

MONTHLY NEWSLETTER

SEPTEMBER 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 wide 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 NOTIFIES APPLICATION FORM FOR AADHAR E-KYC AUTHENTICATION LICENSE



The Reserve Bank of India (RBI) has directed the NBFCs, (Non-Banking Financial Companies), payment system participants, and payment system providers to apply for an Aadhaar e-KYC authentication licence.

As per Section 11A of the Prevention of Money Laundering Act (PMLA), 2002, the government may issue a notification allowing entities other than banking firms to use the Unique Identification Authority of India's (UIDAI) e-KYC facility to validate a client's Aadhaar number. The notification, however, will only be issued following consultation with the UIDAI and the competent regulator.

(Source: RBI Notification No. RBI/2021- 22/9 8 DOR.AML.REC.48/14.01.001/ 2021-22, dated 13-09-2021)

(2) RBI PUBLISHES DETAILS OF GENERAL ALLOCATION OF SPECIAL DRAWING RIGHTS (SDR) BY THE INTERNATIONAL MONETARY FUND (IMF)

The RBI has provided data on the IMF's General Allocation of Special Drawing Rights. SDR holdings are one component of a country's FER (Foreign Exchange Reserves). The IMF distributes SDRs to its members in proportion to their current quotas in the Fund. On August 2, 2021, the IMF's Board of Governors approved a general allocation of around SDR 456 billion (effective August 23, 2021), with India receiving SDR 12.57 billion.

(Source: RBI Press Release No 2021-2022/792 dated 01-09-2021)

(3) RBI ISSUES MASTER DIRECTIONS ON MARKET-MAKERS IN OTC (OVER THE COUNTER) DERIVATIVES

The RBI has issued the RBI (Market-makers in OTC Derivatives) Directions, 2021, which will take effect on January 3rd, 2022.

The Directions apply to entities that have been granted permission to serve as market-makers in OTC derivatives under the Governing Directions. The process for evaluating and approving new OTC derivative products shall be included in the policy for introducing new OTC derivative goods. The Board of Directors must approve all new products.

(Source: RBI Notification No. RBI/2021- 22/84 FMRD.FMD.07/02.03.247/ 2021-22 dated 16-09-2021)

(4) RBI ISSUES MASTER CIRCULAR FOR INVESTMENTS BY PRIMARY (URBAN) CO-OPERATIVE BANKS

The RBI has issued guidelines for investments by Primary (Urban) Co-operative Banks. According to the Master Circular, a co-operative bank's total investments in co-operative institution shares shall not exceed 2% of its owned funds (paid-up share capital and reserves). A bank's investment in a co-operative institution's shares shall not exceed 5% of the institution's subscribed capital. These limits apply to all investments, except for

shares purchased with funds provided by the State Government for that purpose, or shares held by a primary (urban) co-operative bank (UCB) in the central co-operative bank to which it is affiliated or the state cooperative bank of the state in which it is registered.

(Source: RBI Circular No. RBI/2021-22/100 DOR.MRG.REC.50/21.04.141/ 2021-22 dated 20-09-2021)

FOREIGN TRADE

(1) DGFT EXTENDS THE FOREIGN TRADE POLICY TILL MARCH 2022



The Directorate General of Foreign Trade (DGFT) has extended the existing foreign trade policy (FTP) by six months till March 31, 2022. The current policy, which came into effect on April 1, 2015, was for five years and had validity up to March 31, 2020. However, due to the unprecedented current circumstances resulting from the epidemic COVID-19, the government has decided to continue relief under various export promotion schemes by extending the existing Foreign Trade Policy for another year, up to March 31, 2021, and then again until September 30, 2021.

(Source: Trade Notice No. 33/2015-2020, dated 28-09-2021)

(2) DGFT TO DEACTIVATE IECs NOT UPDATED AFTER JANUARY 1ST, 2021

The DGFT has provided Import-Export code (IEC) holders one last chance to update their IEC by October 5, 2021, failing which the provided

IECs would be de-activated on October 6, 2021. Any IEC holder that has submitted an online update application but is awaiting clearance from the DGFT RA will be exempt from the deactivation list.

It may further be noted that every IEC that has been de-activated, would have the option of being automatically re-activated without the need for manual intervention or a physical visit to the DGFT RA. For IEC reactivation after October 6, 2021, the holder of the IEC can go to the DGFT website and update their IEC online. After a successful update, the provided IEC will be reactivated, and the revised status will be transmitted to the Customs system.

