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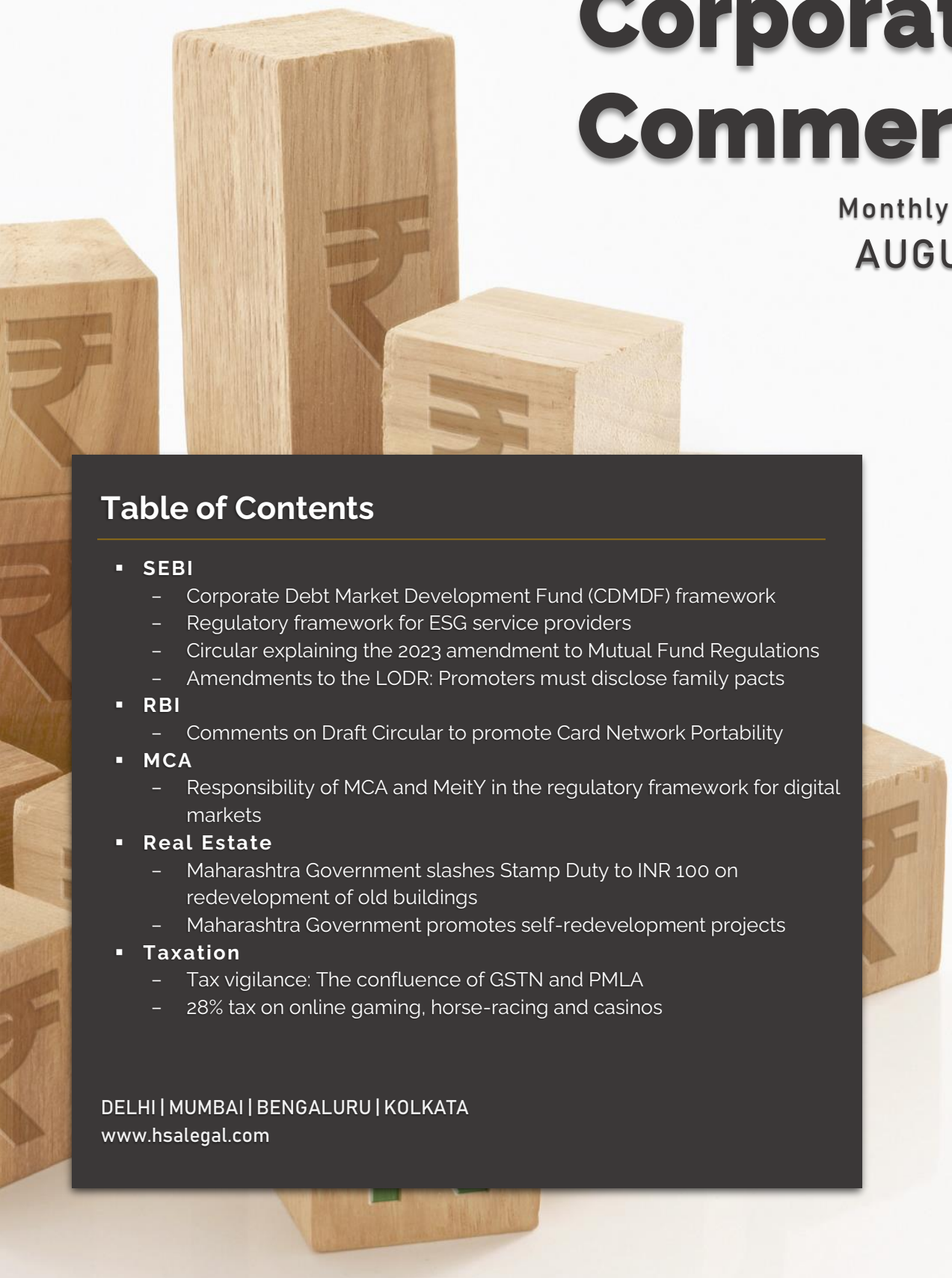

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SEBI | Corporate Debt Market Development Fund (CDMDF) framework

The Securities and Exchange Board of India (**SEBI**) unveiled the Corporate Debt Market Development Fund (**CDMDF**) framework on July 27, 2023, which establishes an Alternative Investment Fund with the objective of enhancing market stability during times of market dislocation.

