

# MONTHLY NEWSLETTER

## OCTOBER 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](mailto: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](http://www.lexport.in).

### OUR LEGAL TEAM

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Rajiv Sawhney  
Raj Latha Kotni  
Sandeep Chatterjee  
Urvashi Kalra  
Akshay Kumar  
Swagita Pandey  
Adivitiya Raj  
Sourabh Malik

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## RBI & FEMA

### **(1) RBI MANDATES INTERNAL OMBUDSMAN MECHANISM FOR CREDIT INFORMATION COMPANIES**



The Internal Ombudsman Mechanism for Credit Information Companies has been mandated by the Reserve Bank of India (CICs). By April 1, 2023, all Credit Information Companies (CICs) with a Certificate of Registration must appoint an Internal Ombudsman (IO) to serve at the centre of their internal grievance resolution system.

According to the procedure, any complaints that are partially or completely rejected by CICs will be examined by the IO before the complainant is informed of the CIC's ultimate decision. Any complaints made directly by members of the public will not be considered by the IO. In addition to RBI regulatory scrutiny, the CIC's internal audit system will keep track of the IO mechanism's execution.

*(Source: Press Release: 2022-2023/1003 dated 6<sup>th</sup> October 2022)*

### **(2) RBI LAUNCHES ADVANCED SUPERVISORY MONITORING SYSTEM (DAKSH)**

"(DAKSH) - Reserve Bank's Advanced Supervisory Monitoring System," a new SupTech effort from the Reserve Bank of India, is intended to strengthen the supervisory processes.

With the aim of further enhancing the compliance culture in Supervised Entities (SEs) like Banks, NBFCs, etc., RBI shall monitor compliance needs in a more targeted manner through "(DAKSH)," a web-based end-to-end workflow platform.

Through a Platform that allows anytime-anywhere secure access, the application will also enable seamless communication, inspection planning and execution, cyber incident reporting and analysis, supply of various MIS reports, etc.

*(Source: Press Release: 2022-2023/1005 dated 6<sup>th</sup> October 2022)*

### **(3) RBI UPDATES MASTER DIRECTIONS ON PRIORITY SECTOR LENDING (PSL)**

The Master Directions on Priority Sector Lending (PSL) - Targets and Classification have been amended by the Reserve Bank of India. Except for Salary Earners' Bank, all Commercial Banks [including Regional Rural Banks (RRB), Small Finance Banks (SFB), and Local Area Banks] and Primary (Urban) Co-operative Banks (UCB) shall be subject to the terms of this Directions.

The following has been made known in the amended version of the RBI's Paragraph 17 on Bank Investments in Securitization Notes (not applicable to RRBs and UCBs):

Bank investments in "securitization notes," which reflect loans to several priority sector categories aside from "others," are eligible for classification under the relevant priority sector categories depending on the underlying assets.

*(Source: RBI Master Directions – targets and classification updated 20<sup>th</sup> October 2022)*

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## FOREIGN TRADE

### **(1) INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (SETTING UP AND OPERATION OF INTERNATIONAL BRANCH CAMPUSES AND OFFSHORE EDUCATION CENTRES) REGULATIONS, 2022.**

The International Financial Services Centres Authority published the International Financial Services Centres Authority (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022 on October 11th, 2022, and these regulations will apply to any International Branch Campus ("IBC") or Offshore Educational Centre ("OEC") of a Foreign University or a Foreign Educational Institution seeking registration under these regulations, respectively.

The purpose of this regulation is to allow foreign universities to establish international branch campuses in the GIFT International Financial Services Centre (hereinafter referred to as the GIFT IFSC), either on a stand-alone basis or in any other format that may be approved by the Authority, to transform the GIFT IFSC into an international educational hub that serves both Indian and foreign students in the designated disciplines, and to promote research in banking, insurance, and commercial finance.

