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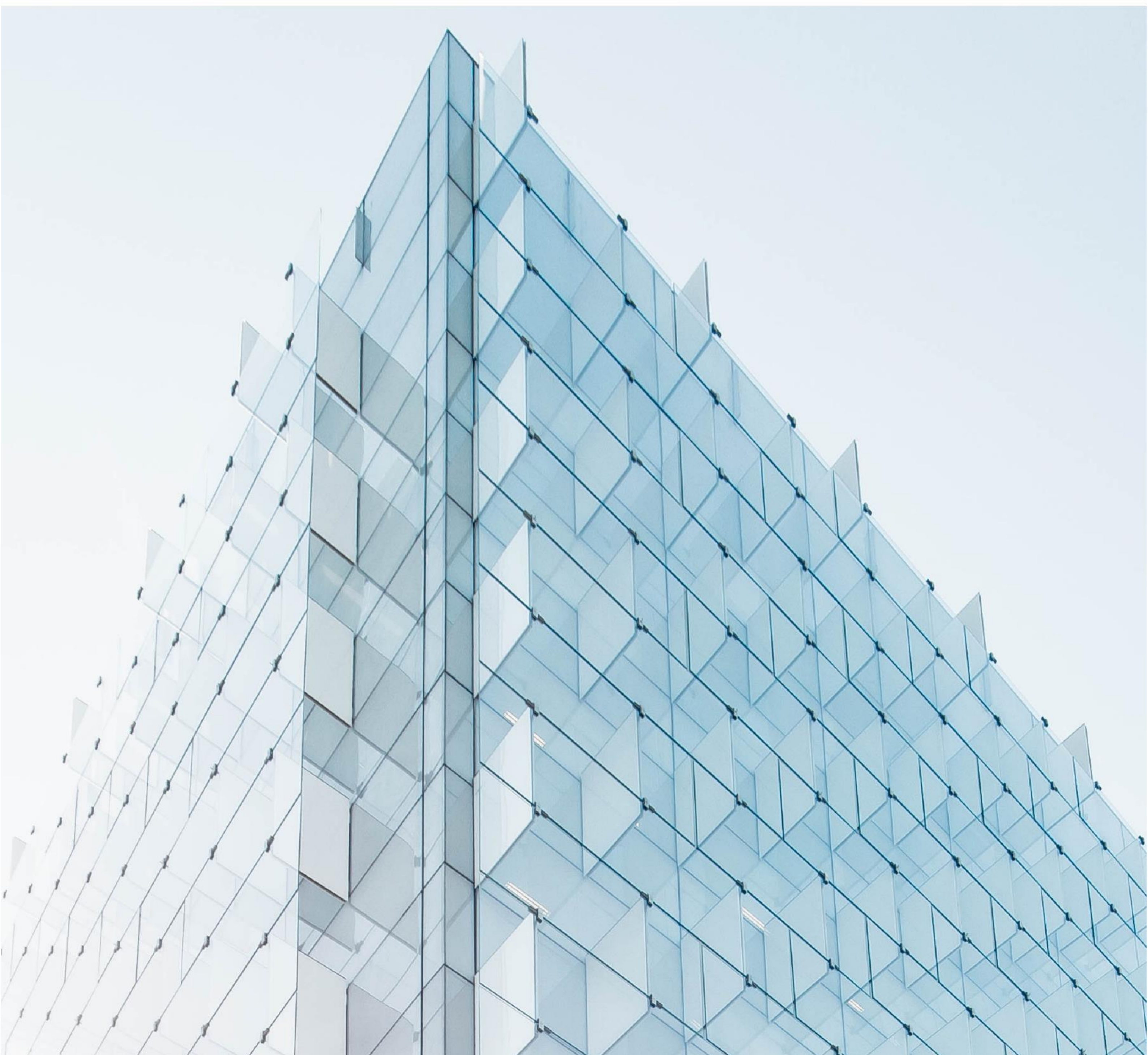

NEWSLETTER

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CAPITAL MARKET

MASTER CIRCULAR FOR ELECTRONIC GOLD RECEIPTS ("EGRS")

SEBI *vide* master circular dated June 01, 2023[1] has issued a Master Circular for EGRs ("**EGRs Master Circular**") that consolidates all previous circulars issued on EGRs till March 31, 2023 on the framework of EGRs, its risk management, standard operating guidelines for vault managers and depositories etc. With the introduction of this EGRs Master Circular, the following circulars have been rescinded:

(i) Circular dated January 10, 2022 - Framework of operationalizing the gold exchange in India
(ii) Circular dated February 14, 2022: - Trading features pertaining to the EGRs segment
(iii) Circular dated February 14, 2022 – Standard operating guidelines for vault managers and depositories
(iv) Circular dated March 28, 2022 – Product specifications pertaining to EGR segment
(v) Circular dated April 11, 2022 – Comprehensive risk management framework for EGRs segment

TRANSACTIONS IN CORPORATE BONDS ("CBS") THROUGH REQUEST FOR QUOTE ("RFQ") PLATFORM BY STOCK BROKERS ("SBS")

SEBI *vide* circular dated June 02, 2023[2] has taken certain steps to increase liquidity on RFQ platform vis-à-vis trading in CBs by SBs. The following steps have been taken to increase such liquidity:

(i) With effect from July 01, 2023, for all trades in the proprietary capacity, SBs shall undertake at least 10% (Ten percent) of their total secondary market trades by value in CBs in that month by placing/seeking quotes through one-to-one ("**OTO**") or one-to-many ("**OTM**") mode on the RFQ platform of stock exchanges.

(ii) With effect from April 01, 2024, for all trades in proprietary capacity, SBs shall undertake at least 25% (Twenty Five percent) of their total secondary market trades by value in CBs in that month by placing/seeking quotes through OTO or OTM mode on the RFQ platform of stock exchanges.

(iii) SBs shall consider the trades executed by value through OTO or OTM mode of RFQ with respect of the total secondary market trades in CBs, during the current month and immediate preceding 2 (two) months on a rolling basis. Only trades pertaining to proprietary capacity of SBs shall be considered for the purpose of such calculations.

(iv) In terms of SEBI circular SEBI/HO/DDHS/P/CIR/2022/142 dated October 19, 2022, quotes on RFQ platform can be placed to an identified counterparty or to all the participants. SBs are encouraged to place bids on RFQ platform through OTM mode, as the same contributes towards achieving better price discovery.

ONLINE PROCESSING OF INVESTOR SERVICE REQUESTS AND COMPLAINTS BY REGISTRAR AND TRANSFER AGENTS ("RTAS")

SEBI *vide* circular dated June 08, 2023[3] has proposed to digitize the requirement of submitting various documents to the RTAs and to also provide a mechanism for investors to lodge service requests and complaints online and thereafter track the status and obtain periodical updates of the same.

[1] SEBI/HO/MRD/MRD-PoD-1/P/CIR/2023/82
[2] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/83
[3] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/72

This digitization is to be undertaken in 2 (Two) phases as follows:

(i) Phase I: All RTAs shall have a functional website which shall mandatorily display information like the basic details of the RTA, names and contact details of key managerial personnel, step-by-step procedures for various service requests, FAQs and procedure for filing a complaint and finding out its status, etc. RTAs shall set-up a user-friendly online mechanism or portal for service requests/complaints.

(ii) Phase II: From July 01, 2024, qualified RTAs shall operate a common website through which investors shall be redirected to individual web-based portal/website of the concerned RTA for further resolution by putting the name of the listed company. This website shall have the functionality of adding companies/RTAs to its search list as and when required.

PARTICIPATION OF MUTUAL FUNDS IN REPO TRANSACTIONS ON CORPORATE DEBT SECURITIES

SEBI *vide* circular dated June 08, 2023[4] has partially modified circular numbers CIR/IMD/DF/19/2011 dated November 11, 2011 and CIR/IMD/DF/23/2012 dated November 15, 2012 that allowed mutual funds to participate in repo transactions on corporate debt securities.

In partial modification to the above-mentioned circulars, the following has been decided:

(i) Mutual funds can participate in repos on following corporate debt securities:

   (a) Listed AA above rated corporate debt securities
   (b) Commercial papers ("**CPs**") and certificate of deposits ("**CDs**")

SEBI has clarified that for the purpose of consideration of credit rating of exposure on repo transactions for various purposes including for potential risk class matrix, liquidity ratios, risk-meter etc., the same shall be as that of the underlying securities, i.e., on a look through basis. Further, for transactions where settlement is guaranteed by a clearing corporation ("**CCs**"), the exposure shall not be considered for the purpose of determination of investment limits for single issuer, group issuer and sector level limits.

UPSTREAMING OF CLIENTS' FUNDS BY SBS/ CLEARING MEMBERS ("CM") TO CCS

SEBI *vide* circular dated June 08, 2023[5] ("**June 08 Circular**"), to safeguard clients' funds placed with SBs/CMs, has been decided to require the upstreaming of all clients' funds received by SBs/CMs to the CCs. In terms of the framework proposed under this circular, no clients' funds shall be retained by SBs/CMs on end of day basis, The clients' funds shall be up streamed by SB/CMs to CCs only in the form of either cash, lien on fixed deposit receipts, or pledge of units of mutual fund overnight schemes. The details of the framework are laid out in the June 08 Circular.

REGULATORY FRAMEWORK FOR EXECUTION ONLY PLATFORMS ("EOPS") FOR FACILITATING TRANSACTIONS IN DIRECT PLANS OF SCHEMES OF MUTUAL FUNDS

SEBI *vide* circular dated June 13, 2023[6] has introduced a framework for EOPs ("**Framework**") for transacting in direct plans for schemes of mutual funds. This Framework lays down detailed guidelines in relation to rights and obligations, fee structure, grievance redressal, disclosure requirements, etc. for each category of EOP. Certain key features of this framework for EOPs are as follows:

(i) No entity shall operate as an EOP without obtaining registration form SEBI or the Association of Mutual Funds in India ("**AMFI**"), under either category 1 EOP (registration obtained from AMFI) or category 2 EOP (registration obtained as a SB).

(ii) The entities under category 1 and category 2 registration shall ensure that they have a comprehensive risk management framework covering all aspects of their operations and shall also ensure that risks associated with their operations are identified and managed.

(iii) For category 1 EOPs, the grievance redressal mechanism shall be as prescribed by AMFI and for category 2 EOPs, the grievance redressal mechanism shall be as prescribed by SBs from time to time.

AMENDMENT TO CIRCULAR ON ISSUE OF CERTIFIED COPIES OF ORDERS AND CIRCULARS

SEBI had issued circular no. CIR/LAD/1/2019 dated April 04, 2019 on issue of certified copies or orders and circular ("**2019 Circular**"). SEBI *vide* circular dated June 13, 2023[7] has decided to do away with acceptance of demand draft with respect to the fee charged for certified copies of orders and

[4] SEBI/HO/IMD/IMD PoD-2/P/CIR/
[5] SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/084
[6] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/86
[7] SEBI/HO/LAD1/LAD1_DoP3/P/CIR/2023/88

circulars. Accordingly, paragraphs 8 and 9 of the 2019 Circular have been modified:

(i) Paragraph 8: A non-refundable fee of INR 50 (Indian Rupees Fifty) per order/circular or INR 5 (Indian Rupees Five) per page, whichever is higher, shall be charged as fees for each certified copy. The same shall be paid along with the application or subsequently within such time as may be informed to the applicant, by way of direct credit in the bank account of the Board through NEFT/RTGS/IMPS or online payment using the SEBI payment gateway or any other mode as may be specified by SEBI from time to time.

(ii) Paragraph 9: The confirmation of payments made electronically through NFT/RTGS/IMPS modes or online payment using the SEBI payment gateway should be sent to the concerned department.

MASTER CIRCULAR FOR RESEARCH ANALYSTS ("RAS")

SEBI vide master circular dated June 15, 2023[8] ("**Master Circular for RAs**") has consolidated and compiled all existing/applicable circulars issued by SEBI pertaining to RAs. This Master Circular for RAs *inter alia* provides for procedural guidelines for proxy advisors, procedure for grievance redressal (in relation to listed companies and proxy advisors) and management of investor complaints, reporting requirements, etc.

AMENDMENT TO SEBI (ALTERNATIVE INVESTMENT FINDS) REGULATIONS, 2012 ("AIF REGULATIONS")

SEBI, by way of notification dated June 15, 2023[9] issued the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023 ("**AIF Amendment Regulations**"). The AIF Amendment Regulations *inter alia* include provisions in relation to Corporate Debt Market Development Fund ("**Fund**") such as:

(a) The Fund has been defined to mean an alternative investment fund set up to make the investments, as prescribed under the AIF Amendment Regulations;

(b) The Fund is required to be constituted in the form of a trust and the instrument of Trust shall be in the form of a deed, duly registered under the provisions of the Indian Registration Act, 1908;

(c) The units of the Fund are required to be offered to the asset management companies and the specified debt-oriented schemes of mutual funds;

(d) During periods of market dislocation, the Fund will be required to purchase corporate debt securities from the specified debt-oriented schemes of mutual funds which meet the prescribed eligibility criteria.

The AIF Amendment Regulations also provide for disclosure requirements and governance mechanisms concerning the Fund.

AMENDMENT TO SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 ("LODR")

SEBI, by way of notification dated June 14, 2023[10] issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 ("**LODR Amendment Regulations**"). The LODR Amendment Regulations *inter alia* provide for the following:

(a) With effect from April 1, 2024 the continuation of a director serving on the board of directors of a listed entity will be subject to the approval by the shareholders in a general meeting, at least once in every 5 (Five) years from the date of their appointment or reappointment, as the case may be;

(b) Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager is required to be filled by the listed entity at the earliest and in any case not later than 3 (Three) months from the date of such vacancy;

(c) Details of cyber security incidents or breaches or loss of data or documents is required to be disclosed along with the quarterly corporate governance reports filed with the stock exchanges;

(d) Any special right granted to the shareholders of a listed entity will be subject to the approval by the shareholders in a general meeting, by way of a special resolution, once in every 5 (Five) years starting from the date of grant of such special right.

AMENDMENTS TO GUIDELINES ON ANTI-MONEY LAUNDERING STANDARDS AND COMBATING THE FINANCING OF TERRORISM / OBLIGATIONS OF SECURITIES MARKET INTERMEDIARIES UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002[11]

SEBI issued a circular dated June 16, 2023 ("**June 16 Circular**"). This June 16 Circular refers to the Master Circular

[8] SEBI/HO/MIRSD-PoD-2/P/CIR/2023/90
[9] No. SEBI/LAD-NRO/GN/2023/132
[10] No.SEBI/LAD-NRO/GN/2015-16/013
[11] https://www.sebi.gov.in/legal/circulars/jun-2023/amendment-to-guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-launderin-_72683.html

of SEBI dated February 3, 2023 ("**February Master Circular**[12]") which provides amendments to guidelines on Anti Money Laundering and Combating the Financing of Terrorism/ Obligations of Securities Market Intermediaries.

In view of the amendments, the following have been made modified and inserted with regards to clients (other than individuals or trusts), client which is a trust, registration of client by registered intermediary on DARPAN portal of NITI Aayog, politically exposed persons, assessment of money laundering and terror financing risks. They are explained in detail as follows:

- When a client purports to act on behalf of a juridical person, individual, or trust, the registered intermediaries ("**RIs**") are to verify the identity and authorisation granted to such client.

- Every registered intermediary ("**RI**") is required to register the details of an unregistered non-profit organisation client on the DARPAN Portal and maintain the record of such registration for 5 (five) years after the later date of the end of business relationship or closure of account.

