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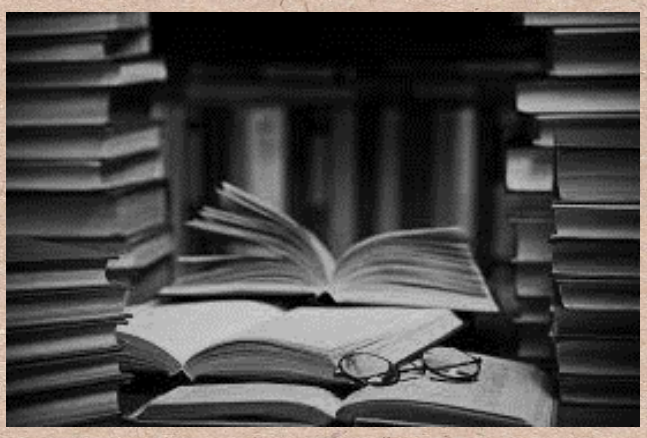
Ipso facto: "by that fact or act."



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SEBI UPDATES

SEBI AMENDS PROVISIONS REGARDING BORROWINGS BY AIF AND TENURE OF LVFs

Securities and Exchange Board of India ("**SEBI**"), *vide* its notification dated August 5, 2024, has notified the SEBI (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024 ("**AIF Amendment Regulations**"), thereby amending the SEBI (Alternative Investment Funds) Regulations, 2012 ("**Principal AIF Regulations**").

Key amendments were introduced regarding (a) borrowing by Category I Alternative Investment Fund ("**Cat-I AIF**") and Category II Alternative Investment Fund ("**Cat-II AIF**") and (b) maximum permissible limit for extension of tenure of large value fund ("**LVFs**") for accredited investors. Further, SEBI, *vide* its circular dated August 19, 2024 ("**AIF Circular**"), has also introduced guidelines in this regard.

Borrowing by Cat-I AIF and Cat-II AIF:

The AIF Amendment Regulations continue to restrict Cat-I AIF and Cat-II AIF from borrowing funds directly or indirectly or engage in any leverage for the purpose of making investments or otherwise, except for borrowing funds to meet temporary funding requirements and day-to-day operational requirements for not more than 30 days, on not more than 4 occasions in a year and not more than 10% of the investable funds and subject to additional conditions mentioned in the AIF Circular.

Pursuant to the AIF Circular, SEBI has allowed Cat-I AIFs and Cat-II AIFs to borrow for meeting shortfall in amount called from investors for making investments in investee companies ("**Drawdown Amount**"). However, such borrowing shall be made only in cases of emergency and as a last recourse when the investment opportunity is imminent to be closed and the Drawdown Amount from investor(s) has not been received by the AIF before the date of investment.

The amount borrowed shall not exceed 20% of the investment proposed to be made in the investee company, or 10% of the investable funds of the scheme of Alternative Investment Fund ("**AIF**"), or the commitment pending to be drawn down from investors other than the investor(s) who has failed to provide the Drawdown Amount, whichever is lower. Further, the cost of such borrowing shall be charged only to investor(s) who failed to provide the Drawdown Amount.

A disclosure in this regard shall be made in the Private Placement Memorandum ("**PPM**"). Further, the manager shall disclose the details with respect to amount borrowed, terms of borrowing and repayment to all the investors of the AIF/scheme, on a periodic basis as per the terms of agreement with the investors of the AIF.

Furthermore, all Cat- I AIFs and Cat- II AIFs shall maintain 30 days cooling off period between 2 periods of borrowing, which shall be calculated from the date of repayment of previous borrowing.

Maximum permissible limit for extension of tenure for LVFs:

The AIF Amendment Regulations now provide a maximum permissible limit for extension of tenure of up to 5 years to LVFs, subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Prior to the amendment, the extension of tenure for LVFs was uncapped.

Existing LVF schemes who have not disclosed the definite period of extension in their tenure in the PPM or whose period of extension in tenure is beyond the permissible 5 years, shall align the same within 3 months from the date of the AIF Circular, i.e., on or before November 18, 2024. The same shall be reported in the quarterly report submitted on the SEBI Intermediary Portal (SI Portal) for the quarter ending December 31, 2024.

While realigning the period of extension in tenure, LVF schemes shall also have the flexibility to revise their original tenure, subject to the consent of all the investors of the scheme. Such LVF schemes shall submit an undertaking to SEBI on or before November 18, 2024, stating that consent of all the investors of the scheme has been obtained for revising the original tenure.

