MONTHLY NEWSLETTER SERIES
NOVEMBER, 2024 | VOL. XVIII

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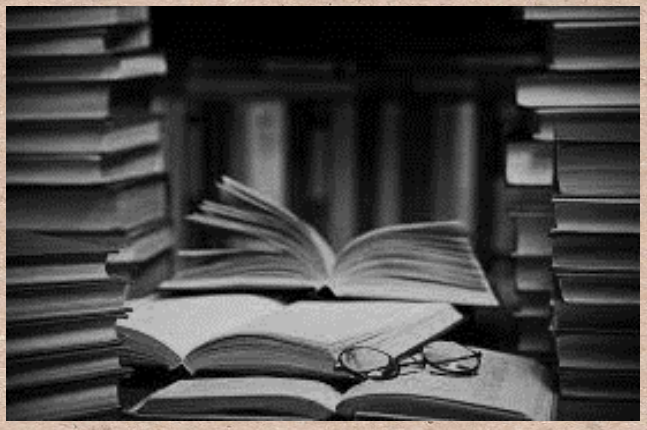

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SEBI UPDATES

SEBI NOTIFIES SPECIFIC DUE DILIGENCE REQUIREMENTS OF INVESTORS AND INVESTMENTS OF AIFs

Securities and Exchange Board of India ("**SEBI**"), *vide* the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2024 had inserted Regulation 20(20) in the SEBI (Alternative Investment Funds) Regulations, 2012, which requires every alternative investment fund ("**AIF**"), manager of the AIF and Key Management Personnel ("**KMP**") of the manager and AIF to exercise specific due diligence, with respect to their investors and investments, to prevent facilitation of circumvention of various laws.

SEBI, *vide* its circular dated October 8, 2024 ("**SEBI Circular**"), has now specified specific due diligence to be carried out by AIFs, managers of AIFs and their KMP, to prevent facilitation of circumvention of regulatory frameworks as elaborated below:

(a) Investors availing benefits designated for qualified institutional buyers ("**QIBs**") through AIFs: AIFs have been designated as QIBs under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**"). Further, certain benefits are provided to QIBs under the ICDR Regulations and other regulations. To prevent AIFs from facilitating investors who are ineligible for QIB status, from availing benefits designated for QIBs, necessary due diligence as per the implementation standards of Standard Setting Forum for AIFs ("**SFA**") shall be carried out prior to availing benefits available to QIBs, for every scheme of AIFs having an investor or investors belonging to the same group who contribute(s) 50% or more to the corpus of the scheme.

The term 'same group' shall mean 'related parties' and 'relatives' as defined in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").

(b) Investors availing benefits designated for qualified buyers ("**QBs**") through AIFs: AIFs have been notified as QBs under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"), and are eligible to subscribe to security receipts ("**SRs**") issued by asset reconstruction companies ("**ARCs**"). To prevent AIFs from facilitating investors who are ineligible for QB status, from availing benefits available for QBs, necessary due diligence as per the implementation standards of SFA shall be carried out prior to making any investments in SRs issued by ARCs or availing benefits designated for QBs under the SARFAESI Act, for every scheme of AIFs having an investor or investors belonging to the same group who contribute(s) 50% or more to the corpus of the scheme.

(c) Reserve Bank of India ("**RBI**") regulated lenders/entities ever-greening their stressed loans/assets through AIFs: To address the issue of ever-greening of stressed loans/assets by the RBI regulated lenders/entities through AIFs and to prevent circumvention of norms specified by the RBI relating to income recognition, asset classification, provisioning and restructuring of stressed loans/assets, necessary due diligence as per the implementation standards of SFA shall be carried out for every scheme of AIFs:

(i) whose manager or sponsor is an entity regulated by the RBI; or
(ii) that has investor(s) regulated by the RBI who: (A) individually or along with investors of the same group contribute(s) 25% or more to the corpus of the scheme, or (B) is an associate of the manager or sponsor of the AIF, or (C) by itself, or through its representative(s)/nominee(s), has majority or veto power in voting over decisions of the investment committee set up by the manager.

Further, if an investor is an AIF or a fund set up outside India or in International Financial Services Centres ("**IFSCs**"), then, the criteria check for such investor(s) shall be carried out on a look through basis.

Furthermore, the manager shall ensure that the scheme does not make any investment that would lead to the RBI regulated lender/entity acquiring or holding interest/exposure in the investee company indirectly, which they are not allowed to acquire or hold directly.

If the proposed investments pertaining to schemes of AIFs falling under para (a), (b) and (c) above do not satisfy the due diligence checks specified by SFA, then: either such investor or investors of same group shall be excluded from the investment, subject to necessary disclosures in the private placement memorandum for exclusion of investors or the investment shall not be made.

