

MONTHLY NEWSLETTER

JUNE 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 ALLOWS DOORSTEP BANKING FOR FINANCIALLY SOUND AND WELL MANAGED (FSWM) UCBS.



According to Section 23 of the Banking Regulation Act, 1949, Primary (Urban) Co-operative Banks (UCBs) require prior approval from the RBI to open any new place of business. Keeping this in mind, the RBI has decided to allow FSWM to provide Doorstep Banking Services to their customers on a voluntary basis. However, for Non-FSWM UCBS, they must receive prior approval from the Regional Office of the Department of Supervision of RBI to offer this service. Further guidelines have also been given by the RBI to the UCBS such as risk management and several others which must be followed while providing this service.

(Source: RBI Notification, DOR.REG.No.45/19.51.052/2022-23, Dated: June 8th 2022)

(2) RBI ANNOUNCES CHANGE IN RATES UNDER LIQUIDITY ADJUSTMENT FACILITY (LAF)

The RBI has increased the policy Repo Rate under LAF by 50 basis points from 4.40% to 4.90%. This change is one of the resolutions arrived upon by the Monetary Policy Committee (MPC) during the Monetary Policy Statement meeting of 2022-23. This changed rate will begin with immediate effect. This has consequently adjusted the Standing Deposit Facility (SDF) rate to 4.65% and the Marginal Standing Facility (MSF) rate to 5.15%, which will be implemented immediately. All other aspects under the LAF scheme will remain, unchanged.

(Source: RBI Circular, FMOD.MAOG.No.145/01.01.001/2022-23, Dated June 8th 2022).

(3) SOVEREIGN GOLD BOND (SGB) SCHEME OF 2022-23

The Government of India has announced two series, under the SGB scheme for every tranche. The date of issuance for Series I began on June 28th, 2022, while the date for Series II will begin on August 30th, 2022. These dates, are however, not fixed and can be changed by the Central Government with prior notice. The subscription for the Bond can be done by filling out the application form and must be accompanied by the details of a valid PAN issued by the country's Income Tax Department.

(Source: RBI Circular, IDMD.CDD.No.S789/14.04.050/2022-23, Dated: June 16th 2022).

(4) RBI RELEASES DRAFT RESERVE BANK OF INDIA DIRECTIONS

The RBI has released Draft Reserve Bank of India (Margining for Non-Centrally Cleared OTC Derivatives) Directions and has opened the floor for comments from banks, market participants and all other interested parties within July 29th, 2022. These Draft Directions prescribe guidelines for the exchange of initial margin for NCCDs. Though the Draft includes provisions for both variation and initial margins, the regulations related to the latter, are now open for feedback.

(Source: RBI Press Release, Dated: June 16th 2022)

FOREIGN TRADE

(1) ALIGNMENT OF 4R APPENDIX WITH THE FINANCE ACT, 2022

The Central Government with the powers conferred to it by Section 5 of the Foreign Trade (Development and Regulation) Act of 1992, has aligned an Appendix 4R to comply with the recent Finance Act of 2022. This new Appendix will contain the eligible RoDTEP export items, rates and per unit value (wherever applicable) and will be available at the DGFT portal (www.dgft.gov.in), under the link 'Regulatory Updates RoDTEP'.

(Source: Notification No: 12/2015-2020, Dated: 1st June 2022)

(2) RELAXATION IN THE SUBMISSION OF 'BILL OF EXPORT' FOR SEZ UNITS

Previously, when the supplies are made to SEZ units under Advance Authorisation, one of the mandatory documents, as given under 'Guidelines for Applicants' of ANF-4F, was the 'Bill of Export'. However, since this provision was difficult to obtain for the exporters, especially during FTP 2009-14, the High Courts, in several instances have granted relief to the Advance Authorisation holders.

Therefore, the issue was then analysed and compared with the FTP of 2015-2020, subsequently leading the Directorate General of Foreign Trade (DGFT) to relax the submission of this document. Exporters can now instead submit corroborative evidence such as:

- a) ARE-1 form duly attested by jurisdictional Central Excise.
- b) Evidence of receipt of the supplies by the recipient in the SEZ.
- c) Evidence of payment made by the SEZ unit to the AA holder.