It must be noted that the compliance test report prepared by the manager of AIF shall include compliance with the provisions of the AIF Circular.

To read the AIF Amendment Regulations click here & to read the AIF Circular click here

SEBI AMENDS BOARD NOMINATION RIGHTS OF UNITHOLDERS OF INVITS AND REITS

SEBI, *vide* its circulars dated August 6, 2024, has amended the Master Circular for Infrastructure Investment Trusts dated May 15, 2024 ("**InvIT Master Circular**") and the Master Circular for Real Estate Investment Trusts dated May 15, 2024 ("**REIT Master Circular**"), thereby amending the provisions regarding the board nomination rights of unitholders of Infrastructure Investment Trust ("**InvIT**") and Real Estate Investment Trust ("**REIT**").

SEBI amended Para 22.3.1. (b) of Chapter 22, titled '*Board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs)*' of the InvIT Master Circular and Para 18.2.2. (b) of Chapter 18, titled '*Board nomination rights to unitholders of REITs*', of the REIT Master Circular which provides that eligible unitholder(s) shall be entitled to nominate only one unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate one or more directors on the board of directors of the investment manager/ manager is available to any entity (*or to an associate of such entity*) in the capacity of shareholder of the investment manager/manager or lender to the investment manager/ manager or the InvIT/REIT (*or its HoldCo(s) or SPVs*), then such entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a unitholder nominee director.

In order to provide clarity regarding nomination rights, SEBI has inserted a proviso to Para 22.3.1. (b) and Para 18.2.2. (b) of the InvIT Master Circular and the REIT Master Circular, respectively, which provides that the restriction in the abovementioned paragraphs relating to the right to nominate a

unitholder nominee director shall not be applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993.

It must be noted that the right to appoint a nominee director is available under Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993 in case of: (a) 2 consecutive defaults in payment of interest to the debenture holders; (b) default in creation of security for debentures; or (c) default in redemption of debentures.

To read the InvIT circular click here & to read the REIT circular click here

SEBI ISSUES MODALITIES FOR MIGRATION OF VENTURE CAPITAL FUNDS

SEBI, *vide* its circular dated July 20, 2024, had amended the SEBI (AIF) Regulations, 2012 ("**AIF Regulations**"), to provide flexibility to Venture Capital Funds ("**VCFs**") registered under the erstwhile SEBI (VCF) Regulations, 1996 ("**VCF Regulations**"), for migrating to the AIF Regulations and to, *inter alia*, avail the facility of dealing with unliquidated investments of their schemes upon expiry of tenure. This was covered in our previous edition of Legalaxy.

SEBI, *vide* its circular dated August 19, 2024, has notified the modalities for migration of VCFs. The key points include:

(a) While applying to SEBI for migration to the AIF Regulations, the migrated VCF shall submit requisite information to SEBI in the format as specified in Annexure I to the circular, along with original certificate of registration issued under the VCF Regulations.

(b) VCFs having only schemes whose liquidation period has not expired shall have the facility to migrate till July 19, 2025. The tenure of scheme(s) of the migrated VCF, upon migration, shall be (i) in case a definite tenure was disclosed in the PPM of the scheme(s) under the VCF Regulations, such scheme(s) shall continue with the same tenure upon migration; (ii) in case a definite tenure was not disclosed in the PPM of the scheme(s), the residual tenure of the scheme(s) of the migrated VCF shall be determined prior to the application for migration, with the approval of 75% of investors by value of their investment in the scheme(s).

(c) VCFs having at least 1 scheme which has not been wound up post expiry of its liquidation period (*as per Regulation 24(2) of the VCF Regulations*) may apply for registration as migrated VCF on or before July 19, 2025, only if the VCF or any of its scheme(s) do not have any pending investor complaint with regard to non-receipt of funds/securities as on the date of the application. Further, a one-time additional liquidation period of 1 year, till July 19, 2025, shall be available to scheme of the migrated VCF, whose liquidation period has expired and is not wound up.

(d) Upon migration to the AIF Regulations, the investors on-boarded, investments held and units issued by the VCF or scheme(s) of the VCF registered under the VCF Regulations, shall be deemed to be that of the migrated VCF or its scheme(s), under the AIF Regulations.

