Masood Ahmed Khan*⁹ and *Manoj Kumar Khokhar vs. State of Rajasthan*¹⁰, wherein it

was held that a Court or even a quasi-judicial authority has a duty to record reasons for its decision.

In light of the aforesaid, the Hon'ble Bench of the Supreme Court set aside the orders dated 01.09.2021 and 19.01.2022 passed by the NCLT and NCLAT respectively and directed the adjudicating authority to pass appropriate orders in the application for approval of the resolution plan.

CORPORATE DEBTOR DENYING LIABILITY PRIOR TO ISSUANCE OF DEMAND NOTICE IS A PRE-EXISTING DISPUTE

The NCLAT in the case of *Panjwani Electrical Engineers and Consultants vs. Larsen And Toubro Ltd*¹¹ held that when Corporate Debtor denied its liability to pay even prior to issuance of Demand Notice under Section 8 of the IBC then the petition under Section 9 of IBC is liable to be dismissed on the ground of pre-existing dispute.

In the given case, Larsen And Toubro Ltd ("**Corporate Debtor**") issued a work order to the Panjwani Electrical Engineers ("**Operational Creditor**") for carrying out certain work and providing its services for the same. Thereafter, on 28.02.2019, the Operational Creditor issued a legal notice to the Corporate Debtor wherein it demanded an amount of Rs 1,80,81,534 in view of the work done as of date. The Corporate Debtor immediately replied to the said notice dated 28.02.2019 stating that no money was due and payable by the Corporate Debtor to the Operational Creditor. Shortly thereafter, the Corporate Debtor terminated the contract entered between the parties. Subsequently, the Operational Creditor sent a notice under section 8 of the IBC to the Corporate Debtor demanding a payment of Rs 1,49,39,386. Thereafter, the Operational Creditor filed a Section 9 Petition against the Corporate

⁸ Civil Appeal No.1527 of 2022

⁹ (2010) 9 SCC 496

¹⁰ (2022) 3 SCC 501

¹¹ Company Appeal (AT) (INS.) No.1399 of 2023

Debtor for initiating the Corporate Insolvency Resolution Process.

Hon'ble National Company Law Tribunal dismissed the Section 9 petition in view of the fact that there is a pre-existing dispute between the parties. The Operational Creditor challenged the said NCLT Order while contending that the Corporate Debtor never disputed the amount claimed by the Operational Creditor in the emails exchanged between the parties. Further, the Operational Creditor contended that the Corporate Debtor never disputed the existence of the contract.

The Hon'ble NCLT dismissed the appeal while taking notice of the reply of the Corporate Debtor to the notice dated 28.02.2019 sent by the Operational Creditor. The Hon'ble Tribunal noted that the aforementioned reply clearly stated no amount was due and payable to the Operational Creditor. The Hon'ble Tribunal noted that the Corporate Debtor, even prior to the issuance of the demand notice, had denied liability to pay, therefore, a pre-existing dispute was there. In view of the aforesaid, the Hon'ble Appellate Tribunal upheld the order of the NCLT.

COURTS CAN EXAMINE THE CONSTITUTIONALITY OF ARBITRATION CLAUSES WHILE CONSIDERING APPLICATIONS TO APPOINT A SOLE ARBITRATOR AND CLAUSES NOT IN CONSONANCE WITH THE CONSTITUTION CANNOT BE ENFORCED

The Hon'ble Supreme Court in the case of *Lombardi Engineering Ltd vs. Uttarakhand Jal Vidyut Nigam Limited*¹² held that Courts can examine the constitutionality of arbitration clauses while considering an application to appoint a sole arbitrator and if a clause in an arbitration agreement is not in consonance with the Constitution, then it cannot be enforced.

In the present case, an application (“**Application**”) filed by Lombardi Engineering Ltd., a Swiss company, under Section 11(6) of the Arbitration and Conciliation Act 1996 (“**Arbitration Act**”) seeking the appointment of an arbitrator in a dispute with the State of Uttarakhand. The company filed the Application while taking objection to two clauses viz.,

- i. The condition that 7% of the total claim must be pre-deposited for invoking the arbitration clause.
- ii. The discretion vested with the Principal Secretary/Secretary (Irrigation) to appoint a sole arbitrator.

In response to the Application, the Respondent contended that only the writ court in a petition under Article 226 of the

Constitution can consider whether a particular condition in the arbitration clause is arbitrary. Therefore, the issue before the Hon'ble Court was whether it could examine if the arbitration clauses are arbitrary while considering an application to appoint a sole arbitrator.

The Hon'ble Court answered the aforesaid question in the affirmative. The Hon'ble Court stated that the Constitution is the paramount source of law in our country and therefore, rejected the argument that the Hon'ble Court cannot examine the Constitutionality of the clause while exercising jurisdiction under Section 11(6) of the Arbitration Act.

The Hon'ble Court held that for any arbitration clause to be legally binding it has to be in consonance with the “operation of law” which includes the Grundnorm i.e., the Constitution. The Hon'ble Court held that they find no merit in the argument that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary. The Court noted that it is a settled position of law that there can be no consent against the law and there can be no waiver of fundamental rights. In view of the aforesaid, the Hon'ble Court allowed the Application.

COURT CANNOT GRANT UNCONDITIONAL STAY ON ARBITRAL AWARDS UNDER SECTION 36(3) OF THE ARBITRATION ACT UNLESS A PRIMA FACIE CASE OF FRAUD IS MADE OUT THAT

The Hon'ble Delhi High Court in the case of *Italian Thai Development vs. NTPC Ltd*¹³ held that a Court cannot grant an unconditional stay on arbitral awards under Section 36(3) of the Arbitration Act unless a *prima facie* case is made out that the arbitral award is marred by fraud.

In the present case, the parties were involved in the Civil Works Project in Bilaspur District. When a dispute arose between the parties, the matter was referred to Arbitration. The Arbitral Tribunal passed the impugned award on 16.03.2022 whereby it asked Petitioner to refund a sum of Rs. 1,69,43,54,488 to Respondent. Shortly thereafter, the Petitioner challenged the award under Section 34 of the Arbitration Act contending that the Arbitral Tribunal went beyond the scope of the reference and specific relief of set-off was not claimed by the respondent in its statement of defense filed before the Arbitral Tribunal. Further, the Petitioner made an application under Section 36(3) of the Arbitration Act seeking an unconditional stay on the award. It is pertinent to note that Petitioner in the captioned case was a foreign entity.

¹² Arbitration Petition no. 43 of 2022

¹³ O.M.P. (COMM) 343/2022

The Hon'ble Court observed that under Section 36(3) of the Arbitration Act, the Hon'ble Court can grant an unconditional stay on the arbitral award if a *prima facie* case is made out that the award was induced by fraud. However, the petitioner had not made any such submission in his application. The Hon'ble Bench noted that the Petitioner is a foreign entity and doesn't have assets for security. Further,

the Hon'ble Bench observed the petitioner's reluctance to deposit any part of the arbitral award while seeking a stay on the arbitral award dated 16.03.2022. The Hon'ble Court while dismissing the Application highlighted that the Petitioner could have shown *bona fide* by offering cash security. In view of the aforesaid, the Hon'ble Court dismissed the application.

EMPLOYMENT LAW

PAYMENT OF EMPLOYEES' PROVIDENT FUND BENEFITS TO SUBSCRIBER'S PAYMENT BANK ACCOUNTS

The Employees' Provident Fund Organisation, *vide* circular dated November 1, 2023, issued directions regarding payment of Employees Provident Fund ("EPF") benefits to subscriber's payment bank accounts. As per the aforementioned circular, the following banks have been included in the second schedule to the Reserve Bank of India Act, 1934:

- Paytm Payments Bank Limited; and
- Airtel Payments Bank Limited.

EMPLOYEES' STATE INSURANCE CORPORATION ISSUES GUIDELINES RELATED TO HOME DELIVERY OF DRUGS AND HOME SAMPLE COLLECTIONS TO THE INSURANCE PROVIDERS AND BENEFICIARIES

Employees' State Insurance Corporation, ("ESIC") *vide* notification dated November 3, 2023, has issued guidelines for home delivery of drugs and home sample collections to the insured persons and beneficiaries. In order to avoid hardship faced by beneficiaries due to long distances of travel, ESIC has granted approval to extend the facility of home delivery of drugs and home sample collection to such entitled insured persons and beneficiaries as per the following guidelines:

- Guidelines and standard of procedures for ESIC hospitals for home sample collection; and
- Guidelines and standard of procedures for ESIC hospitals for home delivery of drugs.

AMENDMENT NOTIFICATION UNDER JAMMU AND KASHMIR FACTORIES RULES, 1972

The Labour and Employment Department, Jammu and Kashmir *vide* notification dated November 3, 2023, in the

exercise of powers conferred by Section 112 read with Section 115 of the Factories Act, 1948, amended the Jammu and Kashmir Factories Rules, 1972. *Vide* the aforementioned notification, the Government of Jammu and Kashmir omitted Rule 50 of the Jammu and Kashmir Factories Rules, 1972.

GOVERNMENT OF DELHI PUBLISHES THE MINISTRY OF FINANCE OFFICE MEMORANDUM ON NON-PRODUCTIVITY LINKED BONUS

The Finance (Policy) Department, Government of NCT of Delhi, *vide* office memorandum dated November 3, 2023, published the Ministry of Finance's office memorandum dated October 17, 2023, on non-productivity linked bonus. Below are the salient features of the memorandum dated October 17, 2023, which has been published by the Government of Delhi:

- The bonus is applicable to Group C and all non-gazetted employees in Group B, who are not covered by any productivity linked bonus scheme. However, only those employees who were in service as on March 31, 2023, and have rendered at least 6 (Six) months of continuous service during the year 2022-23 will be eligible for payment under these orders. The calculation ceiling for payment of *ad-hoc* bonus under these orders shall be monthly emoluments of INR 7,000 (Rupees Seven Thousand).
- The payment of *ad-hoc* bonus will also be admissible to the eligible employees of Central Para Military Forces and Armed Forces.

THE GOVERNMENT OF MANIPUR PUBLISHES THE MANIPUR SHOP AND ESTABLISHMENTS (REGULATION ON EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 2021

The Law and Legislative Affairs Department, Manipur, *vide* notification dated November 2, 2023, published the Manipur

Shop and Establishments (Regulation on Employment and Conditions of Service) Act, 2021 which received the assent of the President of India on October 13, 2023. The aforementioned Act replaces the Manipur Shop & Establishments Act, 1972 and the Manipur Shop & Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021.