(Source: Policy Circular No. 39/2015-2020, Dated 7th June 2022)

(3) CLARIFICATIONS OFFERED BY THE DIRECTORATE GENERAL OF FOREIGN TRADE (DGFT) ON THE CHIP IMPORT MONITORING SYSTEM (CHIMS)

After the import amending policy that changed items under CHIMS from 'Free' to 'Free subject to compulsory registration, the DGFT clarified the status and particulars regarding the same. It allowed the importer to include multiple products with one registration number but mandated a separate registration number for each shipment/consignment. Furthermore, it clarified that CHIMS can be shipped by both air and sea and its registration can be completed on the same day of arrival. Moreover, DGFT also excluded microprocessors and memory modules from CHIMS.

(Source: Policy Circular No. 40/2015-2020, Dated 27th June 2022)

(4) MIGRATION OF BANK REALISATION CERTIFICATE (E-BRC) PORTAL TO NEW PLATFORM

The e-BRC Portal platform is used by the Department of Commerce to attain details of realised export proceeds, directly from the Banks through a secured electronic mode. It also facilitates the implementation of several export promotion schemes electronically. However, this version, which was released in 2012, will be discontinued from the end of July 2022. Therefore, existing users of this portal will need to immediately switch to the new interface, i.e., <https://dgfigov.in>, so as to not negatively impact the exporting community and their workings.

(Source: Trade Notice No. 13 /2022-23, Dated: 30th June 2022)

CORPORATE LAWS

(1) INTRODUCTION OF FORENSIC AUDIT UNDER COMPANIES ACT, 2013

According to the Company Law Committee Report of 2022, this form of auditing was added to the Act to aid executory orders in cases of severe non-compliance. Previously, it could be conducted only with the permission of regulators or at the behest of creditors. Now, it can be ordered during any stage of the investigation of the company's affairs or during the inquiry.

(Source: <https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#363636>)

(2) ESTABLISHMENT OF RISK MANAGEMENT COMMITTEE

The Companies Act of 2013 sets aside a few provisions [Sections 134(3)(n) and 177(4)(vii)] which provide for the implementation and development of a risk management policy for a company. This responsibility was given to the audit team and directed them to evaluate the company's internal financials and risk management systems. However, the Act never called on for the establishment of a committee. This proved to be disastrous for companies during the recent COVID-19 pandemic. Keeping this in mind, the Company Law Committee Report of 2022, recommended such committees to be formed independently and the same to be included in the Act.

(Source: <https://www.taxmann.com/post/blog/key-highlights-of-the-company-law-committee-report-2022-clc-2022/#363636>)

(3) COMPANIES MUST NOW DISCLOSE FOREIGN DIRECT INVESTMENTS (FDI) RECEIVED FROM NEIGHBOURS

The Ministry of Corporate Affairs has made amendments under the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022, which now requires all Indian companies to disclose any FDIs made by India's neighbours. In 2020, the government declared that all FDIs from China, Pakistan, Bangladesh, Nepal, Myanmar, Afghanistan and Bhutan, must receive prior approval from it in compliance to the Foreign Exchange Management (Non-Debt Instruments) Amendment Rules. This amendment was carried out as an effort to prevent any of the neighbouring countries from hostile takeovers of any Indian company.

(Source: <https://law.asia/companies-disclose-fdi-from-neighbours/>)

(4) SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) PROVIDES CLARIFICATION ON APPLICABILITY OF ALTERNATIVE INVESTMENT FUND (AIF) AND PORTFOLIO MANAGEMENT SERVICES (PMS)

According to Indian Market Regulator, SEBI, Investment Managers of an AIF are authorised to provide investment management services to offshore funds, only if they are registered as portfolio managers. They must acquire a certificate of registration as a portfolio manager under the regulations of PMS. Only then can they be eligible as a fund manager.