(e) The flexibility to opt for migration shall not be available to VCFs wherein all the schemes of the VCF have been wound up and/or no investment has been made by schemes of the VCF which have not been wound up. Such VCFs shall submit an application to SEBI for surrender of their registration on or before March 31, 2025, failing which appropriate action shall be initiated to cancel the certification of registration.

Further, with respect to VCFs registered under the VCF Regulations that do not opt for migration to the AIF Regulations: (a) scheme(s) of VCFs, whose liquidation period has not expired, shall be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under the AIF Regulations; (b) VCFs having at least 1 scheme whose liquidation period has expired shall be subject to appropriate regulatory action for continuing beyond the expiry of their original liquidation period.

It shall be ensured that the compliance test report prepared by the manager includes compliance with the provisions of the aforesaid circular.

To read the circular click here

SEBI PROVIDES CONDITIONAL EXEMPTION TO CERTAIN CATEGORY I FPIs FROM MAKING ADDITIONAL DISCLOSURES

SEBI, *vide* its circular dated August 24, 2023, had mandated additional disclosures for Foreign Portfolio Investors ("**FPIs**") that fulfill objective criteria as specified in the said circular, which was covered in our previous edition of Legalaxy. The said circular has been subsumed subsequently in the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024 ("**FPI Master Circular**").

SEBI, *vide* its circular dated August 1, 2024 ("**FPI Circular**"), has decided to provide exemption to University Funds and University related Endowments, registered or eligible to be registered as category I FPI, from making the additional disclosures as specified in para 1(xiii) of Part C of the FPI Master Circular, subject to them fulfilling the following additional conditions:

(a) Indian equity Asset Under Management (AUM) being less than 25% of global AUM.
(b) Global AUM being more than INR 10,000 crores equivalent.
(c) Appropriate return/ filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organization exempt from tax.

The eligible jurisdictions with respect to the exemption granted to University Funds and University related Endowments shall be as specified by SEBI from time to time, in consultation with the pilot custodians and designated depository participants standards setting forum, through the standard operating procedure framed in terms of para 1(xii) of Part C of the FPI Master Circular.

To read the FPI Master Circular click here & to read the FPI Circular click here

RBI & IFSC UPDATES

FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) (THIRD AMENDMENT) REGULATIONS, 2024 – NOTIFIED

Reserve Bank of India ("**RBI**"), *vide* its notification dated August 7, 2024, has notified the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024 ("**Debt Instruments Amendment Regulations**"), thereby amending Schedule 1 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Principal Debt Instruments Regulations**").

The Debt Instruments Amendment Regulations has inserted the following provisions to the Principal Debt Instruments Regulations:

(a) sub-paragraph (F) in paragraph 1 of Schedule 1 of the Principal Debt Instruments Regulations, thereby allowing non-residents, who maintain a securities account with a depository in an International Financial Services Centre ("**IFSC**") in India, to purchase or sell Sovereign Green Bonds ("**SGrBs**") issued by the Government as per the terms and conditions specified by RBI;

(b) clause (4B) in paragraph 2 of Schedule 1 of the Principal Debt Instruments Regulations which enumerates that the amount of consideration for the purchase of SGrBs issued by the Government by non-residents according to the sub-paragraph (F) of paragraph 1 of Schedule 1 shall be paid out of inward remittance from abroad through banking channels or out of funds held in a foreign currency account maintained in accordance with the regulations issued by the RBI and/or the International Financial Services Centre Authority (IFSCA); and

(c) clause (2B) in paragraph 4 of Schedule 1 of the Principal Debt Instruments Regulations which allows for the sale/maturity proceeds (*net of taxes, as applicable*) of instruments held by non-residents as per sub-paragraph (F) of paragraph 1 of Schedule 1 to be remitted outside India.

To read the Debt Instruments Amendment Regulations click here

RBI INTRODUCES SCHEME FOR TRADING AND SETTLEMENT OF SGrBs IN IFSC

RBI, *vide* its notification dated August 29, 2024, has introduced the scheme for trading and settlement of SGrBs in the IFSC ("**SGrBs Scheme**"). The necessary amendments in this relation have been introduced in the Principal Debt Instruments Regulations.

