

NEWSLETTER

December 2021

TABLE OF CONTENTS

Capital Market	03
04	Competition Law
Employment Law	06
10	Energy & Infrastructure
Media & Entertainment	13
17	Ministry of Corporate Affairs ("MCA")
RBI & FEMA	19
21	RERA
Technology Law	23
24	White Collar Crime



SEBI (ALTERNATE INVESTMENT FUNDS) (FIFTH AMENDMENT) REGULATIONS, 2021

The Securities Exchange Board of India (“SEBI”) vide notification no. SEBI/LAD-NRO/GN/2021/57 dated November 9, 2021, has further amended the SEBI (Alternate Investment Funds) Regulations, 2012 as follows:

- a) the term “Co-investment” has been defined as investment made by a Manager/ Sponsor/ investor of Category I and II, provided, co-investment shall be through co-investment Portfolio Manager.
- b) the terms of co-investment shall not be more favorable than the terms of investment of the AIF, and the terms and timing of exit of the co-investment, shall be identical to those of AIF.
- c) Investment of Category III AIFs shall be not more than 10% of net asset value in listed equity of investee company; and shall not be more than 10% of investable funds in securities other than listed equity of investee company, directly or indirectly.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENT) (SIXTH AMENDMENT) REGULATIONS, 2021

SEBI vide notification no. SEBI/LAD-NRO/GN/2021/55 dated November 9, 2021, has further amended the provisions under the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 relating to related party transactions, including those in relation to their definitions, approvals, disclosures.

Under the revised regulations, the meaning of “related party” has been expanded to include any person or entity belonging to the promoter or promoter group of the listed entity and holding 10% or more of shareholding in the listed entity, with effect from April 1, 2023, either directly or on a beneficial interest basis as per Section 89 of Companies Act, 2013. Further, specific carve outs (e.g., issue of specified securities on a preferential basis, payment of dividend, subdivision or consolidation of securities, rights issue or bonus issue of securities, buyback of securities, etc.) have been given to transactions which come under the ambit of ‘related party transaction’.

The amendments shall come into force with effect from April 01, 2022.



COMPETITION COMMISSION OF INDIA PAPER MANUFACTURERS FOR INDULGING IN CARTELISATION

By an order dated November 18, 2021, Competition Commission of India (“CCI”) has penalized companies manufacturing paper from agricultural waste and recycled wastepaper and the Indian Agro & Recycled Paper Mills Association for indulging in cartelisation in fixing the prices of writing and printing paper.

The case was initiated suo motu by CCI based on certain material found during the ongoing investigations of two other cases. Although the Director General (“DG”) investigated 21 original paper manufacturers and the association, it only recorded findings of contravention of the provisions against 10 such paper manufacturers and the association. The period of cartel was noted by the DG to be from September 2012 till March 2013. The conduct of the ten entities was in contravention of provisions of Section 3 of the Competition Act, 2002 (“Act”), which pertains to anti-competitive agreement. CCI imposed a symbolic penalty of Rs. 0.5 Mn. each on the 10 paper manufacturers found guilty of cartelisation. Further, a penalty of Rs. 0.25 Mn. was imposed on the association for providing its platform for anti-competitive activities.

DSK View: The reduced symbolic penalty was imposed considering that during the pandemic most businesses moved to the virtual mode thereby reducing the need for paper and affecting the paper business. This pattern has been followed consistently by the CCI during the pandemic.

CCI RELEASES STUDY ON PHARMACEUTICAL SECTOR

CCI on November 18, 2021, has released a report titled - ‘Market Study on the Pharmaceutical Sector in India: Key Findings and Observations’. The study was carried out with the objective of understanding the factors that influence price competition in the pharmaceutical sector, the study

focused on the specific realms of pharmaceutical distribution and the role of trade associations therein, trade margins, online pharmacies, and the prevalence of branded generic drugs in India and its implications for competition. Since the pharmaceutical sector is a regulated sector, the study also attempted to explore the areas of interface between regulation and competition.

The CCI in its market study has detailed the problem areas existing in this sector — (i) branded versus unbranded generics; (ii) e-pharmacies versus brick-and-mortar stores; and (iii) innovators versus imitators. The report highlighted the reasons for high-cost branded generics having a greater market share than low-cost unbranded generics. CCI found that the market for generic drugs is driven by brand competition instead of price competition despite drugs being functionally and chemically identical. Pharmaceuticals including generic drugs account for about 43.2% of out of pocket healthcare expenditure in India.

To dispel concerns regarding the price-quality correlation of drugs CCI has recommended the creation of a National Digital Drugs Databank and strict enforcement of drug quality standards to boost price competition among generic drugs in India.

The report may be accessed at http://cci.gov.in/sites/default/files/whats_newdocument/Market-Study-on-the--Pharmaceutical--Sector-in-India.pdf

DSK View: The study may lead to better understanding between the regulators in the pharma sector. Also, the report lays emphasis on need of uniform applicability of regulations and standards among all states and agencies.

COMBINATIONS APPROVED

CCI has approved the following combinations in view of the notices filed under Section 31(1) of the Act:

- **November 02, 2021** – Acquisition of 100% shareholding in **Exide Life Insurance Company Limited** by **HDFC Life Insurance Company Limited**. The combination involves acquisition of fully paid-up equity shares. After completion of the share acquisition, Exide Life (which will be a wholly owned subsidiary of HDFC Life) is proposed to be merged with HDFC Life.
- **November 15, 2021** – Acquisition of 71.25% shareholding of **ASK Investment Managers Limited** by **BCP TopCo XII Pte Ltd**. BCP TopCo XII Pte Ltd. is an affiliate of funds advised or managed by the affiliates of the Blackstone Group Inc.

- **November 23, 2021** – Acquisition of minority stake in **Delhivery Limited** by **FedEx Express Transportation and Supply Chain Services (India) Private Limited** and acquisition of certain operating assets of FedEx India and **TNT India Private Limited** by Delhivery.
- **November 23, 2021** – Acquisition of stake in **SUEZ S.A** by **Veolia Environment S.A** and acquisition of stake in **New Suez** by **Meridiam, Global Infrastructure Management, LLC, La Caisse des dépôts et consignations** and **CNP Assurances**.

DSK View: Transactions beyond certain threshold requires CCI's approval. The CCI has introduced an automatic system of approval for combinations under 'Green Channel'. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This system would significantly reduce the time and cost of transactions and thereby contributing towards ease of doing business in India.

EMPLOYMENT LAW

ESIC CIRCULAR ON SUBMISSION OF DOCUMENT FOR LATE REGISTRATION

The Employees' State Insurance Corporation ("ESIC"), vide circular dated November 1, 2021, directed that employers' requesting for change in date of registration have to submit the relevant documents to the concerned regional offices in prescribed proforma within 15 (Fifteen) days of the issue of show cause notice in case of a request made online by an employer for a change in date of registration. Consequently, all employers have been also requested to submit necessary documents within the stipulated time. If the employers fail to submit the documents within the due date, the late registration application may be rejected, and the date of registration will be deemed as the date of appointment.

RELAXATION ON ELIGIBILITY CONDITION UNDER ATAL BEEMIT VYAKTI KALYAN YOJANA

The ESIC, vide notification dated November 8, 2021, relaxed the eligibility condition under Atal Beemit Vyakti Kalyan Yojana scheme ("Scheme") with effect from July 1, 2021.

The revised Scheme provides that the concerned employee should have been in insurable employment for a minimum period of 12 (Twelve) months immediately before his/her unemployment and should have contributed for not less than 78 (Seventy Eight) days in the one completed contribution period in 12 (Twelve) months immediately preceding to unemployment. Further, any objection or suggestions, which may be received from any person in respect of notification within a period of 30 (Thirty) days from the date of publication, will be considered by the ESIC. The objections and suggestions may be addressed to Shri S Biswas, Insurance Commissioner, Employees' State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi 110002, (e-mail ID: dir-pnd@esic.nic.in).