- RIs are required to file a Suspicious Transaction Report with FIU-IND if it suspects that any transaction relates to money laundering ("**ML**") or terror financing ("**TF**"), and reasonably believes that the performance of CDD process will tip-off the client. In this case, RIs shall not pursue the CDD process. RIs are required to implement the issued policies and procedure on ML and TF.

- The norms applicable for client identification process for Politically Exposed Persons (**"PEP"**) is also applicable to the family members or close relatives of PEPs.

- The Stock Exchanges and RIs are required to identify and assess ML/TF risks that may arise in relation to the development of new products and new business practice, including new delivery mechanisms, and the use of new or developing technologies. Such an assessment must be undertaken prior to their launch or use. The Stock Exchanges and RIs must adopt a risk-based approach to manage and mitigate the assessed risks.

The June 16 Circular aims to bring the February Master Circular in consonance with the the Prevention of Money Laundering (Maintenance of Records) Rule, 2005 and its amendments.

ISSUANCE OF ALTERNATIVE INVESTMENT FUNDS ("AIFS") IN DEMATERIALISED FORM[13]

The Securities Exchange Board of India ("**SEBI**") has allowed the issuance of dematerialised AIFs subject to conditions it may specify, under the SEBI (AIF) Regulations, 2012[14]. SEBI has issued a circular on June 21, 2023 ("**Circular**"). Few of the important conditions are as follows:

- The time frame within which AIFs units are to be dematerialised has been provided. This timeframe is not applicable to units whose tenure ends on or before 30th April 2024.

- The Depositories must:

  a) make necessary amendments to their relevant rules, regulations and by-laws for the implementation of the Circular;
  b) put in a place a system to facilitate transfer dematerialised AIFs units; and
  c) bring the Circular to the notice of the participants.

- The manager of AIF is to submit a compliance report for the Circular.

STANDARDISED APPROACH TO VALUATION OF INVESTMENT PORTFOLIO OF ALTERNATIVE INVESTMENT FUNDS (AIF'S)[15]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated June 21, 2023 ("**Circular**"), specifying the standardized approach to valuation of investment portfolio of AIFs. This valuation is required to be carried out in terms of the SEBI (AIF) Regulations, 2012.

In this regard, the following measures have been set out:

A. Manner of valuation of AIF's investments:

Valuation of securities for which valuation norms have not been prescribed under SEBI (Mutual Funds) Regulations, 1996, shall be carried out as per valuation guidelines endorsed by AIF industry association representing at least 33% (thirty-three per cent) of SEBI's registered AIFs.

[12] https://www.sebi.gov.in/legal/master-circulars/feb-2023/guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laundering-act-2002-a-_67833.html
[13] https://www.sebi.gov.in/legal/circulars/jun-2023/issuance-of-units-of-aifs-in-dematerialised-form_72921.html
[14] https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-alternative-investment-funds-regulations-2012-last-amended-on-february-07-2023-_69231.html
[15] https://www.sebi.gov.in/legal/circulars/jun-2023/standardised-approach-to-valuation-of-investment-portfolio-of-alternative-investment-funds-aifs-_72924.html

B. Responsibility of manager of AIF regarding valuation of investments of AIF:

At each asset level, if there is a deviation of more than 20% (twenty per cent) between two consecutive valuations or a deviation of more than 33% (thirty-three per cent) in a financial year, the manager has to inform the investors the reasons/factors for the same.

- The AIF must comply with the circular on "Guidelines on disclosures, reporting and clarifications under AIF Regulations", in case of any change in the methodology and approach for valuation of investments.

- The manager is required to annually disclose the details of changes in the valuation methodology and approach, changes in accounting practices/policies, and their impact.

C. Eligibility criteria for Independent Valuer

SEBI has specified the eligibility criteria for the independent valuer to be appointed by AIF. The independent valuer:

- must not be an associate of manager or sponsor or trustee of the AIF;

- must have at least three years of experience in valuation of unlisted securities;

- must be a valuer registered with Insolvency and Bankruptcy Board of India and with a membership of Institute of Chartered Accountants of India or Institute of Company Secretaries of India or Institute of Cost Accountants of India or Chartered Financial Analyst Institute; or is a holding company or subsidiary of a Credit Rating Agency registered with SEBI; or any other criteria as may be specified by SEBI.

D. Reporting of valuation of investments of AIF to performance benchmarking agencies

The manager of AIF shall ensure that:

- a specific timeframe for providing audited accounts by the investee company to the AIF is included in subscription/investment agreement;

- valuation based on audited data of investee company is reported to performance benchmarking agencies only after the audit of books of accounts of the AIF.

The provisions of this Circular shall come into force with effect from November 01, 2023.

MODALITIES FOR LAUNCHING LIQUIDATION SCHEME AND FOR DISTRIBUTING THE INVESTMENTS OF ALTERNATIVE INVESTMENT FUNDS (AIFS) IN-SPECIE[16]

The Securities Exchange Board of India ("**SEBI**") has issued a circular dated June 21, 2023 ("**Circular**"), wherein modalities with respect to the Liquidation Scheme and distribution of AIFs in-specie are specified. This Circular is consonance of the amendment dated June 15, 2023, to the SEBI (AIFs) Regulations, 2012, which provides flexibility to AIFs to deal with unliquidated investments by either selling such investments to a new scheme of the same AIF ("**Liquidation Scheme**") or distributing such unliquidated investments in-specie. The Circular specifies:

- During the Liquidation Period of a scheme of an AIF ("**Original Scheme**"), if the AIF wants to launch Liquidation Scheme or wants to distribute unliquidated investments in-specie, it must obtain consent of 75% (seventy-five per cent) of investors by value of their investment in the Original Scheme.

- The AIF must arrange a bid for a minimum of 25% (twenty-five per cent) of the value of the unliquidated investments, for which the bid value along with the valuation of unliquidated investments carried out by two independent valuers must be disclosed.

- The dissenting investors are to be offered an option to fully exit the Original Scheme out of the bid. However, this option is not available in case the bidder or its related parties are investors in the Original Scheme.

- The unliquidated investments of the Original Scheme are to be sold to the Liquidation Scheme/ distributed in specie according to the prescribed value.

- Upon the receipt of units of Liquidation Scheme, the Original Scheme must distribute such units of Liquidation Scheme in-specie in lieu of its units issued to investors.

- The Liquidation Scheme shall be launched/ in-specie distribution shall be carried out, and the Original Scheme shall be wound up before the expiry of the Liquidation Period of the Original Scheme.

- If the AIF fails to obtain requisite investor consent for launch of Liquidation Scheme or in-specie distribution of unliquidated investments, then the unliquidated

[16] https://www.sebi.gov.in/legal/circulars/jun-2023/modalities-for-launching-liquidation-scheme-and-for-distributing-the-investments-of-alternative-investment-funds-aifs-in-specie_72922.html

investments are to be distributed to the investors in specie, without the requirement of getting consent of 75% (seventy-five per cent) of investors.

- The manager, trustee and key management personnel of AIF are responsible for compliance, and upon exercising any of the options mentioned above, must submit a compliance report.

COMPETITION LAW

It's been a busy June for Competition Commission of India. The main highlights are as follows:

HON'BLE HIGH COURT OF DELHI QUASHES CCI INVESTIGATION AGAINST ICAI

The Hon'ble High Court of Delhi via its judgment dated June 6, 2023, in *Institute of Chartered Accountants in India vs. The Competition Commission of India and Ors.*[17], has held that the power of the Competition Commission of India (**CCI**) lies in regulating markets rather than reviewing decisions made by statutory regulators.

The Hon'ble Court invalidated a CCI order issued on February 28, 2014, which instructed the Director General to investigate the matter concerning the Continuing Professional Education (**CPE**) program conducted by the Institute of Chartered Accountants of India (**ICAI**). The informant in the present case sought the outsourcing of the CPE program by ICAI to other third parties in the market. Allowing the plea moved by ICAI, the Hon'ble Court rejected the argument that the CCI has the authority to force an organization or enterprise to outsource its activities.

The Hon'ble Court, in its ruling, declared that the ICAI's decision to establish the CPE program for upholding professional standards cannot be regarded as an abuse of ICAI's dominant position. Additionally, the Hon'ble Court highlighted that the Competition Act does not envision the CCI functioning as an appellate court or a platform for addressing grievances regarding decisions made by statutory regulators in the context of their statutory powers, which do not directly involve trade and commerce.

CCI GIVES DEEMED APPROVAL TO CARRIER GLOBAL CORPORATION FOR THE PURCHASE OF 100% SHARE CAPITAL OF VIESSMANN CLIMATE SOLUTIONS SE

Carrier Global Corporation (**Carrier/Acquirer**) is the controlling entity of the Carrier Group, a global manufacturer and distributor of heating, ventilation, air conditioning, refrigeration, and fire and security solutions.

Viessmann Group GmbH & Co. KG (**Seller**) is a limited liability partnership under the laws of Germany and is the parent company of the Viessmann Group.

Viessmann Climate Solutions SE (**Target**) is a European stock company, incorporated under the laws of Germany. Target is active in the development and production of products, systems, and components for heating, cooling, and climate control of all kinds of buildings.

Carrier sought to purchase 100% of the share capital of Target and its subsidiaries from the Seller (**Proposed Transaction**). The Proposed Transaction is in the nature of an acquisition and falls under Section 5(a) of the Competition Act, 2002.

The parties' activities did not exhibit any horizontal, vertical, or complementary overlaps in any of the plausible relevant markets in India. Therefore, the Proposed Combination was notified via order dated June 12, 2023, under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

[17] W.P.(C) 2815/2014

HON'BLE SUPREME COURT HOLDS THAT COMPETITION ACT IS APPLICABLE TO COAL INDIA LTD.

Via its judgment dated June 15, 2023, the Hon'ble Supreme Court in *Coal India Ltd. vs. Competition Commission of India (Civil Appeal No. 2845 of 2017)*, held that Coal India Ltd (**CIL**) would come under the purview of the Competition Act, 2002 despite being a public sector undertaking. The Hon'ble Court remanded the matter back to the CCI for deciding the issues on merits.

The Hon'ble Court was hearing petitions by CIL contending that since it operates coal mines covered under the Coking Coal Mines (Nationalisation) Act, 1972, it would not come under the purview of the Competition Act. The CCI had opposed this plea.

The CCI had earlier, imposed a penalty of over Rs. 1,773 crores on CIL for imposing unfair/discriminatory conditions in its Fuel Supply Agreements with the power of producers for the supply of non-coking coal. The Competition Appellate Tribunal had affirmed the findings and conclusion of the CCI alleging abuse of the dominant position by CIL.

CCI DISMISSES ALLEGATIONS AGAINST LG ELECTRONICS

The CCI closed and dismissed the relief in a case filed by Perfect Infraengineers Limited (**PIL**) against LG Electronics Limited (**LG**) via its order dated June 20, 2023 (*Perfect Infraengineers Limited vs. L.G. Electronics India Pvt. Ltd.*[18]) stating that no cause of contravention of the provisions of the Competition Act, 2002 (**Competition Act**), is made out.

PIL had approached LG with a proposal to integrate 'Hybrid Thermal Solar' (**HTS**) panels into LG's Variable Refrigerant Flow/Variable Refrigerant Volume (**VRF/VRV**) air conditioners for Envirocare and Delhi Metro Rail Corporation (**DMRC**). However, LG declined PIL's request and even informed DMRC through email about their refusal to allow the integration of PIL's HTS panels with LG's VRF/VRV Acs installed at DMRC premises.

PIL alleged that LG's refusal not only caused significant prejudice and hardship to Envirocare and DMRC but also impacted PIL itself.

Assessing LG's dominance in the relevant market, CCI noted the presence of several AC manufacturers and suppliers and found that LG does not exhibit dominance in the market due to the presence of numerous competitors, providing the consumers with multiple options and acting as a competitive constraint. Therefore, no contravention of Section 4 of the Competition Act was established.

Further, with respect to the alleged contravention of Section 3 of the Competition Act, CCI took note that the informant failed to provide information on how LG's conduct falls within the purview of Section 3. Furthermore, considering the market structure and the nature of the allegations, the CCI ruled out any contravention of Section 3 of the Competition Act.

CCI GIVES DEEMED APPROVAL TO THE INTERNATIONAL FINANCE CORPORATION TO ACQUIRE COMPULSORILY CONVERTIBLE PREFERENCE SHARES IN A WHOLLY-OWNED SUBSIDIARY OF MAHINDRA AND MAHINDRA

International Finance Corporation (**IFC**) is a multilateral financial institution established by an international treaty, which provides assistance and makes investments in private enterprises.

Mahindra and Mahindra Limited (**M&M**) proposed to set up a new wholly-owned subsidiary (**Target**) that will undertake commercial operations pertaining to three-wheelers and small commercial vehicles catering to last-mile connectivity of passengers and cargo segments.

IFC proposed to subscribe to certain compulsorily convertible preference shares of the Target, such that IFC will hold 9.97% to 13.64% shareholding in the Target (on a fully diluted basis), post the conversion of the compulsorily convertible preference shares (**Proposed Combination**). The Proposed Combination is in the nature of acquisition in terms of Section 5(a) of the Competition Act.

Given that there were no horizontal overlaps or vertical or complementary linkages between the activities of the Target and IFC, the Proposed Combination was notified via order dated June 5, 2023, under the green channel route under Regulation 5A(1) read with Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations), Regulations, 2011 (as amended).

GOOGLE APPEALS AGAINST NCLAT ORDER UPHOLDING RS. 1,338 CRORE ANTI-TRUST PENALTY

Google on June 27, 2023, appealed to the Hon'ble Supreme Court, challenging the National Company Law Appellate Tribunal's (NCLAT) order upholding the fine of Rs. 1,338 crore imposed on Google by CCI.

NCLAT had partially upheld the CCI order stating that CCI's order stating that the said order did not violate the principles of natural justice. The NCLAT had, however, set aside four of the key directions issued to Google issued by CCI.

[18] Case No. 35 of 2022

It is to be noted that the CCI has also challenged the NCLAT's order before the Hon'ble Supreme Court.

CCI TO REVIEW THE MERGER OF AIR INDIA AND VISTARA

Air India has received a show cause notice from CCI, requesting an explanation as to why the proposed merger with Vistara should not undergo scrutiny regarding competition concerns within the aviation industry.

Vistara and Air India, both full-service airlines, are subsidiaries of the Tata Group. Singapore Airlines (SIA) has a 49 percent ownership stake in Vistara. In November 2022, the Tata Group revealed plans for the merger of Vistara and Air India. Under the agreement, SIA will also acquire a 25.1 percent share in Air India. Tata Sons would own the remaining 74.9 percent stake in the combined entity.

In April of this year, Tata Sons and SIA submitted a merger application to the CCI, stating that the proposed merger between Vistara and Air India would not have any negative impact on competition in India and would not alter the competitive landscape.

DISPUTE RESOLUTION

ORDERS UNDER SECTION 16 OF THE ARBITRATION & CONCILIATION ACT 1996 CAN BE CHALLENGED UNDER ARTICLE 227 ONLY IN EXCEPTIONAL CIRCUMSTANCES

The Hon'ble High Court of Calcutta in ***M.D. Creations & Ors. vs. Ashok Kumar Gupta***[19] has held that orders under Section 16 of the Arbitration and Conciliation Act 1996 **("Act")**, can be challenged under Article 227 of the Constitution of India 1950 **("Constitution")** only in exceptional circumstances. In the said case, the Petitioner filed an application under Section 16 of the Act wherein, an objection was raised *qua* the jurisdiction of the arbitrator as the agreement from which the arbitration arose was unstamped and unregistered and could not have been acted upon. The arbitrator dismissed the application under Section 16 of the Act. Aggrieved by the said dismissal, the Petitioner filed a civil revision petition under Article 227 of the Constitution. The Hon'ble High Court Calcutta observed that a petition under Article 227 of the Constitution challenging arbitral awards can be entertained in rare circumstances i.e., only on the grounds of **(i)** patent lack in inherent jurisdiction; and/or **(ii)** bad faith. Since none of the grounds existed in the said petition, the Hon'ble High Court Calcutta observed that as per the working of the Act, the Petitioner will have to wait till the passing of an arbitral award and challenge the same under Section 34 of the Act. Consequently, the said petition was dismissed.