(a) Applicability of the SGrBs Scheme -

The SGrBs Scheme applies to investments in SGrBs issued by the Government of India for eligible investors in IFSC in India. The eligible investors who can participate in the SGrBs Scheme include: (i) persons resident outside India as defined in the Foreign Exchange Management Act, 1999 that are eligible to invest in IFSC (*as specified by IFSCA*) and are not incorporated in High-Risk Jurisdictions subject to a Call for Action as identified by the

Financial Action Task Force (FATF); (ii) an IFSC banking unit ("**IBU**") of a foreign bank which does not have a branch or subsidiary licensed to undertake banking business in India; and (iii) persons resident outside India as treated under Foreign Exchange Management (IFSC) Regulations, 2015 that are eligible to invest in IFSC (*as specified by IFSCA*) and are not incorporated in High-Risk Jurisdictions subject to a Call for Action as identified by FATF provided such persons are not a branch, joint venture, subsidiary or a trust of an entity incorporated in India. However, funds/schemes, including the ones set up by entities incorporated in India and regulated under the IFSCA Authority (Fund Management) Regulations, 2022 shall be eligible investors.

(b) Salient features –

(i) The SGrBs Scheme provides that eligible investors can participate in primary auctions of securities undertaken by RBI and transact in the secondary market for securities in IFSC.

(ii) Eligible IBUs are not allowed to participate in the primary auctions but can undertake transaction in the secondary market.

(iii) The SGrBs Scheme provides for (I) the process of participation in the primary and secondary market including trading procedure and settlement process; (II) coupon payment and redemption; (III) guidelines for Know Your Customer (KYC)/ Anti-Money Laundering (AML); (IV) data management by authorised depository and authorised clearing corporation(s); (V) reporting requirements by authorised depository and/or authorised clearing corporation(s), Indian bank or the branch or subsidiary in India of the foreign bank, as the case may be, to the Clearing Corporation of India Limited (CCIL) or any other agency as may be specified by RBI, etc.

To read the notification click here

MINISTRY OF FINANCE EASES RULES FOR LISTING COMPANIES IN IFSC

The Department of Economic Affairs, Ministry of Finance ("**MoF**"), *vide* its notification dated August 28, 2024, has notified the Securities Contracts (Regulation) Amendment Rules, 2024, thereby amending the Securities Contracts (Regulation) Rules, 1957. The said amendment has relaxed listing requirements for companies desirous of listing their securities on stock exchanges in the IFSC.

The key amendments are as follows:

(a) The minimum offer and allotment to public by a company desirous of getting its securities listed on a recognised stock exchange in the IFSC shall be at least 10% of each class or kind of equity shares or debentures convertible into equity shares issued by the company, irrespective of the post issue capital of such company.

(b) A company listed on a recognised stock exchange in the IFSC shall maintain public shareholding of at least 10% as compared to a company listed on stock exchanges in India which are required to maintain public shareholding of at least 25%.

These amendments will promote listing of companies on stock exchanges in the IFSC and facilitate access to global markets by Indian companies.

To read the notification click here

RBI REVISES AND HARMONISES REGULATIONS APPLICABLE TO HFCs AND NBFCs

RBI, *vide* its notification dated August 12, 2024, has revised the regulations governing Housing Finance Companies ("**HFCs**") and Non-Banking Finance Companies ("**NBFCs**") with the object to harmonise and align the regulatory framework. The revised regulations shall be applicable with effect from January 1, 2025.

HFCs were previously regulated by the National Housing Bank ("**NHB**"). The regulation of HFCs was transferred to RBI with effect from August 9, 2019. Since then, various regulations have been issued treating HFCs as a category of NBFC.

Revised regulations for HFCs are as follows:

(a) Section I – Guidelines regarding acceptance of public deposits -

The said guidelines are applicable only to HFCs holding a Certificate of Registration ("**CoR**") to accept/hold public deposits. HFCs have been moved towards the regulatory regime on deposit acceptance as applicable to deposit-taking NBFCs. Among other requirements, the revised regulations require HFCs to (i) maintain a minimum percentage of liquid assets on an ongoing basis, in a phased manner as specified in the notification; (ii) ensure safe custody of liquid assets as per the instructions contained in the Master Direction – NBFCs Acceptance of Public Deposits (Reserve Bank) Directions, 2016; (iii) inform NHB in case the asset cover falls short of the liability on account of public deposits; (iv) conform to the revised limit on ceiling on quantum of public deposits held by HFCs (*reduced from 3 times to 1.5 times of net owned fund*) for accepting fresh public deposits or renewing existing deposits; and (v) repay the public deposits after a period of 12 months or more but not later than 60 months, etc.