(d) Investment from countries sharing land border with India through AIFs: In accordance with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 read with Press Note 3 of the FDI Policy 2020, an investor of a country which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest in India only with the prior approval of the Government. To ascertain whether investors from countries sharing land borders with India are investing in Indian companies through AIF, necessary due diligence as per the implementation standards of SFA shall be carried out prior to making any investment, for every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by investors:

(i) who are citizens of or are situated in a country which shares land border with India; or
(ii) whose beneficial owner(s), as determined under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, are citizens of or are situated in a country which shares land border with India.

Post the due diligence, such scheme shall report details of its investment, which would lead to the scheme holding 10% or more equity or equity-linked securities, on a fully diluted basis, issued by an investee company, to its custodian within 30 days of the investment, in the format specified by SFA. Further, the custodians must compile the data on a monthly basis and report to SEBI within 10 working days from the end of the month.

Due-diligence for existing investments

(a) For schemes falling under the ambit of para (a), (b) and (c) above: Due diligence checks prescribed as per the implementation standards formulated by SFA must also be carried out

for existing investments held by the scheme as on date of the SEBI Circular. Post the due diligence checks, if any existing investments of such schemes does not satisfy the due diligence checks, details of such investment shall be reported to the custodian in the format specified in the SEBI Circular. If all the existing investments satisfy the due diligence checks, manager of the AIF shall submit an undertaking to this effect to the custodian. The above-mentioned requirements shall be fulfilled on or before April 7, 2025.

(b) For schemes falling under the ambit of para (d) above: Details of the existing investments where the scheme holds 10% or more equity or equity-linked securities, on a fully diluted basis, issued by an investee company, shall also be reported to the custodians, in the format as specified by SFA, on or before April 7, 2025.

Other compliances:

The implementation standards formulated by SFA shall be adopted by AIFs, managers of AIFs and their KMP.

To read the SEBI Circular click here

SEBI NOTIFIES LIQUIDITY WINDOW FACILITY FOR THE LISTED DEBT SECURITIES

SEBI, *vide* its circular dated October 16, 2024, has introduced a method of buy-back of the listed debt securities mainly the corporate bonds, through a liquidity window facility framework for the investors, with effect from November 1, 2024. The liquidity window facility framework will allow use of put options by investors as specified under Regulation 15 of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, exercisable on pre-specified dates and intervals.

The key parameters set out in the circular, *inter alia*, include the following:

(a) Eligibility and Scope:

(i) The liquidity window facility can be adopted voluntarily by an entity issuing debt securities, which are proposed to be listed on an International Securities Identification Number (ISIN) basis.
(ii) It applies to prospective issuances of debt securities both *via* public issue process or on a private placement basis.
(iii) The window can be made available to all investors or restricted to retail investors, depending on the issuer's discretion and shall be only available to investors who have their debt securities in demat form.

(b) Conditions and Mechanism:

(i) The issuer must obtain prior approval from its Board of Directors ("**Board**") for the liquidity window facility, ensure the said facility is objective, transparent, non-

discretionary and non-discriminatory within the class of investors specified as eligible investors, ensure that the implementation and outcome is monitored by Stakeholders Relationship Committee ("**SRC**") (*in case of entities with listed specified securities*) and where it is not mandatory to constitute a SRC, by its Board or such board level committee that the Board may determine and ensure that the implementation or operation of the liquidity window facility does not compromise market integrity or risk management, asset liability management or liquidity management norms as its Board may specify (*in the absence of any regulatory requirement governing risk management, asset liability management or liquidity management*).

(ii) The said facility is to be provided only after 1 year from the debt security's issuance date. Re-issuances shall not be permitted under the ISINs in which liquidity window facility is offered.

(iii) The issuer shall determine and specify the percentage of the issue size (*in terms of number of debt securities*) of the eligible securities constituting the aggregate limit for the exercise of put options by the investors through liquidity window facility over the tenor of the debt securities, which shall not be less than 10% of final issue size of such debt securities. The said percentage shall be disclosed in the offer document at the time of issuance of such debt securities. Issuer may also specify the sub-limit of put options that can be exercised in each liquidity window over the tenor of liquidity window facility.

(iv) The liquidity window shall be kept open for 3 working days. The schedule of liquidity window(s) shall be disclosed upfront in the offer document. The notice/ intimation regarding the liquidity window through put option shall be made within 5 working days *via* SMS/ WhatsApp messaging from the start of each financial year.

