

MONTHLY NEWSLETTER

DECEMBER 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.

OUR LEGAL TEAM

Srinivas Kotni
Rajiv Sawhney
Raj Latha Kotni
Sandeep Chatterjee
Urvashi Kalra
Akshay Kumar
Shyam Kishor Maurya
Adivitiya Raj
Swagita Pandey
Karan Sharma
Samiksha Bagai
Anirudh Ramanathan

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INDEX

RBI & FEMA	... 2
Foreign Trade	... 3
Corporate Laws	... 3
Securities Laws and Capital Markets	... 4
Competition Laws	... 5
Indirect Taxes and Customs	... 5
Intellectual Property Rights	... 7
Environment Laws	... 8

RBI & FEMA

(1) MASTER DIRECTION – FOREIGN EXCHANGE MANAGEMENT (HEDGING OF COMMODITY PRICE RISK AND FREIGHT RISK IN OVERSEAS MARKETS) DIRECTIONS, 2022



Regulations 6 and 6A of the Foreign Exchange Management Regulations, 2000, as amended from time to time, are being brought to the attention of Authorized Dealer Category I banks. These regulations were issued in accordance with clause (h) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (Act 42 of 1999), as amended from time to time.

Under Section 11 of the Foreign Exchange Management Act of 1999, the Reserve Bank gives instructions to Authorised Persons within the parameters of the Regulations. These Directions outline the procedures for AD Cat-I banks to enable their clients' / constituents' hedging of commodities price risk and freight risk in international markets.

Included with this document is the Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022. AD Cat- I banks may notify their clients or other relevant components of the substance of these Directions.

The directives in this circular have been issued in accordance with Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999), and they are not intended to preclude any other legal licences or approvals that may be necessary.

(Source: RBI/2022-2023/94 dated 12th December 2022)

(2) RESERVE BANK OF INDIA (FINANCIAL STATEMENTS - PRESENTATION AND DISCLOSURES) DIRECTIONS, 2021 - DISCLOSURE OF MATERIAL ITEMS

According to Part A of Annexure II to the Directions, information must be provided in the notes to accounts if any item under the subhead "Miscellaneous Income" under the head "Schedule 14-Other Income" exceeds 1% of total income. The subhead "Other expense" under the heading "Schedule 16-Operating Expenses" has similar instructions.

It has been decided that banks must also include information about all such items in the notes to accounts whenever any item under Schedule 5(IV)-Other Liabilities and Provisions-"Others (including provisions)" or Schedule 11(VI)-Other Assets-"Others" exceeds 1% of the total assets in order to ensure greater transparency.

Further, whenever any item under Schedule 14(I)-Other Income-"Commission, Exchange and Brokerage" exceeds 1% of the total income, Payments Banks must also include information about all such items in the notes to accounts.

We further draw your attention to Clause 6 of Chapter IV of the aforementioned Directions, which encourages more thorough disclosures than the minimum necessary, particularly if they

significantly contribute to understanding the financial status and performance of banks.

(Source: RBI/2022-23/155 dated 13th December 2022)

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

The Sovereign Gold Bond Scheme 2022–2023 Series III and IV have been announced by the Indian government. Each tranche under the Scheme will be divided into a separate series (Series III and IV). The notification shall contain the terms and conditions for the issuing of the Bonds.

(Source: RBI/2022-23/156 series dated 16th December 2022)

FOREIGN TRADE

(1) SPECIAL ECONOMIC ZONES (FIFTH AMENDMENT) RULES, 2022

The Special Economic Zones (Fifth Amendment) Rules, 2022 have been released by the Central Government. Up until December 31, 2023, a SEZ Unit may allow the following personnel to work from home or from any other location outside the Special Economic Zone. This includes employees of Units that offer IT and IT-enabled services, employees who are temporarily incapacitated, employees who are travelling, and employees who work remotely.

(Source: Notification no. G.S.R. 868(E) dated 8th December 2022)

(2) AGENCIES AUTHORIZED TO ISSUE CERTIFICATE OF ORIGIN

The Foreign Trade Policy, 2015-2020, Appendix 28 [List of Agencies Authorized to Issue Certificate of Origin (Preferential)] was updated by the Directorate General of Foreign Trade (DGFT). The list includes organisations approved by the India-Australia Economic Cooperation and Trade Agreement to provide Preferential

Certificates of Origin (COO) for India's exports (Ind-Aus ECTA).