(b) Section II – Other instructions -

It is stated that HFCs shall be allowed to hedge the risks arising out of their operations and to issue co-branded credit cards subject to the instructions prescribed in the Master Direction – Credit Card and Debit Card – Issuance and Conduct Directions, 2022. HFCs have been allowed to participate in: (i) exchange traded currency derivatives subject to relevant instructions/guidelines issued by RBI; (ii) interest rate futures (IRF) exchanges subject to Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019; and (iii) Credit Default Swaps (CDS)

market as users only and buy credit protection only to hedge their credit risk on corporate bonds held by HFCs. All HFCs are required to prepare their financial statements for the year ending on the 31st day of March. Information System Audit shall be conducted as per the periodicity prescribed in the Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices, 2023. Further, for the purpose of calculation of net owned fund (NOF) of an HFC, investments/loans/exposures made to subsidiaries, companies in the same group and other HFCs, in excess of 10% of the owned fund, is reduced from the owned fund. For calculating NOF of an HFC, investment made by HFCs in entities of the same group through an AIF shall be treated in the same manner, provided the funds have come from HFCs to the extent of 50% or more, or where the beneficial owner in case of AIF (*being a trust*) is the HFC and 50% of funds have come from HFC.

Revised regulations for NBFCs are as follows:

(a) Section III – Guidelines regarding acceptance of public deposits -

The said guidelines are applicable only to NBFCs holding a CoR to accept/hold public deposits. Among other requirements, the revised regulations require NBFCs to (i) devise a proper system of acknowledging the receipt of duly completed form of nomination, cancellation and/or variation of the nomination and such acknowledgment shall be given to all the customers; (ii) repay public deposits in order to meet certain expenses of emergent nature; (iii) intimate the details of maturity of the deposit to the depositor at least 14 days before the date of maturity of the deposit; (iv) maintain safe custody of liquid assets as per the RBI Act, 1934 and such liquid assets shall be entrusted for safe custody with specified entities as stated under the Master Direction – NBFC- Acceptance of Public Deposits Directions, 2016, etc. Paragraph 33(5) of the said Master Direction which required NBFCs to authorize the designated banks (*through Power of Attorney*) for collection of interest on due date on securities held in physical form, has been withdrawn since approved securities are now being maintained only in dematerialised form.

(b) Section IV – Other instructions -

The Audit Committee of applicable NBFCs must ensure that an Information System Audit is conducted as per the periodicity prescribed in the Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices, 2023.

To read the notification click here

RBI AMENDS MASTER DIRECTION FOR NBFC PEER-TO-PEER LENDING PLATFORMS

A NBFC Peer-to-Peer Lending Platform ("**NBFC P2P Platform**") acts as an intermediary to provide an online marketplace/platform to the participants involved in peer-to-peer lending. RBI, *vide* its notification dated October 4, 2017, had laid down certain guidelines, being the NBFC - Peer-to-Peer Lending Platform (Reserve Bank) Directions, 2017 ("**NBFC P2P Directions**"), regarding various aspects

of functioning of such NBFC P2P Platforms. However, it was observed by the RBI that some of these NBFC P2P Platforms had adopted certain practices that were violative of the said NBFC P2P Directions. Pursuant to the same, RBI, *vide* its notification dated August 16, 2024, has amended the NBFC P2P Directions, in order to elaborate and clarify certain provisions with some modifications for its proper implementation.

Some of the pertinent amendments/ modifications made in the NBFC P2P Directions are as follows:

(a) While it was earlier provided that the NBFC P2P Platform shall not provide or arrange any credit enhancement or credit guarantee, it has now been clarified that the NBFC P2P Platform shall not assume any credit risk, either directly or indirectly, arising out of transactions carried out on its platform. Additionally, if there is any loss of principal or interest or both in respect of funds lent by lenders to borrowers on the platform, such loss shall be borne by the lenders;

(b) In addition to cross-selling of loan specific insurance products not being allowed previously, now a NBFC P2P Platform is also not allowed to cross sell any insurance product which is in the nature of credit enhancement or credit guarantee;

(c) NBFC P2P Platforms were earlier obligated to disclose the borrower's personal details with the lender. However, it has now been stipulated that such personal details of the borrower may be shared with the lender only upon receiving consent from the borrower for the same;

