

MONTHLY NEWSLETTER

APRIL 2022

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 TO OPERATIONALISE STANDING DEPOSIT FACILITY (SDF) WITH EFFECT FROM 8TH APRIL 2022



The Reserve Bank of India (RBI) has operationalized Standing Deposit Facility (SDF) at a rate of 3.75% starting April 8, 2022, which will act as the foundation for the policy corridor. The SDF scheme will now be open to all users in the Liquidity Adjustment Facility (LAF).

The Fixed Rate Reverse Repo (FRRR) will be replaced by the SDF as the LAF corridor's floor. The SDF rate will be 3.75 percent, or 25 basis points (bps) less than the policy repo rate.

The SDF allows the qualifying entities to make overnight receipts with the RBI. But the RBI has the option to absorb liquidity for extended tenors under the SDF with proper pricing, should the need arise.

(Source: Press Release: 2022-2023/41 dated 8th April 2022)

(2) MASTER CIRCULAR FOR CONSOLIDATING PRUDENTIAL GUIDELINES ON BASEL III CAPITAL ADEQUACY ISSUED TO BANKS

The regulatory Basel III capital adequacy rules that were given to banks up until June 30, 2015, have been consolidated in a Master Circular. Basel III reforms are the Basel Committee on Banking Supervision's (BCBS) reaction to the need to increase the banking industry's capacity to absorb shocks resulting from financial and economic stress of any kind, lowering the risk of a financial sector spill over into the general economy.

(Source: Press Release: RBI/2022-23/12 dated 1st April 2022)

(3) RBI RELEASES GUIDELINES ON ESTABLISHMENT OF DIGITAL BANKING UNITS (DBUS)

The RBI announced the guidelines for the formation of digital banking units *vide* notification dated April 7, 2022. All nationally scheduled commercial banks must follow these rules (excluding Regional Rural Banks, Payments Banks, and Local Area Banks).

Except where expressly prohibited, Scheduled Commercial Banks (other than RRBs, PBs, and LABs) with prior understanding of digital banking are allowed to open Digital Banking Units (DBU) in Tier 1 to Tier 6 centres without requesting approval from the RBI in each instance.

(Source: Press Release: 2022-2023/30 dated 7th April 2022)

(4) RBI INCREASES MARKET TRADING HOURS

The RBI decided to reinstate the pre-pandemic opening schedule of 9.AM for the regulated financial markets. The market opening time changed from the current 10 am on April 18, 2022.

The trading hours for commercial paper and certificates of deposit, repurchase agreements in corporate bonds, government securities (central government securities, state development loans, and Treasury bills), foreign currency (FCY)/Indian

rupee (INR) trades, including forex derivatives, and call/notice/term money, are from 10 a.m. to 3 p.m.

(Source: Press Release: 2022-2023/55 dated 11th April 2022)

FOREIGN TRADE

(1) DGFT AMENDS THE IMPORT POLICY CONDITION OF UREA

The import of urea through Rastriya Chemicals & Fertilizers (RCF) and National Fertilizers Limited (NFL) are allowed as per Para 2.20 of the Foreign Trade Policy (FTP) 2015-20. Furthermore, import of urea through Indian Potash Limited (IPL) has been extended for a period up to March 31st, 2023.

Technical Grade Urea (TGU) imports, however, are "Free" when used for manufacturing NPKs or other non-agricultural purposes.

(Source: Notification No. 65 /2015-2020 dated 1st April 2022)

(2) DGFT HAS NOTIFIED ADDITIONAL FEATURES IN THE SCRIP TRANSFER RECORDING MODULE.

The scrip transfer recording module is now active with new features and restrictions. The primary duty credit holder must register the duty credit scrip with Customs at the Port of Registration, and the "transfer" of scrips from one IEC to another IEC will follow the provisions agreed upon by the buyer and seller.

(Source: Trade notice no. 01/2022-2023 dated 11th April 2022)

CORPORATE LAWS

(1) COMPANIES (INDIAN ACCOUNTING STANDARDS) AMENDMENT RULES, 2022

The Ministry of Corporate Affairs (MCA), in conjunction with the National Financial Reporting Authority, released the Companies (Indian Accounting Standards) Amendment Rules, 2022, w.e.f. April 1st, 2022, to provide explanations regarding Annual Improvements to IndAS (2021).

