

MONTHLY NEWSLETTER

AUGUST 2021

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, Environmental 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) RBI ISSUES MASTER DIRECTION ON FINANCIAL STATEMENTS - PRESENTATION AND DISCLOSURES



The Reserve Bank of India (RBI) has issued the RBI (Financial Statements - Presentation and Disclosures) Directions, 2021. Its objective is to harmonize across the banking sector. The extant guidelines on the presentation of financial statements, Regulatory clarification on compliance with accounting standards have all current instructions on the same at one place for reference. These Directions shall be applicable to:

- all banking companies including foreign banks, Local Area Banks (LABs), Small Finance Banks, Payment Banks, corresponding new banks, RRBs and SBI as defined in Section 5 of the Banking Regulation Act, 1949.
- primary co-operative banks as defined under clause (ccv) of sub-section 1 of Section 56 of the Banking Regulation Act, 1949.

(Source: RBI Notification No. RBI/DOR/2021-22/83 DOR. ACC. REC. No. 45/21.04.018/2021-22, dated 30-08-2021)

(2) RBI ISSUES MASTER DIRECTIONS ON PREPAID PAYMENT INSTRUMENTS (MD-PPIS)

The RBI has issued Master Directions on Prepaid Payment Instruments (MD-PPIs, 2021) for the purpose of providing a framework for authorisation, regulation and supervision of entities issuing and operating PPIs in the country, to foster competition and encourage innovation in this segment in a prudent manner while considering safety and security of systems and transactions along with customer protection and convenience, and to provide for harmonisation and interoperability of PPIs. The said Directions shall be applicable to all PPI Issuers and System Participants.

(Source: RBI Notification No. RBI/DPSS/2021-22/82 CO. DPSS. POLC. No. S-479/02.14.006/2021-22 dated 27-08-2021)

(3) NOTIFICATION AS 'FINANCIAL INSTITUTION' UNDER SECTION 2(1)(M)(IV) OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT)

Certain criteria has been prescribed under Para 105 of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 for notification of HFCs as 'Financial Institution' under Section 2(1)(m)(iv) of the SARFAESI Act, 2002. The Government of India (GoI) vide its Notification dated June 17, 2021 notified the HFCs registered under Section 29A(5) of National Housing Bank Act, 1987 and having assets worth ₹100 crore & above, as 'Financial Institution' under Section 2(1)(m)(iv) of SARFAESI Act, 2002. In view of revision of the criteria for notification as 'Financial Institution' as per the abovementioned Gazette notification of GoI, the criteria prescribed under Para 105 of the aforesaid Master Direction are withdrawn with immediate effect.

(Source: *RBI/2021-22/91 DOR. FIN.REC. No. 41/03.10.136/2021-22 dated 25-08-2021*)

(4) FRAMEWORK FOR OUTSOURCING OF PAYMENT AND SETTLEMENT RELATED ACTIVITIES BY PAYMENT SYSTEM OPERATORS

RBI has released a framework for outsourcing of Payment and Settlement-related activities by Payment System Operators ('the Framework'). The Framework is applicable to non-bank PSOs insofar as it relates to their payment and / or settlement-related activities.

The Framework has laid down details about the activities which cannot be outsourced, criticality of outsourcing, and has also defined responsibilities of the board and the senior management of a Payment System Operator.

The Framework excludes activities such as internal administration, housekeeping or similar functions from its purview.

(Source: *RBI Notification No. RBI/2021-22/76 dated 03-08-2021*)

FOREIGN TRADE

(1) DGFT EXTENDS THE PERIOD OF MODIFICATION OF IEC TILL 31ST AUGUST 2021

The Directorate General of Foreign Trade (DGFT) has extended the last date for updating of Importer-Exporter Code (IEC) on annual basis for the current financial year 2021 upto 31st August 2021.

An IEC holder has to ensure that details in its IEC is updated electronically every year, during April-June period. However, for the current year only, this period is extended by another month i.e. till 31st August, 2021. In cases where there are no changes in IEC details same also needs to be confirmed online.

