

MONTHLY NEWSLETTER

NOVEMBER 2020

Dear Readers,

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

Our newsletter will cover updates from RBI, FEMA, Foreign Trade, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Trade & Indirect Taxes and Customs, Intellectual Property Laws, Environment Laws etc.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are 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 detailed profile can be seen at our website www.lexport.in.

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RBI & FEMA



(1) ESTABLISHMENT OF BRANCH OFFICE (BO) / LIAISON OFFICE (LO) / PROJECT OFFICE (PO) OR ANY OTHER PLACE OF BUSINESS IN INDIA BY FOREIGN LAW FIRMS

Foreign law firms or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession, as per the order of the Hon'ble Supreme Court of India. AD Category – I banks have been directed by the Reserve Bank of India ["RBI"] to not grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India.

(Source: RBI A.P. (DIR Series) Circular No. 07 dated 23.11.2020)

(2) MAINTENANCE OF ESCROW ACCOUNT WITH SCHEDULES COMMERCIAL BANK

An authorised Prepaid Payment Instruments ("PPI") Issuer or Payment Aggregators ("PA") are

required to maintain an escrow account with a scheduled commercial bank on an ongoing basis. With a view to diversify risk and address business continuity concerns, RBI has decided to allow one additional escrow account in a different scheduled commercial bank.

(Source: RBI Notification No. RBI/2020-21/68 dated 17.11.2020)

(3) FRAMEWORK OF REGULATION 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/2020-21/68 dated 17.11.2020)

(4) DISCONTINUATION OF RETURNS / REPORTS UNDER FEMA, 1999

With a view to improve the ease of doing business and reduce the cost of compliance, the existing forms and reports prescribed under FEMA, 1999 for Authorised Persons, were reviewed by the Reserve Bank. Accordingly, it has been decided to discontinue the 17 returns/reports as listed in the Annexure with immediate effect.

(Source: RBI Notification No. RBI/2020-21/66 dated 13.11.2020)

(5) CO-LENDING BY BANKS AND NBFCs TO PRIORITY SECTOR

RBI has revised the scheme on co-origination of loans by bank and NBFCs for lending to priority sectors (named as the Co-Lending Model or CLM), with the focus on improving the flow of credit to the unserved and underserved sectors of the economy and make funds available to the ultimate beneficiary at an affordable cost.

(Source: RBI Notification No. RBI/2020-21/63 dated 05.11.2020)

FOREIGN TRADE

(1) FACILITATION OF IMPORT OF PULSES BY FSSAI

FSSAI *vide* order has informed that importers may carry out advance filing of Bills of Entries in Food Import Clearance System of FSSAI for import of pulses through JNPT Mumbai, Chennai and Mundra Ports.

(Source: FSSAI Order dated 09.11.2020)

CORPORATE LAWS

(1) MINISTRY OF FINANCE NOTIFIES INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (PROCEDURE FOR AUTHORITY MEETINGS) REGULATIONS, 2020

The Ministry of Finance has published International Financial Services Centres Authority (Procedure for Authority Meetings) Regulations, 2020 which deals with the meetings of the authority, their quorum and the obligations of the members of IFSCs.

(Source: Ministry of Finance Gazette Notification 12.11.2020)

(2) MCA EXTENDS THE OPERATION OF THE LLP SETTLEMENT SCHEME, 2020

The date of applicability of defaulting LLP to file belated documents under the LLP Settlement Scheme, 2020 had been extended till 30th November 2020. If a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of the financial year but not later than 30th November 2020, the same shall not be deemed as non-compliance.

(Source: MCA General Circular No. 37/2020 dated 09.11.2020)

(3) THE RAJASTHAN ENTERPRISES SINGLE WINDOW ENABLING AND CLEARANCE (AMENDMENT) BILL, 2020

The State Government of Rajasthan has introduced the Rajasthan Enterprises Single Window Enabling and Clearance bill 2020 to amend the Rajasthan Enterprises Single Window Enabling and Clearance Act, 2011, in which the government shall establish and constitute the board of investment which shall consider, review, formulate and approve policies, programmes and schemes for promoting investment in the State in enterprises and infrastructure sector.