Any economic liabilities that are altered or swapped on or after the start of the annual period in which the organisation first implements the amendment must be subject to the Annual Improvements to IndAS (2021). The modification must be used by an organisation for annual reporting periods starting from April 1st, 2022.

(Source: Notification No. G.S.R 255(E) dated 23rd March 2022)

(2) COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2022

MCA released the Companies (Management and Administration) Amendment Rules, 2022. The amendment requires that information from the register, index, or returns regarding a company's members shall not be open to inspection.

(Source: Notification No. G.S.R. 279(E) dated 6th April 2022)

(3) NEW DELHI MUNICIPAL COUNCIL V. MINOSHA INDIA

The Supreme Court clarified the scope of Section 60(6) of the IBC by holding that the entire period of moratorium imposed therein would be excluded while calculating the limitation period for proceedings initiated by the Corporate Debtor. The court noted that the intent behind Section 60(6) is to allow the corporate debtor to enforce its claims if the Resolution Professional fails to discharge his duties and conduct proceedings.

(Source: New Delhi Municipal Council v. Minosha India Limited, Civil Appeal No. 3470 of 2022)

(4) RAJEEV SHETH V. SEBI

Rajeev Sheth (“Appellant”) was the chairman of Tara Jewels which had incurred massive losses in a quarter. The appellant, being in possession of the financial results of the quarter, sold a large number of shares during this period after which a Whole Time Member of SEBI (“Respondent”) held him guilty of insider trading. The Securities Appellate Tribunal (“SAT”) overturned this order noting that the proviso to Regulation 4(1) of the Insider Trading Regulations suggests that an insider may prove their innocence by establishing exonerating circumstances. The SAT held that the shares were sold to save the company from its dire financial straits and the appellant could not be held guilty of insider trading.

(Source: Rajeev Vasant Sheth v. Securities and Exchange Board of India, Securities Appellate Tribunal in Appeal No. 536 of 2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) DISCONTINUATION OF USAGE OF POOL ACCOUNTS FOR TRANSACTIONS IN THE UNITS OF MUTUAL FUNDS



The use of pool accounts for transactions involving Mutual Fund unit trades has been prohibited by Securities and Exchange Board of India. The date of application of "Circulars" requiring the use of pool accounts for trades involving Mutual Fund units, redemption, source account authentication, and two-factor authentication has been determined to be extended until July 1, 2022 in the interest of investors.

The "Circulars" (along with the provisions relating to 2FA for redemption and source account verification) shall be implemented by the AMCs, recognised Stock Exchanges, Depositories, recognised Clearing Corporations, Registrar to an Issue, and Share Transfer Agents, including all necessary procedures and systems to ensure adherence to the "Circulars" requirements.

(Source: Circular no. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/41 dated 31st March 2022)

(2) IFSCA NOTIFIES GUIDELINES FOR LIQUIDITY ENHANCEMENT SCHEME

The Liquidity Enhancement Scheme (LES) being run in the International Financial Services Centres (IFSC) will be reviewed, according to the IFSC Authority. Any commodity or listed product may receive liquidity improvement initiatives from the Securities Exchange.

The scheme must receive the prior approval of the Governing Board of the Securities Exchange, and the Board will oversee its execution and results every quarter. It must also specify the incentives available to market makers and liquidity providers, which could include fee reductions, fee adjustments in other parts, cash payments, or the issuance of shares, along with warrants and options.

The market must be informed of the scheme, any changes, and eventual cessation minimum 15 days in advance.

(Source: Circular no. F. No. 286/IFSCA/PM(CMD-DMIIT)/2021/4 dated 31st March 2022)

(3) THE UPI LIMITATIONS FOR EQUITY SHARES AND CONVERTIBLE SECURITIES ARE REVISED BY SEBI.

The Unified Payment Interface (UPI) restrictions for equity share and convertible public offerings

have been updated by the Securities and Exchange Board of India. For public issues from May 1st, 2022, the new rules will take effect.