(Source: Press notice no. 44/2015-2020 dated 22nd December 2022)

CORPORATE LAWS

(1) IFSCA DIRECTIONS FOR THE DISTRIBUTION OF CAPITAL MARKET PRODUCTS AND SERVICES

In accordance with the International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021, and in recognition of the crucial role distributors play in the distribution of capital market products and services, the International Financial Services Centres Authority (IFSCA) issued a circular on the distribution of capital market products and services.

An entity that wishes to establish operations in an IFSC in order to serve as a registered distributor must apply for registration with the Authority in accordance with this Circular and regulation 3 of the Regulations. Such an entity must adhere to all regulations, this circular, and any other circulars or instructions the authority may issue from time to time in this area.

A company that wishes to become a registered distributor must submit an application form to the Authority in the format outlined in Part I of Schedule I of the Regulations along with the application fees that the Authority specifies.

Entities interested in taking advantage of simplified registration may submit an application along with a letter of purpose, information about any current registrations or licences required by clauses 13 and 14, and any fees the Authority may specify.

A company that wants to become a registered distributor must always have a net worth of at least \$50,000 USD.

Every registered distributor and its staff members are required to adhere to the code of conduct

outlined in this circular's Annexure I and Schedule III of the Regulations.

The sale of capital market products and/or services through any digital method may be arranged by a registered distributor with issuers, service providers, or related distributors.

(Source: Circular F. No. 817/IFSCA/Distribution/ 2022-2023 dated 21st December 2022)

(2) RAJESH KUMAR V. RABINDRA KUMAR MINTRI

In the present case, the Resolution Plan of the Corporate Debtor was approved by the CoC consisting of 1053 home buyers. Thereafter, an application was filed before the NCLT for rejecting the plan as approved by the CoC. The application was rejected and the appellants approached the NCLAT. The appellants contested the plan largely on its feasibility and contended that the plan was in violation of Section 30(1).

The NCLAT upheld the order of the NCLT and noted that the commercial wisdom of the CoC was paramount. A resolution plan cannot be challenged on the ground that the same is not viable as it is presumed that the CoC has given approval to a feasible plan.

(Rajesh Kumar & Ors. v. Rabindra Kumar Mintri & Anr., Company Appeal (AT) (Insolvency) No. 1489 of 2022, National Company Law Appellate Tribunal)

(3) BASE REALTORS V. GRAND REALCON

The appellant herein had filed an application under Section 7 of the IBC for interest which had become payable as debt. The application was rejected by the NCLT holding that the interest component would not come under the ambit of financial debt unless the principal amount has also become due and payable. Thereafter, the appellant approached the NCLAT.

The NCLAT overturned the order of the NCLT and held that an application under Section 7 can be maintainable even if the principal debt amount has

not become due. It was observed that 'default' under Section 3(12) of the IBC has been defined as non-payment of debt when any part thereof has become due and payable. It was held that non-payment of interest would also come within the ambit of this definition.

(Source: Base Realtors Pvt. Ltd. v. Grand Realcon Pvt. Ltd., Company Appeal (AT) (Ins.) No. 882 of 2022)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SEVENTH AMENDMENT) REGULATIONS, 2022

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022, have been published by SEBI. According to the amendment, if the Central Government submits an application regarding its strategic disinvestment in a listed entity, the Board may, after due consideration of the interests of investors and the securities market and for the development of the securities market, relax the strict enforcement of any requirements of these regulations.

The effective date of this is December 5, 2022.

(Source: Notification No. SEBI/LAD-NRO/GN/2022/109 dated 5th December 2022)

(2) SEBI ISSUED A NOTIFICATION ON FOREIGN INVESTMENT IN ALTERNATIVE INVESTMENT FUNDS (AIFs)

Foreign Investment in Alternative Investment Funds is a policy that the Securities and Exchange Board of India (SEBI) has published (AIFs). The announcement was made on December 9th, 2022.

2012 AIFs are permitted to raise money from any investor in accordance with Regulation 10(a) of the SEBI (Alternative Investment Funds) Regulations. An investor of this type could be an Indian non-resident or a foreigner. The issuance of units may be used to raise these monies.