ESIC REAFFIRMS REGISTRATION OF EMPLOYEES WITHIN A SPECIFIC TIMELINE FROM THE DATE OF THE APPOINTMENT BY EMPLOYER

The ESIC, *vide* letter dated November 6, 2023, reiterated that employers should submit the relevant reply/records within 15 (Fifteen) days of the issue of show cause notices by the authorized officer or the regional director. After verifying the records given by the employer, the regional director or the authorized officer shall accept the date of appointment as declared by the employer as the date of appointment. Further the letter also noted that where the employer has submitted the request with the required documents, the said request should be settled within 7 (Seven) days.

GOVERNMENT OF JAMMU & KASHMIR AMENDS THE JAMMU AND KASHMIR BUILDING & OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) RULES, 2006

The Labour & Employment Department, Jammu & Kashmir, *vide* notification dated November 7, 2023, has amended the Jammu and Kashmir Building & Other Construction Workers (Regulation of Employment and Conditions of Services) Rules, 2006. In the said rules, following changes have been made:

- In Rule 22-T(i), the scale of financial assistance in form of scholarship to the children of beneficiaries has been substituted.
- In Rule 22(U), financial assistance for marriage has been substituted.

DECLARATION OF VARIOUS INDUSTRIES AS PUBLIC UTILITY SERVICES UNDER THE INDUSTRIAL DISPUTES ACT, 1947

The Ministry of Labour and Employment, *vide* notification dated November 9, 2023, declared the following industry as public utility services effective for next 6 (Six) months:

- Industries engaged in processing or production or distribution of fuel gases (coal gas, natural gas and the like);
- Industries engaged in the lead and zinc mining; and
- Industries engaged in the food stuff services.

GUIDELINES REGARDING ALIGNMENT OF ESIC HOSPITALS WITH PRADHAN MANTRI NATIONAL DIALYSIS PROGRAM

ESIC, *vide* notification dated November 10, 2023, issued guidelines regarding development of in-house hemodialysis services at ESIC hospitals and their integration with Pradhan Mantri National Dialysis Program (“PMNDP”).

The PMNDP was launched on April 7, 2016, as part of the ‘National Health Mission’ for the provision of free dialysis services to the patients. It provides options to provide dialysis service to those entitled through public private partnership mode, in-house mode and hybrid mode. The afore-mentioned guidelines *inter alia* contains provisions for in-house dialysis services, norms for establishing dialysis units, personnel for hemodialysis unit management.

EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 CAN BE APPLIED EVEN TO FACTORIES NOT ENGAGED IN SCHEDULE 1 INDUSTRIES

The Supreme Court of India, in the case of *Thankamma Baby vs. The Regional Provident Fund Commissioner*, *vide* judgement dated November 7, 2023, noted that a notification under Section 1(b)(3) of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (“PF Act”) can be issued in respect of factories engaged in any industry that are not specified in Schedule I of the PF Act.

The appellant in the present case was involved in the production, distribution, and manufacturing of umbrellas and received a notification from the Provident Fund Commissioner that the PF Act is applicable to them. The respondents in the present case also contended that the establishment qualified as a commercial enterprise because the appellant was in the business of assembling umbrellas and selling them in her own store. Thus, according to the Central Government notification in 1969, the appellant was operating a business that qualified as a “trading and commercial establishment”. However, the appellant argued that since their establishment is not covered under Schedule I of the PF Act, they will be out of the coverage of Section 1(3)(b) of the PF Act, under which the aforementioned 1969 notification was issued. The Supreme Court in the present case noted that to give effect to the legislature’s intention, the Court will have to adopt a purposive interpretation in this scenario. Thus, it noted that factories which are not covered by industries in Schedule I of the PF Act are not out of the coverage of Section 1(3)(b), and provisions of the PF Act can be made applicable to them by the virtue of the said section.

OFFICE ORDER ISSUED REGARDING REDUCING THE COMPLIANCE BURDEN TO THE PRINCIPAL EMPLOYER/CONTRACTOR UNDER CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

The Labour Commissioner, Government of NCT of Delhi released an office order on November 10, 2023, to reduce the compliance burden on the principal employer/contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (“CLRA”).

As per the aforementioned office order, previously, the contractors deploying contract workers were initially instructed to upload worker details, wages, and statutory records on their websites. If a contractor lacked a website, the principal employer was to upload the information until the contractor established their own website. Moreover, the principal employer/contractor were also directed to submit hard copies of the aforementioned information to the concerned registering/licensing officer.

These requirements, according to the notification, only overburdened the employers and hampered the business process when looked at from the point of ease of doing business. Thus, in supersession of prior orders, registering/licensing officers are directed to strictly follow the CLRA and its rules for processing applications.

AVAILING OF MEDICAL SERVICES BY INSURED PERSONS AND BENEFICIARIES FROM ANY ESIC DISPENSARY/HOSPITALS ACROSS INDIA

ESIC, *vide* notification dated November 13, 2023, prescribed the procedure regarding availing of medical services by insured persons and beneficiaries from any ESIC dispensary/hospitals across India.

In order to extend the portability in service delivery of ESIC pan India, an insured person and beneficiaries can now visit any dispensary/hospital across India for consultation and issuance of medicines through Dhanwantri module, irrespective of the dispensary allotted on the beneficiary card. Moreover, in case of chronic disease, patients’ medicines may be issued up to 90 (Ninety) days as and when required.

ENTERPRISE SHUTTING DUE TO FINANCIAL DIFFICULTIES IS NOT AN UNAVOIDABLE CIRCUMSTANCE TO DENY RETRENCHMENT COMPENSATION

The High Court of Jammu & Kashmir and Ladakh, in the case of *Davinder Kumar Batra vs. the Authority*, *vide* order dated November 9, 2023, noted that the closure of an enterprise due to financial difficulties cannot be deemed as an unavoidable circumstance as stated under Section 25-FFF of the Industrial Disputes Act, 1948 (“IDA”) thereby reinforcing

the entitlement of employees to retrenchment compensation.

The petition was filed under Article 226 of the Constitution of India, against the order of the assistant labour commissioner, Jammu, wherein he had directed the petitioner to pay retrenchment compensation under the IDA. This was challenged by the petitioner on various grounds. The first issue raised was whether the compensation to be paid to the employees would fall within the definition of wages under the Payment of Wages Act, 1936. In this regard, the High Court of Jammu & Kashmir observed that if a workman is retrenched, a certain compulsory compensation has to be paid under the IDA, and it will fall under the definition of wages under the Payment of Wages Act, 1936.

Further, deciding on whether the respondents are entitled for retrenchment compensation or not, the High Court of Jammu & Kashmir observed while citing the explanation to Section 25-FFF of the IDA, that when an undertaking is closed down due to financial difficulties, it shall not be deemed to be closed down on account of unavoidable circumstances beyond control of the employer. Therefore, the claim for retrenchment was considered valid.

PUNJAB & HARYANA HIGH COURT DECLARES 75% (SEVENTY FIVE PERCENT) DOMICILE QUOTA FOR HARYANA LOCALS IN PRIVATE SECTOR AS UNCONSTITUTIONAL

The Punjab and Haryana High Court, *vide* order dated November 17, 2023, in the case of *IMT Industrial Association vs. State of Haryana*, struck down a state law mandating 75% (Seventy Five Percent) reservation for locals in private sector jobs on the grounds of being unconstitutional.

The Haryana Government had earlier passed the Haryana State Employment of Local Candidates Act, 2020 (“LC Act”), in 2021, which mandated private sector employers in the state of Haryana to reserve 75% (Seventy Five Percent) of new job openings for candidates who are domiciled in the state of Haryana. The LC Act was thus challenged in the present case. The Punjab and Haryana High Court herein noted that the underlying objective of the LC Act was to create an artificial gap and a discrimination qua the citizens of India and the powers of the state legislature cannot be detrimental to the national interest and in conflict with the powers of the Central Government.

Further, the Punjab and Haryana High Court also noted that private employers cannot be forced to employ persons from a particular state and discriminating against individuals based on their state would be negative treatment against other citizens of the country. Thus, the High Court herein held that the LC Act was beyond the state’s legal authority, and it violated Part III of the Constitution of India.

MURDER OF AN EMPLOYEE DURING THE COURSE OF EMPLOYMENT WOULD MAKE THE EMPLOYER LIABLE UNDER EMPLOYEES' COMPENSATION ACT, 1923

The High Court of Delhi, in the case of *Neelu Kumari & Ors. vs. Om & Anr.*, *vide* judgement dated November 21, 2023, held that murder of an employee during the course of his duties will bring the case within the ambit of Section 2(1)(n) of the Employees' Compensation Act, 1923. However, the High Court of Delhi herein noted that though there was no relationship of an employer-employee between the respondents and the deceased, the finding by the commissioner that murder during the course of employment would not bring the case under Section 2(1)(n) of the aforementioned Act was flawed and cannot be accepted. The High Court of Delhi herein placed reliance on *Rita Devi vs. New India Insurance Company Ltd.*, for the same.

COURTS SHOULD NOT GET SWAYED BY HYPER TECHNICALITIES IN CASES OF SEXUAL HARASSMENT: SUPREME COURT OF INDIA

The Supreme Court of India, *vide* judgement dated November 06, 2023 in the case of *Union of India vs. Dilip Paul*, has observed that when it comes to the cases of sexual harassment at the workplace, the courts should not get swayed away by little discrepancies and technicalities.

The afore-mentioned judgement emphasized that accusations of sexual harassment or similar offenses at a

workplace should be assessed in the wider context of the case and should not be solely evaluated based on a breach of procedure. The Supreme Court herein also pointed out that the "test of prejudice" should be applied, before allowing harassers to escape accountability, as this could be highly distressing for victims, especially when the offender faces only minimal penalties or avoids punishment altogether.