(d) While NBFC P2P Platforms were previously required to disclose certain details pertaining to their portfolio performance including details of non-performing assets (NPAs) on their website, it has now been clarified that such disclosures shall also include details of all the losses borne by the lenders on principal or interest or both;

(e) NBFC P2P Platforms have been disallowed from promoting peer to peer lending as an investment product with features like tenure linked assured minimum returns, liquidity options, etc.; and

(f) Earlier, NBFC P2P Platforms were required to obtain explicit declarations from the lenders stating that they have understood all the risks associated with the lending transactions and that the NBFC P2P Platform does not assure return of principal/payment of interest. This declaration shall now also state that there exists a likelihood of loss of entire principal in case of default by a borrower and the NBFC P2P Platform cannot provide any assurance or guarantee for the recovery of loans.

There are certain newly introduced provisions in the NBFC P2P Directions:

(a) A lender's funds cannot be utilised in any manner other than as specified in the NBFC P2P Directions, and that such funds cannot be utilised to pay back another lender;

(b) NBFC P2P Platforms have been obligated to disclose the fees liable to be charged at the time of lending itself. Further, such fees shall be a fixed amount or a fixed proportion of the principal amount and shall not be dependent upon the repayment by the borrower(s);

(c) NBFC P2P Platforms are required to explicitly and prominently mention their name (*as mentioned in the CoR*) along with their brand name, in all their touch points/ customer interfaces including promotional material and any communication with stakeholders/ participants; and

(d) NBFC P2P Platforms shall mandatorily display a caveat prominently on their website, mobile/web applications including any other promotional material used by them, in relation to them being duly registered with the RBI. Such caveat should also clearly state that RBI shall have no responsibility for the correctness of any of the statements or representations made or opinions expressed by such platform and does not provide any assurance for repayment of the loans lent on it.

To read the notification click here

CERTAIN OFFENCES REMOVED FROM THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

The Department of Revenue, MoF, *vide* its notification dated August 13, 2024, has brought into force the provision of the Jan Vishwas (Amendment of Provisions) Act, 2023 ("**Jan Vishwas Act**") in so far as it relates to column (5) against serial number 34 of the Schedule to the Jan Vishwas Act with respect to the Prevention of Money-laundering Act, 2002 ("**PMLA**").

Pursuant to the above, following offences under the PMLA have now been decriminalised:

Sl. No.	Paragraph No.	Section under relevant Acts	Description of offence
1.	Paragraph 21 (*Offences under the Trade Marks Act, 1999*)	107	Penalty for falsely representing a trademark as registered
2.	Paragraph 22 (*Offences under the Information Technology Act, 2000*)	72	Penalty for breach of confidentiality and privacy
3.	Paragraph 25 (*Offences under the Environment Protection Act, 1986*)	15 read with Section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards
		15 read with Section 8	Penalty for handling hazardous substances without complying with procedural safeguards
4.	Paragraph 27 (*Offences under the Air (Prevention and Control of Pollution) Act, 1981)*	37	Failure to comply with the provisions for operating industrial plant

To read the notification click here

FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (FOURTH AMENDMENT) RULES, 2024 – NOTIFIED

The Department of Economic Affairs, MoF, *vide* its notification dated August 16, 2024, has notified the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024 ("**NDI Amendment Rules**"), thereby amending the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**Principal NDI Rules**").

The key provisions of the NDI Amendment Rules are as follows:

(a) Definition of 'control' -

The definition of 'control' has been inserted to align it with the definition mentioned in the Companies Act, 2013 and for the purposes of LLP, the definition under Rule 23 (*Downstream investment*) of the Principal NDI Rules has been retained.

(b) Definition of 'startup company' -

The definition has been aligned with the notification dated February 19, 2019, issued by the Department for Promotion of Industry and Internal Trade which provides that an entity shall be considered as a startup (i) up to a period of 10 years from the date of incorporation/registration; (ii) turnover of the entity has not exceeded INR 100 crores; and (iii) entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

(c) Government approval for transfer of equity instruments -

The proviso for item (i) to Rule 9(1) of the Principal NDI Rules has been substituted which now states that prior government approval shall be obtained for transfer in all cases wherever Government approval is applicable. Earlier, the language of the proviso stated that prior Government approval shall be obtained for any transfer in case the company was engaged in a sector that required Government approval.

