

NEWSLETTER

September 2024

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AMENDMENT TO CIRCULAR FOR MANDATING ADDITIONAL DISCLOSURES BY FPIs THAT FULFIL CERTAIN OBJECTIVE CRITERIA¹

Previously, Securities Exchange Board of India (“SEBI”) had mandated additional disclosures vide circular no. SEBI/ HO/ AFD/ AFD-PoD-2/CIR/P/2023/148 for Foreign Portfolio Investors (“FPIs”) that fulfil the objective criteria as specified in that circular. However, certain FPIs listed under Para 8 of the circular were exempted from these disclosure requirements, subject to certain conditions. This circular was later integrated into the FPI Master Circular issued on May 30, 2024.

In this context, SEBI has decided that University Funds and University-related Endowments will not need to make the additional disclosures mentioned in the FPI Master Circular, provided they meet certain conditions. Specifically, these funds must have less than 25% of their global assets under management in Indian equity, a global AUM exceeding INR 10,000 crore, and provide appropriate returns or filings to their home jurisdiction’s tax authorities, proving their status as a tax-exempt non-profit organization.

Eligible jurisdictions for these exemptions shall be determined by SEBI from time to time, in consultation with relevant bodies, as outlined in the FPI Master Circular.

This circular came into effect from August 01, 2024.

SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (SECOND AMENDMENT) REGULATIONS, 2024²

On August 2, 2024, the Securities and Exchange Board of India (SEBI) issued the SEBI (Mutual Funds) (Second Amendment) Regulations, 2024, amending the SEBI (Mutual Funds) Regulations, 1996. The key amendments are as follows:

¹ SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/104

² SEBI/LAD-NRO/GN/2024/197

- (i) A new clause has been added to Regulation 2(1) to define "market abuse". It means and includes manipulative, fraudulent and unfair trade practices which may contravene Section 12A of the Act or any of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;
- (ii) Three sub-regulations have been added after sub-regulation (26) of Regulation 25, outlining the obligations of asset management companies (“AMCs”):
 - (a) AMCs are required to establish an institutional mechanism to identify and prevent potential market abuse, including front-running and fraudulent transactions in securities,
 - (b) The CEO/Managing Director or an equivalent officer, along with the Chief Compliance Officer, will be held responsible and accountable for implementing this mechanism, and
 - (c) AMCs must establish, implement, and maintain a documented whistle-blower policy; and
- (iii) An amendment to Clause 2 in Part B of the Fifth Schedule has added a proviso to sub-clause (b), which states that face-to-face communications, including off-premises interactions, are not required to be recorded.

INSTITUTIONAL MECHANISM BY ASSET MANAGEMENT COMPANIES FOR IDENTIFICATION AND DETERRENCE OF POTENTIAL MARKET ABUSE INCLUDING FRONT-RUNNING AND FRAUDULENT TRANSACTIONS IN SECURITIES³

In view of the SEBI (Mutual Funds) (Second Amendment) Regulations, 2024, SEBI issued this circular on August 05, 2024 to address the instances of market abuse including front running and fraudulent transactions in securities. The AMCs will put in place an institutional mechanism will consist of enhanced surveillance systems, internal control procedures, and escalation processes which will help to identify market abuse. The mechanism shall provide for the following:

- (i) **Accountability:** The Chief Executive Officer or Managing Director or Chief Compliance Officer or any other person with equivalent power shall be responsible for the implementation of the institutional mechanism;
- (ii) **Alert-based surveillance mechanism:** AMC shall be required to develop a system which shall be able to generate and process alerts;
- (iii) **Processing of alerts:** AMC shall, whilst it is processing the alerts, shall consider and review all the recorded communications including chats, emails, access logs of dealing room and CCTV footage (if available). The AMC shall also maintain and monitor entry logs to AMC's premises;
- (iv) **Standards operating procedure:** The AMCs shall formulate written policies and procedures for conducting examination and taking action in case of potential market abuse including front-running and fraudulent transactions in securities by its employees and connected entities. Such policies/procedures shall be approved by AMCs' board of directors;
- (v) **Action on suspicious alerts:** AMCs shall take suitable action upon becoming aware of any potential market abuse by its employees or brokers / dealers, including suspension or termination of such persons/entities;
- (vi) **Escalation process:** AMCs shall have an escalation process to promptly inform its board of directors and trustees, regarding instances of potential market abuse, if any, and results of the examination conducted by the AMCs;
- (vii) **Whistle blower policy:** AMCs shall have a documented whistle blower policy in line with sub-regulation (29) of regulation 25 of the SEBI MF Regulations; and
- (viii) **Periodical review:** AMCs shall ensure that the procedures and/or systems put in place are reviewed and updated at appropriate periodic intervals.

To ensure the effective operation of the institutional mechanism, stock exchanges and depositories, in consultation with the Association of Mutual Funds in India, are required to develop systems that enable data sharing with AMCs.

Furthermore, AMCs must report all examined alerts to SEBI, including the actions taken. This information should be included in the Compliance Test Report and the Half-Yearly Trustee Report which shall be submitted to SEBI in the format provided under this circular.

SECURITIES AND EXCHANGE BOARD OF INDIA (ALTERNATIVE INVESTMENT FUNDS) (FOURTH AMENDMENT) REGULATIONS, 2024

On August 5, 2024, SEBI issued the SEBI (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024, amending the SEBI (Alternative Investment Funds) Regulations, 2012.

The following amendments have been envisaged under this amendment:

The first proviso to Regulation 13(5) has been revised to allow large value funds for accredited investors to extend their tenure by up to five years, subject to approval from two-thirds of the unit holders by the value of their investment. Previously, the extension beyond two years required approval in accordance with the contribution agreement, other fund documents, and conditions set by the Board.

Regulation 16(1)(c) has been modified to clarify that Category I Alternative Investment Funds are prohibited from borrowing funds or using leverage for the purpose of making investments or for any other reason. Earlier, the regulation did not specify the purpose.

Similarly, Regulation 17(1)(c) has been updated to state that Category II Alternative Investment Funds are also prohibited from borrowing funds or using leverage for the purpose of making investments or for any other reason. This provision previously did not specify the purpose.

These amendments came into effect on August 6, 2024.

GUIDELINES FOR BORROWING BY CATEGORY I AND CATEGORY II AIFS AND MAXIMUM PERMISSIBLE LIMIT FOR EXTENSION OF TENURE BY LVFS⁵

The amendment provides that Category I and Category II Alternative Investment Funds (AIF) may borrow for the

³ SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/107

⁴ SEBI/LAD-NRO/GN/2024/198

⁵ SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/112.

purpose of meeting shortfall in drawdown amount, subject to the following additional conditions:

- 1) If AIF intends to borrow funds for meeting shortfall in drawdown amount, the same shall be disclosed in the PPM of the scheme.
- 2) Such borrowing shall be done only in case of emergency and as a last recourse, when the investment opportunity is imminent to be closed and the drawdown amount from investor(s) has not been received by the AIF before the date of investment, in spite of best efforts by manager to obtain the drawdown amount from the delaying investor(s).
- 3) The amount borrowed shall not exceed twenty per cent of the investment proposed to be made in the investee company, or ten per cent of the investable funds of the scheme of AIF, or the commitment pending to be drawn down from investors other than the investor(s) who has failed to provide the drawdown amount, whichever is lower.
- 4) The cost of such borrowing shall be charged only to investor(s) who failed to provide the drawdown amount for making investments.
- 5) The flexibility of borrowing to meet shortfall in drawdown amount shall not be used as a means to provide different drawdown timelines to investors.
- 6) The manager shall disclose the details with respect to amount borrowed, terms of borrowing and repayment to all the investors of the AIF/scheme, on a periodic basis as per the terms of agreement with the investors of the AIF.
- 7) Further, all Category I and Category II AIFs shall maintain thirty days cooling off period between two periods of borrowing as permissible under AIF Regulations. The cooling off period of thirty days shall be calculated from the date of repayment of previous borrowing.

These amendments came into effect immediately.

MODALITIES FOR MIGRATION OF VENTURE CAPITAL FUNDS REGISTERED UNDER ERSTWHILE SEBI (VENTURE CAPITAL FUNDS) REGULATIONS, 1996 TO SEBI (ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012⁶

The amendment allows funds to transition to Alternative Investment Funds (AIF) Regulations, providing flexibility for managing unliquidated investments post-tenure. Venture Capital Funds (VCF) seeking migration must submit their original registration certificate and required information by July 19, 2025. The circular details conditions for schemes with both expired and unexpired liquidation periods.

⁶ SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/111.

Migration Procedure- To migrate to the AIF Regulations as a "Migrated VCF," a VCF must submit an application to SEBI in the specified format. The application requires:

- a) The original certificate of registration issued under VCF Regulations.
- b) Relevant information as per the format specified in Annexure I of the notification.
- c) The flexibility to migrate is available until July 19, 2025.

For VCFs with schemes whose liquidation periods have not yet expired, the tenure of the schemes will be determined based on the Private Placement Memorandum (PPM). If the PPM disclosed a definite tenure, it remains unchanged post-migration. If the PPM did not specify a tenure, the remaining tenure will be determined with the approval of 75% of investors by value.

Conditions for Schemes with Expired Liquidation Periods- For VCFs that have at least one scheme with an expired liquidation period, migration is allowed only if there are no pending investor complaints regarding non-receipt of funds or securities. A one-time additional liquidation period of one year is available for schemes with expired liquidation periods, allowing them to wind up by July 19, 2025.

Post-Migration Provisions- Upon migration, the investors, investments, and units of the VCF or its schemes registered under VCF Regulations will be deemed as those of the Migrated VCF under AIF Regulations. Additionally, the applicability of the SEBI Master Circular for AIFs (dated May 7, 2024) and subsequent circulars will extend to Migrated VCFs, as detailed in Annexure II of the notification.

Non-Migrating VCFs- For VCFs that choose not to migrate, Schemes with unexpired liquidation periods will be subject to enhanced regulatory reporting. Schemes with expired liquidation periods will face appropriate regulatory action if they continue operating beyond their original tenure. VCFs that have wound up all their schemes or have made no investments must apply to SEBI to surrender their registration by March 31, 2025. Failure to do so will result in the cancellation of their registration.

These amendments came into effect immediately.

CYBERSECURITY AND CYBER RESILIENCE FRAMEWORK (CSCRF) FOR SEBI REGULATED ENTITIES (RES)⁷

These guidelines are aimed at strengthening cybersecurity for all regulated entities in the Indian securities market. This framework updates and supersedes previous cybersecurity guidelines issued by SEBI. The Cybersecurity and cyber resilience framework (CSCRF) are designed to address evolving cyber threats, align with industry standards, and

⁷ SEBI/HO/ITD-1/ITD_CSC_EXT/P/CIR/2024/113.

ensure robust cybersecurity practices across various entities, including stockbrokers, mutual funds, and investment advisors. It sets forth guidelines for anticipating, withstanding, containing, recovering from, and evolving against cyber incidents. It categorizes entities based on their size and scope and includes a structured methodology for implementation and compliance. It mandates the establishment of Security Operation Centres (SOC) and provides provisions for both self-managed and market-provided SOCs, aiming to simplify compliance for smaller entities. Implementation timelines vary, with some entities required to comply by January 1, 2025, and others by April 1, 2025. It highlights the importance of governance and supply chain risk Management and at the same time, it focuses on evolving security guidelines such as data classification and localization, Application Programming Interface (API) security, Security Operations Centre (SOC) and measuring its efficacy, Software Bill of Materials (SBOM), etc.

It also aims to ensure that even smaller REs are equipped with adequate cybersecurity measures and achieve resiliency against cybersecurity incidents/ attacks. The guideline contains provisions with respect to various areas such as requirements of IT services, Software as a Service (SaaS) solutions, hosted services, classification of data, audit for software solutions/ applications/ products used by Res.

AMENDMENT TO MASTER CIRCULAR FOR INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) DATED MAY 15, 2024 - REVIEW OF STATEMENT OF INVESTOR COMPLAINTS AND TIMELINE FOR DISCLOSURE OF STATEMENT OF DEVIATION(S)⁸

These amendments, effective immediately, focus on the review process for investor complaints and the timeline for disclosing deviations in the use of proceeds. Previously, the Board of Directors of the Investment Manager was required to review investor complaints before submitting the statement to stock exchanges. However, this requirement has been revised to align with SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015. Now, the statement will be reviewed on a quarterly basis. Additionally, the timeline for submitting statements on deviations from the stated use of proceeds has also been adjusted. Such statements will now be submitted to stock exchanges along with the financial results, rather than within 21 days of the quarter's end. These changes are intended to streamline compliance and promote ease of doing business for InvITs.

These amendments came into effect immediately.

REVIEW OF ELIGIBILITY CRITERIA FOR ENTRY/EXIT OF STOCKS IN DERIVATIVES SEGMENT⁹

To be eligible for entry into the derivatives segment, stocks must meet certain criteria based on their performance in the cash market over the previous six months on a rolling basis. The stock's Median Quarter Sigma Order Size (MQSOS) must be at least INR 75 lakh, revised, from the current INR 25 lakh and the Market Wide Position Limit (MWPL) must be at least INR 1,500 crore, increased from the present INR 500 crore due to a rise in market capitalisation.

Additionally, the stock's Average Daily Delivery Value in the cash market has been increased to at least INR 35 crore from INR 10 crore, owing to a significant increase in the average daily delivery value.

Stocks, which meet the eligibility criteria in the underlying cash market of any stock exchange, would be permitted to trade in the equity derivatives segment of all stock exchanges.

The stock exchanges will settle the derivative contracts at a price calculated by the clearing corporations based on volume-weighted average price (VWAP) from the cash segment across all exchanges.