ENFORCEMENT OF CERTAIN PROVISIONS OF THE EMPLOYEES' STATE INSURANCE ACT, 1948 IN UTTAR PRADESH, ODISHA AND TAMIL NADU

The Ministry of Labour and Employment, *vide* multiple notifications dated November 23, 2023, enforced the following provisions of the Employees' State Insurance Act, 1948 in all the areas of Mainpuri, Etah, Lakhimpur Khiri and Balrampur in Uttar Pradesh, Kandhamal district in Odisha and Pudukottai district in Tamil Nadu from December 1, 2023:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV which relates to 'contribution';
- Sections 46 to 73 of Chapter V which relates to 'benefits'; and
- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI which relates to 'adjudication of disputes and claims'.



ENERGY

BUREAU OF ENERGY EFFICIENCY ISSUED DRAFT DETAILED PROCEDURE FOR COMPLIANCE MECHANISM UNDER THE CARBON CREDIT TRADING PROGRAM

The Carbon Credit Trading Scheme envisages the compliance mechanism whereby the registered entities which are notified under the compliance mechanism are called 'Obligated Entity'. Bureau of Energy Efficiency (BEE) on November 8, 2023 unveiled draft detailed procedures for its impending compliance on carbon market, proposing an intensity-based approach over an absolute cap on emissions. The compliance scheme outlines issuance of Carbon Credit Certificates based on achieved versus targeted GHG emission intensity for production quantities. Entities surpassing targets earn credits, while those falling short must purchase certificates. The BEE will set GHG emission intensity goals covering direct, non-energy, and indirect emissions for each compliance cycle. The Indian Government will notify these targets in CO2 equivalent per unit of product. This strategic framework aims to incentivize emission reductions while fostering sustainable industrial growth.

Read more ([here](#)).

MINISTRY OF POWER ANNOUNCED THE PRICE BENCHMARKING OF BIOMASS PELLETS FOR CO-FIRING IN THERMAL POWER PLANTS FOR NORTHERN REGION

In a significant stride toward sustainable energy, the Ministry of Power *vide* letter F.No.11/86/2021-Th.II [C.No:238797] dated November 8, 2023 announced benchmark prices for biomass pellets used in thermal power plants across the Western and Northern regions, excluding the National Capital Region. The directive, based on a comprehensive study by a price benchmarking committee, aims to streamline the supply chain and promote the use of eco-

friendly fuel for cleaner energy production. For the Western Region, the benchmark price for non-torrefied biomass pellets stands at Rs. 2.24 per 1000 kcal, effective from November 8th, 2023, for a year. Similarly, in the Northern Region (excluding NCR), the price is fixed at Rs. 2.27/1000 kcal under specific criteria. This move supports the government's June policy to enhance biomass co-firing in coal-based power plants, endorsed by Union Minister R. K. Singh. The initiative seeks to stabilize raw biomass prices, creating a more stable market and ensuring a consistent supply of sustainable fuel to meet India's escalating power demands.

Read more ([link](#)).

REC LIMITED SIGNS MOU WITH RAILTEL TO FINANCE INFRASTRUCTURE PROJECTS IN TELECOM, IT AND RAILWAY SIGNALING

In a move to extend financial assistance for Infrastructure projects to be executed by RailTel in the upcoming 5 years, REC Limited, a prominent entity under Ministry of Power, signed a memorandum of understanding ("MoU") with RailTel on November 9, 2023, earmarking up to Rs 30,000 crore. These projects encompass diverse areas such as data center products and services, telecom, and IT products and services, alongside railway and metro initiatives, including the innovative KAVACH Train Collision Prevention System. Beyond domestic endeavors, the MoU opens doors for financing international projects, particularly in Southeast Asia and Eastern Africa, aligning with RailTel's current focus. The signing of the MoU was followed by discussions on exploring new collaborative areas like Renewable Energy, Smart Metering, and other projects where RailTel and REC can collaborate.

ENERGY EFFICIENCY SERVICES LIMITED NATIONAL UNDER THE MINISTRY ON NOVEMBER 25, 2023, LAUNCHED THE POWER EFFICIENT COOKING PROGRAMME TO PROMOTE AFFORDABLE AND ENERGY-EFFICIENT INDUCTION COOKERS

Energy Efficiency Services Limited (EESL), under the Ministry of Power, has unveiled two transformative programs aiming to revolutionize cooking methods and promote energy-efficient fans in India. The National Efficient Cooking Programme (NECP) and Energy Efficient Fans Programme (EEFP) aim to distribute 10 million energy-efficient fans and 2 million induction cookstoves nationwide. These initiatives, inaugurated by Union Power Minister underscore the dedication of the government in fostering energy efficiency. The NECP focuses on introducing cost-efficient induction-based cookstoves, promising 25-30% cost savings compared to traditional methods, reducing energy consumption, and providing affordable cooking alternatives. EESL highlighted the environmental benefits and partnering with Modern Energy Cooking Services (MECS) to promote induction cooktop adoption. These programs signify a crucial move towards greener practices, offering cost-effective solutions while ensuring a cleaner, healthier environment for all.

MINISTRY OF PETROLEUM & NATURAL GAS ANNOUNCED THE MANDATORY BLENDING OF COMPRESSED BIOGAS IN CNG (TRANSPORT) & PNG (DOMESTIC) SEGMENTS OF CGD SECTOR

Ministry of Petroleum & Natural Gas *vide* press release dated November 25, 2023, announced the introduction of the CBG Blending Obligation (CBO) to propel Compressed Biogas (CBG) production and usage in India. The National Biofuels Coordination Committee chaired by the Union Petroleum Minister mandated phased blending of CBG in CNG (Transport) & PNG (Domestic) segments of the CGD sector. The CBO aims to elevate CBG demand in the CGD sector, import substitution for Liquefied Natural Gas (LNG), saving in Forex, promoting circular economy and to assist in achieving the target of net zero emission etc. Further, the

INFRASTRUCTURE

DRAFT MANUAL FOR PROCUREMENT OF GOODS, 2024

The Manual for Procurement of Goods (“Manual”) was published in 2017 and was updated in 2022 by the Procurement Policy Division (“PPD”), Department of Economic Affairs, Ministry of Finance (“DOE”). In order to incorporate various new guidelines and to add more clarity to the existing Manual, a second edition of the Manual is now being developed by the PPD, DOE.

In furtherance of the same, the PPD, DOE has issued the beta draft of the Manual for Procurement of Goods, 2024 (“Draft

Union Petroleum Minister highlighted that this move would attract investments of around Rs. 37,500 crores, facilitating 750 CBG projects by 2028-29. It was decided that the CBO will be voluntary until FY 2024-25 and will become mandatory from FY 2025-26 onwards, gradually increasing from 1%, 3% and 4% of the total CNG/PNG Consumption for FY 2025-26, 2-26-27 and 2027-28 respectively. Thereafter, CBO will be increased to 5% from FY 2028-29 onwards. Moreover, discussions included promoting ethanol production from maize, focusing on increasing cultivation area, improving yield, quality enhancement, and fostering collaborations with seed companies for high starch varieties. Additionally, the committee announced initial indicative blending targets for Sustainable Aviation Fuel (SAF) for international flights, aiming for 1% indicative blending target to be achieved in 2027 and 2% blending target to be achieved in 2028.

Read more ([link](#))

CENTRAL ELECTRICITY REGULATORY COMMISSION ISSUED DRAFT CENTRAL ELECTRICITY REGULATORY COMMISSION (PROCEDURE, TERMS AND CONDITIONS FOR GRANT OF TRANSMISSION LICENSE AND OTHER RELATED MATTERS) REGULATIONS, 2023

In exercise of the powers conferred under Section 178 of the Electricity Act, 2003 read with Section 14, 15 and 16 of the Electricity Act along with other provisions therein, the Central Electricity Regulatory Commission *vide* public notice bearing reference no. L-1/270/2023/CERC dated November 28, 2023, issued the said regulations. The draft regulations are in the draft stage and is subject to comments/suggestions which are invited from the stakeholders and interest parties. The draft regulations include chapters on grant of license, determination of transmission charges, terms and conditions of license, accounts of the licensee, grounds of revocation of license along with other provisions.

Manual”), in November 2023 seeking feedback from stakeholders. Feedback on the Draft Manual from various stakeholders has been sought by the PPD, DOE *vide* office memorandum bearing number 1/4/2023-PPD dated November 17, 2023 (“OM”). As per the OM, the last date to send feedback on the Draft Manual is December 31, 2023. The key highlights of the Draft Manual are provided hereinbelow:

- **Procurement Framework:** The Draft Manual serves as a reference document for all ministries/departments

and sub-ordinate bodies, or central public sector enterprises (“**Procuring Entities**”) involved in public procurement. It covers all the major aspects related to procurement in a user-friendly manner.

- **Draft Manual Overview:** This Draft Manual serves as a guide to navigate the vast landscape of procurement rules. It does not encompass all procurement guidelines but highlights fundamental norms. The Procuring Entities are encouraged to supplement the Draft Manual with tailored guidelines and regulations. The procurement process is governed by a comprehensive set of statutory provisions, rules, and guidelines outlined in the General Financial Rules 2017, (“**GFR**”), and other relevant legislations. The Draft Manual prescribes operating instructions for procurement of goods and aims to bring about greater transparency and accountability and uniformity in government procurement procedures.
- **Applicability and Entities Covered:** The Draft Manual applies to various Procuring Entities receiving substantial financial assistance from the Central Government. While Government eProcurement System of National Informatics Centre, Government e-Marketplace (“**GeM**”), and similar platforms adhere to the guidelines provided in the Draft Manual, exceptions may be permitted through government notifications for certain entities under unique conditions.
- **Definition of “Goods”:** The Draft Manual defines the term “goods” which is applicable to a range of items. “Goods” comprise a wide range of items like articles, commodities, livestock, medicines, furniture, raw materials, machinery, vehicles, intellectual properties, etc., procured or acquired by Procuring Entities. This definition excludes items for library use. Procurement of goods may involve incidental or consequential services, such as transportation, insurance, installation, commissioning, training, and maintenance, as per Rule 143 of the GFR.
- **Delegated Powers and GeM Mandate:** Procuring Entities have delegated powers for procurement, except for items available on the GeM. Rule 149 of the GFR mandates the mandatory use of GeM for common-use goods and services. Delegated powers must align with the ‘Delegation of Financial Power Rules’ and adhere to specific procurement guidelines.
- **Statutory Provisions and Hierarchy:** A hierarchy of statutory provisions, rules, and guidelines ensures a uniform, systematic, and cost-effective public procurement procedure. This includes constitutional mandates (i.e., Article 299), fundamental rights, and relevant legislation such as the Indian Contract Act,

1872, and the Sale of Goods Act, 1930. The same has been provided in the Draft Manual.

