

MONTHLY NEWSLETTER

SEPTEMBER 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 ENABLES BHARAT BILL PAYMENT SYSTEM (BBPS) TO PROCESS CROSS-BORDER INBOUND BILL PAYMENTS



Bharat Bill Payment System (BBPS) may now process cross-border incoming bill payments thanks to RBI. It has been agreed to permit the transfer of foreign inbound remittances received under the Rupee Drawing Arrangement (RDA) to the biller's (beneficiary's) bank account via the Bharat Bill Payment System (BBPS) using an electronic method like NEFT or IMPS..

(Source: RBI/2022-23/115 dated 15th September 2022)

(2) KARNATAKA PROTECTION OF INTEREST OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS (AMENDMENT) ACT, 2022

The Karnataka Protection of Depositors' Interests in Financial Establishments (Amendment) Act, 2022, was released by the state's governor. The amendment states that if multiple First Information Reports regarding fraudulent default are filed against the same accused person or Financial Establishment in more than one police station, multiple police stations within a District, multiple police stations within a Commissionerate, or multiple police stations within the State, an officer as prescribed by the amendment may order the clubbing of the subsequent filed First Information Reports into the earliest case and order to continue with the complaint.

(Source: Act no. 24 of 2022 dated 28th September 2022)

(3) GOVERNMENT SEEKS TO PERMIT 74% INVESTMENT IN DEFENSE SECTOR THROUGH AUTOMATIC ROUTE

The Foreign Direct Investment (FDI) Policy in the Defense Sector has been reviewed by the Department for Promotion of Industry and Internal Trade. As of right now, 49% of investments can be made automatically, and 100% of FDI is allowed in the defence industry. The government is trying to make it possible for 74% of investments to be made automatically in the military industry. Once the FEMA notification is released, this will take effect.

(Source: Press note no. 4 2020 series dated 17th September 2022)

FOREIGN TRADE

(1) DGFT MANDATES TRQ LICENSEES TO INTIMATE IMPORT DETAILS

The Director General of Foreign Trade has instructed licensees of the Tariff Rate Quota (TRQ) to furnish information on imports anticipated under the TRQ. Details of the advance payment, the purchase contract or letter of credit, the SWIFT Output Message Reference date, and other supporting documents are examples of information and proof of purchase or import arrangements.

After 20.09.2022, the TRQ will be cancelled and reallocated to other qualified importers if these conditions are not met.

(Source: Press release 1860192 dated 17th September 2022)

(2) COURIER IMPORTS AND EXPORTS (ELECTRONIC DECLARATION AND PROCESSING) SECOND AMENDMENT REGULATIONS, 2022

The Courier Imports and Exports (Electronic Declaration and Processing) Second Amendment Regulations, 2022 were made public by the Central Board of Indirect Taxes and Customs in a news release dated September 23, 2022. The following forms for importers to file details of the status of an e-commerce import, the e-commerce operator or website utilised, and Payment/unique transaction ID have been updated as a result of the amendment.

(Source: Press release 1861783 dated 23rd September 2022)

(3) MINISTRY OF COMMERCE & INDUSTRY EXTENDS THE FOREIGN TRADE POLICY FOR SIX MONTHS.

The Ministry of Commerce & Industry decided to extend the Foreign Trade Policy 2015–20, valid until September 30, 2022, for an additional six months, effective October 1st. Exporters and industry organisations have pressed the government to extend the current policy for a while and conduct additional consultations before releasing the new policy in light of the current, unstable global economic and geopolitical situation. As a result, it has been prolonged for an additional six months.

(Source: Press release 1862335 dated 26th September 2022)

CORPORATE LAWS

(1) COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2022

The Companies (Acceptance of Deposits) Amendment Rules, 2022 have been released by the Ministry of Corporate Affairs. In accordance with the 2014 Companies (Acceptance of Deposits) Rules, the modification has released updated forms for filing Return of Deposits. To file a return of deposits, utilise the new Form No. DPT-3 and Form No. DPT-4. The modification shall take effect right away.

(Source: Notification No. G.S.R. 663(E) dated 29th August 2022)

(2) IFSCA ISSUES GUIDELINES AND APPLICATION FORM FOR IFSCA FINTECH INCENTIVE SCHEME, 2022.

The IFSCA (FinTech Incentive) Scheme's implementation guidelines were made public by the International Financial Services Centers Authority. The scheme's purpose is to provide specific grants as financial support for FinTech operations (s). This programme is available to domestic FinTechs seeking listing on IFSCA-recognized stock exchanges, domestic FinTechs seeking market access to IFSCs in India, foreign FinTechs seeking market access to IFSCs in India, etc.