*(Source: Notification No. IFSCA/2022-23/GN/REG027 dated 11<sup>th</sup> October 2022)*

### **(2) DGFT HAS DESIGNATED APEDA AS THE AGENCY AUTHORIZED TO ISSUE RCMCs FOR CASHEW KERNELS, CASHEW NUT SHELL LIQUID AND KARDANOL**

The Agricultural and Processed Food Products Export Development Authority (APEDA) has been appointed by the Director General of Foreign Trade as the organisation with immediate authority to issue RCMCs for Cashew Kernels, Cashew nuts Shell Liquid, and Kardanol.

The Cashew Export Promotion Council of India shall also serve as the agency authorised to issue RCMCs for Cashew Kernels, Cashew nutshell

Liquid, and Kardanol in addition to the Agricultural and Processed Food Products Export Development Authority.

*(Source: Public notice No. 33/2015-2020 dated 25<sup>th</sup> October 2022)*

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## CORPORATE LAWS

### **(1) IRDAI UPDATES ITS PRODUCT FILING PROCEDURES GUIDELINES.**



A government employee may commute in line with Rule 5 of the CCS (Commutation of Pension) Rules, 1981, in exchange for a lump-sum payment that is not greater than 40% of his pension. Additionally, in accordance with Rule 10-A of the CCS (Commutation of Pension) Rules from 1981, the commuted amount of the pension will be reinstated once fifteen years have passed after the date on which the reduction in pension due to the commutation became effective in accordance with Rule 6.

*(Source: Notification No. 42/15/2022-P&PW(D)/5 dated 25<sup>th</sup> October 2022)*

### **(2) IRDAI AMENDS GUIDELINES ON PRODUCT FILING PROCEDURES**

The Authority, acting in accordance with the authority granted by Section 14(2)(i) of the IRDA Act, 1999, hereby grants the general insurers permission to file all products under Miscellaneous lines of business (including, but not limited to,

general insurance products) after reviewing the current product filing procedure in use. This will enable the industry to respond faster to the emerging market needs in terms of designing and pricing of general insurance products and to promote efficiency in the conduct of general insurance business.

*(Source: Circular no  
IRDAI/NL/CIR/MISC/212/10/2022 dated  
13<sup>th</sup> October 2022)*

### **(3) IRDAI CONSTITUTES HEALTH INSURANCE CONSULTATIVE COMMITTEE**

In order to stay up with the evolving landscape of healthcare, health insurance must also continually change. It need to be able to fully satisfy the requirements of those looking to purchase insurance as a safeguard against medical costs. Every family in the nation needs to be covered by health insurance. To create an atmosphere that will enable the country to reach its goal of universal health insurance, it is necessary to visit the various components of the health insurance value chain on a regular basis..

*(Source: Notification No.  
IRDAI/HLT/ORD/Gen/221/10/2022 dated  
21<sup>th</sup> October 2022)*

### **(4) RESERVE BANK OF INDIA V. RELIANCE CAPITAL**

Axis Bank, Reliance Capital, and Reliance Home Financial Ltd. entered into a tripartite obligor undertaking. Reliance Capital failed to meet its indemnity obligations under the agreement and was admitted into CIRP. Thereafter, the bank filed an application under Section 60(5) of the IBC seeking admission of its claim as a financial creditor.

The NCLT rejected the claim holding that indemnity obligations under a contract did not come within the ambit of 'financial debt' in Section 5(8) of the Insolvency and Bankruptcy Code since there was no disbursement to the Corporate debtor against consideration for the time value of money.

*(Source: Reserve Bank of India v. Reliance  
Capital Limited CP (IB) No. 1231/MB/C-  
I/2021)*

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## **SECURITIES LAWS AND CAPITAL MARKETS**

### **(1) SEBI DIRECTIONS PERTAINING TO ELECTRONIC BOOK PROVIDER (EBP) PLATFORM**

For the Electronic Book Provider (EBP) platform, the Securities Exchange and Board of India (SEBI) has issued directives. In order to address this issue, SEBI has had discussions with market participants including issuers, arrangers, investors (such as banks, mutual funds), stock exchanges, depositories, and at CoBoSAC meetings.