In addition, other aspects like any surveillance concerns, ongoing investigations, or other administrative considerations will be taken into account while considering a stock for introduction into the derivatives segment. In case, a stock fails to meet these criteria for three months it will exit the derivatives segment. New contract will be issued on these stocks. However, the existing unexpired contracts can be allowed to trade till expiry. Once a stock is excluded from the derivatives segment, it will not be considered for re-inclusion for one year. A framework has been introduced, product success framework (PSF) for single-stock derivatives. Under this framework, at least 15 per cent of trading members active in all stock derivatives, or 200 trading members (whichever is lower), must have traded in any derivative contract on the stock being reviewed, on average, each month during the review period.

Additionally, trading must occur on at least 75 per cent of the trading days during the review period. The stock should also have an average daily turnover (futures and options premium combined) of at least INR 75 crore and an average daily notional open interest (futures and options combined) of at least INR 500 crore during the review period.

These amendments came into effect immediately.

⁸ SEBI/HO/DDHS/DDHS-PoD-2/P/CIR/2024/114.

⁹ SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/116.



The following are the main highlights in the Competition Law space for the month of August 2024:

DELHI HIGH COURT SETS ASIDE CCI'S PROBE INTO JCB'S ALLEGED ANTI-COMPETITIVE PRACTICES

The Delhi High Court, in its [judgment](#) dated August 14, 2024, set aside the CCI's *prima facie* order directing an investigation against JCB India Limited ("**JCB**") for alleged abuse of dominant position.

By way of a brief background, the case involved an intellectual property dispute between JCB and Bull Machines Private Limited ("**Bull Machines**") which are engaged in the manufacture heavy equipment vehicles for road construction.

During the settlement negotiations of the IP dispute, Bull Machines approached the CCI, alleging that JCB had engaged in bad faith litigation, leading to the denial of market access. The CCI, basis the same and in consideration of the evidence placed on record found merit in these allegations and ordered a detailed investigation, citing the rising concern of predatory litigation in India and its potential impact on market access.

JCB, however, challenged the investigation, arguing that no final decision had been made on the alleged bad faith litigation, and also contested the scope of the search and seizure connected to a dawn raid it had faced.

The CCI contended that the pending investigation should not be closed, as the settlement terms could be unfair and anti-competitive, similar to how litigation can be abusive or predatory. However, the Delhi High Court disagreed with the CCI's stance, ruling that investigating the settlement terms could undermine the settlement process. The court determined that the settlement terms were final and not

subject to interference, and thus concluded that the CCI's investigation could not proceed. It also noted that reviewing the settlement terms would exceed the CCI's jurisdiction.

The Delhi High Court held that the terms of the settlement were final and could not be interfered with. Consequently, the court set aside the CCI's preliminary order that directed the investigation and terminated the ongoing proceedings.

CCI APPROVED PAMP SWITZERLAND'S ACQUISITION OF MKS PAMP GROUP LTD. SUBSIDIARIES IN INDIA

Vide [order](#) dated 16th April 2024, the Competition Commission of India ("**CCI**") approved the acquisition of 100% of the share capital of PAMP Technologies (India) Private Limited ("**Target 1**") and 72.65% of the share capital of MMTC PAMP India Private Limited ("**Target 2**") by PAMP Ventures SA ("**Acquirer**") from PAMP Holding Mauritius Limited ("**Seller**").

The Acquirer is a private company incorporated in Switzerland and a wholly owned subsidiary of MKS PAMP Group Limited ("**MKS PAMP**"). The Target 1 is a private limited company in India which provides information technology services to MKS PAMP Group companies. The Target 2 is a joint venture between MKS PAMP Group and the Target 2 group, incorporated in India and engaged in the business of refining gold and silver products such as coins and bars.

The CCI noted that the proposed combination involves internal group restructuring of MKS PAMP. Acquire, Target 1 and Target 2 are all group companies of MKS PAMP. Basis the assessment, CCI noted that there was no change in the market dynamics as a result of the proposed transaction.

The CCI further noted that the proposed combination was not likely to have any appreciable adverse effect on competition and approved.

CCI APPROVES THE COMBINATION INVOLVING APAC AND KOTAK FUND

The CCI via its [order](#) dated May 28, 2024, approved the proposed combination whereby APAC Company XXIII Limited (“**Acquirer 1**”) and Kotak Performing RE Credit Strategy Fund I (“**Acquirer 2**”) exercise their right to collectively nominate a director on the board of directors of Embassy Office Parks Management Services Private Limited (“**Target**”) pursuant to an amendment to the Securities Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014.

The CCI in its assessment noted that the combined market shares of the parties in all overlapping segments/ sub-segments are minuscule. With respect to the vertical overlaps, the CCI noted that the relationship between the parties is not such that can cause competition concern in any market. In view of the same, the CCI noted that the proposed combination was not likely to have an appreciable adverse effect on competition in India and therefore, the CCI approved the proposed combination under Section 31(1) of the Competition Act, 2002 (“**Act**”).

CCI DISMISSES ABUSE OF DOMINANCE CASE AGAINST NATIONAL INTERNET EXCHANGE OF INDIA

The CCI in its [order](#) dated August 20, 2024, dismissed a complaint filed by an Extreme Infocom Pvt. Ltd. (“**Informant**”) against the National Internet Exchange of

India (“**NIXI**”) for abuse of its dominance by engaging in predatory pricing in the market for internet exchange services for peering between content providers, content delivery networks (“**CDN**”) and internet service provider.

The CCI rejected the definition of market provided by the Informant. The definition provided by the Informant was ‘*internet exchange services for peering between content providers, CDNs and ISPs in towns/ cities in India in which CDNs./ content providers are not present/ do not have their data centres*’. Instead, the CCI defined the market as ‘*the provision of internet exchange services in India*’.

As per NIXI, the Telecom Regulatory Authority of India had the jurisdiction to determine any dispute between parties under the provisions of the Telecom Regulatory Authority of India Act, 1997 (“**TRAI Act**”) and not CCI. However, the CCI disagreed with the submission stating that an obligation to comply with the provisions of the Act and maintain fair competition in the market. Such obligation was independent of the obligation to comply with the provisions of the TRAI Act and rules made thereunder and violation of one need not result in violation of the other.

Thereafter, the CCI sought the NIXI’s comments on the complaint and data by both the parties on the total market size on certain parameters and the parties’ share thereto. Consequently, the CCI relied on the data submitted by NIXI and held that NIXI is not dominant in the relevant market and thus a case of abuse of dominance did not arise.



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PENDING INVESTIGATION AGAINST PAYMENT OF GST DUES NOT A BAR TO SECTION 9 IBC PROCEEDINGS

The Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi ("NCLAT") in the matter titled *Gulshan Kumar Ahuja vs. Monika Garg Sole Proprietor Aggarwal*¹⁰ has held that a dispute pertaining to payment of GST does not preclude the initiation of Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency & Bankruptcy Code, 2016 ("IBC") as a "pre-existing dispute".

In the present case, an appeal was preferred by the Mr. Gulshan Kumar Ahuja ("Appellant"), a member of the suspended board of directors of the Corporate Debtor ("CD"), under Section 61 of IBC against the Impugned Order, passed by the Hon'ble National Company Law Tribunal ("NCLT"), whereby the Ld. NCLT admitted the CD under CIRP on a Petition under Section 9 of IBC filed by Ms. Monika Garg, the Operational Creditor ("OC"). The OC under the Section 9 Petition highlighted the debt and default of an amount of Rs. 1,91,51,792/-, including interest from the CD. The CD asserted before the Ld. NCLT that, in December 2018, several reports in the market surfaced with respect to scams involving the supply of cotton on fake bills, which subsequently, led the CD to halt transactions and demand original GST documents to verify the authenticity of the transactions. Subsequently, the Directorate General of GST Intelligence ("DGGI") conducted searches and seized records from CD's premises, alleging the supply of cotton without proper GST payments.

Relying on the pending investigation, CD claimed a "pre-existing dispute" over the invoices of OC and the legality of the GST payments, which were being investigated by GST authorities and pending adjudication before Hon'ble Punjab

and Haryana High Court. CD's primary argument was based on the claim arising out of a valid disagreement of alleged bills which were in existence before OC had issued its Demand Notice under Section 8 of IBC. The CD also contested before the Ld. NCLT, the legitimacy of the debt by questioning the invoices as being a component of a larger probe of dishonest practices in the cotton supply business. Moreover, CD also contended that CIRP should be barred since the Ld. NCLT has neglected to appropriately consider the consequences of the GST investigations and relied upon the judgment passed by the Hon'ble Supreme Court of India in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*¹¹, wherein it was held that if there is a plausible contention requiring further investigation, the existence of a dispute must be recognized without delving into the merits.

The Hon'ble NCLAT held that the alleged disagreement over GST dues does not constitute a "pre-existing dispute" between OC and CD which would prevent the initiation of CIRP under Section 9 of IBC, as the three requisites for the admission of a Section 9 application namely, (a) existence of an operational debt, (b) debt being due and unpaid, and (c) absence of a pre-existing dispute were satisfied, the Hon'ble NCLAT was pleased to dismiss the appeal.

AUCTION OF SUBSIDIARY'S ASSETS UNDER THE SARFAESI ACT DOES NOT VIOLATE THE PROVISIONS OF MORATORIUM UNDER SECTION 14(1)(D) OF IBC

The Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi ("NCLAT") in the matter titled *Wind World (India) Limited vs Indian Renewable Energy Development Agency Limited and Anr.*¹² has held that there is no violation of Section 14(1)(d) of the IBC in the auction of assets or facilities of a subsidiary company if the assets were handed over to the CD for operation and maintenance under

¹⁰ Company Appeal (AT) (Insolvency) No. 1202 of 2024

¹¹ (2018) 1 SCC 353

¹² Company Appeal (AT) (Insolvency) No.175 of 2023

the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”). In the present case, Wind World (India) Limited, the CD, entered into a Facility Agreement with its subsidiary company i.e., Wind World (India) Infrastructure Private Limited (“**Respondent No. 2**”) to construct and operate power switchyards required for pooling of power to be generated by CD at its wind energy projects. Under the Facility Agreement, the CD was authorized to use, operate and maintain the facility, subject to paying facility usage charges to Respondent No.2 who entered into loan agreements with Indian Renewable Energy Development Agency Limited (“**Respondent No. 1**”) and created a charge over the substations and other assets in favour of Respondent No.1. Subsequently, CIRP was initiated by the Hon’ble NCLT against the CD, wherein the Resolution Professional (“**RP**”) filed an application challenging the Expression of Interest (“**EoI**”) issued by Respondent No.1 for appointing a new operation and maintenance contractor for the facility.

The RP argued that the EoI issued by Respondent No.1 violates the moratorium under Section 14(1)(d) of IBC as RP is in possession of the facility. Respondent No.1 argued that it is neither the owner nor lessor of the property, and the measures undertaken are not in contravention of Section 14 of IBC.

The RP claimed that the Facility Use Agreement (“**FAU**”) remains in force and should not be terminated under the SARFAESI Act while the CIRP is ongoing. Further, it was argued that the Conditional Deed of Assignment with Respondent No.1 was contrary to the Facility Use Agreement, and the Facility’s continued use is vital for CD’s operations and recovery. On the other hand, Respondent No. 1 argued that the measures taken including issuing of EoI, do not contravene Section 14 of IBC. Respondent No.1 argued that Section 14(1)(d) is not applicable in the present instance, as Respondent No.1 is neither the owner nor lessor of the Facility, rather, Respondent No.2 is the owner. Respondent No.1 maintained that the Corporate Debtor’s occupation of the Facility does not equate to ownership for the purposes of Section 14.

The Ld. NCLT observed that the EoI issued by Respondent No.1 for appointing a new operation and maintenance contractor does not amount to a breach of Section 14(1)(d) of IBC and evaluated the FAU between the CD and Respondent No. 2.

In the appeal, while examining the FAU, the Hon’ble NCLAT observed that Respondent No. 2 clearly retained ownership of the Facility and that the RP acting for the CD, was only allowed to use and maintain it according to Clause 2.2(d) of the FAU. It was also noted that Clause 2.1 confirmed CD’s

rights to use, operate, and maintain the Facility. However, according to Section 14(1)(d) of IBC, the Hon’ble NCLAT determined that these operational rights were not the same as possession or occupation of the Facility. According to the Hon’ble NCLAT, CD’s function as a contractor for operations and maintenance did not qualify as possession or occupation of the Facility in the legal sense needed to invoke Section 14(1)(d) of IBC.

ARBITRATOR’S POWER TO AWARD PRE-REFERENCE & PENDENTE LITE INTEREST IS NOT RESTRICTED WHEN AGREEMENT IS SILENT ABOUT IT

The Hon’ble Supreme Court in the case of **Pam Developments (P) Ltd. vs. The State of West Bengal & Anr.**¹³, summarised the propositions relating to the power of the Arbitrator to grant pre-reference, pendente lite, and post-award interest under Section 31(7) of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”).

The dispute between the State of West Bengal (“**State**”) and Pam Developments (P) Ltd. (“**PDPL**”) sprouted out of project works regarding widening and strengthening of Egra Bajkul road under the Tamluk Highway. Owing to the disputes, PDPL invoked arbitration, wherein it sought additional payment for a host of reasons, including delays caused by the State, loss of business, uneconomic utilization of plant and machinery, labour charges, interest on delayed payments, costs and escalation bill, and interest thereupon. The Arbitral Tribunal while awarding the claims in favour of the PDPL, directed the State to pay *inter alia* pre-reference, *pendente lite* and post-award interest over and above the claimed amounts, under the head of “*interest on delayed payments*”. Aggrieved by the arbitral award, the State challenged the same under Section 34 of the A&C Act before the Ld. District Court, which was unsuccessful. Subsequently the State appealed against the Order of the Ld. District Judge under Section 37 before the Hon’ble Calcutta High Court, wherein while partly allowing the appeal, it held that since the contract prohibited the grant of pre-reference interest, it could not have been awarded by the arbitral tribunal, however, upheld the grant of *pendente lite* and post award interest.