In a previous notification, SEBI launched the use of Unified Payment Interface (UPI) channel as a second payment method alongside the Application Supported by Blocked Amount (ASBA) for Retail Individual Investors. It also increased the per-transaction UPI limit in Initial Public Offerings from Rs. 2 lakh to Rs. 5 lakh (IPOs).

(Source: Notification No. SEBI / HO / CFD / DIL2 / CIR / P / 2022 / 45 dated 5th April 2022)

COMPETITION LAWS

(1) AMENDMENT REGULATIONS FOR THE COMPETITION COMMISSION OF INDIA'S (METHOD IN RESPECT TO THE CONDUCT OF A BUSINESS RELATING TO COMBINATIONS), 2022

The Competition Commission of India (Process in respect to the course of trade of business relating to combinations) Amendment Regulations, 2022 were published *vide* notification dated March 31, 2022. The modification will take effect on May 1, 2022. According to the modification, the parties must notify CCI of the information in the revised format provided.

(Source: Notification no. F. No. CCI / CD / Amend / Comb. Regl. / 2022 dated 31st March 2022)

INDIRECT TAXES AND CUSTOMS

(2) THE CUSTOMS (ELECTRONIC CASH LEDGER) REGULATIONS, 2022.

The Ministry of Finance released the Customs (Electronic Cash Ledger) Regulations, 2022 w.e.f. June 1st, 2022.

Every payment made toward the duty, interest, penalties, fees, or any other sum payable by an individual under the terms of this Act, the Customs Tariff Act of 1975, or any other law currently in effect or the rules and regulations made thereunder, using an authorised method of payment must be, subject to such terms and conditions, be credited to the e - cash ledger of such individual, to be kept in accordance with the provisions of Section 51 of the Customs Act of 1962.

After paying duty, interest, penalties, fees, and any other amounts due, the remaining balance in the electronic cash ledger may be requested for a refund by the individual on the public site using FORM ECL-5. Following application receipt, the requested sum from the balance is no longer usable by the applicant, and a decision regarding its refund must be made on the public site within 30 days of the application date. The amount to be refunded is then credited to the applicant's bank account as registered with the customs automated system.

(Source: Notification No. No. 20/2022-CUSTOMS (N.T.) dated 30th March 2022)

(3) GSTR-1/IFF ENHANCEMENTS DEPLOYED ON GST PORTAL

The Goods and Service Tax Network (GSTN) has informed the public of technological advancements in GSTR-1/IFF that will improve the application's functionality and user experience (Invoice furnishing facility).

All regular and irregular registered taxpayers who make outward supplies of goods and services or both are required to submit Form GSTR-1, a monthly Statement of Outward Supplies, which contains information about such outward supplies.

The "submit" option has been changed to "file statement" as part of the new upgrade. By pressing the 'File Statement' button, taxpayers will have the freedom to add or edit records up until the file is finished, which will replace the current two-step filing process.

The table-wise consolidated summary will now be presented to taxpayers before to the actual filing of GSTR-1/IFF. The records provided by the taxpayers will be thoroughly and table-by-table, be

summarised in this unified report. Before the actual filing, this will give a thorough review of the records added to GSTR-1/IFF.

Additionally, the taxpayers can now examine and download the GSTR-1/complete IFF's summary in a new PDF format. A few tables from the announced format were combined and made publicly available in the older format of the GSTR-1 summary, which was slightly different from the notified format. The new summary format has been adjusted to match the GSTR-1 standard that has been announced.

(Source: GSTR-1 enhancements and improvements dated 27th April 2022)

(4) I-TECH PLAST INDIA V. STATE OF GUJARAT

The applicant inadvertently exported its finished goods upon payment of IGST instead of exporting it under the 'Letter of Undertaking'. Therefore, the applicant received auto-refund of IGST paid at the time of exports. Thereafter, the applicant paid the requisite IGST with interest to the tax authorities. The applicant requested the authorities to restore the ITC which was inadvertently utilized for the payment of IGST at the time of export of goods. The ITC was not restored and a writ application was preferred before the Gujarat High Court seeking appropriate directions. The Court held that where an assessee has used the ITC in payment of IGST and got refund of the same while it had imported some goods under advance authorization, the ITC must be restored since the assessee had repaid the earlier IGST refund.

