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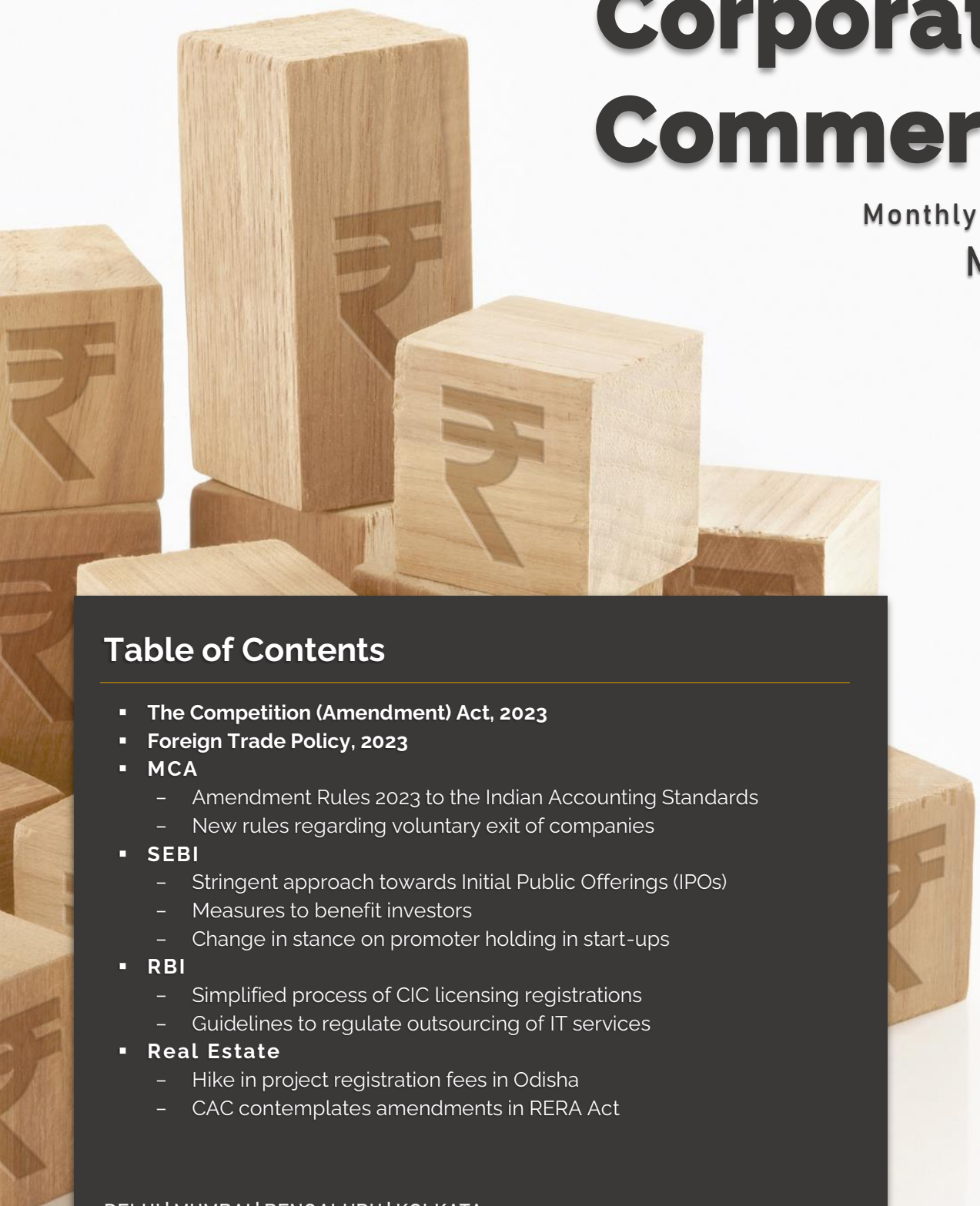

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The Competition (Amendment) Act, 2023

On April 11, 2023, the Competition (Amendment) Bill received the assent of the President of India, after being passed by both the Lok Sabha and the Rajya Sabha. While the Competition (Amendment) Act, 2023 (**Amendment Act**) has since been notified, the date for its enforcement is yet to be notified.