The circular outlines the issuances that must be done through EBP, the eligible participants, the obligations and responsibilities of different entities, the provision for an issuer to withdraw proposals, the bidding and allocation process, etc. Other requirements of the current EBP framework, such as the threshold limits for applicability, the bid restrictions for arrangers, the penalty in case of default, etc., have also been changed.

*(Source: Circular No.  
SEBI/HO/DDHS/DDHS\_Div1/P/CIR/202  
2/00139 dated 10<sup>th</sup> October 2022)*

### **(2) SEBI ISSUES CIRCULAR ON REDUCTION IN DENOMINATION FOR DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES.**

The Changes to chapter V of the operational circular (Denomination of issuance and trading of Non-convertible Securities) have been announced by the Securities and Exchange Board of India. By means of which it has announced that each debt security or non-convertible redeemable preference

share issued on the basis of a private placement shall have a face value of Rs. 1 lakh.

In a previous announcement dated August 10, 2021, SEBI outlined the rules for non-convertible security trading, issuance, and denomination. It requires that the trading lot must be equivalent to the face value of each debt security or nonconvertible redeemable preference share issued on a private placement basis, which is set at Rs. 10 lakh.

However, Numerous market participants, including issuers, made SEBI representations asking for a reconsideration of the aforementioned denominations. The high ticket size is seen as a particular barrier by non-institutional investors, preventing them from accessing the market for corporate bonds. More investors will be able to participate if the face value and trading lot are decreased, which will improve the market's liquidity for corporate bonds.

Therefore, it has announced that the face value of listed debt securities and non-convertible redeemable preference shares issued through private placement that are traded on a stock exchange or over-the-counter (OTC) shall be Rs. 1 lakh, and that all debt securities and non-convertible redeemable preference shares issued through private placement that are issued through new ISINs shall be subject to the provisions of this circular.

*(Source: Circular SEBI/HO/DDHS/P/CIR/2022/00144 dated 28<sup>th</sup> October 2022)*

### **(3) SEBI ISSUES CIRCULAR ON STANDARDISATION OF RATING SCALES USED BY CREDIT RATING AGENCIES (CRAS)**

The standards for the rating scales employed by Credit Rating Agencies were announced by the Securities and Exchange Board of India (CRA). The circular will be effective as of January 1, 2023, and CRAs are required to report to SEBI on their compliance with it (as confirmed by their respective boards of directors) within one quarter of the date of application.

The issuer rating or corporate credit rating reveals the level of safety of the rated business or issuer in terms of prompt payment of all of its financial obligations. Standardized symbols and their definitions for Issuer Rating and Corporate Credit Rating have been developed as a result of collaboration with the CRAs. The new symbols and terminology announced in these guidelines will now be used for the new Issuer Rating and Corporate Credit Rating ratings/reviews by the CRAs.

In an earlier notification, SEBI ordered the CRAs to develop specific policies for putting ratings on credit watch. Each CRA must assign a rating outlook and disclose it in the press release, according to the circular.

*(Source: Circular SEBI/HO/DDHS/DDHS-RACPOD2/P/CIR/2022/146 dated 31<sup>st</sup> October 2022)*

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## **COMPETITION LAWS**

### **(1) COMMISSION APPROVES AMALGAMATION OF ZEE ENTERTAINMENT ENTERPRISES LIMITED (ZEE) AND BANGLA ENTERTAINMENT PRIVATE LIMITED (BEPL) WITH CULVER MAX ENTERTAINMENT PRIVATE LIMITED (CME), WITH CERTAIN MODIFICATIONS.**

The consolidation of ZEE and BEPL with and into CME, as well as the preferential allocation of some CME shares to Sunbright International Holdings Limited (formerly known as Essel Holdings Limited) and Sunbright Mauritius Investments Limited, are all part of the planned combination. The Competition Act of 2002's Sections 5(a) and 5(c) apply since the proposed combination is an acquisition.

