

About Lexport

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients. The core areas of the firm's practice are *inter alia* Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights. The firm also provides Transaction, Regulatory and Compliance Services. Our brief profile can be seen at our website www.lexport.in.

Lexport Legal Team

Srinivas Kotni
Rajiv Sawhney
Raj Latha Kotni
Sandeep Chatterjee
Urvashi Kalra
Akshay Kumar
Anuraag Mehta
Shantam Gorawara
Dimple Saraswat
Jatin Kalwani
Nupur Gupta
Yashasvi Maleyvar
Anirudh Ramanathan

IT Team

Srinivas Boyina
Hanuman Berwa

MONTHLY NEWSLETTER

SEPTEMBER 2020

We bring you a concise analysis of important developments, publications, judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.



IN THIS ISSUE:

- 1. RBI & FEMA**
- 2. Foreign Trade**
- 3. Corporate**
- 4. Securities**
- 5. Competition**
- 6. Indirect Taxes**
 - a. Customs**
 - B. GST**
- 7. Intellectual Property Rights**
- 8. Environment**

Perceiving the significance of these updates and the struggle in keeping track of the same, we have prepared this comprehensive newsletter for quick reference of the changes brought in by the proactive Regulatory authorities.

RBI & FEMA

1. SIX STATE RUN BANKS EXCLUDED FROM SECOND SCHEDULE OF RBI ACT, 1934



- Syndicate Bank, Oriental Bank of Commerce, United Bank of India, Andhra Bank, Corporation Bank and Allahabad Bank have ceased to carry on banking operations w.e.f. April 01, 2020 since they were merged with Canara Bank, Punjab National Bank, Union Bank of India and Indian Bank. Accordingly, these banks have been removed from the Second Schedule of the Reserve Bank of India Act, 1934.

(Source: RBI Notifications RBI/2020-21/44 - 47 dated 30.09.2020)

2. INTRODUCTION OF POSITIVE PAY SYSTEM FOR CHEQUE TRUNCATION SYSTEM [“CTS”]



- The Positive Pay System is a process of reconfirming key details of large value cheques (Rs. 50,000 and above). The issuer of the cheque submits certain details of that cheque electronically to the drawee bank, details of which are cross checked with the presented cheque by CTS.
- The said system shall be implemented w.e.f. January 01, 2021.

(Source: RBI Notification RBI/2020-21/41 dated 25.09.2020)

3. CESSATION OF ADITYA BIRLA IDEA PAYMENTS BANK AND WESTPAC BANKING CORPORATION AS A “BANKING COMPANY” UNDER THE BANKING REGULATION ACT, 1949

- “Aditya Birla Idea Payments Bank Limited” and “Westpac Banking Corporation” have ceased to be a banking company within the meaning of the Banking Regulation Act, 1949. *(Source: Notification RBI / 2020-21 / 31 - 32 dated 03.09.2020)*

FOREIGN TRADE

1. AMENDMENT TO PARA 2.54 OF THE HANDBOOK OF PROCEDURES

- Para 2.54(d)(v)(ii) of the Foreign Trade Policy- Handbook of Procedures (2015-20) has been amended and the deadline to install and operationalise Radiation Portal Monitors and Container Scanners in designated sea ports has been extended up to December 31, 2020.

(Source: DGFT Public Notice No. 21/2015-2020 dated 30.09.2020)

2. INSERTION OF POLICY CONDITION REGARDING IMPORT UNDER ALL HS CODES IN CHAPTERS 72, 73 AND 86 OF ITC (HS), 2017 TO REQUIRE COMPULSORY REGISTRATION UNDER ‘SIMS’

- New policy conditions have been added as in Chapters 72, 73 and 86 of ITC(HS), 2017, Schedule – I (Import Policy) wherein import under the aforesaid Chapters shall require compulsory registration under the Steel

September 2020

Import Monitoring System (SIMS). Bills of Entry issued on or after October 16, 2020 shall compulsorily require registration under SIMS.



(Source: DGFT Notification No. 33/2015-2020 and Public Notice No. 19/2015-2020 dated 28.09.2020)

3. INSERTION OF POLICY CONDITION IN CHAPTERS 85 AND 94 OF ITC (HS) 2017, SCHEDULE - I (IMPORT POLICY)

- Policy Condition No. 7 in Chapter 85 and Condition no. 1 in Chapter 94 of ITC(HS) 2017 Schedule - 1 (Import Policy) have been added, wherein LED products and AC or DC supplied control gears for LED modules as notified under the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 will be randomly picked-up and sent to BIS recognised labs for testing of parameters. If the testing fails, the consignment will either be sent back or destroyed at the cost of the importer.

