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MONTHLY CORPORATE NEWSLETTER

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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.

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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PART A: LATEST CIRCULARS / NOTIFICATIONS

1. SEBI HAS AMENDED FOREIGN PORTFOLIO INVESTORS REGULATIONS TO ENHANCE COMPLIANCE AND STABILITY:

On May 31, 2024, the Securities and Exchange Board of India (SEBI) announced significant amendments to the Foreign Portfolio Investors (FPI) Regulations, 2019. This move, encapsulated in the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024, aims to refine the regulatory landscape for FPIs operating in India. These changes are geared towards enhancing compliance, simplifying regulatory procedures, and ensuring a more streamlined process for foreign investors. By addressing the complexities of the previous regulations, SEBI is making the Indian financial market more accessible and attractive to foreign investors.

The amendment introduces a new framework for the payment of registration fees. Under the newly inserted sub-regulation (6), FPIs are required to pay registration fees every three years. This payment must be made before the beginning of each three-year block. However, recognizing potential delays, SEBI has allowed FPIs to pay the registration fees along with a late fee within 30 days of the block's commencement. If an FPI fails to comply within this period, they will be permitted to sell their securities or wind-up derivative positions within 360 days post the 30-day grace period.

Perhaps one of the more stringent measures introduced is detailed in sub-regulation (8). FPIs whose registration certificates have expired and who have not disposed of their securities or wound up their derivatives positions within the stipulated period will be deemed to have written off their securities. The specific manner of this write-off will be dictated by SEBI, ensuring that non-compliant FPIs face clear consequences for inaction.

The amendments reflect SEBI's balanced approach towards regulation—providing flexibility to FPIs while simultaneously holding them accountable. The extended timelines for compliance reflect an understanding of the practical challenges FPIs may face, but the strict enforcement measures underscore the importance of adherence to regulatory norms. This ensures that FPIs are given reasonable time to comply, but cannot escape regulatory scrutiny or potential penalties for non-compliance.

The revised fee payment structure simplifies the process, reducing administrative burdens and ensuring that FPIs remain in good standing with SEBI more efficiently. The inclusion of a late fee option further demonstrates a practical approach to regulatory

compliance. By making the fee payment process more predictable and manageable, SEBI helps maintain a smoother operational framework for FPIs.

By allowing FPIs a 360-day period to dispose of their securities or derivatives, SEBI aims to maintain market stability. Sudden, forced sales could lead to market disruptions, and this amendment seeks to mitigate such risks by providing a structured timeline for compliance. This approach not only helps FPIs manage their portfolios more effectively but also ensures that the broader market remains stable and orderly.

2. SEBI MANDATES DIRECT PAY-OUT OF SECURITIES TO CLIENT ACCOUNTS

The Securities and Exchange Board of India (SEBI) on 5th June 2024, has issued a circular aimed at enhancing operational efficiency and reducing risks in the Indian financial markets by mandating the direct pay-out of securities to clients' demat accounts. Previously, securities were pooled by brokers before being credited to clients, but starting October 14, 2024, Clearing Corporations (CCs) will be required to credit securities directly to clients' accounts. This shift is designed to minimize the risk of misuse of clients' securities by brokers and increase the transparency of transactions.

This new directive builds on SEBI's earlier voluntary guideline from February 1, 2001, which allowed but did not require direct pay-outs to client accounts. Recognizing the need for a more secure and efficient system, SEBI has now made this practice compulsory. However, clients with arrangements involving SEBI-registered custodians for trade clearing and settlement are excluded from this requirement.

The implementation of these changes will be guided by the Broker's Industry Standards Forum, working under the stock exchanges and in consultation with SEBI. The detailed standards are expected by August 5, 2024, ensuring that all necessary adjustments are in place by the October deadline. Stock exchanges, depositories, and CCs must comply with the new rules, amend their regulations accordingly, and report their progress in Monthly Development Reports to SEBI.

For clients, this direct pay-out mechanism guarantees that their securities are securely and promptly credited to their demat accounts, enhancing trust and confidence in the market. For brokers and clearing members, this change necessitates adjustments to operational processes, including setting up new demat accounts for margin-funded stocks. Despite some initial administrative challenges, these changes ultimately streamline operations and promote greater transparency. Overall, this move by SEBI aims to foster a more efficient, secure, and trustworthy financial ecosystem in India.

3. SBI ISSUED CONSULTATION PAPER ON EXPANDING MUTUAL FUNDS' ROLE IN CREDIT DEFAULT SWAPS

The Securities and Exchange Board of India (SEBI) on 7th June 2024, has released a consultation paper seeking public feedback on increasing the flexibility of mutual funds' participation in Credit Default Swaps (CDS). CDS are financial derivatives allowing one party to insure against the default of a debt instrument by another party. Currently, mutual funds in India can only use CDS for hedging purposes in Fixed Maturity Plans with a tenor of more than one year. SEBI proposes expanding this to allow mutual funds to buy CDS for all schemes and sell CDS for all schemes except overnight and liquid ones, aiming to enhance liquidity in the corporate bond market.

This consultation paper outlines the potential new guidelines for mutual funds as buyers and sellers of CDS. Mutual funds buying CDS would use them strictly for hedging against credit risks of debt securities they hold, with a requirement to close CDS positions within seven days of selling the underlying debt security. SEBI emphasizes that mutual funds must buy CDS only from rated programs and can purchase protection for both investment-grade and below-investment-grade securities, transferring the credit risk to the CDS seller.