SUPPLYING COPIES OF ARBITRAL AWARDS CERTIFIED BY THE MSME COUNCIL TO THE PARTIES IS NOT IN COMPLIANCE WITH THE PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT 1996

The Hon'ble High Court of Himachal Pradesh in ***M/s Sterkem Pharma Private Limited vs. Symbiosis Pharmaceuticals Private Limited & Ors***[20] has held that supplying copies of arbitral awards certified by the MSME Council to the parties is not in compliance with the provisions of the Arbitration and Conciliation Act 1996 **("Act")**. In the said case, the petitioner had filed an objection petition under Section 34 of the Act which was held to be not duly constituted as the signed copy of the arbitral award was not placed on record by the petitioner. Accordingly, the petitioner through a written communication requested the arbitrator to provide a signed copy of the arbitral award and thus withdrew the objection petition under Section 34 of the Act. The Hon'ble High Court observed that as per the scheme of the Act, a signed copy of the arbitral award is mandatorily required to be given to the parties to the arbitration. Since the Himachal Pradesh MSME Council had not supplied the signed copy of the arbitral award but only the certified copy of the arbitral award, the Hon'ble High Court observed that the same was not in compliance with Section 31 of the Act. Accordingly, the Hon'ble High Court observed as follows: **(i)** It is the bounden duty of an arbitrator to issue a signed copy of the arbitral award to parties; **(ii)** Arbitrator is also required to send a communication to the MSME Council that signed copy has been sent to parties so that the proceedings may be formally concluded; **(iii)** Record of arbitration proceedings after passing of award is required to be retained by arbitrator and not sent to MSME Council.

RESOLUTION PROFESSIONAL EMPOWERED TO KEEP CLAIMS IN ABEYANCE: NCLAT CHENNAI

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), Chennai Bench, in the case of ***Anheuser Busch Inbev India Limited vs. Mr. Pradeep Kumar Sravanam***[21], held that the Resolution Professional **("RP")** has jurisdiction to hold claim(s) by the creditor(s) in abeyance if the situation justified it. In this case, Anheuser Busch Inbev India Limited ("**Financial Creditor**") and East Godavari Breweries Pvt. Ltd.

[19] C.O. 2545 of 2022

[20] CMPMO No. 274 of 2023

[21] Comp. App (AT) (CH) (INS.) No. 12 of 2023

("**Corporate Debtor**") entered into a Brewing Agreement. Consequently, Financial Creditor referred the matter to arbitration for recovery of debt. On 17.11.2021, Hon'ble National Company Law Tribunal ("**NCLT**") admitted the Corporate Debtor into Corporate Insolvency Resolution Process ("**CIRP**") and appointed a RP. Thereafter, the appellant herein submitted its claim of Rs. 33,98,16,438.35/- before the RP in its capacity of a Financial Creditor, for the amount which is subject matter of pending arbitral proceedings. However, the RP did not accept the Appellant's claim and kept the claim in abeyance as the final admissible claim amount would depend on the outcome of the Arbitration Proceedings and the determination of the Corporate Debtor's Counter Claim. Subsequently, the Appellant herein filed an Application before the Hon'ble NCLT seeking admission of his claim and inclusion in the Committee of Creditors **("CoC")** which was dismissed by the Hon'ble NCLT, vide the order dated 02.12.2022, on the ground that the RP was justified in keeping the claim in abeyance because of the pending Arbitration Proceedings and the Counter Claim of the Corporate Debtor. Aggrieved by this order, the Appellant filed an appeal before the Hon'ble NCLAT. The Hon'ble Bench, in the present case, after considering the arguments advanced by both sides, held that the action of the RP of keeping the Claim in abeyance is justified as there is a pending Arbitration Proceedings, in regard to the counterclaim of the Corporate Debtor and the claim can be ascertained with clarity only after it is determined by the Hon'ble Court. It was further noted that the counterclaim of the Corporate Debtor may end in a set off of the Sum, payable to the Appellant / Petitioner. Accordingly, the Hon'ble bench upheld the decision of the Hon'ble NCLT and dismissed the present Appeal.

SUCCESSFUL RESOLUTION APPLICANT CAN PURSUE AVOIDANCE APPLICATION POST COMPLETION OF CIRP, IF PLAN CONTAINS A CLAUSE TO THAT EFFECT: NCLAT DELHI

The National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi Bench in the case of ***Kapil Wadhawan vs. Piramal Capital & Housing Finance Ltd. & Ors***[22]***.,*** held that avoidance application(s) can be pursued by the Successful Resolution Applicant (**"SRA"**) post completion of CIRP if the approved Resolution Plan contains a specific clause pursuing such applications by the SRA.

In the present case, the Reserve Bank of India (**"RBI"**), in exercise of its powers under Section 45-IE of the Reserve Bank of India Act, 1934, superseded the Board of Directors of Dewan Housing Finance Corporation Limited ("**DHFL/Corporate Debtor**") and appointed Mr. R. Subramaniakumar as the Administrator of DHFL. Subsequently, RBI filed a petition before the Hon'ble National Company Law Tribunal ("**NCLT**") seeking the initiation of a Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor. On 03.12.2019, the Hon'ble NCLT allowed the Application seeking initiation of CIRP and appointed Mr R. Subramaniakumar, the Administrator, as the Resolution Professional **("RP")**. Subsequently, several Interim Applications were filed by the Administrator under sections 25(2), 43, 44 and 66 of the Insolvency and Bankruptcy Code 2016 ("**IBC**") praying for the avoidance of transactions by DHFL.

In the meanwhile, Piramal Capital & Housing Finance Ltd. ("**Successful Resolution Applicant/SRA**") submitted a Resolution Plan for the Corporate Debtor, which was approved by the Committee of Creditors ("**CoC**"). The aforementioned Resolution Plan contained a Clause which stated that the SRA will pursue avoidance applications filed by the Administrator. Accordingly, the SRA filed applications seeking impleadment in place of the erstwhile Administrator, in the pending avoidance applications. The Hon'ble NCLT, vide order dated 09.02.2023, substituted the name of SRA in place of the erstwhile Administrator in the avoidance applications.

Aggrieved by the Order dated 09.02.2023, Mr. Kapil Wadhawan ("**Appellant**"), Ex-Promoter of the Corporate Debtor, filed an appeal before the Hon'ble NCLAT claiming that the avoidance applications were not decided before the completion of CIRP and thus, became infructuous post completion of CIRP and approval of Resolution Plan. Further, an SRA cannot continue prosecution of the avoidance applications since the RP is a '*persona designate'* under IBC, whose power and duties cannot be delegated. The Hon'ble NCLT relied upon the order passed by the Hon'ble Delhi High Court in ***TATA Steel BSL Ltd. vs. Venus Recruiter Pvt. Ltd. & Ors.***,[23] and noted that proceedings in respect of avoidance transactions will be pursued after the approval of the Resolution Plan. The Bench observed that since the SRA's Resolution Plan was approved prior to 14.06.2022 and contains specific provisions for the continuance of avoidance applications by the SRA. Therefore, such a provision in the Plan is not contrary to IBC. The contention of the Appellant that it is only the erstwhile Administrator/Resolution Professional who could pursue the avoidance application has been rejected by the Hon'ble Bench. The Hon'ble Bench upheld the order of the Ld. Adjudicating Authority and dismissed the Appeal.

[22] Company Appeal (AT) (Insolvency) No. 437 of 2023

[23] (2023) SCC OnLine Del 155

EMPLOYMENT LAW

EMPLOYEES' PROVIDENT FUND ORGANISATION CIRCULAR ON THE COMPUTATION OF PENSION ON HIGHER WAGES

The Employees' Provident Fund Organisation ("**EPFO**"), vide circular dated June 1, 2023, has prescribed the method for calculating the average monthly pay drawn during the contributory period of service.

As per the circular, the method of computation of pension shall be in accordance with the provisions of the Employees' Pension Scheme 1995. These are:

(i) Cases found eligible for pension on higher wages where the date of commencement of pension is prior to September 1, 2014: Pension shall be calculated based on the average monthly pay drawn during the contributory period of service in the span of 12 (Twelve) months preceding the date of exit from the membership of the pension fund.

(ii) Cases found eligible for pension on higher wages where the date of commencement of pension is post September 1, 2014: Pension shall be calculated based on the average monthly pay drawn during the contributory period of service in the span of 60 (Sixty) months preceding the date of exit from the membership of the pension fund.

EPFO CONSTITUTES COMMITTEES FOR FRAMING DRAFT SCHEMES UNDER SOCIAL SECURITY CODE, 2020

The EPFO, vide order dated June 2, 2023, has constituted committees to frame the following draft schemes under the Social Security Code, 2020 and the schemes are to be placed before the Government of India (Ministry of Labour and Employment) for consideration:

(i) Employees' Provident Fund Scheme;
(ii) Employees' Pension Scheme; and
(iii) Employees' Deposit Linked Insurance Scheme.

The first draft of the abovementioned schemes may be submitted by the committees to the Central Provident Fund Commissioner by June 23, 2023.

EMPLOYEES' STATE INSURANCE CORPORATION CIRCULAR ON THE DECLARATION OF STATUS OF AN EMPLOYER

The Employees' State Insurance Corporation ("**ESIC**"), vide circular dated June 2, 2023, has introduced a 'dormant' option in the employer's portal as it was brought to the notice of various regional offices/sub-regional offices of ESIC that some Ministry of Corporate Affairs registered employers who had registered with 0 (Zero) number of employees were unable to see the 'dormant' option being reflected in their employer ID and were, therefore, unable to exercise this option.

In this regard, the ESIC has also directed all such employers to declare the status of the company within 6 (Six) months of registration in order to avoid defaulter action. Further, before the end of such 'inactive' mode of the company, this inactive status can be further extended by it for another 6 (Six) months as per such company's status. However, the option to extend the status will not be available once the 'inactive' mode has expired.

CIRCULAR ON JOINT REQUEST UNDER THE EMPLOYEES' PROVIDENT FUND SCHEME, 1952

The EPFO, vide circular dated June 2, 2023, has directed that any employee who intends to become a member of the Employees' Provident Fund Scheme, 1952 ("**EPF Scheme**") and contribute to it on higher pay exceeding the statutory limit, shall submit a joint request with his/her employer, which shall be made through the employer to the jurisdictional regional office of EPFO ("**RO**"). The employee shall also submit an undertaking to pay the administrative

charges as payable on such higher pay and comply with related statutory provisions.

Further, such joint requests shall be maintained by the EPFO field office in the following manner:

(i) The employer shall submit the duly signed joint request and undertaking to the RO, who will further inform the establishments under its jurisdiction about such digital channel;
(ii) All joint requests and undertakings shall be expeditiously processed by the RO;
(iii) Any officer not below the rank of Assistant Provident Fund Commissioner will allow such higher contributions after intimation to the employer and the employee within 7 (Seven) days of receipt of such joint request.

The procedure shall be applicable to employees who are either already enrolled under the EPF Scheme or are existing members of the EPF Scheme and may intend to contribute higher when their wages exceed the then statutory wage ceiling. Further, all existing members already contributing higher will be required to submit their joint request at the time of final claim settlement if the same has not been done yet.

EPFO CIRCULAR ON SCRUTINY OF APPLICATION FOR JOINT OPTION

The EPFO, vide circular dated June 2, 2023, has directed all zonal offices to monitor and scrutinize all applications for validation of joint option. It has been directed that all applications shall be scrutinized expeditiously, and it shall be ensured that a demand letter to the employer or communication to the employer is issued for providing any additional proof or evidence or correct any mistakes/errors (this includes mistakes made by the employers and pensioners) in respect of each application for validation of joint option within 20 (Twenty) days of receipt of the application in the login of the dealing assistant.

CENTRAL GOVERNMENT TO EXTEND AADHAAR BASED PAYMENT BRIDGE SYSTEM TO MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005

The Ministry of Rural Development, vide press note dated June 3, 2023, has extended the Aadhaar-based payment bridge system ("**ABPS**") to Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

The Central Government has observed that in many cases, due to frequent changes in bank account number by the beneficiary and non-updation of the new account number by the concerned programme officer of the same and due to non-submission of new account by the beneficiary on time, several transactions of wage payment are being rejected. Consequently, it has been decided that ABPS is the best route for making wage payments through direct benefit transfer as this would help the beneficiaries in getting their wage payments on time.

Once Aadhar is updated in the scheme database, a beneficiary is not required to update the account numbers due to a change in location or change in bank account number and money will be transferred to the account number which is linked with the Aadhar number.

Further, all states have been requested to organize camps and follow up with beneficiaries to achieve 100% (One Hundred Percent) ABPS. The Ministry of Rural Development has expressly conveyed to all the states that the beneficiary who comes for work should be requested to provide the Aadhar number but will not be refused work on this basis. Moreover, if a beneficiary does not demand work, in such case his/her status vis-à-vis eligibility for ABPS will not affect the demand for work.

EPFO CIRCULAR ON APPLICATIONS FOR VALIDATION OF OPTION OR JOINT OPTION

The EPFO, vide circular dated June 14, 2023, has issued the procedures for scrutiny and verification of applications for validation of option/joint option. As per the circular, in case of applicants otherwise eligible for pension on higher wages as per the directions of the Supreme Court of India ("**SC**") dated November 4, 2022, in the case of ***EPFO and Another vs. Sunil Kumar B. and Others***, for scrutiny regarding paragraph 26(6) of the EPF Scheme (*which relates to class of international workers entitled and required to join the fund*), the following procedure may be followed:

(i) Field offices will verify that:

- Employer share of provident fund ("**PF**") contribution has been remitted on employer's pay exceeding the prevalent statutory wage ceiling of INR 5,000 (Rupees Five Thousand) or INR 6,500 (Rupees Six Thousand Five Hundred) or INR 11,500 (Rupees Eleven Thousand Five Hundred) per month from the day the pay exceeded the wage ceiling or November 16, 1995, whichever is later, till date or till the date of retirement or superannuation as the case may be;

- Administrative charges payable by the employer have been remitted on such higher wages;

- PF account of the employee has been updated with interest as per paragraph 60 of the EPF Scheme (*which relates to interest on members' accounts*) on the basis of such contribution received; and

- Any of the following documents have been submitted along with applications for validation of option/joint options as proof of joint option under paragraph 26(6) of the EPF Scheme:

    - Wage details submitted by the employer along with applications for validation of option/joint options.
    - Any salary slip/letter from the employer authenticated by the employer.
    - Copy of joint request and undertaking from the employer.
    - Letter from PF office issued prior to November 4, 2022, indicating PF contributions on higher wages.

(ii) The applicants who comply with point (i) above and are already contributing or have contributed till retirement or superannuation on actual (higher) pay, if they have not submitted their joint requests and undertakings of the employer, can submit the same at the time of final claim settlement through their last employer. Joint requests and undertakings of the employer for permission under paragraph 26(6) of the EPF Scheme can be submitted by pensioners or members any time before the grant of pension on higher wages in accordance with the decision of the SC order dated November 4, 2022.