(c) Operation:

(i) Investors can exercise the put option on debt securities by blocking their securities in their demat account and utilizing the mechanism for notifying the issuer during the trading hours.

(ii) Eligible investors may be permitted to modify or withdraw their bids during the liquidity window session.

(iii) All exercises of the put option on the debt securities received by the stock exchange until the end of trading hours on the date of closure of the liquidity window (*i.e., day 3 of the liquidity window*) and for which block is created, shall be treated as duly tendered. However, if the window sub-limit specified by the issuer is exceeded, the acceptance of the tendered debt securities shall be on a proportionate basis.

(iv) Debt securities shall be valued on 'T-1' day where T is the first day of the liquidity window. Such valuation shall be displayed at all times during the period of liquidity window, on the website of the issuer and stock exchanges. Such valuation shall be done in accordance with Chapter 9 (*Valuation*) of the Master circular for mutual funds dated June 27, 2024. Such amounts shall be payable within 1 working day from the closure of the liquidity window. Further, settlement of debt securities shall be on 'T+4' day where T is the first day of the liquidity window.

(d) Post-Window Actions: Issuers have to handle the securities returned through the liquidity window within 45 days of the closure of the liquidity window or before the end of the relevant

quarter (*whichever is earlier*). This could be achieved by: (i) selling the debt securities on the stock exchange, (ii) selling the debt securities directly on a Request for Quote (RFQ) platform, (iii) selling such debt securities through an online bond platform, or (iv) extinguishing such debt securities.

(e) Disclosure and Reporting:

(i) Issuers shall, within 3 working days of the closure of liquidity window facility, submit a report to the stock exchange(s) where such debt securities are listed, in the manner as specified by the stock exchange in consultation with SEBI.

(ii) Issuers shall, within 3 working days from the end of the timeline for handling the returned securities, inform the depositories and debenture trustee regarding debt securities to be extinguished.

(iii) Issuers must disclose detailed information about the ISINs with available liquidity windows, including name of the issuer, outstanding amount of the ISIN, credit rating, coupon rate, percentage of securities eligible for redemption, the schedule for the window, etc.

(iv) Issuer shall furnish the aforesaid information to the stock exchanges, depositories, and debenture trustee who shall host the same on their website/ corporate bond database. Further, issuer shall intimate changes, if any, of the above information within 24 hours of such change and the stock exchanges, depositories and debenture trustee shall update the information within 1 working day.

To read the circular click here

EXTENSION OF RELAXATION UNDER THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

SEBI, *vide* its circulars dated October 6, 2023 and October 7, 2023, had provided limited relaxation in relation to sending physical copies of the financial statements (*including Board's report, Auditor's report or other documents required to be attached therewith*) to the shareholders as mandated under Regulation 36(1)(b) of the LODR Regulations and the proxy forms as mandated under Regulation 44(4) of the LODR Regulations for all the listed entities, for the Annual General Meetings ("**AGMs**") and Extra-ordinary General Meetings ("**EGMs**") conducted till September 30, 2024, which was covered in one of the previous editions of Legalaxy.

SEBI, *vide* its circular dated October 3, 2024, has now extended the abovementioned relaxations for the AGM and EGMs conducted till September 30, 2025.

To read the circular click here

SEBI MODIFIES COMPLIANCE AND REPORTING REQUIREMENT FOR NON-INDIVIDUAL INVESTMENT ADVISERS

SEBI, *vide* its circular dated October 25, 2024, has modified compliance and reporting requirements for Non-Individual Investment Advisers ("**IAs**"), with immediate effect. The key modifications set out in the said circular, *inter alia*, include the following:

(a) Annual Compliance Certificate for IAs:

IAs were earlier required to obtain the annual compliance certificate for client-level segregation from their statutory auditors, as specified in Regulation 22 of the SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**"). However, the said requirement has now been relaxed to provide that any qualified auditor may issue such annual compliance certificate. The said certificate must be submitted within 6 months of the financial year-end and form part of the compliance audit, in terms of Regulation 19(3) of the IA Regulations.

(b) Revised Reporting Timeline:

IAs were earlier required to submit periodic reports to the Investment Adviser Administration and Supervisory Body (IAASB) within 7 working days from the end of the half-yearly period for which details are to be furnished. SEBI has now revised the timeline to provide that the IAs shall submit periodic reports within 30 days from the end of the half-yearly period for which details are to be furnished.

To read the circular click here

RBI & IFSC UPDATES

RBI REVISES GUIDELINES REGARDING SUBMISSION OF INFORMATION TO CREDIT INFORMATION COMPANIES BY ARCs

RBI, *vide* its circular dated November 25, 2010, on 'Submission of information to Credit Information Companies', had advised the ARCs to become a member of at least 1 Credit Information Company ("**CIC**").