Assailing the Hon’ble High Court’s order, PDPL filed a civil appeal, wherein the Hon’ble Supreme Court observed that the contract was merely silent *qua* the grant of pre-reference interest, and did not prohibit the same. Therefore, the Hon’ble Supreme Court held that under Section 31(7) of the A&C Act, the arbitral tribunal has the power to grant interest at various stages i.e., pre-reference, *pendente lite* and post-award, unless the contract expressly prohibits grant of such interest(s).

¹³ Civil Appeal Nos. 9781-9782 of 2024

EXCISE DUTY DISPUTES ARE ARBITRABLE UNLESS THEY INVOLVE SOVEREIGN FUNCTIONS INCLUDING DETERMINATION OF TAX RATE OR LIABILITY

The Hon'ble Delhi High Court, in the case of **Bharat Broadband Network Ltd. vs. Paramount Communications Ltd.**¹⁴, while deciding the arbitrability of disputes involving excise duty, held that the same are arbitrable, unless they involve the acts of sovereign state including determination of tax rate or liability.

The present judgment involves the adjudication of disputes pertaining to two purchase orders between Bharat Broadband Network Ltd. ("BBNL") and Paramount Communications Ltd. ("Paramount") for the supply of optical fibre cables. Since, there was a difference in classification of goods by BBNL under the Customs and Excise Tariff Heads, and that adopted by the Excise Department. Since the same was not agreeable to BBNL, Paramount invoked arbitration seeking claims pertaining to difference in the excise duty deducted.

On the arbitrability of disputes, the Arbitral Tribunal while awarding the claims in favour of Paramount, held that since the dispute fell within the scope of "changes in taxes/duties", i.e., a contractual term, hence the dispute was arbitrable.

BBNL assailed the said arbitral award under Section 34 of the A&C Act before the Hon'ble Delhi High Court on the ground that the dispute pertains to differential excise duty which is not arbitrable as it is a sovereign function. While adjudicating the said dispute the Hon'ble High Court addressed three key issues: (i) the arbitrability of disputes between the parties, (ii) the interpretation of tax-related contract provisions, and (iii) whether Paramount was entitled to recover the claimed amounts including excise duty. Regarding the first issue, it was held that since the dispute, was limited to the classification of goods between two commercial entities, was only affecting rights in *rem* and was causing no effect to the rights and obligations of the State, hence was arbitrable. Regarding the second issue, Hon'ble High Court agreed that price adjustment due to "changes in taxes/duties" was decided by the arbitral tribunal basis the contractual provisions, and hence also decided the third issue in favour of Paramount.

This landmark case provides further clarity on the doctrine of arbitrability and punctuates that while arbitral tribunal can adjudicate on tax-related issues, the same can be done within contractual frameworks whilst ensuring that the same cannot override sovereign functions related to tax assessment or rate determination.

¹⁴ O.M.P. (COMM) No. 355/2024

EMPLOYMENT LAW

CIRCULAR FOR TRANSACTION-LESS AND INOPERATIVE ACCOUNTS IN THE EMPLOYEES PROVIDENT FUND ORGANIZATION

The Employees' Provident Fund Organization ("EPFO") has implemented new procedures *vide* circular dated August 2, 2024 to improve the management of transaction-less and inoperative accounts. The updated standard operating procedure focuses on 3 (Three) main areas: generating a Universal Account Number (UAN), seeding Know Your Customer (KYC) details, and unblocking accounts.

GOVERNMENT OF KERALA NOTIFIES THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) KERALA RULES, 2024

The Labour and Skills Department, Government of Kerala *vide* notification dated August 06, 2024 issued an amendment to the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 1998, introducing the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 2024.

This amendment specifically addresses Rule 284(2) by adding a new proviso. The proviso stipulates that if a beneficiary fails to pay their contribution for a period exceeding 3 (Three) years, their membership in the scheme will not be reinstated. This change emphasizes the importance of consistent contribution payments for maintaining active membership status under the rules governing employment and working conditions for building and construction workers in Kerala.

CIRCULAR REGARDING COMPLIANCE OF THE EMPLOYEES STATE INSURANCE CORPORATION PENSIONER'S MEDICAL SCHEME

The Employees State Insurance Corporation ("ESIC") *vide* notification dated August 07, 2024 issued a circular addressing the Compliance of the ESIC Pensioners' Medical Scheme.

The circular outlines adherence to the revised guidelines dated May 25, 2021 under the Pensioners' Medical Scheme 2006 provide a detailed procedure for various medical services, including cashless super-specialty treatment, emergency medical care, treatment at ESIC and private hospitals, and reimbursement-based treatment.

The aforementioned circular requests that medical treatment for pensioners be strictly administered in accordance with the ESIC Pensioners' Medical Scheme and any guidelines issued by ESIC headquarters from time to time.

DRAFT NOTIFICATION SEEKING INPUT ON PROPOSED REVISIONS TO MINIMUM WAGE RATES FOR EMPLOYMENT IN SHOPS OR COMMERCIAL ESTABLISHMENTS BY THE MAHARASHTRA GOVERNMENT

The Industries, Energy, Labour and Mining Department of the Maharashtra Government on August 12, 2024 proposed revising minimum wage rates for employees in commercial establishments, excluding banks and certain other sectors. This draft notification is open for public review, with a 2 (Two) month period allowed for comments before finalization.

The proposed wage structure, set to take effect at a future date yet to be announced, is as follows:

- (i) Zone I: Skilled INR 15,820 (Rupees Fifteen Thousand Eight Hundred Twenty), Semi-skilled INR 14,765 (Rupees Fourteen Thousand Seven Hundred Sixty Five), Unskilled INR 13,630 (Rupees Thirteen Thousand Six Hundred Thirty);
- (ii) Zone II: Skilled INR 15,010 (Rupees Fifteen Thousand Ten), Semi-skilled INR 13,955 (Rupees thirteen Thousand Nine Hundred Fifty Five), Unskilled INR 12,820 (Rupees Twelve Thousand Eight Hundred twenty); and
- (iii) Zone III: Skilled INR 14,200 (Rupees Fourteen Thousand Two Hundred), Semi-skilled INR 13,145 (Thirteen Thousand One Hundred Forty Five), Unskilled INR 12,010 (Rupees twelve Thousand Ten).

The aforementioned rates include basic wages, cost of living allowances, and any other applicable concessions. The final rates will be adjusted based on periodic cost-of-living index calculations. Public feedback can be submitted to the Commissioner of Labor for consideration before the rates are finalized.

NOTIFICATION ON THE AMENDMENT TO THE CENTRALIZED INSPECTION SYSTEM (CIS) FOR EASE OF DOING BUSINESS IN KERALA

The Labour and Skills Department, Government of Kerala *vide* notification dated August 12, 2024 has made amendments to the existing notification under the Factories Act, 1948, with the objective of improving transparency, accountability, and simplicity in the factory inspection process. These amendments include several key changes:

- **Redefinition of Jurisdictional Powers:** Inspectors of Factories and Boilers in Grades I and II now have clarified roles. Grade I Inspectors will oversee all factories within their designated areas and will act as the controlling officer for Grade II Inspectors. Grade II Inspectors, in turn, will supervise additional inspectors within their respective jurisdictions.
- **Non-Consecutive Inspections:** The amendment introduces a rule that prohibits the same inspector from conducting consecutive inspections of the same factory, ensuring greater impartiality and fairness in the inspection process.

These changes are part of the Centralized Inspection System (CIS) implemented under the Business Reform Action Plan to enhance the ease of doing business in Kerala. The amendments demonstrate the government's commitment to better governance and streamlined operations in the industrial sector.

EPFO RELEASED A STANDARD OPERATING PROCEDURE FOR SURRENDERING OF EMPLOYEES' PROVIDENT FUND EXEMPTION

The EPFO has issued a notification dated August 13, 2024 implementing a new Standard Operating Procedure (SOP) for surrendering employees provident fund exemptions, replacing all previous guidelines. This SOP aims to standardize and streamline the process, ensuring consistent and timely procedures across all regional and zonal offices. Establishments are required to submit their surrender applications at least 30 (Thirty) days in advance, along with essential documents such as audited financial statements and board resolutions. The responsibility for verifying the applications, conducting audits, and managing the transition to unexempted status lies with the regional offices and zonal offices. The head office oversees the final approval process, ensuring full compliance with the statutory requirements.

GOVERNMENT OF ODISHA NOTIFIES INCLUSION OF NEW SCHEDULED EMPLOYMENTS UNDER THE MINIMUM WAGES ACT, 1948

The Labour and ESI Department, Government of Odisha, through notification dated August 20, 2024 has announced the inclusion of new categories of employment under the existing scheduled employments covered by the Minimum Wages Act, 1948.

This notification adds “**Swacch Karmi**” (No. 91) covering workers engaged in sanitation and cleanliness activities as skilled workers.

This addition ensures that workers involved in these activities are now entitled to the protections and benefits under the Minimum Wages Act, 1948, which mandates fair wages and improved working conditions for employees in these sectors. This move reflects the government's ongoing efforts to broaden the scope of labour rights and protections to include more sectors within the state's workforce.

MINISTRY OF LABOUR & EMPLOYMENT LAUNCHES A CENTRALISED PORTAL FOR BUILDING AND OTHER CONSTRUCTION WORKERS

Ministry of Labour & Employment, Government of India on August 21, 2024 launched Building and other Construction Workers (“**BOCW**”) Management Information System portal.

This portal will serve as a centralized data management system, allowing for the compilation and analysis of data from BOCW welfare boards across states and union territories. This system will support informed decision-making and the development of improved welfare policies for BOCW workers.

As of June 30, 2024, approximately 5,70,00,000 (Five Crores Seventy Lakh) workers are registered with the Building and Construction Workers Welfare Boards across the country. These Boards have collected a cumulative cess of about INR 115000,00,00,000 (Rupees One Lakh Fifteen Thousand Crores), of which over INR 66000,00,00,000 (Rupees Sixty Six Thousand Crores) have been spent on providing benefits under various welfare schemes for these workers. The government is collaborating with State BOCW welfare boards to extend the benefits of central government schemes to BOCW workers, using the BOCW cess fund. Consequently, 1,30,00,000 (One Crore Thirty Lakhs) BOCW workers have been approved for the Ayushman Cards under the Pradhan Mantri Jan Arogya Yojana for health benefits. Additionally, over 85,000 (Eighty Five Thousand) workers have been insured under the Pradhan Mantri Jeevan Jyoti Bima Yojana, and 1,24,000 (One Lakh Twenty Four Thousand) workers have been covered under the Pradhan Mantri Suraksha Bima Yojana for disability protection.

A FORMAL INQUIRY IS MANDATORY WHEN AN EMPLOYEE'S CONTRACT IS NOT RENEWED DUE TO DISCIPLINARY REASONS: SUPREME COURT

The Supreme Court of India *vide* judgement dated August 22, 2024 in the case of *Swati Priyadarshini vs. The State of Madhya Pradesh & Ors.*, upheld the necessity of conducting a formal inquiry when an employee's contract is not renewed due to disciplinary reasons.

In the present case, an appeal was filed against an order dated February 3, 2020, issued by the Division Bench of the

Madhya Pradesh High Court which had overturned an earlier judgment from June 20, 2017, by a Single Judge. The Supreme Court of India reinstated an employee whose contract had not been renewed due to allegations of unsatisfactory performance and dereliction of duty.

The Supreme Court observed that a termination based on contractual rights is not inherently punitive unless it is grounded in misconduct, negligence, or inefficiency, which would then invoke Article 311 of the Constitution of India, requiring due process. If a termination is based on such grounds, it is considered a punishment and must adhere to the protections afforded by Article 311 of the Constitution of India, including conducting a proper inquiry.

EPFO RELEASES A CIRCULAR ON REVISION OF RATE OF DAMAGES IN EMPLOYEES' PROVIDENT FUND

The EPFO issued a notification on August 28, 2024 concerning the updated rates for damages related to defaults.

The notification specifies that any defaults occurring up to June 13, 2024, will be subject to the penalty rates and recovery procedures that were in effect at the time of those defaults. The previous provisions will apply to all defaults made before this date, and the revised rates will only impact defaults occurring after June 13, 2024. This ensures that organizations are charged according to the rules that were in place when the default occurred, maintaining fairness and consistency in the enforcement of penalties.



ENERGY

CENTRAL ELECTRICITY REGULATORY COMMISSION ISSUED THE CENTRAL ELECTRICITY REGULATORY COMMISSION (DEVIATION SETTLEMENT MECHANISM AND RELATED MATTERS) REGULATIONS, 2024

The Central Electricity Regulatory Commission (CERC) *vide* Notification dated August 5, 2024, in exercise of the powers conferred under Section 178 read with clauses (c) and (h) of sub-section (1) of Section 79 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, notified the [Central Electricity Regulatory Commission \(Deviation Settlement Mechanism and Related Matters\) Regulations, 2024](#).



NATIONAL PAYMENTS CORPORATION OF INDIA (“NPCI”) ANNOUNCED THE INTRODUCTION OF ‘UPI CIRCLE’

NPCI introduced the ‘UPI Circle’ feature through a circular dated August 13, 2024. The concept of UPI Circle has been designed to create a delegated payment environment for flexibility and control in the unified payments system. The letter was issued *vide* circular number NPCI/ UPI/ OC No. 201/ 2024-25.

Under this concept, there are two users: (i) Primary User; and (ii) Secondary User. A Primary User is the one under whose name a bank account is registered and the one who has the authority to delegate whereas, a Secondary User is the one to whom the delegation is done. Through this feature, Primary User, can delegate the right to make payment through UPI to the Secondary User.