Key aspects:

- Debt-oriented schemes will be required to contribute 25 basis points (**bps**) of their Assets Under Management (**AUM**) in CDMDF units. This contribution will increase proportionally with the growth of their AUM and will be subject to review every 6 months.
- The Asset Management Company (**AMC**) responsible for specified debt-oriented mutual fund schemes will subscribe to units of the CDMDF, per the following terms:
  - The Association of Mutual Funds in India (**AMFI**) will calculate the contribution amount for each AMC and its mutual fund schemes. The AMCs and CDMDF will then be informed of these contributions.
  - AMCs will make a one-time contribution of 2% of their specified debt-oriented schemes' AUM to the CDMDF.
  - The contribution, along with any appreciation on the scheme, will be locked in until the fund is wound up.
- Delay in contributions will attract a penalty of 15% per annum on the respective AMC for the delayed period.
- CDMDF will purchase listed corporate debt securities from specified debt-oriented mutual fund schemes, and SEBI will determine the triggers and the time frame for such actions.
- In times of market dislocation, the CDMDF will acquire securities from the secondary market with a remaining maturity period of no more than 5 years, provided they hold an investment-grade credit rating. Sellers will receive 90% of the payment in cash and 10% in the form of CDMDF units.
- Mutual funds will have the option to sell corporate debt securities from their contributing schemes' portfolios to the CDMDF. The access to this sell facility will be proportionate to the mutual fund's contribution to the CDMDF.
- AMCs will include information about contributing to the CDMDF in their Scheme Information Document by issuing an addendum before initiating the contribution process.

SEBI | Regulatory framework for ESG service providers

Environmental, Social and Governance (**ESG**) rating providers (**ERPs**) are regulated under the provisions of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (**Regulations**) that prescribe guidelines for registration, general obligations, manner of inspection and code of conduct applicable to ERPs. The Securities and Exchange Board of India (**SEBI**) has recently introduced amendments to the Regulations through the Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2023 in order to stipulate additional registration and regulation requirements applicable to ERPs.

In this regard, a new Chapter IV A has been introduced in the Regulations, which outlines the requirements for registration, approval, surrender, and stipulates operational guidelines for ERPs. The chapter also covers procedural aspects, reporting and disclosure obligations, internal audit, and general guidelines for ERPs.

- **Eligibility conditions for registration of ERPs:** Any entity intending to operate as an ERP can apply for the grant of a registration certificate from SEBI by applying in Form A, as prescribed in the fifth schedule of the Regulations, as Category 1 or Category 2 ERP. Such an applicant shall fulfil the below mentioned general eligibility criteria (applicable to both Category 1 and 2 ERPs):
  - The applicant must be incorporated as a company under the Indian Companies Act
  - Such a company's main objective in the Memorandum of Association should be specified as ESG rating activity
  - The applicant should submit a business plan related to providing ESG ratings, including a target breakeven date, target revenue, the number of clients it plans to service within two years, and projected cash losses until the target breakeven date
  - The targets set by the applicant should be limited to operations in the securities markets, focusing on listed or proposed-to-be-listed issuers on a recognized stock exchange, and they should be reasonable
  - The applicant should declare that it will not engage in any activity or offer any product or service except ESG rating of issuers or securities listed or proposed to be listed on a recognized stock exchange, or other activities specified by SEBI
  - Category II ERP cannot undertake certification of green debt securities or other activities specified by the board
  - The applicant should maintain a positive liquid net worth as required under the regulations
  - The applicant must have the necessary infrastructure, office space, technology, equipment, and manpower to provide ESG rating services as per the Regulations
  - The applicant should not be registered as a credit rating agency or any other intermediary registered with SEBI
  - The applicant should appoint a compliance officer
  - It must have employees with adequate professional and relevant experience to the satisfaction of SEBI
  - The applicant and its promoter(s) should be considered fit and proper person as per Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008
  - The applicant should not have been refused a certificate under the regulations, deemed not fit and proper by the SEBI, or subject to any enforcement action for a violation of the SEBI Act, 1992 or related rules and regulations