RBI, *vide* its notification dated October 10, 2024, has revised the guidelines regarding submission of information to CICs in order to align these guidelines with the guidelines applicable to banks and Non-Banking Financial Companies ("**NBFCs**"), and with a view to maintain a track of borrowers' credit history after transfer of loans by banks and NBFCs to the ARCs. These guidelines shall be applicable to all ARCs and the ARCs shall put in place system and processes to ensure compliance with these guidelines latest by January 1, 2025.

The revised guidelines provide as follows:

(a) ARCs shall become members of all CICs and submit the requisite data to CICs as per the Uniform Credit Reporting Format prescribed by the RBI.

(b) ARCs shall keep the information collected/maintained by them, updated regularly on a fortnightly basis or at such shorter intervals as mutually agreed upon between the ARC and the CIC, in terms of Regulation 10(a)(i) and (ii) of the CIC Regulations, 2006.

(c) ARCs shall rectify the rejected data received from the CICs and upload the same with the CICs within 7 days of receipt of such data.

(d) ARCs shall have a standard operating procedure in place for the CIC related matters which shall, *inter alia*, include the best practices such as: providing customer information (*including identifier information*) to the CICs; regularly updating records submitted to the CICs; reporting all instances of repayment by centralising the issue of no-objection certificates; appointing a nodal officer for dealing with the CICs; prioritizing customer grievance redressal; and integrating grievance redressal in respect of credit information with the existing systems. Further, the ARCs should abide by the period stipulated under the CIC (Regulation) Act, 2005 ("**CICRA**") and the rules and regulations framed thereunder in respect of updation, alteration of credit information, resolving disputes, etc. Procedure prescribed under Rules 20 and 21 of the CIC Rules, 2006 in this regard should be adhered to. Deviations from stipulated time limits should be monitored and commented upon in the periodical reports/reviews.

To read the notification click here

IMPLEMENTATION OF CREDIT INFORMATION REPORTING MECHANISM SUBSEQUENT TO CANCELLATION OF LICENCE OR CERTIFICATE OF REGISTRATION

According to the CICRA, only entities defined as credit institutions ("**CIs**") can provide credit information to a CIC. Further, Section 17(1) of the CICRA allows the CICs to collect credit information only from its member CIs or member CICs, and only those entities that are covered under the ambit of the definition of CIs under Section 2(f) of the CICRA can submit credit information to the CICs. Therefore, in a situation where a CI's licence or certificate of registration ("**CoR**") has been cancelled by the RBI, it can no longer be considered as a CI under the purview of the CICRA, and their credit information cannot be accepted by the CICs. Due to this, their borrowers' repayment histories are not updated even if such borrowers continue to repay/clear their due, thereby creating difficulties for the borrowers who continue to meet their obligations.

In order to address this issue, the RBI, *vide* its notification dated October 10, 2024, has directed the CICs and CIs to implement a credit information reporting mechanism subsequent to the cancellation of licences/CoRs of banks/NBFCs, within 6 months from the date of this circular. The notification further stipulates the following points:

(a) All CIs, whose licence or CoR has been cancelled by the RBI, to be categorised as 'CIs' under Section 2(f)(vii) of the CICRA;

(b) Such CIs to have access to the credit information reports ("**CIRs**") pertaining to only those borrowers who were on-boarded and reported to the CICs prior to the cancellation of their licence or CoR and the CIs shall continue to report credit information of the borrowers on-boarded and reported to CICs prior to cancellation of their licence or CoR to all the 4 CICs till the loan lifecycle is completed or the CI is wound up, whichever is earlier;

(c) CICs cannot charge annual and membership fees from such CIs for the use of CIRs;

(d) CICs shall tag such CIs as 'licence cancelled entities' in the CIR, where such tagging shall be based upon the information available on the RBI's website or the cancellation of licence order received from the RBI; and

(e) The provisions of this circular shall also be applicable to those entities whose licence or CoR has been cancelled by the RBI prior to issuance of this notification.

To read the notification click here

RBI ISSUES GUIDELINES FOR COMPOUNDING OF CONTRAVENTIONS UNDER FEMA

Ministry of Finance, *vide* its notification dated September 12, 2024, had notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 ("**Compounding Rules**") (*as covered in the previous edition of Legalaxy*).