(Source: Circular No. SEBI/HO/AFD-1/POD/P/CIR/2022/171 dated 9th December 2022)

(3) FRAMEWORK FOR ORDERLY WINDING DOWN OF CRITICAL OPERATIONS AND SERVICES OF A CLEARING CORPORATION

Framework for Orderly Winding Down of Critical Operations and Services of a Clearing Corporation has been published by SEBI. The CCs must have a policy framework for the orderly winding down of their critical operations and services that at the very least includes the identification of potential scenarios, the identification of the CCs' critical operations and services, the standard operating procedure (SOP), the return of assets, financial resources, and oversight.

Within 90 days of the date this circular was issued, the CCs must have the policy framework incorporating the SOP duly authorised by their governing boards and make it accessible on their websites.

(Source: Circular SEBI/HO/MRD/MRD-PoD-3/P/CIR/2022/173 dated 16th December 2022)

(4) NSE INTRODUCES DUMMY CONTRACTS IN MASTER FILES

Dummy Contracts in Master Files: National Stock Exchange Notification.

Every trading day, before the opening of market hours, Exchange should conduct internal order/trade activity as part of pre-market sanity tests in an ongoing effort to strengthen and optimise the trading platform. Given the foregoing, dummy contracts and symbols on the FUTCUR

and FUTIRC current instrument types must be included in contract master files.

Market participants are now informed that the inclusion of dummy contracts and symbols in contract master files is solely for internal testing purposes of the Exchange and that they should disregard any reports, feeds, or broadcasts including such information.

The aforementioned modification will take effect as of January 9, 2023

(Source: Circular Ref. No: 47/2022 dated 22nd December 2022)

COMPETITION LAWS

(1) 5TH EU-INDIA COMPETITION WEEK 2022

The fifth edition of the European Union-India Competition Week was launched on December 5 at the Competition Commission of India (CCI) by Mr. Seppo Nurmi, Deputy Head of Delegation of the EU to India & Bhutan, and Dr. Sangeeta Verma, Acting Chairperson, CCI. The Competition Week is slated to take place from December 5 to 7, 2022.

The Deputy Head of the EU delegation and Chairperson, CCI, along with the Secretary and other officials, had a brief discussion outside of competition week.

(Source: PRESS RELEASE No. 57/2022-23 dated 5th December 2022)

INDIRECT TAXES AND CUSTOMS

(1) HIMACHAL PRADESH GOODS AND SERVICES TAX (THIRD AMENDMENT) RULES, 2022

The Himachal Pradesh Goods and Services Tax (Third Amendment) Rules, 2022 have been released by the Himachal Pradesh Excise and Taxation Department. The Rules were made known on December 21st, 2022. The 2017 Himachal Pradesh

Goods and Services Tax Rules are intended to be modified by them. The new regulations will take effect on December 21, 2022.

Changes are made in FORM GSTR-9, which states “annual returns to be filed by taxpayers registered under GST”. In the instructions for filling the form, the words “April to September 2022” have been replaced with “April 2022 to October 2022 filed up to November 30th, 2022”. Through these changes, the time for claiming Input Tax Credit has been extended to 30th November 2022

(Source: Notification No. 22/2022-State Tax dated 20th December 2022)

(2) CENTRAL GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2022



The Central Goods and Services Tax (Fifth Amendment) Rules, 2022 have been released by the Central Board of Indirect Taxes and Customs (CBIC). The notification of the Amendment Rules took place on December 26, 2022, and they became effective on that day. The Central Goods and Services Tax Rules, 2017, are being amended further by the rules.

A new Rule 37A has been inserted which provides for the mechanism for reversal of input tax credit in case of non-payment of tax by supplier. It also provides for a re-availment mechanism in case the tax is paid subsequently. This makes it easier to meet the condition envisaged in Section 16(2)(c) of the CGST Act for claiming input tax credit. Rule 8 has also been amended to include sub-rule 4B which empowers the Central Government to notify the States or Union Territories where sub-rule 4A (which provides for biometric Aadhar authentication of an applicant) shall not apply. The new Rule 88C has also been notified which prescribes the mechanism of addressing the difference in liability reported in statement of outward supplies and that reported in return. In case

of a discrepancy, the concerned person shall be intimated and would have to pay and explain the difference on the common portal within 7 days.

(Source: Notification No. 26/2022 – Central Tax dated 26th December 2022)

(3) VALLABH TEXTILES V. SENIOR INTELLIGENCE OFFICER

Vallabh Textiles (“Petitioner”) was in the garments business and sold ready-made garments on a commission basis on behalf of third parties. The petitioner failed to pay tax on the commission earned and thereafter, a search of the petitioner’s premises was conducted. The petitioner deposited 1.8 Crores during the search proceedings.