Further no fee shall be charged on modifications carried out in IEC during the period upto 31st August, 2021.

(Source: *Trade Notice No. 16/2015-2020 dated 09-08-2021*)

(2) SCHEME GUIDELINES FOR REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS (RODTEP)



The DGFT *vide* the said Circular has notified Scheme for RoDTEP. The objective of the Scheme is to refund, currently un-refunded:

1. Duties/taxes/levies at the Central, State and local level, borne on exported products and.
2. Such indirect duties/taxes/levies in respect of distribution of exported products.

Further, the scheme guidelines and rates have been notified and the eligible RoDTEP export items, rates, per unit value caps have been mentioned in the Appendix 4R available on the DGFT portal.

(Source: *Trade Notice No. 19/2015-20 dated 17-08-2021*)

(3) AMMENDMENT IN FOREIGN TRADE POLICY, 2015-2020

The DGFT in consultation with Ministry of Commerce and Industry has issued a list of items for imports/exports on which it may impose 'Prohibition' or 'Restriction' by issuing Notifications. The list includes: -

1. Export of foodstuffs or other essential products for preventing critical shortages.
2. Imports to safeguard Country's external financial position and to ensure a level of reserves.
3. For protection of human, animal or plant life or health.
4. Importation or exportation of gold or silver.
5. Necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and

copyrights, and the prevention of deceptive practices, etc.

(Source: Notification No. 17/2015-2020 dated 10-08-2021)

CORPORATE LAWS

(1) COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2021



The Ministry of Corporate Affairs (MCA) vide the said Notification has issued these Rules providing that an individual shall not be required to pass the online proficiency self-assessment test to be included in independent directors databank when he has served for a period of 3 years or more as on the date of inclusion of his name in the data bank in the pay scale of Director or equivalent or above in any Ministry or Department, of the Government, and a certain prescribed experience criteria.

Further, individuals who have been for the last 10 years, practicing as Advocates, PCSs, PCAs, PCWAs are also not required to pass the test.

(Source: Notification No. G.S.R. 579 (E) dated 19-08-2021)

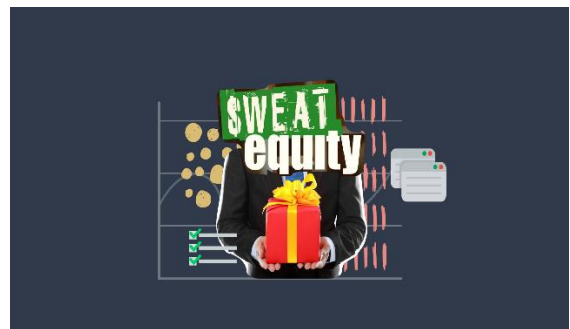
(2) CLARIFICATION ON SPENDING OF CSR FUNDS FOR COVID-19 VACCINATION

The MCA vide the said Circular has further clarified that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, as an eligible CSR activity under Schedule VII of the Companies Act, 2013.

(Source: General Circular No. 13/2021 dated 30-07-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) THE SECURITIES AND EXCHANGE BOARD OF INDIA (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021



The Securities and Exchange Board of India (SEBI) vide the said Notification has issued the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, which shall be applicable to Employees Stock Option Schemes (ESOP), Purchase Schemes (ESPS), Stock Appreciation Rights schemes (SAR), general employee benefits schemes, Sweat Equity Scheme (SES) and Retirement Benefit scheme.