Key aspects:

- **Scope of anti-competitive agreements:** The amendment to Section 3(4) of the Competition Act, 2002 (**Principal Act**) has significantly enlarged the scope of anti-competitive agreements to now include indirect collusion. Now therefore, enterprises or persons not engaged in the trade of identical or similar businesses shall be presumed to be part of such agreements in case they participate or intend to participate in furtherance of such agreements. Further, the term 'exclusive supply agreement' has been replaced with 'exclusive dealing agreement' with the aim to cover acquisition and supply of all kinds of goods and services by an enterprise during the course of its business cycle.
- **Change in the definition of relevant product market:** The definitions of the term 'relevant product market' (as mentioned in Section 2(t) of the Principal Act) has been amended to factor in interchangeability and substitution of products and services, their prices and intended use, and the ease of switching production between such goods and services in the short term without significant additional costs or risk, and without risk of permanent change in relative prices.
- **Mandatory notification of acquisition:** Amendment to Section 5 of the Principal Act makes it mandatory to disclose to the Competition Commission of India (CCI) all transactions where an enterprise/company having substantial business operations in India is either acquired or merged with other enterprises, resulting in the value of shares, control or voting rights being transferred, to exceed INR 2,000 crore.
- **Imposition of penalties:**
  - As a result of amendment to Section 44 of the Principal Act, the limit for imposition of penalty for misrepresentation in disclosures made to the CCI in furtherance of proceedings inquiring into anti-competitive practices has been increased to INR 5 crore from INR 1 crore.
  - As per amendment to Section 27(b) of the Principal Act, the penalty which the CCI can impose upon concluding the enterprises' involvement in anti-competitive activities has been increased to up to 10% of the global turnover of such enterprise. The Supreme Court of India had in the case of ***Excel Crop Care v. CCI***[1] expounded the 'doctrine of proportionality', holding that the penalty of 9% on aggregate turnover imposed by the Competition Appellate Tribunal (**COMPAT**) for anti-competitive behavior was disproportionate since the anti-competitive practice had taken place only in relevant product and a relevant geographic market, and therefore the penalty should have been imposed on the turnover from that specific market rather than being on the entire turnover. In light of this amendment, the doctrine of proportionality shall loose its applicability for prospective cases involving anti-competitive activities.
- **Other significant changes:**
  - The introduction of Sections 48A, 48B and 48C in the Principal Act has brought in a mechanism to settle inquiries into restrictive trade practices and abuse of dominant position. The enterprises being investigated can propose a settlement to the CCI. The CCI may, after considering the nature, gravity, and impact of the contravention, either agree to the proposal for settlement or reject the proposal altogether. This decision of the CCI shall not be subject to appeal, however.
  - An option has been availed to the enterprises involved in mergers and acquisitions to make requisite modifications in the schemes for merger and acquisition if the CCI is of the opinion that it has an appreciable adverse effect upon competition.
  - The Amendment introduces Section 29A to the Principal Act under which, if after investigation into a combination, the CCI is of the opinion that the combination is likely to have an appreciable adverse effect on competition (**AAEC**), then the CCI shall issue a statement of objection to the enterprises involved, which shall be answerable by the enterprises within 25 (twenty-five) days of date of receipt of the statement. Against the objections, the enterprises involved may jointly submit an offer incorporating appropriate modifications to the combination thereby eliminating the AAEC as pointed out by the CCI.
  - In case the CCI does not accept the modifications, it shall within 7 days of receipt of the said modifications, communicate its reasons for holding so and shall allow the parties a time up to 12 days from receipt of the communication to suggest revised modifications. CCI has also been conferred with power to suggest appropriate modifications to the combination proposed.

Foreign Trade Policy, 2023

On March 31, 2023, the Foreign Trade Policy 2023 (FTP) was notified in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 and has come into force with effect from April 1, 2023.

Key aspects:

- **Duration of FTP:** In a shift from the preceding Foreign Trade Policies, the FTP has no end date and subsequent revisions in the FTP shall be done as and when required and shall not be linked to any date[2].