*(Source: PRESS RELEASE No. 45/2022-23 dated 4<sup>th</sup> October 2022)*

**(2) CCI ISSUES CEASE AND DESIST ORDER AGAINST KRAFT PAPER MANUFACTURERS AND THEIR FOUR ASSOCIATIONS FOR INDULGING IN ANTI-COMPETITIVE PRACTICES**

Today, the Competition Commission of India (CCI) issued a final order against four regional organizations of Kraft Paper makers, together with its 115 members, for violating the Competition Act, 2002's anti-antitrust provisions in Section 3(3) read with Section 3(1).

Three federations or associations of corrugated box makers provided information that served as the foundation for the case's inception. To enforce the unfair price increase and shut down the operation of the paper mills in a region collectively, it was alleged that the various associations of Kraft Paper Manufacturers directed their members to raise the price of the paper to be sold to the buyers through periodic meetings and correspondences.

*(Source: PRESS RELEASE No. 49/2022-23 dated 12<sup>th</sup> October 2022)*

**(3) COMPETITION COMMISSION IMPOSES MONETARY AND NON-MONETARY SANCTIONS ON MAKEMYTRIP, GOIBIBO AND OYO FOR INDULGING IN ANTI-COMPETITIVE CONDUCT**

The Commission penalized MMT-Go (MakeMyTrip and GoIbibo) financially and behaviorally for abusing its dominant position and engaging in anticompetitive activities with OYO (Oravel Stays Limited). OYO is also subject to a monetary fine for its anti-competitive agreement with MMT-Go, because of which MMT-Go delisted OYO's rivals from its web portals in 2018.

In addition, financial penalties of Rs. 223.48 crore (Rupees Two Hundred Twenty-Three crores and Forty-Eight lakhs only) and Rs. 168.88 crore (Rupees One Hundred Sixty-Eight Crores and Eighty-Eight lakhs alone) each have been levied on MMT-Go and OYO at the rate of 5% of their respective turnovers.

*(Source: PRESS RELEASE NO. 51/2022-23 dated 19<sup>th</sup> October 2022)*

**(4) CCI IMPOSES A MONETARY PENALTY OF RS. 1337.76 CRORE ON GOOGLE FOR ANTI-COMPETITIVE PRACTICES IN RELATION TO ANDROID MOBILE DEVICES**

In addition to issuing a cease-and-desist order, the Competition Commission of India (the Commission) fined Google Rs. 1337.76 crore for abusing its dominant position in several areas within the Android mobile device ecosystem. The Commission also gave Google a deadline by which to change its behavior.

An operating system (OS) is required for running programmes and applications on smart mobile devices. One of these mobile operating systems that Google purchased in 2005 is Android. In this case, the Commission has looked at Google's licensing policies for the Android mobile operating system and several its proprietary mobile applications (e.g., Play Store, Google Search, Google Chrome, YouTube, etc.).

The Commission observed that Google presented multiple revenue data points with evident errors and extensive disclaimers regarding the computation of the penalty. However, the Commission estimated the preliminary monetary penalties based on the information provided by Google in the interest of justice and with the goal of effecting the quickest possible market correction. Considering this, the Commission fined Google Rs. 1337.76 crore on a preliminary basis for breaking Section 4 of the Act. Google has been given 30 days to submit the necessary financial information and accompanying paperwork.

*(Source: PRESS RELEASE No. 55/2022-23 dated 20<sup>th</sup> October 2022)*

**(5) CCI IMPOSES A MONETARY PENALTY OF RS. 936.44 CRORE ON GOOGLE FOR ANTI-COMPETITIVE PRACTICES IN RELATION TO ITS PLAY STORE POLICIES**

In addition to issuing a cease-and-desist order, the Competition Commission of India (Commission) fined Google Rs. 936.44 crore today for abusing its dominant position regarding its Play Store policy. The Commission also gave Google a deadline by which to change its behavior.