(Source: Trade Notice No. 18/2021-22 dated 20-09-2021)

(3) DGFT NOTIFIES THE SEIS BENEFITS FOR SERVICES RENDERED IN FY 2019-20

The DGFT has notified the list of eligible services and rates under the service exports from India scheme (SEIS) for services rendered in FY 2019-2020, as well as the fact that the facility to claim SEIS benefits on payments in INR will not be available for services rendered in FY 2019-20.

The Notified services and rates are as follows:

(i) Under 5% rate, the sectors include professional services like legal, taxation, engineering, medical, veterinary, and urban planning and under research and development services (radio and television, sound recording) are included and construction, educational, environmental, and health.

(ii) Under the 3% rate, the services include advertising, investigation and security, packaging and printing, photography etc.

(Source: Public Notice No. 29/2015-2020, dated 23-09-2021)

(4) DEPARTMENT OF COMMERCE EXTENDS TIMELINE FOR APPLYING FOR SCRIP BASED FTP SCHEMES

The deadline for applying for scrip-based FTP initiatives has been extended by the Ministry of

Commerce and Industry. The last date to apply for MEIS, SEIS, ROSCTL, and ROSL has been extended until December 31, 2021. No applications will be accepted after December 31, 2021, and those that are will be considered time barred.

(Source: Public Notice No. 26/2015-2020, dated 16-09-2021)

CORPORATE LAWS

(1) EXTENSION OF LAST DATE OF FILING OF COST AUDIT REPORT



DUE DATE EXTENDED OF CRA-4 FORM

In view of the extraordinary disruption due to pandemic, cost audit report for the financial year 2020-21 by the cost auditor may be submitted by 31st October 2021 to the Board of Directors of the companies, this would not be viewed as violation of rule 6(5) of Companies (Cost Records and Audit) Rules, 2014.

The report shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

However, in case a company has got extension of time for holding The AGM under section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to rule 6(6) of the companies (Cost Records and Audit) Rules, 2014.

(Source: General Circular No. 15/2021 dated 27.09.2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) LINKING OF PAN WITH AADHAR

The Central Board of Direct Taxes (CBDT) has notified that the Permanent Account Number (PAN) shall become inoperative if it is not linked with Aadhaar by September 30, 2021 or other date specified by CBDT.

Since, PAN is sole identification number for all transactions in the Securities Market, all SEBI registered entities including Market Infrastructure Institutions (MIIs) are required to ensure compliance of said notification.

Also, all the existing investors are advised to ensure linking of their PAN with Aadhaar number for continual and smooth transactions in securities market and avoid any consequences of non-compliance.

(Source: PR No.27/2021 dated 03.09.2021)

(2) REVISED GUIDELINES FOR LIQUIDITY ENHANCEMENT SCHEME IN THE EQUITY CASH AND EQUITY DERIVATIVE SEGMENT

The SEBI in order to enhance liquidity in illiquid securities had *vide* its Circular dated April 23, 2014, permitted the stock exchanges to introduce liquidity enhancement schemes in the equity cash and derivatives segments.

Based on the inputs from the stock exchanges, the Board has decided to modify clause 3.1 and 4.1 of said Circular as under:

3.1 "The Scheme shall have prior approval of the Governing Board of the Stock Exchange which will be valid for one year. The Governing Board of the Stock Exchange may give yearly approval till the time the scheme is in operation. Further, its implementation and outcome shall be monitored by the Governing Board at quarterly intervals".

4.1. "The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security". Other conditions prescribed in aforesaid SEBI Circular dated April 23, 2014, shall be the same.

*(Source: Circular No. SEBI/HO/MRD/DSA
/CIR/P/2021/623 dated 01.09.2021)*

(3) ALIGNMENT OF THE INTERESTS OF AMCs WITH THE UNITHOLDERS OF THE MUTUAL FUND SCHEME

As per the amended sub-regulation 16(A) in Regulation 25 of SEBI (Mutual Funds) Regulations, 1996, the Asset Management Companies (AMCs) are required to invest such amount in such scheme(s) of the mutual fund, based on the risk associated with the scheme, as may be specified by the Board from time to time. Accordingly, it is decided that based on the risk value assigned to the scheme(s), in terms of SEBI circular dated October 5, 2020, AMCs shall invest minimum amount as a percentage of Assets Under Management ('AUM') in their scheme(s) as provided in the Annexure of the Circular. The compliance of the provisions of this circular shall be ensured by the AMCs and monitored by the Trustees. Any non-compliance in this regard, shall be reported in the Quarterly and half-yearly Trustee Report.

