

# MONTHLY CORPORATE NEWSLETTER

## MAY 2024

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.

In this issue, we bring you the most recent updates and important notifications from key regulatory bodies including SEBI, RBI, and CCI. Stay informed with our comprehensive coverage on the latest circulars, notifications and orders that impact the corporate landscape.

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).

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### PART A: LATEST CIRCULARS / NOTIFICATIONS

#### **1. SEBI'S CIRCULAR ON CROSS-MARGIN BENEFITS**

The Securities and Exchange Board of India (SEBI) has decided to extend cross-margin benefits to offsetting positions with different expiry dates in the derivatives segment. Previously, such benefits were only available if the positions had the same expiry date. This change, which aims to enhance liquidity and financing flexibility by reducing margin requirements and net settlement obligations, was made after discussions with stock exchanges, clearing corporations, and SEBI's risk management review committee.

Under the new framework, a 40% spread margin will be required for offsetting positions in correlated indices with different expiry dates, while the existing 30% margin will continue for those with the same expiry date. For offsetting positions between an index and its constituent stocks with different expiry dates, a 35% spread margin will apply, compared to the current 25% margin for positions with the same expiry date. The spread margin benefit will end at the start of the expiry day of the first expiring position if the expiry dates differ.

SEBI has mandated stock exchanges and clearing corporations to monitor cross margin activities to ensure compliance. The updated regulations will take effect three months from the circular's issuance date, April 23, 2024.

#### **2. CCI DISMISSES ALLEGATIONS FILED AGAINST SEVERAL HEALTHCARE SECTOR**

The Competition Commission of India (CCI) dismissed allegations against various entities in the healthcare sector, including hospitals, pharmaceutical companies, e-pharmacies, associations, and certain government departments. The complaint, filed by Mr. Somnath Banerjee, centered on the non-marketing of his patented dietary supplement, 'Protestin'. Banerjee alleged that the entities' lack of response to his marketing proposals constituted anti-competitive behavior under Sections 3(4) and 3(1) of the Competition Act, 2002.

In its order dated April 25, 2024, the CCI noted that Section 3(4) requires an agreement between vertically related parties that causes or is likely to cause an appreciable adverse effect on competition (AAEC) in India. The CCI found no evidence of such an agreement from the emails sent by Banerjee to the opposite parties, determining that the decision to market a product depends on commercial considerations. Consequently, the CCI found no contravention of the Act and dismissed the case under Section 26(2).

### **3. CCI SEEKS PROPOSALS FOR MARKET STUDY ON AI AND COMPETITION IN INDIA**

The Competition Commission of India (CCI) invites proposals from agencies or institutions to conduct a comprehensive Market Study on Artificial Intelligence (AI) and Competition in India. Proposals must be submitted by June 3, 2024, by 5:00 PM. This Market Study aims to explore the transformative potential of AI and its implications for competition. The study will develop a thorough understanding of the competitive dynamics within AI development ecosystems and assess how AI applications impact competition, efficiency, and innovation in key industries.

The study's objectives include:

- Understanding key AI systems, markets, and ecosystems, including stakeholders, essential inputs, value chains, market structures, and competition parameters.
- Examining emerging and potential competition issues within these markets and ecosystems.
- Analyzing the scope and nature of AI applications, assessing associated opportunities, risks, and implications from a competition perspective.
- Reviewing existing and evolving regulatory and legal frameworks governing AI in India and other major jurisdictions.
- Engaging with relevant stakeholders for a comprehensive understanding of AI-related competition issues.
- Identifying trends and patterns in AI to determine the CCI's enforcement and advocacy priorities regarding AI applications in markets.

### **4. RBI ISSUES DIRECTIVE TO CURB UNFAIR LENDING PRACTICES AND PROMOTE FAIRNESS**

The Reserve Bank of India (RBI), through a notification dated April 29, 2024 (reference no. RBI/2024-25/30 DoS.CO.PPG.SEC.1/11.01.005/2024-25), has directed regulated entities (REs) to align their lending practices with the Fair Practices Code. This directive follows observations that some lenders were engaging in unfair practices when charging interest.

The Fair Practices Code specifies several unfair practices, including:

- Charging interest from the date of loan sanction or execution of the loan agreement rather than the actual disbursement date.
- Charging interest from the date of the cheque for disbursement, even if the cheque was handed over to the customer days later.
- Charging a full month's interest for loans disbursed or repaid within the month, instead of for the actual period the loan was outstanding.
- Collecting one or more installments in advance while applying interest to the full loan amount.

To address these issues, the RBI has instructed REs to refund any excess interest and charges to affected customers and to adopt online account transfers for loan disbursements instead of cheques. Additionally, REs are required to review and correct their loan disbursement methods and interest application practices, implementing system-level changes if necessary.

The directive applies to a wide range of REs, including Non-Banking Financial Companies (NBFCs), Microfinance Institutions, Housing Finance Companies, Commercial Banks (excluding Payments Banks), Small Finance Banks, Local Area Banks, Regional Rural Banks, and various types of Co-operative Banks.

This circular, effective immediately, aims to ensure transparency and fairness in lending operations, safeguarding customer interests and promoting a fair and transparent lending environment in the economy.

## **5. RBI RELEASES DRAFT MASTER DIRECTIONS FOR ELECTRONIC TRADING PLATFORMS, SEEKS STAKEHOLDER FEEDBACK**

On April 29, 2024, the Reserve Bank of India (RBI) released a draft Master Direction for Electronic Trading Platforms (ETPs) and invited comments and feedback from stakeholders, including operators, banks, and market participants, by May 31, 2024. This follows RBI Governor Shaktikanta Das's February monetary policy statement announcing the intention to review the regulatory framework for ETPs to enhance market makers' access to offshore platforms offering permitted Indian Rupee (INR) products.