As sellers of CDS, mutual funds would engage in these transactions only if they hold risk-free securities like government securities equivalent to the CDS's notional amount. This structure aims to ensure that the credit risk of selling CDS mirrors that of holding a similar debt security. SEBI proposes that the cover value for these CDS positions should be reviewed daily, and CDS positions should be included in single issuer, group issuer, and sectoral limits, considering the synthetic debt securities' credit risk and liquidity aspects.

SEBI invites public comments on these proposals, emphasizing the need for a robust risk management framework. The feedback will help shape the final guidelines, which aim to provide mutual funds with additional investment tools while ensuring investor protection and market stability. The consultation period is open until July 1, 2024, and stakeholders are encouraged to submit their views through SEBI's designated channels.

4. SEBI'S FINANCIAL DISINCENTIVES FRAMEWORK FOR SURVEILLANCE LAPSES

The Securities and Exchange Board of India (SEBI) on 6th June 2024, has introduced a new framework to impose financial disincentives on Market Infrastructure Institutions (MIIs) like stock exchanges, clearing corporations, and depositories for lapses in surveillance. These institutions are crucial for maintaining the integrity and safety of the securities market, especially given the significant rise in trading activity and the introduction of new trading strategies.

The new framework outlines specific penalties for various lapses in surveillance activities. These include failures to implement decisions from surveillance meetings, inadequate reporting, or delays in executing surveillance duties. The financial penalties are scaled based on the total annual revenue of the MII and the number of lapses within a financial year, ranging from INR 1 lakh to INR 1 crore depending on the severity and frequency of the lapses.

Upon identifying a lapse, SEBI will provide the concerned MII an opportunity to present its case before imposing any penalties. Once a penalty is imposed, the MII must transfer the amount to the Investor Protection and Education Fund within 15 working days and publicly disclose the details. This disclosure is intended to ensure transparency and accountability within the market infrastructure.

This framework, effective from July 1, 2024, is part of SEBI's broader effort to enhance market oversight and protect investor interests. It emphasizes that the financial disincentives do not preclude SEBI from taking additional actions as deemed necessary under existing laws and regulations, ensuring a robust regulatory environment for the securities market.

5. NEW REGULATIONS FOR PAYMENT SYSTEMS IN INTERNATIONAL FINANCIAL SERVICES CENTRES

The International Financial Services Centres Authority (IFSCA) is seeking public feedback on its proposed Payment and Settlement Systems Regulations for 2024. These regulations aim to establish the authorization and operational procedures for setting up payment systems in International Financial Services Centres (IFSCs). The proposed rules are grounded in the Payment and Settlement Systems Act of 2007 and the International Financial Services Centres Authority Act of 2019.

The regulations will outline the application process for entities wishing to establish a payment system in an IFSC, including the necessary forms and fees. They also detail the criteria that the Authority will consider when granting authorization and the ongoing compliance requirements for system providers. These include adherence to the Principles for Financial Market Infrastructure and, for systemically important payment systems, the Core Principles for Systemically Important Payment Systems.

In addition to setting up the application framework, the regulations also propose a mechanism for exemptions from authorization under specific conditions. Compliance with international standards and the provision of detailed financial and operational information are mandated to ensure the integrity and stability of the payment systems operating within IFSCs. Public comments are invited to refine these regulations before they are finalized and enforced.

6. IFSCA CLARIFIES GLOBAL ACCESS RULES FOR BROKER DEALERS

The International Financial Services Centres Authority (IFSCA) on 6th June 2024, has issued new clarifications regarding the global market access for broker dealers registered with the IFSCA. These dealers can now engage with stock exchanges outside the IFSC through two primary methods: cross-border arrangements and direct membership. Under cross-border arrangements, broker dealers can work with regulated entities to access international exchanges. Alternatively, they can directly register as trading members on foreign exchanges, provided their activities are limited to proprietary trading and do not involve client dealings.

The circular also clarifies the fee structure, referencing an earlier communication from May 2023 that established an annual fee of USD 1,000 for broker dealers and subsidiaries of exchanges providing global access. This fee is essential for the IFSCA's regulatory and administrative oversight. The June 2024 circular further details that broker dealers must obtain a 'no-objection certificate' (NOC) from recognized IFSC stock exchanges before pursuing global access, with exemptions for those using India INX Global Access IFSC Limited (India INX GA).

Key points addressed in the June 2024 circular include the applicability of the November 2021 circular to all broker dealers accessing global markets, NOC requirements, and specifics on fee payments. Broker dealers using their arrangements must seek

NOCs, whereas those using India INX GA are exempt from this requirement. Fee payments are also clarified, with a pro rata basis for initial payments and specific deadlines for pending fees.

These clarifications streamline the regulatory requirements, making it easier for broker dealers in the IFSC to comply with the rules. By distinguishing between those using their arrangements and those utilizing India INX GA, the IFSCA removes ambiguities and ensures a smoother operational process for accessing global markets.

PART B: Article

1. "WHO HOLDS THE KEYS?" DETERMINING THE RESPONSIBILITY IN ACCIDENTAL CASES OF AUTOMATED VEHICLES

In this article, our **Partner, Mr. Rajiv Sawhney**, and **Junior Associate, Ms. Akshita Agarwal**, highlights the integration of digital technologies in the automobile industry through automated vehicles (AVs), outlining five levels of autonomy per SAE J3016. It emphasizes the progressive nature of AV technology and its industry impact, while also discussing the complex liability and accountability issues arising from AV-related accidents.

Click on the below link to read the article:

https://rb.gy/vuapxu

END OF THE NEWSLETTER

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