

## 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](http://www.lexport.in).

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# MONTHLY NEWSLETTER

## OCTOBER 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.**



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**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. SCHEME FOR GRANT OF EX-GRATIA PAYMENT OF DIFFERENCE BETWEEN COMPOUND INTEREST AND SIMPLE INTEREST FOR SIX MONTHS TO BORROWERS IN SPECIFIED LOAN ACCOUNTS



The central government has announced a scheme of ex-gratia payment of difference between compound interest and simple interest for six months (01.03.2020 to 31.08.2020) for borrowers of certain classes of loans such as MSME loans, educational loans, housing loans, consumer durable loans, credit card dues, auto loans etc., and which do not exceed the sanctioned limit of Rs. 2 crores, subject to certain other conditions.

This follows the judgment of a three-judge division bench of the Hon'ble Supreme Court of India in *Gajendra Sharma v. Union of India & Anr.*, Writ Petition (Civil) No. 825 of 2019.

*(Source: RBI Notification No. RBI / 2020-21 / 61 dated 26.10.2020)*

### 2. STREAMLINING QR CODE INFRASTRUCTURE FOR DIGITAL PAYMENT TRANSACTIONS

Upon recommendations of the committee constituted by the Reserve Bank of India ("RBI") for review of current system of Quick Response ("QR") Codes in India, RBI has decided to continue operation of two interoperable QR Codes in existence, viz., UPI QR and Bharat QR, and has directed Payment System Operators (PSOs) that still use proprietary QRs to

migrate to an interoperable QR by 31.03.2022 and has also directed them to not launch any new proprietary QR Codes.

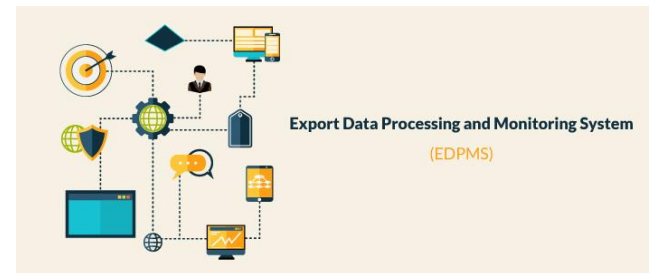
*(Source: RBI Notification No. RBI / 2020- 21 / 59 dated 22.10.2020)*

### 3. FRAMEWORK OF RECOGNITION OF SELF-REGULATORY ORGANISATION FOR PAYMENT SYSTEM OPERATORS

To promote industry self-governance, the RBI has introduced a framework for Self-Regulatory Organisations (SROs) for Payment System Operators (PSOs) (Both Bank and Non-Bank).

*(Source: RBI Notification No. RBI / 2020-21 / 58 dated 22.10.2020)*

### 4. EXPORT DATA PROCESSING AND MONITORING SYSTEM (EDPMS) MODULE FOR 'CAUTION/ DECAUTION LISTING OF EXPORTERS' – REVIEW



The RBI has revised the Module for 'Caution / De-caution Listing of Exporters' in the EDPMS in order to make the system more exporter friendly and equitable.

Under the revised procedure, an exporter would be caution-listed by the Reserve Bank based on the recommendations of the AD bank concerned, depending upon the exporters track record with the AD bank and investigative agencies.

*(Source: RBI Notification No. RBI / 2020-21 / 50 dated 09.10.2020)*

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## FOREIGN TRADE

### 1. IMPORT OF POTATOES FROM BHUTAN IS NOW PERMITTED FREELY WITHOUT ANY LICENCE UP TO 31<sup>ST</sup> JANUARY 2021



Import of potatoes (both fresh and chilled) from the Kingdom of Bhutan is now permitted freely without licence up to 31<sup>st</sup> January 2021 by way of Insertion of condition in import policy for items Chapter 7 of ITC (HS), 2017 Schedule-1 (Import Policy).

*(Source: DGFT Notification No. 44/ 2015-20 dated 30.10.2020)*

### 2. EXPORT OF ONION SEEDS IS NOW PROHIBITED

Amendment has been made to Chapter 12 of ITC (HS), wherein the export of Onion Seeds, which were earlier restricted, are now prohibited, with immediate effect.