(Source: Notification No. SEBI/LAD NRO/GN/2021/40, dated 13-08-2021)

(2) SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2021

SEBI, vide the said Notification, has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'). The amendment majorly deals with the provisions relating to Independent Directors ('IDs') which are summarized as follows:

1. Enhanced criteria for determining independence of IDs

2. Change in manner of approval of Related Party Transactions
3. Appointment/ Removal of IDs
4. D&O Insurance for IDs
5. Cooling-off period before transition post resignation as IDs
6. Disclosures at the time of appointment and resignation of IDs
7. Role of Nomination and Remuneration Committee in appointment of IDs

(Source: Notification No. SEBI/LAD-NRO/GN/2021/35, dated 03-08-2021)

(3) AUTOMATION OF CONTINUAL DISCLOSURES UNDER REGULATION 7(2) OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015



The SEBI *vide* its Circular dated September 09, 2020, had implemented System Driven Disclosures (“SDD”) in phases, under SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

Now since it has been confirmed by Stock Exchanges and Depositories that they have implemented the SDD in line with the said Circular and the same has gone live from April 01, 2021, SEBI has by way of the present Circular clarified that listed companies who have complied with requirements of the earlier circular, the manual filing as required under Regulation 7(2) (a)& (b) of PIT regulations is no longer mandatory.

(Source: Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/617, dated 13-08-2021)

(4) SECURITY AND COVENANT MONITORING USING DISTRIBUTED LEDGER TECHNOLOGY (DLT)

In order to strengthen the process of security creation, monitoring of security created, asset cover and covenants of the non-convertible securities, SEBI, based on the recommendations of the working group created for the same, decided to develop a platform for ‘Security and Covenant Monitoring System’ (‘system’) hosted by Depositories.

The system will be used for recording and monitoring of security created and covenants of non-convertible securities and will *inter alia* capture the process of creation of security (viz. due diligence, charge creation etc.), continuous monitoring of covenants by Debenture Trustees (as applicable), credit rating of the non-convertible securities by the Credit Rating Agencies (CRAs) etc.

(Source: PR No.26/2021, dated 25-08-2021)

(5) SEBI (ICDR) (THIRD AMENDMENT) REGULATIONS, 2021

SEBI, has amended ICDR Regulations and provided the following relaxations:

1. Change in definition of promoter group- any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20% or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20% or more of the equity share capital of the issuer are omitted from the definition of promoter group.
2. Reduction in lock-in of promoter holdings- Lock-in requirements of minimum promoters’ contribution and other institutional investors has been reduced to 18 months from the date of allotment under IPO/ FPO. Further, for excess promoters’ contribution and pre-issue capital of persons other than promoters it has been reduced to 6 months.
3. The lock-in requirement of partly paid shares has been reduced to 18 months.

(Source: Notification No. SEBI/LAD-NRO/GN/2021/45, dated 13-08-2021)

COMPETITION LAWS

(1) RS. 200 CR. PENALTY ON MARUTI FOR RESTRICTING DISCOUNTS BY DEALERS

The Maruti Suzuki India Limited 'MSIL' had a 'Discount Control Policy' in place for its dealers whereby the dealers were discouraged from giving extra discounts, freebies, etc. to the consumers beyond what were permitted by MSIL. If a dealer wanted to offer additional discounts, prior approval of MSIL was mandatory. In order to enforce the Discount Control Policy, MSIL appointed Mystery Shopping Agencies ('MSAs') who used to pose as customers to MSIL dealerships to find out if any additional discounts were being offered to customers. Thus, MSIL not only imposed the Discount Control Policy on its dealers, but also monitored and enforced the same by monitoring dealers through MSAs, imposing penalties on them and threatening strict action like stoppage of supply, collecting, and recovering penalty, and utilisation of the same. The Competition Commission of India (CCI) found this to be in contravention of the provisions of Section 3(4)(e) read with Section 3(1) of the Competition Act, 2002.

(Source: Press Release No. 32/2021-22 dated 23-08-2021)

(2) CCI APPROVES ACQUISITION BY ZOMATO OF GROFERS AND HANDS ON TRADES PRIVATE LIMITED (HOT)

The CCI approves proposed combination involving acquisition by Zomato Limited (Zomato) of approximately 9.3% stake in each of Grofers India Private Limited (Grofers India) and Hands on Trades Private Limited (HoT) along with certain rights in each of the Targets.