EPFO EXTENDS THE DUE DATE FOR EMPLOYERS TO UPDATE WAGE DETAILS ONLINE

The EPFO, vide press release dated June 26, 2023, has provided the last opportunity for employees to submit applications for validation of option/joint options for pension on higher wages. The facility was launched on February 26, 2023, and was to remain available only till May 3, 2023. However, considering the representations of the employees, the time limit had been extended till June 26, 2023, to provide a complete 4 (Four) months' time to the eligible pensioners or members for filing the applications. This opportunity will be the last 15 (Fifteen) days to remove any difficulty faced by eligible pensioners or members in relation to the updation of KYC, difficulty in submitting online applications, etc. Accordingly, the last date for submitting applications for validation of option or joint options has now been extended till July 11, 2023.

Further, the EPFO after considering the representations by employer's and employers' associations has extended the last date for uploading wage details of applicant pensioners or members till September 30, 2023.

ENERGY

THE MINISTRY OF POWER AMENDED THE ELECTRICITY (RIGHTS OF CONSUMERS) RULES, 2020 BY INTRODUCING TIME OF DAY (TOD) TARIFF AND SIMPLIFICATION OF SMART METERING RULES. POWER TARIFF TO BE 20% LESS DURING SOLAR HOURS, 10%-20% HIGHER DURING PEAK HOURS; CONSUMERS TO BENEFIT FROM EFFECTIVE UTILIZATION OF TOD PROVISION

The Government of India has introduced two changes to the prevailing power tariff system, through an amendment to the Electricity (Rights of Consumers) Rules, 2020. The changes are introduction of Time of Day (ToD) Tariff, and rationalization of smart metering provisions.

Under the ToD Tariff system, Tariff during solar hours (duration of eight hours in a day as specified by the State Electricity Regulatory Commission) of the day is to be 10%-20% less than the normal tariff, while the tariff during peak hours is to be 10 to 20 percent higher. ToD tariff would be applicable for Commercial and Industrial consumers having maximum demand of 10 KW and above, from 1st April, 2024 and for all other consumers except agricultural consumers, latest from 1st April, 2025. Time of Day tariff will be made effective immediately after installation of smart meters, for the consumers with smart meters.

The TOD tariffs comprising separate tariffs for peak hours, solar hours and normal hours, will send price signals to consumers to manage their load according to the Tariff. With awareness and effective utilization of ToD tariff mechanism, consumers can reduce their electricity bills. Since solar power is cheaper, the tariff during the solar hours will be less, so the consumer will benefit.

The ToD mechanism will also ensure better grid integration of Renewable Energy sources thereby facilitating faster energy transition for India.

The current amendment to the Rules is in continuation of the measures taken by the government, to empower power consumers, to ensure 24X7 reliable electricity supply at affordable cost, and to maintain a conducive ecosystem for investment in the power sector.

MOU SIGNED BETWEEN NHPC LIMITED AND DEPARTMENT OF ENERGY, GOVERNMENT OF MAHARASHTRA FOR THE DEVELOPMENT OF PUMPED STORAGE SCHEMES AND OTHER RENEWABLE ENERGY SOURCE PROJECTS IN THE STATE OF MAHARASHTRA

The Memorandum of Understanding (MoU) envisages development of four Pumped Storage Projects aggregating to a total capacity of 7,350 MW, namely Kalu – 1,150 MW, Savitri – 2,250 MW, Jalond – 2,400 MW and Kengadi -1,550 MW. Other Renewable Energy Source Projects too will be developed in the state under the agreement.

The MoU entails harnessing the Pump Storage Projects as Energy Storage Solutions to help achieve the national objective of Energy Transition, i.e., installed capacity of 500 GW of renewable energy by 2030 and Net Zero by 2070.

These projects will attract an investment of about Rs. 44,000 crores and will generate indirect and direct employment for 7,000 people in the state.

Pumped Storage System utilises surplus grid power available from thermal power stations or other sources to pump up water from lower to upper reservoir and reproduces power during peak demand when there is scarcity of power.

NHDC TO CONSTRUCT 525 MW PUMPED STORAGE POWER PROJECT NEAR INDIRA SAGAR, KHANDWA TO MEET PEAK HOUR ENERGY DEMAND OF MADHYA PRADESH

Narmada Hydroelectric Development Corporation Ltd. (NHDC Ltd.) is going to construct a 525 MW Pumped Storage Project near Indira Sagar Dam, Khandwa, Madhya Pradesh using the existing reservoirs Indira Sagar and Omkareshwar of the Indira Sagar Project. The project is being undertaken, keeping in view the need for increasing peak hour demand of the state. With the increased renewable energy generated through this Pumped Storage Project, the energy needs of the state can be met during peak energy hours (morning and evening). The project will generate 1,226.93 million units of energy during peak hours.

The project is estimated to cost Rs. 4,200 crores. The Department of New & Renewable Energy, Government of Madhya Pradesh has allotted this project to NHDC Limited.

There is a potential for 11.2 GW of Pumped Storage Projects in the state of Madhya Pradesh. At present, two power stations of NHDC Limited, namely Indira Sagar Power Station (1000 MW) and Omkareshwar Power Station (520 MW) are in operation in the Khandwa district. 100 percent of the power produced by these power stations are supplied to the state of Madhya Pradesh.

NHDC plans to make the state a green state through the production of green energy with construction of solar power projects. Construction of 8 MW solar project in the historic city of Sanchi and of 88 MW floating Solar Project on Omkareshwar Reservoir is in progress.

THE MNRE VIDE OFFICE MEMORANDUM ON JUNE 16, 2023 EXTENDED THE TIMELINE OF THE SOLAR PARK SCHEME, A SCHEME FOR "DEVELOPMENT OF SOLAR PARKS AND ULTRA MEGA SOLAR PROJECTS"

The Ministry of New & Renewable Energy (MNRE), Grid of Solar Power Division through Office Memorandum on June 16, 2023 extended the timeline of the Solar Park Scheme i.e. the Scheme for "Development of Solar Parks and Ultra Mega Power Projects" up to Financial Year 2025-26, without any additional financial implication.

THE MNRE VIDE OFFICE MEMORANDUM DATED JUNE 9, 2023 PROVIDED THAT STANDARD FORMAT OF THE TEST REPORT OF SOLAR PHOTO VOLTAIC (SPV) WATER PUMPING SYSTEM

The Ministry of New & Renewable Energy (MNRE), Grid of Solar Power Division through office memorandum on June 9, 2023 provided standard format of the Test Report of Solar Photo Voltaic (SPV) water pumping system. Ministry has issued the updated specifications and testing procedure for the Solar PV water pumping systems to be used in the agriculture sector on March 22, 2023. So far, different labs follow different formats for the test report of the SPV Water Pumping system. In order to standardize the format across all the labs in the country, a standard format of the Test Report (attached as Annexure) is being issued which is to be followed by all the labs testing Solar Water Pumping system under the PM-KUSUM scheme, with the immediate effect.

MINISTRY OF NEW & RENEWABLE ENERGY REVISES DISPUTE RESOLUTION MECHANISM FOR RENEWABLE ENERGY PROJECTS

The Ministry of New & Renewable Energy (MNRE) issued an order dated June 7, 2023 for setting up of a dispute resolution mechanism to consider the unforeseen disputes between Renewable Energy Power Developers/ EPC Contractors and SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA), designated by MNRE, beyond contractual agreements and have also provided with the Procedural Guidelines for Dispute Resolution Mechanism to consider the unforeseen disputes between Renewable Energy Power Developers/ EPC Contractors and SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA) designated by MNRE, beyond contractual agreements.

The notified order is a transparent, unbiased Dispute Resolution Mechanism, consisting of an independent, transparent and unbiased Dispute Resolution Committee (DRC), for resolving the unforeseen disputes that may arise in implementation of contractual agreements and also for dealing with issues which were beyond the scope of contractual agreements between Renewable Energy (RE) Power Developers/ EPC Contractors and SECI/NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA), designated by MNRE.

INFRASTRUCTURE

ACCEPTANCE OF E-BANK GUARANTEE AND INSURANCE SURETY BONDS AS 'BID SECURITY" AND 'PERFORMANCE SECURITY' IN THE STANDARD DOCUMENTS OF EPC, HAM, AND BOT (TOLL) PROJECTS

The Ministry of Road Transport and Highways ("**MoRTH**") vide policy circular bearing number 18.88/2023 dated June 13, 2023 ("**Circular**"), has directed the inclusion of relevant clauses and formats in standard documents (i.e., Request for Proposal (RFP) and the model concession agreement (MCA)) of EPC, HAM and BOT (Toll) projects, for acceptance of 'bid security' and 'performance security' in the form of e-bank guarantee and insurance surety bonds.

MoRTH has stated that the bank guarantee in all existing contracts, including road development, toll contracts, ropeways etc., may be replaced with insurance surety bonds as per the availability. However, if a bank guarantee cannot be furnished in the form of e-bank guarantee, then physical bank guarantee may be accepted.

DRAFT AIRCRAFT BILL, 2023

The Ministry of Civil Aviation ("**MoCA**") vide notification number AV- 11012/5/2022-D G dated May 30, 2023, has published the draft Aircraft Bill, 2023 ("**Draft Bill**"), and has invited the general public and stakeholders to comment on the same.

The Draft Bill proposes to amend the Aircraft Act, 1934 ("**Act**"), by simplifying the regulatory provisions, identifying the redundant provisions, and updating the provisions to reflect the current position of the civil aviation sector.
The Draft Bill has inserted the definitions of 'design' and 'manufacture'.

The Draft Bill has introduced a new provision empowering the Central Government to make rules for the following:

- certification and licensing of personnel engaged in operation of radio telephone or telegraph, who are involved in operation and maintenance of aircraft and associated equipment.

- regulation in the vicinity of the aerodrome, for control of obstruction limiting surfaces.

- regulating the area and manner of issue of directions by the Director General of Civil Aviation's for carrying out safety and regulatory oversight functions and granting exemption from compliance.

- regulating the area and manner of issue of directions by the Director General of Bureau of Civil Aviation Security for carrying out security oversight functions and granting exemption for compliance with such directions.

- making rules for the issuance of radio telephone operator (restricted) certificate and license to eligible persons carrying out operation and maintenance of aircraft, in accordance with the International Telecommunication Convention.

Further, the Draft Bill has elaborated the provisions for appeal against the orders issued by the Central Government under Section 27(2) (for restriction, suspension or cancellation of licenses, certificates or approvals issued under the Act) and Section 28(4) (for adjudication of financial penalties).

DEFAULT LOSS GUARANTEE IN DIGITAL LENDING

The RBI (vide circular No. RBI/2023-24/41DOR.CRE.REC.21/21.07.001/2023-24) dated June 08, 2023 issued guidelines regulating default loss guarantee in digital lending ("**FLDG Guidelines**").

The RBI has clarified that FLDG arrangements conforming to these guidelines shall not be treated as 'synthetic securitisation'.

A snapshot of the key conditionalities set forth under the FLDG Guidelines is as follows:

A. **Applicability**:

Under FLDG Guidelines, the FLDG can be provided by regulated entities ("**REs**")/ lending service providers ("**LSPs**"). The FLDG services can be provided to commercial banks, primary co-operative banks, state co-operative banks, central co-operative banks and NBFCs undertaking digital lending operations.

FLDG has been defined as a contractual arrangement under which the RE/LSP guarantees to compensate the RE, for loss due to default up to a certain percentage of the loan portfolio of the RE. The definition of FLDG is wide and is intended to cover other forms of guarantee/assurance given by LSP/RE with respect to performance of loan portfolio.

B. **Contractual Requirements**:

(a) The contract covering the FLDG arrangement should explicitly clarify:
- extent of the FLDG cover;
- form in which FLDG cover is to be maintained with the RE; and
- timelines for invocation, and disclosure requirements as mentioned under the FLDG Guidelines.

(b) The FLDG should not involve any form of transfer of loan portfolio.

C. **Threshold and Invocation**: The FLDG cover cannot exceed 5% of the amount of loan portfolio. Further, the amount of FLDG invoked cannot be set off against the underlying individual loans. The RE can invoke FLDG within a maximum overdue period of 120 days.

Any subsequent recovery by the RE from the loans on which FLDG has been invoked and realised, can be shared with the FLDG provider in terms of the contractual arrangement.

D. **Forms of FLDG**: The FLDG can only be by way of: (a) cash; (b) fixed deposits maintained with a scheduled commercial bank with a lien marked in favour of the RE; and (c) bank guarantee in favour of the RE.

E. **Tenure**: The period of FLDG arrangement shall not be less than the longest tenor of the loan in the underlying loan portfolio.

F. **Transparency**: The FLDG Guidelines require REs to ensure that LSPs publish the total number of portfolios and the respective amount of each portfolio on which FLDG has been offered on their respective websites.

G. **Due Diligence**: RE while entering into a FLDG arrangement are, *inter alia*, required to: (a) put in place a Board approved policy specifying the eligibility criteria for FLDG provider, nature and extent of FLDG cover, process of monitoring and reviewing the FLDG arrangement; (b) put in place robust credit appraisal requirements and credit underwriting standards; and

(c) undertake adequate due diligence of the FLDG provider to ensure that the FLDG provider would be able to honour the FLDG.

H. **Exceptions**: The Guidelines exclude certain schemes/ entities from the ambit of definition of FLDG. These include the guarantee schemes of credit guarantee fund trust for micro and small enterprises, credit risk guarantee fund trust for low income housing, individual schemes under national credit guarantee trustee company limited, guarantees provided by Bank for International Settlements and International Monetary Fund, etc.

DSK View: *Until the introduction of the Guidelines, the FinTech industry had been adopting customized FLDG structures. Newly introduced guidelines will enable a standard regulation in the digital lending industry. It is expected that the Guidelines will provide the rapidly growing Indian FinTech landscape a directed growth and multitudinously increase the operational ease and clarity for the businesses to work in the FinTech industry.*

Source

DRAFT REGULATIONS FOR PAYMENT SYSTEM OPERATORS ("PSO") TO ENHANCE CYBER SECURITY

With the objective of promoting safety and security of digital payments, the RBI on June 02, 2023, announced draft regulations for PSO (seeking feedback thereon by June 30, 2023). As proposed under the draft regulations, the RBI has entrusted PSO with the responsibility of defining appropriate key risks indicators, to effectively identify potential risk events and key performance indicators for assessing the effectiveness of security controls. Some of the measures are:

A. **Formulation of Governance Controls:** PSOs must formulate an Information Security policy, prepare a crisis management plan, undertake a cyber risk assessment, etc. that covers all applications and products concerning payment systems. The policy should be reviewed annually.

B. **Baseline Information Security Measures:** PSO have to maintain and manage an inventory that contains a comprehensive record of key roles, information assets, critical functions etc., process flow diagrams of network resources and data flows. PSO also have to identity and access management for individuals with access to the IT environment of the PSO, privileged accounts, remote access situations etc. and prepare their network against external threats. Security testing for all applications to be put in place, deficiencies to be resolved in time.

C. **Multi-factor authentication for payment transactions**: All payment transactions, including cash withdrawals, conducted through electronic modes should require multi-factor authentication, except where explicitly relaxed.

D. **Appoint a nodal officer:** PSO must appoint a dedicated nodal officer(s) who is available 24x7x365 to liaise with customers on fraudulent transactions and also with Law Enforcement Agencies (LEAs).

E. **Security testing:** PSO are recommended to follow a 'secure by design' approach. PSO should ensure that all their applications are subjected to "rigorous security testing" through qualified agencies at regular frequencies. Reporting any unusual incidents, outage of critical system, internal fraud, settlement delay, etc., to the RBI within 6 hours of detection and to CERT-In.

F. **Anti-phishing safeguards:** PSO subscribe to anti-phishing or anti-rogue app services that identify and take down phishing websites and apps.