ESI CONTRIBUTION TO EXCLUDE CONVEYANCE ALLOWANCE

The ESIC, vide notification dated November 8, 2021, apprised all regional and sub-regional offices to comply with the order of the Hon'ble Supreme Court of India in the case of *Employees' State Insurance Corporation v M/s Texmo Industries*. The Supreme Court, vide the order, held that the payment of conveyance allowance, as on the facts of the present case, does not fall under the definition of term "wages" as defined in Section 2(22) of the Employees' State Insurance Act, 1948. In furtherance of the same, ESIC has directed that, conveyance allowance shall not form part of the wages of the employees and the judgement holds good with effect from March 8, 2021.

EXTENSION OF THE SCOPE OF THE MAHARASHTRA EMPLOYEES' STATE INSURANCE (MEDICAL BENEFIT) RULES, 1953 AND TAMIL NADU EMPLOYEES' STATE INSURANCE (MEDICAL BENEFIT) RULES, 1955

The ESIC, vide notification dated November 8, 2021, has extended the scope of the Maharashtra Employees' State Insurance (Medical Benefit) Rules, 1955 and the Tamil Nadu Employees' State Insurance (Medical Benefit) Rules, 1955. The mentioned rules (as applicable) will now also be applicable to the families of insured persons in the entire area of Ahmednagar, Jalna and Yavatmal districts in the State of Maharashtra and the entire area of Thanjavur and Coimbatore districts in the State of Tamil Nadu, in addition to the already implemented area(s) in the district.

SEEDING OF UAN IN THE INSURANCE MODULE

The ESIC, vide notification dated November 8, 2021, has issued a circular regarding the provision for seeding of Universal Account Number ("UAN") data in Employer's Module of Corporation. It was further directed that UAN of a minimum of 75,00,000 (Seventy Five Lakhs) workers should

be added in the Insurance Module of the ESIC by February 24, 2022. The employers can use the screen to enter the UAN data of insured persons in the Insurance/Panchdeep Module. Once the data is entered in the system, the same can be validated from an Employees Provident Fund Organisation (“EPFO”) through application programming interface being built by EPFO and ESIC.

THE DRAFT OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS (BIHAR) RULES, 2021

The Labour Resource Department of Government of Bihar, vide notification dated November 8, 2021, has published the draft of the Occupational Safety, Health and Working Conditions (Bihar) Rules, 2021 (“Draft Rules”). The Draft Rules proposed are expected to supersede The Bihar Building and Other Construction Workers (Regulation of Employment and Condition of Services) Rules, 2005; The Bihar Factories Rules, 1950; The Contract Labour (Regulation and Abolition) State Rules, 1972; The Bihar Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) State Rules, 1980; The Bihar Motor Transport Workers Rule, 1962; and The Bihar Beedi and Cigar Workers (Condition of Employment) Rule, 1968.

EXTENSION OF TIMELINE FOR MANDATORY SEEDING OF AADHAAR NUMBER WITH UAN FOR FILING OF ECR-REG

The EPFO, vide notification dated November 15, 2021, has amended the previous circular dated June 15, 2021. As per the amendment, the filing of Electronic Challan cum Return (“ECR”) for UAN to seed with Aadhaar has been extended till November 30, 2021. The concerned field officers shall advise employers for implementation after the period of deferment.

EPFO notification dated June 15, 2021, specified September 1, 2021 as the effective date for compliance of Section 142 of the Social Security Code, 2020 as well as the date for filing ECR only for the UANs seeded Aadhaar. The effective date is now amended and changed to December 1, 2021.

RELAXATION OF THE TIME LIMIT FOR FILING AND DEPOSITING ESI CONTRIBUTIONS

The ESIC, vide its notification dated November 16, 2021, has relaxed the time limit for filing and depositing ESI contribution due to system breakdown. Accordingly, the ESI contribution for the month of October 2021 can be remitted up to November 30, 2021, instead of November 15, 2021, and Return on contribution for the period April 2021 to September 2021 may be filed up to December 15, 2021, instead of November 11, 2021.

EXTENSION OF THE PUBLIC UTILITY SERVICES STATUS ON THE COAL INDUSTRY

The Ministry of Labour and Employment, vide notification dated November 23, 2021, has further extended the public utility services status for the Coal industry by another 6 (Six) months with effect from November 27, 2021. The services engaged in the Coal industry had earlier been declared as a public utility service for a period of 6 (Six) months with effect from May 27, 2021.

THE (DRAFT) MIZORAM CODE ON WAGES RULES, 2021

The Government of Mizoram, vide notification dated November 10, 2021, has published the Draft Mizoram Code on Wages Rules, 2021. The said rules amongst other things, provides for the manner of calculating and norms for fixation of the minimum rate of wages, the revised working hours, holidays, overtime wages, night shift, dearness allowance, constitution and functions of the state advisory board.

ADOPTION OF THE STARTUP POLICY, 2021 BY THE GOVERNMENT OF GOA

The Government of Goa, vide its notification dated November 11, 2021, has adopted the StartUp Policy, 2021 (“Policy 2021”). As per the said policy, all start-ups registered under the StartUp Policy of 2017, shall continue to be registered under Policy 2021. Further, all incentive applications submitted on or before September 30, 2021, shall be processed as per StartUp Policy, 2017. The Policy 2021 shall remain in operation for a period of 3 (Three) years from the date of notification of the policy in the Official Gazette.

As per the Policy 2021:

- All start-ups registered in Goa will be allowed to operate 24/7. An intimation from Startup Promotion Cell (“Cell”) will be issued to the Panchayat and local bodies intimating them on such 24/7 operations of the registered start-ups.
- Start-ups registered with the Government of India under the Start-up India program and registered with the Cell will be exempted from inspection under the Factories Act, 1948; the Maternity Benefit Act, 1961; the Contract Labour/Regulations and Abolition Act, 1970; the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; and the Employment Exchange Act, 1959. However, start-ups will need to confirm compliance based on self-certification.
- As part of the Government of Goa’s endeavour to promote ease of doing business in the state, the Cell has set up an internet-based single-window portal, i.e., Goa State Start-Up portal (www.startup.goa.gov.in),

exclusively for start-ups and continues to update and maintain the portal providing due information. The portal enables registration of the start-ups, facilitates two-way communication with the Goa Government for updates and reminders on regulatory matters, and allows access to the repository of information at the state-level as well as national regulatory compliances that are required for new and existing start-ups. Through the single window portal, the Cell enables the start-ups to provide policy inputs to the Government.

- Certain incentives and enabling funds are also provided under Policy 2021 such as for the registration of intellectual properties, for hiring local talent, for operating the start-up from its own or rented premises, etc.

THE DELHI SHOPS AND ESTABLISHMENTS (AMENDMENT) RULES, 2021

The Government of Delhi, vide notification dated November 15, 2021, has published the Delhi Shops and Establishments (Amendment) Rules, 2021 to amend the Delhi Shops and Establishments Rules, 1954 (“**DSE Rules**”). The amendments shall be effective from November 15, 2021. The amending rules have primarily amended the rules related to fees, manner of registering establishments, form of registration certificate etc. of the DSE Rules. The amendments made are as under:

- Amendment to Rule 3 of DSE Rules provides for the online system, i.e., the Shops and Establishment Portal of Labour Department, which is implemented for filing applications. The occupier of the establishment shall do the same within 90 (Ninety) days of commencement of his establishment.
- Amendment to Rule 4 of the DSE Rules provides that the registration certificate shall be generated online in Form C, after the submission of the registration application on the online portal.
- Amendment to Rule 6 provides that occupier shall notify any change in respect of any information mentioned on the registration certificate, within 30 (Thirty) days after such change has taken place, online, on the portal.
- Form G of the DSE Rules have been amended to include the register of wages, deductions, overtime, advances. Further, Form H (Register of employment and remuneration of employees) and Form I (Register of leave) have been removed.