UPI Circle contemplates two types of delegation services : (i) Full delegation, in which the Primary User authorise the Secondary User to make payments according to defined spending limits; and (ii) Partial Delegation, in which the Secondary User raises request for payment and the Primary User completes the transaction through UPI PIN.

Key Directions:

- (i) Primary User and Secondary User shall be provided independent user journey by UPI apps and PSPs
- (ii) UPI apps shall ensure that App Passcodes/ Biometrics are compulsory for all Secondary Users
- (iii) A Primary User can have upto 5 (Five) Secondary Users, but a Secondary User can only have 1 (One) Primary user.
- (iv) A Secondary user should be linked only by scanning the QR code and then selecting the UPI ID of the user through the contact list by the Primary User. Manual entering of number for linking is prohibited.

- (v) A monthly transaction limit of INR 15,000 (Indian Rupee Fifteen Thousand) and a per transaction limit of INR 5,000 (Indian Rupee Five Thousand) has to be set in case of full delegation. In case of partial delegation, existing UPI limits are needed to be set.
- (vi) Primary User must be provided with the access to view the payments made by Secondary User through the UPI app and bank account statements.
- (vii) Harmonisation of turnaround time and customer compensation for failed transactions using authorised Payment Systems Guidelines dated September 20, 2019, must be adhered to by the members.
- (viii) Online dispute resolution mechanism shall be made available for such UPI Transactions.
- (ix) The reconciliation process shall be according to the existing UPI Guidelines.

DSK View: *The UPI Circle feature introduced by NPCI marks a significant advancement in digital payments, offering a seamless and secure way for users to delegate payment responsibilities. For instance, parents can now allow their teenage children to make purchases independently while setting spending limits to ensure responsible usage. Elderly family members, who may find digital transactions challenging, can delegate payment responsibilities to a younger relative, ensuring their financial needs are met without compromising security.*

In a corporate setting, business owners can delegate payment rights to employees for routine office purchases while maintaining control through spending limits or approval requirements. In a nutshell, this is a much welcome step by NPCI which ensures greater convenience while maintaining stringent checks.

Source

THE RESERVE BANK OF INDIA (“RBI”) AMENDED THE MASTER DIRECTION - NON-BANKING FINANCIAL COMPANY – PEER TO PEER LENDING PLATFORM (RESERVE BANK) DIRECTIONS, 2017

RBI introduced changes in the [Master Direction - Non-Banking Financial Company – Peer to Peer Lending Platform \(Reserve Bank\) Directions, 2017](#) in order to curb the unwanted practices which p2p platforms have adopted in recent times (such as violation of the prescribed funds transfer mechanism, promotion of peer to peer lending as an investment product). The key highlights of the changes brought and the reason for such changes are provided hereunder:

- (i) NBFC-P2Ps are now explicitly prohibited from assuming any credit risk, and lenders must be informed that they will bear the entire risk of loss.
- (ii) NBFC-P2Ps can no longer cross-sell insurance products that act as credit enhancements or guarantees.
- (iii) The amount lent must be consistent with the lender’s net worth, with proper certification for higher amounts.
- (iv) Stricter guidelines introduced for the use and management of escrow accounts, including detailed rules on fund transfers.
- (v) Borrower identity disclosure will now require explicit consent.
- (vi) NBFC-P2Ps must also disclose all losses borne by lenders.
- (vii) Promotion of P2P lending as an assured return investment is now prohibited.
- (viii) NBFC-P2Ps are now restricted from outsourcing core functions like pricing and decision-making.
- (ix) Introduction of restrictions on the use of lender funds and matching/mapping practices.

DSK View: RBI has implemented these changes to enhance transparency, safeguard participants, and ensure that NBFC-P2P platforms operate within a well-regulated and ethical framework. These measures are aimed at curbing P2P platforms from offering guaranteed returns, promoting responsible lending by aligning investment amounts with the lender’s financial capacity, protecting borrower privacy, and preventing misleading marketing practices. Additionally, these changes are intended to prevent the misuse of funds, ensuring they are utilized solely for their intended purposes.

Source

RBI ISSUES CIRCULAR ON E-MANDATES FOR RECURRING TRANSACTIONS

The RBI has decided to include the auto-replenishment feature for FASTag and National Common Mobility Card (NCMC). When the balance in FASTag or NCMC falls below a

threshold set by the customer, the auto-replenishment will automatically take place.

DSK View: This move by RBI is both practical and customer friendly. By including auto-replenishment under the e-mandate framework and exempting it from pre-debit notifications, RBI ensures that customers experience uninterrupted services, such as toll payments via FASTag or public transport payments through NCMC. This decision simplifies the process, making it more efficient and convenient, while still giving customers control over the threshold for auto-replenishment.

Source

RBI ANNOUNCED THE INTRODUCTION OF THE UNIFIED LENDING INTERFACE (“ULI”)

The RBI in its Global Conference held on August 26, 2024, introduced ULI platform designed to facilitate the seamless and consent-based flow of digital information required for the lending process. The ULI architecture employs common and standardized APIs, utilizing a 'plug and play' approach to ensure smooth digital access to information from a variety of sources. This approach minimizes the complexity of integrating multiple technical systems, allowing for easier and quicker access to relevant data. As a result, borrowers will benefit from faster delivery of credit and reduced documentation requirements.

This innovation significantly reduces the time required for credit appraisal, particularly benefiting smaller and rural borrowers who often face delays in accessing credit. The digitization of both financial and non-financial data, through ULI is expected to address the substantial unmet demand for credit across various sectors, particularly for agricultural and MSME borrowers.

DSK View: By providing a streamlined, digital infrastructure for accessing crucial borrower information, ULI simplifies and accelerates the credit appraisal process, making it easier for borrowers to secure loans. The reduced need for extensive documentation and the quicker turnaround time will be particularly beneficial for agricultural and MSME sectors, where timely access to credit is critical.

Source

RBI GOVERNOR INTRODUCES THE BHARAT BILLPAY FOR BUSINESS

The RBI Governor announced the expansion of Bharat BillPay System (“BBPS”) services to include business enablement platforms thereby, simplifying B2B payments and collections. This new initiative, Bharat BillPay for Business, aims to standardize, simplify, and automate various invoice

payment processes for businesses of all sizes across the country. The platform will offer features such as business onboarding, search and add business functions, purchase order (PO) creation, invoice management, automated reminders, guaranteed settlement, financing, accounts receivable and accounts payable dashboards, and online dispute resolution.

DSK View: *This expansion of BBPS services is a significant step towards digitizing and streamlining business payments in India. This initiative is expected to empower businesses to improve efficiency, reduce errors, and enhance their overall financial management. It also provides B2B service providers with a powerful tool to offer their clients a more integrated and seamless payment experience.*

Source

NPCI ANNOUNCED EQUAL REWARDS FOR PAYMENTS USING RUPAY CREDIT CARDS THROUGH UPI

NPCI, through its recent circular has announced that any rewards, points, benefits, and other offers linked to RuPay Credit Card transactions on UPI must not be lower than those for other RuPay Credit Card transactions. The only exception to the above guidelines is when the issuer does not earn any interchange fee from the transaction. This change is meant to encourage more spending on credit cards through UPI by ensuring that the rewards and features for UPI transactions are just as attractive as for any other transaction. The rule will be effective from September 01, 2024.

DSK View: *This is a strategic move by NPCI to boost the use of RuPay Credit Cards on UPI platforms. By ensuring that users receive equal rewards for UPI transactions, it creates a level playing field and encourages more users to make payments through UPI. This initiative could lead to higher adoption of digital payments and support the broader goal of a cashless economy.*

Source

RBI ANNOUNCES ENHANCED UPI TRANSACTION LIMIT FOR TAX PAYMENTS

RBI has announced enhancement in the transaction limit done through UPI for any direct and indirect tax payments. The transaction limit has been increased from INR 1,00,000 (Indian Rupee One Lakh) to INR 5,00,000 (Indian Rupee Five Lakh).

DSK View: *The RBI increased the limit on payment of taxes in order to simplify the tax payment processes which are generally regular and high valued. Earlier, the RBI had done the same for other categories such as IPO subscriptions, loan repayments etc. This step by the regulator is welcoming as it now allows the payment of taxes through UPI which were restricted earlier thereby, making the process swifter.*

Source



FSSAI MANDATES BOLD NUTRITION LABELS TO ENHANCE CONSUMER AWARENESS

The Food Safety and Standards Authority of India (FSSAI) on July 6, 2024 has announced a significant amendment to the Food Safety and Standards (Labelling and Display) Regulations, 2020. This decision was taken during the 44th meeting of the Food Authority with an objective to improve the nutritional transparency of packaged foods and empower consumers to make more informed and healthier choices.

New Labelling Requirements

The amendment introduces mandatory labelling changes that will require the nutritional information for salt, sugar, and saturated fat to be displayed in bold letters and a larger font size on packaged food items. This design will make it easier for consumers to quickly assess the nutritional content of the food they are buying, enhancing their ability to make healthier decisions.

According to a communiqué from the Health Ministry, "The amendment aims to empower consumers to better understand the nutritional value of the product they are consuming and make healthier decisions." The updated regulations will ensure that information regarding per serve percentage contribution of total sugar, total saturated fat, and sodium to the Recommended Dietary Allowances (RDAs) is prominently displayed on food labels.

Regulatory Framework

The amendment modifies Regulation 2 (v) and 5(3) of the Food Safety and Standards (Labelling and Display) Regulations, 2020. Regulation 2 (v) specifies the requirements for mentioning serving sizes, while Regulation 5(3) mandates the inclusion of nutritional information on food product labels. These regulations collectively aim to provide consumers with clear and accessible information about the nutritional content of the products they consume.

Addressing Misleading Claims

With addition to the new labelling requirements, FSSAI is trying to address the misleading claims in the food industry. The regulator has issued several advisories to prevent deceptive practices. For instance, FSSAI directed e-commerce websites to remove the term 'health drink' from product descriptions, as it is not defined or standardized under the Food Safety and Standards Act, 2006, or its associated regulations.

FSSAI has also mandated all Food Business Operators (FBOs) to eliminate claims of '100% fruit juices' from labels and advertisements of reconstituted fruit juices. Additionally, FSSAI has instructed FBOs to avoid using the term 'wheat flour' or 'refined wheat flour' unless it accurately reflects the product's content. This directive aims to prevent misleading representations and ensure that consumers are accurately informed about the content of packaged food.

Impact and Objectives

The primary goal of these amendments and advisories is to enhance the transparency and accuracy of nutritional information on food labels. By implementing these measures, FSSAI seeks to:

- 1. Improve Consumer Awareness:** Clear and prominent labelling will help consumers make more informed decisions regarding their food choices, potentially leading to healthier dietary habits.
- 2. Combat Misleading Claims:** By addressing and correcting misleading product claims, FSSAI aims to protect consumers from deceptive marketing practices and ensure that food products meet regulatory standards.
- 3. Encourage Healthier Choices:** With better visibility of key nutritional information, consumers will be more equipped to choose products that align with their dietary needs and health goals.
- 4. Promote Public Health and Combat Non-Communicable Diseases (NCDs):** Along with

empowering consumers to make healthier choices, the amendment will contribute to efforts to combat the rise of NCDs and promote overall public health and well-being. The prioritization of clear and distinguishable labelling requirements aligns with global efforts to address NCDs, reinforcing the commitment to improving dietary habits and reducing health risks associated with poor nutrition.

However, it is important to consider the potential impact on food companies. Implementing these new labelling requirements may lead to increased costs for manufacturers. Companies will need to invest in updated packaging designs to accommodate the larger font sizes and bold lettering mandated by the new regulations. This could involve retooling production lines, revising artwork, and

possibly incurring additional expenses for regulatory compliance and quality control.

DSK View: *The recent amendment by the FSSAI to the Food Safety and Standards (Labelling and Display) Regulations marks a significant advancement in improving nutritional transparency and safeguarding consumer interests in the country. Despite the costs associated with it, by mandating bold and easily readable nutritional labels, this amendment is set to enhance consumer awareness and facilitate healthier food choices. The FSSAI's ongoing efforts to tackle misleading claims and uphold regulatory standards will be vital in fostering a more transparent and health-conscious food market in India. Additionally, these measures align with global efforts to combat non-communicable diseases (NCDs), contributing to better public health outcomes.*

MEDIA & ENTERTAINMENT



BOMBAY HIGH COURT UPHOLDS ARIJIT SINGH'S PERSONALITY RIGHTS, RESTRICTS UNAUTHORIZED EXPLOITATION

Renowned singer, Arijit Singh ("Plaintiff") instituted proceedings before the Bombay High Court ("BHC") against multiple defendants, including AI platforms, restaurant owners, event organizers, merchandise sellers, e-commerce sites, and domain name registrars ("Defendants") for allegedly utilizing AI-generated content to mimic the Plaintiff's voice, image, and other attributes, misleadingly suggesting his involvement in various events and unlawfully selling merchandise featuring his name and likeness. The lawsuit also addressed violations of the Plaintiff's moral rights under Section 38-B of the Copyright Act, 1957. The BHC in its order reiterated that celebrities are entitled to protect their personality traits, such as name, images, and voice, etc. from unauthorized commercial use. The BHC expressed concern that AI tools enabling the replication of a celebrity's voice without consent violate such celebrity's personality rights, facilitate unauthorized appropriation and manipulation of a key aspect of a celebrity's identity. Consequently, an *ex parte* injunction was granted by the BHC, prohibiting the Defendants from infringing upon the Plaintiff's personality and publicity rights without his explicit consent. The Defendants were ordered to suspend infringing URLs and remove unauthorized content from all digital platforms. Furthermore, the BHC observed that while freedom of speech and expression allows for critique and commentary, it does not permit the unauthorized exploitation of a celebrity's persona for commercial purposes.