G. **Maintenance of logs:** PSO shall put in place a mechanism to capture, analyse, store and archive audit logs in a systematic manner. Log messages shall provide relevant information to uniquely identify the user that initiated an action, the action and parameters of that particular action. Access to log data shall be provided on a controlled basis. Audit logs shall be preserved for a period of at least five years.

The RBI plans to enforce the proposed master directions in a phased manner. Large non-bank PSO (Payment Aggregators (PAs), card payment networks, large PPI issuers, non-bank ATM networks, White Label ATM Operators, Clearing Corporation of India Limited (CCIL), National Payments Corporation of India (NPCI), NPCI Bharat Bill Pay Limited, TReDS, and Bharat Bill Payment Operating Units) have a timeline till April 01, 2024, to ensure compliance, whereas Medium non-bank PSO (Cross-border (in-bound) money transfer operators under Money Transfer Service Scheme (MTSS) and Medium PPI Issuers) may take until April 01, 2026 to comply with the proposed master directions. Small non-bank PSO (Small PPI Issuers and Instant Money Transfer Operators) have been allotted until April 01, 2028m to ensure compliance with the draft master directions upon enforcement.

DSK View: *The RBI envisions for these master directions to improve safety and security of the PSO by enacting a comprehensive and exhaustive framework, along with other existent regulatory guidelines, to protect consumer data and demarcating a benchmark for protection against cyber frauds.*

The draft directions come at a time when the instances of cyberattacks on payment systems have seen a visible growth in India. It can be expected for this move by the RBI to play a catalysing role in promoting financial stability by alleviating and removing commonly countered cyber risks, thereby increasing financial inclusion for all. The directions cover security measures for ensuring system resilience as well as safe and secure digital payment transactions. As the proposed norms will rigorously bring PSO sector under the surveillance of the RBI, it will be exciting to see how the RBI takes mitigating active measures to block and prevent any leakage in the security vaults of the PSO sector in India.

Source

INTRODUCTION OF LIGHTWEIGHT PAYMENT SYSTEMS

The RBI has conceptualised a light weight and portable payment system that will be independent of conventional technologies and can be operated from anywhere by a bare minimum staff. It is expected to operate on minimalistic hardware and software and would be made active only on a need basis. It would process transactions that are critical to ensure stability of the economy such as government and market related transactions during unforeseen events such as natural calamities. This can aid in achieving zero downtime and seamless conclusion of critical financial transactions of lower value.

DSK View: *A forward-looking idea such as this can help prepare the economy to continue the transactions during some catastrophic events. But before implementing this payment system, the workforce of banks must be trained and proper instructions must be given to the public at large to ensure that the system is well-received and widely adopted. Large chunk of population still rely on physical banking and unless they are made comfortable with the current digital banking practice, this new system may not see widespread usage, especially in rural areas.*

Source

EXTENSION OF PILOT PROJECT OF CENTRAL BANK DIGITAL CURRENCY ("CBDC")

The RBI aims at expanding the ongoing pilots in CBDC-Retail and CBDC-Wholesale by incorporating various use cases and features. The pilot in CBDC-Retail is proposed to be expanded to more locations and to include more participating banks. In the Financial year 2022-23, the CBDC pilot project was operationalised in two segments - CBDC-Wholesale and CBDC Retail, effective November 01, 2022 and December 01, 2022, respectively. As per the RBI, the results of both the pilots so far have been satisfactory and in line with expectations. Further, the Deputy Governor of RBI, T Rabi Sankar has stated in a press conference that RBI is planning to make CBDC's QR code inter-operable with UPI.

DSK View: *The expansion of CBDC re-affirms the will of the RBI to implement RBI-controlled and-managed digital counterpart of the country's fiat currency. CBDC's implementation and inter-operability will help in further streamlining the digitisation of retail payment system in India which has already been revolutionised by UPI. Retail CBDC will offer new payment possibility with the benefit of instant settlement. Further, India is one of the top destinations for foreign inward remittances. Currently, the international payments are exposed to multiple frictions including time lags and settlement cost. Effective implementation of the wholesale CBDC with coordination of central banks will help in reducing these frictions.*

Source

INDIA AND PHILIPPINES SIGNS MOU ON FINTECH COOPERATION

A Memorandum of Understanding between the Department of Economic Affairs, Ministry of Finance, Government of India and the Department of Finance, Government of Philippines on Financial Technology cooperation was signed on 19th June, 2023. The MoU envisages the constitution of a Joint Working Group (JWG) which will be co-chaired by Finance Ministries of both the Countries. The JWG will identify concrete measures for partnership in innovative e technologies, fintech industry, digital governance, payment, linkages, creation of interoperable APIs, financial inclusion and other related areas.

Source

EXPANDING THE REACH AND SCOPE OF E-RUPI

The RBI has proposed to expand the scope and reach of e-RUPI vouchers by: (a) permitting non-bank Prepaid Payment Instrument ("**PPI**") issuers to issue e-RUPI vouchers and (b) enabling issuance of e-RUPI vouchers on behalf of individuals. Other aspects like reloading of vouchers, authentication process, issuance limits, etc., will also be modified to facilitate use of e-RUPI vouchers. e-RUPI, a digital voucher launched in August 2021, rides on the Unified Payments Interface (UPI) system of National Payments Corporation of India (NPCI). At present, purpose-specific vouchers are issued by banks on behalf of Central and State Governments and to a limited extent on behalf of corporates. Detailed instructions will be released by RBI shortly.

e-RUPI is basically a one-time contactless, cashless digital voucher which a beneficiary gets on his phone in the form of an SMS or QR code. It is a pre-paid voucher, which can be

redeemed at identified centers. e-RUPI Voucher is a person and purpose specific which can be redeemed without a card, digital payments app, or internet banking access.

DSK View: *With non-bank PPI issuers being allowed to issue e-RUPI vouchers and considering that one does not need smart phone to redeem such voucher, the use-case of such vouchers will only boost the digital payment ecosystem in the country.*

RBI DIRECTIVE ON CO-BRANDING DEALS BY PPI ISSUERS

RBI thorough National Payment Corporation of India (“**NPCI**”) has directed bank and non-bank Prepaid Instrument (“**PPI**”) Issuers to discontinue UPI transactions using PPI wallet issued under co-branding arrangement. As per the news sources, the directive has been communicated by NPCI through emails to bank and non-bank PPI Issuers. RBI has directed to close down UPI on PPI related cobranding arrangement by June 30, 2023.

DSK View: *The move will significantly impact co-branding partners without PPI license. Such co-branding partners are left in a state of perplexity after this unprecedented move of RBI as they are left with little or no time to comply with the directive. Further, such an impulsive regulatory direction has put a question on integration of UPI in payment ecosystem.*

PROCEDURE LAID UNDER RULE 124 OF THE TRADE MARKS RULES, 2017 FOR INCLUSION IN THE LIST OF WELL-KNOWN TRADEMARKS MAINTAINED BY THE REGISTRY CANNOT BE DISPENSED WITH EVEN IF THE MARK HAS BEEN DECLARED A WELL-KNOWN BY COURT: DELHI HIGH COURT

The Hon'ble Delhi High Court while dismissing a writ petition filed by Tata SIA Airlines Limited ("Petitioner") established that even after declaration of a mark as "well-known" by Courts, proprietor of such mark would be required to file a request under Rule 124 of the Trade Marks Rules, 2017 ("Rules") for inclusion of the mark in the list of well-known trademarks maintained by the Trade Marks Registry. The Petition was filed seeking a writ of mandamus, directing the Registrar of Trade Marks ("Registrar") to include the mark VISTARA in the List of Well-Known Trademarks, by virtue of Section 11(8) of the Trade Marks Act, 2000 ("Act").

As against the Petitioner and Amici's submissions that the Registrar cannot have supremacy over a Court's determination, it was contended by the Registry that even in case where the determination of trade mark as a well-known trademark has already been made by a Court, Rule 124 will apply with respect to the procedure for publication and inclusion, save and except, calling for documents and inviting objections under sub-Rules (4) and (5) thereof.

Upon considering arguments from both sides as well as the Amici Curiae, the Hon'ble Court observed that a plain reading of Section 11(8) shows that the legislature has consciously used two distinct words, that is, "determine" and "consider" and use of the word "shall" does not leave any doubt that once the trademark has been determined to be a well-known trademark by any Court, there is no need for Registrar to re-determine the same, as would otherwise be required under law under Rule 124. Having said so, it was held that the formal procedure of publication and inclusion envisaged under Rule 124 cannot be dispensed with. It was also observed that the Court could not enter into the exercise of testing the justiciability of prescribed fee of INR 1,00,000 on the yardstick of quantum of work required to be done by the Registrar.

[Tata Sia Airlines Limited v. Union of India, 2023:DHC:3659]

U.S. DISTRICT COURT GRANTS PERMANENT INJUNCTION RESTRAINING ROTHSCHILD'S 'METABIRKIN' NFT SALES

The U.S. District Court granted Hermès motion to permanently block MetaBirkins creator Mason Rothschild from continuing to market, sell, and/or generate royalties from the Birkin artwork-linked NFTs and from using the MetaBirkins domain, among other things as they violated the French luxury house's trademark rights in its famed Birkin handbags. The Court held that the permanent injunction was justified because Rothschild's continuous marketing of the NFTs would likely cause confusion amongst the consumers and irreparably harm the company. The lawsuit was initiated by Hermès when Rothschild began selling MetaBirkin NFTs which portrayed reworked Birkin bags made of vibrant colours and priced equivalently to a real one.

Considering that Hermès owns trademark rights in the Hermès Birkin marks and trade dress rights in the Birkin bag design, the luxury giant contended that Rothschild was piggy riding and capitalising on the brand's goodwill and reputation. The counsel for the plaintiff averred that the alleged intentional nexus created by Rothschild to the reputed Hermès brand was to mislead consumers to assume that his goods were formally affiliated with the brand and endorsed by them. Further, it was argued that Rothschild not only indulged in unauthorised use of the mark but also benefited openly from it by selling and refilling the concerned NFTs. Pursuant to Hermès plans to foray into metaverse, it was claimed that Rothschild project would be a cause of hindrance considering that there would always be

a reference to MetaBirkin.

The learned counsel of the defendant submitted that his MetaBirkin NFT project was an 'artistic experiment' which was a commentary on society's fixation with status symbols and was thus, protected by the fair use defence under the First Amendment of the U.S Constitution. It was also averred that the fair use defence came into play considering that his work was artistically relevant and did not deliberately mislead consumers into assuming any association with Hermès.

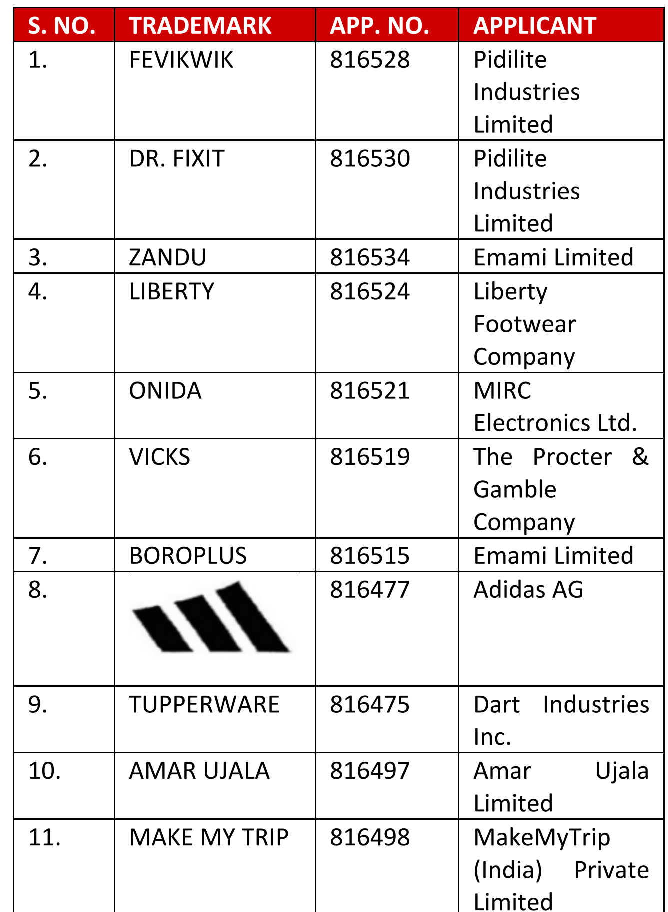
The jury, while ruling in favour of Hermès, found that usage of the domain name MetaBirkin.com was confusingly similar to the already existing legacy French brand and directed transfer of the domain name and related materials to Hermès. It was also held that the NFT 'MetaBirkin' was more akin to a consumer good than be viewed as an 'artistic expression'. Pursuant to these findings, the concerned NFT was subject to trade mark regulations rather than free speech-protected work of art. Further, the continued sale and marketing of the MetaBirkins NFTs is likely to create confusion pertaining to the source amongst the public.

[Hermes International v. Rothschild, U.S. District Court for the Southern District of New York, No. 1:22-cv-00384.]

RECOGNITION OF TRADEMARKS AS WELL-KNOWN MARKS

As per the recent Trade Marks Journal No. 2110 dated 26/06/2023 published by the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), the Trade Mark Registry by virtue of Rule 124(5) of the Trademark Rules, 2017, has determined 'KENT' as a well-known mark and the same shall be included in the list of "well-known" trademarks maintained by the Trade Marks Registry.

Further, in accordance with the provision of Rule 124(4) of the Trade Marks Rules, 2017, the Trademark Registry has advertised the below mentioned trademarks before determining the same as well-known and has invited objections from the general public to be filed within thirty days from the date of invitation of such objection. A list of trademarks proposed to be included in the list of well-known trademarks is mentioned below:



S. NO.	TRADEMARK	APP. NO.	APPLICANT
1.	FEVIKWIK	816528	Pidilite Industries Limited
2.	DR. FIXIT	816530	Pidilite Industries Limited
3.	ZANDU	816534	Emami Limited
4.	LIBERTY	816524	Liberty Footwear Company
5.	ONIDA	816521	MIRC Electronics Ltd.
6.	VICKS	816519	The Procter & Gamble Company
7.	BOROPLUS	816515	Emami Limited
8.		816477	Adidas AG
9.	TUPPERWARE	816475	Dart Industries Inc.
10.	AMAR UJALA	816497	Amar Ujala Limited
11.	MAKE MY TRIP	816498	MakeMyTrip (India) Private Limited

INDIA'S OWN CARBON MARKET FRAMEWORK IN ORDER TO HIT BACK AT EU'S CBAM

Carbon Border Adjustment Mechanism ('**CBAM**') is an instrument which aims to adjust carbon leakage by putting a fair price on the carbon emitted during the production of carbon-intensive goods imported into the European Union ('**EU**'). The CBAM mechanism (available here) has been explained in detail in the *May edition* of our Newsletter.

From 2026 onwards, all EU companies would be required to annually report the quantity of goods imported into the EU in the previous year, along with their embedded greenhouse gas emissions. On the basis of such emissions, they would be obligated to pay for the excess emissions by way of CBAM certificates, or in other words, all the importers would be obligated to pay a carbon levy for imports of carbon-intensive goods.

However, if the producers in the third countries have already paid the carbon tax in accordance with their domestic regimes, then the same would be reduced in from the tax payment obligation in the EU, in order to avoid the double incidence of such taxes.

Thus, to avoid the incidence of carbon tax in EU, India has been actively engaged in shaping its own carbon market framework which aligns with the global efforts to combat climate change. The Indian Government intends to create a domestic Carbon Market which would involve pricing of the greenhouse gas emissions and trading of such emissions by way of Carbon Credit Certificates.