(Source: Bill No. 27 of 2020 of the State of Rajasthan dated 09.11.2020)

SECURITIES LAWS AND CAPITAL MARKETS



(1) CONSULTATIVE PAPER ON RE-CLASSIFICATION OF PROMOTER / PROMOTER GROUP ENTITIES AND DISCLOSURE OF PROMOTER GROUP ENTITIES IN THE SHAREHOLDING PATTERN

Securities and Exchange Board of India [“SEBI”] has decided to introduce the following, in addition to the already specified processes for payment for applications in public issue of debt securities through ASBA:

- i) Providing an option to retail investors to apply in public issues of debt securities through app / web-interface of Stock Exchange(s) with a facility to block funds through UPI mechanism for application value up to Rs. 2 Lakhs;
- ii) Permitting the UPI mechanism to block funds for application value up to Rs. 2 Lakhs submitted through intermediaries such as SCSBs, Registered

Stockbrokers, Registrar, Transfer agent and Depository Participants.

(Source: SEBI Consultative Paper dated 23.11.2020)

(2) CONSULTATION PAPER ON REVIEW OF SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009

SEBI has issued a Consultation paper on review of SEBI (Delisting of Equity Shares) Regulations, 2009 to address certain gaps in the Regulations such as obligation to disclose the intention to voluntarily delist the company to public is not cast on the promoter / acquirer and the said information is not disseminated to the public on immediate basis, thus leaving the scope for information asymmetry.

(Source: SEBI Consultative Paper dated 20.11.2020)

(3) REPORT ON DISCLOSURES PERTAINING TO ANALYST MEETS, INVESTOR MEETS AND CONFERENCE CALLS

SEBI has issued a Report on disclosures pertaining to analyst meets, investor meets and conference calls on the issue of information asymmetry between various classes of investors arising out of limited disclosures in respect of analyst meets / institutional investors meet / conference calls which was discussed by Primary Markets Advisory Committee (PMAC) in the meeting in July, 2020.

(Source: SEBI Report dated 20.11.2020)

(4) MONITORING AND DISCLOSURES BY DEBENTURE TRUSTEE(S)

SEBI has stated that the debenture trustee(s) shall undertake independent periodical assessment of the compliance with covenants or terms of the issue of listed debt securities including for 'security created'. Further, for the existing debt securities, listed entities and debenture trustee(s) shall enter into supplemental / amended debenture trust deed within 120 days from the date of this circular incorporating the changes in the debenture trust deed.

(Source: Circular No.: SEBI / HO / MIRSD / CRADT / CIR / P / 2020/230 dated 12.11.2020)

(5) Schemes of Arrangement by Listed Entities

SEBI has amended the SEBI Circular which has laid down the framework for Schemes of Arrangement by listed entities and relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957. The Circular amends the following:

- Report from Audit Committee on Valuation Report
- Report from Committee of Independent Directors
- Valuation Report
- Approval of Scheme by the shareholders.

(Source: Notification No. SEBI / HO / CFD / DIL1 / CIR / P / 2020 / 215 dated 03.11.2020)

COMPETITION LAWS



(1) CCI APPROVES RELIANCE – FUTURE GROUP DEAL

Amidst Amazon, Inc.'s objections, the Competition Commission of India [“CCI”] approved the acquisition of retail, wholesale, logistics and warehousing businesses of Future Group by Reliance Retail Ventures Ltd. and Reliance Retail and Fashion Lifestyle Ltd.

(Source: LiveLaw News Network, 20.11.2020, 06:27pm)

(2) CCI APPROVES INSURANCE BUSINESS OF BHARTI AXA BY ICICI

The entire general insurance business of Bharti AXA General Insurance Company Limited would be transferred by way of a demerger to ICICI Lombard General Insurance Company Limited.