- **Five ‘R’s of Procurement:** The fundamental aims of procurement i.e. encompassing right quality, right quantity, right price, right time, and right source, are emphasized in the Draft Manual. The Draft Manual advocates achieving an optimal balance between these parameters for effective procurement.
- **Manual Revision and Nodal Authority:** For revisions, interpretations, and clarifications of the Draft Manual, the PPD, DOE shall serve as the nodal authority.
- **International Funding and Special Cases:** Guidelines in the Draft Manual will not apply to projects funded by international agencies like the World Bank, as specific procurement procedures outlined in agreements with these agencies govern such cases.
- **Priority:** The Draft Manual contains all the updates till November 2023. In case of any conflict between the provisions stipulated in the Draft Manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.

QUALITY CUM COST BASED SELECTION METHOD IN PROCUREMENT OF WORKS AND NON-CONSULTANCY SERVICES

The PPD, DOE vide circular bearing number F.3/26/2023-PPD dated November 01, 2023 (“**Circular**”), issued certain clarifications in relation to the extent of procurements for which the quality cum cost-based selection (“**QCBS**”) method has been permitted for works and non-consultancy services (“**NCS**”).

The QCBS method has been allowed in the following cases under paragraph 15.2 of the General Instructions on Procurement and Project Management issued by the DOE vide office memorandum bearing number F.1/1/2021-PPD dated October 29, 2021 (“**General Instructions**”):

- Where the procurement has been declared by the competent authority to be a quality-oriented procurement (“**QOP**”).
- For procurement of NCS wherein the estimated value of procurement (inclusive of taxes and options) does not exceed INR 10,00,00,000 (Rupees Ten Crore).

In order to remove the ambiguities existing in relation to the extent of procurements for which the QCBS method has

been permitted for works and NCS, the following clarifications have been provided in the Circular:

- **Procurement of works:** The QCBS method has been allowed for procurement of any value of works by following the procedure mandated for QOP.
- **Procurement of NCS:** Procurement of NCS of any value can be done using the QCBS method. The procedure for the same may vary basis the value of procurement as follows:
 - i. Procurement of NCS of value exceeding INR 10,00,00,000 (Rupees Ten Crore): the procurement can be done using the procedure provided for QOP.
 - ii. Procurement of NCS of value not exceeding INR 10,00,00,000 (Rupees Ten Crore): the procurement can be done using the procedure provided in the General Instructions.

DELEGATION OF POWERS TO REGIONAL OFFICERS TO DECIDE COS AND EOT

The National Highways Authority of India (“NHAI”) vide policy circular number 18.91/2023 dated November 03, 2023 (“**Policy Circular 1**”), issued certain directions regarding the examination and approval of change of scope (“**COS**”) and extension of time (“**EOT**”) of works by regional officers (“**ROs**”) instead of the NHAI headquarters (“**HQ**”).

ROs have been authorized to sanction works related to blackspot rectification, highway maintenance, risk and cost works, etc. ROs are currently sanctioning these works and inviting bids at their level. However, it has been observed by NHAI that although ROs sanction estimates, COS and EOT claims during execution are forwarded to HQ for approval. The said issue relating to COS and EOT approval was discussed in an executive committee meeting on February 01, 2023.

Policy Circular 1 provides that the COS and EOT works will be examined and approved by the ROs subject to the following:

- The COS must be within 20% (twenty percent) of the contract price. The COS must be valued in accordance with the principles followed in estimation of the works by applying the tender discount/premium as provided in the particular contract agreement.
- The revised cost of work including the COS as well as claims of the contractor (if any) must be 20% (twenty

percent) of the original sanctioned cost in relation to the works.

- The revised cost must be within the sanctioned ceiling of powers delegated to the RO.
- While granting EOT, the provisions stipulated in the policy circular bearing number 9.2.23/2020 dated February 26, 2020, must be followed. Any cost claim on account of EOT must be settled while the EOT is granted. The RO shall be solely responsible for EOT, or cost claims allowed.
- If the parties to the contract agreement wish to settle disputes of cost implications of EOT and/or COS before the sole conciliator, the RO must handle the same and approve the draft settlement agreement between the parties.
- If the aforementioned requirements are not duly met, the same shall be referred to the technical division at the HQ for approval of the competent authority by giving reasons, identifying lapses as well as fixing responsibilities.

VIVAD SE VISHWAS SCHEME (CONTRACTUAL DISPUTES)

The PPD, DOE vide policy circular number 1/7/2022-PPD dated November 09, 2023, has clarified that the last date of submission of claims under the Vivad se Vishwas Scheme has been extended to December 31, 2023.

CLARIFICATION ON CALCULATION OF BASE DATE

NHAI, vide policy circular number 9.1.14/2023 dated November 10, 2023 (“**Policy Circular 2**”), issued certain clarifications on the calculation of base date under the standard engineering procurement and construction agreement (“**EPC Agreement**”).

The EPC Agreement states that ‘base date’ means the last date of the calendar month preceding the bid due date by at least 28 (twenty-eight) days. To ensure uniformity in all projects and bring greater clarity to field units, Policy Circular 2 provides that the base date shall not only be the last date of the calendar month, but it shall also precede the bid due date by 28 (twenty-eight) days.

For example, if the particular bid is received between 28th to 31st of January, then the date 28 (twenty-eight) days prior to the bid due date shall lie on a date between 1st January to 4th January. In such a case, the base date shall be the last date of the preceding calendar month i.e., it shall be December 31st.



REGULATION OF PAYMENT AGGREGATOR – CROSS BORDER (PA - CROSS BORDER)

The RBI issued a circular bearing number CO.DPSS.POLC.No.S-786/02-14-008/2023-24 dated October 31, 2023 (“Circular”), outlining regulations for entities facilitating cross-border payment transactions. These entities fall under the category of Payment Aggregator – Cross Border (“PA-CB”). Entities, such as Authorized Dealer (“AD”) banks, Payment Aggregators (“PAs”) and PA-CBs, engaged in the processing or settlement of cross-border payment transactions for importing and exporting goods and services, must adhere to these instructions, subject to frequent regulatory updates. Given below are the key points provided under the regulations:

i. Requirement for authorisation:

- a. AD Category-I banks do not need separate RBI approval for PA-CB activities.
- b. Non-bank entities providing PA-CB services need RBI authorization by April 30, 2024. They will be categorized as:
 1. Export only PA-CB (“PA-CB-E”): PA-CB-Es will exclusively maintain Export Collection Accounts (“ECA”) denominated in Indian Rupees or foreign currency with designated commercial banks. Each non-INR currency requires a separate ECA. All proceeds from exports must be directed to the relevant currency-specific ECA of the PA-CB-E, ensuring a structured and transparent flow of export revenues. PA-CB-Es facilitating transactions between Indian merchants or e-commerce platforms and foreign customers/entities must ensure that these transactions comply with India's Foreign Trade

Policy. They must conduct due diligence on the merchants, guarantee adherence to regulations, and settle proceeds exclusively into verified merchant accounts.

2. Import only PA-CB (“PA-CB-I”): PA-CB-Is will exclusively maintain an Import Collection Account (“ICA”) with designated commercial banks. Payments for imports must flow through an escrow account managed by the PA before moving to a PA-CB-I's ICA, from where only debits will be allowed for making payments to the foreign merchants. PA-CB-Is can engage directly with foreign merchants or through agreements with overseas e-commerce entities, but they must conduct due diligence and avoid facilitating payments for restricted goods or services under the Foreign Trade Policy. Additional due diligence on buyers is required for transactions exceeding INR 2,50,000/- (Indian Rupees Two Lakh Fifty Thousand) per unit.
3. Export and Import PA-CB (“PA-CB-E&I”): Requirements under PA-CB-I and PA-CB-E should be adhered to under this, while a separate collection account must be maintained for facilitating import and export transactions.
- c. All the regulated entities must ensure stringent compliance with guidelines on governance, tech, security, and risk management within a period of three months from the date of this Circular, as it is essential for authorization.
- d. Non-banking entities engaged in PA-CB activities must register themselves with the Financial Intelligence Unit-India (FIU-IND) as a pre-requisite to RBI authorisation.

ii. Net worth criterion:

- a. Existing PA-CBs need a minimum net worth of INR 15,00,00,00/- (Indian Rupees Fifteen Crore) while applying for RBI authorisation, which must increase to INR 25,00,00,000/- (Indian Rupees Twenty Five Crore) by March 31, 2026.
- b. New PA-CBs must possess a minimum net worth of INR 15,00,00,00/- (Indian Rupees Fifteen Crore) during the application and the same must increase to INR 25,00,00,000/- (Indian Rupees Twenty Five Crore) within three financial years post-authorization.
- c. Any existing non-bank PA-CB which fails to meet the net worth requirement or fails to apply for authorisation within the prescribed duration must cease PA-CB operations by July 31, 2024.
- d. Additionally, banks are instructed to close accounts used by non-bank PA-CBs by the same date, unless these entities furnish proof of their application to RBI for authorisation.

This Circular has set specific deadlines for certain identified activities under the Circular. With respect to adherence to other aspects of the Circular which is not specifically captured, the timeline for compliance for AD Category-I banks is April 30, 2024. For non-bank entities who are already engaged in online PA activities, the provisions of the Circular will become applicable from the date on which it seeks approval for PA-CB activity. Any change in a PA-CB's activity category mandates adherence to the requirements of the new category from the date approval is sought from the RBI. Additionally, AD banks managing Import and Export Collection Accounts for PA-CBs must comply with FEMA requirements, including reporting and reconciliation, ensuring transparency in financial transactions.

DSK View: RBI has laid out this Circular for enabling cross border money transactions, highlighting the significance of authorization, conformity to net worth criteria, and fulfilment of operational and customer due diligence obligations to be fulfilled by those entities involved in cross border transaction.