The Commission observed that Google presented multiple revenue data points with evident errors and

extensive disclaimers regarding the computation of the penalty. However, the Commission estimated the preliminary monetary penalties based on the information provided by Google in the interest of justice and with the goal of effecting the quickest possible market correction. To punish Google for breaking Section 4 of the Act, the Commission levied a penalty equal to 7% of its annual relevant turnover, or Rs. 936.44 crore, on an interim basis. Google has been given 30 days to submit the necessary financial information and supporting documentation.

*(Source: PRESS RELEASE No. 56/2022-23 dated 25<sup>th</sup> October 2022)*

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## INDIRECT TAXES AND CUSTOMS



### **(1) GSTN ISSUES ADVISORY ON FILING TRAN-1/2 FORMS TO CLAIM TRANSITIONAL CREDIT.**

The facility for filing TRAN-1 and TRAN-2 or revising previously filed TRAN-1 and TRAN-2 on the GST common portal by displeased taxpayers has been made available by the Goods and Service Tax Network as of October 1, 2022, and it will be accessible to all displeased taxpayers until November 30, 2022, in accordance with the Hon'ble Court's directive.

This notice informs all resentful taxpayers who wish to file or amend Form TRAN-1/2 that the current TRAN filing procedure differs from the filing procedure for the fiscal year 2017-18. According to the current procedure, the jurisdictional tax officer must confirm the transitional credit claimed by the taxpayer on TRAN-1/2 forms before the credit is recorded in the relevant ledgers.

Only if the taxpayer has submitted TRAN-1 and made the declaration in TRAN-1's table 7 will TRAN-2 be made available. If the taxpayer is updating a previously submitted TRAN-2 Form, they must re-enter all of their information.

The opportunity to file or amend TRAN-1/TRAN-2 on the common portal from 1.10.2022 to 30.11.2022 is a one-time chance for the applicant to either file the aforementioned forms, if they haven't been filed already, or to amend the forms that have already been filed.

*(Source: Advisory on Filing TRAN-1/2 Forms to claim Transitional Credit dated 1<sup>st</sup> October 2022)*

### **(2) GSTN IMPLEMENTS MANDATORY MENTIONING OF HSN CODES IN GSTR-1.**

The GST Network has announced that the phase 2 amendments would be implemented on the GST Portal as of November 1, 2022, and that taxpayers with annual revenue up to Rs 5 crore will need to declare 4-digit HSN numbers in their GSTR-1.

In a previous announcement, the Central Government mandated that taxpayers declare a minimum of a 4 or 6 digit HSN Code in table-12 of GSTR-I based on their aggregate annual turnover (AATO) in the prior financial year. These improvements are being put on the GST Portal in phases in order to assist the taxpayers.

Phase 1's Parts I and II have already been put into effect and are already available on the GST Portal as of the firsts of April 2022 and August 2022, respectively. Phase 2 will be implemented on the GST Portal as of November 1, 2022, and taxpayers with annual revenue up to Rs 5 crore would need to declare 4-digit HSN numbers in their GSTR-1.

*(Source: Implementation of mandatory mentioning of HSN codes in GSTR-1) dated 22<sup>th</sup> October 2022)*

### **(3) DURGA RAMAN PATNAIK V. ADDITIONAL COMMISSIONER OF GST**

The GSTIN of the petitioner was cancelled for non-filing of returns for a considerable period of time. The Appellate Authority ("AA") refused to overturn the order of the Registering Authority as it

found that application for revocation of cancellation was not filed within the limitation period. Thereafter, the petitioner approached the Orissa High Court assailing the order of the AA. The court allowed the appeal noting that the AA should have considered the predicament of the taxpayer. It observed that the AA had the power to grant relief even after the expiry of the limitation period considering the hardship that would be caused to the petitioner.