(Source: Circular no. F. No. 389/IFSCA/FIP/2021-22 dated 12th September 2022)

(3) INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) (THIRD AMENDMENT) REGULATIONS, 2022

The Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Third Amendment) Regulations, 2022, have been published by the board. The amendment stipulates that, in cases where the insolvency professional is an insolvency professional entity, it shall pay to the Board, on or before the 30th day of April each year, a fee

calculated at the rate of one percent of the professional fee earned for the services rendered as an insolvency professional in the preceding financial year, along with a statement in Form G.

(Source: Notification No. IBBI/2022-23/GN/REG097 dated 20th September 2022)

(4) SECURITIES AND EXCHANGE BOARD OF INDIA V. ABHIJIT RAJAN

Abhijit Ranjan (“Respondent”) was the Managing Director of Gammon Infrastructure Projects Limited (“GIPL”). GIPL entered into two shareholder agreements with Simplex Infrastructure Limited (“SIL”) which were subsequently terminated. Before making the requisite disclosure regarding the termination to the National Stock Exchange, the Respondent sold 144 lakh shares held by him in GIPL. Thereafter, SEBI initiated an investigation of this transaction and the Whole-Time Member (“WTM”) passed an order holding the respondent guilty of insider trading. An appeal against this order was allowed by the Securities Appellate Tribunal (“SAT”) after which SEBI approached the Supreme Court.

The Supreme Court affirmed the order of the SAT and overturned the decision of the WTM. Upon interpreting the provisions of SEBI (Prohibition of Insider Trading Regulations), 2015, the Court held that a profit motive is a necessary prerequisite to the offense of Insider Trading. It further propounded that mere possession of Unpublished Price Sensitive Information (“UPSI”) would not be sufficient and the regulator would need to establish a motive to make undeserved gain. For instance, the sale of securities by an insider at a time when their price is likely to go up on the basis of UPSI would not come within the ambit of insider trading. In the present case, the Court noted that the sale of securities by the insider was made to prevent insolvency of the parent company, and not with an intent to encash upon the UPSI.

(Source: Securities and Exchange Board of India v. Abhijit Rajan, Civil Appeal No. 563 of 2020, Supreme Court)

(5) K. PARAMASIVAM V. THE KARUR VYASA BANK

A 3-judge bench of the supreme court upheld the order of the NCLT admitting a Section 7 IBC petition against a corporate guarantor. The guarantor sought to argue that it does not come within the ambit of a corporate debtor and hence no CIRP can be initiated against it. The court held that CIRP would be maintainable against an entity who has given a guarantee once the principal borrower has committed default. It noted that the liability of the guarantor would be co-extensive with that of the principal borrower.

(Source: K. Paramasivam v. The Karur Vyasa Bank Ltd. & Anr., Civil Appeal No. 9286 of 2019, Supreme Court)

SECURITIES LAWS AND CAPITAL MARKETS

(1) INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (INSURANCE INTERMEDIARY) REGULATIONS, 2021

The International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 were published by the IFSCA, or International Financial Services Centres Authority. The purpose of these regulations is to establish the registration and operational procedures for insurance intermediaries inside an IFSC.

The Authority must receive an application from a candidate who wishes to act as an insurance intermediary in an IFSC in the format outlined in SCHEDULE-VI of these regulations. At least ninety (90) days before the certificate expires, the application for renewal of the certificate must be submitted in the prescribed format along with the renewal fee specified by the Authority. The insurance intermediary must submit the periodic returns as the Authority may specify.

(2) SEBI ISSUES CIRCULAR ON VALIDATION OF INSTRUCTIONS FOR PAY-IN OF SECURITIES

FROM CLIENT DEMAT ACCOUNT TO TRADING MEMBER (TM) POOL ACCOUNT AGAINST OBLIGATIONS RECEIVED FROM THE CLEARING CORPORATIONS.

The International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 were published by the IFSCA, or International Financial Services Centres Authority. The purpose of these regulations is to establish the registration and operational procedures for insurance intermediaries inside an IFSC.

The Authority must receive an application from a candidate who wishes to act as an insurance intermediary in an IFSC in the format provided in SCHEDULE-VI of these regulations. At least ninety (90) days before the certificate expires, the application for renewal of the certificate must be filed in the required format along with the renewal fee stipulated by the Authority. The insurance intermediary must submit the periodic returns as the Authority may specify.

Depositories receive the debit instruction for Pay-In, which is provided either by the client directly using the depository's online system or eDIS mandate, or by the depository participant based on a physical DIS or DIS that has been digitally signed and provided by the client, POA, or DDPI holder. Depositories must verify the depository transfer instruction details with CC obligation details based on UCC, TM ID, CM ID, Exchange ID, ISIN, quantity, settlement details, etc., based on the obligation data provided by CCs.