SECTION 31D'S STATUTORY LICENSING NOT APPLICABLE TO 'INTERNET' BROADCASTING

On August 21, 2024, the Department for Promotion of Industry and Internal Trade (DPIIT) officially rescinded its office memorandum dated September 05, 2016. This

decision was made in light of the Bombay High Court's ("Court") division bench ruling in the case of *Tips Industries Ltd. vs. Wynk Music Ltd. & Anr* ("*Tips Industries Case*") wherein the Court reaffirmed that Section 31D's statutory licensing applies only to linear broadcasting mediums, excluding non-linear, on-demand streaming services. The 2016 memorandum sought to broaden the interpretation of Section 31D of the Indian Copyright Act, 1957 ("Copyright Act"), which governs statutory licenses for the broadcasting of literary and musical works, as well as sound recordings. This expansion aimed to include "internet" transmissions alongside traditional broadcasting mediums such as television and radio. However, the memorandum sparked significant legal debate regarding its validity, as critics contended that the DPIIT lacked the constitutional authority to interpret statutory provisions, a responsibility that lies with the judiciary. In 2019, the Bombay High Court in the *Tips Industries Case* held that Section 31D did not extend to internet broadcasting. The Court in its judgement referenced the 227th Report of the Rajya Sabha Parliamentary Standing Committee on the Copyright (Amendment) Bill, 2010 highlighting that even though digital technologies like online streaming and downloads were prevalent when the Copyright Act was amended in 2012, the legislature deliberately chose not to include "internet broadcasting" within the scope of Section 31D. While the 161st Report of the Parliamentary Standing Committee and the Draft Copyright Rules, 2019, suggested including internet streaming under Section 31D, this proposal was ultimately omitted in the final Copyright Rules (Amendment) 2021, likely considering the *Tips Industries* judgment.

BOMBAY HC QUASHES CIRCULAR ISSUED BY THE STATE OF GOA EXEMPTING HOTELS FROM TAKING LICENSES FOR PERFORMANCE OF MUSICAL WORKS AT WEDDINGS

In a recent writ petition filed before the Bombay High Court ("BHC") by Phonographic Performance Limited (PPL) ("Petitioners") against the Goa government's circular dated

January 30, 2024, which stated that no hotel or copyright society could demand permission or a no-objection certificate (NOC) for the performance of musical works or recordings at weddings, the BHC has set aside the state government's circular. This circular referenced a public notice issued by the Department for Promotion of Industry and Internal Trade (DPIIT) in July 2023, which directed copyright societies to refrain from collecting royalties for music played during marriage functions, in accordance with Section 52(1)(za) of the Copyright Act, 1957 ("Copyright Act"). The circular clarified that hotels and copyright societies did not require permissions or NOCs for the performance of musical works or recordings during religious ceremonies, festivals, or wedding events. However, after hearing the contentions of the parties to the petition, the BHC dismissed the state government's arguments, stating that the circular exceeded its purpose of merely informing the public about Section 52(1)(za) and introduced terms not found in that provision. The Court criticized the usage of the term "wedding" instead of "marriage," emphasizing the significance of the phrase "*bona fide* religious ceremony". The Court highlighted that the Copyright Act provides a comprehensive mechanism for addressing grievances from copyright owners and those who are defending themselves from copyright infringement claims. It noted that whether an act constitutes copyright infringement must be evaluated on

a case-by-case basis. As a result, the BHC declared the circular illegal and contrary to the provisions of the Copyright Act.

AJAY DEVGN STARRER MAIDAAN LANDS IN TROUBLE OVER ROYALTY ISSUE FROM FAMILY OF LATE SYED ABDUL RAHIM

Ajay Devgn's Maidaan, which released after several delays on April 10, 2024, is now facing controversy over unpaid royalties. The Telangana government has initiated a probe into allegations that the producers of the film have not paid the family of the late football coach Syed Abdul Rahim, whose life inspired the film. Despite attempts by Rahim's family to resolve the issue, they reportedly have not received any payment.

In response, the defendants, representing Boney Kapoor, clarified that the legal heirs of Rahim had previously sought an injunction against the film in 2019. The court had rejected this request, ruling that no permission was needed for using publicly available information. The defendants stated that, although not legally required, the producers had amicably settled the matter with Rahim's family through a consent agreement in January 2020 and had paid for the life rights of Syed Shahid Hakim, Rahim's son.



THE LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2024

The MCA, *vide* its notification dated August 5, 2024 (accessible [here](#)), has notified the Limited Liability Partnership (Amendment) Rules, 2024, ("LLP Amendment Rules"), which amends the Limited Liability Partnership Rules, 2009. As per the LLP Amendment Rules, the application in Form 24 (filed for striking off the name of LLP) will now be made to the Registrar, Centre for Processing Accelerated Corporate Exit. Prior to the amendment, the aforesaid form was to be filed with the jurisdictional Registrars of Companies ("ROC").

THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014

The MCA, *vide* its notification dated August 5, 2024 (accessible [here](#)), has notified the Companies (Adjudication of Penalties) Amendment Rules, 2024, ("AJP Amendment Rules"), which amends the Companies (Adjudication of Penalties) Rules, 2014, and which shall be effective from September 16, 2024. The key provisions of the AJP Amendment Rules have been summarised below:

- a) All proceedings (including of issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) conducted by adjudicating officers and regional directors will be carried out electronically via the e-adjudication platform;
- b) In relation to the aforesaid change, the Form No. ADJ (memorandum of appeal) has been revised to reflect the required changes in the memorandum of appeal

against the adjudication order. The key changes in the Form No. ADJ are as follows:

- i. the inclusion of the order ID number of the adjudication order against which the appeal is to be filed;
- ii. details for other appellants, if any, including identification number, name, and email ID and a copy of the authorization letter in favour of the applicant to file the appeal on behalf of the appellants; and
- iii. details for the reason of delay in filing the appeal.

THE COMPANIES (INDIAN ACCOUNTING STANDARDS) AMENDMENT RULES, 2024

The MCA, *vide* its notification dated August 12, 2024 (accessible [here](#)), has notified the Companies (Indian Accounting Standards) Amendment Rules, 2024 ("IAS Amendment Rules"), which amends the Companies (Indian Accounting Standards) Rules, 2015. The key provisions of the IAS Amendment Rules have been summarised below:

- a) The IAS Amendment Rules aim to align Indian Accounting Standards with the International Financial Reporting Standards, promoting consistency and comparability.
- b) The IAS Amendment Rules have replaced Ind AS 104 (Insurance Contracts) with new Ind AS 117 which would deal with insurance contracts. The Ind AS 117 have *inter alia* set out detailed guidelines for the recognition, measurement, presentation, and disclosure of the insurance contract, and guidelines on the Premium

Allocation Approach (PAA) for simplified measurement of short-duration contracts.

- c) Ind AS 101 (First-time Adoption of Indian Accounting Standards) has been updated to provide the guideline for first-time adoption of Ind AS, aiming to simplify and clarify reporting requirements for companies.
- d) Amendments have also been made to Ind AS 103 (Business Combinations), Ind AS 105 (Non-current Assets Held for Sale and Discontinued Operations), Ind AS 107 (Financial Instruments: Disclosures), Ind AS 109 (Financial Instruments) and Ind AS 115 (Revenue from Contracts with Customers) to align them with the new Ind AS 117 (Insurance Contracts).

THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) AMENDMENT RULES, 2024

The MCA, *vide* its notification dated August 12, 2024 (accessible [here](#)), has notified the Companies (Registration of Foreign Companies) Amendment Rules, 2024 (“**RFS Amendment Rules**”), which amends the Companies (Registration of Foreign Companies) Rules, 2014, and which shall be effective from September 9, 2024. As per the RFS Amendment Rules, the foreign companies are now required to submit their registration documents using Form FC-1 directly to the Registrar, Central Registration Centre. Prior to the amendment, the form was to be filed with the jurisdictional ROC which managed the entire registration process.

FREQUENCY OF REPORTING OF CREDIT INFORMATION BY CREDIT INSTITUTIONS TO CREDIT INFORMATION COMPANIES

The Reserve Bank of India ("RBI"), *vide* notification bearing reference RBI/2024-25/60 - DoR.FIN.REC.No.32/20.16.056/2024-25 dated August 8, 2024, has directed Credit Information Companies ("CICs") and Credit Institutions ("CIs") to update credit information on a monthly basis effective from January 1, 2025. In accordance with the Credit Information Companies (Regulation) Act, 2005 ("CICRA"), CICs and CIs are now required to update credit information on a fortnightly basis. CIs must submit the data to CICs within seven days of each reporting period and CICs must process the data within five days of receipt.

CICs are also required to report non-compliant CIs to the RBI every six months for monitoring.

REVIEW OF REGULATORY FRAMEWORK FOR HFCS AND HARMONISATION OF REGULATIONS APPLICABLE TO HFCS AND NBFCs

The RBI, *vide* notification bearing reference RBI/2024-25/61 - DOR.FIN.REC.No.34/03.10.136/2024-25 dated August 12, 2024, announced significant revisions to the regulatory framework governing Housing Finance Companies ("HFCS") and Non-Banking Financial Companies ("NBFCs") in a move aimed at harmonizing regulations across these sectors, ensuring minimal disruption.

The primary goal of this regulatory overhaul is to integrate HFCS into the broader regulatory framework established for NBFCs, following the transfer of regulatory oversight from the National Housing Bank ("NHB") to the RBI in August 2019.

Key Changes

- (i) **Public Deposit Acceptance:** The maximum limit for public deposits held by deposit-taking HFCS has been halved from 3 times to 1.5 times of net owned funds. Public deposits must be repayable after at least 12 months but no more than 60 months, against previous limit of 120 months. HFCS will now adhere to the same prudential parameters as deposit-taking NBFCs, including maintaining higher liquidity ratios and ensuring full asset coverage for public deposits.
- (ii) **Safe Custody of Liquid Assets:** The regulations governing the safe custody of liquid assets for HFCS will be aligned with those of NBFCs. This includes the application of specific guidelines from the Master Direction on Non-Banking Financial Companies regarding the safe custody of assets and collection of interest on statutory liquidity ratio ("SLR") securities.
- (iii) **Accounting Year Requirements:** All HFCS are mandated to prepare financial statements for the fiscal year ending March 31. They must finalize their balance sheets within three months of the fiscal year-end and seek prior approval from the NHB for any extensions to this timeline.
- (iv) **Investment Restrictions and Risk Management:** The new framework introduces restrictions on investments in unquoted shares and refines the risk management practices of HFCS. This includes guidelines for participation in currency derivatives, interest rate swaps, and credit default swaps, enhancing the financial instruments available for risk mitigation.
- (v) **Branch Operations and Agent Appointments:** HFCS will be subject to the same regulations as NBFCs regarding branch operations and the appointment of agents for deposit collection, promoting standardization across the financial sector.

The above-mentioned RBI's revisions also encompass updates to existing norms, including the maintenance of minimum liquid asset percentages, compliance with deposit maturity notices, and record-keeping practices.

REVIEW OF MASTER DIRECTION - NON-BANKING FINANCIAL COMPANY – PEER TO PEER LENDING PLATFORM (RESERVE BANK) DIRECTIONS, 2017

The RBI, *vide* notification bearing reference RBI/2024-25/63 - DoR.FIN.REC.35/03.10.124/2024-25 dated August 16, 2024, announced that the Master Direction on Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017, (“**Master Direction**”) originally established guidelines for NBFC-P2P Lending Platforms (“**NBFC-P2P**”) to act as intermediaries in the online marketplace for peer-to-peer (“**P2P**”) lending. To ensure proper adherence to the regulations, the RBI has issued a clarification and amendment to certain provisions of the Master Direction.

Key points amended in the Master Directions

1. An NBFC-P2P cannot offer credit enhancement, guarantees, or take on credit risk related to platform transactions. Any losses on loans must be borne by the lenders, as per the fair practices code.
2. An NBFC-P2P is only allowed to cross-sell loan-specific insurance products and is prohibited from selling any insurance products related to credit enhancement or credit guarantees.
3. A lender's total exposure across all P2P platforms cannot exceed Rs. 50,00,000/- subject to alignment with their net-worth. If a lender's total lending exceeds Rs. 10,00,000/- they must provide P2P platforms with a certificate from a practicing chartered accountant confirming a minimum net-worth of Rs. 50,00,000/-.
4. Fund transfers on a peer to peer lending platform must be done via escrow accounts operated by a bank-promoted trustee. Separate escrow accounts must be maintained for funds from lenders and collections from borrowers. No funds from one escrow account can be used for the other purpose, and all transactions must occur through bank accounts, with cash transfers prohibited. Funds in escrow accounts must be transferred within one business day (T+1).
5. An NBFC-P2P must disclose to the lender details about the borrower, including their personal identity (with consent), the required loan amount, the interest rate sought, and the borrower's credit score as determined by the NBFC-P2P.
6. An NBFC-P2P must publicly disclose on its website the portfolio performance, including the share and age segregation of non-performing assets (“**NPA**s”) on a monthly basis, along with any losses incurred by lenders on principal or interest.
7. NBFC-P2Ps can outsource non-core functions but must retain control over core management functions, including internal audit, strategic and compliance roles, pricing, and KYC compliance.

The updated provisions will take effect immediately, except for amendment given in paragraph 4 above which will become effective 90 days from August 16, 2024.

SCHEME FOR TRADING AND SETTLEMENT OF SOVEREIGN GREEN BONDS IN THE INTERNATIONAL FINANCIAL SERVICES CENTRE IN INDIA

The RBI, *vide* notification bearing reference RBI/2024-25/72 - CO.FMRD.FMIA.No.S242/11-01-051/2024-2025 dated August 29, 2024 introduced a “Scheme for Trading and Settlement of Sovereign Green Bonds in the International Financial Services Centre in India” (“**Scheme**”) to allow eligible foreign investors to invest and trade in Sovereign Green Bonds (“**SGRB**s”) in India's International Financial Services Centre (“**IFSC**s”). The Scheme mainly provides that:

(a) Investors may engage in primary security auctions conducted by the RBI and trade securities in the secondary market within the IFSC, following the Scheme's terms and conditions.