The petitioner claimed that the deposition of the amount was not voluntary and was obtained through coercion. The Delhi High Court agreed with the contentions of the petitioner and observed that were the payments voluntary, a receipt as prescribed in form GST DRC-04 under Rule 142(2) of the CGST Act ought to have emanated from the proper officer. The court directed the return of the amount along with interest.

(Source: M/s. Vallabh Textiles v. Senior Intelligence Officer & Ors., W.P.(C) 9834/2022, Delhi High Court)

(4) RENEW HANS URJA V. CENTRAL BOARD OF INDIRECT TAXES

The petitioner, being in the solar power business, applied for a concessional duty rate under Chapter 98, Schedule I of the Customs Tariff Act, 1985. The concession was granted by registration of contract under the Project Import Regulations, 1986. Thereafter, Notification 54/2022-Customs removed solar power projects from the Table of Sponsoring Authorities in the Project Import Regulations. Thus, the registration of contracts was revoked by the Assistant Commissioner of Customs since the notification had retrospective application.

The petitioner challenged the actions of the commissioner arguing that delegated legislation under the Customs Act cannot have retrospective application. The court found that the petitioner had established a *prima facie* case and granted interim protection. It directed the respondent to not take

any precipitative steps against the petitioner at the time of import.

(Source: Renew Hans Urja Pvt. Ltd. v. Central Board of Indirect Taxes and Customs, W.P.(C) 17116/2022, Delhi High Court)

INTELLECTUAL PROPERTY RIGHTS

(1) MINISTRY OF COMMERCE AND INDUSTRY REVISES SIPP SCHEME

In a press release, the Ministry of Commerce and Industry announced that the Start-Ups Intellectual Property Protection (SIPP) plan would be revised on December 2, 2022. The facilitation fees have increased by at least 100% under the amended programme. This updated plan will take effect on November 2, 2022.

Through the assistance of IP Facilitators, whose fees were covered by the Office of the Controller General of Patents, Designs, and Trademarks, Department for Promotion of Industry and Internal Trade, Government of India, the scheme made it easier for start-ups to file and process their patent, design, or trademark application.

After being implemented successfully and leading to a considerable increase in start-ups filing intellectual property, the Scheme was extended for a further three years, ending on March 31, 2023.

Additionally, by offering fee refunds under the relevant IP laws, start-ups are encouraged to file IP.

80% of the filing fee for patent applications and 50% of the filing fee for trademark applications are waived for startups. Additionally, there are provisions for expedited review of patent applications.

(Source: Press Release ID: 1880465 dated 2nd December 2022)

(2) SONY INTERACTIVE ENTERTAINMENT INC V. VIKASH KUMAR

Plaintiff has filed the present suit, inter alia, seeking permanent injunction restraining infringement of trademarks 'PlayStation' as well as passing off, damages, etc.

Plaintiff is part of the Sony Interactive Group of companies including its sister company – 'Sony Interactive Entertainment Europe'. It develops, sells, promotes, manufactures and distributes "PlayStation" series of video game consoles and related gaming products, either directly or through its affiliates and licensees. Plaintiff owns trademark registrations for 45 marks under 18 different classes in India.

Plaintiff has approached the Court against certain fake websites and social media platforms, who are offering to sell 'PlayStation 5' product of Plaintiff, but in fact are only taking money without delivering the product.

On conducting an investigation, it was found that the Defendants are operating under one Mr. Vikash Kumar and are portraying to be authorised by the Plaintiff and operating domain names bearing Plaintiff's trademark "PlayStation" - www.sonyplaystationindia.com; www.sonyplaystationstores.com; www.playstation.ind.in; www.sonyplaystation.in and www.playstationindia.in. Defendants were contacting customers through social media accounts, e-mail IDs, and telephonic conversations, using identical 'PlayStation' trademarks and logo, thereby misleading them to believe that they are associated with the Plaintiff. Defendants are also operating UPI IDs containing the trademark of the Plaintiff 'PlayStation' and other associated marks such as 'Sony'.