Such a Carbon Credit Trading Scheme ('**CCTS**') is being developed by the conjoint efforts of the Bureau of Energy Efficiency, Ministry of Power, along with Ministry of Environment, Forest & Climate Change. The CCTS will establish benchmarks and targets for various energy-intensive sectors in India on the basis of their performance. Additionally, it is envisaged that a voluntary mechanism will be developed concurrently in order to encourage greenhouse gas reduction from non-obligated sectors.

The CCTS also aims to develop methodologies for estimation of carbon emission reductions and removals from various registered projects, and stipulates the required validation, registration, verification, and issuance processes to operationalize the scheme. Monitoring, Reporting and Verification ('**MRV**') Guidelines for the Scheme will also be developed after consultations with various stakeholders.

On June 28, 2023, the Ministry of Power issued a notification for the CCTS, in accordance with the powers conferred by the Energy Conservation Act, 2001, as amended by the Energy Conservation (Amendment) Act, 2022.

The draft scheme circulated in March 2023 serves as the foundation for the newly notified scheme, which largely maintains its proposed structure. The scheme introduces two categories of parties: 'obligated' and 'non-obligated.' However, the specific sectors falling under the 'non-obligated' category, which comprise 13 sectors, are yet to be decided.

Although the current scheme lacks detailed information regarding the operations of the carbon market and the roles of existing players, such as project proponents and developers, the formulation of procedures and guidelines is expected to address this concern. These measures are anticipated to bring greater clarity and enhance the overall effectiveness of the CCTS.

Further, India has also proposed a mutual recognition agreement to the EU urging them to acknowledge the framework under the CCTS, which is currently being developed by the Ministry of Power. Acceptance of the CCTS

by EU would assist Indian companies in alleviating the added burden of carbon taxes on their exported goods.

In addition to the above, India is also making efforts to seek exemptions for micro, small, and medium enterprises (‘**MSMEs**’) within the framework of CBAM. Such exemptions are being deliberated in the Free-Trade Agreement (‘**FTA**’) negotiations between India and EU; however, such deliberations are yet to reach a conclusion.

DSK View: *India has for long been working towards strengthening its carbon market framework to address the challenges posed by EU’s CBAM and to align with global climate objectives. Thus, the government’s focus on carbon pricing, renewable energy, and international cooperation reflects its commitment to combating climate change while ensuring sustainable economic growth.*

However, the changes brought in by EU’s CBAM is a cause of concern amongst the Indian exporters, especially steel exporters, whose tariffs may increase significantly.

On the other hand, the establishment of a domestic Carbon Market and subsequent trading of carbon certificates may provide certain relief to Indian exporters of carbon-intensive goods.

STREAMING GIANTS: NETFLIX, AMAZON AND DISNEY CONSIDERING CHALLENGING INDIA'S TOBACCO RULES

On 31st May 2023, the Ministry of Health and Family Welfare notified that the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) 2023 Rules was to come into effect 3 months from the date of its publication in the official gazette. The rules briefly stated that all publishers of online curated contents displaying tobacco products shall display the ill-effects of tobacco use twice for 20 seconds each along with a prominent warning text at the bottom of the screen during the period of display of the tobacco products among other rules.

Streaming giants such as Netflix, Amazon and Disney are reportedly looking for ways to challenge these new rules. The need for challenging these rules comes from a place of not wanting to edit millions of hours of existing content on the web. The Health Ministry directed streaming services to include static health warnings during smoking sequences within three months. The Centre has also requested at least 50 seconds of anti-tobacco disclaimers, including an audio-visual, at the beginning and halfway of each programme.

DELHI HC CONCLUDES CONTROVERSY AROUND SATYAJIT RAY'S 'NAYAK'

In *RDB and Co. HUF vs. HarperCollins Publishers India Pvt. Ltd.*, the Delhi HC on May 23rd held that the copyright of the screenplay of the Bengali film Nayak wholly belonged to Satyajit Ray along with the right to novelise the screenplay. Although this right now vests upon Sandip Ray upon his demise. 50 years post the release of the film Nayak, it was novelised and published by HarperCollins Publishers India Pvt. Ltd. The plaintiff, producer of the film claimed that the copyright of the film including all derivative and indirect rights are vested with the plaintiff. The defendants on the other side contended that the rights belong to Ray as he was the first owner of the copyright of the screenplay. The court held that there was no separate contractual agreement between Ray and RDB and the right to assign a copyright is a separate right under Section 18 of the Copyright Act, 1957. This separate agreement has also been mandated by the Act under section 19 of the same act.

The court in this case clarified that novelisation of the screenplay would come within the ambit of "reproduction" and that right is vested with the owner of the copyright. Hence the right to authorise novelisation of a screenplay would not vest with the producer who is RDB in this case. Hence, all rights in the underlying work of cinematography do not lie with the producer by default.

DELHI HIGH COURT RESTRAINS ROGUE WEBSITES FROM STREAMING "SPIDER-MAN: ACROSS THE SPIDER-VERSE" AND "SPIDER-MAN: INTO THE SPIDER-VERSE"

Delhi HC has restrained over 100 'rogue' websites from streaming animated films- "Spider-Man: Across the Spider-Verse" and "Spider-Man: Into the Spider-Verse" without any authorisation. Sony Pictures Animation Inc., in its suit stated that it was the copyright holder of the upcoming release of the aforementioned films and it has not licensed the right to broadcast it to any other website.

Justice C Hari Shankar ordered these 100 defendants along with all other acting on their behalf against posting, screening and reproducing any cinematograph content wherein this plaintiff has a copyright. The court passed an *ex parte* interim order that clarifies that the plaintiff's copyright of both the films are being infringed by rogue websites. Further, the courts have also directed internet service providers to block any access to these 'rogue' websites. It has delegated this task to the Department of Telecommunications and Ministry of Electronics and Information Technology.

BOMBAY HC DENIES RELIEF TO CHHOTA RAJAN IN 'SCOOP' NETFLIX SERIES DISPUTE

Jailed gangster Chhota Rajan has sought for an injunction against the release of the Netflix series 'Scoop', which has been rejected by the Bombay High Court. However, the court granted permission to Rajan to modify the commercial intellectual property lawsuit he had filed by adding a challenge against the unauthorized use of his photograph in the TV series. Rajan argued that his photograph was integral to his personality rights and utilizing it in the series without his consent constituted a violation of copyright. Senior defence advocate Mihir Desai argued before the bench that he sought either a halt to the series or the exclusion of Rajan's name, as all other characters' names had been altered except his own. As per an interim application submitted in the lawsuit, which sought immediate remedies, it was stated that any direct or indirect reference to the plaintiff without obtaining prior consent would constitute a violation of his rights. Moreover, it was argued that such actions could potentially be considered defamatory. The application further contended that if the series were to be broadcasted, it would infringe upon the plaintiff's fundamental right to privacy, as it would reach approximately 200 million Netflix subscribers who might develop a biased opinion against him. Consequently, the court was urged to issue a permanent injunction to prevent the release of the series.

After considering the arguments presented, the bench decided against granting urgent remedies. Instead, it allowed Rajan to amend the lawsuit and instructed Mehta and Netflix to submit their respective responses to the claims made.

KERALA HIGH COURT STAYS SEIZURE OF MATERIALS IN KANTARA PLAGIARISM CASE

Recently, the Kerala High Court intervened by issuing a stay order on the Chief Judicial Magistrate's directive in Kozhikode. The directive instructed the investigating officer to seize agreements and contracts associated with the song titled "Varaharoopam," which is allegedly a plagiarized version from the Kannada movie "Kantara."

The Chief Judicial Magistrate had issued the order in response to a complaint filed by Mathrubhumi Printing and Publishing Co. Ltd., seeking an investigation and seizure of materials related to the song. The complaint alleged that "Varaharoopam" was an unauthorized copy of the song "Navarasam," which was broadcasted on Mathrubhumi's TV channel, KAPPA, and performed by the band Thaikkudam Bridge. The petitioner argued that the Magistrate's order was based on specific bail conditions, which were subsequently suspended by the Supreme Court. The stay order prevents the seizure of materials associated with the song until further legal proceedings take place in the plagiarism case.

BOMBAY HIGH COURT PROVIDES INTERIM RELIEF TO T-SERIES AND HUNGAMA IN THEIR CASE AGAINST RELIANCE BIG ENTERTAINMENT

Reliance Big entertainment Private Limited allegedly terminated a Long Form Agreement (LFA) from December 2009 with T-Series and Hungama Digital Media leading to controversy and copyright infringement suits between the media houses. T-Series and Hungama were granted interim relief by the Bombay High Court against the Reliance Media house. The LFA was examined thoroughly by the court after which it was decided that the films in question were not covered under the Agreement. These films were protected by way of independent assignment agreements which helped claim their stake for the copyright case. Hence, the plaintiffs were granted relief. Furthermore, upon more analysis, the court interpreted that the clauses from the LFA did not automatically reassign copyrights upon the termination of the LFA, a reassignment document was necessary. A strong *prima facie* case was made out in the favour of the plaintiffs which also required the satisfaction of Section 19 of the Copyright Act. The court held that reassignment does not automatically take place and the Copyright Act must be an important consideration before any deputes were brought before the Court.

BOMBAY HIGH COURT: TWO NEW PETITIONS FILED AGAINST IT RULES AMENDMENT

Recently, two new petitions challenging the amendments made to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021) have been filed before the Bombay High Court. As a response to these petitions, the Central government has announced that it will delay the notification of the Fact-Checking Unit (FCU) until July 10. The earlier date for notification was July 5. This statement was made by Additional Solicitor General (ASG) Anil Singh during the hearing of a petition filed by stand-up comedian Kunal Kamra, who is challenging the constitutional validity of the Information Technology Rules.

Previously, the Ministry of Electronics and Information Technology (MeitY) filed an affidavit stating that the FCU, established by the Union government, would only be authorized to direct the removal of false or misleading information regarding government policies and programs, and not satire or artistic impressions.

Another affidavit filed by the government clarified that the Rules do not empower the FCU to order the removal of any information from an intermediary's platform. It emphasized that knowingly and intentionally spreading patently false, untrue, and misleading information or content contradicts

the right to free speech, and passing off such content as true information through deceptive means is an abuse of free speech.

In its affidavit seeking the dismissal of Kamra's plea, the Centre stated that it would be in the public interest to verify and disseminate authentic information after fact-checking by a government agency to mitigate potential harm to the public. The affidavit also argued that Kamra's plea is premature since the FCU has not been officially notified, and no social media intermediary has been directed to remove any content under the contested Rule.

Kamra alleges that the real motive behind the Rules is to prevent scrutiny of the Central Government's actions. He argues that the amendments do not fall within the reasonable restrictions permitted under Article 19 of the Constitution. In his written note, Kamra asserts that the Rules arbitrarily discriminate between fake or misleading information about the Central Government and other forms of false or misleading information. He seeks an *ad-interim* stay on the Rule as part of his plea.

HINDU SENA FILES WRIT PETITION AGAINST 'ADIPURUSH'

The Hindu Sena, led by its national president Vishnu Gupta, lodged a Public Interest Litigation (PIL) with the Delhi High Court on June 16th, challenging the film 'Adipurush'. In the filed writ petition, Gupta, as the Hindu Sena national president, sought a writ of mandamus under Article 226 of the Indian Constitution, requesting the court to issue appropriate directions to the respondents. The directions include the removal of objectionable scenes that depict religious leaders/characters/figures in a manner deemed inappropriate and the prohibition of certification and public exhibition of the film 'Adipurush'. Gupta also requested the court to pass any other necessary orders as deemed suitable in light of the facts and circumstances of the case.

According to the petition, the film 'Adipurush' has been accused of causing offense to the Hindu community by portraying religious leaders/characters/figures in an inaccurate and inappropriate manner. The petitioner, who is aggrieved and deeply concerned by this portrayal, submitted a representation on 4th October 2022 to the Secretary of the Ministry of Information and Broadcasting. However, the petition states that no response has been received regarding this representation as of the present date.

The petition claims that the film has caused distress to the Hindu community by presenting religious leaders, characters, and figures in an inaccurate and inappropriate manner. It argues that the portrayal of Ravana, Lord Ram, Mata Sita, and Hanuman in the film deviates from their depiction in the Ramayana authored by Maharishi Valmiki and Saint Tulsidas' Ramcharitmanas. Additionally, on June 17, Priyanka Chaturvedi, a member of Shiv Sena, demanded an apology from the creators of 'Adipurush' for allegedly using substandard dialogues in the film. Ms. Chaturvedi strongly criticized the dialogues on Twitter, claiming they were disrespectful to the characters of the Hindu epic Ramayana, and called for the dialogue writer and director of the film to apologize to the nation.

THE BOMBAY HIGH COURT DENIES AN INJUNCTION TO HALT THE RELEASE OF THE MOVIE 'I LOVE YOU' IN A COPYRIGHT INFRINGEMENT CASE

The copyright infringement lawsuit filed by Lions Gate India LLP (LGIL) against the producers of the Bollywood movie 'I Love You' was rejected by the Bombay High Court, which refused to halt the film's release. LGIL claimed that Athena E&M LLP, the film's producers, had violated their exclusive rights to remake the American film 'P2'. Summit Entertainment, the American company holding the copyrights to 'P2', had granted LGIL the Hindi remake rights.

The petitioner argued that they learned about the film's release on June 5, 2023, and immediately approached the High Court seeking an injunction against Athena and Viacom 18 Media Pvt Ltd (Jio Cinema), the platform planning to release the film. They also sought damages of INR 10 crores as compensation.

Justice RI Chagla ordered responses from the defendants regarding interim relief and scheduled the next hearing for June 28, 2023. In the meantime, the court denied the plea to stay the film's release. However, the defendants will not be able to claim any equity if the court decides to grant relief to the plaintiff.

DUA LIPA IS GRANTED TEMPORARY RELIEF AS LOS ANGELES FEDERAL COURT DROPS INFRINGEMENT LAWSUIT AGAINST 'LEVITATING'

According to the order granting Dua Lipa's motion to dismiss on June 5th, a federal court in Los Angeles has dropped a lawsuit that claimed Lipa had copied a song by Florida reggae group Artikal Sound System in her popular track "Levitating." The U.S. District Judge ruled that Artikal Sound System could not prove that the writers of "Levitating" had seen or heard their song, despite the group's claims. Artikal Sound System argued that their song was available on streaming services, performed during live shows in Florida, and that they had sold a significant number of compact discs. However, the judge deemed this insufficient to establish that Lipa's writers had access to their song.

The judge also denied Artikal Sound System's request to move the case to New York to be heard alongside another infringement lawsuit by songwriters Sandy Linzer and L. Russell Brown. Linzer and Brown alleged similarities between "Levitating" and their disco songs "Wiggle and Giggle All Night" and "Don Diablo." The judge rejected the band's

request and gave them the opportunity to file a new complaint.

Even though this dismissal represents a temporary win for Dua Lipa, it's important to note that she still faces another copyright infringement lawsuit related to "Levitating" from songwriters L. Russell Brown and Sandy Linzer.

TWITTER SUED FOR $250 MILLION BY MUSIC PUBLISHERS OVER COPYRIGHT INFRINGEMENT

A group consisting of 17 music publishers, including major players like Sony Music Group and Universal, has filed a lawsuit against Twitter, seeking damages of over $250 million. The publishers claim that Twitter's platform facilitates extensive copyright infringement, causing harm to music creators. The lawsuit alleges that, unlike its competitors such as TikTok, Facebook, Instagram, YouTube, and Snapchat, Twitter has allowed users to share copyrighted songs without obtaining proper licenses.