[1] (2017) 8 SCC 47

[2] Para 1.01 of the FTP

- **Online approvals without physical interface:** The FTP aims for automatic approval of various permissions under the FTP based on process simplification and technology implementation and reduction in processing time, and immediate approval of applications under automatic route for exporters. Now processing time for some permissions is to be as low as one day.
- **Reduction in charges for Micro, Small and Medium Enterprises (MSMEs):** Application user charges have been brought down for MSMEs for advance authorization and Export Promotion Capital Goods (**EPCG**) Schemes, which will benefit 55-60% of exporters who are MSMEs.
- **Export promotion initiatives**: Status holder export thresholds have been reduced to enable more exporters to achieve higher status and reduce transaction cost for exports[3].
- **Merchanting trade reform:** With an aim to boost merchanting services from India, merchanting trade of restricted and prohibited items under export policy would now be possible. Merchanting trade involves shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This will be subject to compliance with RBI guidelines, except for goods/items covered in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**) and Special Chemicals, Organism, Materials, Equipment and Technologies (**SCOMET**) list[4].
- **Rupee payment to be accepted under FTP schemes:** In a step towards internalization of Rupee invoicing, payment and settlements of exports and imports is permissible in Indian Rupees in accordance with RBI's circular on International Trade Settlement in Indian Rupees dated July 11, 2022. FTP benefits have been extended for rupee realization through special vostro accounts[5].
- **Towns of Export Excellence (TEE):** Four new towns of Faridabad, Mirzapur, Moradabad and Varanasi, have been designated as TEEs with an objective to develop and grow these export production centers. Recognized associations of units will be provided financial assistance under Market Access Initiative Scheme, which is an export promotion scheme, on priority basis, for export promotion projects for marketing, capacity building and technological services. Common Service Providers, who are service providers certified by the DGFT or Department of Commerce, in these areas shall be entitled for authorization under EPCG scheme. Through this scheme such units can get financial assistance to visit various trade exhibitions/fairs for exploring more marketing avenues[6].
- **Facilitation of e-commerce exports:** All benefits accorded by the FTP are to be extended to e-commerce exports. The value limit for exports through courier is increased to INR 10 lakh from INR 5 lakh per consignment[7].
- **EPCG scheme:** The Prime Minister Mega Integrated Textile Region and Apparel Parks (**PM MITRA**) scheme has been added as an additional scheme eligible to claim benefits under CSP (Common Service Provider) EPCG Scheme. Products classified as Green Technology, such as Battery Electric Vehicles (**BEV**), various types of vertical farming equipment, recycling and wastewater treatment systems, rainwater harvesting systems and filters, and green hydrogen, will now qualify for a reduction in their Export Obligation requirements, which are obligations to export product or products covered by authorization or permission in terms of quantity, value or both, as may be prescribed or specified by the regional or competent authority.
- **Special one-time Amnesty Scheme for default in export obligations:** A one-time Amnesty Scheme to address non-compliance in export obligations by advance authorization and EPCG authorization holders has been introduced where all pending cases of default in Export Obligation of authorizations mentioned can be regularized by the authorization holder on payment of all customs duties exempted in proportion to unfulfilled export obligation and maximum interest is capped at 100% of such duties exempted. No interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty. The scheme is available for a limited period, up to September 30, 2023[8].
- **Emphasis on streamlining SCOMET licensing procedure:** Recent policy changes have been introduced such as general authorizations for export of certain SCOMET items to streamline licensing of these items to make export of SCOMET items globally competitive[9]. There is a focus on simplifying policies to facilitate export of dual-use high-end goods/technology such as UAV/drones, cryogenic tanks, etc. A robust export control system in India would provide access of dual-use high end goods and technologies to Indian exporters while facilitating exports of controlled items/technologies under SCOMET from India.

The FTP has multiple new components which include trade facilitation to effectively reduce time and costs to obtain export permissions, facilitation of e-commerce exports and, most importantly, promoting merchanting trade and stimulating greater settlement of trade in INR to make it a global currency. The above stated developments are admirable, and an effective implementation should be envisioned by the Central Government in line with its vision to boost the country exports to USD 2 trillion by 2030.

MCA | Amendment Rules 2023 to the Indian Accounting Standards

The Ministry of Corporate Affairs (**MCA**) issued a notification on April 1, 2023 announcing the Companies Indian Accounting Standards Amendment Rules, 2023 effective from April 1, 2023. These changes are in line with the recommendations of the Institute of Chartered Accountants of India (**ICAI**) and the International Financial Reporting Standards (**IFRS**), and are part of the government's efforts to align the Indian accounting

[3] Para 1.26 of the FTP
[4] Para 2.39 of the FTP
[5] Para 2.52 (d) of the FTP
[6] Para 1.23 of the FTP
[7] Para 9.05 of the FTP
[8] https://content.dgft.gov.in/Website/dgftprod/cdb6b9a7-fd65-4265-b8a8-bd1ee12c0f91/PN.%202%20dated%2001.04.2023%20English.pdf
[9] Para 10.08 (ix) & (x) of the FTP

standards with international accounting standards, and to improve the quality and transparency of financial reporting in India.