(b) Eligible IFSC Banking Units cannot take part in primary auctions under the Scheme but are allowed to trade in the secondary market according to the Scheme's terms.

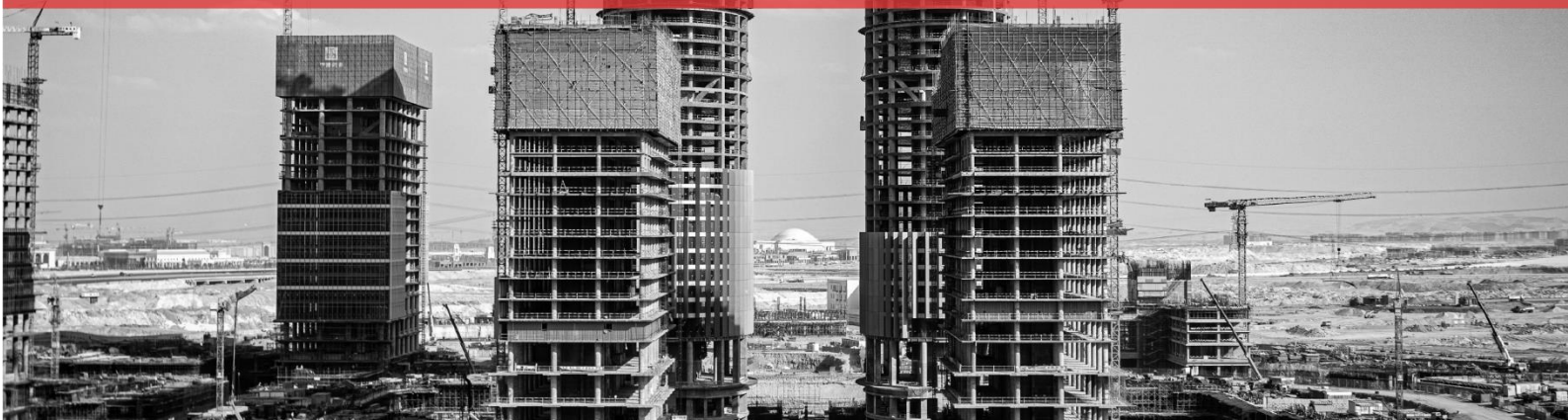
The Scheme takes effect immediately. The IFSC authority will soon release detailed operational guidelines to help IFSC entities understand how to participate in the Scheme. These guidelines will provide instructions on the procedures, eligibility criteria, and compliance requirements necessary for entities within the IFSC to engage effectively with the Scheme.

AMENDMENT TO THE FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019

The RBI, *vide* notification No. FEMA.396(3)/2024-RB dated August 2, 2024, amended the Foreign Exchange Management (Debt Instruments) Regulations, 2019 pursuant to the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024 to enable persons residing outside India to buy and sell Sovereign Green Bonds through security accounts opened with depositories in IFSCs.

The amount of consideration for purchase of such bonds may be paid out of inward remittance from abroad through banking channels or out of funds held in foreign currency

accounts maintained as per RBI regulations and/or the International Financial Services Centre Authority.



HIMACHAL PRADESH HIGH COURT HOLDS THAT ONLY THE PROVISIONS OF CPC MENTIONED IN RERA ACT APPLY TO RERA PROCEEDINGS, REMAINING PROVISIONS EXCLUDED BY LEGISLATURE

The High Court of Himachal Pradesh, in the case titled *Sumit Khanna and Another vs. Kanchan Sunil Adani and Others* has ruled that only those provisions of the CPC explicitly mentioned in the Real Estate (Regulation and Development) Act, 2016 (“RERA”), apply to RERA proceedings, while other provisions are intentionally excluded by the Legislature.

Justice Tarlok Singh Chauhan observed, “The Legislature has expressly made only the aforementioned provisions of CPC applicable to the RERA and is, therefore, deemed to have intentionally excluded the other provisions of CPC from its applicability to the proceedings.”

This proposition, the court said, is based on the principle of “*expressio unius*”, which implies that the express inclusion of certain provisions naturally excludes others that are not mentioned.

The case originated from a decree passed by RERA in favour of the respondents, which directed the petitioners to refund substantial sums along with interest. The petitioners, however, sought to frustrate the execution of the decree by repeatedly challenging the proceedings on various grounds, including the alleged non-compliance with certain provisions of the CPC by RERA. The petitioners contended that RERA had failed to adhere to the procedural safeguards provided under the CPC, specifically citing non-compliance with the provisions of Order 21 Rules 11A, 37, 39, and 40.

It was argued that the orders passed by RERA, which included the issuance of arrest warrants, were vitiated by this non-compliance. The petitioners, therefore, sought the quashing of RERA's orders and requested that the matter be remanded back to RERA for reconsideration in compliance with the CPC.

The court, however, rejected the petitioners' contention that RERA had failed to adhere to the procedural safeguards provided under the CPC. The court clarified that only the provisions of the CPC explicitly mentioned in the RERA Act, apply to RERA proceedings, and therefore, the petitioners' argument was unfounded.

The court further observed that the petitioners, despite not having paid a single rupee towards the decree, continued to argue that the principles of natural justice had not been followed. This was despite their active participation in the RERA proceedings, their full awareness of the orders passed, and the dismissal of their appeals by the Appellate Authority.

Thereafter the court deemed the petition baseless, recognizing it as part of a broader strategy to evade the legal obligations imposed by the RERA decree. Concluding that the petitions amounted to a “*gross abuse of the judicial process*”, the court dismissed them with costs.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MAKES 'QUALITY ASSURANCE CERTIFICATE' MANDATORY FOR BUILDERS

The Maharashtra Real Estate Regulatory authority (**Maha RERA**) has made it mandatory for developer to present a ‘Quality Assurance Certificate’ (QAC) to Maha RERA at the end of financial year and publish it in their respective websites. This is done to guarantee that homebuyers will receive better-quality residences and won't have to pursue the developer to have the flaws fixed.

A consultation paper was issued in December, followed by a draft circular published on April 24. After a period for feedback and consultation with experts, the framework for the compulsory QAC has been finalised. The certificate will be based on various factors determining quality of project, including a project's structural design, stability, various tests, the types of materials used, and the skill level of workforce

involved, fire safety and fire resistance measures, etc. This mandatory condition was introduced in the amendment to the MahaRERA General Regulations, 2017 with the inclusion of the MahaRERA General (Amendment) Regulations, 2024.

Details must be provided by the project engineers and supervisors, and the builder must confirm the information before releasing the "Quality Assurance Certificate" to the public. This will increase developer's accountability and ensure that homebuyers receive quality houses. As per MahaRERA Act, a developer is obliged to rectify any deficiency in the residences for a period of five years from the date of possession, as its defect liability period. Every complaint has to be attended to within 30 days, without any cost to the homebuyer.

This certificate marks a significant step towards elevating construction standards and ensuring homebuyers receive high quality residences. This initiative is expected to foster greater accountability among developers and ultimately enhance reliability and safety of new housing projects.

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL HELD THAT HOMEBUYERS COULD APPROACH REAL ESTATE REGULATORY AUTHORITY EVEN IF THEY HAVE ALREADY FILED A COMPLAINT BEFORE CONSUMER COURT

Maharashtra Real Estate Appellate Tribunal (**MahaREAT**) in *Ajay vs. M/s. Lucina Land Development Limited A/w Another*, held that homebuyers can approach Real Estate Authority even if they have already filed a complaint before consumer court. However, if both complaints seek same relief, the home buyers will need to withdraw their complaint from the consumer court i.e. *Doctrine of election* will apply.

Aggrieved by the delay in construction project and execution of sale agreements, the homebuyers lodged separate complaints with MahaRERA (Authority) requesting a reimbursement that included interest. The Authority announced on July 30, 2021, that the homebuyers had already filed complaint with the State Consumer Dispute Redressal Commission, requesting similar relief. Authority dismissed the complaints of the homebuyers, holding that they were engaging in forum shopping. Therefore, aggrieved by the dismissal of their complaints before the Authority, the homebuyers filed appeal before the Tribunal seeking to quash the Authority's order dated July 30, 2021, and provide a refund of the amount with interest.

The Tribunal while referring to Supreme Court decision in *M/s. Imperia Structures Ltd. vs. Anil Patni and Anr.*, held that Homebuyers are permitted to initiate proceedings under RERA by filing complaints before Authority, even if they have already filed consumer complaints earlier under the Consumer Protection Act, 1986.

The Tribunal referred to Section 18 of the Real Estate (Regulation and Development) Act, 2016 [RERA], which states that remedies under this section are *without prejudice to any other remedy available*. This means that concurrent claims are permitted, particularly if the reliefs sought are different. Such as, one may seek compensation under the Consumer Protection Act and regulatory compliance under RERA.

The Tribunal further noted that Section 79 of the RERA, 2016, bars civil courts but does not bar consumer forums, which are specialized tribunals distinct from civil courts. Therefore, Section 79 of the RERA, 2016 does not impact the doctrine of election regarding remedies under RERA and the Consumer Protection Act. Additionally, the Tribunal held that Section 88 of RERA, 2016, creates an exception to the doctrine of election by permitting concurrent claims as long as they address different aspects of grievances.

As a result, the Tribunal concluded that the doctrine of election applies to the homebuyers' appeal. Since the homebuyers chose not to withdraw their complaint from the Consumer Court, their complaint before the Authority is unsustainable. Therefore, the Tribunal dismissed the homebuyers' appeal and upheld the MahaRERA order dated July 30, 2021.

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL HOLDS THAT BUILDER NOT ENTITLED TO FORFEIT MONEY PAID BY HOMEBUYER AS PART PAYMENT OF CONSIDERATION

In *M/s. Godrej Properties Limited vs. Mr. Amit Agarwal*, the MahaREAT held that the builder is not entitled to forfeit the money paid by the homebuyer as part of the consideration.

As per the factual matrix of the case, the homebuyer purchased two flats, in the builder's project named '*The Trees*.' The total cost of each flat was Rs. 1,41,67,000/-. On 07.10.2016, an agreement for sale was executed between the builder and the homebuyer, and the homebuyer paid a total consideration of Rs. 97,49,343/- towards the flats.

On March 23, 2018, the builder terminated the sale agreement due to the buyer's noncompliance with payment terms, forfeiting Rs. 56,66,800/- from the buyer's payment. Outraged by the cancellation and forfeiture, the homebuyer complained to the Authority, requesting Rs. 15,00,000 in compensation for the builder's illegal behaviour and a refund of the full sum paid.

By virtue of Section 7 of RERA, 2016, the Authority invalidated the forfeiture clause in the sale agreement as an unfair practice and ordered the builder to reimburse Rs. 19,81,136 for Flat 503 and Rs. 19,24,186 for Flat 504 in its ruling dated August 13, 2020.

Further aggrieved by the Authority's order dated 13.08.2020, both the homebuyer and the builder filed separate appeals before the Tribunal, with the homebuyer seeking a refund with interest and the builder seeking to set aside the Authority's order. The Tribunal cited Clause 13(b) of the sale agreement, which stated that, if the homebuyer defaults on payments on time, the builder is entitled to forfeiture of 20% of the total cost of the property along with interest.

The Tribunal observed that while the builder claimed to have suffered losses due to the termination of the sale agreements, the flats in question were further re-sold by the builder at a much higher price than initially agreed upon in the original agreements. Therefore, the Tribunal allowed the homebuyer's appeal and dismissed the builder's appeal. The Tribunal directed the builder to refund Rs. 73,57,978 to the homebuyer and to pay interest to the homebuyer from the termination date until the actual payment date.

MADHYA PRADESH HIGH COURT HOLDS THAT COPARCENERS CANNOT ALIENATE ANY SPECIFIC SHARE OF LAND BELONGING TO HINDU JOINT FAMILY PROPERTY OTHER THAN THEIR OWN SHARE

The High court of Madhya Pradesh in the case **Ahamad Khan And Others Versus Bhaskar Ddatt Pandey And Others** has discussed the issue of the sale of a part of land belonging to a Hindu joint family property. The court adjudicated on the question of whether a specific piece of land, not being the share of a coparcener, can be alienated. In answering the question in the negative the court ruled that, under a coparcenary, an individual's portion may be alienated, but no land that is part of the Hindu joint family property may be alienated other than the coparcener's own share.

The court further observed that, the lower courts were correct in restraining the petitioners from raising construction on the disputed land. The court found no jurisdictional error or material illegality in the orders passed by the lower courts, as they aligned with the legal principles governing Joint Hindu Family Property and the transfer of property during litigation.

The court emphasized that the *lis pendens* doctrine under Section 52 of the Transfer of Property Act remains applicable to property sales even when no temporary injunctions are in effect. This approach ensures that the property remains under the court's jurisdiction and that any transfers made while the case is pending do not affect the outcome of the case.

MAHAREAT HOLDS THAT DELAY IN POSSESSION DUE TO DELAY IN GRANTING PERMISSIONS/ SANCTIONS FROM VARIOUS COMPETENT AUTHORITIES CANNOT BE CONSTRUED AS FORCE MAJEURE

The MahaREAT, in the case of **M/s. Spenta Builders Pvt. Ltd. vs. Mr. Ashlesh Gosain**, clarified that delays in possession due to granting permissions or sanctions do not qualify as force majeure. MahaREAT affirmed that the RERA Authority has the jurisdiction to handle claims for interest under Section 18 of the RERA Act. They noted that while the Authority had directed the builder to pay interest from July 1, 2017, based on similar complaints, this did not adequately reflect the specifics of this case.