*(Source: Durga Raman Patnaik v. Additional Commissioner of GST & Ors., W.P.(C) No. 7728 of 2022)*

**(4) COMMISSIONER OF CENTRAL EXCISE AND CENTRAL GOODS AND SERVICE TAX V. HATHWAY SUKHAMRIT CABLE & DATACOM**

The CESTAT has held that Multi System Operators when (“MSOs”) providing cable operator services to Local Cable Operators (“LCOs”) would be liable to pay service tax. It was observed that MSOs would be liable to pay tax on the amount received from the LCOs, as they provide cable operator services to the LCOs and not directly to the consumers. The LCOs would be further liable to pay service tax on the amount received from the consumers for the services provided by them.

*(Source: Commissioner of Central Excise and Central Goods and Service Tax v. Hathway Sukhamrit Cable & Datacom, Service Tax Appeal No. 60027 of 2021, CESTAT Chandigarh)*

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**INTELLECTUAL PROPERTY RIGHTS**

**(1) IPO GRIEVANCE PORTAL LAUNCHED BY CGPDTM AS A PART OF VIGILANCE AWARENESS WEEK**

All parties involved are hereby informed that, in honour of Sardar Vallabhbhai Patel's birthday and as part of Vigilance Awareness Week, the O/o CGPDTM has established a grievance portal wherein parties involved may file complaints or grievances if they feel that a particular official has

made unwarranted demands for resolving their problems with processing applications quickly.

*(Source: Public notice dated 31<sup>st</sup> October 2022)*

**(2) FRANKFINN AVIATION SERVICES V. TATA SIA AIRLINES**

The Delhi High Court vacated an interim injunction granted against Tata SIA (“Respondent”) wherein it was restrained from using ‘Fly Higher’ in its advertisements. The court held that the phrase was not used as a trademark by the respondent. It was descriptive in nature and used by several airlines in their advertisements. The court also noted that Frankfinn (“Plaintiff”) had registered ‘Fly Higher’ in classes 16 and 41, whereas Vistara operated in classes 12 and 39. The customers of both companies were different and the court *prima facie* did not find an element of confusion due to Vistara’s use of the impugned mark.

*(Source: Frankfinn Aviation Services v. Tata SIA Airlines Ltd., I.A. No. 1670/2022 in CS(Comm) 54/2022)*

**(3) FMC CORPORATION V. THE CONTROLLER OF PATENTS**

The Delhi High Court expressed its displeasure over significant delays caused in the patent application process due to repeated adjournments. The court noted that FMC Corp. (“Applicant”) was needlessly delaying the process by not adhering to the timelines prescribed by the Patent Rules, 2003. However, the court also emphasized that the Patent Controller has a duty to make a reasoned order when rejecting a patent.

*(Source: FMC Corporation v. The Controller of Patents, C.A.(Comm.IPD-PAT) 482/2022)*

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**ENVIRONMENT LAWS**

**(1) CAQM ADVISES IMPLEMENTING AGENCIES TO ENSURE COMPLIANCE AND STRICT IMPLEMENTATION OF THE DIRECTIONS**



The Commission for Air Quality Management in the National Capital Region and Adjacent Areas encouraged everyone involved, including industries and project proponents for construction and demolition (C&D) sites, to rigorously abide by the commission's legal directives.

In the following days, citizens have been urged to carefully adhere to the actions outlined in the Citizen Charter at each stage of the Graded Response Action Plan (GRAP).

CAQM shall use all reasonable means to ensure that its statutory directives and orders are strictly followed. Violations and disregard for the Commission's air pollution control laws and regulations are taken extremely seriously. When serious infractions occur, the Commission not only issues closure orders but also imposes Environmental Compensation (EC) and starts legal action.

*(Source: Ministry of Environment, Forest and Climate Change dated 15<sup>th</sup> October 2022)*

**[End of Newsletter]**

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