- Granting a certificate to the applicant should be in the interest of investors

- **Additional conditions:** The Regulations, amongst others, also provides for certain conditions which are to be complied by the ERPs, such as:
  - In case of any change in control of the ESG rating provider, it shall obtain the prior approval of SEBI for continuing to act as such after the change
  - It shall at all times maintain the minimum liquid net worth as required under the provisions of the Regulations
  - The ESG rating provider shall meet the targets declared at the time of its application to SEBI within the specified time
  - The ESG rating provider does not undertake any activity or offer any product or service, except services related to ESG ratings, etc.
- Additionally, for ERPs to maintain independence in their ratings, SEBI has imposed restrictions on shareholding of ERPs in other ERPs. In this regard, an ERP cannot hold more than 10% of shares or voting rights in another ERP or have representation on its board without approval of SEBI. Similarly, a shareholder owning 10% or more shares or voting rights in an ERP cannot hold the same amount in any other ERP, with exceptions for pension funds, insurance schemes, and mutual fund schemes.
- To provide further clarity and facilitate compliance for ERPs, SEBI has issued a master circular on July 12, 2023, consolidating all relevant directions applicable to ERPs.

SEBI | Circular explaining the 2023 amendment to Mutual Fund Regulations

The Securities and Exchange Board of India (**SEBI**) through Circular dated July 7, 2023 clarified the amendment notified for SEBI (Mutual Funds) Regulations, 1996 (**MF Regulations**) dated June 27, 2023 which had introduced a set of new responsibilities for trustees appointed on behalf of mutual fund unit holders, and the board of directors of Asset Management Companies (**AMCs**) managing such mutual funds to ensure that such persons act in the best interests of the unit holders. This amendment is to be effective from January 1, 2024.

Since certain aspects regarding the responsibilities of trustees and board of directors of AMCs managing mutual funds were found to be unclear/ambiguous, a working group was constituted by SEBI in order to streamline the same. Based on the recommendations made by this working group, which were subsequently deliberated with Mutual Fund Advisory Committee (**MFAC**), amendments were made to the MF Regulations, specifying the core responsibilities of the trustees and mandating the constitution of unit holder protection committees (**UPHCs**) for all AMCs.

Key aspects:

- **Core responsibilities of trustees:**
  - The trustees have been entrusted with the responsibility to conduct independent due diligence on certain core areas to safeguard the interests of unitholders as mentioned below:
    - Ensuring fairness of fees and expenses involved
    - Reviewing performance of AMCs
    - Preventing mis-selling and unfair practices
    - Ensuring the independence of operations
    - Preventing unfair advantage from accruing to associates
    - Addressing cases involving conflicts of interest
    - Preventing misconduct in operations
  - Additionally, to prevent fraudulent transactions and misconduct, the trustees have been entrusted with the responsibility of devising system level checks at the AMC's end.
  - The MF Regulations allow the trustees of a mutual fund to rely upon third-party fiduciaries such as audit firms, legal firms, and merchant bankers to carry out due diligence on their behalf with respect to non-core responsibilities.
- **Unit Holder Protection Committees (UPHC):**
  - **Purpose:**
    - The UHPC for a mutual fund is tasked with protecting the interests of unit holders across all products and services provided by an AMC. It is responsible for ensuring adherence to healthy market practices, compliance with laws and regulations, and redressal of unit holder grievances.
    - The UHPC is also responsible for reviewing compliance issues and keeping unit holders informed and educated about mutual fund products and investor charters.
  - **Membership/constitution of the UHPC:**
    - The Chairperson of the UHPC shall be an independent director, and a minimum of 3 directors would be appointed as members of the UHPC.
    - At least two-thirds of the UHPC members shall be independent directors of the AMC.
    - The members of the UHPC shall be appointed by the board of directors of the AMC.
    - Additionally, the UHPC shall have the authority to invite experts or representatives of unit holders as invitees for matters deemed necessary.
  - **Meetings:** The UHPC shall convene a minimum of four meetings in a financial year, where the quorum for meetings shall consist of either two members or one-third of the total UHPC members, whichever is greater, and at least two independent directors shall be present.
  - **Reporting requirement:** The AMC shall present the UHPC's agenda to its members, including the reports on findings and observations related to the protection of unit holders' interests arising from audits, reviews, etc., conducted by the AMC and its internal auditors.