Pursuant to the above, the RBI, *vide* its notification dated October 1, 2024, has issued directions for compounding of contraventions under the Foreign Exchange Management Act, 1999 ("**FEMA**"), superseding all earlier circulars in this regard. RBI has advised the authorised dealer ("**AD**") banks to take necessary steps to ensure that checks and balances are incorporated in systems dealing with and relating to foreign exchange transactions so that contraventions of FEMA do not occur.

The key provisions of the guidelines include:

(a) Compounding of contraventions by RBI: A list of rules and regulations issued under FEMA has been provided, contravention of which shall be compounded by the compounding authorities of the RBI at relevant offices.

(b) Application for compounding: An applicant may submit an application, along with the documents, physically or through PARVAAH portal of the RBI, either *suo moto* or based on a memorandum of contraventions issued by the RBI with the prescribed fee of INR 10,000 along with GST (*currently 18%*) by demand draft or through NEFT or other permissible electronic or online modes of payment along with such other documents as provided in the guidelines.

(c) Cases not eligible for compounding: A contravention under FEMA, committed by a person within 3 years from the date on which similar contravention was committed and the same was compounded, shall not be compounded and the relevant provisions of FEMA shall apply, and any contravention committed after the expiry of a period of 3 years from the date on which a similar contravention was previously compounded shall be deemed to be a first contravention. Further, contraventions of serious nature shall be referred to the Directorate of Enforcement ("**ED**") for further investigation and necessary action under FEMA. Transactions, in which amount is not quantifiable, or attracting Section 37A (*where foreign exchange, foreign security or immovable property situated outside India is suspected to have been held in contravention of Section 4 of FEMA*) of FEMA, or where the adjudicating authority has passed an order imposing penalty, or where ED is of the opinion that compounding proceeding relates to serious contravention, such contraventions shall not be compounded by the RBI. A contravention where a person deals in or transfers any foreign exchange or security to any person not being an authorised person, shall not be compounded.

(d) Procedure for compounding: RBI shall examine the application based on the documents and submissions made in the application and assess whether the contravention can be compounded and if so, the sum involved in the contravention. Certain factors which shall be taken into consideration for passing compounding order include: (i) undue gains, i.e., the amount of unfair advantage or economic benefits accruing from delayed compliance or avoidance; (ii) amount of loss caused to the authority/exchequer due to the contravention; (iii) repetitive nature of the contravention, etc. A guidance note for calculation of the compounding amount is also provided in the guidelines.

(e) Issue of the compounding order: The compounding authority shall pass a compounding order after affording an opportunity of being heard to the applicant not later than 180 days from the date of receipt of the compounding application by the RBI. In case the applicant requests for a personal hearing, the RBI would encourage the applicant to appear personally

or through virtual mode. In case the applicant does not opt for personal hearing or absents on the day of hearing, the compounding authority may pass an order based on the available information/documents.

(f) Payment of the amount for which contravention is compounded: The compounding amount shall be paid by way of demand draft or through NEFT or RTGS or such other permissible electronic or online modes of payment within 15 days from the date of the compounding order. The contravener cannot seek to withdraw the compounding order or hold that it is void or request review of the same. In case of failure to pay the compounding amount, it shall be deemed that an application for compounding was never made. A certificate shall be issued by the RBI, subject to the conditions in the order, if any, on realisation of the sum for which contravention is compounded.

To read the notification click here

RBI ISSUES NOTIFICATION FOR DUE DILIGENCE IN RELATION TO NON-RESIDENT GUARANTEES AVAILED BY RESIDENTS

RBI, *vide* its notification dated October 4, 2024, has mandated AD Category-I banks to ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with FEMA, and has thereby asked for the contents of this notification to be brought to the notice of their constituents.

The direction has been issued by the RBI under Sections 10(4) and 11(1) of FEMA pursuant to its observation that guarantees (*including Standby Letters of Credit (SBLCs) and/or performance guarantees*) are being issued by non-residents in favour of residents, which are not permitted under the extant FEMA regulations.

To read the notification click here

IFSCA ISSUES DIRECTIONS FOR OPERATIONS OF THE FOREIGN CURRENCY ACCOUNTS OF INDIAN RESIDENT INDIVIDUALS OPENED UNDER THE LIBERALISED REMITTANCE SCHEME

RBI, *vide* its circular dated July 10, 2024, had eased remittances to IFSCs under the Liberalised Remittance Scheme ("**LRS**") for Indian resident individuals ("**RIs**") by allowing authorised persons ("**APs**") to facilitate remittances for all permissible purposes under LRS to IFSCs for: (a) availing financial services or financial products as per the IFSC Authority Act, 2019 within IFSCs; and (b) all current or capital account transactions, in any other foreign jurisdiction (*other than IFSCs*) through a Foreign Currency Account ("**FCA**") held in IFSCs. For these permissible purposes, RIs were permitted to open FCA in IFSCs (*as covered in the previous edition of Legalaxy*).