ASSAM MIGRANT WORKERS’ FOOD SECURITY SCHEME

The Labour Welfare Department of Government of Assam, vide notification dated November 22, 2021, has issued the Assam Migrant Workers’ Food Security Scheme to provide relief in the form of dry ration to the migrant workers in emergency times like the recent lockdown due to COVID-19 pandemic.

THE GOA SOCIAL SECURITY (DRAFT) RULES, 2021

The Government of Goa, vide its notification dated November 25, 2021, has published the Draft Goa Social Security Rules, 2021 (“**Draft GSS Rules**”) and has invited objections/suggestions from the public which shall be addressed to the Secretary (Labour), Secretariat, Porvorim within 45 (Forty Five) days.

As per the Draft GSS Rules:

- An employee who is eligible for payment of gratuity or any person authorized, in writing, to act on his behalf, shall apply, ordinarily, within 30 (Thirty) days from the date the gratuity became payable, in Form-II of the GSS Rules to the employer. Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 (Thirty) days of the date of superannuation or retirement. Provided further that an employee on fixed-term employment shall be eligible for gratuity, if he renders service under the contract for a period of 1 (One) year and he shall be paid gratuity at the rate of 15 (Fifteen) days’ wages, based on the rate of wages last drawn by him, for every completed year of service or part thereof in excess of 6 (Six) months.
- Further, Within 15 (Fifteen) days of the receipt of an application for payment of gratuity, the employer shall —
 - a) if the claim is found admissible on verification, issue a notice in Form-III to the applicant/employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the 30th (Thirtieth) day after the date of receipt of the application, for payment thereof, or
 - b) if the claim for gratuity is not found admissible, issue a notice in Form-III to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In the case of denial of gratuity, a copy of the notice shall be endorsed to the competent authority.
- The gratuity payable shall be paid through demand draft or by crediting in the bank account of the eligible

employee, nominee or legal heir, as the case may be. Provided that intimation about the details of payment shall also be given by the employer to the competent authority of the area.

REVISED RATES OF MINIMUM WAGES

- Tripura: The Government of Tripura, vide a memorandum dated November 9, 2021, has published the revised rates of dearness allowance, which is retrospectively effective from July 1, 2021 on the employees of Central Government and Central Autonomous Bodies, who are continuing to draw their pay as per the 6th (Sixth) Central Pay Commission. The enhanced rate of dearness allowance is now fixed at 196% (One Hundred and Ninety Six Percent) from the earlier rate of 189% (One Hundred and Eighty Nine Percent).
- New Delhi: The Government of Delhi, vide an order dated November 11, 2021, has revised minimum wages including variable dearness allowance applicable in respect of various skilled, semi-skilled and unskilled categories in all scheduled employments, with effect from October 1, 2021. The Delhi Government, after adjustment of the average Consumer Price Index for the period from January 2021 till June 2021, declared the dearness allowance, which shall be payable for all categories with effect from October 1, 2021. The order stipulates the revised rates of minimum wages for various categories of employees.
- Kerala: The Government of Kerala, vide notification dated November 12, 2021, has revised the minimum wages for the state of Kerala, with effect from September 1, 2021, for various categories of scheduled employments.
- Goa: The Government of Goa, vide an order dated November 22, 2021, has revised minimum wages including variable dearness allowance applicable after adjustment of the average Consumer Price Index for the period from January 2021 till June 2021, with effect from October 1, 2021. The rate of variable dearness allowance fixed is INR 72 (Rupees Seventy Two) per day for various categories of employees.



ENERGY

CENTRE TO TABLE 26 BILLS

As India pledged to emit zero carbon emission by 2050, the Centre aims to amend the Energy Conservation Act, 2001 demand to enhance renewable energy at the end- use sectors such as Industry, buildings, transport etc. The proposed amendments include - additional incentives in the form of Carbon credits, promoting green hydrogen as an alternate to existing fossil fuels, expanding the scope of Act to include larger Residential buildings to promote Sustainable Habitat. The bill aims to empower institutions to contribute for India's Paris commitments and achieve more than 40% energy generation from non-fossil-fuel energy resources by 2030.

INDIA ENERGY EXCHANGE RESUMES TRADING OF RENEWABLE ENERGY CERTIFICATES

Renewable Energy Certificate or green certificate trades were suspended in July 2020. The Indian Energy Exchange as well as Power Exchange of India Ltd are set to resume trading of renewable energy certificates after a gap of 16 months.

POWER MINISTRY ALLOWS BUNDLING OF RENEWABLE TO REPLACE THERMAL POWER UNDER EXISTING PPAS

The Ministry of Power and New & Renewable Energy have issued revised guidelines providing for thermal generation companies to set up renewable energy generation capacity either by themselves or through developers by open bids and supply the bundled power to the consumers under the existing power purchase agreements (PPAs).

This will enable the replacement of high-cost fossil fuel based energy with cheaper renewable energy under the existing PPAs. The gains from the bundling of renewable

energy with thermal energy will be shared between the generator and distribution companies or other procurers on a 50:50 basis.

India has given electricity generation companies the flexibility to replace thermal power and hydro power with renewable energy under existing long-term supply pacts, a move that is aimed at boosting demand for cleaner energy.

PUNJAB GOVERNMENT TABLES BILLS TO REVISE PPAS

The Punjab energy security, reform, termination and redetermination of power tariff Bill, 2021, aims to revise the terms of the power purchase agreements (PPAs) between the state and power suppliers. The tariffs of these projects are generally around Rs 7/unit, which is much higher than the rates of around Rs 2.2-2.6/unit being currently discovered in competitive biddings in the country. The bill will become law if the state governor gives his assent, however, a state law that contradicts central government legislation can be legally challenged.

INDIA PROPOSES NEW RULES TO PUSH GREEN ENERGY USE IN INDUSTRIES

India has proposed new rules to lower emissions and fight climate change, including setting a minimum share of renewable energy to be used by its industries. The proposals, aimed at promoting green Hydrogen as an alternative to the fossil fuels currently used by industries, will be made effective through amendments to India's 2001 Energy Conservation Act. The proposed amendments would facilitate the development of a carbon market in India and prescribe minimum consumption of renewable energy either as direct consumption or indirect use through the grid.

HIMACHAL PRADESH CABINET APPROVES DRAFT ELECTRIC VEHICLE POLICY

The Himachal Pradesh cabinet approved the Draft Electric Vehicle Policy (the “Policy”) this month. The Policy promotes sustainable transport system for making Himachal Pradesh a

global hub for electric mobility development and manufacturing of electric vehicles. Additionally, the Policy shall also aid in creating public and private charging infrastructure for electric vehicles in addition to providing subsidy and incentives to the electric vehicles manufacturing industries.