Source

REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCs

The RBI vide its notification bearing number DOR.STR.REC.57/21.06.001/2023-24 dated November 16, 2023 ("**Notification**") released regulatory measures towards consumer credit and bank credit to NBFCs. It is based on the

Governor's Statement dated October 06, 2023, flagging the high growth in certain components of consumer credit and advising banks and NBFCs to strengthen their internal surveillance mechanisms, address the build-up of risks, if any, and institute suitable safeguards, in their interest. The key points have been addressed below:

- i. Consumer credit exposure: Changes have been made to the risk weights applicable to both commercial banks and NBFCs.
 - a. For consumer credit exposure of commercial banks and NBFCs, excluding housing loans, education loans, vehicle loans, and loans secured by gold and gold jewellery, the risk weight has been increased from 100% to 125%.
 - b. For credit card receivables, the risk weights have been revised, with scheduled commercial banks facing an increase from 125% to 150%, and NBFCs experiencing an increase from 100% to 125%.
- ii. Strengthening credit standards: Regulated Entities ("**RE**") are directed to review their existing sectoral exposure limits concerning consumer credit. They are instructed to establish board-approved limits specifically for various sub-segments within consumer credit, particularly for unsecured consumer credit exposures. These limits, once set by their board, must be strictly followed and continuously monitored by the Risk Management Committee as part of prudent risk management practices.

DSK View: The current notification aims to improve how risk is factored into regulations concerning consumer credit exposure within the financial sector. It is anticipated that lenders might raise interest rates on these products following the risk weight adjustments. This will have a direct impact on unsecured lending by way of personal loans or credit cards offered by various fintech platforms as the capital available such fintech platforms may decrease.

Source

MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

The RBI, on November 07, 2023, issued Master Directions on Information Technology Governance, Risk Management and Controls and Assurance Practices ("**Directions**"). The Directions focus on IT governance, risk management, resource management, performance management, and Business Continuity/Disaster Recovery Management. The

Directions will become effective from April 01, 2024, and they will apply to the following Regulated Entities (“REs”):

- i. Commercial banks (Banking Companies, Foreign Banks, Small Finance Banks, and Payments Banks);
- ii. Non-Banking Financial Companies (“NBFCs”);
- iii. Credit Information Companies (“CICs”); and
- iv. All India Financial Institutions (“AIFI”) such as EXIM Bank, National Bank for Agriculture and Rural Development (“NABARD”), National Bank for Financing Infrastructure and Development (“NaBFID”), National Housing Bank (“NHB”) and Small Industries Development Bank of India (“SIDBI”)

A. IT Governance: REs are mandated to establish a robust IT governance framework that specifies governance structures aligned with business/strategic objectives. This includes defining roles and responsibilities of the Board of Directors, and Senior Management, incorporating oversight mechanisms to ensure accountability and mitigate IT and cyber/information security risks. The Board of Directors is responsible for approving strategies and policies related to IT, Information Assets, Business Continuity, Information Security, and Cyber Security, ensuring these are reviewed at least annually.

B. IT and Information Security Risk Management: REs are also required to include IT-related risks, especially Cyber Security risks, within their risk management policy. The Risk Management Committee of their board of directors (“RMCB”) in collaboration with the ITSC (*defined hereunder*) is mandated to conduct annual reviews and updates. It also highlights the need for an Information Security Policy and a Cyber Security Policy, advocating the formation of an Information Security Committee (“ISC”) under ITSC supervision. This committee’s duties include policy development, project approval, and incident reviews. Moreover, the Directions outline the role and responsibilities of the Chief Information Security Officer (“CISO”), emphasizing technical expertise and compliance enforcement.

C. Committees and Policy Frameworks:

i. **IT Strategy Committee (“ITSC”)** must be constituted by the REs with a minimum of three directors. The Chairperson should have substantial expertise in the field of information technology. The ITSC oversees strategic IT planning, ensures alignment with business objectives, and reviews IT governance and information security structures. It ensures budget allocations and risk assessment, and reviews business continuity plans and disaster recovery management annually.

ii. **IT Steering Committee** is required to be established by the REs and includes senior management representation from both IT and business departments. The responsibilities of the committee include:

- a. Assisting the ITSC in strategic IT planning, supervising IT performance, and aligning IT endeavors with the needs of the business.
- b. Supervising the established procedures for business continuity and disaster recovery.
- c. Ensuring the implementation of a strong IT framework that complies with statutory and regulatory standards.
- d. Providing regular updates to the ITSC and CEO on the IT Steering Committee’s activities.

iii. **Information Security Committee (“ISC”)**, under the management of the ITSC, shall be formed to manage cyber/ information security. The constitution of the ISC, with CISO and other representatives from business and IT functions, etc., shall be decided by the ITSC. The head of the ISC shall be from the risk management vertical. Major responsibilities of the ISC include:

- a. Development of information/ cyber security policies, implementation of policies, standards, and procedures to ensure that all identified risks are managed within the RE’s risk appetite;
- b. Approving and monitoring information security projects and security awareness initiatives;
- c. Reviewing cyber incidents, information systems audit observations, monitoring and mitigation activities; and
- d. Updating ITSC and CEO periodically on the activities of ISC.

iv. **The Business Continuity Plan (“BCP”) and Disaster Recovery (“DR”) Policy** should adhere to best practices to minimize disruptive incidents’ impact and ensure continuous business operations. The policy must be regularly updated based on major developments and risk assessments.

v. **Change and Patch Management Policy** helps in guaranteeing the following:

- a. Assessment of the business repercussions of applying patches/changes or choosing not to implement a specific patch/change request;
 - b. Secure and timely application/implementation and review of patches/changes with essential approvals;
 - c. Justification of any alterations to an application system or data by legitimate business necessities, supported by documented approvals, and subjected to a rigorous change management process; and
 - d. Establishment of a mechanism to recover from unsuccessful changes/patch deployments or unforeseen outcomes.
- vi. **Data Migration Policy** specifies a systematic process for data migration, ensuring data integrity, completeness, and consistency. The policy shall, *inter alia*, contain provisions pertaining to signoffs from business users and application owners at each stage of migration, maintenance of audit trails, etc.
- vii. **Information Security Policy** encompasses objectives, scope, ownership, and responsibility, alongside the information security organizational setup, exceptions, compliance assessments, and penalties for policy breaches. Additionally, REs must establish a **Cyber Security Policy and a Cyber Crisis Management Plan (CCMP)**.
- viii. **Cyber incident response and recovery management policy** shall address the classification and assessment of cyber incidents; include a clear communication strategy and plan to manage such incidents, contain exposures, and achieve timely recovery.
- ix. **Risk management policy** of the RE shall include IT related risks, including the Cyber Security related risks, and the RMCB in consultation with the ITSC shall periodically review and update the same at least on a yearly basis.
- x. **BCP and DR Policy** by REs shall adopt best practices to guide its actions in reducing the likelihood or impact of disruptive incidents and maintaining business continuity. These policies shall be updated based on major developments/ risk assessments.

- xi. **Information System Audit Policy** shall contain a clear description of its mandate, purpose, authority, audit universe, periodicity of audit, etc. The policy shall be approved by the Audit Committee of the Board and reviewed at least annually.

DSK View: *The Directions introduces new measures as well as updates and consolidates measures prescribed in earlier circulars, which now stand repealed which definitely provides clarity on a laundry list of compliance. These Directions place the onus on the top-level management to establish vigilant supervision over the planning and implementation of the IT Strategy and mark a pivotal moment in embracing technology and innovation within the financial services realm.*

Source

ACTION AGAINST BAJAJ FINANCE LTD. UNDER SECTION 45L(1)(B) OF THE RESERVE BANK OF INDIA ACT, 1934

The RBI, in a press release on November 15, 2023, invoked its authority under Section 45L(1)(b) of the RBI Act 1934, instructing Bajaj Finance Ltd. (“BFL”) to immediately cease loan approval and distribution for its 'eCOM' and 'Insta EMI Card' products. The 'eCOM' product provides consumers with a financing option for online shopping, whereas the 'Insta EMI Card' allows customers to enroll for a financing solution enabling them to shop across various products and make payments through EMIs.

This action by the RBI is a consequence of BFL’s failure to comply with the existing provisions outlined in the Digital Lending Guidelines of RBI, specifically regarding the absence of ‘Key Fact Statements’ for these products and deficiencies in statements issued for other digital loans. These restrictions will remain in place until the issues are addressed to RBI's satisfaction, prompting a subsequent review.

DSK View: *As per the RBI's digital lending guidelines, lenders are required to furnish borrowers with a 'key fact statement' during loan disbursement. This statement includes crucial details like the annualized interest rate of the digital loan, repayment procedures, and contact information for grievance redressal. It is vital specifically in transactions that involve multiple partners in the loan process, where customers engage with an online app under a different brand, while the loan itself might be facilitated by a partnering bank or NBFC. The format of the key fact statement has been set out by the RBI in the Guidelines on Digital Lending.*

Source

INDUSIND BANK GOES LIVE WITH RUPAY CREDIT CARD ON UPI

IndusInd Bank recently launched its 'IndusInd Bank Platinum RuPay Credit Card' in partnership with the National Payments Corporation of India ("NPCI"). This credit card allows customers to seamlessly make payments through the RuPay network using point of sale ("POS") devices, e-commerce websites, and UPI-enabled apps. Users can link their credit cards to UPI apps for easy transactions both

online and offline, earning accelerated rewards on UPI transactions.

Customers also have the flexibility to convert their reward points into statement credit, air miles, or multiple voucher options through 'IndusMoments'. NPCI, through such partnerships, aims to enhance credit accessibility in India through RuPay credit cards, transforming the country's financial transaction landscape.

Source



AMENDMENT IN THE EXPORT POLICY OF ONIONS

The Directorate General of Foreign Trade ('DGFT') has amended the Export Policy of Onions in Chapter 07 of Schedule 2 of the ITC (HS) Export Policy vide Notification No. 45/2023 dated 23 November 2023.

As per the text of the above-mentioned Notification, an exporter of Onions would be subject to a Minimum Export Price ('MEP') of US \$800 F.O.B. per Metric Ton till 31 December 2023. However, the following consignments of onions would be allowed for exports without MEP –

- i. Wherein the consignments have been handed over to the Customs before 29th October, 2023 and are registered in their system.
- ii. Wherein the consignments have entered the Customs station for exportation before this Notification came into effect and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and time stamping of these commodities.
- iii. Wherein the export duty has been paid before the issuance of this Notification; such export duty will be non-refundable.

The Notification has come into immediate effect.