(Source: https://www.business-standard.com/article/economy-policy/sebi-clarifies-on-applicability-of-aifs-and-portfolio-manager-rules-122061300665_1.html)

(5) VALLAL RCK V. SIVA INDUSTRIES AND HOLDINGS

IDBI Bank had filed an application for the commencement of CIRP of Siva Industries ("Corporate Debtor"). The CIRP did not succeed, and an application was filed for liquidation of the Corporate Debtor. Meanwhile, a shareholder of the Corporate Debtor approached the NCLT seeking consideration of a one-time settlement offer, after which the tribunal directed the CoC to consider a one-time settlement. The settlement was subsequently approved, and an application was filed for the withdrawal of CIRP. However, the NCLT rejected the application and directed the liquidation of the Corporate Debtor. After an appeal was rejected by the NCLT, a further appeal was preferred before the Supreme Court

The Supreme Court held that the application for withdrawal of CIRP complied with the statutory provisions as there was more than 90% concurrence of the members of the CoC and cogent reasons were given justifying the withdrawal. The Court set aside the orders of the tribunal and held that the NCLT cannot sit in appeal over the decisions of the CoC.

(Vallal RCK v. M/s. Siva Industries and Holdings Ltd. & Ors., Civil Appeal Nos. 1811-1812 of 2022, Supreme Court)

(6) PRASHANT AGARWAL V. VIKASH PARASRAMPURIA

In the Bombay Rayon Fashions ("Corporate Debtor") insolvency case, the NCLAT has stayed the constitution of the Committee of Creditors. The present case arose out of an appeal against the decision of the NCLT wherein it had allowed a Section 9 IBC application for initiating CIRP against the corporate debtor. A

settlement was proposed by the respondent for which the appellant sought time to seek instructions. In the interim, the bench decided to stay the constitution of the committee of creditors while letting the CIRP continue.

(Source: Prashant Agarwal v. Vikash Parasprampuria, Company Appeal (AT) (Ins.) No. 690 of 2022, NCLAT)

SECURITIES LAWS AND CAPITAL MARKET

(1) SEBI PUBLISHES SOP FOR DISPUTE RESOLUTION UNDER THE STOCK EXCHANGE ARBITRATION MECHANISM

The Basic Operating Procedure for Stock Exchange Arbitration for Conflicts between such a Listed Company and/or Registrars to an Issue and Share Transfer Agents (RTAs) and its Shareholder(s)/Investor has been made public by the Securities and Exchange Board of India. On June 1st, 2022, the new structure will go into effect.

After all attempts to resolve complaints, including those made through the SCORES Portal, have been made, the arbitration mechanism will be launched. The Stock Exchange where the initial complaint was filed must receive the Arbitration reference.

A single arbitrator shall be appointed in arbitration cases involving claims up to Rs. 25 lakh, and a panel of three arbitrators shall be appointed in cases where the amount of the claim exceeds Rs. 25 lakh. The regional stock exchange office closest to the shareholder(s) or investor shall serve as the venue for both the arbitration and the appellate arbitration (s).

The stock exchanges must keep any arbitration-related documents for five years following the date of the arbitral award, appellate arbitral award, or court order, as applicable, and must record the permanent destruction of any such records.

(Source: Notification no. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/76 dated 30th May 2022)

(2) SEBI STRENGTHENS INVESTOR GRIEVANCE REDRESSAL MECHANISM.

According to feedback from market participants, the Investor Grievance Redressal Mechanism (IGRC) was significantly reinforced by the Securities and Exchange Board of India. Beginning on July 1, the new mechanism will be used.

Before using any other legal options accessible under any other law, the complainant/member must first refer any civil matter between the member and the client to the IGRC and/or to the Stock Exchange's arbitral proceedings mechanism. This applies to any dispute between the member and the client relating to or arising out of the transactions in the Stock Exchange.

(Source: Notification no. SEBI/HO/MIRSD/DOS3/P/CIR/2022/78 dated 3rd June 2022)

(3) NSE INTRODUCES NEW MODULE TO UPDATE NSEIL CDS INSTRUMENTS ON ENIT

In order to better serve its members and streamline the current operating system, the National Stock Exchange (NSE) has launched a new module to update NSEIL CDS (Currency derivatives Segment) instruments on ENIT (Electronic NSE Interface for Trading Members).

The new function will go into effect on May 31, 2022, with the intention of replacing or adding instruments given toward the NSEIL IFSD in the CD segment. With the help of the module, the member is able to submit their request for an NSEIL CD instrument digitally via the ENIT site.