INFRASTRUCTURE

GUIDELINES ON DEBARMENT OF FIRMS

The Department of Expenditure (“DoE”), Ministry of Finance vide office memorandum bearing number F.1/20/2018-PDD dated November 2, 2021, has notified guidelines pertaining to debarment of entities from bidding (“Guidelines”), pursuant to Rule 151 of the General Financial Rules, 2017 (“Rules”). In this regard, the Guidelines provide for provisions relating to debarment by either a line Ministry (in cases where debarment is proposed to be limited to a single Ministry), or by the DoE, Ministry of Finance (in cases where debarment is proposed to extend beyond the jurisdiction of a particular Ministry). The key highlights as provided by the Guidelines are as follows:

- *Instances where debarment of firms is carried out by any Ministry*

In cases where any Ministry wishes to debar a firm, such debarment shall also extend to its allied entities, and shall not be for a period of more than 2 (two) years. However, prior to such debarment, the entity shall be provided with an opportunity for due representation. The reason for debarring an entity by any Ministry may be due to, *inter alia*, actions or omission, which in the opinion of the Ministry prejudices the work or material to be supplied, or in cases of failure to abide by the bid security declaration. The Guidelines further state that government e-marketplaces may also debar entities up to 2 (two) years on their respective portals.

- *Instances where debarment of firms is carried out by the DoE*

Debarment of firms by the DoE shall be subject to the prior approval of the Secretary of the concerned Ministry/Department. In this regard, the entity shall be presented with an opportunity for due representation, including instances of additional opportunity in this regard. Further, the DoE may also take suo-moto action to debar entities in case of certain circumstances. With relation to revocation, the Guidelines state that the debarment order may be revoked before expiry by the competent authority, if it is of the opinion that the disability preference is adequate, or for any other reason.

In addition to the above, all partners, in cases of joint ventures/consortium, shall also be debarred during the debarment period. However, in case of shortage of suppliers, the debarring entity may analyze the circumstances and try to reform the supplier (including obtaining a written commitment that performance will improve) as opposed to outright debarment.

NOTIFICATION TO ENFORCE THE MAJOR PORTS AUTHORITIES ACT, 2021

The Ministry of Ports, Shipping and Waterways, vide notification bearing number PD-24015/21/2021-PD-1 (346320) dated November 2, 2021, has notified November 3, 2021 as the date on which the provision of the Major ports Authorities Act, 2021 shall come into force.

In furtherance to the above, the Ministry of Ports, Shipping and Waterways, has also issued several Rules in relation to major ports (“Rules”):

- Major Port Authorities (Fixation and Implementation of Scale of Rates, Fees and Conditions) Rules, 2021 (notified vide gazette notification bearing number GSR. 824 (E) dated November 22, 2021) which *inter alia* provides for the scale of rates for assets and services available at major ports.
- Major Port Authorities (Application of Money in Sinking Fund) Rules, 2021 (notified vide gazette notification bearing number GSR. 825(E) dated November 22, 2021) which *inter alia* substantiates on provision relating to sinking fund. In this regard, “sinking fund” has been defined as the sum or sums set apart by the Board to service or liquidate its loans.
- Major Port Authorities (Master Plan and Application of Funds from Non-port related Use) Rules, 2021 (notified vide gazette notification bearing number G.S.R. 821 (E) dated November 22, 2021) which *inter alia* mentions provision relating to usage of port assets and land appurtenant to such ports for development or other purposes.
- The Major Port Authorities (Corporate Social Responsibility) Rules, 2021 (notified vide gazette notification bearing number G.S.R 823 (E) dated November 22, 2021), which *inter alia* mentions

provisions relating to actions for corporate social responsibility that may be undertaken by the major ports.

- The Major Port Authorities (Accounts and Audit) Rules, 2021 (notified vide G.S.R. 820 (E) dated November 22, 2021), which *inter alia* mentions provision relating to budget and audition of account of major ports.

PUBLICATION OF MODEL CONCESSION AGREEMENT FOR PUBLIC-PRIVATE-PARTNERSHIP IN MAJOR PORTS

The Ministry of Ports, Shipping and Waterways vide notification dated PD-12/66/2020-PPP (Part I)/e-346833 dated November 12, 2021 has issued a revised model concession agreement for implementation of projects in major ports in India ("**MCA**"). Salient features of the model concession agreement, inter alia, are as following:

- In case of change in law, and unforeseen event that may have material adverse impact on the concessionaire or the cargo, the MCA provides for suitable measures to mitigate the same vide Article 13.2.
- As per Article 8 of the MCA, tariff can now be fixed by the concessionaire basis inter alia market conditions, in line with the Major Port Authorities Act, 2021.
- Minimum guaranteed throughput will be linked to royalty payment vide Article 9.2 of the MCA.

- The MCA, vide Article 17.1, also provides for compensation that shall be payable for termination of concession agreement due to concessionaire's default prior to commercial operations date.
- Deemed performance security for entire duration of concession has been made in line with other sectors vide Article 4.2. In this regard, the deemed performance security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on an equivalent balance in the escrow account and on all amounts due and payable by the concessionaire to the concessioning authority

It must be noted that the MCA will also be applicable to the public-private partnership projects, which are already approved by the Government and are still under bidding stage.

NOTIFICATION OF NEW MAJOR AIRPORTS

The Ministry of Civil Aviation, vide gazette notifications bearing numbers S.O. 4596 (E) (dated November 1, 2021), and S.O. 4606 (E) (dated November 5, 2021), has notified the airports at Shirdi and Srinagar as major airports, pursuant to recently amended Airports Economic Regulatory Authority of India Act, 2008. This may be considered as a welcome move to attract private investment in these airports.

MEDIA & ENTERTAINMENT



PUBLIC INTEREST LITIGATION FILED BEFORE THE KERALA HIGH COURT AGAINST THE FILM 'KURUP'

A lawyer has filed a public interest litigation against the makers of the film 'Kurup' ("Film"). The petitioner has averred that the Film, which is based on the true story of Mr. Sukumaran Kurup, violates and exploits Mr. Kurup's right to privacy and such portrayal of his personal life along with elements of fiction could be detrimental to him and may even deny him justice before the courts. Therefore, the petitioner has sought a stay on the release of the Film. While Mr. Kurup is a fugitive, he is not stripped of his fundamental right to life and personal liberty (of which right to privacy is an intrinsic part). While the Film has already released, the Kerala High Court has issued notice to the respondents, including the producers of the Film, the Central and state government and the National Central Bureau. The case is yet pending for hearing before the Kerala High Court.

BOMBAY HIGH COURT REFUSES INJUNCTION AGAINST 'ZOMBIVLI' RELEASE

A copyright infringement suit was filed before the Bombay High Court ("BHC") by an independent filmmaker, Tarun Wadwa, against Saregama, on the grounds that Saregama had illegally used material provided by Tarun Wadwa to make a Marathi film on zombies. Thus, Tarun Wadwa *inter alia* sought to restrain the release of 'Zombivli'. The BHC rejected such plea on the basis that it is a well-known proposition under Indian law that there is no copyright in an idea. The BHC further held that *"When two ideas are developed, there are bound to be similarities. A sure test is to see whether a viewer or reader having seen both works unmistakably concludes that the later work is a copy of the original. Even if the two works are thematically the same, but treated and presented differently, there may be no question of copyright infringement. Incidental co-incidences are not copyright infringement. Infringement is established only by clear and cogent evidence."*

Tarun Wadwa has filed an appeal against this order before a division bench of the BHC, which is currently pending.

MADRAS HIGH COURT HOLDS THAT PRODUCER IS THE COPYRIGHT OWNER IN A FILM

The Madras High Court ("MHC") was faced with a challenge against an order of a lower court, which refused to grant an injunction for copyright infringement against the producer, SS Chakravarty and one Fakrudeen Ali, who bought the remake rights of a film 'Vaalee'. The appellant is the director of the film and has claimed that since the credit for the story, screenplay and dialogue in the film was given to him, the copyright in the film also vested with him. The MHC disagreed with such proposition and held that *"Merely because the producer gave credit to the appellant herein as author of the screenplay or the dialogue would not amount to an acknowledgment of the appellant's copyright therein."* The MHC noted that ordinarily a producer would have the copyright in a cinematograph film and in the works commissioned therein and documents clearly evidencing that copyright was retained by another would be required to claim otherwise.