The National Music Publishers' Association, representing members such as Universal, Sony, and Warner Music Group, asserts that Twitter's leniency towards users sharing copyrighted music, combined with its promotion of tweets containing such music, has contributed unlawfully to the company's growth. The complaint identifies more than 1,700 songs whose copyright Twitter is accused of infringing, including popular hits like Mariah Carey's "All I Want For Christmas Is You," Outkast's "Hey Ya!," and Mark Ronson's "Uptown Funk" featuring Bruno Mars. The association requests that the court impose fines on Twitter of up to $150,000 for each violation.

The lawsuit specifically points to instances where music has been used in tweets without permission. One example cited is a post featuring Rihanna's song "Umbrella," which allegedly included two minutes of the song's music video. According to the suit, the post garnered 221,000 views and 15,000 likes without the consent of the song's publishers. The National Music Publishers' Association claims to have notified Twitter about approximately 300,000 tweets containing infringing music since December 2021. However, the suit alleges that Twitter frequently delayed or failed to take action in response to these notices.

HERMES WINS PERMANENT BAN ON 'METABIRKIN' NFT SALES IN US LAWSUIT

On June 23rd, a federal judge in Manhattan granted Hermes' request for a permanent injunction against artist Mason Rothschild's sales of "MetaBirkin" non-fungible tokens (NFTs) following a jury's verdict that they infringed on the luxury brand's trademark rights in its iconic Birkin handbags.

US District Judge Jed Rakoff determined that a permanent injunction was necessary because Rothschild's continued marketing of the NFTs had the potential to confuse consumers and cause irreparable harm to Hermes. The judge agreed with Hermes' argument that Rothschild, whom they referred to as a "digital speculator," was engaged in a "get rich quick" scheme that violated the company's "Birkin" trademark. According to Hermes, the NFTs created a false impression that the fashion house had endorsed the tokens.

Rothschild, who goes by the legal name Sonny Estival, defended his works by stating that they were intended as an absurdist statement on luxury goods. He argued that the lawsuit should not apply to his art due to First Amendment protections, asserting that the use of trademarks in an artistically relevant manner without explicitly misleading consumers is constitutionally safeguarded.

The court's decision to grant the permanent injunction indicates a legal determination that Rothschild's NFTs unlawfully infringed on Hermes' trademark rights and that their continued sale would cause harm to the luxury brand. This case raises important questions about the intersection of art, trademarks, and free speech rights, and it underscores the ongoing legal challenges presented by NFTs in relation to intellectual property and branding.

COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2023

The MCA, *vide* notification dated May 31, 2023 (accessible *here*), has notified the Companies (Accounts) Second Amendment Rules, 2023 to amend Rule 12 of the Companies (Accounts) Rules, 2014. Rule 12 of the Companies (Accounts) Rules, 2014 deals with the filing of financial statements by the companies and the fees to be paid thereon.

The aforesaid rule has been amended to include the requirement of filing of Form CSR-2 (Report Corporate Responsibility) for the financial year 2022-2023 separately on or before March 31, 2024 after filing of the Form No. AOC-4 *(Form for filing financial statement and other documents with the Registrar)* or Form No. AOC-4-NBFC *(Form for filing financial statement and other documents with the Registrar)* or Form No. AOC-4 XBRL *(Form for filing XBRL document in respect of financial statement and other documents with the Registrar)*, as the case may be.

Form CSR-2 was introduced by the MCA in the month of February 2022 with the aim of fostering sound corporate governance practices. This form necessitates companies covered within the purview of Section 135 of the Companies Act 2013, which mandates Corporate Social Responsibility (CSR) compliance, to furnish information regarding their CSR expenditure to the MCA separately.

The Companies (Accounts) Second Amendment Rules, 2023 have come into force on June 2, 2023.

LIMITED LIABILITY PARTNERSHIP (AMENDMENT) RULES, 2023

The MCA, *vide* notification dated June 2, 2023 (accessible *here*), has notified the Limited Liability Partnership (Amendment) Rules, 2023 to notify the new LLP Form No. 3. LLP *(Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein)* as prescribed under Rule 21(1) of the Limited Liability Partnership Rules, 2009.

Every limited liability partnership is required to file information pertaining to the limited liability partnership agreement, and any change thereon, with the Registrar of Companies within 30 (thirty) days of the date of incorporation/change in the limited liability partnership agreement. The new LLP Form No. 3 is an online web-form which additionally provides for linkage to *(a)* LLP Form No. 4 to report changes, if any, to the partners/designated partners of the LLP as part of the change in the limited liability partnership agreement, and *(b)* LLP Form No. 5 to report change, if any, to the name of the LLP as part of the change in the limited liability partnership agreement.

This amendment and the new LLP Form No. 4 seeks to improve the transparency and reporting standards of LLPs by ensuring that there is complete information available concerning the LLP agreement.

The Limited Liability Partnership (Amendment) Rules, 2023 have come into force on June 2, 2023.

GUIDELINES ON DEFAULT LOSS GUARANTEE IN DIGITAL LENDING

*The RBI has, issued guidelines to permit and regulate default loss guarantee ("**DLGs**") in digital lending transactions vide circular dated June 8, 2023, bearing reference number RBI/2023-24/41 DOR.CRE.REC.21/21.07.001/2023-24 ("**DLG Guidelines**"). The key features of DLG Guidelines include:*

i. *Scope: The DLG Guidelines are applicable to DLG arrangements entered into by the following regulated entities ("**Regulated Entity**"):*

   a. *commercial banks (including small finance banks);*
   b. *primary (urban) co-operative banks, state co-operative banks, central co-operative banks; and*
   c. *non-banking financial companies (including housing finance companies).*

ii. *Definition of DLG: The term 'DLG' has been defined as any contractual arrangement between any Regulated Entity and a Lending Service Provider/other Regulated Entity (in either case, being a company under Companies Act, 2013) ("**LSP**"), wherein the LSP guarantees to compensate the Regulated Entity up to a specified percentage of the loan portfolio of the Regulated Entity.*

Further, any other implicit guarantee of a similar nature linked to performance of the loan portfolio, will also be considered as DLG.

iii. *Structure and Form: The DLG Guidelines mandate inter alia, that any DLG arrangement must be backed by an explicit and legally enforceable contract between the Regulated Entity and the DLG provider. The contract must contain, amongst other things, extent of DLG cover and form of cover. The DLG may only be in the form of a cash deposit or fixed deposits or bank guarantee in favour of the Regulated Entity as per the DLG Guidelines.*

iv. *Other Key Conditions: The DLG arrangement shall be subject to other conditions such as a ceiling of 5% on the total DLG cover, the tenure of the DLG agreement, etc.*

***DSK View:** The DLG Guidelines are expected to expand the digital lending ecosystem, by enabling banks to partner with digital lenders. However, the 5% cap on DLG arrangements is likely to restrict the benefits of the DLG Guidelines to a limited sub-set of lenders.*

EXPANDING THE SCOPE OF TRADE RECEIVABLES DISCOUNTING SYSTEM

The RBI has, vide circular dated June 7, 2023, bearing reference number RBI/2023-24/37 CO.DPSS.POLC.No.S-258/02-01-010/2023-24 notified enhancements to the Guidelines for the Trade Receivables Discounting System ("**TReDS Guidelines**"). The key enhancements include:

i. Insurance for transactions: To grant comfort to financiers for placing bids for payables of low rated buyers and to aid financiers in hedging default risks, insurance facility is being permitted for TReDS transactions, subject to certain conditions.

ii. Pool of financiers: All entities / institutions allowed to undertake factoring business under the Factoring Regulation Act, 2011 and the rules / regulations made thereunder, are now permitted to participate as financiers in TReDS.

iii. Secondary market for Factoring Units (FUs): TReDS platform operators have been granted the discretion to enable a secondary market for transfer of FUs within

the same TReDS platform. Such transfers shall, however, be subject to the applicable provisions of Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions.

iv. _Settlement of FUs not discounted / financed_: TReDS platform operators have been permitted to undertake settlement of all FUs, financed, discounted, or otherwise, using the NACH mechanism used for TReDS. The funds have to be settled within the timelines under the TReDS Guidelines and other relevant statutes (including the Micro, Small and Medium Enterprises Development Act, 2006).

v. _Display of bids_: To make the bidding process more transparent, the TReDS platforms have been permitted to display details of bids (but not the name of the bidder) placed for an FU to other bidders.

***DSK View**: The revisions to the TReDS Guidelines are aimed at not only enabling a wider pool of financiers to participate in the platform, but also to enable the financiers to bid on a wider range of products, and to enable them to offload such products on the secondary market.*

PRODUCT OFFERINGS ON ONLINE BOND PLATFORMS

The SEBI has, vide circular dated June 16, 2023, bearing reference number SEBI/HO/DDHS/POD1/P/CIR/2023/092 notified amendments to the registration and regulatory framework for Online Bond Platform Providers ("**OBPP**"). The key amendments are as follows:

i. _Permitted Securities_: OBPPs are not permitted to offer on their Online Bond Platform ("**OBP**") or any other platform/website, products or services other than the following:

   a. Listed debt securities, listed municipal debt securities and listed securitised debt instruments
   b. Debt securities, municipal debt securities and securitised debt instruments proposed to be listed through a public offering
   c. Listed Government Securities, State Development Loans and Treasury Bills
   d. Listed Sovereign Gold Bonds

ii. Acting through Group Companies: The OBPP cannot, through its holding company, subsidiary or associate (collectively, "**Group Company**"), undertake the following:

   a. the Group Company or any third party cannot utilize the name/ brand name/ any name resembling to that of the OBPP or the OBP for undertaking any activity or offering products/ securities or services (including offering of unlisted securities) that are not regulated by a financial sector regulator, viz. SEBI, RBI, IRDAI, or PFRDA ("**Unregulated Activities**");

   b. the OBPP cannot have a link or a tab to websites/platforms of its Group Companies which undertakes Unregulated Activities, on its OBP or any other platform/ website;

   c. a Group Company undertaking any Unregulated Activities shall neither have access to or receive any information about a user of the OBP nor cross-sell products/ securities or services to the OBP users.

***DSK View**: This move by SEBI is aimed at protecting the interests of retail investors by ensuring that OBPPs only deal with regulated instruments and are backed by appropriate disclosures. The law was earlier silent on this aspect, giving a window to several OBPs to deal in unlisted bonds. While the OBPPs have now been specifically prohibited from dealing in unlisted instruments, SEBI has permitted the OBPs to offer listed G-Secs and Sovereign Gold Bonds, in order to enable them to expand their operations.*

FRAMEWORK GOVERNING COMPROMISE SETTLEMENTS AND TECHNICAL WRITE-OFFS

The RBI has issued a comprehensive regulatory framework governing compromise settlements and technical write-offs vide circular no, DOR.STR.REC.20/21.04.048/2023-24 dated June 8, 2023 "**Framework**"), and a set of frequently asked questions in relation thereto on June 20, 2023.

Pursuant to the Framework, regulated entities (which for the purpose of the Framework, includes all commercial banks, non-banking financial companies, co-operative banks, and all India financial institutions) can now undertake compromise settlements and technical write-offs after establishing board-approved policies for the same ("**Policy**").

Amongst other things, the Framework lays down certain items that parties need to be mindful of, while preparing the Policy:

- objective should be maximization of recovery at minimal costs
- safeguarding the interests of the regulated entities
- should lay down the process to be followed for compromise settlements and technical write-offs, including working out permissible haircuts, etc.

It may be noted that arrangements undertaken pursuant to the Framework are without prejudice to any mutually agreed contractual positions between the regulated entities and the borrower relating to future contingent realizations or

recovery and other terms specified under the Framework. Borrowers also need to observe a cooling period of a minimum of 12 (twelve) months, after a compromise arrangement has been completed. Borrowers cannot avail any debt from a regulated entity, during this period.

DSK View: *The resolution plan stipulated under the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019, was only applicable to a certain set of banks and financial institutions. The Framework has widened and harmonized the scope of applicability of compromise settlements as a valid resolution plan, by including commercial banks, non-banking financial companies, co-operative banks, and all India financial institutions.*

CESSATION OF MIFOR

The Mumbai Interbank Forward Outright Rate ("**MIFOR**") (the financial benchmark administered by Financial Benchmarks India Private Limited) was earlier notified as a 'significant benchmark' by the RBI. However, as another step towards moving transitioning away from the London Interbank Offered Rate ("**LIBOR**") and the US Dollar LIBOR (pursuant to cessation of the publication of LIBOR and USD LIBOR with effect from June 30, 2023), the RBI has accorded approval for cessation of the publication of the MIFOR as well with effect from June 30, 2023.

The updated list of significant benchmarks as on June 23, 2023 is as follows:

(a) Overnight Mumbai Interbank Outright Rate (MIBOR)
(b) USD/INR Reference Rate
(c) Treasury Bill Rates
(d) Valuation of Government Securities
(e) Valuation of State Development Loans (SDL)
(f) Modified Mumbai Interbank Forward Outright Rate (MMIFOR)

The updated list of significant benchmarks will come into effect from July 01, 2023.

DSK View: *The process of transition from LIBOR had started in 2017. While most banks in India and elsewhere have already started using alternate reference rates including Secured Overnight Financing Rate (SOFR) (USA) and Sterling Overnight Index Average (SONIA) (UK), the introduction of India specific risk-free rates and benchmarks will further boost the Indian financial market and also guide industry stakeholders in respect of the alternative reference rates to be adopted.*

AMENDMENTS WITH RESPECT TO LISTING AND DELISTING OF DEBT SECURITIES

The Securities and Exchange Board of India ("**SEBI**") conducted its first board meeting in the current fiscal year on June 28, 2023 ("**Board Meeting**"), approved the following proposals pertaining to debt non-convertible debentures:

(i) **Amendment to SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015 ("LODR Amendment"):**

a. **Mandatory listing of listed non-convertible debentures:** Pursuant to the LODR Amendment, listed entities having outstanding listed non-convertible debentures ("**NCDs**"), as on December 31, 2023, will have to mandatorily list their subsequent issuance of NCDs. This will come into effect from January 01, 2024. However, certain types of issuances, including NCDs issued pursuant to an agreement with multilateral institutions, will be exempted.

b. **Voluntary listing of unlisted NCDs:** If entities with previously issued listed NCDs have outstanding unlisted NCDs, as on December 31, 2023, such entities will have the option to voluntarily list their unlisted NCDs.

c. **Voluntary delisting of NCDs:** Pursuant to the LODR Amendment, entities which have previously issued listed NCDs by way of private placement, will have the option to delist such listed NCDs. However, in all such cases, approval of 100% of the debenture holders will be mandatory for the proposed delisting.

(ii) The SEBI has also approved:

a. **Direct participation on Limited Purpose Clearing Corporation:** SEBI has approved direct participation, other than through clearing members, by entities desirous of undertaking repo transactions in corporate bonds.

b. **Additional disclosures from Foreign Portfolio Investors ("FPIs"):** Approval has been accorded for amending SEBI (Foreign Portfolio Investors) Regulations, 2019. Pursuant to the amendment, certain additional granular level disclosures regarding ownership, economic interest, and control with respect to FPIs, will be mandated.

DSK View: *The changes approved at Board Meeting aim to boost the debt market as well as develop and increase the*

depth of the debt market, through increased transparency and additional disclosures.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY IS INTRODUCING A GRADING SYSTEM FOR ALL REAL ESTATE PROJECTS WITHIN THE STATE

The Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”) is currently in the process of introducing a grading system as per section 32 (f) of Real Estate (Regulation and Development) Act, 2016. The MahaRERA *vide* circular dated June 16, 2023, bearing no. MahaRERA/CC/937/2023, has invited suggestions and comments of all stakeholders on the consultation paper regarding framework for grading of real estate projects. The said suggestions and comments are to be submitted on or before July 16, 2023. The primary goal of this endeavor, as stated by officials, is to empower homebuyers to make well-informed decisions before investing in real estate ventures. The grading system will evaluate multiple factors such as financial, legal, technical, and timely completion risks pertaining to the project, helping the prospective buyers make informed decisions pertaining to real estate investments. Once such framework of the grading system is finalized, the same will be accessible on the MahaRERA official website.