*(Source: DGFT Notification No. 43/2015-2020 dated 29.10.2020)*

### 3. EXPORT POLICY OF NITRILE / NBR GLOVES REVISED TO 'RESTRICTED'



Export policy of Nitrile / NBR Gloves exported under ITC(HS) Code 392690 ex 4015 is revised from "Prohibited" to "Restricted".

*(Source: DGFT Notification No. 42/ 2015-2020 dated 22.10.2020)*

### 4. EXPORT POLICY OF ALCOHOL BASED SANITIZERS REVISED TO 'FREE'

The export of Alcohol based Hand Sanitizers in containers with dispenser pumps is now "Free" for export, making the export of Alcohol based Hand Sanitizers in any form / packaging freely exportable with immediate effect.

*(Source: DGFT Notification No. 40/ 2015-2020 dated 15.10.2020)*

### 5. IMPORT POLICY OF AIR CONDITIONERS WITH REFRIGERANTS REVISED TO 'PROHIBITED'



Import of Air Conditioners with refrigerants under HS Codes 84151010 (Split System) and 84151090 (Other) is amended from 'Free' to 'Prohibited'.

*(Source: DGFT Notification No. 41 / 2015-2020 dated 15.10.2020)*

### 6. EXPORT OF ONIONS PROHIBITED

Export of all types of Onions were prohibited, however, this notification has allowed for export of Bangalore Rose Onions and Krishnapuram Onions, up to 10,000 MT through Chennai Port only.

*(Source: DGFT Notification No. 39/2015-2020 dated 09.10.2020)*

### 7. EXPORT POLICY OF PERSONAL PROTECTION EQUIPMENTS / MASKS NOW 'FREE'



The Export Policy of N-95 / FFP-2 masks or its equivalent is amended from "Restricted" to "Free" category, making all types of masks freely exportable.



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*(Source: DGFT Notification No. 36 / 2015-2020 dated 06.10.2020)*

## 8. IMPORT OF “TYRES” UNDER DFIA SCHEME NOT ALLOWED

Import of ‘tyres’ under the Duty-Free Import Authorisation (DFIA) Scheme has been disallowed. *Source: DGFT Notification No. 38/ 2015-2020 dated 06.10.2020)*

## 9. STEEL MANUFACTURERS SUPPLYING STEEL AGAINST ADVANCE AUTHORISATION THROUGH THEIR SERVICE CENTRES / DISTRIBUTORS ETC., ELIGIBLE TO CLAIM DUTY DRAWBACK

Steel manufacturers can claim Duty Drawback on steel supplied through their service centres / Distributors / Dealers / Stock Yards, against the Advance Authorisation Scheme. *(Source: DGFT Notification No. 35 / 2015-2020 dated 01.10.2020)*

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### CORPORATE

## 1. MCA RELAXES MINIMUM RESIDENCY REQUIREMENTS FOR PARTNERS AND DIRECTORS

The Ministry of Corporate Affairs (“MCA”) has provided that the requirement for at least one director or partner to stay in India for at least 182 days a year has been relaxed for the year 2020. *(Source: MCA General Circular No. 36/2020 dated 20.10.2020)*

## 2. THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2020



MCA has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 to insert a new proviso after 2nd proviso to Rule 14(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year. *(Source: MCA Gazette Notification G.S.R. 642(E) dated 16.10.2020)*

## 3. CASE LAW: RAVINDRA SINGH CHAUDHARY V. UNION OF INDIA

The Hon’ble Rajasthan High Court has dismissed a writ petition PIL filed against a Mobile Fantasy Sports App, reiterating the judgement of the Hon’ble Supreme Court of India that such Real Money Gaming Platforms are purely a game of skill, and hence do not fall under the purview of gambling laws.

*(Source: D. B. Civil Writ Petition No. 20779/2019 of the Hon’ble Rajasthan High Court at Jaipur dated 16.10.2020)*

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### SECURITIES

## 1. SEBI MUTUAL FUNDS (SECOND AMENDMENT) REGULATIONS, 2020

The provisions governing Asset Management Companies (AMC) have been amended to provide that an AMC may become a proprietary trading member for carrying out trades in the debt segment of the recognized stock exchanges, on behalf of its mutual fund schemes and may also become a self-clearing member of the recognized clearing corporations to clear and settle trades in the debt segment on behalf of its mutual fund schemes.