VANNIYAR SANGAM COMMUNITY ISSUES DEFAMATION NOTICE TO MAKERS OF THE FILM 'JAI BHIM'

The State President of the Vanniyar Sangam Community ("Vanniyar Sangam") issued a legal notice to the makers of the film 'Jai Bhim' and Amazon Prime, alleging defamation of Vanniyar Sangam through particular scenes and names of characters in the film. The notice states that the makers of the film have twisted real-life facts in order to prejudice the social standing of Vanniyar Sangam, by naming the Sub-Inspector who commits custodial torture and subsequent murder of an innocent film as 'Guru', who in fact resembles one of the front line leaders of Vanniyar Sangam.

Through the legal notice, Vanniyar Sangam has sought removal of the defamatory scenes from the film, removal of any references to the Vanniyar Sangam community and removal of the 'Agni Kundam' symbol that represents Vanniyar Sangam. In addition to this, the notice also seeks damages of Rs. 5,00,00,000/- (Rupees Five Crores only) and a public apology. In the event of non-compliance with such notice, Vanniyar Sangam has threatened to take criminal action under s. 499, 500 and 505 of the Indian Penal Code, 1860, and any other applicable civil proceedings to claim damages. It thus remains to be seen whether this matter is settled or whether defamation proceedings are instituted before the courts.

TV TODAY NETWORK MOVES DELHI HIGH COURT AGAINST THE MIB'S ORDER AGAINST AAJ TAK

TV Today Network ("TV Today") moved the Delhi High Court ("DHC") against an order passed by the Ministry of Information and Broadcasting ("MIB") with respect to reporting done by TV Today's channel 'Aaj Tak'. The MIB had passed an order declaring that Aaj Tak's reporting of Rhea Chakraborty's narcotics drug case was violative of Rule 6(i) of the Programme Code, since the taglines used by the channel were offensive. TV Today has stated in its petition that: (i) no show-cause notice was issued to it in this regard, (ii) the impugned order was passed by the Joint Secretary of the MIB, who is not a member of the Inter-Ministerial Committee, which is the body that had discussed the issue. Therefore, the Joint Secretary had an obligation to hear TV Today before passing any order, (iii) Rule 6(i) of the Programme Code does not in any manner deal with 'offensive' and thus the order passed by the MIB was in fact on the basis of a non-existent violation, and (iv) the broadcast of Aaj Tak was reflective of the investigation conducted by the NCB and the broadcast also attributes the NCB as being the source providing information. Therefore, the information provided in the broadcast were a matter of fact and not violative of the Programme Code. The case is currently pending before the DHC for hearing.

DELHI COURTS REFUSE INTERIM INJUNCTION AGAINST SALMAN KHURSHID'S BOOK

Hindu Sena President, Vishnu Gupta, filed a suit before the Delhi Civil Court ("DCC") seeking a direction to stop the publication, sale and circulation of Salman Khurshid's (a former Union Minister) book 'Sunrise over Ayodhya: Nationhood in our times' ("Book") for its alleged remarks on Hindutva. The DCC refused to grant the ad-interim ex-parte injunction on the grounds that the plaintiff had failed to establish the balance of convenience in its favour and had been unable to establish the inconvenience that would be caused to it in avoiding either the Book or the allegedly offensive excerpts of the book. The DCC reiterated that ex-parte injunctions would only be granted under exceptional circumstances.

A similar plea was also filed before the Delhi High Court ("DHC") seeking a direction to the Centre and Delhi government to ban the sale and publication of the Book. The DHC noted that the petitioner had failed to make either the author or the publisher a party to the suit and the petition had thus filed the suit for publicity. The petitioner thus withdrew his suit with permission to file a fresh suit with the appropriate parties.

COMPLAINTS FILED AGAINST COMEDIAN VIR DAS IN MUMBAI AND DELHI

Complaints have been lodged with both the Delhi and Mumbai police (although no FIRs registered yet) against comedian Vir Das for using derogatory and defamatory language against the nation in his monologue 'Two Indias' performed at the Kennedy Center in Washington, D.C. Vir Das has since tried to clarify the intention behind such monologue by releasing his own statement.

BOMBAY HIGH COURT DIRECTS CENTRE TO PROVIDE AN UPDATE ON THE DRAFT CRYPTOCURRENCY BILL

The Bombay High Court is currently hearing a PIL filed by advocate Aditya Kadam, which seeks directions for the government to enact appropriate laws to address the growing threat of cryptocurrencies and malpractices at trading platforms. Since there is no legislation currently, there is no redressal process for any aggrieved individuals. The BHC has directed the Centre to update it on the proposed legislation and subsequently listed the matter for hearing on January 17, 2022.

KEVIN SPACEY ORDERED TO PAY THE STUDIO BEHIND 'HOUSE OF CARDS' APPROX. \$31 MILLION FOR CONTRACT BREACH

Kevin Spacey was ordered last year by an arbitrator to pay approximately \$31 million to MRC Studios for breaching its contract by violating the company's sexual harassment policy. Kevin Spacey appealed the arbitrator's ruling, but his appeal was rejected earlier this month. MRC Studios have now filed a petition in the Los Angeles Superior Court seeking to confirm that Kevin Spacey will pay the monies due.

NEWSLAUNDRY AGREES BEFORE DELHI HIGH COURT TO TAKE DOWN VIDEO MAKING COMMENTS ON TV TODAY'S SUIT AGAINST IT

Newslandry today agreed before the Delhi High Court to take down its video making commentary on the suit filed by TV Today Network against it alleging defamation and copyright infringement. The Delhi High Court held that a parody ruining the other person's reputation is not justified under the guise of freedom of speech and expression.

MIRA NAIR AND NETFLIX RECEIVE NOTICE FROM SHIA PERSONAL LAW BOARD OVER A SCENE IN 'A SUITABLE BOY'

The All India Shia Personal Law Board (**AISPLB**) sent a legal notice to Mira Nair and Netflix over the portrayal of a 'tazia', which is a replica of Imam Husain's mausoleum in one of the episodes of their show 'A Suitable Boy' ("**Series**"). AISPLB have stated that the manner in which the 'Tazia' has been shown has hurt the sentiments of lakhs of people from different religions and faiths and who consider a 'Tazia' to be sacrosanct and has also invoked religious fervour amongst people. The AISPLB has demanded that the producers should remove the 'tazia' scene from the Series and also issue a public apology. In the event of non-compliance with such notice, AISPLB has threatened to commence criminal proceedings under s. 295-A (Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs) of the Indian Penal Code, 1860.

AIFCC APPLIES FOR REGISTRATION AS A COPYRIGHT SOCIETY UNDER SECTION 33 OF THE COPYRIGHT ACT, 1957

The Copyright Office vide public notice dated October 27, 2021, notified that the All India Film Chamber of Commerce (**AIFCC**) has filed an application for registration as a copyright society under Section 33 of the Copyright Act, 1957 for carrying out business of issuing or granting license in respect of creative works i.e., literary, dramatic, musical and artistic works incorporated in cinematograph films or sound recordings.