(Source: Circular no. 34/2022 dated 31st May 2022)

(3) CONSULTATION PAPER ON PROPOSED IFSCA (FINANCE COMPANY) (AMENDMENT) REGULATIONS, 2022

The IFSCA (Finance Company) (Amendment) Regulations, 2022, have been the subject of a consultation document from the International Financial Services Centers Authority. Any non-core activity (ies)

in IFSC that FC/FU intends to conduct must adhere to the provisions of the relevant Framework and Guidelines, as determined by the Authorities. Additionally, subject to compliance with the relevant Frameworks / Regulations governing such activities, an entity engaging in more than one permissible activity under FC laws will be required to maintain the higher of the minimum capital / owned funds / net worth prescribed for each individual activity.

(Source: consultation paper dated 3rd June 2022)

COMPETITION LAWS

(1) CCI PENALISES FIRMS FOUND GUILTY OF BID RIGGING AND CARTELIZATION IN INDIAN RAILWAYS TENDERS

Today, the Competition Commission of India (CCI) issued a final order against seven businesses that were deemed to have violated the anti-competitive agreement-prohibiting provisions of Sections 3(3)(a), 3(3)(b), 3(3)(c), and 3(3)(d) of the Competition Act, 2002 (Act).

A lighter penalty proposal submitted by one of the cartelizing firms served as the foundation for the case's inception. A cartel member may approach the Commission under Section 46 of the Act to request a reduced punishment in exchange for making complete, truthful, and important disclosures to the Commission about the alleged cartel.

(Source: PRESS RELEASE No. 10/2022-23 dated 9th June 2022)

INDIRECT TAXES AND CUSTOMS

(3) CBIC WAIVED INTEREST FOR FAILURE TO FILE FORM GSTR-8

The class of listed individuals who were obliged to furnish the statement in FORM GSTR-8 for the month of December 2020 but did not do so have had interest waived by the Central Board of Indirect Taxes

"Electronic commerce operators who had deposited the tax collected under subsection (1) of section 52 for the stated month in the electronic cash ledger but were unable to file the statement owing to a technical error on the portal."

(Source: Notification no. No. 08/2022 – Central Tax dated 7th June 2022)

(3) THE GOODS AND SERVICES TAX (PERIOD OF LEVY AND COLLECTION OF CESS) RULES, 2022.

The Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022, which were released by the Ministry of Finance, extended the deadline for the levy of the compensating cess up to the end of March 2026.

According to the Goods and Services Tax (Compensation to States) Act of 2017, states are entitled to compensation for any revenue losses resulting from the implementation of GST. According to the Act, some products and services can be supplied with a GST Compensation Cess. The GST Compensation Fund receives the cess revenue deposits. The sum deposited in the Fund is used to make up for any revenue losses experienced by the states as a result of the implementation of the GST.

The government had previously set the last day for the GST compensation cess to be collected as 1 July 2022, but it has since been extended to 31 March 2026.

(Source: Notification no. No. 1/2022– Compensation Cess dated 24th June 2022)

(3) KEY HIGHLIGHTS OF THE RECOMMENDATIONS MADE IN 47TH GST COUNCIL MEETING.

Union Minister for Finance & Corporate Affairs Smt. presided over the 47th GST Council. Nirmala Sitharaman The GST Council has, among other things, recommended the following amendments

to GST law and process as well as adjustments to GST rates on the supply of goods and services.

It is suggested that the GST rate be raised from 12% to 18% on supplies of power-driven pumps, LED lamps, cutlery, and lighting fixtures. It is advised to raise the GST rate on finished leather and solar water heaters from 5% to 12%.

The GST Council also clarified a few things about the GST rates. It is made clear that all electric cars, whether or not they are equipped with battery packs, are eligible for the reduced GST rate of 5%, and that under CTH 0804, all types of mango, including mango pulp (other than sliced or dried mangoes), are subject to a 12% tax. Entry is being updated to make this abundantly obvious as well. Mangoes that are still raw or fresh are still exempt.

To avoid needless litigation, the GST imposed at 5% without ITC on the supply of ice cream by ice cream parlours during the period from 1.07.2017 to 5.10.2021 must be regularised due to ambiguity in the rates.

It has also been made clear that the application fee charged by universities for entrance, the issuance of an eligibility certificate for admission, or the issuance of a migration certificate is exempt from GST and that services such as assisted reproductive technology (ART) and in vitro fertilisation (IVF) are included in the definition of health care services for the purposes of the GST exemption.