GOVERNMENT OF BENGAL HAS IMPLEMENTED MEASURES TO DECREASE THE SCALE OF RESIDENTIAL DEVELOPMENTS IN COMPLIANCE WITH THE REGULATIONS ESTABLISHED BY THE REAL ESTATE REGULATORY AUTHORITY

The Government of Bengal has taken steps to prioritize the interests of homebuyers by significantly lowering the size threshold as set under the Real Estate (Regulation & Development) Act, 2016 (“**RERA Act**”), for residential developments to fall under the authority of the Real Estate Regulatory Authority (“**RERA**”).

As per RERA Act, the projects proposed to be developed on land not exceeding 500 square meters or number of apartments proposed to be developed in project are not more than 8 apartments are exempted from registration. Now, as per a notification issued by the state housing department, projects proposed to be developed on land not exceeding 200 square meters or number of apartments proposed to be developed in project are not more than 6 apartments will now be exempted from such mandatory registration under RERA Act. Due to aforesaid change, as per officials, a significant majority of projects in the unorganized sector will now be encompassed by the provisions of the Act.

VERIFYING COMMENCEMENT CERTIFICATES HAS BEEN MADE A COMPULSORY REQUIREMENT BY THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY FOR REGISTERING PROJECTS

The Maharashtra Real Estate Regulatory Authority (“**MahaRera**”) has implemented a new requirement for registration of real estate projects under Real Estate (Regulation & Development) Act, 2016 (“**RERA Act**”) from June 19, 2023. The MahaRERA will now only register projects post verification of the commencement certificate obtained from local planning authorities. These authorities include corporations, councils, nagar panchayats, and metropolitan authorities. The Local authorities were given a deadline to integrate their website with MahaRERA or send independent emails regarding project registrations. The purpose is to compare the commencement certificates provided by developers with those received from local authorities before granting registration to ensure transparency and prevent fraud.

CONSUMER ADVOCACY DEMANDS FOR REVOCATION OF DELISTED PROJECTS UNDER REAL ESTATE REGULATORY AUTHORITY

A state consumer organization titled ‘Mumbai Grahak Panchayat’, has demanded for the reversal of order, whereby, certain projects were deregistered by Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”). The MahaRERA has reported receiving 88 applications from developers requesting deregistration of

their projects, and the said authority had given homebuyers a 15(fifteen) day period to respond to the same. The consumer body argues that while revocation of any project has been mentioned under Section 7 of the Real Estate (Regulation & Development) Act, 2016 ("**RERA Act**), there is no provision for deregistration under the RERA Act. The consumer body also asserts that the authority cannot introduce a provision that does not exist in the RERA Act.

FINTECH

RBI ISSUES GUIDELINES ON DEFAULT LOSS GUARANTEE IN DIGITAL LENDING PLATFORMS

On June 8, 2023, the Reserve Bank of India ("**RBI**") issued guidelines on default loss guarantee ("**DLG**") in digital lending ("**DLG Guidelines**") (*accessible here*). The focus of DLG Guidelines is to establish a regulatory framework for arrangements between Regulated Entities and lending service providers ("**LSPs**"). The DLG Guidelines are applicable on operations of all commercial banks (including small finance banks), primary (urban) co-operative banks, state co-operative banks, central co-operative banks; and non-banking financial companies ("**Regulated Entities/REs**") (including Housing Finance Companies).

The DLG Guidelines build up on the previous version of guidelines released by the RBI on September 2, 2022. DLG arrangement refer to contractual arrangements where non-regulated entities, such as LSPs, guarantee compensation to an RE in case of losses due to defaults. Below are the key highlights of the guidelines:

1. **Eligibility**: REs can only enter DLG arrangements with LSPs/REs they have outsourcing arrangements with. The LSP providing DLG must be a company incorporated under the Companies Act, 2013.

2. **Structure of DLG Arrangement**: An explicit, legally enforceable contract capturing DLG particulars is required. It should specify the extent of DLG cover, form of DLG maintenance, invocation timelines, and disclosure requirements.

3. **Forms of DLG**: REs can accept DLGs in the form of cash, fixed deposits with a lien, or bank guarantees.

4. **Capping**: DLG covers should not exceed 5% of the loan portfolio.

5. **Recognition of NPA**: The amount of DLG invoked shall not be set off against the underlying individual loans.

6. **Invocation**: The RE shall invoke DLG within a maximum overdue period of 120 days, unless made good by the borrower before that.

7. **Tenor**: The DLG agreement will stay in effect for at least as long as the longest loan term in the loan portfolio.

8. **Disclosure**: LSPs must publish the total number and respective amounts of portfolios on which DLG has been offered on their websites.

9. **Due Diligence**: REs are required to establish a Board-approved policy before entering into any DLG arrangement, which should outline the eligibility criteria for DLG providers, the extent of DLG cover, the monitoring and review process, and any applicable fees. REs must ensure that adequate information is obtained from DLG providers, including declarations on outstanding DLG amounts and past default rates.

Customer protection measures and grievance redressal for DLG arrangements will follow the 'Guidelines on Digital Lending' dated September 2, 2022, and other relevant existing norms. The guidelines exclude certain guarantee schemes/entities from the DLG definition.

Read more here.

RBI RELEASES DRAFT MASTER DIRECTIONS ON CYBER RESILIENCE AND DIGITAL PAYMENT SECURITY CONTROLS FOR PAYMENT SYSTEM OPERATORS

The RBI, *vide* its notification dated June 2, 2023, issued the Reserve Bank of India (Cyber Resilience and Digital Payment Security Controls for PSOs) Master Directions, 2022 ("**Draft Directions**") (*accessible here*), inviting comments and feedback from the stakeholders until June 30, 2023. These Draft Directions apply to all authorized non-bank Payment System Operators ("**PSOs**") to effectively manage cyber and technology-related risks stemming from their linkages with unregulated entities in the digital payments ecosystem, such as payment gateways, third-party service providers, vendors, and merchants. The existing instructions on security and risk mitigation measures for card payments, prepaid payment instruments ("**PPIs**"), and mobile banking will remain applicable as before.

To provide adequate time to put in place the necessary compliance structure, a phased implementation approach is proposed as follows: (i) large non-bank PSOs should comply by April 1, 2024; (ii) medium non-bank PSOs by April 1, 2026; and (iii) small non-bank PSOs by April 1, 2028.

The Draft Directions aim to enhance the safety and security of payment systems by providing a framework for information security and cyber resilience. It includes measures such as governance controls, baseline information security measures, and digital payment security measures to address cyber risks, maintain secure access, prevent data leaks, and facilitate swift responses to unauthorized transactions. Additionally, it emphasizes the need for security practices in mobile, card, and prepaid payments, including encryption, authentication protocols, transaction limits, and alert mechanisms.

TELECOMMUNICATION

TRAI DIRECTS TELECOM SERVICE PROVIDERS TO UTILIZE AI AND ML TO TACKLE UNSOLICITED COMMERCIAL COMMUNICATIONS

On June 13, 2023, the Telecom Regulatory Authority of India ("**TRAI**") issued directions ("**Directive**") (*accessible here*) to all Telecom Service Providers ("**TSPs**") under Section 13 read with Section 11 of the Telecom Regulatory Authority of India Act, 1997 ("**TRAI Act**") (*accessible here*). The directions, outlined in a document accessible here, pertain to the deployment of AI and ML-based systems for detecting unsolicited commercial communications ("**UCC**") in the form of calls and messages.

The Directive aims to combat the activities of unregistered telemarketers ("**UTMs**") who engage in sending commercial communications without proper registration as per the Telecom Commercial Communications Customer Preference Regulations, 2018 ("**TCCCPR**") (*accessible here*). To effectively tackle this issue, TSPs are instructed to implement an UCC detection system that utilizes artificial intelligence and machine learning technologies. This system should be capable of continuously evolving to detect and handle new signatures, patterns, and techniques employed by UTMs.

The Directive also specifies that the detection system should consider factors such as the age of subscription, authentication during subscription, address verification methods, and the sender's SMS sending or calling pattern. Additionally, TSPs are directed to share intelligence gathered through the distributed ledger technology ("**DLT**") platform with other TSPs, as well as with law enforcement agencies, such as the Ministry of Home Affairs, and the Department of Telecommunications.

TRAI DIRECTS TSPs TO DEVELOP UNIFIED DIGITAL PLATFORM FOR CONSENT ACQUISITION

On June 2, 2023, TRAI issued directions (*accessible here*) under the TRAI Act for TSPs to implement the Digital Consent Acquisition facility ("**DCA**") as part of the TCCCPR. The DCA will serve as a unified platform for service providers and principal entities to seek customer consent for promotional calls and messages. This initiative aims to address the absence of a consolidated system for demonstrating customer consent in receiving promotional messages. By implementing the DCA, customers will have a convenient 24x7 platform to provide or withdraw consent for commercial calls and messages in accordance with the TCCCPR.

TSPs are required to develop and deploy the DCA platform by July 31 and onboard all principal entities by November 30. The consent data collected will be shared on the DLT for verification by all TSPs. Additionally, TSPs must use a common short code for sending consent-seeking messages that clearly state the purpose, scope of consent, and the Principal Entity or brand name. Only whitelisted URLs, APKs, OTT links, and call-back numbers will be permitted in these messages.

TRAI RELEASES CONSULTATION PAPER ON ESTABLISHING A REGULATORY SANDBOX FOR THE DIGITAL COMMUNICATION SECTOR

On June 19, 2023, TRAI released a consultation paper on establishing a regulatory sandbox in the digital communication sector to promote innovative technologies, services, use cases, and business models (*accessible here*). The regulatory sandbox will enable telecom companies to innovate and test new products and services within a controlled environment. This sandbox will grant companies access to live customers and real-time data while exempting them from meeting regulatory or licensing requirements. It is stated that such a sandbox will be particularly essential for

the success of 5G/6G, as their deployment will require close coordination with regulators and other stakeholders such as Municipalities, Power Distribution Companies, State and Central Ministries, etc.

The framework covers the goals, scope, participant eligibility, application requirements, evaluation criteria, approval process, rule waivers/modifications, validity period, revocation of permission, reporting, oversight body, and funding for innovation. TRAI noted that regulatory sandbox frameworks have been implemented in various countries to facilitate telecom tech innovation, allowing controlled testing of new concepts with exemptions, allowances, or time-limited exceptions.

TRAI is inviting comments from all the stakeholders until July 17, 2023, and counter-comments by August 1, 2023.

SANCTION UNDER SECTION 197 CRPC IS MANDATORY FOR PROSECUTING GOVERNMENT OFFICIALS FOR OFFENCES UNDER THE IPC

In the case of ***A. Srinivasulu vs. State of Rep. By the Inspector of Police*[24]*,*** the Supreme Court of India has held that sanction under section 197 of Criminal Procedure Code, 1973 ("**CrPC**") is mandatory for acts done by government officials amounting to offences under the Indian Penal Code, 1860 ("**IPC**"). The prosecution in this case alleged that the appellants, including officers of Bharat Heavy Electricals Limited ("**BHEL**") and individuals from private enterprise, conspired to cheat BHEL in the award of a contract for the construction of desalination plants. They were charged with various offences under the IPC and the Prevention of Corruption Act, 1988 ("**PC Act**"). The Special Court convicted four appellants and acquitted one. The four convicted persons appealed to the Madras High Court, which dismissed their appeals. The appellants then filed appeals in the Supreme Court. One of the issues in the appeal that arose before the Supreme Court was whether a previous sanction from BHEL for the prosecution of Appellant No. 1, who was a former Executive Director of BHEL, for offences under the IPC was required. The respondent admitted that no such sanction was sought, arguing that it was only necessary when the alleged offence was committed while acting in the discharge of official duty. However, the Supreme Court disagreed, stating that even if the act was part of a conspiracy or lacked *bona fides*, it could still be considered an act in the discharge of an official duty. The Court held that previous sanction was required, and that the prosecution should have obtained it. The Supreme Court thus acquitted the Appellant of all the charges.

DSK View: *In this case the Supreme Court has made an important observation that even if the act of the government official was a part of a conspiracy or lacked bona fides, it could still be considered an act in the discharge of an official duty and held that obtaining previous sanction under Section 197 of the CrPC is mandatory for prosecuting government officials accused of committing offences under the IPC.*

BANK ACTION IN FURTHERANCE OF THE RBI MASTER CIRCULAR ON FRAUD CLASSIFICATION STAYED BY BOMBAY HIGH COURT

The Bombay High Court in ***SS Hemani vs. The Reserve Bank of India*[25]*,*** has temporarily stayed the actions of the banks or their in-house committees under the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016. The petitioners in the present case claimed that the principles of natural justice were being flouted as the borrowers had no opportunity of hearing before their accounts were classified as fraudulent as per the circular.

The Supreme Court had considered these directions in *SBI vs. Rajesh Agarwal*[26]*,* and had concluded that classification of an account as fraudulent was akin to blacklisting without an opportunity of being heard. The Bombay High Court in view of the above judgement was pleased to temporarily stay the Master Circular, however, the stay is restricted only to actions of banks and their in-house committees under the Master Circular. The High Court has clarified that any proceedings of the Central Bureau of Investigation ("**CBI**") would not be interfered with by its order and that all banks were at liberty to rescind, withdraw or cancel any orders already passed under the Master Circular which may be inconsistent with the Supreme Court judgement in *SBI vs. Rajesh Agarwal*. Since the Master Circular was not struck down by the Supreme Court, the Bombay High Court did not stay the operation of the Master Circular.

[24] Criminal Appeal No. 2417 of 2010

[25] Writ Petition (L) No. 15240 of 2023

[26] 2023 SCC OnLine SC 342

IN CASE OF CIRCUMSTANTIAL EVIDENCE, THE CHAIN HAS TO BE COMPLETE IN ALL RESPECT

The Supreme Court in the matter of ***Laxman Prasad @Laxman vs. The State of Madhya Pradesh***[27]**,** has reiterated that in order to establish the guilt of the accused in case of circumstantial evidence, the chain has to be complete in all respect. In the present case, an appeal was filed in the Supreme Court challenging the judgment of the High Court of Madhya Pradesh, which upheld the conviction and life sentence of the appellant under Section 302 of the IPC. The prosecution's case relied on circumstantial evidence, including motive, the appellant being last seen, and the recovery of a weapon of assault. While the High Court agreed with the finding of motive and last seen, it observed that the recovery of the weapon and blood-stained clothes was invalid and stated that it did not indicate the appellant's guilt. However, considering other evidences, the High Court affirmed the conviction. The Supreme Court disagreed with the High Court's conclusion, stating that in cases of circumstantial evidence, the entire chain of evidence must be complete to establish guilt and exclude other theories. Referring to the cases of *Sharad Birdhichand Sarda vs. State of Maharashtra*[28], and *Sailendra Rajdev Pasvan vs. State of Gujarat Etc.*[29], the Supreme Court emphasized that if a crucial link is missing, the conviction ought to be overturned. Therefore, the appeal was allowed, and the conviction was set aside.

DSK View: *The Supreme Court has in this case again reiterated the cardinal principle of criminal law that in case of circumstantial evidence for proving the guilt of the accused every chain has to be complete in all aspects.*

[27] Criminal Appeal No. 821/2012
[28] (1984) 4 SCC 116
[29] AIR 2020 SC 180

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