*(Source: SEBI Gazette Notification No. SEBI / LAD - NRO / GN / 2020 / 39 dated 29.10.2020)*

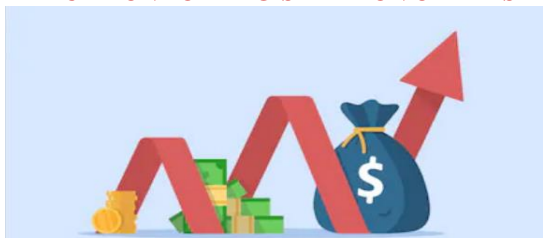
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## 2. SEBI BRINGS IN NEW FRAMEWORK FOR RECOVERY EXPENSES FUND

SEBI has created a 'Recovery Expense Fund' in order to enable the Debenture Trustee(s) to take prompt action for enforcement of security in case of 'default' in listed debt securities and recovery expense fund shall be used in the manner as decided in the meeting of the holders of debt securities.

*(Source: SEBI Circular No. SEBI / HO / MIRSD / CRADT / CIR / P / 2020 / 207 dated 22.10.2020)*

## 3. SEBI ISSUES FRAMEWORK FOR PROCESSING OF AN APPLICATION FOR REGISTRATION OF AIFs



SEBI has issued a framework for processing applications for registration of Alternative Investment Funds (AIF). The applications wherein the Investment Committee proposed to be constituted to approve investment decisions of AIF includes external members who are 'resident Indian citizens', shall be duly processed. However, where external members are Non-Resident Indians, then those will be considered only after receiving clarification from the government and the RBI.

*(Source: SEBI Circular No. SEBI / HO / IMD / DF6 / CIR / P / 2020 / 209 dated 22.10.2020)*

## 4. SEBI (AIF) AMENDMENT REGULATIONS, 2020

SEBI has issued the Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2020 on 19th October, 2020. The amendment has prescribed several qualifications to the key investment team of the Manager of Alternative Investment Fund.

*(Source: Gazette Notification No. SEBI / LAD-NRO / GN / 2020/37 dated 19.10.2020)*

## 5. SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) (SECOND AMENDMENT) REGULATIONS, 2020



Explanation to Regulation 4 has been inserted, which deals with the prohibition of manipulative, fraudulent and unfair trade practices to provide that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

*(Source: Gazette notification No. SEBI / LAD-NRO / GN / 2020 / 36 dated 19.10.2020)*

## 6. SEBI CAUTIONS INVESTORS AGAINST UNSOLICITED INVESTMENT TIPS

SEBI has advised investors not to rely on unsolicited stock tips/investment advice that is circulated through bulk SMS, websites, and social media platforms and the investors shall exercise appropriate due diligence before dealing in the securities market. Such messages are sent to investors and general public usually recommending dealing in specific stocks of listed companies, indicating target prices and giving fraudulent, misleading information relating to listed companies, inducing them to deal in these stocks.

*(Source: SEBI Press Release No. 53 / 2020 dated 14.10.2020)*

## 7. DHFL v. SEBI



The Securities Appellate Tribunal has quashed the Rs. 20 Lakh fine on Dewan Housing and Finance Limited and held that the Adjudicating Officer had improperly exercised jurisdiction under Section 14 of the Insolvency and Bankruptcy Code, 2016 by considering the report of the insolvency committee to proceed under SEBI law inspite of a moratorium having come into effect.

(Source: SAT, Mumbai Appeal No. 206 of 2020 dated 09.10.2020)

## 8. SEBI TIGHTENS RULES ON INTER-SCHEME TRANSFERS IN MUTUAL FUND SCHEMES



SEBI has tightened rules on inter-scheme transfers (ISTs) in mutual fund schemes. The regulator said inter-scheme transfers for managing liquidity should only be taken after all other avenues including using cash, market borrowing and selling securities in the market, for raising liquidity have been attempted and exhausted.