(Source: DGFT Notification No. 32 / 2015-2020 dated 17.09.2020)

4. EXPORT OF ONIONS PROHIBITED



- Export of all types of Onions had been prohibited. However, export of Bangalore Rose Onions and Krishnapuram Onions up to 10,000 MT has been allowed through Chennai Port subject to certain additional conditions imposed in the Notification. *(Source: DGFT Notification No. 31/2015-2020 dated 14.09.2020)*

5. CEILING / CAP ON MEIS BENEFITS AVAILABLE TO EXPORTERS ON EXPORTS MADE FROM 01.09.2020 TO 31.12.2020

- The total reward which may be granted to an Import Export Code (IEC) holder under the Merchandise Exports from India Scheme (MEIS) shall not exceed Rs. 2 crores per IEC on exports made during the period from 01.09.2020 to 31.12.2020 [period based on Let Export Order (LEO) date of shipping bills.]
- Any IEC holder who has not made any export with LEO date during the said period or any new IEC obtained on or after 01.09.2020 will not be eligible to claim any benefit under the MEIS for exports made w.e.f. 01.09.2020. *(Source: DGFT Notification No. 30/2015-2020 dated 01.09.2020)*

CORPORATE

1. EXTENSION OF TIME FOR COMPANY FRESH START SCHEME, 2020 (CFSS)



- The Ministry of Corporate Affairs ["MCA"] has extended the time limit for Company Fresh Start Scheme, 2020 ["CFSS 2020"] till December 31, 2020. CFSS 2020 has given relaxation to Companies to file certain delayed e-forms without paying any additional delayed filing fees. This Amnesty Scheme was introduced to enable companies to start Fresh as compliant companies.
(Source: MCA General Circular No. 30/2020 dated 28.09.2020)

2. EXTENSION OF TIME OF SCHEME FOR RELAXATION OF TIME FOR FILING FORMS RELATED TO CREATION OR MODIFICATION OF CHARGES

- MCA has extended time limit of Scheme of relaxation of time for filing forms related to creation or modification of charges till December 31, 2020.
(Source: MCA General Circular No. 32/2020 dated 28.09.2020)

3. EXTENSION OF TIME FOR CONVENING EGM THROUGH VC/OAVM TILL DECEMBER 31, 2020



- MCA has extended the timeline for convening Extra Ordinary General Meeting by companies of its members through Video Conferencing (VC) or Other Audio Visual Means (OAVM) or transacting items through Postal Ballot, without being physically present upto December 31, 2020.
(Source: MCA General Circular No. 33/2020 dated 28.09.2020)

4. EXTENSION OF TIME FOR CREATION OF DEPOSIT REPAYMENT RESERVE AND TO INVEST OR DEPOSIT AMOUNT OF DEBENTURES

- The time limit has been extended till December 31, 2020 for the following:
 - Requirement to create the Deposit Repayment Reserve of 20% of deposits maturing during the financial year 2020-21.
 - Requirement to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits.*(Source: MCA General Circular No. 34/2020 dated 29.09.2020)*

5. COMPANIES AMENDMENT ACT, 2020 ("CAA 2020") NOTIFIED

- The Companies Amendment Act, 2020 ["CAA 2020"] has been notified which *inter alia*, majorly consists of the following:
 - Decriminalization of certain offences under the Companies Act, 2013;
 - Empowerment of the Central Government to exclude, in consultation with the SEBI, certain class of companies from the definition of "listed company", mainly for listing of debt securities;
 - Allowing payment of adequate remuneration to Non-executive Directors and Independent Directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases.

(Source: Act No. 29 of 2020 dated 28.09.2020)

6. TIME LIMIT FOR INCLUSION OF NAME OF INDEPENDENT DIRECTORS IN DATA BANK EXTENDED

- MCA has extended the time limit for inclusion of name of Independent Directors in data bank of Independent Directors from "ten months" to "thirteen months" i.e. till December 31, 2020.

(Source: Notification G.S.R. 589(E) dated 28.09.2020)

7. COMPANIES (MEETINGS OF BOARD AND ITS POWERS) THIRD AMENDMENT RULES, 2020

- MCA has allowed the Companies to pass certain matters *viz.*, approval of the annual financial statements, approval of board's report, approval of prospectus, audit committee meetings etc., through video

conferencing or other audio visual means till December 31, 2020.



(Source: Notification G.S.R. 590(E) dated 28.09.2020)

8. COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2020

- MCA has notified the Companies (Acceptance of Deposits) Amendment Rules, 2020 to amend Rule 2(1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014.
- The term 'deposits', *inter alia*, does not include an amount of Rs 25 lakh or more received by a start-up company, by way of a convertible note in a single tranche, from a person. Such convertible note must be convertible into equity shares or repayable within a period not exceeding ten years from the date of issue.