Justice Sanjeev Narula found the case prima facie in favour of the Plaintiff and granted an ex parte ad interim injunction restraining Defendants from using the name/ mark 'PlayStation' or any other mark which is identical or deceptively similar to the trademark "PlayStation" of the Plaintiff, to lock and suspend the impugned websites, to freeze impugned UPI ids and bank accounts, and take down Instagram accounts and email ids.

(Source: Sony Interactive Entertainment Inc. v. Vikash Kumar & Ors., CS (Comm) 922/2022, Delhi High Court)

(3) LOUIS VUITTON V. WWW.HAUTE24.COM

The Delhi High Court has ordered blocking of a website which was using photographs of the famous French luxury brand Louis Vuitton without its authorization, observing that a prima facie case of copyright infringement has been made out.

Justice C Hari Shankar restrained www.haute24.com, its owner and agents from copying or publishing the allegedly infringing photographs on the website, till the next date of hearing.

"Defendant 3, which is the domain name registrar of the domain name www.haute24.com is directed immediately and forthwith block access to the said website and also to provide the BIS details of the registrant of the said website so that he could be impleaded in these proceedings, in its reply affidavit," the court ordered.

Justice Shankar was hearing a suit filed by Louis Vuitton alleging that the website and its owner copied its photographs and infringed the copyright by using them without any authorization or commercial relationship.

The unlicensed use of the plaintiff's photographs amounts to infringement of the copyright of the plaintiff in the said photographs, the plaintiff alleged.

Louis Vuitton told the court that the photographs used for advertisement on its website qualify as "artistic works" within the meaning of section 2(c) of the Copyrights Act, 1957.

It submitted that it had the copyright of the photographs since they were taken at its instance, by persons commissioned to do so and are used to advertise its products.

(Source: Louis Vuitton Malletier v. www.haute24.com & Ors., CS(Comm) 874/2022)

ENVIRONMENT LAWS

(1) EXTENDED PRODUCER RESPONSIBILITY (EPR) REGIME UNDER NEW E-WASTE (MANAGEMENT) RULES, 2022

Regarding the recycling of e-waste, the Ministry of Environment, Forest, and Climate Change (MoEFCC) released a press release. The E-Waste (Management) Rules, 2022 have been announced by the Ministry and will take effect on November 2, 2022, replacing the E-Waste (Management) Rules, 2016.

These regulations will usher in a new Extended Producer Responsibility (EPR) system for recycling e-waste, and they'll go into force on April 1st, 2023.

(Source: Public Release no. 1881761 dated 8th December 2022)

(2) AMENDMENTS IN EPA, 1986

A press release was issued by the Press Information Bureau regarding the T.S.R. Subramanian Committee's study of environmental laws.

For the purpose of reviewing the environmental Acts and recommending necessary revisions, the T.S.R. Subramanian Committee was established. The Acts were meant to be brought into compliance with their goals and existing regulations. The Parliamentary Standing Committee on Science & Technology examined the T.S.R. Subramanian Committee Report in 2015. The High Level Committee was given three months to study the six environmental Acts, but the Committee felt that this was too little time. Therefore, it was advised that instead of carrying out the suggestions made in HLC, the Ministry of Environment, Forest, and Climate Change should give the views, opinions, and concerns presented significant consideration.

You may remember that the Environment (Protection) Act of 1986 was passed to address issues relating to the environment's protection and improvement.

According to the aforementioned Act, "environment" comprises water, air, and land as well as the interactions that exist between water, air,

and land and people, other living things, plants, microorganisms, and property.

(Source: Press Release no. 1882839 dated 12th December 2022)

(3) TECHNOLOGY ASSESSMENT CELLS

Technology Assessment Cells were released by the Press Information Bureau.

The strategy plan for the National Clean Air Programme calls for the Technology Assessment Cell to assess significant technologies with regard to pollution prevention, control, and abatement.

For NKN and Institutes of Repute, the Ministry of Environment, Forest, and Climate Change had published instructions in this regard. On September 22, 2022, these regulations were released as part of the National Clean Air Program. The National Knowledge Network (NKN) was established with the intention of enhancing regional technological capabilities. This will make it possible for a bigger pool of institutes to support NCAP operations. Additionally, NKN offers assistance with laboratory-based data, scientific and technical knowledge, and monitoring the application of NCAP and performance evaluation. It includes specific research needs and policy initiatives when making suggestions for air quality management solutions to meet the objectives of the NCAP Programme.

(Source: Press Release no. 1882836 dated 12th December 2022)

[End of Newsletter]