Key aspects:

- Changes to Indian Accounting Standard (Ind AS) will have an impact on financial statements of companies and entities in India and will require them to make certain adjustments in their accounting practices. MCA has advised companies and entities to prepare themselves for the implementation of the Amendment Rules by conducting training sessions for their accounting teams.
- The Amendment Rules will apply to all companies that are required to prepare financial statements in accordance with Ind AS; however, these will not apply to companies that fall under the purview of the Small and Medium-sized Enterprises (SME) sector.
- Amendment Rules will have a significant impact on companies' financial reporting practices, particularly with regards to the recognition and measurement of financial instruments, revenue recognition, and the accounting treatment of leases.
- MCA has advised companies to ensure that their accounting practices are in compliance with the Amendment Rules, and to seek professional guidance if necessary.
- The Amendment Rules are part of a broader initiative by the Indian government to improve corporate governance and transparency, and the MCA has emphasized the importance of timely and accurate financial reporting, which is critical for maintaining investor confidence and promoting economic growth in India.

MCA | New rules regarding voluntary exit of companies

A recent notification issued by the Ministry of Corporate Affairs (**MCA**) in India outlines new rules for companies that wish to voluntarily exit or deregister from the Registrar of Companies (**RoC**). The new rules, known as the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023, will come into effect from April 1, 2023. The new rules provide a clear and streamlined process for companies that wish to voluntarily exit or deregister from the RoC and will help to reduce the burden and complexity of the existing process.

The rules also aim to ensure that companies comply with all necessary procedures and requirements before exiting or deregistering and provide clarity on the circumstances under which the RoC may reject an application.

Key aspects:

- The new rules replace the existing Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, and aim to streamline the process for companies that wish to voluntarily exit or deregister from the RoC.
- Companies that wish to voluntarily exit or deregister from the RoC will be required to file an application with the RoC, along with a statement of accounts and other necessary documents.
- RoC will then examine the application and, if satisfied, will issue a notice to the company and its creditors, inviting objections, if any.
- In case of no objections received within the stipulated time period, the RoC will issue a notice in the Official Gazette stating that the company has been strike off in RoC and dissolved.
- New rules also specify the circumstances under which the RoC may reject an application for voluntary exit or deregistration, such as if the company has any pending statutory dues, or if any investigation or inquiry is pending against the company.
- MCA has advised companies that wish to voluntarily exit or deregister from the RoC to ensure that they comply with all necessary procedures and requirements, and to seek professional guidance if necessary.

SEBI | Stringent approach towards Initial Public Offerings (IPOs)

Securities and Exchange Board of India's (SEBI) released new guidelines for initial public offerings (IPOs) aimed at ensuring greater transparency and accountability in the process. These measures are aimed at protecting the interests of investors and ensuring greater transparency and accountability in the IPO process.

Key aspects:

- Issuers to file the RHP at least 6 working days prior to the opening of the IPO, instead of the earlier requirement of 3 days.
- Directed issuers to complete the allotment of shares within 6 working days from the closure of the IPO, instead of the earlier timeline of 12 days.
- Issuers to disclose consolidated financial information for the last 3 years in the RHP, as well as provide details of their subsidiaries, associates, and joint ventures.
- Issuers will now be required to disclose all pending litigation and regulatory proceedings in the RHP, including those filed by government authorities or public bodies.
- Issuers to appoint at least 1 independent woman director on their board, as well as disclose the rationale behind the appointment of each independent director.
- Issuers to appoint a monitoring agency to oversee the utilization of the funds raised from the IPO and provide periodic reports to the stock exchanges.

SEBI | Measures to benefit investors

Securities and Exchange Board of India's (SEBI) discussed several key aspects related to measures aimed at safeguarding investor interests in its quarterly board meeting. These measures announced by SEBI in a press conference aimed at enhancing investor protection and boosting investor confidence in the capital markets.