(Source: Press Release No. 29/2021-22 dated 13-08-2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) GSTN ISSUES ADVISORY FOR TAXPAYERS REGARDING BLOCKING OF E-WAY BILLS



The Goods and Service Tax network ["GSTN"] has decided to resume the blocking of electronic way (e-way) bill generation facility on the EWB portal, for all the taxpayers in terms of Rule 138 E (a) and (b) of the CGST Rules, 2017, from 15th August onwards. The Central Board of indirect Taxes and Customs ["CBIC"] had earlier suspended the blocking of e-way bill generation for non-filers of GST returns, to give taxpayers compliance relief during the COVID pandemic. Thus, after 15th August 2021, the System will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, and restrict the generation of EWB in case of:

- Non filing of two or more returns in Form GSTR-3B for the months up to June, 2021 and
- Non filing of 02 or more statements in Form GST CMP-08 for the quarters up to April to June, 2021.

It is therefore advised to file pending GSTR 3B returns/ CMP-08 Statement immediately to avail continuous EWB generation facility on EWB Portal.

(Source: Advisory dated 04-08-2021)

(2) CBIC EXTENDS THE DUE DATE FOR FILING OF FORM GSTR-3B & GSTR-1/ IFF USING EVC

The CBIC *vide* a Notification has extended the due date of filing of GSTR-3B and GSTR-1/ IFF by

companies using Electronic Verification Code (EVC), instead of Digital Signature Certificate (DSC) to 31st October, 2021.

(Source: Notification No. 32/2021-Central Tax [G.S.R. 598(E)], dated 29-08-2021)

(3) EXTENSION IN DUE DATE TO AVAIL BENEFIT OF THE LATE FEE AMNESTY SCHEME

The CBIC *vide* the said Notification has extended the last date to avail benefit of the late fee amnesty scheme to 30th November 2021.

Earlier, this date was 31st August 2021. Hence, the relief provided to the taxpayers by reducing / waiving late fee for non-furnishing Form GSTR-3B for the tax periods from July 2017 to April, 2021, has been extended if the returns for these tax periods are furnished between 01.06.2021 to 30.11.2021.

(Source: Notification No. 33/2021 G.S.R. 599(E), dated 29.08.2021)

II. CUSTOMS

(1) THE CBIC EXTENDS THE TIMELINE FOR EXEMPTION OF CUSTOM DUTY ON CERTAIN IMPORTED GOODS

The Ministry of Finance has exempted certain goods from whole of the duty of customs and health cess leviable thereon, when imported into India, such as, Oxygen concentrator including flow meter, regulator, connectors and tubings. Medical Oxygen, Oxygen canister, Oxygen generator, Oxygen storage tanks, Oxygen cylinders etc. till “30th September 2021”.

Earlier such exemption was granted till “31st August 2021”.

(Source: Notification No. 41/2021-Customs, dated 30-08-2021)

(2) CBIC NOTIFIES RATE OF EXCHANGE OF FOREIGN CURRENCIES AGAINST INDIAN RUPEES WITH EFFECT FROM 6TH AUGUST 2021

CBIC determined the rate of exchange of conversion of each of the foreign currencies (as specified in Schedule I and Schedule II annexed to the said Circular) into Indian currency or *vice versa* relating to imported and export goods and it shall come into effect from 6th August 2021. For e.g., one unit of US Dollar shall be INR 75.10 equivalent for imported goods and INR 73.40 for exported goods.

(Source: Notification No. 65/2021 - Customs, dated 05-08-2021)