DSK View: The Ministry of Commerce and Industry has imposed a minimum export price of US \$ 800 F.O.B per Metric Ton (MT) till 31st December, 2023 with a view to increase availability of onions in the domestic and local markets and to contain its prices.

The imposition of a minimum export price is a measure often utilized by governments to control the export of essential commodities and ensure domestic availability. In this case, the MEP on onions should help stabilize domestic prices,

prevent shortages, or address any other concerns related to the domestic onion market.

The measure has likely been taken to maintain sufficient availability of onions to domestic consumers at affordable prices. Moreover, the Government has also announced the procurement of additional 2 lakh tons of onion as a buffer, over and above the 5 lakh tons already procured. Thus, it the continuous procurement and disposal of onion from the buffer, along with the applicable MEP on onion exports would help moderate the prices for consumers while ensuring remunerative prices to the onion farmers.

EXPORT OF CERTAIN FOOD COMMODITIES THROUGH NATIONAL COOPERATIVE EXPORTS LIMITED (NCEL) ONLY

The Directorate General of Foreign Trade ('DGFT') has amended the Export Policy of Wheat Grain, Flour, Maida, Semolina and Broken Rice Onions vide Notification No. 46/2023 dated 30 November 2023 (available [here](#)).

Earlier the exports of these food commodities were prohibited and/or subjected to quotas on humanitarian or food security grounds on the basis of requests received from the Governments of other countries. As per the text of the above-mentioned Notification, the following food commodities are permitted through National Cooperative Exports Limited ('NCEL') –

Country Name	Commodity	Quantity
Bhutan	Wheat Grain	14,184 MT
	Wheat Flour (Atta)	5326 MT
	Maida/ Semolina	15,226 MT
	Broken Rice	48,804 MT
Mali	Broken Rice	1 Lakh MT
Senegal	Broken Rice	5 Lakh MT in six months' time

Gambia	Broken Rice	50,000 MT in six months' time
Indonesia	Broken Rice	2 Lakh MT

DSK View: The export of wheat, flour, semolina and rice was earlier 'prohibited, subject to requests received from governments of other nations on humanitarian grounds' in order to boost domestic supply. However, the Ministry of Commerce and Industry has now allocated the quantity of exports of these food commodities for certain specified quotas for the above-mentioned countries. Such exports are permitted through National Cooperative Exports Limited (NCEL) only. The involvement of NCEL in facilitating these exports suggests a centralized and organized approach to oversee and manage the export process. This can potentially

streamline procedures and ensure compliance with the specified quantities.

As informed by the Government of India to the WTO's agricultural committee meet, its export restrictions on rice and other food commodities were temporary and subject to review on the basis of domestic demand and supply conditions. The Government has been cooperating with the countries and allowing exports of rice on the basis of requests received by various countries like UAE, Bhutan, Mauritius and Singapore.

Therefore, keeping in line with its WTO commitments and to ensure food security in importing countries, especially to those in need; the Government of India has rescinded its erstwhile Notifications and revised the applicable export policy of various food commodities, including rice, wheat, flour, semolina, etc.

MEDIA & ENTERTAINMENT



BOMBAY HIGH COURT REFUSES TO STAY THE OTT RELEASE OF THE HINDI LANGUAGE WEB SERIES “THE RAILWAY MEN - THE UNTOLD STORY OF BHOPAL 1984”

The Bombay High Court (“Court”), pursuant to an order dated November 16, 2023, rejected a plea to stay the release of the Hindi language web series “The Railway Men - The Untold Story of Bhopal 1984.” Two convicts, who are also former employees of Union Carbide India Private Ltd., had filed an appeal seeking to stop the OTT release and requested a pre-screening of the series to identify any factual errors. The Court dismissed the appeal, noting that: (i) the series was fictional and inspired by real events, and (ii) it was accompanied by a clear disclaimer. The Court emphasized that the Bhopal Gas Tragedy was a well-documented event in the public domain, and the appellants, who were already convicted, had no right to an injunction. The appellants had also contended that the series may affect their legal proceedings. However, the Court held that such contention was untenable given: (i) their prior conviction, (ii) the public availability of trial details since 2010, and (iii) the disclaimer provided by Yash Raj Films (the production company). The Court, therefore, concluded that the appellants did not meet the high threshold required for grant of a stay.

CEASE DISSEMINATION OF DECEPTIVE ADVERTISEMENTS OR INCUR A PENALTY OF RS 1 CRORE FOR MAKING FALSE CURE CLAIMS, WARNS THE SUPREME COURT TO PATANJALI

The Supreme Court (“SC”) has directed Patanjali Ayurved (“Patanjali”) to immediately cease publishing of any misleading claims and advertisements against modern systems of medicine. With respect to the petition filed by the Indian Medical Association (“IMA”), the SC warned Patanjali that it would impose hefty fines of upto Rs. 1 (one) crore on every product of Patanjali, which makes false claims of curing a specific disease. The SC clarified that the issue was about tackling misleading medical advertisements and not a

conflict between allopathy and ayurveda. Patanjali was instructed not to publish such advertisements in the future, and the court asked the Union Government to find a viable solution with respect to tackling misleading medical advertisements and present recommendations by February 5, 2024.

CENTRE PLANNING NEW REGULATIONS, PENALTIES FOR BOTH CREATORS AND PLATFORMS TO DEAL WITH DEEPFAKES

Following a meeting addressing the threat of deepfakes, the Central Government, plans to introduce regulations in this regard. During the meeting, the Information Technology (IT) Minister, Mr. Ashwini Vaishnaw emphasized upon the need for accountability from both content creators and platforms hosting deepfakes, with penalties also under consideration for those engaged in such activities. The meeting focused on detecting, preventing, and reporting deepfakes, as well as increasing public awareness through collaboration between the government, industry, and media. The IT Minister stated that the next meeting in early December would assess the progress made in tackling deepfakes, with social media platforms committing to interim measures aligning with their policies. The government aims to draft regulations within a few weeks, addressing the challenges posed by deepfakes to free speech, privacy, and societal harm. The regulations may take the form of new rules, a new law, or amendments to existing rules, with a focus on ensuring that AI-generated synthetic content is not harmful. The public will be invited to provide comments on the regulatory framework through the MyGov portal. The Prime Minister, Mr. Narendra Modi had earlier raised concerns about the rapid growth of artificial intelligence, particularly in addressing the issue of deepfakes during the virtual G20 Summit.

INDIAN SINGERS RIGHTS ASSOCIATION (ISRA) BECOMES INDIAN SINGERS AND MUSICIANS RIGHTS ASSOCIATION (ISAMRA) ON ITS 10TH ANNIVERSARY

The Indian Singers Rights Association (ISRA), established a decade ago under the leadership of Bharat Ratna, Lata Mangeshkar, as a non-profit organization under the Companies Act, 1956, aimed to advocate for singers' rights and manage the collection and distribution of their royalties, has now evolved into the Indian Singers and Musicians Rights Association (ISAMRA), expanding its scope to include musicians. In 2016, ISRA achieved a significant milestone by securing two judgments from the Delhi High Court, establishing singers' rights to receive royalties. Subsequently, in October 2022, ISRA concluded a historic agreement with all music labels in the country, resolving long-standing litigation and ensuring the payment of royalties to singers. The Minister for Commerce and Trade, Mr. Piyush Goyal announced this achievement in April 2023, acknowledging the groundbreaking accomplishment of over Rs. 50 (fifty) crores in royalties for Indian singers. The latest development involves extending royalty distributions to musicians through ISAMRA. To facilitate this expansion, the organization has been renamed as the Indian Singers' And Musicians' Rights Association (ISAMRA), representing artists not only in India but also globally. ISAMRA has established affiliations with 18 foreign societies, solidifying its presence and impact on an international scale.

DELHI HIGH COURT TO EXAMINE IF STREET ART IS COVERED UNDER COPYRIGHT RULES

The Delhi High Court (“DHC”) is set to delve into a significant legal question surrounding the copyright protection of street art, particularly murals displayed in public spaces. The legal challenge emerged when Acko General Insurance (“Acko”), in its February 2023 advertising campaign, utilized a photograph of a mural titled 'Humanity', situated on a public building in Mumbai. Acko extended the campaign to its social media platforms as well. In response, St+Art India Foundation (“St+art”), an organization dedicated to art projects in public spaces, along with Mexican muralist Paola Delfin Gaytan, the creator of 'Humanity', issued a legal notice to Acko, demanding the removal of the hoarding and social media posts featuring images of the mural. Acko contested the legal notice, asserting that the use of the mural in its advertisement did not constitute copyright infringement. Acko justified its position by claiming that the artwork fell under the category of "fair use" since it was permanently located in a public space accessible to the public. St+Art, renowned for its contributions to public art, including creating the largest mural in the country on the MTNL building in Mumbai and the tallest mural of Mahatma Gandhi at the Delhi police headquarters, contested Acko's stance. Along with Ms. Gaytan, St+Art moved the DHC, arguing that they held the copyright to the mural. They contended that Acko's use of images of 'Humanity' was purely commercial in

nature. The DHC, pursuant to an order dated November 10, 2023, acknowledged that the removed hoarding was unmistakably an advertisement. The next hearing is now in February 2024. In the interim, the DHC has instructed Acko to remove all online content associated with the mural. This legal battle not only brings attention to the specific dispute between the involved parties but also raises broader questions about the extent of copyright protection afforded to street art, especially murals located in public spaces. The DHC's eventual decision could have implications for future cases involving the copyright status of such artistic expressions.

THE DELHI HIGH COURT HAS INSTRUCTED THE CENTRAL GOVERNMENT TO RELEASE PRELIMINARY GUIDELINES FOR ENSURING THE ACCESSIBILITY OF FILMS TO DISABLED INDIVIDUALS

The Delhi High Court (“DHC”) has directed the Union Ministry of Information and Broadcasting (I&B) to publish draft guidelines within the next two to four weeks for making films accessible to persons with disabilities (PwDs), including those with visual and hearing impairments. The move aims to gather stakeholder comments on the proposed guidelines. An official from the I&B ministry informed the court that the draft guidelines are under preparation, and after stakeholder comments, the approval process by concerned ministries, including the Union Law Ministry, could take three to six months. The DHC, in response to a plea, which sought features for persons with disabilities in the OTT release of the movie “Pathaan”, emphasized the need for films lacking necessary captioning and audio descriptions to be released in an accessible manner during this period. The matter is scheduled for the next hearing on January 31, 2024. The DHC also addressed concerns related to the cost of technology, privacy, and viewer experience raised during a meeting on October 19, 2023, noting that technological solutions are increasingly available, and the ministry is considering all options.