Key aspects:

- SEBI has directed stockbrokers and depository participants to simplify the account opening process for investors, making it easier for them to invest in the capital markets.
- Allowed the use of Aadhaar-based electronic KYC (e-KYC) for opening accounts with intermediaries such as brokers, mutual funds, and depository participants.
- Proposed to shorten the settlement cycle from T+2 (trade date plus two days) to T+1 (trade date plus one day) in a phased manner, which will reduce the risk and increase efficiency in the clearing and settlement process.
- Allowed interoperability of clearing corporations, which will enable investors to clear trades with multiple clearing corporations, thereby reducing costs and risks.
- Increased the investment limit in mutual funds for individual investors from INR 2 lakh to INR 5 lakh, providing more avenues for retail investors to participate in the capital markets.
- Mandated the standardization of product labelling for mutual funds and other investment products, making it easier for investors to compare different schemes and products.
- Directed stock exchanges to set up investor protection funds to safeguard investor interests in case of default by brokers or trading members.

SEBI | Change in stance on promoter holding in start-ups

In early March 2023, reports emerged that the Securities & Exchange Board of India (**SEBI**), the regulator for the securities market in India, had been mulling a change in the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**) whereby Regulation 2(oo) and Regulation 2 (pp) of the ICDR Regulations would be amended to bring down the minimum holding requirement for a promoter entity or a group from 20% of the issued equity share capital to 10% of the issued equity share capital.

SEBI had observed that several issuers had listed themselves as professionally managed companies. This was found to be an abdication of duties on part of the founders and hence it is being proposed that all persons with a shareholding of 10% or more in the company be classified as promoters of the company. However, there are several drawbacks attached to this move by the SEBI.

- One of the major drawbacks of diluting the subscription requirement for classification as a promoter is that it shall counteract against the interest of institutional investors in companies, making it difficult for promoters to obtain funds.
- As an immediate effect, it was feared that in start-ups having a low founder shareholding (i.e., at least 10% but less than 20%), the founders would acquire the status of promoters. This would hamper the plans of private limited companies seeking to make public offering by increasing the promoter's pool of shares, since a promoter's holding is locked in for a period of 18 months post the conclusion of the initial public offering (IPO). At the same time, this can potentially reduce instances of founders listing themselves as public shareholders in IPOs.
- Such a move can also increase the compliances and costs associated therewith for owners holding a stake less than the current 20%. Section 31 A of the ICDR Regulations lists a long list of compliances to be followed by persons named as promoters of a company in a red herring prospectus.
- Vesting a person with a stake as low as 10% in a company with the powers of a promoter of the company also has other substantial risks. Under Section 2(69) of the Companies Act, 2013, a promoter has also been identified as a person in accordance with whose directions, advice or instructions, the board of directors of the company is accustomed to working. This is where individual interests may subordinate general interests and lead to mismanagement of the company.

Contrary to this, a cross-section of stakeholders are also of the opinion that not every person meeting the threshold of being a subscriber to at least 10% of the issued share capital of the company should be classified as a promoter, but additional parameters should be laid down to ensure that investors holding 10% or more of the issued equity share capital but not participating in the day-to-day management of the company to be not listed as promoters of that company. The prospective move by SEBI requires further deliberation and consultations with different stakeholder before a final policy/amendment is rolled out by SEBI.

RBI | Simplified process of CIC licensing registrations

The Reserve Bank of India (**RBI**), in order to streamline and simplify the registration process for a Holding or Core Investment Company (**CIC**), has conducted an extensive revaluation of the present process of registration and introduced a comparatively more practical and simplified regime by issuing a notification on April 10, 2023[10].

As per the Core Investment Companies (Reserve Bank) Directions, 2016 (**RBI Guidelines**)[11], CICs are categorized as Non-Banking Financial Companies (**NBFCs**) which carry on the business of acquisition of shares and securities in group companies. CICs are only allowed to invest in securities, grant loans to group companies and issue guarantees on behalf of group companies and cannot engage in trading of these securities or undertake any other financial activity unless specified by the RBI.