(Source: MCA Notification No. GSR 548 (E) dated 07.09.2020)

9. GENERAL ORDER FOR EXTENSION OF TIME TO HOLD AGM FOR FY 2019-20

- The Registrar of Companies have extended the time to hold Annual General Meeting ["AGM"], other than the first AGM, for the financial year ended on 31.03.2020 by a period of 3 months from the due date by which the AGM ought to have been held in

accordance with the provisions of section 96 of the Companies Act, 2013.

(Source: MCA Press Release No. 1652485 dated 08.09.2020)

10. EXTENSION OF THE DUE DATE FOR FILING OF FORM CRA-4



**DUE DATE EXTENDED OF
CRA-4 FORM**



- MCA has extended the due date for filing of Form CRA-4 (form for filing of cost audit report) for the financial year 2019-20 under the Companies Act 2013.
- The cost auditor is allowed to submit the cost audit report for the financial year 2019-20 by November 30, 2020 which shall not be considered as a violation of rule 6(5) of Companies (Cost Records and Audit) Rules, 2014.

(Source: MCA General Circular No. 29/2020 dated 10.09.2020)

11. CASE LAW: SAGUFA AHMED & ORS. V. UPPER ASSAM PLYWOOD PRODUCTS PVT. LTD. & ORS.

- **Facts of the case:** The appellants filed an appeal before the National Company Law Appellate Tribunal ["NCLAT"] along with an application for condonation of delay. By an order dated 04.08.2020, NCLAT dismissed the application for condonation of delay on the ground that NCLAT has no power to condone the delay beyond a period of 45 days. Accordingly, the appellants filed the present appeal before the Hon'ble Supreme Court
- **Judgement:** The Hon'ble Supreme Court pronounced that any period beyond the

prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be "prescribed period". Therefore, it was held that NCLAT is empowered to condone the delay up to the prescribed period of 45 days.

(Source: Civil Appeal Nos. 3007-3008 of 2020 dated 18.09.2020)

SECURITIES

1. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (FOURTH AMENDMENT) REGULATIONS, 2020

- The Securities and Exchange Board of India ["SEBI"] has notified the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2020 effective from September 28, 2020 to amend the provisions related to Right Issue such as certain cases in which minimum subscription criteria of 90% shall not be applicable, finance for the specific projects, etc.

(Source: SEBI Notification dated 28.09.2020)

2. RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS AND REVISION IN ISSUE SIZE

- In terms of Regulation 44(1), 85 and 140 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, a public issue/rights issue may be opened within twelve months from the date of issuance of observations by SEBI.

- The validity of the SEBI observations expiring between October 1, 2020 and March 31, 2021 has been extended upto March 31, 2021, subject to an undertaking from lead manager to the issue confirming compliance with the ICDR Regulations, 2018 while submitting the updated offer document to the Board.

(Source: SEBI Circular No.: SEBI / HO /CFD /DIL1 /CIR /P /2020 /188 dated 29.09.2020)

3. 31ST MARCH 2021 FIXED AS CUT-OFF DATE FOR RE-LODGMET OF TRANSFER DEEDS



TRANSFER SHARES IN DEMAT FORM

- SEBI has provided a cut-off date of 31st March, 2021 for re-lodging the transfer request rejected/ returned earlier. Physical transfers of specified securities were prohibited w.e.f. 1st April, 2019 by virtue of amendment made in Reg. 40 vide SEBI LODR (Fourth Amendment) Regulations, 2018. Subsequently, vide Press Release No. 12/2019 dated 27th March 2019, it was clarified that transfer deeds lodged prior to deadline of April 01, 2019 and rejected / returned due to deficiency in the documents may be re-lodged with requisite documents. However, there was no specific deadline provided for re-lodgment of such requests. Moreover, the Circular provides that on effecting the transfer of such physical shares, the transferee will be issued shares in De-Mat mode only.

(Source: SEBI Circular No.: SEBI / HO/MIRSD/RTAMB/CIR/P/2020/166 dated 07.09.2020)

4. INVESTOR GRIEVANCES REDRESSAL MECHANISM – STANDARD OPERATING PROCEDURE FOR NON-REDRESSAL OF GRIEVANCES BY LISTED COMPANIES

- SEBI has issued the manner of providing System Driven Disclosures ["SDD"] for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company ['entities'] under Regulation 7(2) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

- The SDD shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by the entities. The entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till March 31, 2021.

(Source: SEBI Circular No. SEBI /HO/ISD/ISD/CIR/P/2020/168 dated 09.09.2020)

5. SEBI ISSUES CONSULTATION PAPER ON PROPOSED AMENDMENTS IN SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS



September 2020

- SEBI has issued its Consultation Paper to solicit public comments on the proposed amendments in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- The category-wise intent for these amendments can be understood as follows:
 - proposed amendments to strengthen corporate governance practices and disclosure requirements;
 - proposed amendments to ease the compliance burden on listed entities;
 - proposed amendments to maintain consistency within the LODR Regulations, harmonize the LODR Regulations with the Companies Act, 2013.