(d) Rule 9A (*Swap of equity instruments and equity capital*) introduced -

The transfer of equity instruments of an Indian company by a resident to a person resident outside India can be done through (i) swap of equity instruments; and (ii) swap of equity capital of a foreign company in compliance with the Foreign Exchange Management (Overseas Investment) Rules, 2022 and the regulations specified by the RBI. However, prior Government approval would be required to be obtained for transfer in all cases wherever Government approval is applicable. The NDI Amendment Rules have brought clarity regarding permissible transactions that can be undertaken by Indian companies which include the transfer of equity instruments through equity swaps of an Indian company or swap of equity capital of foreign company. Further, paragraph 1(d) of Schedule 1 has been amended to provide for issuance of equity instruments to a person resident outside India against the swap of equity capital of a foreign company.

(e) Downstream Investment -

An investment made by an Indian entity owned and controlled by a Non-Resident Indian ("**NRI**") or Overseas Citizen of India including a company, trust and partnership firm incorporated outside India, on a non-repatriation basis shall not be treated as downstream investment and considered for calculation of indirect foreign investment. Earlier, this exemption was applicable only to investments made by an Indian entity owned and controlled by an NRI.

(f) Entry route for foreign portfolio investment -

49% cap for government approval for aggregate foreign portfolio investment in an Indian entity has been removed and is now linked to the sectoral cap or statutory cap.

(g) White Label ATM Operations (WLAO)

100% foreign investment in WLAO is now permitted under the automatic route.

To read the notification click here

CORPORATE UPDATES

MCA'S WELCOME MOVE – INTRODUCES E-ADJUDICATION PLATFORM

Ministry of Corporate Affairs ("**MCA**"), *vide* its notification dated August 5, 2024, has notified the Companies (Adjudication of Penalties) Amendment Rules, 2024, which is effective from September 16, 2024 ("**Effective Date**"), thereby amending the Companies (Adjudication of Penalties) Rules, 2014 ("**Principal Adjudication Rules**").

The amendment has inserted a new Rule 3A in the Principal Adjudication Rules, which stipulates that (a) from the Effective Date, all proceedings (*including issuance of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty*) of adjudicating officer and regional director under the Principal Adjudication Rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose; (b) in case the e-mail address of any person to whom a notice or summons is required to be issued under the Principal Adjudication Rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in point (a) above. If no address of the person concerned is available, the notice shall be placed on the e-adjudication platform; and (c) Form ADJ (*memorandum of appeal before the regional director*) has been substituted.

To read the notification click here

MCA STREAMLINES EXIT OF LIMITED LIABILITY PARTNERSHIPS AND FILING NORMS FOR REGISTRATION OF FOREIGN COMPANIES

MCA, *vide* its notification dated August 5, 2024 ("**LLP Notification**"), has notified the Limited Liability Partnership (Amendment) Rules, 2024 thereby amending Rule 37(1) of the Limited Liability Partnership Rules, 2009, streamlining the process for striking off name of defunct Limited Liability Partnership ("**LLP**") by delegating the authority to the Registrar, Centre for Processing Accelerated Corporate Exit ("**C-PACE**") in relation to the said rule. The C-PACE means the office of C-PACE established by the Central Government, *vide* notification number S.O. 1269(E), dated March 17, 2023, issued under sub-sections (1) and (2) of Section 396 of the Companies Act, 2013. The said amendment has come into force on August 27, 2024.

Further, MCA, *vide* its notification dated August 12, 2024 ("**Registration of Foreign Companies Notification**"), has notified the Companies (Registration of Foreign Companies) Amendment Rules, 2024, thereby amending Rule 3 and Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014 and mandating the foreign companies to now file Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and deliver the required documents in

relation to its registration as prescribed under the said rules to the Registrar, Central Registration Centre. The said amendment has come into force on September 9, 2024.

To read the LLP Notification click here & to read the Registration of Foreign Companies Notification click here

OTHER UPDATES

PROCESS FOR HOLDING INQUIRY AND APPEAL NOTIFIED FOR TRADE MARKS AND GEOGRAPHICAL INDICATIONS

Ministry of Commerce and Industry (MCI), *vide* its notifications dated August 16, 2024, has notified the Trade Marks (Holding Inquiry and Appeal) Rules, 2024 ("**TM Inquiry and Appeal Rules**") and Geographical Indications of Goods (Holding Inquiry and appeal) Rules, 2024 ("**GI Inquiry and Appeal Rules**"), thereby amending the Trade Marks Rules, 2017 and the Geographical Indication of Goods (Registration and Protection) Rules, 2002, respectively. The TM Inquiry and Appeal Rules and the GI Inquiry and Appeal Rules provide a mechanism for filing complaint, holding of inquiry and appeal against orders passed pursuant to such inquiry, in respect of contraventions under the Trade Marks Act, 1999 ("**Trade Marks Act**") and the Geographical Indications of Goods (Registration and Protection) Act, 1999 ("**GI Act**"), respectively, through electronic means.