(3) CCI APPROVES ACQUISITION OF 7.73% STAKE OF JIO PLATFORMS BY GOOGLE INTERNATIONAL

CCI approves acquisition of 7.73% equity share capital of Jio Platforms Limited, subsidiary of Reliance Industries Limited, by Google International LLC.

(4) CASE LAW: XYZ V. ALPHABET INC. & ORS

CCI has initiated a probe against Google for allegedly abusing its dominant position to force app makers to exclusively use its billing system for in-app purchases and for bundling the search giant's payments app with Android smartphones sold in the country.

(Source: Case No. 07 of 2020 of the Competition Commission of India)

INDIRECT TAXES AND CUSTOMS

I. GST



(1) WAIVER OF PENALTY FOR NON-COMPLIANCE TO GST INVOICE QR CODE PROVISIONS

The Central Board of Indirect Taxes and Customs ["CBIC"] has waived the amount of penalty payable by any registered person for non-

compliance of issuance of Dynamic Quick Response (QR) code to the recipient.

(Source: CBIC Notification No. 89/2020–Central Tax dated 29.11.2020)

(2) E-INVOICING FOR THE TAXPAYERS HAVING AGGREGATE TURNOVER EXCEEDING RS. 100 CR

CBIC has notified that the provisions of e-invoicing shall be applicable to registered persons having turnover exceeding 100 crore rupees instead of the current limit of 500 crore rupees.

(Source: CBIC Notification No. 88/2020–Central Tax dated 10.11.2020)

(3) EXTENSION OF THE DUE DATE FOR FURNISHING OF FORM ITC-04

CBIC has extended the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th November, 2020.

(Source: CBIC Notification No. 87/2020–Central Tax dated 10.11.2020)

(4) CENTRAL GOODS AND SERVICES TAX (THIRTEENTH AMENDMENT) RULES, 2020

All the registered persons required to furnish the details of outward supplies of goods or services or both, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner. The details of outward supplies furnished using the Invoice Furnishing Facility (IFF), for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

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

(5) DYNAMIC QUICK RESPONSE CODE BECOMES MANDATORY FOR ISSUANCE OF A B2C INVOICE

The Finance Department of NCT Delhi has notified that any registered person with aggregate turnover in a financial year exceeding 500 crore rupees shall have a Dynamic Quick Response Code to issue a B2C invoice.

(Source: CBIC Notification No. 14/2020–State Tax dated 04.11.2020)

II. CUSTOMS

(1) CBIC PRESCRIBES BCD RATE OF 27.5% ON CRUDE PALM OIL

Notification seeks to further amend notification No. 50/2017-Customs dated 30th June, 2017 so as to prescribe BCD rate of 27.5% on Crude Palm Oil.

(Source: CBIC Notification No. 43/2020-Cus dated 26.11.2020)

(2) CBIC PRESCRIBES 5% BCD ON SPECIFIED PARTS FOR MANUFACTURE OF OPEN CELL FOR LED/LCD TV PANELS SUBJECT TO END USER CONDITION

Notification seeks to further amend notification No. 50/2017-Customs dated 30th June, 2017 so as to prescribe 5% BCD on specified parts for manufacture of Open Cell for LED/LCD TV Panels subject to end user condition.

(Source: CBIC Notification No. 42/2020-Cus dated 11.11.2020)

(3) ANTI-DUMPING DUTY IMPOSED ON VEHICLE COMPONENTS ORIGINATING FROM CHINA, PR

Notification seeks to further amend notification No. 49/2015-Customs (ADD), dated 21st October, 2015 to extend the levy of ADD on imports of “Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles” originating in or exported from China PR, for a period upto and inclusive of the January 31, 2021.