(Source: SEBI Consultation Paper dated 11.09.2020)

COMPETITION

1. CCI DISMISSES CASE OF ABUSE OF DOMINANCE AGAINST AMAZON



- The Competition Commission of India ["CCI"] has dismissed a case of abuse of dominance alleged against Amazon Sellers Service by Dutch brand Beverly Hills Polo Club ["BHPC"].

- According to the order, BHPC, the informant, claimed that Amazon Sellers Service, through its dominance of the online fashion retail space and together with its affiliates, Amazon Exports Sales and Clouddtail India created unfair market conditions and barriers to entry to the relevant market in India.
- "It seems unlikely that the alleged conduct would have the alleged appreciable adverse effect on competition, to conclude a prima facie case of contravention," the CCI said directing closure of the case.
(Source: Economic Times article dated 11.09.2020)

INDIRECT TAXES

a. GST

1. CBIC EXTENDS THE TIME LIMIT FOR ISSUING INVOICES

- The Central Board of Indirect Taxes and Customs ["CBIC"] has extended the time limit till October 31, 2020 for compliance with section 31(7) of the Central Goods and Services Act, 2020 falling during the period from March 20, 2020 to October 30, 2020.
- Section 31(7) states that where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

(Source: Notification No. 66/2020 dated 21.09.2020)

September 2020

2. AMENDMENT IN CBIC NOTIFICATION TO FURTHER EXTEND TIMELINE FOR COMPLIANCES

CBIC has extended the timeline upto November 30, 2020 for completion or compliance of any action, by any authority or by any person, which falls during the period from the 20th March, 2020 to 29th November, 2020 under the provisions of the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the Union Territory Goods and Services Tax Act, 2017.

(Source: Notification No. 65/2020 dated 01.09.2020)

b. Customs

1. AMENDMENT MADE TO THE SEA CARGO MANIFEST AND TRANSSHIPMENT REGULATIONS, 2018

- Minor amendments made to the Sea Cargo Manifest and Transshipment Regulations, 2018.
- The bond to be furnished *vide* Regulation 3(1A) is now reduced to Rs. 5 Lakhs and the exemption afforded to AEO shall also extend to a Customs Broker.

(Source: Notification No. 94/2020-Customs (NT) dated 30.09.2020)

2. AMENDMENT TO BILL OF ENTRY (FORMS) REGULATIONS, 1976



- Several amendments have been made to the Bills of Entry (Forms) Regulations 2018, whereby Forms 1, 2 and 3 stand substituted. *(Source: Notification No. 90/2020-Customs (NT) dated 17.09.2020)*

INTELLECTUAL PROPERTY RIGHTS

1. DELHI HIGH COURT REFUSED TO ALLOW INDOCO REMEDIES LTD TO MANUFACTURE AND SELL ITS PRODUCT "APIXABID"



- **Case Law- Indoco Remedies Ltd vs Bristol Myers Squibb Holdings:**
M/s Indoco Remedies Ltd. ("Appellants") filed an appeal before the Hon'ble Delhi High Court asking for permission to manufacture and sell its product "APIXABID".
- **Facts of the case:** The Appellants had infringed upon a registered patent of the respondent. The Appellants stated that the instant patent product APIXABID was in shortage during the COVID-19 pandemic situation and was much cheaper than the generic Apixaban product of the respondent. Therefore, they did not wait for a grant of Compulsory Licence due to its lengthy process.
- **Judgement:** The Hon'ble Delhi High Court observed that the instant product was not in

September 2020

any shortage during the pandemic and the respondent was not involved in predatory pricing. The appellant's claims in the appeal were unfounded.

(Source: Del. HC CM Appl. 16257/2020 in FAO (OS) (COMM) 3/2020 and CM Appl. 602/2020 dated 18.09.2020)

ENVIRONMENT

1. CPCB ISSUES SOP FOR ISSUANCE OF CERTIFICATE TO MANUFACTURERS/SELLERS OF COMPOSTABLE PLASTIC CARRY BAGS



- The Central Pollution Control Board ["CPCB"] has revised Standard Operating Procedure ["SOP"] for issuing certificate to manufacturers/sellers of compostable plastic carry bags or products under Plastic Waste Management (PWM) Rules, 2016.
- Application shall be made to CPCB to manufacture/sale compostable plastic carry bags in Form-A (Manufacturer) and Form-B (Seller).

(Source: CPCB Notification dated 10.09.2020)

Disclaimer:

The information contained in this Newsletter is for general purposes only and Lexport is not, by means of this newsletter, rendering legal, tax, accounting, business, financial investment or any other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Lexport shall not be responsible for any loss sustained by any person who relies on this newsletter.

As used in this document, "Lexport" means Lexport - Advocates and Legal Consultants. Please see www.lexport.in for a detailed description about Lexport and services being offered by it.