INTELLECTUAL PROPERTY RIGHTS

(1) CASE LAW: SUN PHARMACEUTICALS INDUSTRIES LTD. V. CIPLA LTD.: MADRAS HC REJECTS COVID AS AN EXCUSE FOR PASSING OFF

- Cipla Limited (Cipla) approached the Madras High Court seeking an injunction against Sun Pharmaceutical Industries Ltd. (Sun Pharma) restraining it from allegedly imitating and substantially reproducing the artistic packaging, trade dress, and labels of Cipla’s ‘BUDECORT RESPULES’ and ‘DUOLIN RESPULES’ which allegedly amounted to infringement of its copyright. Using packaging allegedly identical to Cipla’s packaging for ‘Budesonide Respules’ and ‘Duolin Levosalbutamol Respules’ thereby allegedly passing off its goods as those of Cipla
- The Court dismissed Sun Pharma’s application for a vacation of injunction stating that it is misconceived. The Court noted, “The court cannot allow a party to violate another person’s intellectual property rights which is copyright and trademark and remain a mute spectator where there also is an attempt to pass-off the goods notwithstanding fact that the country is facing unprecedented medical emergency and possibly the patients suffering from covid systems may require the drugs manufactured both by the plaintiff and the defendant for treating patients them with respiratory ailments during these tough times.”

- The Court added that the label and the trade dress adopted by Sun Pharma prima facie appear to be an imitation of Cipla's label, intending to ride upon the goodwill and reputation of Cipla.

(Source: Appl. Nos.1980,1982 and 1983 of 2021 and 1949 of 2021, dated 08-07-2021)

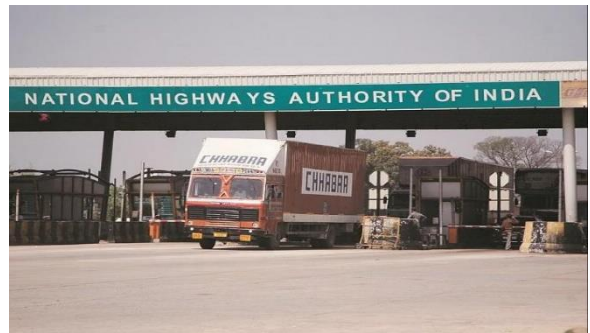
(2) CASE LAW: DIPALI SIKAND AND ORS VS SAMSUNG INDIA & ORS

The technology giant Samsung India, along with its service provider Story Experiences Pvt. Ltd., have been temporarily restrained from using the term "Concierge". The suit was instituted by Dipali Sikand, the founder of Lesconcierges Services Pvt. Ltd. and Club Concierge Services (India) Pvt. Ltd., claiming to be the first person to introduce concierge services in India, registering the trademark "Concierge" under classes 35, 39, 41, 43, and 45. It was asserted by Sikand that she was providing concierge services to Samsung India, however, after the expiry of her initial engagement with the tech giant, Story Experiences was appointed to provide the aforementioned services to Samsung India. Story Experiences subsequently began sharing pamphlets and brochures bearing the term "Concierge" to prospective clients, which led to Sikand filing this case, alleging infringement of her trademark rights, to which the City Civil Court at Bangalore thus granted a temporary injunction against Samsung India and Story Experiences Pvt. Ltd. until the conclusion of the suit.

(Source: OS.No.3588/2021- XVIII ADDL. CITY CIVIL JUDGE, BENGALURU, dated 10-08-2021)

ENVIRONMENT LAWS

(1) CASE LAW: SUPREME COURT ISSUES NOTICE TO NHAI ON CONSTRUCTION OF DWARKA HIGHWAY



The Petitioner (Rao CGHS Ltd.) contended that the High court gave the Respondents (NHAI) carte blanche to continue its activities despite lack of approval under the Air & Water Acts and environmental clearance under the Environmental Impact Assessment notification, 2006.

The Supreme court issued a notice agreeing to hear Resident Association plea alleging the highway authority was illegally building the flyover without obtaining mandatory clearances.

(Source: Petition(s) for Special Leave to Appeal (C) No.12539/2021, dated 30.07.2021)

(2) CASE LAW: SUPREME COURT TO RECONSTITUTE COMMITTEE TO ASSESS ENVIRONMENTAL DAMAGE AND COMPENSATION

Supreme court Decided to reconstitute the committee for assessment of compensation and restitution of damage done to the environment due to fire at Assam's Bhagjan oil well.

The bench orally observed that one can be heard but cannot be in the committee, i.e., a defaulter cannot be in the committee it was observed that OIL India needs to be deleted from the committee.

(Source: Civil appeal no.(s) 2201/2021, dated 01.07.2021)

[End of Newsletter]