In pursuance to the same, International Financial Services Centres Authority ("**IFSCA**"), *vide* its circular dated October 10, 2024 ("**IBU Circular**"), has issued directions to IFSC Banking Units ("**IBUs**") for operations of FCA of RIs opened under the LRS.

The key directions include:

(a) Obligations of IBUs: IBUs shall –

(i) permit the RIs to open FCA for receiving remittances from onshore India (*under LRS*) and ensure that the remittances into the FCA are routed through an AP. IBUs shall also obtain a copy of the return submitted by the RI to AP before opening of the FCA and at the time of any inward remittance to the FCA from onshore India thereafter. Further, IBUs shall ensure that such funds from the FCA are deployed for the purpose(s) declared in such return;

(ii) permit the RIs to open FCA for receiving remittances from locations other than onshore India. IBUs shall obtain a declaration from the RI (*with respect to remittances into the FCA from locations other than onshore India*) that such remittance represents funds duly remitted earlier under the LRS or income earned on the investments made from funds duly remitted earlier under the LRS;

(iii) ensure that any received/realised/unspent/unused foreign exchange from onshore India or from locations other than onshore India in the FCA, unless reinvested within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of return to India, is repatriated through an AP to the account of the RI in designated AD bank;

(iv) obtain a declaration from the RI to the effect that, such RI shall not settle any domestic transactions with other RI through the FCA; and

(v) ensure compliance with the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022, including the circulars issued thereunder.

(b) Use of funds to avail financial services or financial products in IFSCs: IBUs shall permit the use of funds remitted to the FCA for availing financial products (*including securities, deposits, etc.*) or financial services (*including buying, selling, or subscribing to a financial product, acceptance of deposits, etc.)* within IFSCs. However, in cases where fixed deposits are offered to the RI, the tenure of such deposits shall be less than 180 days, and the maturity proceeds of the same, if not reinvested in any other permissible financial product, shall be subject to the provisions of para (a) (iii) above.

(c) Use of funds to avail services in any other foreign jurisdiction (*other than IFSCs*): IBUs shall permit remittance of funds received in the FCA for undertaking all permitted current or capital account transactions, in any foreign jurisdiction (*i.e., other than IFSCs*). IBUs shall ensure that remittances for permitted capital account transactions from the funds received in the FCA are not by countries identified by the Financial Action Task Force (FATF) as non-cooperative countries and territories. Further, it must be ensured by IBUs that remittances of funds from the FCA are not made, directly or indirectly, to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by RBI.

(d) Reporting by IBUs: IBUs opening FCA shall notify IFSCA by way of a letter, including a description of the arrangements put in place for complying with the conditions specified in the IBU Circular and furnish the data about operations in FCAs, as may be specified by IFSCA.

To read the IBU Circular click here

IFSCA (PAYMENT AND SETTLEMENT SYSTEMS) REGULATIONS – NOTIFIED

IFSCA, *vide* its notification dated October 14, 2024, has notified the IFSCA (Payment and Settlement Systems) Regulations, 2024 to lay down the process of authorisation and operations of payment systems in the IFSCs. The Payment and Settlement Systems Regulations, 2008, issued by the RBI, shall not apply in the IFSCs.

The key provisions include:

(a) Application for authorisation for commencing or carrying on payment system: Any person desirous of commencing or carrying on a payment system in an IFSC, shall submit an application under the Payment and Settlement Systems Act, 2007 ("**Payments Act**") to IFSCA for grant of authorisation under the Payments Act. The application shall be accompanied by a non-refundable application fee of USD 1,000.

(b) Grant of in-principle approval: After considering the application for grant of authorisation, IFSCA may issue an 'in-principle approval' requiring the applicant to satisfy the condition laid down under Section 7 of the Payments Act or such other conditions, as may be stipulated by IFSCA.

(c) Grant of authorisation certificate: In case IFSCA is satisfied that the conditions under Section 7 of the Payments Act are fulfilled, it may issue an authorisation certificate to the applicant to commence a payment system and specify the date on which the authorisation shall take effect.

(d) Exemption from authorisation: An application for exemption from authorisation under the Payments Act shall include the rationale under which such exemption is being sought. IFSCA shall decide to accept, with or without conditions, or reject the request for exemption and communicate the same to the applicant within 90 days from the date of application.

(e) Compliance with the Principles for Financial Market Infrastructures (PFMI): Every system provider shall comply, on an ongoing basis and to the extent applicable, with the Principles for Financial Market Infrastructures issued by Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) and such other norms as may be specified by IFSCA from time to time.