MahaREAT found that the builder's justification for delays—such as changes in sanctioned plans and delays in obtaining clearances—did not meet the force majeure criteria outlined in Section 6 of RERA, which pertains to natural calamities like war, floods, or earthquakes. MahaREAT determined that the builder failed to substantiate the delays and ruled that these excuses were insufficient to extend the possession date. Consequently, the builder was not entitled to any extension or profit due to these delays.

In its ruling, MahaREAT criticized the Authority's decision to begin calculating interest from July 1, 2017, instead of January 1, 2016, the date following the original possession deadline of December 31, 2015. MahaREAT found this decision to be unjustified and contrary to RERA's guidelines. As a result, MahaREAT granted the homebuyer's appeal, denied the builder's appeal, and ordered the builder to pay interest from January 1, 2016, until the actual date of possession.



SPORTS AND GAMING

SPORTS

CAS DISMISSES VINESH PHOGAT'S APPLICATION FOR JOINT SILVER MEDAL AT THE PARIS OLYMPICS

In considering the appeal by Indian wrestler Vinesh Phogat, who contested her disqualification and replacement by United World Wrestling (UWW) due to failing her second weigh-in before the gold medal match in the Women's Freestyle 50kg event at the Paris Olympics, Sole Arbitrator Dr. Annabelle Bennette dismissed her application. Dr. Bennette found that the UWW International Wrestling Rules 2023 are explicit about the weight limit, which applies uniformly to all competitors without exception. There is no allowance for factors like the weight of the singlet; it is the athlete's responsibility to stay within the weight limit. The Arbitrator emphasized that the Rules do not accommodate personal exceptions and that the 50 kg limit is definitive.

Additionally, it was determined that the Rules embody a UWW policy requiring wrestlers to remain eligible throughout the entire competition—from the start to the finals. This policy means that partial eligibility does not confer any rights, which is why Article 11 of the Rules dictates the consequences for wrestlers who become ineligible during the competition.

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BAHRAIN'S TRACK TEAM SANCTIONED FOR DOPING VIOLATIONS, RESTRICTED FROM NATURALIZING ATHLETES

Bahrain's track team has been sanctioned by World Athletics due to doping violations, including negligence and employing a banned coach. As a result, Bahrain is limited to a maximum of 10 athletes for the Paris Olympics and the 2025 World Championships. The country is also prohibited from recruiting foreign athletes until 2027. In response, Bahrain

will focus on developing local talent through a new academy, addressing past scrutiny over doping issues among its naturalized athletes.

Bahrain's team in Paris included Kenya-born Winfred Yavi, who won gold in Paris in the women's 3,000-meter steeplechase, and Nigeria-born sprinter Salwa Eid Naser, the silver medallist in the 400. This was not the first time that Bahrain has faced scrutiny over doping, particularly among its roster of athletes who were naturalized. Naser missed the Tokyo Olympics while serving a ban for not being available for drug testing. Kemi Adekoya, a former world indoor champion in the 400, got a four-year ban in 2019 in a steroid case. Marathon runner Marius Kimutai was banned for three years in April after failing a drug test.

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PARALYMPICS DROP BAN ON OLYMPIC RING TATTOOS, ALLOW ATHLETES TO SHOWCASE INK

The International Paralympic Committee (I.P.C.) has lifted its ban on athletes displaying Olympic ring tattoos during the Paralympics, a rule that previously required them to cover up these tattoos or face penalties. This change was issued before the start of the 2024 Paralympics in Paris, offering relief to athletes who view the rings as a symbol of their dedication. Despite the I.P.C. and International Olympic Committee being separate entities, the new policy allows for the visible display of this iconic emblem.

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NBA SEEKS DISMISSAL OF WARNER BROS. DISCOVERY LAWSUIT OVER MEDIA RIGHTS DEAL WITH AMAZON

The NBA has requested the New York Supreme Court to dismiss Warner Bros. Discovery's (WBD) lawsuit, which claims the NBA breached its contract by rejecting WBD's matching offer in favour of Amazon Prime Video for a new media rights deal. The NBA argues that WBD (the parent company of Turner Sports) improperly altered Amazon's offer and that their revisions constituted a counteroffer, not a match. The new media rights deal, worth nearly \$76 billion, marks the end of a decades-long partnership between the NBA and Turner Sports. Amazon's offer was roughly \$1.8 billion per year, and NBC's was roughly \$2.45 billion per year.

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UK SPORTS BODIES INTRODUCE NEW CODES FOR GAMBLING SPONSORSHIPS

The Betting and Gaming Council (BGC), working with various sports bodies, has developed the "Codes of Conduct for Gambling-Related Agreements" framework, with each body creating a code tailored to its sport. Football and horseracing have led with new codes to enhance safe gambling sponsorship practices. This new framework sets higher standards for safer gambling sponsorships, aiming to protect vulnerable individuals, uphold sporting integrity, and ensure gambling sponsorship revenues are reinvested into the sport.

The Premier League, the English Football League, The FA, and the Women's Super League have agreed to adopt a new Code of Conduct for Gambling Related Agreements in Football. The aim is to ensure that gambling sponsorships are delivered in a socially responsible way and that revenues from these agreements are reinvested into football and its communities. This code complements existing statutory requirements within the Gambling Act 2005 and the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing. Separately, Premier League teams have also voluntarily agreed to ban front of shirt sponsorship deals with gambling companies from the 2026/27 season.

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JANNIK SINNER AVOIDS DOPING BAN AFTER INDEPENDENT TRIBUNAL RULING

Jannik Sinner, the men's world No. 1 tennis player, has avoided a doping ban after he successfully argued that two failed anti-doping tests in March 2024 had been a result of contamination through his physiotherapist. After Sinner's positive test, the International Tennis Integrity Agency (ITIA), which handles anti-doping and corruption in tennis, consulted with scientific experts and then took the case to the independent tribunal. The independent tribunal ruled

that Sinner bore "no fault or negligence" for twice testing positive for trace amounts of the banned substance clostebol. Neither of Sinner's positive anti-doping tests had previously been made public.

While athletes receive automatic mandatory provisional suspensions after being notified of an anti-doping rule violation, it can be appealed and removed if an athlete demonstrates at a hearing that the violation likely involved a contaminated product. Sinner was provisionally suspended from 4 April until 5 April, shortly after winning the Miami Open, and then just before the Madrid Open between 17 April until 20 April. Both times, the provisional suspension was cut short after Sinner successfully appealed them.

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IMANE KHELIF FILES LEGAL COMPLAINT OVER ONLINE HARASSMENT

Imane Khelif, the Algerian boxer at the centre of a gender row at the Paris Olympics, has filed a legal complaint saying she has been a victim of online harassment. Khelif was crowned an Olympic champion after beating China's Yang Liu by unanimous decision to win gold in the women's welterweight final.

Khelif and a Taiwanese boxer were banned from the world championships last year, with the International Boxing Association (IBA) saying they failed gender eligibility tests. However, the International Olympic Committee (IOC) said the decision was "sudden and arbitrary" and the tests were majorly flawed. It has banned the IBA over governance issues, alleged corruption and ties to Russia.

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VARSITY BLUES DAD SCORES WIN VS. NETFLIX, CLAIMS FILM DISTORTS REALITY

John B. Wilson, who had his conviction from the Operation Varsity Blues case overturned last year on appeal, achieved another legal victory when a Cape Cod judge denied Netflix's request to dismiss his defamation lawsuit regarding the film *Operation Varsity Blues: The College Admissions Scandal*. The Court determined that Wilson had sufficiently claimed that Netflix defamed both him and his son, John B. Wilson Jr., by suggesting in the film that Wilson Jr. was a fraudulent athlete or that he cheated on his ACT exam to gain admission to the University of Southern California.

The Court noted that viewers of the film could wrongly infer that Wilson Jr. was a fake athlete due to "truncated" conversations and "contemporaneous images" that implied both that he was a sham and that his father orchestrated this deception. In reality, Wilson Jr. was a highly accomplished

high school water polo player, scoring in the 93rd percentile on his ACT and making the USC water polo team.

Although Netflix still has a chance to win the case, as a motion to dismiss being denied happens early in the litigation process, both Netflix and Wilson are now facing pretrial discovery. This process will likely involve sworn testimonies and the exchange of sensitive communications, including emails and texts. Wilson will seek to understand how Netflix chose to portray him and his family in the film. The case could potentially be settled at any point, possibly involving Netflix revising the film to adjust the portrayal of Wilson.

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GAMING

E-GAMING FDI RULES SET TO BE EASED

The Indian government is set to liberalize foreign direct investment (FDI) in the burgeoning online gaming sector, aligning with Prime Minister Narendra Modi's vision of establishing India as a "global gaming hub." This initiative may allow for 100% foreign ownership of locally incorporated gaming entities through an automatic route, subject to restrictions on "games of chance," which include indiscriminate betting and gambling.

A recent note from the Department for Promotion of Industry and Internal Trade (DPIIT) emphasizes the need to differentiate between "games of skill" and "games of chance" for FDI purposes. However, this distinction may conflict with the Goods and Services Tax (GST) Council's recent clarifications, which mandate a uniform 28% GST on all online gaming revenues.

Currently, while 100% FDI is not explicitly prohibited, it is rarely approved. Over the past five years, the Indian gaming sector has attracted \$2.8 billion in investments, with significant venture capital activity noted last financial year. The proposed changes are part of a broader review of foreign investment rules, aiming to clearly define sectors where foreign investment in real money gaming is permissible.

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REFUGEE TEAM BREAKDANCER FROM AFGHANISTAN DISQUALIFIED FOR DISPLAYING 'FREE AFGHAN WOMEN' DURING PERFORMANCE

Afghan refugee Manizha Talash has been disqualified from the Paris Olympics 2024 after displaying "Free Afghan Women" on her cape during her breaking routine in the competition's pre-qualifiers. Talash was "disqualified for displaying a political slogan on her attire," the World DanceSport Federation said in a statement.

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WHATSAPP BUSINESS UPDATES POLICY TO ALLOW REAL MONEY GAMING ADS IN INDIA

Meta has updated its WhatsApp Business policy to allow companies in the real-money gaming sector to send promotional messages to users in India, provided they comply with state-specific regulations. This change aims to enhance engagement for online gaming companies, especially small and medium enterprises (MSMEs), by enabling them to reach users who have opted in to receive communications.

Under the new policy, online gambling and gaming organizations must obtain permission from Meta before sending promotional messages. They are required to demonstrate that their activities are appropriately licensed and comply with local regulations. Additionally, businesses must ensure their communications adhere to legal age restrictions, prohibiting messages to individuals under 18.

This update is part of a broader effort by Meta to navigate local laws while promoting user safety by preventing illegal gambling platforms from using its services. The All India Gaming Federation (AIGF) welcomed the decision, highlighting its potential to foster growth and innovation within the sector while ensuring compliance with regulatory standards.

Meta emphasised that it may limit or remove a company's access to WhatsApp Business services if there is significant negative feedback, reported harm to WhatsApp or its users, or if the company violates Meta's terms or policies.

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RBI ISSUES FRAMEWORK FOR RECOGNITION OF SELF-REGULATORY ORGANISATIONS IN FINANCIAL MARKETS

The Reserve Bank of India (“RBI”) issued the Framework for Recognition of Self-Regulatory Organisations in Financial Markets regulated by the Reserve Bank, dated August 19, 2024 ([accessible here](#)). The framework is based on the ‘Omnibus Framework for recognition of Self-Regulatory Organisations for Regulated Entities of the Reserve Bank’ issued on March 21, 2024 ([accessible here](#)) and specifies the broad parameters, viz., objectives, responsibilities, eligibility criteria, membership, governance standards and application process for the recognition of SROs in financial markets.

SROs must be not-for-profit entities with a minimum net worth of INR 10 crore and must uphold high standards of governance. They should have transparent, professional management and ensure equitable treatment for all members. The RBI may revoke recognition if an SRO's activities are found to be against public interest. This framework seeks to enhance the integrity, transparency, and accountability of financial markets, thereby supporting their sustainable growth. It should ensure compliance with regulations, manage disputes effectively, and align its practices with statutory requirements. It must maintain transparency, fair pricing, and public education while adhering to a governance framework with Independent Directors. Recognition by the RBI requires meeting eligibility criteria, submitting a detailed application, and ongoing compliance, with the RBI holding the authority to grant or revoke recognition.

RBI AMENDS THE PEER TO PEER LENDING PLATFORM MASTER DIRECTIONS 2017

The RBI, *vide* its circular dated August 16, 2024 ([accessible here](#)), has amended the Peer to Peer Lending Platform (Reserve Bank) Directions, 2017, originally devised to regulate these platforms as intermediaries in online peer-to-

peer lending. Some platforms were found violating these guidelines by misrepresenting their services as investment products with guaranteed returns, offering liquidity options, and acting beyond their intermediary roles. To address these issues, the RBI has clarified and amended the provisions.

Key amendments include a prohibition on credit enhancements or guarantees by NBFC-P2P platforms, with all lending risks fully borne by lenders and clearly disclosed. Platforms must not cross-sell beyond loan-specific insurance products, and lenders' total exposure is capped at ₹50 lakh, with amounts over ₹10 lakh requiring net-worth certification. Platforms must adopt a Board-approved policy for fair matching of lenders and borrowers, use escrow accounts for fund transfers, and ensure no cash transactions. Additionally, platforms must disclose borrower details, portfolio performance, and risk warnings, and include a disclaimer that the RBI does not guarantee loan repayment. New provisions also ban the use of lenders' funds for replacement purposes, mandate objective pricing policies, and prohibit matching participants within closed user groups.