*(Source: Circular SEBI/HO/IMD/IMD-
IDOF5/P/CIR/2021/624, dated 02.09.2021)*

(4) INTRODUCTION TO T+1 ROLLING SETTLEMENT ON AN OPTIONAL BASIS



SEBI *vide* its Circular dated February 6, 2003, shortened the settlement cycle from T+3 rolling settlement to T+2 w.e.f. April 01, 2003. Based on the discussions with Market Infrastructure Institutions (Stock Exchanges, Clearing Corporations and Depositories), it decided to provide flexibility to Stock Exchanges

to offer either T+1 or T+2 settlement cycle. Hence, a Stock Exchange may choose to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and disseminating the same on its website.

Further, upon opting for T+1 settlement cycle for a scrip, the Stock Exchange shall have to mandatorily continue with the same for a minimum period of 6 months.

*(Source: SEBI/HO/MRD2/DCAP/P/CIR/
2021/628 dated 07.09.2021)*

COMPETITION LAWS

(1) COMPETITION COMMISSION PENALISES BEER COMPANIES FOR INDULGING IN CARTELISATION

The Competition Commission of India (CCI) passed a final order against three beer companies namely United Breweries Limited ('UBL'), SABMiller India Limited (now renamed as Anheuser Busch InBev India Ltd. after being acquired by Anheuser Busch InBev SA/NV) ('AB InBev') and Carlsberg India Private Limited ('CIPL') for indulging in cartelisation in the sale and supply of beer in various States and Union Territories in India, including through the platform of All India Brewers' Association ('AIBA'). As AIBA was found to be actively involved in facilitating such cartelisation, CCI also held AIBA to be in contravention of the provisions of Competition Act, 2002 (the 'Act'), apart from the beer companies. The period of cartel was held to be from 2009 to at least 10.10.2018 (the date on which the Director General ('DG') conducted search and seizure operations at the premises of the beer companies), with CIPL joining in from 2012 and AIBA serving as a platform for facilitating such cartelisation since 2013.

*(Source: Press Release No. 40/2021-22 dated
24-09-2021)*

(2) CCI APPROVES ACQUISITION OF ONGC TRIPURA POWER COMPANY LIMITED (TARGET) BY GAIL (INDIA) LIMITED (ACQUIRER)



The CCI approves proposed combination of acquisition of 26% equity share capital of the Target by the Acquirer from IL&FS group entities. The proposed combination falls under Section 5(a) of the Competition Act, 2002.

(Source: Press Release No. 37/2021-22 dated 09-09-2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) CENTRAL GOODS AND SERVICES TAX (EIGHTH AMENDMENT) RULES, 2021

The Central Board of Indirect Taxes and Customs (CBIC) has published the Central Goods and Services Tax (Eighth Amendment) Rules, 2021 to further amend the Central Goods and Services Tax Rules, 2017.

The amendment has notified a new rule 10B which deals with Aadhaar authentication for registered person, and states that:

A registered person who has been issued a certificate of registration under rule 10, shall undergo authentication of the Aadhaar number of the Managing Director or any whole time Director, in the case of a company, to be eligible for filing of application for revocation of cancellation of registration in

FORM GST REG 21 under Rule 23 and for filing of refund application in FORM RFD-01. Further, a new sub-rule 89(1A) has been inserted, which states that:

Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of 2 years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of 2 years from the date on which this sub-rule comes into force.

(Source: Notification No. 35/2021 –Central Tax G.S.R. 659(E), dated 24-09-2021)

(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 ELECTRONIC DUTY CREDIT LEDGER REGULATIONS, 2021

The Ministry of Finance (MoF) has published the Electronic Duty Credit Ledger Regulations, 2021 which specifies the manner of issuance of duty credit. Few major highlights of the Regulation are as under:

As per regulation 3, a shipping bill or a bill of export, presented on or after the January 01, 2021, and having a claim of duty credit under the Scheme, shall be processed in the customs automated system, including on the basis of risk evaluation through appropriate selection criteria and the claim shall be allowed by Customs as per the conditions and restrictions notified for the Scheme, after the filing of export manifest or export report.

Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system. Separate scrolls will be generated for each Scheme.

The duty credit available in the e-scrip in the ledger shall be used for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975 and the e-scrip shall be valid for a period of one year from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse.

Further the duty credit in the e-scrip that has lapsed shall not be re-generated and the ledger, including e-scrip and the transactions made therein, shall be visible in the customs automated system to the recipient of such duty credit and the Customs. Transfer of duty credit in e-scrip shall be allowed within the customs automated system from the

ledger of a person to the ledger of another person who is a holder of an Importer-exporter Code Number issued in terms of the Foreign Trade (Development and Regulation) Act.

The duty credit available in an e-scrip shall be transferred at a time for the entire amount in the said e-scrip to another person and transfer of the duty credit in part shall not be permitted.