(Source: CBIC Notification No. 41/2020-Cus (ADD) dated 27.11.2020)

(4) ANTI-DUMPING DUTY IMPOSED ON FLUOROELASTOMERS ORIGINATING FROM CHINA, PR

Notification seeks to impose Anti-Dumping duty on Fluoroelastomers (FKM) originating in or exported from China PR for a period of 5 years, in pursuance of sunset review final findings issued by DGTR.

(Source: CBIC Notification No. 40/2020-Cus (ADD) dated 27.11.2020)

(5) ANTI-DUMPING DUTY IMPOSED ON CARBON BLACK (FOR RUBBER APPLICATIONS) FROM CHINA, PR AND RUSSIA

Notification seeks to amend notification No. 54/2015-Customs (ADD), dated 18th November 2015 to extend the levy of ADD on imports of "Carbon Black used in rubber applications" originating in or exported from China PR and Russia, for a further period upto and inclusive of 31st December, 2020.

(Source: CBIC Notification No. 36/2020-Cus (ADD) dated 09.11.2020)



INTELLECTUAL PROPERTY RIGHTS

(1) PATENTS (2ND AMENDMENT) RULES, 2020

Where patent application is transferred from a natural person / small entity / start-up to an entity other than the above, the fee difference shall be paid by the latter entity. Furthermore, if a start-up

/ small entity, having filed an application as such, ceases to be a start-up / small entity, the difference in scale of fees need not be paid.

(Source: Gazette Notification of the Ministry of Commerce and Industry dated 04.11.2020)

(2) CASE LAW: TAISHO PHARMACEUTICAL LTD. V. ROHAN CHOPRA & ORS.

Controller of Patents granted a patent for the compound Luseogliflozin while dismissing four pre-grant oppositions, holding that the claims pertain to a new chemical entity rather than a mere discovery of a known substance.

(Source: Hearing dated 19.11.2020 in the matter of patent application number 6000 / DELNP / 2007)

(3) CASE LAW: M/S SUPER CASSETTES INDUSTRIES PVT. LTD. V. NANDINI C. KUMAR & ORS.

The movie 'Jhund' starring Amitabh Bachchan was stayed by the Telangana High Court, which was appealed in the Hon'ble Supreme Court by M/s Super Cassettes Industries Pvt. Ltd. (T-Series). The court gave a direction to dispose of the suit within 6 months and declined to lift the stay.

(Source: SLP dated 18.11.2020)

(4) CASE LAW: FACEBOOK, INC. V. NOUFEL MALOL

The Hon'ble Delhi High Court restrained the respondent from using the mark "FACEBAKE" for its products.

(Source: CS(COMM) 499/2020 of the High Court of Delhi dated 12.11.2020)

ENVIRONMENT LAWS

(1) GOVERNMENT OF PUNJAB PROVIDES AD-INTERIM PERMISSION FOR GROUNDWATER EXTRACTION

The Punjab Water Regulation and Development Authority has decided to provide ad-interim permissions for groundwater extraction to industrial and commercial units in the State under the draft guidelines pending their finalisation. The authority would grant ad-interim permission on the condition that the applicant shall comply with the conditions contained in the draft guidelines. The Applicant shall disclose the details regarding total water requirement, type of water meter required and the means of groundwater level monitoring.

(Source: Punjab Water Regulation and Development Authority Notification dated 17.11.2020)

(2) ASSAM PCB PROVIDES THE TIMELINE TO ISSUE CONSENT TO ESTABLISH UNDER THE POLLUTION CONTROL STATUTES AND AUTHORIZATIONS UNDER THE WASTE MANAGEMENT RULES.

The Assam Pollution Control Board has provided the procedure and timeline to obtain Consent to Establish under the pollution control statutes and authorizations under the waste management rules. The timeline to grant these authorizations shall start from the date of submission of completed application in the Boards online application website. The notification also provides appropriate authorities who shall grant the authorizations.

(Source: Assam Pollution Control Board Notification No. PCBA / LGL-41 / 2020 / ARTPS / 39 dated 12.11.2020)

[End of Newsletter]