(Source: Circular No. SEBI/HO/MIRSD/DoP/P/CIR/2022/119 dated 19th September 2022)

(3) SEBI PERMITS REITs AND INVITs TO ISSUE COMMERCIAL PAPER.

The Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT) with net worth of at least Rs 100 crore are qualified to issue commercial paper, according to a notification made by the Securities and Exchange Board of India on September 22, 2022.

(Source: Circular SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/123 dated 22nd September 2022)

(4) SEBI ISSUES CIRCULAR ON MODIFICATION IN DAILY PRICE LIMITS (DPL) FOR COMMODITY FUTURES CONTRACTS.

The Daily Price Limits (DPL) for Commodity Futures Contracts have changed, according to a Securities and Exchange Board of India notification. The exchanges have stated that, due to differences in the methods used to calculate closing prices, closing prices on domestic exchanges and overseas exchanges (after necessary currency conversion) are not the same. The aggregate DPL range on domestic exchange may lag (either upwards or downwards) the prices on foreign exchange in the following trading session as a result of such a discrepancy in closing price.

When compared to the closing price on the previous day on domestic exchange, SEBI has modified certain clauses from its earlier circular dated 11th January 2021 by notifying that the Exchange may further relax the clauses in stages of 3% with a cooling off period of 15 minutes if the price movement in the international markets is greater than the aggregate DPL or if the international price is outside the aggregate DPL range (after appropriate currency conversion). In these situations, the Stock Exchanges must

properly notify the market and include all pertinent information and an explanation.

The stock exchanges can directly relax the DPL by the necessary level by properly notifying the market only in exceptional circumstances, where there is extreme price movement, beyond the initial slab of the DPL, in the international markets, during trading hours or after the close of trading on domestic exchanges.

(Source: Circular SEBI/HO/MRD/MRD-PoD-1/P/CIR/2022/128 dated 27th September 2022)

(5) THE LEGAL METROLOGY (PACKAGED COMMODITIES) (AMENDMENT) RULES, 2022

The Legal Metrology (Packaged Commodities) Amendment Rules, 2022's implementation date was postponed by the Ministry of Consumer Affairs, Food, and Public Distribution from October 1, 2022 to December 1, 2022.

According to the Legal Metrology (Packaged Commodities) Amendment Rules, 2022, each pre-packaged commodity must display the unit sale price in rupees, rounded to the nearest two decimal places.

The State Excise Laws and the rules imposed thereunder shall apply within the State in which the package containing alcoholic drinks or spirituous liquor is manufactured.

Furthermore, pre-packaged goods where the retail sale price is the same as the unit sale price do not need to declare their unit sale price.

With effect from April 1, 2022, and in accordance with the Legal Metrology (Packaged Commodities) Rules, 2011, as amended by the Legal Metrology (Packaged Commodities) Amendment Rules, 2021, no prosecution shall be brought against the manufacturer, packer, or importer of pre-packaged commodities for making a declaration.

(Source: Notification no. G.S.R. 747(E) dated 30th September 2022)

COMPETITION LAWS

(1) COMMISSION APPROVES ACQUISITION OF 100% OF THE EQUITY SHARE CAPITAL OF INDIAIDEAS.COM LIMITED (IIL) BY PAYU PAYMENTS PRIVATE LIMITED (PAYU INDIA) UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The proposed combination involves PayU India acquiring all of IIL's equity share capital.

PayU India primarily offers payment aggregation services, allowing businesses to accept payments from clients using a variety of electronic payment methods. Prosus N.V. ("Prosus") indirectly owns shares of PayU India. One of the top technology investors in the world is the worldwide consumer internet group Prosus. Euronext Amsterdam is where Prosus' major listing is located. In Prosus, Naspers Limited has 73.6% of the voting rights. On the Johannesburg Stock Exchange, Naspers is traded.

IIL is a public limited company that is not listed. In India, it trades under the name "BillDesk" and operates under that brand. IIL's main business is providing payment aggregation services, which let businesses (and other entities) accept payments from customers using a variety of digital payment methods.