(f) Payment instructions and determination of standards: Every system participant, with respect to the format of payment instructions and other matters specified under Section 10 of the

Payments Act, shall be governed by the regulations, guidelines, directions, etc., issued by IFSCA.

(g) Returns, documents and other information: Every system provider shall submit such returns, documents and other information to IFSCA as required by it from time to time and in the form as specified. Further, every system provider shall furnish a copy of its audited balance sheet as on the last date of the relevant year along with a copy of the profit and loss account and a copy of the auditor's report to IFSCA, within 3 months from the date on which its annual accounts are closed. IFSCA may, on an application by the system provider, extend the period for furnishing of returns by a further period not exceeding 3 months. The said documents are also required to be published on the website of the system provider.

To read the notification click here

OTHER UPDATES

ADVERTISERS REQUIRED TO REFRAIN FROM ENGAGING IN GREENWASHING AND MISLEADING ENVIRONMENTAL CLAIMS

Central Consumer Protection Authority, *vide* its notification dated October 15, 2024, has issued the Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024 ("**Prevention of Greenwashing Guidelines**") with an aim to prevent greenwashing and misleading environmental claims, ensuring transparency and accuracy in advertisements related to environmental sustainability. The Prevention of Greenwashing Guidelines is in furtherance to the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022.

The Prevention of Greenwashing Guidelines are applicable to: (a) all environmental claims (*which means a representation regarding – any goods, manufacturing process, packaging, manner of usage or disposal, any service or the process involved in providing the service – suggesting environmentally friendly attributes aimed to convey a sense of environmental responsibility or eco-friendliness*); and (b) a manufacturer, service provider or trader whose goods, product or service is the subject of an advertisement, or to an advertising agency or endorser whose service is availed for the advertisement of such goods, product or service.

As per the Prevention of Greenwashing Guidelines, no person to whom the guidelines apply shall engage in greenwashing and misleading environmental claims and the provisions of the Consumer Protection Act, 2019 shall apply in case of contravention with the Prevention of Greenwashing Guidelines. 'Greenwashing' means: (a) any deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false or unsubstantiated environmental claims, or (b) use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful activities. However, greenwashing shall not include: (a) use of obvious hyperboles, puffery, (b) use of generic colour schemes or pictures, either not amounting to any deceptive or misleading practice, or (c) a company mission statement that is not specific to any product or service.

Usage of generic terms such as 'eco-friendly', 'organic', 'sustainable', etc. shall be allowed only when adequate, accurate and accessible qualifiers and substantiation and adequate disclosure (*in accordance with the Prevention of Greenwashing Guidelines*) is provided along with the advertisement. Further, while using technical terms like 'environmental impact assessment', 'greenhouse gas emissions', 'ecological footprint', advertisers shall have to use consumer-friendly language and explain the meaning or implications of such technical term. All environmental claims shall have to be supported by accessible verifiable evidence based on independent studies or third-party certifications.

For helping the advertisers and enabling them to comply with the Prevention of Greenwashing Guidelines, a guidance note is also annexed thereto.

To read the Prevention of Greenwashing Guidelines click here

EXEMPTION TO IT AND ITES ESTABLISHMENTS IN UTTAR PRADESH

Government of Uttar Pradesh, *vide* its notification dated September 26, 2024, has exempted information technology and information technology enabled services (IT and ITES) related establishments in the State of Uttar Pradesh from the applicability of Sections 6 and 7 of the Uttar Pradesh Dookan Aur Vanijya Adhisthan Adhiniyam, 1962 ("**UP S&E Act**") for 2 years. Section 6 of the UP S&E Act deals with the hours of work and overtime and Section 7 of the UP S&E Act deals with the intervals for rest and spread over of working hours in a day.

The aforesaid exemption is subject to the following conditions:

(a) The employer shall not require or allow an employee to work on any day for more than (i) 6 hours in case of a young person (*age between 14 years to 18 years*), and (ii) 12 hours in case of any other employee (*including rest interval*);

(b) The employee must get an interval of not less than 30 mins for rest after not more than 5 hours of continuous work, and the periods of work and intervals of rest of an employee shall not spread over more than 12 hours in one day;

(c) The employee shall not be made to work for more than 48 hours in a week. Work in excess of 48 hours in a given week shall be considered overtime and the employee shall be entitled for overtime wages. The overtime wages shall be wages at twice the ordinary rate (*where the ordinary rate is the basic wages plus all applicable allowances excluding the bonus*);

(d) Total number of hours of overtime work shall not exceed 125 hours in any quarter;

(e) The employee shall be entitled to a weekly off;

(f) Where an employee works on a public holiday, he shall be given a compensatory holiday in lieu of such work; and

(g) Adequate security and transport arrangements shall be made by the employer for women employees during night shifts.