RBI STREAMLINES PROCESSING OF E-MANDATES FOR RECURRING TRANSACTIONS

The RBI has released notification ([accessible here](#)), dated August 22, 2024, in reference to its E-mandate framework to include auto-replenishment for FASTag and National Common Mobility Card transactions. Previously, issuers were required to send a pre-debit notification at least 24 hours before any charge. However, for auto-replenishment transactions—recurring but without fixed periodicity—this pre-debit notification requirement is now exempt. This change aims to streamline the process for auto-replenishment when account balances fall below a customer-defined threshold. All other aspects of the e-mandate framework remain in effect. This update is effective immediately.

DOT ISSUES DRAFT TELECOMMUNICATION FOR PROCEDURE AND SAFEGUARD FOR LAWFUL INTERCEPTION OF MESSAGES RULES, 2024

The Department of Telecommunications (“DOT”) has released draft Telecommunication Rules, dated August 30, 2024 ([accessible here](#)), for Procedure and Safeguard for Lawful Interception of Messages, under the Telecommunications Act, 2023. These rules are set to replace Rule 419 and 419A of the Indian Telegraph Rules, 1951. The draft rules outline the procedures for lawful interception of communications by authorized agencies, including the roles of competent authorities, the issuance and confirmation of interception orders, and the maintenance and destruction of intercepted messages. They also establish safeguards, such as limiting the duration of interception orders to 60 days (renewable up to 180 days), maintaining secure records, and implementing confidentiality measures. Additionally, the rules define the structure and responsibilities of review committees at both the Central and State levels, which will assess the compliance of interception orders with the Act.

Objections or suggestions from the public are invited within 30 days of the notification's publication in the Official Gazette.

DOT ISSUES DRAFT TELECOMMUNICATIONS OF TELECOM CYBER SECURITY RULES, 2024

The DOT has released draft Telecommunication Rules, dated August 30, 2024 ([accessible here](#)), of Telecom Cyber Security, under the Telecommunications Act, 2023. These rules aim to enhance the security of telecom networks and services. They will replace the existing regulations on mobile device identification but will uphold actions previously taken under those rules. The draft rules include provisions for the collection, sharing, and analysis of telecom data, obligations for telecom entities to ensure cyber security, the appointment of a Chief Telecommunication Security Officer, and the reporting of security incidents.

Public feedback is invited within 30 days from the notification in the Official Gazette.

DOT ISSUES DRAFT TEMPORARY SUSPENSION OF TELECOMMUNICATION SERVICES RULES, 2024

The DOT has released draft Telecommunication Rules, dated August 30, 2024 ([accessible here](#)), of Temporary Suspension of Telecommunication Services, under the Telecommunications Act, 2023. These rules, intended to replace the previous rules from 2017 and 2020 under the Indian Telegraph Act, 1885, will regulate the temporary suspension of telecom services in situations of public emergency or safety. Key provisions include the requirement that suspension orders be issued in writing by the competent

authority, specifying reasons, geographical scope, and a duration not exceeding 15 days. A review committee, constituted by both the Central and State Governments, must assess the validity of these orders within five days.

Public objections or suggestions on the draft rules may be submitted within 30 days of their publication in the Official Gazette.

DOT ISSUES DRAFT TELECOMMUNICATION OF CRITICAL TELECOMMUNICATION INFRASTRUCTURE RULES, 2024

The DOT has released draft Telecommunication Rules, dated August 30, 2024 ([accessible here](#)), of Critical Telecommunication Infrastructure, under the Telecommunications Act, 2023. These rules aim to regulate and secure Critical Telecommunication Infrastructure, which is vital to national security, the economy, and public safety. Telecommunication entities are required to comply with stringent security measures, including regular vulnerability assessments, maintaining detailed logs and inventories, and ensuring compliance with national security directives. The rules also mandate the appointment of a Chief Telecommunication Security Officer responsible for implementing these regulations and reporting security incidents to the government.

The draft rules are open for public objections or suggestions within 30 days of their publication in the Official Gazette.

TRAI DIRECTS ACCESS PROVIDERS TO DISCONNECT TELECOM RESOURCES AND BLACKLIST UNREGISTERED SENDERS INVOLVED IN SPAM CALLS

The Telecom Regulatory Authority of India (“TRAI”) has issued directives, dated August 13, 2024 ([accessible here](#)), to Access Providers to disconnect all telecom resources of unregistered Senders for making spam calls and to blacklist such Senders under Telecom Commercial Communication Customer Preference Regulations, 2018. The directions mandate that all Access Providers must immediately stop promotional voice calls from Unregistered Telemarketers (“UTM”) and disconnect all telecom resources used by these entities for up to two years if they violate regulations. Additionally, if a UTM is blacklisted, all Access Providers must disconnect the resources allocated to that sender within 24 hours and ensure no new resources are allocated during the blacklisting period. UTMs must also be migrated to the Distributed Ledger Technology (“DLT”) platform within one month and submit a compliance report. Access Providers are required to report their actions and updates on UTMs within fifteen days and on the 1st and 16th of each month.

TRAI DIRECTS ACCESS PROVIDERS REGARDING MEASURES TO CURB MISUSE OF HEADERS AND CONTENT TEMPLATES

The TRAI has issued directions, dated August 20, 2024, ([accessible here](#)) to Access Providers for enforcements of measures to curb misuses of Headers and Content templates under Telecom Commercial Communications Customer Preference Regulation, 2018.

These directives has been issued to curb the misuse of messaging services and protect consumers from fraudulent practices. Effective immediately, Access Providers must ensure full implementation of the 140xxx numbering series on the DLT platform by September 30, 2024, and block traffic with unapproved URLs, APKs, and OTT links starting September 1, 2024. From November 1, 2024, all messages must be traceable, and messages with undefined or mismatched telemarketer chains will be rejected. In cases of misuse, Access Providers must suspend traffic from the sender and require them to file complaints with law enforcement.

Misuse of Headers and Content Templates will result in blacklisting and suspension of services for repeat offenders. Access Providers are also required to ensure compliance with the regulations and submit updated reports within fifteen days.

TRAI RELEASES THE REVISED STANDARDS OF QUALITY OF SERVICE FOR ACCESS AND BROADBAND SERVICES

The TRAI, has released revised standards, dated August 2, 2024, ([accessible here](#)) namely “The Standards of Quality of Service of Access (Wirelines and Wireless) and Broadband (Wireline and Wireless) Service Regulations, 2024”. These new regulations shall come into force with effect from October 1, 2024, and are applicable to all service providers with Unified Access Service Licenses, Unified Licenses with authorization for Access Service, Internet Service Authorizations, or authorizations under the Telecommunications Act, 2023, with specific exceptions for providers with fewer than 10,000 subscribers.

Service providers are required to display technology-wise mobile coverage maps and publish QoS performance data online, shifting from quarterly to monthly monitoring for mobile services with a six-month transition period. TRAI has introduced new parameters like Jitter and Packet drop rate, aligned with global standards, and implemented more granular performance observation, including network availability and call drop rates at the cell level.

A standardized methodology for measuring QoS has been mandated, with benchmarks for key parameters like network availability and call drop rates being tightened in a graded manner. QoS performance measurement has shifted from average to percentile-based reporting to better identify

problem areas, with additional parameters introduced to enhance overall service quality. Service providers must adopt Six Sigma Quality Management Plans and upgrade their systems for online monitoring, with escalating financial penalties imposed for ongoing QoS non-compliance. Previously established QoS regulations are repealed but will remain in effect until September 30, 2024.

TRAI RELEASES CONSULTATION PAPER ON REVIEW OF THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER PREFERENCE REGULATIONS, 2018

The TRAI has released a consultation paper dated August 28, 2024 ([accessible here](#)) on reviewing the Telecom Commercial Communications Customer Preference Regulations (“TCCCPR”) of 2018. These regulations were implemented to control the issue of Unsolicited Commercial Communications (“UCC”). While TCCCPR 2018 has significantly reduced spam from registered telemarketers, the issue of UCC persists, especially with unregistered telemarketers who use regular 10-digit numbers and automated calls to bypass the regulations. The paper seeks feedback on various aspects of the existing framework, including definitions of commercial communications, complaint redressal processes, differential tariffs for curbing UCC, and the use of new technologies like Distributed Ledger Technology (“DLT”) to enforce regulations.

The consultation paper discusses the need to refine definitions related to transactional, service, and promotional communications to prevent misuse. It suggests revising the categorization to make the definitions clearer and reduce the chances of promotional content being disguised as service messages. Further, it highlights issues with delayed complaint transfers between providers, high thresholds for initiating investigations, and challenges in monitoring compliance. It proposes measures for real-time complaint transfers, clearer criteria for actions against violators, and better complaint handling facilities.

Stakeholders are invited to submit comments by September 25, 2024, and counter-comments by October 09, 2024, via email or the TRAI website.

TRAI RELEASES A CONSULTATION PAPER ON AUDIT RELATED PROVISIONS OF INTERCONNECTION REGULATIONS, 2017 AND DIGITAL ADDRESSABLE SYSTEMS AUDIT MANUAL

The TRAI has released a consultation paper, dated August 9, 2024, ([accessible here](#)) on amendments to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, and the Digital Addressable Systems Audit Manual. The paper aims to review and potentially amend the audit provisions and the Audit Manual in light of the complete digitization of the cable TV sector. Key areas under

discussion include proposed amendments to the audit provisions in the Interconnection Regulation, modifications to the Audit Manual, and the inclusion of enabling provisions

for infrastructure sharing within the sector. Stakeholders are invited to submit their comments by September 6, 2024, with counter-comments due by September 20, 2024.

WHITE COLLAR CRIME

LONG INCARCERATION AND DELAYED TRIAL IS VIOLATION OF ARTICLE 21 AND GROUND FOR BAIL UNDER PMLA

In this case where the accused had been incarcerated for 17 months without the trial having even commenced, the **Supreme Court** reiterated that the right to bail in cases of delayed trial coupled with long incarceration should be read into Section 439 of Code of Criminal Procedure, 1973 (CRPC) and Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA) as right to liberty and right to speedy trial are sacrosanct rights under Article 21 of the Constitution. The Supreme Court deprecated the tendency of High Courts and trial courts to deny bail as a matter of default and ignoring the well-settled legal principle that bail is not to be withheld as a punishment.

Case - Manish Sisodia vs. Directorate of Enforcement

ED CANNOT RELY ON THE STATEMENT OF CO-ACCUSED TO ESTABLISH ITS CASE FOR OPPOSING BAIL

In a landmark judgment, the **Supreme Court** has laid down certain important jurisprudential principles for PMLA:

- (1) Relying upon its judgment in *Manish Sisodia vs. Directorate of Enforcement* (covered above) where the Supreme Court deprecated the tendency of High Courts and trial courts to deny bail as a matter of default, the Supreme Court held that “Bail is the Rule and Jail is the Exception” is an expression of Article 21 of the Constitution and is the governing principle even under PMLA. The twin conditions on grant on bail imposed under PMLA do not re-write this principle.
- (2) When an accused is in judicial custody under PMLA, any statement obtained from him by Directorate of Enforcement (ED) under Section 50 of the PMLA is inadmissible even if made for any other offence

under PMLA (for which he is not under custody). This is because a person in such custody is not a person who can be considered as operating with a free mind.

- (3) Reiterating the principles laid down in *Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.*,(2022) SCC OnLine SC 929, the court held that in PMLA matters, the prosecution must establish three foundational facts: first, that a criminal activity related to a scheduled offence has been committed; second, that the property in question was obtained directly or indirectly as a result of that criminal activity; and third, that the accused is involved in any process or activity connected to the proceeds of crime. It is only once these facts are prima facie established, the presumption under Section 24 of the PMLA arises, shifting the burden of proof onto the accused.
- (4) To oppose accused’s bail under Section 45 of PMLA, ED cannot start with the incriminating material in the statements of co-accused as they will not have the character of substantive evidence in view of Section 30 of the Indian Evidence Act, 1872. ED will have to first marshal out other evidence and can at best look at statements of co-accused for lending assurance.

Case - Prem Prakash vs. the Union of India

FACTUAL ASSERTIONS IN PMLA COMPLAINTS MUST SHOW THAT SCHEDULED OFFENCES GENERATED PROCEEDS OF CRIME

The **Supreme Court** granted bail to an accused who was incarcerated for about one year primarily on the ground that there were no factual assertions in the complaints filed under the PMLA to show that the alleged scheduled offences

generated any proceeds of crime, directly or indirectly. In such event, there were reasonable grounds for believing that the complaints do not indicate that the accused was guilty of money-laundering.

Case - Bhagwan Bhagat vs. Directorate of Enforcement

ECIR MUST BE CLOSED IF PREDICATE OFFENCE DOES NOT SURVIVE

The **Kerala High Court** held that, while an Enforcement Case Information Report (**ECIR**) registered by the ED is an internal administrative document, since an ED investigation under PMLA is impossible without a predicate offence, the ECIR must be closed by ED if the predicate offence is quashed or the accused is acquitted or discharged. If the ED refuses to close the ECIR, the aggrieved person is entitled to invoke Article 226 of the Constitution or Section 482 of the CrPC.

Case - South Indian Bank vs. Directorate of Enforcement and Others

ARREST IN NON-COMPLIANCE WITH SECTION 41A OF CRPC IS ILLEGAL

In a case where the accused was arrested by police without complying with Section 41A of the CrPC, the **Bombay High Court** relied upon the Supreme Court's judgment in *Arnesh Kumar vs. State of Bihar and Anr.*, (2014) 8 SCC 273, and held such arrest illegal. In this case, though the notice under Section 41A was allegedly prepared, it was not served upon the Petitioner before arresting him. On account of such illegality, the High Court ordered an inquiry against the relevant department and directed compensation to the accused.

Case - Abhijit Padale vs. State of Maharashtra



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