All CICs are required to be registered with the RBI under Section 45-IA of the Reserve Bank of India Act, 1934 and obtain a Certificate of Registration (**CoR**) by furnishing the required documents. The amendment has revamped the application form to align it with the CIC Regulations. Further, in an attempt to make the process more user friendly and smoother, the

[10] Notification is available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=55494

[11] Core Investment Companies (Reserve Bank) Directions, 2016 available at https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10564

number of documents to be furnished with the application has been reduced from 52 to 18. The revised application form and an indicative list of documents to be furnished is available on the RBI website. However, the RBI can call for any further documents to satisfy itself on the eligibility of the CIC which the applicant company is required to provide within a month.

Indicative list of documents/information:

- Details of access to public funds
- Certified copy of Certificate of Incorporation of the company
- Certified copy of the main object clause in the Memorandum of Association related to financial business
- Credit Bureau Report pertaining to the directors of the company
- Copy of experience certificate in the financial services sector for directors/promoters, if any
- Board Resolution approving the submission of application, its contents and authorizing signatory
- Board Resolution stating the company has not accepted/solicited public deposits and will not do so without the RBI approval in writing
- Board Resolution stating that the company was not trading/will not trade its investments in shares, bonds, debentures, debt, or loans in group companies except for block sales for the purpose of dilution or disinvestment
- Board Resolution stating the company does not carry on the activities other than as specified under Sections 451(c) and 451 (f) of the RBI Act, 1934
- 1Statutory Auditor/s Certificate certifying the Average Market Price of quoted investments
- Statutory Auditor/s Certificate certifying the number of CICs (registered or unregistered) in the group
- Statutory Auditor/s Certificate certifying the company's net asset size and investment in group companies as a percent of its net assets
- Statutory Auditor/s Certificate certifying investments in equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies as a percent of its net assets
- Certificate from Statutory Auditor/s providing the details of companies in the group
- Last three years' audited Balance Sheet and Profit & Loss Account along with directors and auditors report or for such shorter period as are available
- Business plan of the company for the next three years, including its projected Balance Sheets
- Time-bound plan for adherence to minimum Capital Ratio and Leverage Ratio requirements, if applicable; and
- Time-bound action plan for achieving 90% of net assets under investments, if applicable

RBI has continually endeavored to bring reforms in the legal framework governing CICs. Previously in 2019, RBI constituted the Working Group chaired by Shri Tapan Ray, Former Secretary, Ministry of Corporate Affairs to review the regulatory and supervisory framework for CICs. The Committee identified major issues effecting higher risk assumed by CICs like lack of proper corporate governance guidelines and complex structures of companies resulting in multiple gearing and excessive leveraging. On August 13, 2020, the RBI revised the guidelines applicable to CICs based on the recommendations of the Tapan Ray Working Group making key adjustments such as limiting the layers of CICs within a group company to two and mandating the constitution of a Group Risk Management Committee responsible for risk mitigation.

The RBI guidelines foster the ultimate objective, by re-engineering the procedure, to provide simplified and streamlined process to create a more conducive business environment in the country and thereby, encouraging the expansion of Core Investment Companies.

RBI | Guidelines to regulate outsourcing of IT services

Reserve Bank of India has pushed new guidelines to regulate the outsourcing of Information Technology (**IT**) and IT enabled services (**ITeS**) to promote accountability & transparency in corporate governance among Regulated Entities (**REs**). Exercising its powers under Section 35A read with Section 56 of the Banking Regulation Act, 1949, Section 45L of the Reserve Bank of India Act, 1934 and Section 11 of the Credit Information Companies (Regulation) Act, 2005, and all other enabling provisions/laws, RBI on June 23, 2022 released a draft Master Direction[12] on outsourcing of ITeS to be implemented by REs. This direction on 'Outsourcing of Information Technology Services' will come into effect from October 1, 2023.

Key aspects:

- REs include Scheduled Commercial Banks (excluding Regional Rural Banks), Small Finance Banks, Local Area Banks, Payment Banks, Primary (Urban) Co-operative Banks having asset size of INR 1000 crore and above, Credit Information Companies, NBFCs in Top, Upper and Middle Layers[13], All India Financial Institutions (NHB, NABARD, SIDBI, EXIM Bank and NaBFID).
- REs shall critically evaluate the need for outsourcing services based on criticality of activity to be outsourced, the expectations and the outcome of such outsourcing, the success factor along with cost-benefit analysis and the model of outsourcing.
- Board and senior management must ensure all the compliances of this master direction are in check. Outsourcing of any activity of the RE shall not diminish its obligations as also of its board and senior management, who shall be ultimately responsible for the outsourced activity. RE shall take steps to ensure that the service provider employs the same high standard of care in

12 https://rbidocs.rbi.org.in/rdocs/Content/PDFs/DRAFTMDOUTSOURCINGITSERVICES7B1B0F9AD111484EBF66ADEF509E6CB4.PDF

13 https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12179&Mode=0

performing the services as would have been employed by the RE if the same activity was not outsourced. The service provider shall be independent unless it's a group company and shall not be controlled or owed by any of the directors or KMPs or their relatives.