(Source: Notification No.75/ 2021 – Customs (N.T.), dated 23-09-2021)

(2) COVID-19 VACCINES EXEMPTED FROM DUTY TILL 31.12.2021

CBIC has extended the exemption of basic Custom duty on import of COVID-19 vaccines till December 31, 2021, which earlier was up till September 30, 2021.

(Source: Notification No. 45/2021 - Customs, dated -09-2021)

INTELLECTUAL PROPERTY RIGHTS

(1) KARNATAKA HIGH COURT LAYS DOWN GUIDELINES FOR INJUNCTION APPLICATION



In the case between ITC Limited and CG Foods (India) Pvt. Ltd. the Karnataka High Court, affirming the Commercial Court's order in the aforementioned matter, summarised principles which guides the lower courts in inquiry regarding action for passing off. The crux of this matter has

to do with deceptive similarity of the defendant's product 'WAI WAI Xpress Noodles Majedar Masala' which is identical to the 'Magic Masala' variant of Sunfeast Yippee Noodles.

(Source: Comm App No. 205/2021, dated 28-09-2021)

(2) HOW LATE IS TOO LATE TO ASK FOR AN INJUNCTION?

The trademark "Rajdhani" was registered by the Plaintiff in Victoria Foods Pvt. Ltd. V. Rajdhani Masala Co. & Anr. for edible products who filed a suit as well as an interim application for injunction. The defendants ran a business of Indian spices under the same name and claimed to be prior users of the mark. The Delhi High Court observed that the Plaintiff was the "first in the market" to use the mark and therefore as prior user and registered owner had the right over the mark. The Court also added that the Plaintiff's delay in claiming right was not a sufficient cause to disentitle them of relief.

(Source: I.A. No. 3527/2021, dated 01-09-2021)

(3) FAKING GUCCI IS A SOCK-Y MOVE

In the case Guccio Gucci v. Intiyaz Sheikh, the luxury brand filed for permanent injunction against the defendant who illegally manufactured socks with the brand's iconic, registered mark; green and red stripes mark with the 'Gucci' logo. The Court passed an ex-parte ad-interim injunction wherein it opined that the defendant had deliberately decided to not be present for the hearing and therefore justified the ex-parte order based on preponderance of probability.

(Source: CS Comm No. 2090/2019, dated 27-08-2021)

(4) THE DISPUTE OVER THE ACCESSIBILITY OF EXPENSIVE ACADEMIA

Once again India is the playground for discussion around accessibility of expensive academic writing after the landmark judgement of Rameshwari Photocopy Services case. Three academic publishers have filed a case in the Delhi High Court

against the website 'LibGen' and its ancillary domains which provide users with free access to millions of academic works. These websites are enabled by Sci-Hub, a pirate website, that allows pirated content to bypass restrictions. The relevant Ministries have been requested to block access to these websites. The owner of Sci-Hub has suits filed against them across multiple countries and they have not defended themselves in any of the cases other than the one filed in USA wherein they weren't liable to pay for damages as the servers were based in Russia, which is outside USA's jurisdiction.

(Source: Indian Express, dated 29-09-2021)

ENVIRONMENT LAWS

(1) MOEF & CC DIRECTS SPCBs TO NOT GRANT OR RENEW CONSENT TO ESTABLISH ENTERPRISES UNLESS ENVIRONMENTAL CLEARANCE IS OBTAINED



The Ministry of Environment, Forest, and Climate Change (**MoEF & CC**) vide its Order dated September 20, 2021, has directed State Pollution Control Boards (SPCBs) not to grant or renew consent to establish enterprises unless environmental clearance is obtained. They are directed to ensure that enterprises obtain environmental clearance before commencement of a project/ activity.

(Source: F. No. IA3-22/19/2021-IA.III E 164361, dated 20.09.2021)

**(2) THE PLASTIC WASTE MANAGEMENT
(SECOND AMENDMENT) RULES, 2021**



The MoEF & CC has published the Plastic Waste Management (Second Amendment) Rules, 2021 to further amend the Plastic Waste Management Rules, 2016.

Through this amendment rule 4 which deals with conditions to be followed by the manufacturer in using carry bags has been substituted as follows: As per Rule 4(1)(b) carry bags made of recycled plastic or products made of recycled plastic can be used for storing, carrying, dispensing, or packaging ready to eat or drink food stuff subject to the notification of appropriate standards and regulation under the Food Safety and Standards Act, 2006 (34 of 2006) by the Food Safety and Standards Authority of India.

(Source: Notification No. G.S.R. 647(E), dated 17.09.2021)

[End of Newsletter]