(Source: 47th Council meeting dated 29th June 2022)

(4) SONAL AUTOMATION INDUSTRIES V. STATE OF UTTARAKHAND

Sonal Automation (“Petitioner”) mentioned the wrong invoice number in an e-way bill which led to the imposition of a penalty by tax authorities. The High Court of Uttarakhand set aside the penalty holding that since there was no intention to avoid taxes, inadvertent human errors cannot be subject to penal consequences. The penalty was thereafter directed to be refunded.

(Source: Sonal Automation Industries v. State of Uttarakhand, Writ Petition No. 1969 of 2021, Uttarakhand High Court)

(5) RAJNANDINI METAL V. UNION OF INDIA

Rajnandini Metal (“Petitioner”), being aggrieved by the blocking of its Input Tax Credit by a proceeding under Rule 86A of CGST Rules, filed a Writ Petition with the High Court. The ITC of the Petitioner was purportedly blocked because it was under investigation by the tax authorities for receiving fake and ineligible ITC from a racket of suppliers.

The Court held that the blocking of ITC was a drastic measure which could not be sustained merely by recording that an investigation was on going. Further, it was observed that the blocking of ITC was done without recording any cogent reasons or independent application of mind, and that there was no reason to believe that the petitioner was guilty of fraudulent transactions.

(Rajnandini Metal v. Union of India & Ors., CWP No. 26661 of 2021, Punjab and Haryana High Court)

INTELLECTUAL PROPERTY RIGHTS

(1) A RETAIL STORE IN DELHI IS PERMANENTLY PROHIBITED FROM SELLING ANY COUNTERFEIT GOODS USING THE "HETTICH" TRADEMARK AND LOGO.

The Delhi High Court has forbidden a retail establishment from using the trade names and trademarks HETTICH and HETTICH Logo to sell any counterfeit goods or other similar products. Justice Jyoti Singh was handling a lawsuit brought by Heettich Marketing-Und Vertriebs Gmbh & Co. against a retail establishment named Gupta Store to prevent it from using the trade names and trademarks HETTICH and HETTICH Logo.

(Source: HEETICH MARKETING-UND VERTRIEBS GMBH & CO. KG., & ANR v GUPTA STORE)

(2) VISHAL PIPES V. BHAVYA PIPE INDUSTRY

A suit was filed by Vishal Pipes (“Plaintiff”) seeking permanent injunction for trademark infringement. The suit was valued below 3 lakh rupees and the same was listed before a non-commercial court. The court held against the plaintiff after which he approached the Delhi High Court.

The High Court noted that the case was listed before a non-commercial court even though the valuation of the trademark seemed higher. It held that valuation of the subject matter IP should be based on its market value. It was further observed that the valuation of IPR disputes can be below 3 lakhs only in exceptional cases, and such suits should ordinarily be listed before commercial courts.

(Vishal Pipes Ltd. v. Bhavya Pipe Industry, CM Appls. 12-14/2022, Delhi High Court)

ENVIRONMENTAL LAWS

(3) THE ENVIRONMENT (PROTECTION) DRAFT AMENDMENT RULES, 2022.

The Draft Environment (Protection) Amendment Rules, 2022 have been released by the Ministry of Environment, Forest, and Climate Change. These rules will take effect one year from the date that the final announcement is published in the Official Gazette.

The amendment is made in accordance with schedule 1, which deals with the standards for emission or discharge of environmental pollutants and where the CPU unit standards have been made known.

According to CPCB regulations, all petroleum coke calciners must have continuous emission monitoring systems (CEMS) for SO₂ and PM (particulate matter). To improve process control, CO should be monitored by CEMS, and VOCs should be tested once every three months.

(Source: Notification no. G.S.R. 405(E) dated 31st May 2022)

(3) THE ENVIRONMENT (PROTECTION) AMENDMENT DRAFT RULES, 2022.

The Environment (Protection) Amendment Draft Rules, 2022 have been published by the Ministry of Environment, Forest, and Climate Change, and the public is asked to provide comments or ideas, which should be directed to the Secretary, Ministry of Environment, Forest, and Climate Change.

(Source: Notification no. G.S.R. 477(E) dated 27th June 2022)

[End of Newsletter]