Under the respective TM Inquiry and Appeal Rules and GI Inquiry and Appeal Rules, any person may file a complaint in Form-I through electronic means to the adjudicating officer, regarding any contravention committed under Section 107 (*prescribes penal consequences for persons making a false representation regarding registration of a trade mark*) of the Trade Marks Act or various contraventions under the GI Act.

Furthermore, both the TM Inquiry and Appeal Rules as well as the GI Inquiry and Appeal Rules prescribe a comprehensive procedure for holding an inquiry, which commences with the issuance of a show cause notice through electronic means to the concerned person(s) who is alleged to have committed the contravention, requiring him to show cause why an inquiry should not be held against him. Both the foregoing rules also includes the provisions for requiring personal attendance, allowing counter statements and evidence submission, and enforcing attendance of witnesses.

Any person aggrieved by an order of the adjudicating officer under the TM Inquiry and Appeal Rules or the GI Inquiry and Appeal Rules, as the case may be, may prefer an appeal in Form III through electronic means to the appellate authority, being an officer at least one rank above the adjudicating officer, within 60 days from the date of the order, provided that the appellate authority may entertain appeal after the expiry of the said period, if he is satisfied that he has sufficient cause for not filling the appeal within such period. On receipt of the appeal, the appellate authority shall issue a notice requiring to the respondent, to file his reply within such period as may be specified in the notice. The appellate authority, shall, after giving the parties a reasonable opportunity of being heard, pass a reasoned order, including an order for adjournment, and complete the proceedings ordinarily within 60 days from the date of the receipt of the appeal.

All communications under the TM Inquiry and Appeal Rules and the GI Inquiry and Appeal Rules shall be transmitted through electronic means only. Every order under the TM Inquiry and Appeal Rules or the GI Inquiry and Appeal Rules, as the case may be, shall be digitally signed, communicated to all the parties through electronic means, and also uploaded on the official website of Intellectual Property India.

To read the TM Inquiry and Appeal Rules click here & to read the GI Inquiry and Appeal Rules click here

CERTAIN PENALTIES MODIFIED UNDER THE PHARMACY ACT

Ministry of Health and Family Welfare, *vide* its notification dated August 19, 2024, has appointed December 31, 2024, as the date on which provision of the Jan Vishwas Act, in so far as it relates to serial number 9 and the entries relating thereto in the Schedule of the Jan Vishwas Act, with respect to the Pharmacy Act, 1948 ("**Pharmacy Act**") shall come into force.

The following provisions of the Pharmacy Act have been either decriminalised or the maximum period of imprisonment has been reduced:

Sr. No.	Provision	Pre-amendment	Post-amendment
1	Section 26A(3) – Inspection	(a) Imprisonment – up to 6 months; or (b) Fine – up to INR 1,000; or (c) Both.	Fine – up to INR 1 lakh
2	Section 41(1) – Penalty for falsely claiming to be registered	(a) First conviction – Fine up to INR 500 (b) Subsequent conviction – i. Imprisonment – up to 6 months; or ii. Fine – up to INR 1,000; or iii. Both.	(a) First conviction – Fine up to INR 1 lakh (b) Subsequent conviction – i. Imprisonment – up to 3 months; or ii. Fine – up to INR 2 lakhs; or iii. Both.
3	Section 42(2) – Dispensing by unregistered persons	(a) Imprisonment – up to 6 months; or (b) Fine – up to INR 1,000; or (c) Both.	(a) Imprisonment – up to 3 months; or (b) Fine – up to INR 2 lakhs; or (c) Both.

In addition to the above, the following amendments have also been introduced:

(a) Section 18(2) has been amended to expand the list of items for which the central council may make regulations. It now also includes: (i) the manner of holding inquiry and imposing penalty under Section 43A(1), and (ii) the form and manner of preferring appeal under Section 43A(2).

(b) Section 43A has been inserted in the Pharmacy Act which provides for the process of adjudication of penalties under Section 26A.

To read the notification click here

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