THE DJ UNION CLAIMS A FRAUD OF RS 2500 CRORE INVOLVING THREE COMPANIES IN CHANDIGARH AND DEMANDS A THOROUGH INVESTIGATION

The Light and Sound DJ Union (“Union”) in Chandigarh has leveled fraud allegations against three companies—Phonographic Performance Limited (PPL), Novex Communications, and Indian Performing Rights Society (IPRS). The Union claims that despite the expiration of licenses under the Indian Copyright Act, 1957 (“Act”) these companies continued unauthorized collections in the name of licenses across the country. The alleged illegal collections amount to a total of Rs. 2,500 crores, with PPL facing accusations of Rs. 1000 crore, Novex Communications Rs. 1000 crore, and IPRS Rs. 500 crore. The All India Light and DJ Association has lodged a complaint with the Chandigarh Police, urging an investigation into the matter. According to

the association and Delhi's Chief Veerendra Babbar, these companies were appointed under the Act in 1994 to conduct DJ and light business with licenses. However, their agreements with the government expired in the year 2012, yet they continued to make substantial collections across the country. This information was revealed in response to an RTI inquiry from the Revenue Department of the Government of India. Manmohan Jolly, President of the Chandigarh Light and DJ Association, highlighted that a case against these companies was filed in the Delhi High Court, resulting in a judgment against them in 2018. Similarly, the Madras High Court ruled against the companies in 2021. The DJ Association further claims that failure to pay fees to these companies results in them filing cases in courts in other states, imposing financial burdens on individuals involved in the light and DJ business, forcing them to pay out of fear. The Union is seeking a thorough investigation into these alleged fraudulent activities.

DELHI HIGH COURT DIRECTS MOHALLA TECH (P) LTD. TO REMOVE ZEE'S COPYRIGHTED CONTENT FROM SHARECHAT AND MOJ APPS AND WEBSITES

Zee Entertainment Enterprises Ltd. ("Zee") has filed a case seeking an interim injunction against Mohalla Tech Pvt. Ltd. ("MTPL") to prevent the continued availability of Zee's copyrighted recordings in MTPL's library. Zee has claimed ownership of copyright in several music recordings and had previously entered into a license agreement with MTPL. This

agreement, dated September 09, 2020, allowed MTPL to store Zee's licensed content in its library, making it accessible to MTPL's users through "ShareChat" and "Moj" apps and websites. The license agreement expired on July 14, 2023, and basis the reply from MTPL dated September 01, 2023, MTPL claimed to have removed Zee's licensed content from its audio library after the agreement's expiry. Despite MTPL's claims of removal, Zee alleged that its copyrighted songs and recordings continued to be part of MTPL's curated library, accessible to users through the "ShareChat" and "Moj" Apps and websites. Zee contended that this ongoing availability amounted to copyright infringement and a breach of the license agreement, especially as the agreement had already expired. MTPL, in response, argued that any recordings it might be making available through "ShareChat" and "Moj" Apps and websites were either remixes, cover versions, or constituted user-generated content. MTPL also specified that the only identified copyrighted content from Zee was related to 134 films/clips enlisted in Schedule 1A of their agreement. The Delhi High Court ("DHC"), led by Justice C. Hari Shankar, issued a directive to MTPL, instructing the company to ensure that none of the 134 films/clips recordings from Zee were made available in its library accessible through "ShareChat" and "Moj" apps and websites. The DHC clarified that the injunction did not extend to MTPL's use of cover versions, remixes, or user-generated content. The case is scheduled for the next hearing on February 06, 2024.



LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERSHIP) RULES, 2023

The MCA, *vide* its notification dated November 9, 2023 (accessible [here](#)), has notified the Limited Liability Partnership (Significant Beneficial Ownership) Rules, 2023 ("LLP SBO Rules") to introduce the concept of beneficial owners for Limited Liability Partnerships ("LLPs").

A 'Significant Beneficial Owner' ("SBO") has been defined in Rule 3 (k) of the LLP Rules 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 such reporting limited liability partnership, namely:

- (i) holds indirectly or together with any direct holdings, not less than 10% (ten percent) of the contribution;
- (ii) holds indirect holding together with any direct holdings, not less than 10% (ten percent) of voting rights in respect of the management or policy decisions in such LLP;
- (iii) has right to receive or participate in not less than 10% (ten percent) of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
- (iv) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

The key provisions of the LLP SBO Rules have been summarised below:

1. Rule 4 of the LLP SBO Rules imposes an obligation on every reporting LLP to identify significant beneficial owners and cause such individuals to make a declaration in Form LLP BEN-1. If the total

contribution, voting rights, or profit/distribution rights of a partner of an LLP (not being an individual) is at least 10% (ten percent), then the LLP must issue a notice in Form LLP BEN-4 seeking information in respect of significant beneficial owner.

2. Rule 5 of the LLP SBO Rules imposes an obligation on every individual who is a SBO in a reporting LLP to make the declaration in Form LLP BEN-1 within 90 (ninety) days of the commencement of the LLP SBO Rules. However, if an individual subsequently becomes an SBO or where the significant beneficial ownership undergoes any change, a declaration in this regard is to be made within 30 (thirty) days of acquiring such ownership/change.
3. Rule 6 of the LLP SBO Rules imposes an obligation on every LLP to file a return in Form LLP BEN-2 with the jurisdictional registrar of companies within 30 (thirty) days of receiving a declaration in Form LLP BEN-1 from the SBO.
4. Rule 7 of the LLP SBO Rules imposes an obligation on every LLP to maintain a register of SBOs in Form LLP BEN-3.
5. The LLPs are also entitled to make an application to the National Company Law Tribunal where any person fails to give the information required in respect of SBO or when the information given is not satisfactory.

The LLP SBO Rules are not applicable to:

- (a) LLPs held by Central Government or by one or more State Governments or any local authority; or
- (b) any reporting LLP/body corporate/entity controlled by Central or one or more State Governments or

jointly by the Central and one or more State Governments; or

(c) an investment vehicle registered and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds, real estate investment trusts or infrastructure investment trust; or

(d) an investment vehicle regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCs

The Reserve Bank of India (“RBI”) vide notification bearing number RBI/2023-24/85 DOR.STR.REC.57/21.06.001/2023-24 dated November 16, 2023¹⁴, has issued regulatory measures towards consumer credit and bank credit to non-banking financial companies (“NBFCs”). Some of these measures are listed below:

Consumer credit exposure:

- i. The risk weight for consumer credit exposure in commercial banks, covering both existing and new loans, has been raised from 100% to 125%.
- ii. The risk weight for consumer credit exposure in NBFCs, categorized as retail loans has been increased from 100% to 125%.
- iii. The risk weight for credit card receivables of Scheduled Commercial Banks (“SCBs”) has been raised from 125% to 150%, and for NBFCs, the risk weight for credit card receivables has been raised from 100% to 125%.

Bank credit to NBFCs:

- i. The risk weight on bank credit to NBFCs has been increased by 25 percentage points (over and above the risk weight associated with the given external rating) in all cases where the extant risk weight as per external rating of NBFCs is below 100%. *This provision does not apply to loans provided to HFCs and loans to NBFCs eligible for classification as part of the priority sector, as per existing instructions.*

Strengthening credit standards:

- i. Regulated Entities are required to assess and potentially revise their current sectoral exposure limits for consumer credit and establish board-approved limits for various sub-segments within consumer credit.
- ii. Any top-up loans granted by Regulated Entities against depreciable movable assets, such as vehicles, will be treated as unsecured loans for purposes of credit appraisal, prudential limits, and exposure assessment.

DSK View: *These measures are expected to moderate the expansion of consumer credit and promote responsible lending practices among both commercial banks and NBFCs. The increased risk weights could translate into higher capital requirements for these institutions, encouraging them to adopt more cautious lending practices. These measures seem to be a move by the RBI to maintain financial stability and promote responsible lending and a more prudent approach to consumer credit.*

RBI EXPANDS SILVER IMPORT GUIDELINES FOR QUALIFIED JEWELLERS

The RBI on November 10, 2023, issued a notification vide notification bearing Circular no. 7 A.P. (DIR Series) RBI/2023-2024/83 regarding the Guidelines on the Import of Silver by Qualified Jewellers (“Guidelines”)¹⁵ as notified by the International Financial Services Centres Authority (“IFSCA”) for expanding the import guidelines to include silver for Qualified Jewellers in the same manner as gold imports was permitted vide A.P. (DIR Series) Circular No.04 dated May 25, 2022.

¹⁴

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12567&Mode=0>

¹⁵

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12565&Mode=0>

Some of the key provisions of the Guidelines for Qualified Jewellers are given below:

- i. Qualified Jewellers can now import silver under specific Indian Trade Clarification based on Harmonized System (“ITC(HS)”) Codes through India International Bullion Exchange IFSC Limited (“IIBX”).
- ii. AD Category-I banks are authorized to allow Qualified Jewellers to remit advance payments for 11 (eleven) days for the import of silver through IIBX subject to the conditions as mentioned in A.P. (DIR Series) Circular No.04 dated May 25, 2022.

DSK View: This Guideline is a significant update that is expected to boost the import of silver and contribute to the growth of the jewellery industry in India.

MASTER DIRECTION ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

RBI *vide* notification bearing number RBI/2023-24/107 DoS.CO.CSITEG/SEC.7/31.01.015/2023-24 dated November 07, 2023¹⁶, has issued new directions on Information Technology (“IT”) Governance for banks and NBFCs called as *Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023 (“The Directions”)*. Some key highlights of the Directions are given below:

- 1) **Establishment of an IT Governance Framework:** The Directions mandate all Regulated Entities (“REs”) to establish a robust IT governance framework to cover strategic alignment, risk management, resource management, performance management, etc.
- 2) **Role of the Board of Directors:** The role of the board of directors of REs have been given more responsibility in terms of approving the RE's IT strategies and policies, including those related to Information Assets, Business

Continuity, Information Security, and Cyber Security. The board is also required to review these strategies and policies at least annually.