- REs shall establish an inventory of services provided by the service providers (including key entities involved in their supply chains), map their dependency on third parties and periodically evaluate the information received from the service providers. This evaluation must be conducted by REs on outsourcing service providers regarding their performance & the frequency of such audit will be based upon the risk and nature of the service provided.
- There shall be a board approved comprehensive outsourcing policy, in case RE intends to outsource any of its IT activities. This policy shall contain the role and responsibilities of the board, senior management, material contracts for outsourcing, business function, IT functions, disaster recovery, surveillance system, termination, exit strategies & continuation of service in case of abrupt exit by third-party service providers. The business continuity plan and the data recovery plan have to be robust.
- REs must do proper due diligence on the outsource service providers (their capability to provide service, financial and operational soundness, legal diligence & business reputation, external factors such as political, economic, legal, and jurisdictional issues & confidentiality measures).
- The outsourcing agreement must be a legally binding written agreement.
- REs must ensure that outsourcing service providers make the master database accessible to all authorities for inspection as authorized by law.
- In a situation of cross-border outsourcing, REs shall watch over the political scenarios, and social, economic, and legal conditions of the outsourcing service providers in a continuous manner and establish sound procedures for mitigating the country risk.
- The exit strategy shall clearly set a framework to the manner of continuation of the service in the event of a change in management or any scheme related to merger/acquisition, regulatory changes in the legal regime affecting the service provider & outline the process of safe data transfer/disposal of data.
- Non-disclosure agreement plays a crucial role in protecting customer data. Indemnity clause shall be framed accordingly.
- The directives provide key foundational broad strokes to regulated entities for managing technology outsourcing relationships across the continuum: Evaluation - Onboarding - Service Experience/Management - Performance Management - Ongoing Risk/Compliance Management - Overall Relationship Management.
- The Master Direction also includes three appendices regarding Usage of Cloud Computing Services, Outsourcing of Security Operations Centre (**SOC**), Services not considered under Outsourcing of IT Services (Corporate Internet Banking services, SMS gateways, Procurement of IT hardware/ appliances, acquisition of IT software/ product/ application on a license or subscription basis, any maintenance service for IT Infra or licensed products, provided by the OEM etc.)

Real estate | Hike in project registration fees in Odisha

Vide the Odisha Real Estate Regulatory Authority (Amendment) Regulations, 2022 (**Amendment**) the Odisha RERA Authority (**RERA Authority**) did an escalated upward revision of the fee for registration of real estate project under the RERA Act. For instance, the registration fee for a commercial project was INR 10 per square meter subject to a cap of INR 5 lakh which has now been revised to INR 200 per square meter subject to a cap of INR 1 crore. This is likely to have far-reaching implications, not only with regard to the state of Odisha, but also a reference point for RERA Authority in other states to revise and escalate the fee in a similar fashion.

In our view, this revision of fee by the RERA Authority is misplaced and in violation of the law, as discussed below:

- This revision of fee should have been carried out by the State Government and not the RERA Authority.
- The RERA Act clearly defines and distinguishes the respective jurisdictions of the State Government and the RERA Authority. In October 2016, vide the Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 (**Order**), Rule 84(2)(a) was amended which empowered the State Government to enact rules for the form, time and manner of making application and fee payable therewith under sub-Section (1) of Section 4, whilst at the same time, removing this power from the RERA Authority by omitting Section 85(2)(a) of the RERA Act.
- The scope of the power to enact rules in relation to registration of projects was broadened to encompass computation of the fee for such registration, amongst others. Therefore, only the State Government is empowered to deal with matters pertaining to the fees.
- Basis the cardinal rule of interpretation, *expressum facit cessare tacitum*, which means that where the meaning of an expression or provision in a statute is clear, express and unambiguous, there is no place for tacit interpretation, it is amply clear that it is the State Government and not the Authority, who has the power to expound upon and compute the registration fees for the registration of real estate projects under the RERA Act.