(Source: PRESS RELEASE No. 39/2022-23 dated 5th September 2022)

(2) COMMISSION APPROVES THE AMALGAMATION OF THE JIO CINEMA OTT PLATFORM WITH VIACOM 18 MEDIA PRIVATE LIMITED (VIACOM18), FOLLOWING AN INVESTMENT BY BTS INVESTMENT 1 PTE. LTD. (BTS1) AND RELIANCE PROJECTS & PROPERTY MANAGEMENT SERVICES LIMITED (RPPMSL)

Following an investment by BTS Investment 1 Pte Ltd (BTS1) and Reliance Projects & Property Management Services Limited, the Commission approves the merger of the Jio Cinema OTT platform with Viacom 18 Media Private Limited (Viacom18) (RPPMSL)

A corporation called BTS1 was established in accordance with Singaporean law. In addition to offering IT support services, business and infrastructure support services, personnel support services, and the construction and commissioning of telecom facilities, RPPMSL is a fully owned subsidiary of Reliance Industries Limited. The following services are offered by Viacom 18 in India's media and entertainment industry.

(Source: PRESS RELEASE No. 41/2022-23 dated 19th September 2022)

(3) CCI APPROVES ACQUISITION OF ASSETS OF ESSAR GROUP BY ARCELORMITTAL NIPPON STEEL INDIA LIMITED

In order to complete the proposed combination, certain assets must be acquired, including the following: (a) Power Assets (Essar Power Hazira Limited (EPHL), Gandhar Hazira Transmission Limited (GHTL)); (b) Port Assets (Hazira Cargo Terminals Limited (HCTL), Ibrox Aviation & Trading Private Limited (IATPL), Essar Bulk Terminal Limited (EBTL), Essar Bulk Terminal Paradip Limited (EBTPL), The Essar Group is the owner of all of these target assets. ArcelorMittal SA (AM) and its affiliates, as well as Nippon Steel Corporation, are partners in the joint venture known as AMNS (NSC).

(Source: PRESS RELEASE No. 44/2022-23 dated 29th September 2022)

INDIRECT TAXES AND CUSTOMS

(1) THE CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY OR FOR SPECIFIED END USE) RULES, 2022.

The Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, published by the Ministry of Finance on September 9, 2022, are applicable to importers who wish to take advantage of any notification, provided that the benefit is used in connection with the manufacture

of a covered good, the provision of an output service, or the application of a specified end use.

An Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) will be generated against the information upon acceptance: As long as the information can be updated on the common portal in the event that the details provided in Form IGCR-1 change.

When a Bill of Entry is approved for domestic use, the importer's bond is automatically debited in the automated customs system, and the relevant Customs Officer will be able to access the information electronically.

By the tenth day of the following month, the importer must submit a monthly statement on the common portal in the Form IGCR-3. However, the importer may submit details of goods consumed in the Form IGCR-3A at any time for immediate bond recredit, which will be included in the monthly statement of the following month.

(Source: Notification no 74/2022 – customs dated 9th September 2022)

(2) CBDT PUBLISHES THE INCOME-TAX (30TH AMENDMENT) RULES, 2022.

To further update the Income-tax Rules, 1962, the Central Board of Direct Taxes published the Income-tax (30th Amendment) Rules, 2022.

The following has been substituted for Rule 121A, which deals with the form of statement to be supplied by cinematograph film producers or individuals doing a designated activity:

A person engaged in cinematograph film production, a designated activity, or both is obliged to provide a statement pursuant to section 285B for each prior year in Form No. 52A. Within sixty days of the preceding year's end, the Form No. 52A must be provided.

(Source: Notification no. G.S.R. 697(E)) dated 14th September 2022)

(3) INCOME-TAX (31ST AMENDMENT) RULES, 2022.

The Income-tax (31st Amendment) Rules, 2022 were announced by the Ministry of Finance and will take effect on November 1st, 2022.

This amendment adds a new regulation 12AD on the return of income under Section 170A and creates a new form ITR-A for "successor entities" to submit their return of revenue under Section 170A of the Income Tax Act of 1961 as a result of company reorganisation.

A successor entity to a business reorganization, as defined in section 170A, is required by rule 12AD to provide a modified return of income for an assessment year that is in the Form ITR-A and is verified in accordance with its requirements. The income tax return must be submitted electronically with a digital signature. The Assessing Officer must pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment if the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the order of the business reorganisation applies have been completed or are pending on the date of furnishing the modified return in accordance with the provisions of section 170A.

(Source: Notification no. G.S.R 709(E) dated 19th September 2022)

(4) **THE CENTRAL GOODS AND SERVICES TAX (SECOND AMENDMENT) RULES, 2022.**



The Central Goods and Services Tax (Second Amendment) Rules, 2022 were published by the Ministry of Finance on September 28, 2022, and they will take effect on October 1st, 2022.

Through this amendment, it has been made known that any registered person who has used an input tax credit on an inward supply of goods or services or both, aside from those for which tax is payable on a reverse charge basis, but who does not pay the

supplier the amount towards the supply's value and the tax due thereon within the allotted time period, shall pay an amount equal to the input tax credit used in respect of such supply along with the tax due thereon.