- 3) **Formation of an IT Strategy Committee of the Board (“ITSC”):** The Directions require REs to establish an ITSC, responsible for guiding the preparation of the IT Strategy, ensuring alignment with the RE's overall strategy, and overseeing the effectiveness of IT Governance and Information Security Governance.
- 4) **Senior Management Oversight:** The senior management of the RE is responsible for ensuring the execution of the IT Strategy, the effectiveness of IT/IS infrastructure, the implementation of IT risk management processes, etc.
- 5) **Establishment of an IT Steering Committee:** an IT Steering Committee is required to be formed by REs, with representation from Senior Management and business functions, to assist the ITSC in strategic IT planning, overseeing IT performance, aligning IT activities with business needs, etc.

To ensure the security and effectiveness of their IT systems, REs have been directed to implement certain controls, including appointment of senior-level IT professionals to oversee the execution of IT projects, manage IT infrastructure, assess IT risks; establish a robust IT and Information Security Risk Management Framework; form an Information Security Committee (“ISC”) to manage cyber/information security, back up data regularly and verify its usability, etc.

DSK View: The Directions, which are effective from April 1, 2024, aim to strengthen IT governance practices in the financial sector and enhance cyber security resilience and may work to ensure that these institutions have in place robust IT governance frameworks, risk management practices, controls, and assurance mechanisms to protect their IT systems and data from cyberattacks.

¹⁶<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/107MDITGOVERNANCE3303572008604C67AC25B84292D85567.PDF>



THE REAL ESTATE REGULATORY AUTHORITY HAS RESCINDED ITS REGISTRATION RESTRICTION ORDER, LEADING TO THE LIFTING OF THE BAN ON NON-COMPLIANT PROPERTIES

The Real Estate Regulatory Authority (“**RERA**”) revoked its directive issued on September 11, 2023, whereby, the sub-registrars of Delhi were instructed not to register properties that contravene the Unified Building Bye Laws of 2016. This reversal follows a meeting at Raj Niwas, wherein, the Lieutenant Governor Vinai Kumar Saxena, prompted by concerns raised by individuals facing challenges in registering their lands and flats, requested a reconsideration of the order.

The initial announcement made on September 9, 2023, had triggered widespread outcry and protests from various quarters. With only DDA units, plots, wills, and rental agreements being processed for registration, the sub-registrar offices practically halted the registration of properties for a week, impacting revenue collection. This pause not only posed difficulties for the public, particularly those in the middle and lower-income brackets but also had repercussions on government revenue, given the significance of land and sale deed registrations as crucial tax revenue streams, accordingly, the said order has been revoked.

ALLAHABAD HIGH COURT UPHOLDS HOMEBUYERS' RIGHTS, ASSERTS RERA AUTHORITY OVER CONTRACTUAL TERMS IN U.P. AVAS EVAM VIKAS PARISHAD CASE

The Hon’ble Allahabad High Court, in the case titled *U.P. Avas Evam Vikas Parishad vs. Dhruv Kumar Chaturvedi* [Real Appeal No. 67 of 2023 and connected appeals], has reinforced the supremacy of the Real Estate (Regulation and Development) Act, 2016 (“**RERA Act**”) over contractual terms of any agreement executed between promoter and allottee. The case involved a complaint against the U.P. Avas Evam Vikas Adhinyam, a public institution, for delays in delivering possession, before the UP Real Estate Appellate Tribunal, Lucknow (“**Tribunal**”). The Tribunal ruled in favor of the complainant. Subsequent to the appeal filed by the Tribunal, the appellants filed an appeal against the order of the Tribunal.

The Hon’ble Court dismissed the appeals filed by the appellants and affirmed the ruling of UP Real Estate Appellate Tribunal, Lucknow, emphasized the precedence set in the case of *M/S Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P.*, whereby, the Hon’ble Supreme Court of India categorically stated that the contractual terms cannot override the provisions as laid under the RERA Act.



MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY RELEASES ADVISORY TO SOCIAL MEDIA INTERMEDIARIES TO IDENTIFY DEEPFAKES AND PREVENT MISINFORMATION

The Ministry of Electronics and Information Technology (“**MEITY**”), *vide* its press release dated November 7, 2023 (accessible [here](#)), advised the social media intermediaries to (a) ensure that due diligence is exercised and reasonable efforts are made to identify misinformation and deepfakes, and in particular, information that violates the provisions of rules and regulations and/or user agreements; (b) expeditiously take action against such cases, well within the timeframes stipulated under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and disable access to the content/information; (c) ensure that the users are caused not to host such information/content/Deep Fakes; and (d) remove any such content when reported, within 36 hours of such reporting.

MINISTRY OF INFORMATION AND BROADCASTING NOTIFIES THE DIGITAL ADVERTISEMENT POLICY, 2023

The Ministry of Information and Broadcasting (“**MIB**”) *vide* its advisory dated November 9, 2023, notified the Digital Advertisement Policy, 2023 (“**Advertisement Policy**”) (accessible [here](#)). The Advertisement Policy grants the Central Bureau of Communication (“**CBC**”) the authority to empanel agencies and organizations engaged in social media, streaming, and other digital audio services for government advertisements. This policy expands CBC’s reach into the Over the Top (“**OTT**”) and Video on Demand space, allowing it to convey public service messages through mobile applications and streamline ad placements on social media platforms. Additionally, the CBC can also on-board new communication platforms with the approval of a duly constituted committee. Further, the Advertisement Policy, to ensure transparency and efficiency, introduced the process of competitive bidding for the purpose of rate

discovery. The rates thus discovered shall remain valid for a period of 3 (Three) years.

DEPARTMENT OF CONSUMER AFFAIRS ISSUES GUIDELINES FOR PREVENTION AND REGULATION OF DARK PATTERNS, 2023

Central Consumer Protection Authority, *vide* its notification dated November 30, 2023, released the Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“**Guidelines**”), effective from November 30, 2023, that purports to prohibit activities which may tantamount as ‘dark patterns’ (accessible [here](#)). Herein, the term ‘dark pattern’ means “*such practices or deceptive design patterns using UI/UX interactions on any platform, to mislead or trick users to do something they originally did not intend or want to do, by impairing the consumer autonomy and decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights*”. The practices which may be considered as ‘dark pattern’ have been listed under the Guidelines. These Guidelines are applicable to: (i) all online platforms which systematically offers goods or services in India; (ii) advertisers; and (iii) sellers.

MIB INTRODUCES THE BROADCASTING SERVICES REGULATION BILL, 2023

The MIB, *vide* its notice dated November 10, 2023, introduced the Broadcasting Services Regulation Bill, 2023 (“**BSR Bill**”) (accessible [here](#)), to replace the long-standing Cable Television Networks Regulation Act, 1995. The BSR Bill is currently in consultation phase and public comments have been sought by December 9, 2023. The BSR Bill holds significant implications for the broadcasting sector as the government aims to expand the regulatory scope of MIB by inculcating OTT and other digital platforms under its governance. The proposed legislation aims to unify the broadcasting platforms under a single unified regulatory

framework which was earlier subject to disparate rules and regulations.

Further, the BSR Bill empowers the government officials to seize the equipment of the broadcasting services and broadcasting networks if they do not adhere to the proposed legislation and the rules framed thereunder.

WHITE COLLAR CRIME

A SEIZURE MAHAZAR IS A PUBLIC DOCUMENT AND THE ACCUSED HAS THE RIGHT TO OBTAIN A COPY ON DEMAND AND ON PAYMENT OF LEGAL FEE

The Kerala High Court has held that once a seizure mahazar (signed document for reporting the seizure of goods to the Magistrate) is prepared and sent to court, it is a public document and there is no bar against issuing a certified copy of the same to the accused. Section 76 of the Indian Evidence Act, 1872 (“Evidence Act”) gives a person the right to obtain a copy of a public document on demand and payment of legal fees. The lower court had rejected the application for certified copy of the seizure mahazar observing that the same is not necessary for filing a bail application. The High Court has held that an FIR and seizure mahazar may be necessary at the stage of bail application to mould the accused’s case and therefore denial of the same is illegal.

Case- Shibu J vs. State of Kerala (Crl. MC No. 8455 of 2023)

THE SUPREME COURT OF INDIA SETS ASIDE THE ORDER REJECTING A QUASHING PETITION BEFORE THE FILING OF THE FINAL REPORT UNDER SECTION 173 OF THE CODE OF CRIMINAL PROCEDURE, 1973 (“CRPC”)

The Supreme Court of India has upheld the order of the Madhya Pradesh High Court setting aside a quashing petition without going into merits. The High Court had observed that the Investigating Officer will give an opportunity to the appellant to explain the material collected against him during investigation before submission of a final report under Section 173 of the CrPC. The Supreme Court held that such an approach is very strange and contrary to law and therefore the order of the High Court is not sustainable.

Case – Shiv Kumar Sharma vs. State of Madhya Pradesh & Ors. (Criminal Appeal No. 3347 of 2023)

CERTIFICATE UNDER SECTION 65B OF THE INDIAN EVIDENCE ACT, 1872 (“EVIDENCE ACT”) CAN BE PRODUCED AT ANY STAGE IF THE TRIAL IS NOT OVER

The Supreme Court of India has held that a certificate under Section 65B of the Evidence Act in respect of primary evidence, which was already submitted before the Trial Court after completion of the investigation, can be produced at any stage. The Court allowed the application filed under Section 311 of CrPC observing that the said certificate was not an evidence, which was created belatedly but its only meeting the requirement of law to prove a report on record. Accordingly, no prejudice is caused to the Accused by production of the said certificate because the accused will have full opportunity to rebut the evidence led by the prosecution.

Case- State of Karnataka vs. T. Naseer @ Thadiantavida (SLP (Crl.) No. 6548 of 2022)

INVESTIGATING AGENCIES CAN SEIZE THE PASSPORTS BUT CANNOT IMPOUND IT

The High Court of Jammu & Kashmir & Ladakh relying on the case of *Suresh Nanda vs. Central Bureau of Investigation*, ((2008) 3 SCC 674), has held that investigating agencies has the powers to seize a passport under Section 102 of the Code of Criminal Procedure, 1973 (“CrPC”), but does not have the power to impound or retain a passport. The power of impounding vests with the Passport Authorities under Section 10(3) of the Passport Act.

Case- Madhu Bakshi vs. Anti-Corruption Bureau Kashmir & Anr. (CRM (M) No. 235/2023)



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