Therefore, quite expectedly, CREDAI Orissa Pvt Ltd, Bhubaneswar, filed a petition challenging this Amendment on the grounds that the RERA Authority has no jurisdiction to enact such regulations, amongst others. The case is currently sub-judice. The decision of the Odisha High Court is much awaited and anticipated, especially for project developers for whom the project cost has increased significantly as a direct result of the Amendment. It may not be out of place to point out that an increase in the project cost would also reflect upon and translate to the real estate allottees, who may indirectly bear the brunt of the Amendment.

Real estate | Central Advisory Committee contemplates amendments in RERA Act

The Real Estate (Regulation and Development) Act, 2016 (Act) came into force in the year May, 2017 with an intent to establish a nodal agency in each state i.e. the Real Estate Regulatory Authority (**RERA Authority**) to supervise, monitor and regulate the real-estate projects and provide quicker and effective adjudication to the homebuyers. By putting checks and balances in place, RERA Authority has been able to regulate the sector to an extent. However, violators and defaulters have devised novel tactics to drag and shortchange the process by finding loopholes in law and its machinery.

One blatant expression of these tactics, as experienced by many litigants, is frustrating the enforcement of the orders of the Court by leveraging the excruciating bottlenecks, delays and even failures endemic to the execution process. The law provides a mechanism by way of execution proceedings, to enforce its orders and force the defaulting party to comply with the orders, which unfortunately suffers from excruciating bottlenecks, delays and even failures. As per the Act, once an order is passed, it must be complied within the time frame mentioned in the order, failing which one can file for execution of the same under Section 40(1) of the Act, which empowers the RERA Authority to recover the amount of refund, delay possession charges, compensation, etc., as the case maybe, as an arrears of land revenue. Furthermore, the State-specific rules empower the RERA Authority with the powers of the Civil Court while executing a decree. However, under the current scheme of the Act, the RERA Authority does not have any powers to recover the same itself and issues a Recovery Certificate under Section 40(1), which is executed by the jurisdictional Collector. The present machinery and provisions of the Act are not robust, effective and efficient, to cause successful and swift execution of its orders.

There have been numerous instances where decree holders suffer for years as they are not able to execute their decrees. By way of example, as per reports, the Maharashtra RERA Authority has issued recovery warrants of about INR 625 crore out of which only 20-30% have been executed by the State Government. Because of the unfortunate state of affairs and time spent in executing the decrees, homebuyers have also filed applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) claiming status of a financial creditor in capacity of a decree holder, but the same has not passed the judicial muster.

The entire process is cumbersome and time-consuming, which is leading to frustration of the Act in living up to its objectives. In a fortunate and progressive development, the Central Government's Central Advisory Committee, headed by the current Chairman of RERA, Maharashtra (**CAC**), is considering amendments in the Act to strengthen the process of execution of recovery warrants, by improving the process of execution of recovery certificates. This move by CAC is a major development and is in line with the continuous efforts by the Central Government to provide expeditious redressal to the homebuyers.

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Associate

Pradyun Chakravarty
Associate

Rhea Lobo
Associate

Taha Abdur Razzack
Associate

Unnati Goel
Associate

Shivansh Bansal
Assistant Manager

HSA
AT A GLANCE

FULL-SERVICE CAPABILITIES

- BANKING & FINANCE
- COMPETITION & ANTITRUST
- CORPORATE & COMMERCIAL
- DEFENCE & AEROSPACE
- DISPUTE RESOLUTION
- ENVIRONMENT, HEALTH & SAFETY
- INVESTIGATIONS
- LABOR & EMPLOYMENT
- PROJECTS, ENERGY & INFRASTRUCTURE
- PROJECT FINANCE
- REAL ESTATE
- REGULATORY & POLICY
- RESTRUCTURING & INSOLVENCY
- TAXATION
- TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION

TOP RANKED Chambers Asia-Pacific 2023

asialaw AWARDS 2022/23

The LEGAL 500 ASIA PACIFIC TOP TIER 2023

IFLR 1000 TOP TIER FIRM 2021-22

RECOGNISED IN WHO'S WHOLEGAL WWL

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BW LEGAL WORLD GLOBAL LEGAL SUMMIT AND LEGAL LEADERS AWARDS 2020

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