To read the notification click here

MCA CLARIFIES THE APPLICABILITY OF THE E-ADJUDICATION RULES TO PENDING PROCEEDINGS

Ministry of Corporate Affairs ("**MCA**"), *vide* its notification dated August 5, 2024, had notified the Companies (Adjudication of Penalties) Amendment Rules, 2024 ("**E-Adjudication Rules**"), effective from September 16, 2024 ("**Effective Date**"), which, *inter alia,* stipulated that all proceedings of Adjudicating Officer and Regional Director under the Companies (Adjudication of Penalties) Rules,

2014 ("**Principal Adjudication Rules**") shall take place in electronic mode through the e-adjudication platform developed by the Central Government (*as covered in the previous edition of Legalaxy*).

MCA, *vide* its notification dated October 9, 2024, has notified the Companies (Adjudication of Penalties) Second Amendment Rules, 2024, thereby further amending the Principal Adjudication Rules. A proviso has been added under Rule 3A(1) of the Principal Adjudication Rules which provides that the proceedings pending before the Adjudicating Officer or Regional Director on the Effective Date shall continue as per the Principal Adjudication Rules existing prior to the Effective Date. Therefore, it is clarified that the E-Adjudication Rules will not be applicable retrospectively and the proceedings pending on the Effective Date would be govern by the Principal Adjudication Rules as existing prior to the Effective Date.

To read the notification click here

BIOLOGICAL DIVERSITY RULES, 2024 – NOTIFIED

Ministry of Environment, Forest, and Climate Change, *vide* its notification dated October 22, 2024, has notified the Biological Diversity Rules, 2024 ("**Biodiversity Rules**"), thereby superseding the Biological Diversity Rules, 2004. The Biodiversity Rules shall come into force on expiry of 60 days from the date of its notification.

Following are certain salient features of the Biodiversity Rules:

(a) The National Biodiversity Authority ("**Authority**") shall be responsible for administering the national biodiversity fund, providing technical and legal advice, clarifications and guidance to the State Biodiversity Boards or Union Territory Biodiversity Councils, etc;

(b) The Authority shall, after conducting enquiry, take steps to restrict the access to biological resources and knowledge associated with biological resources for reasons set out in the Biodiversity Rules;

(c) Specific approval is required in the following cases, the procedures for which have been laid down in the Biodiversity Rules:

  (i) for access to biological resources and knowledge associated thereto;
  (ii) for sharing or transferring results of research to persons covered under Section 3(2) of the Biological Diversity Act, 2002 ("**Biodiversity Act**");
  (iii) for registration and obtaining prior approval from the Authority before grant of intellectual property rights; and
  (iv) for conducting non-commercial research or research for emergency purposes outside India by Indian researcher or institution.

(d) Where a person referred to in Section 7 of the Biodiversity Act seeks to claim an exemption for accessing cultivated medicinal plants, the procedure has been laid down in Rule 19 of the Biodiversity Rules. Based on the application, a certificate of origin for cultivated medicinal plants may be issued;

(e) The Biodiversity Rules also provide the grounds on which access or approval granted to a person may be revoked; and

(f) The Biodiversity Rules also provide the manner of inquiry by the adjudicating officer in case of contravention of the provisions under the Biodiversity Act, and factors to be considered by the adjudication officer for determining the quantum of penalty for such contraventions.

To read the notification click here

Contributors:

Krishna Kishore
Partner

Yatin Narang
Partner

Navya Shukla
Associate

Saksham Kumar
Associate

Neel Mehta
Associate

Sakshi Solanki
Associate

Ishita Jha
Associate

Prerna Mayea
Associate

We hope you like our publication. We look forward to your suggestions. Please feel free to contact us at mumbai@vaishlaw.com.

VAISH ASSOCIATES ADVOCATES ESTD. 1971

Corporate, Tax and Business Advisory Law Firm

DELHI

1st, 9th, 11th Floor,
Mohan Dev Building, 13, Tolstoy Marg, New Delhi, 110001 (India)

+91-11-42492525
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre,
Dr. S.S. Rao Road, Parel,
Mumbai, 400012 (India)

+91 22 42134101
mumbai@vaishlaw.com

BENGALURU

105 -106, Raheja Chambers,
#12, Museum Road,
Bengaluru, 560001 (India)

+91 80 40903588/89
bangalore@vaishlaw.com