GOVERNMENT INTRODUCES ACCESSIBILITY STANDARDS FOR PERSONS WITH DISABILITIES IN TELEVISION PROGRAMMES

This Ministry of Information and Broadcasting is in process to get the "Accessibility Standards for Television Programmes for Hearing Impaired" notified under the Rights of Persons with Disabilities Act, 2016 through the Department of Empowerment of Persons with Disabilities (**DEPwD**), Ministry of Social Justice and Empowerment for making television content more inclusive for Persons with Hearing Disabilities. Almost all television channels will have to ensure that they either carry captions or sign language to help the hearing impaired understand the programming. Channels which have less than 1 per cent average audience share for all households over a year will also be exempt from these standards. The standards shared by the ministry mention that all programming, barring "live and deferred live content/events such as sports: live news, events like live music shows, award shows, live reality shows, etc.; content like music shows, debates, scripted/ unscripted reality shows, etc.; and advertisements and teleshopping content" will have to adhere to these standards.

COMMISSION OF MINORITIES TAKES UP MINORITY PORTRAYAL IN FILMS WITH CBFC

The Commission for Minorities (**NCM**) and the Central Board of Film Certification (**CBFC**) will look at putting in place by December a protocol for the portrayal of minorities in movies. This comes after one complainant from Tamil Nadu said that there has been a poor portrayal of Christians in Rudratandav. Jathedar Sikhs have also complained about the 'poor portrayal' of Sikhs in movies. Officials in commission have indicated that these complaints need to be looked at and investigated. The country is divided into nine regions under the CBFC and there is a five-member movie screening committee in each region, headed by a regional officer. Officials from commission mentioned that it mandatory that there must be at least one woman on each committee but there is no such mandate for a member of the minority community to be on these committees.

CHARMING BEATS SUES APPLE MUSIC FOR ALLEGED INFRINGEMENT OF COPYRIGHT IN AN ORIGINAL SONG

Apple Music has been sued by Charming Beats for alleged copyright infringement, false and misleading advertising and associating a company with transphobia. Charming Beats has claimed that Apple has included a track in Apple Music that infringes the copyright in the song 'Anything you Synthesize' ("**Original Song**"), which is owned by Charming Beats. Charming Beats has alleged that a song entitled 'Caramelo' by a French rapper, Ninho, on the Apple website, contains a musical component, which is an unlicensed reproduction of the Original Song. Moreover, Charming Beats has also alleged that Apple's ad of the song, also included a video from performer 'DeeBaby', encouraging people to listen to the full song by downloading Apple Music. According to Charming Beats, 'DeeBaby' has been widely criticised for his transphobic statements and Apple has now forced an association between such individual and a track in which Charming Beats owns the copyright, thus damaging the Original Song. It is understood that Charming Beats wants a trial by jury and damages of at least \$30,000 (albeit not exceeding \$150,000) plus costs.

MIRAMAX SUES QUENTIN TARANTINO OVER PULP FICTION NFTS

Production company Miramax has sued director Quentin Tarantino over his non-fungible token or NFT collection based on Pulp Fiction. The lawsuit, filed by attorney Mark Jaffe, says NFTs don't fall under Tarantino's reserved rights for the film. Miramax accuses him of violating the company's copyright and trademark, and it's demanding a halt to the upcoming sale. Tarantino's team claims that the contract is clear and he is entitled to sell the NFTs of his hand-written script and a drawing inspired by some element of the scene for Pulp Fiction. However, Miramax alleges that Tarantino's limited contractual rights for Pulp Fiction,

including interactive games, live performances, and other ancillary media, don't cover NFTs linked with the film's screenplay.

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2021

The MCA *vide* notification dated November 9, 2021 (accessible [here](#)) has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021 ("IEPF Amendment Rules"). Subsequently, the MCA has also issued a corrigendum dated November 12, 2021 (accessible [here](#)) correcting a minor clause referencing error in the IEPF Amendment Rules.

The IEPF Amendment Rules (read with the aforesaid corrigendum) have amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ("Principal Rules") (accessible [here](#)) to simplify the claim settlement process followed by the Investor Education and Protection Fund Authority ("Authority") by rationalising various requirements under the Principal Rules, specifically with regard to transmission of securities.

The key amendments brought about by the IEPF Amendment Rules are as follows:

- (i) The requirement of the claimant to submit advance receipt (specifying the details of unpaid amounts and shares) to the nodal officer of the concerned company after filing of Form IEPF-5 (Application to the Authority for claiming unpaid amounts and shares out of IEPF) for verification of claim, has been waived off.
- (ii) The threshold of INR 2,00,000 (Rupees two lakhs) as set out in Schedule II of the Principal Rules pertaining to the documents required for registering transmission of securities has been enhanced to INR 5,00,000 (Rupees five lakhs). Consequentially, the

mandatory requirement for submitting succession certificate/probate of will/will/letter of administration/deed shall be applicable for securities having value of more than INR 5,00,000 (Rupees Five Lakhs).

- (iii) While the erstwhile provisions mandated a 'probate of will' in the list of documents which can be submitted with the claim, the IEPF Amendment Rules has added 'will' in the list of documentary proof. However, in case where will is provided, the following additional documents are also required to be submitted with the claim: **(a)** Legal heirship certificate issued by a competent authority; **(b)** No objection certificate from all legal heirs in favor of the claimant; **(c)** Affidavit from witness about confirmation of will wherever alive or death certificate of such witness; **(d)** Affidavit with regard to the will as last will and that no matter is pending before any court with regard to such will; and **(e)** Surety affidavit by at least two sureties with their PAN card.
- (iv) Companies may also enhance the aforesaid limit of INR 5,00,000 (Rupees five lakhs) in Schedule II, in accordance with the provisions of Schedule VII (Transfer of Securities) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, after taking approval of its board of directors and provide a copy of the board resolution to the Authority at the time of verification of claim. Essentially, the companies have been given flexibility to accept transmission documents as per their internally approved procedures.
- (v) In Schedule III of the Principal Rules pertaining to the documents required to be submitted in case of loss of securities, the requirement for notarization of documents (FIR/Police Complaint) has been replaced

with self-attestation. Further, in respect of the requirement of submitting surety affidavit for loss of securities, the requirement that the surety affidavit must be of a 'value equal to market value that of shares as on date of execution' has been omitted.

- (vi) In respect of the requirement to publish newspaper advertisement in case of loss of securities held in physical mode, the threshold of market value of shares has been enhanced from INR 10,000 (Rupees ten thousand) to INR 5,00,000 (Rupees five lakhs).
- (vii) In Schedule IV of the Principal Rules stating the procedure to be followed while disposing the claims, the requirement of verification of transaction statement of unclaimed suspense account of companies and the details of investors whose shares have been transferred from unclaimed suspense account, has been eased.
- (viii) The IEPF Amendment Rules has also notified the updated Form IEPF-5 (Application to the Authority for claiming unpaid amounts and shares out of IEPF).

PRUDENTIAL NORMS ON INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES – CLARIFICATIONS

The Reserve Bank of India (“RBI”) vide its circular dated November 12, 2021 bearing reference number RBI/2021-2022/125 DOR.STR.REC.68/21.04.048/2021-22 (“Circular”), has provided clarifications to the guidelines contained in the Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated October 1, 2021 (“IRACP Norms”). The key provisions are as follows:

- a. **Repayment schedule:** the Circular provides that all loan agreements must clearly specify the exact due dates for repayment, frequency of repayment, date of commencement of payment, breakup between principal and interest, examples of SMA/NPA classification dates, etc. – this must be complied with not later than December 31, 2021
- b. **Classification as Special Mention Account (SMA) or Non-Performing Asset (NPA):** Borrower accounts shall be flagged as overdue/SMA/NPA by the lending institutions as part of their day-end processes for the due date, irrespective of the time of running such processes. The SMA or NPA classification date shall be the calendar date for which the day end process is run.
- c. Further, the Circular provides clarity to the meaning of ‘out of order’ used in relation to Cash Credit/Overdraft accounts and states that such accounts shall be treated as ‘our of order’ if: (i) the outstanding balance in the account remains in excess of the sanctioned limit for 90 continuous days; or (b) there are no credits for 90 continuous days, or the outstanding balance in the

¹ Bearing number RBI/2021-2022/127 CO.DPSS.OVRST.No.S929/06-08-001/2021-2022, RBI/2021-22/128 DoR.RRA.69/01.01.101/2021-22, RBI/2021-22/129 FMRD.DIRD.09/14.03.059/2021-22, RBI/2021-22/130

account is less than the sanctioned limit/drawing power but credits are not enough to cover the interest debited during the previous 90 days period.

INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT – REVIEW

The RBI vide its notification dated November 8, 2021 bearing notification no. RBI/2021-22/120 A.P. (DIR Series) Circular No. 16 and pursuant to the amendments FEMA (Debt Instruments) Regulations, 2019, has permitted FPIs to acquire debt securities issued by InvITs and REITs under the Medium-Term Framework (MTF) or the Voluntary Retention Route (VRR), within the limits and subject to the terms and conditions for investments by FPIs in debt securities under the respective regulations of MTF and VRR.

DSK View: Debt investment by FPIs in REITs and InvITs will enable them to raise debt from foreign investors at competitive rates, increase the participation of institutional investors, and improve the business trust unit holders’ risk-adjusted returns due to leveraging.

MASTER CIRCULAR: GUARANTEES AND CO-ACCEPTANCES

The RBI vide its circular dated November 9, 2021 bearing reference number RBI/2021-22/121 DOR.STR.REC.66/13.07.010/2021-22, has consolidated all instructions and guidelines on Guarantees and Co-Acceptances in the master circular.

WITHDRAWAL OF CIRCULARS

The RBI vide its circulars¹ dated November 16, 2021 has withdrawn a series of circulars which have been deemed to be redundant under the interim recommendations of the

A.P. (DIR Series) Circular No.18, RBI/2021-22/131 DCM (Admin) No.S472/19.01.010/2021-22, RBI/2021-22/132 DoS.CO.PPG./SEC.06/11.01.005/2021-22

Regulations Review Authority. The withdrawn circulars inter alia cover the following:

1. Circular No.6 dated July 16, 2015 on Foreign Investment in India by Foreign Portfolio
2. Circulars issued by the Department of Currency Management
3. Circulars in relation to Audit System in Commercial Banks
4. Circular with respect to introduction of Credit Default Swaps for Corporate Bonds

5. Guidelines on Credit Default Swaps (CDS) for Corporate Bonds- Permitting All India Financial Institutions.
6. Circulars issued by the Department of Payment and Settlement Systems (DPSS).

DSK View: *The withdrawal is a much needed step which will assist in streamlining the regulatory framework of RBI and enable the stakeholders to access and focus on the relevant regulations.*



SUPREME COURT'S RERA JURISDICTION VERDICT MAY COMPEL STATES TO AMEND RULES

The Supreme Court's verdict, upholding the jurisdiction of the Real Estate (Regulation & Development) Act, 2016 on all realty projects that were ongoing and had not received Completion Certificate until the law came into effect, is now expected to trigger a major change in state-specific rules modelled on this Act.

The Apex Court affirmed the purview of the RERA Act on all projects that were incomplete and had not received completion certificate until the commencement of the Act.

Regulations of RERA authorities in states including Uttar Pradesh, Haryana, Punjab, Karnataka, Telangana and Tamil Nadu are currently not in line with this position and may need to amend their rules to ensure all ongoing projects get covered under RERA.

SALE DEED EXECUTED WITHOUT PAYMENT OF PRICE IS VOID; HAS NO LEGAL EFFECT - SUPREME COURT

The Supreme Court observed that the payment of price is an essential part of a sale. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law.

The court also observed that a document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

ROBUST REGULATORY MECHANISM UNDER RERA: CENTRE ON BUILDER-BUYER AGREEMENT

The Centre has told the Supreme Court that a robust regulatory mechanism and draft 'agreement for sale' already exists under provisions of RERA, Real Estate (Regulation &

Development) Act, to balance the rights and interest of homebuyers and promoters in an accountable and transparent manner.

The Centre's response came on a plea seeking direction to it to frame a "model-builder agreement" and agent-buyer agreement in the real estate sector to infuse transparency and fairness, restraining builders and agents from indulging into unfair and restrictive trade practices. The Ministry of Housing and Urban Affairs, in an affidavit submitted that the prayer against answering respondent is infructuous, as there is a robust regulatory mechanism and draft 'agreement for sale' has already been prescribed under the provisions of RERA which seeks to balance the rights and interest of homebuyers and promoters in an accountable and transparent manner.

BUILDERS CAN'T CITE RERA ACT TO DENY INVESTORS ASSURED RETURNS: HARYANA RERA

Haryana Real Estate Regulator Authority's (H-RERA) Gurugram bench, while disposing of 26 cases related to non-payment of assured returns to investors, has made it clear that developers can't walk away from a contractual obligation or cite a new pact being executed because of the Rera Act coming into effect in 2016.

TO EXECUTE SALE DEEDS OF 700 BUYERS, TN RERA APPOINTS PANEL

Tamil Nadu Real Estate Regulatory Authority (TNRERA) has appointed a committee of RERA officials to execute sale deeds for undivided share/plots in favour of the association of buyers of a stuck housing project in Coimbatore. The RERA authority is writing to country planning department for permission.

While this order brings big relief to 700 homebuyers it has come at a time different RERA authorities are not enforcing

the execution orders against builders despite their repeated failures to comply with orders.

RERA CAN DELEGATE ITS POWERS TO HEAR COMPLAINTS FROM HOME BUYERS: SUPREME COURT

The Supreme Court has said the Real Estate Regulatory Authority can delegate its powers to a single member to hear complaints from homebuyers against builders. A three-judge bench headed by Justice U U Lalit said Section 81 of the The

Real Estate (Regulation and Development) Act, 2016 empowers the authority to delegate its power and functions to any of its member, by general or special order.

The top court said the scheme of the Act, 2016, provides an in-built mechanism and any order passed on a complaint by the authority is appealable, if any manifest error is left by the authority either in computation or in the amount refundable to the allottee/homebuyer.



CENTRAL GOVERNMENT TO INTRODUCE BILL ON CRYPTOCURRENCY IN THE WINTER SESSION OF PARLIAMENT

The Central Government has listed the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 (“**Crypto Bill**”) in the tentative list of government’s legislative and financial business for the winter session of the parliament. The Crypto Bill seeks to create a facilitative framework for creation of the official digital currency of India to be issued by the Reserve Bank of India. The Crypto Bill also seeks to prohibit all private cryptocurrencies in India however, it provides for certain exceptions to promote the underlying technology of cryptocurrency and its uses.

Read the Lok Sabha bulletin [here](#).

MEITY APPOINTS NEW DESIGNATED OFFICER UNDER INFORMATION TECHNOLOGY ACT, 2000

The Ministry of Electronics and Information Technology (“**MeitY**”), vide a notification dated November 24, 2021, appointed the Group Coordinator (Cyber Law) as the designated officer under Section 69A(1) of the Information Technology Act, 2000 read with Rule 3 of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

Read the notification [here](#).

WHITE COLLAR CRIME

ATTORNEY GENERAL FOR INDIA V SATISH ANR (CRIMINAL APPEAL NO. 1410 OF 2021)- SKIN TO SKIN CONTACT NOT REQUIRED FOR AN OFFENCE TO BE REGISTERED UNDER POSCO ACT

In January 2021, the Bombay High Court, adopting a literal approach of interpretation, acquitted an accused under Protection of Children from Sexual Offences Act, 2012 (“POCSO”) whilst convicting for offences under S 345 of the Indian Penal Code (“IPC”). The High Court held that stricter proof of the serious allegations are required considering the stringent nature of punishment and that for an act to constitute an offence under the POSCO, skin-to-skin contact coupled with intention was required.