The draft directions build on the framework introduced by the RBI in October 2018 for authorizing ETPs, which facilitate transactions in financial market instruments. ETPs, distinct from recognized stock exchanges, are electronic systems enabling the trading of eligible instruments such as securities, money market instruments, foreign exchange instruments, and derivatives.

The draft Master Directions set stringent criteria for entities aspiring to operate as ETPs. To qualify, an entity must:

- Maintain a minimum net worth of Rs. 5 Crore continuously.
- Be an Indian-incorporated company with non-resident shareholding in compliance with relevant laws, including the Foreign Exchange Management Act, 1999.
- Have key managerial personnel with at least three years of experience in managing trading infrastructure within financial markets.

Additionally, the RBI retains the authority to cancel an ETP's authorization if the operator violates statutory provisions, applicable laws, or the terms of the license, after providing a reasonable opportunity for the operator to present its case.

This draft direction also addresses concerns raised by the RBI on unauthorized entities offering foreign exchange trading with promises of exorbitant returns. The RBI has mandated that authorized dealers report such transactions to the Enforcement Directorate. It was noted that unauthorized forex trading entities use local agents to open accounts at various bank branches to collect money related to margins, investments, and charges, often under the names of individuals or trading firms.

## **6. RBI ISSUES REVISED MASTER DIRECTION ON RISK MANAGEMENT AND INTER-BANK DEALINGS**

On May 3, 2024, the Reserve Bank of India (RBI) issued a revised Master Direction on Risk Management and Inter-Bank Deals, outlining the following key provisions:

### **1. Compliance with Existing Directions:**

- AD Category-I banks must adhere to the Master Direction – Reserve Bank of India (Financial Services provided by Banks) Directions, 2016, as amended.
- Standalone Primary Dealers authorized as Dealer Category-III must follow the Master Direction – Standalone Primary Dealers (Reserve Bank) Directions, 2016, as amended.

### **2. Borrowing in Foreign Currency:**

- Standalone Primary Dealers are permitted to borrow in foreign currency from their parent, correspondent outside India, or other entities permitted by the RBI.
- They can also avail overdrafts in nostro accounts (not adjusted within five days) for operational reasons.
- These borrowings must remain within the limits set by the Master Direction – Standalone Primary Dealers (Reserve Bank) Directions, 2016, as amended.

### 3. **Net Open Position Limit (NOOPL):**

- The boards of the respective Authorized Dealers must set NOOPL and report it to the RBI through the Centralised Information Management System (CIMS) or email.
- NOOPL should not exceed 25% of the total capital (Tier I and Tier II) of the Authorized Dealer.

### 4. **Aggregate Gap Limit (AGL):**

- The boards of the respective Authorized Dealers must set AGL and report it to the RBI through CIMS or email.
- AGL should not exceed six times the total capital (Tier I and Tier II) of the Authorized Dealer.

## 7. **SEBI INTRODUCES SECOND AMENDMENT TO EMPLOYEES' SERVICE REGULATIONS, 2024**

The Securities and Exchange Board of India (SEBI) has issued the Securities and Exchange Board of India (Employees' Service) (Second Amendment) Regulations, 2024, to enhance employee accountability and address misconduct.

Key changes include:

#### 1. **Regulation 79:**

- New provision: The Competent Authority can recover financial losses from former employees using all legal means, including withholding amounts due from SEBI.
- Explanation 2: Proceedings against employees initiated during their tenure will continue even after retirement or repatriation.

#### 2. **Regulation 87A:**

- Defines procedures for investigating allegations of corrupt practices against former employees as per the Prevention of Corruption Act, 1988.

#### 3. **Regulation 93:**

- Allows withholding gratuity payments during pending proceedings to address potential liabilities.

These amendments emphasize SEBI's commitment to ethical conduct and accountability, extending its regulatory reach to former employees and ensuring thorough handling of misconduct allegations. Effective implementation and employee training are essential for fostering a culture of compliance.

## 8. **SUPERVISORY ACTION AGAINST KOTAK MAHINDRA BANK LIMITED**

The Reserve Bank of India (RBI) has invoked Section 35A of the Banking Regulation Act, 1949, to mandate Kotak Mahindra Bank Limited to immediately halt (i) onboarding new customers via online and mobile banking channels and (ii) issuing new credit cards. This directive follows serious concerns identified in the bank's IT examinations for 2022 and 2023, which Kotak failed to address adequately.

The RBI found significant deficiencies in Kotak's IT management, including issues with inventory, patch and change management, user access, vendor risk, data security, and business continuity. Despite corrective action plans from the RBI, Kotak remained largely non-compliant, resulting in frequent outages in its Core Banking System and digital channels, causing repeated customer inconvenience.

Over the past two years, the RBI has engaged extensively with Kotak to resolve these issues, but the outcomes have been unsatisfactory. This action is intended to protect customer interests and prevent extended service disruptions that could affect the bank's efficiency and the broader digital banking ecosystem.

The imposed restrictions will be reassessed following a comprehensive external audit, contingent on RBI approval and successful remediation of the identified deficiencies.

**PART B: Article**

**1. Impact of Digital Personal Data Protection Act, 2023 on the Online Gaming Industry of India**

In this article, our **Partner, Mr. Rajiv Sawhney**, and **Junior Associate, Mr. Ramansh Kakra**, provide an in-depth analysis of how the Digital Personal Data Protection Act, 2023, reshapes compliance requirements, enhances user data security, and impacts operational dynamics within India's online gaming industry.

Click on the below link to read the article:

<https://rb.gy/7bog1t>

**END OF THE NEWSLETTER**

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