(Source: Notification no. 19/2022 – central tax dated 28th September 2022)

(5) **OASIS REALTY V. UNION OF INDIA & ORS.**

Oasis Realty ("Petitioner") wished to file an appeal with an Appellate Authority under Section 107 of the CGST Act read with the MGST Act. The Act requires the petitioner to pay 10% of the disputed tax before filing such appeal. The appellant wanted to fulfil this requirement by using the Input Tax Credit ("ITC") available in the Electronic Credit Ledger ("ECrL"), which was rejected by the Appellate Commissioner.

The Bombay High Court allowed the appeal by the Petitioner and set aside the impugned order. It noted that output tax liability due to a proceeding by a tax authority can be settled by utilizing the ITC in the EcRL. Thus, the Petitioner was allowed to utilize this method to comply with the conditions for filing the appeal.

(Source: Oasis Realty v. Union of India & Ors., Writ Petition (ST) No. 23507 of 2022, Bombay High Court)

(6) **ARUN KRISHNACHANDRA GOSWAMI V. UNION OF INDIA**

In the present case, the Petitioner had entered into a contract with the Respondent which provided for the payment of GST at 18% per annum. This tax was paid to the Railways whereas it was supposed to be paid to the Central Government directly.

The High Court observed that there was no attempt to evade tax by the Petitioner and noted that the payment was made under a *bona fide* mistake. The Court directed the Railways to repay the amount to the Petitioner after which the Petitioner shall pay the Central Government through the GST authorities.

(Source: Arun Krishnanchandra Goswami v. Union of India & Ors., Writ Petition No. 2963 of 2022)

INTELLECTUAL PROPERTY RIGHTS

(1) NIKHIL CHAWLA v. THE COCA COLA COMPANY

After a fruitful mediation procedure, the trademark settlement lawsuit of Coke Studio and Cook Studio was resolved in Delhi High Court. Cook Studio, a firm that produces cooking-related videos and blogs, filed a lawsuit seeking a declaration of non-infringement of a registered trademark against Coco Cola, the corporation that owns the well-known music platform Coke Studio. They agreed that the plaintiff should use the mark "Cook Pro" rather than the mark "Cook Studio." The Court ordered the litigation in accordance with the settlement's background..

(Source: Nikhil Chawla v. The Coca Cola Company CS (COMM) 313/2022 Delhi High Court Order)

(1) VLSI TECHNOLOGY LLC v. INTEL CORP.

On September 14, Intel Corp. filed its opening brief with the U.S. Court of Appeals for the Federal Circuit, criticising the jury's \$2.1 billion patent judgement against it and labelling VLSI Technology LLC's damages demands "exorbitant" and the trial itself "fatally flawed." According to Intel, U.S. District Judge Alan Albright allowed VLSI to present evidence that influenced the jury against it and led to an excessive award. In a filing with the Federal Circuit on Wednesday, Intel argued that Albright should not have allowed VLSI to show the jury six contracts with Intel in which the corporation committed to pay between \$200 million and \$1.5 billion to remedy earlier patent issues. The contracts were "irrelevant" to the circumstances, according to Intel.

(Source: vlsi technology llc v. intel corp. Civil Action No. 18-966-CFC-CJB)

ENVIRONMENT LAWS

(2) ASSAM PCB MANDATES ALL CEMENT MANUFACTURING UNITS TO OBTAIN REGISTRATION

In a public notice dated September 7, 2022, the Assam Pollution Control Board ordered all cement production facilities to register within 15 days of the notification's issuance. The Extended Producers Responsibility (EPR) portal is where the registration application must be submitted.

Micro, small, and medium-sized businesses are exempt from registering through the EPR site.

(Source: Public Notice no. WB/T-298/21-22/79 dated 7th September 2022)

(3) THE GOA MUNICIPALITIES (AMENDMENT) ACT, 2022.

In the Goa Municipalities (Amendment) Act, 2022, which was published by the Goa government on September 15, 2022, a new section 265A dealing with the sealing of locations engaging in any trade or occupation without a licence was notified.

In accordance with section 265A, the Chief Officer shall seal any premises where any individual engages in any trade or occupation within the boundaries of a municipal area without first obtaining a licence from the Council.

The tax on any building or piece of land that is subject to property tax assessment must also be determined in accordance with section 110, and it will be determined using the capital value system of the property as may be announced by the government by publication in the Official Gazette.

(Source: Series no I of 24 dated 15th September 2022)

[End of Newsletter]