The Supreme Court, however found the above reasoning and statutory interpretation of the single judge of Bombay High Court absurd and held that a purposive approach towards statutory interpretation was warranted as opposed to a strict literal interpretation. The apex court held that the word ‘touching’ need not mean skin-to-skin contact.

DSK View: *Despite the public outrage, the Bombay High Court judgement can hardly be declared a first of its kind as courts in India have always maintained a remarkably high bar for every single ingredient an offence to be proved. By reversing the Bombay High Court judgement, the Apex Court whilst taking a humane view has struck a perfect balance between the rights of victims/society and those of the accused.*

Read at : <https://main.sci.gov.in/judgments>

RISHIPAL SINGH SOLANKI V STATE OF UTTAR PRADESH AND ORS (CRIMINAL APPEAL 1240 OF 2021)-MEDICAL TEST NOT A CONCLUSIVE PROOF OF JUVENILITY AND ONLY TO BE USED AS A LAST RESORT

In the instant case, the Supreme Court refused to allow medical determination of age of the delinquent as prayed for by the victim and held that ossification test and medical examination can only serve as the last resort if documentary evidence is unable to accurately show the age of the delinquent. The Supreme Court has also set guidelines on determining the age of delinquent juveniles.

The Supreme Court held that a prayer for juvenility could be raised at any stage of the trial and that there was a natural presumption that a person brought before the Juvenile Justice Board was a minor. In the event the board was of an opinion otherwise, it could sufficiently determine the age of the delinquent by relying on the delinquent’s matriculation certificate/school records or birth certificate as held with the Municipal Corporation. A medical test of bone ossification could only be directed as a last resort.

DSK View: *The guidelines laid down in this judgement make it amply clear that neither the victim nor the prosecution can as a matter of right seek a medical ossification test of a delinquent to determine his age. It is only the Juvenile Justice Board that is empowered to do so that too in a very limited set of cases, where the other documents are either unavailable or prima facie disingenuous. In its obiter dicta observations, the Supreme Court has further held that a prayer of juvenility could even be raised after conclusion of the trial. The court here seems to have taken note of the fact that a majority of cases of minor criminals are represented through their parents/next friends and that a lapse on their part should not prejudice their case.*

Read at : <https://main.sci.gov.in/judgments>

SURINDER SINGH V UNION TERRITORY OF CHANDIGARH CRIMINAL APPEAL NO. 2373 OF 2010 UNLAWFUL USE OF A LICENSED FIREARM NO LONGER AN OFFENCE UNDER THE ARMS ACT, 1959

The Supreme Court held that unlawful use of firearms would not attract section 27 of the Arms Act, 1959 unless coupled with unlawful possession. i.e. unauthorised and unlawful use of a licensed weapon shall not attract provisions of the arms act.

DSK View: Prior to the Arms Act Amendment of 1988, any illegal/unlawful use of a firearm or a weapon under the act would constitute an offence under section 27. However, post the amendment, the penal provisions under section 27 of this act shall not apply to cases where there is an unlawful use of a licensed weapon.

Read at: <https://www.livelaw.in/top-stories/arms-act-section-27-illegal-use-of-licensed-weapon-section-5-section-7-186493>

HARI & ANR. V STATE OF UTTAR PRADESH (CRIMINAL APPEAL NO. 186 OF 2018) WITNESSES TURNING HOSTILE CAN NO LONGER BE FATAL TO THE PROSECUTION

The Supreme Court has held that witness protection is an integral part of the constitutional rights under Articles 19 and 21. It further held that it was obligatory upon the state to ensure witness protection and that the testimony of a hostile witness could be relied upon for conviction in the event the witness turned hostile on a subsequent cross examination.

DSK View: The Supreme Court appears to have taken note of the fact that there is a duty on part of the state to ensure due and proper implementation of law and order, provide retributive justice to the victim as well as ensure that proper sentencing and conviction of criminals serves as a social deterrent. The same cannot be achieved without adequate witness protection measures.

Read at : <https://main.sci.gov.in/judgments>

NARCOTICS CONTROL BUREAU V. ANUJ KESHWANI & ANR. (CRIMINAL WRIT PETITION 2077 OF 2021) WEIGHT OF BLOTTING PAPER TO BE TAKEN INTO ACCOUNT WHILE CALCULATING COMMERCIAL QUANTITY OF NARCOTICS UNDER THE ACT

The Bombay High Court while referring to a series of US and International judgements held that the weight of blotting paper, a medium of consumption of LSD, needs to be taken into account while calculating commercial quantity. Justice

Dere has aptly relied on the Supreme Court judgement in the case of Hira Singh & Anr². vs. Union of India & Anr. overruling the previous judgments in the case of Hitesh Malhotra v State of Maharashtra³ and Harsh Mesham v State of Maharashtra⁴ which held that the weight of blotting paper need not be taken into account in determining commercial quantity.

DSK View: The Bombay High Court has taken note of fact that India is a signatory to the UN Convention of Psychotropic Substances and hence seems to have taken account of the way other countries signatory to the same instrument deal with this issue. In addition to a binding Supreme Court precedent, the court also seems to have taken note of the fact that LSD is a drug traded in minuscule quantities and that excluding the weight of blotting paper would give an unfair advantage to various criminals who attempted to claim protection.

Read at: https://bombayhighcourt.nic.in/ordqrywebcoram_action.php

MOHAMMAD AZAM KHAN V UNION OF INDIA - SUPREME COURT TO EXAMINE IF SPECIAL COURTS NEED TO BE SET UP FOR TRAILS OF ACCUSED MPS AND MLAS

The Supreme Court orally observed the need to set up a special court for trying cases relating to MP's and MLA's. Previously, a Special Committee of the Madras High Court had ruled against setting up of such courts as courts could only be offence centric and not offender centric. The Supreme Court had orally observed that under Article 142, a special court could be set up provided there was a statutory basis of the special judges jurisdiction. This decision was however objected by many, including the Additional Solicitor General stating that it would be beyond the scope of judicial function to do so. It was further argued that setting up of special courts of a sessions judge to try such offences takes away the right of appeal from an accused who would in ordinary course be tried before a magistrate and is hence unconstitutional.

What transpires in the matter remains to be seen.

Read at: <https://www.livelaw.in/top-stories/special-courts-for-mp/mlas:-supreme-court-to-examine-if-cases-triable-by-magistrate-can-be-committed-to-sessions-court-185606>

² 2020 SCC OnLine SC 382

³ Cri.BA/352/2020 decided on 07.12.2020

⁴ Cri.BA/1671/2021 decided on 13.05.2021

**MITESH KUMAR J SHA VS THE STATE OF KARNATAKA
(CRIMINAL APPEAL 1285 OF 2021) GIVING CRIMINAL
COLOR TO CIVIL DISPUTES FOR QUICK RELIEF IS AN ABUSE
OF LAW**

Observing a growing tendency amongst litigants to misuse criminal law and proceedings to settle personal scores and vengeance, the Supreme Court had found no hesitation in quashing an FIR stemming out of a Joint Development Agreement Deal turned sour. The court observed that on various occasions, the authorities wrongly book the accused

for an offence of cheating when infact the subject matter of the allegations is a mere breach of contract. The court further observed that where a complainant who files criminal proceedings with male-fides, despite being aware of remedies under civil law solely for the purpose of getting quick relief should bear the consequences of abusing the process of law.

Read at:

<https://www.barandbench.com/news/litigation/criminal-colour-civil-dispute-quick-relief-abuse-of-law-supreme-court>



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