(Source: SEBI Circular No. SEBI / HO / IMD / DF4 / CIR / P / 2020 / 202 dated 08.10.2020)

## 9. SEBI DIRECTS MUTUAL FUNDS TO ASSIGN RISK LABEL TO EVERY SCHEME

The Risk Level of a scheme will be depicted by “Risk-o-meter” and it shall have six levels of risk for mutual fund schemes i.e. Low Risk, Low to Moderate Risk, Moderate Risk, Moderately High Risk, High Risk and Very High Risk. Based on the scheme characteristics, Mutual Funds shall assign risk level for schemes at the time of launch of scheme/New Fund Offer.

(Source: SEBI Circular No. SEB I / HO / IMD / DF3 / CIR / P / 2020 / 197 dated 05.10.2020)

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## COMPETITION

### 1. CASE LAW: XYZ v. HINDALCO INDUSTRIES LTD. & ANR.



The informant XYZ [name withdrawn] had alleged cartelisation between Hindalco Industries Ltd. and Vedanta Limited, two of the largest manufacturers of Copper products in India. The informant alleged that the Opposite Parties (OPs) *inter alia* are engaged in bid rigging / collusive bidding in contravention to the provisions of the Competition Act 2002.

The commission in its judgement noted that the informant had failed to produce substantive evidence in support of their allegations against the OPs and held that the commission found no case of contravention of the provisions of the Act.

(Source: CCI case no. 18 of 2020 dated 18.10.2020)

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## INDIRECT TAXES

### A. GST

#### 1. CGST (TWELFTH AMENDMENT) RULES, 2020



Amendment made to Rule 67A whereby a registered person who has to furnish nil returns in Form GSTR-3C, nil details of outward supplies in Form GSTR-1 or nil statement in Form GSTR CMP-08 for a tax period can do so by SMS from their Registered Mobile Number and One-Time Password.

*(Source: CBIC Notification No. 79 / 2020 – Central Tax dated 15.10.2020)*

#### 2. CBIC NOTIFIES THE NUMBER OF HSN DIGITS REQUIRED ON TAX INVOICE

If the aggregate turnover in the preceding financial year is up to five crore rupees, then 4 digits of the HSN Code shall be put on the tax invoice. If the aggregate turnover in the preceding financial year exceeds five crore rupees, then 6 digits of the HSN Code shall be put on the tax invoice, provided if sale is made to unregistered persons and aggregate turnover in the preceding financial year is up to five crore rupees, then HSN Code may not be specified. This notification shall come into effect from 01.04.2021.

*(Source: CBIC Notification No. 78 / 2020 – Central Tax dated 15.10.2020 and Notification No. 06 / 2020 – Integrated Tax dated 15.10.2020)*

#### 3. ANNUAL RETURN FILING UNDER CGST ACT OPTIONAL FOR SMALL TAXPAYERS

Filing of annual return under section 44 (1) of CGST Act for F.Y. 2019-20 has been made optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date.

*(Source: CBIC Notification Number 77 / 2020 – Central Tax dated 15.10.2020)*

#### 4. SPECIAL PROCEDURE FOR TAXPAYERS FOR ISSUANCE OF E-INVOICE

A special procedure for taxpayers for issuance of e-Invoices in the period 01.10.2020 - 31.10.2020 has been notified.

*(Source: CBIC Notification No. 73 / 2020 – Central Tax dated 01.10.2020)*

### B. Customs

#### 1. THE SPECIAL ECONOMIC ZONE (AMENDMENT) RULES, 2020



The amendment provides that in case of supplies from Domestic Tariff Area to foreign suppliers in Free Trade and Warehousing Zone, the drawback or any other similar benefit Scheme shall be admissible where the payments are made in foreign currency by the foreign supplier to Domestic Tariff Area.

*(Source: Gazette Notification No. G.S.R. 678(E) dated 23.10.2020)*

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## 2. EXEMPTION TO CERTAIN MEDICINES UNDER PATIENT ASSISTANCE PROGRAMMES (PAPS)

Amendment has been made in Notification No. 16/2017-Customs dated 20<sup>th</sup> April 2017, which provides exemption to specified medicines under certain Patient Assistance Programmes (PAPs) run by pharmaceutical companies.