(Source: I-Tech Plast India Pvt. Ltd. v. State of Gujarat, Civil Application No. 3635 of 2021)

(5) GREENLIGHTS POWER SOLUTIONS V. STATE TAX OFFICER

The petitioner approached the Kerala High Court alleging that the detention of its goods under Section 129 of the CGST Act was illegal. The goods were detained by the tax officer on account of a discrepancy in the e-way bill. The discrepancy was due to the computer formatting system which generated the bill in a month-day-year format instead of day-month-year. The court held that the discrepancy was minor and came under the ambit of Para 5(d) of the CBIC Circular No. 14/38/2018

which stated that minor discrepancies should not be penalized. The court upheld the plea of the petitioner after noting that the significant details such as the nature and value of goods, GSTIN of supplier and recipient, HSN code etc. contained no discrepancies.

(Source: Greenlights Power Solutions v. State Tax Officer, WP(C) No. 7716 of 2021)

INTELLECTUAL PROPERTY RIGHTS

(1) SUPREME COURT DISMISSES "POSTPE'S" CLAIM THAT "PHONEPE" WAS GIVEN PERMISSION TO FILE A NEW TRADEMARK INFRINGEMENT LAWSUIT.



The Supreme Court affirmed the Bombay High Court's decision to permit PhonePe to bring a new lawsuit against PostPe's owners, Resilient Innovations, alleging trademark infringement on Monday in a dispute involving the trademarks "PhonePe" and "PostPe." Justices DY Chandrachud and Surya Kant's panel upheld the high court's decision.

(Source: Resilient Innovations Private Limited v. Phonepe Private Limited, SLP© No. 005072 – 005073 / 2022 (Supreme Court of India))

(2) MAKEMYTRIP INDIA V. BOOKING.COM

Makemytrip ("Plaintiff") filed an application to restrain Booking.com ("Defendant") from misusing its trademark. The Defendant was using

the Plaintiff's trademarks as keywords on the Google Ads Program to promote its website. It secured a bid on the Google Ads Program for the keyword 'MAKEMYTRIP'. Thus, when a search for 'MAKEMYTRIP' was carried out, the first result displayed was that of Booking.com. The Plaintiffs claimed that this constituted trademark infringement.

The Court opined that due to the structure of the Google Ads Program, Google appropriates the goodwill of the trademark owner as it allows competitors to bid on the trademark as a keyword. This forces the proprietor to bid for its own trademark. It held that on an interpretation of Section 29(9) of the Trade Marks Act, 1999, invisible use of trade marks can also constitute infringement. It further noted that since business was being diverted away from the plaintiff to the defendant due to its unfair use of the trademark, there was a violation of Section 29(8)(a) as well.

(Source: Makemytrip India Pvt. Ltd. v. Booking.com B.V. & Ors., CS(Comm) 268/2022)

ENVIRONMENT LAWS



(1) CLARIFICATION ON VALIDITY OF ENVIRONMENTAL CLEARANCE

The September 14, 2006 notification that deals with obtaining environmental clearance for new programs and projects, or for the development or modernization of current projects or activities based on their potential environmental impacts, has been amended by the Ministry of Environment, Forest, and Climate Change.

The period from when a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted, to the beginning of manufacturing operation by the task or project, in the context of construction projects, to the completion of all construction operations—is defined as the validity of the environmental clearance.

In the case of River Valley projects or activities, the prior environmental clearance granted for an existing or new project or activity shall be valid for a period of thirteen years. As in case of Area Infrastructure projects and Townships, the time limit of ten years shall be restricted to only those activities that may be the applicant's obligation as a developer. Until the earlier of thirty years or the project life as specified in the mining plan that has been periodically authorized and updated by the competent authority, whichever comes first, the prior Environmental Clearance given for mining projects shall be valid.

(Source: Notification no. S.O. 1807€ dated 12th April 2022)

(2) ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION AMENDED TO CLARIFY APPROVAL PROCESS FOR INTEGRATED MINING PROJECTS

The Environment Impact Assessment (EIA) Notification, 2006 has been revised by the Ministry of Environment and Forests. The amendment states that the following projects will continue to be taken into consideration at the Central or State level, depending on the situation, in accordance with the current threshold for mining projects.

(Source: Notification No. S.O. 1886(E) dated 20th April 2022)

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