(Source: *CBIC Notification No. 41/2020 – Cus dated 29.10.2020*)

## 3. BCD ON POTATO IMPORTS ON TARIFF RATE QUOTA (TRQ)

The Notification seeks to prescribe concessional Basic Customs Duty (BCD) rate of 10% on potato imports with the prescribed quota (TRQ) till the 31st January 2021.

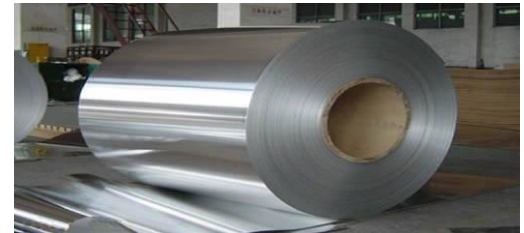
(Source: *CBIC Notification No. 40/2020 – Cus dated 28.10.2020*)

## 4. ANTI-DUMPING DUTIES LEVIED ON CERTAIN IMPORTS FROM CHINA, PR AND OTHER COUNTRIES

- Anti-Dumping Duty (ADD) shall be levied on import of Fluoroelastomers from China, PR, extended up to 27.11.2020.
- ADD shall be levied on Yarns of Polyester from China, PR and Thailand up to 30.11.2020.
- ADD shall be levied on “Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles” from China PR, extended up to 30.11.2020
- ADD shall be levied on “Plain Medium Density Fibre Board of thickness 6mm and above” from China, PR, Sri Lanka, Malaysia and Thailand extended up to 20.01.2021.

(Source: *CBIC Notification No.s 30, 31, 32, 33 / 2020 – Cus (ADD)*)

## 5. CVD IMPOSED ON FLAT ROLLED STAINLESS STEEL PRODUCTS FROM INDONESIA



Provisional countervailing duty shall be imposed on import of Flat rolled products of stainless steel, originating in, or exported from Indonesia.

(Source: *CBIC Notification No. 02/2020-Cus (CVD) dated 09.10.2020*)

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## INTELLECTUAL PROPERTY RIGHTS

### 1. CASE LAW: DELHIVERY PRIVATE LIMITED V. TREASURE VASE VENTURES PRIVATE LIMITED

# DELHIVERY

# v/s

# DELIVER-E™

In a blow to the petitioner, the Hon'ble Delhi High Court vacated an interim injunction effectively by permitting the Respondent to use the impugned trademark (“DELIVER-E”). In doing so, the Hon'ble court has held that the registered trademark of the Petitioner (“DELHIVERY”) is phonetically similar to the English word ‘delivery’ and hence is a generic mark, not eligible to avail any rights over such generic word.

(Source: *Delhi HC CS (COMM) 217/2020 dated 12.10.2020: MANU/DE/1862/2020*)



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## 2. CASE LAW: DOW AGROSCIENCES, LLC V. CONTROLLER OF PATENTS

The Hon'ble Intellectual Property Appellate Board has held that the legal requirement of filing 'proof of right' for a PCT National Phase application is met by filing of the declaration under Rule 4.17 (ii) of the PCT Regulations by the appellant.

(Source: IPAB Order OA / 63 / 2020 / PT / DEL dated 27.10.2020)

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## ENVIRONMENT

### 1. CPCB DIRECTS IMPLEMENTATION OF 'GUIDELINES FOR GOLD ASSAYING AND HALLMARKING CENTRES'



The CPCB has directed Jharkhand State Pollution Control Board for implementation of 'Guidelines for Gold Assaying and Hallmarking Centres' in compliance of NGT order dated 18.11.2019. Necessary action may be initiated, and timely compliance status shall be provided to CPCB.

(Source: CPCB Notification EZO / Tech / F-510 dated 22.10.2020)

### 2. THE HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) AMENDMENT RULES, 2020

The Ministry of Environment, Forest and Climate Change has published the Hazardous and Other Wastes (Management and Transboundary Movement) Amendment Rules, 2020, inviting

objections and suggestions from the public if any, before the expiry of the period of sixty days from the date on which copies of the Gazette containing the said notification were made available to the public.

(Source: MoE&FCC Notification No. G.S.R. 641(E) dated 09.10.2020)

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