- **Powers and responsibilities of UHPC:**
  - The UHPC shall periodically review unit holders' complaints, including ageing and outstanding ones, relating to mis-selling and fraud as well as assessing the AMC's complaint handling system.
  - The UHPC shall lay down guidelines for utilization of the funds earmarked for investor's education and awareness.
  - The UHPC will also manage conflicts of interest, address the instances market abuse, evaluate compensation payable to investors and review unitholder protection metrics.

- **Other provisions of the amendment**
  - **Appointment of a company as trustee:** The amendment dated June 27, 2023 further mandates that in case a company is appointed as the trustee of a mutual fund, the chairperson of its board of directors must be an independent director. The companies already appointed as trustees shall have to comply with this requirement within a period of six months.
  - **Meetings between the trustee company and the AMC:** The board of directors of the trustee company and the board of directors of the AMC, including any of their committees, are mandated to meet at least once a year to discuss the issues concerning the mutual fund, if any, and future course of action, wherever required.

SEBI | Amendments to the LODR: Promoters must disclose family pacts

Previously, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) required agreements binding listed entities that were not in the ordinary course of business to be declared as material information to shareholders. Such agreements must be reported whether entered into by the listed firm or any of its promoters or shareholders.

In line with the existing law, the Securities and Exchange Board of India (**SEBI**) through its consultation paper 'Strengthening Corporate Governance at Listed Entities by Empowering Shareholders – Amendments to SEBI (LODR) Regulations, 2015' dated February 21, 2023, recommended that if the listed entity is not a party to such an arrangement, the parties engaging in such agreements must be required to disclose it to the firm. The listed entity would then be able to disclose such agreements to the stock exchanges.[1]

SEBI through a gazette notification dated June 14, 2023[2], incorporated significant amendments 'Regulation 30A' to the LODR Regulations recently introduced regulation, Regulation 30A which provides that all the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, and employees of a listed entity or of its holding, subsidiary, and associate company, who are parties to the agreements specified in Clause 5A of para A of part A of Schedule III to these regulations, shall inform the listed entity about the agreement to which such a listed entity is not a party within two working days of entering into such agreements or signing an agreement. The listed entity, in turn, discloses all such subsisting agreements to the Stock Exchanges and on its website within the timelines as specified by the Board.[3]

Pursuant to the newly inserted Clause 5A, any agreements that have the purpose or effect of (i) influencing management, (ii) influencing control of the listed company, or (iii) imposing any restriction or creating liabilities upon the listed company and are not in the ordinary course of the listed company's business, must be disclosed by the listed company under Regulation 30A. This disclosure will also cover any later rescission, amendment, or alterations to these agreements.

Key aspects:

- The amended regulations have come into force on July 15, 2023. The notification is made enforceable retrospectively and will include any agreements in force as on the date of the notification.
- Prior to this amendment, promoters have entered into legally binding agreements with parties that have an impact on how a listed entity is managed or controlled, or how these agreements have imposed any indirect restrictions on the listed entity, but these facts have not been disclosed to the listed entity or its shareholders. When important information is kept secret and later becomes known to the general public, it causes information asymmetry and has a substantial impact on the market.[4]
- Therefore, the LODR amendments aim for a reduction of information asymmetry, increase in transparency, and prevention of unethical practices as well as consistency with the market regulator's goal of making the Indian market a model for other markets to emulate. This modification results in the revelation of agreements made within the promoters' families. The promoters' families will have to tread a fine line between releasing internal concerns to the general public that could have an impact on the management or control of the listed firm and safeguarding their privacy.
- SEBI has provided a clear structure for the information that must be disclosed in connection with such agreements. This contains information about the parties involved, their relationship with the listed entity, the agreement's date and purpose, shareholding if any, how it impacts management or control of the listed entity, quantification of any specific restrictions or liabilities imposed on the listed entity, parties

[1] https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-strengthening-corporate-governance-at-listed-entities-by-empowering-shareholders-amendments-to-the-sebi-lodr-regulations-2015_68261.html

[2] https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2023_72609.html

[3] https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2023_72609.html

[4] https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-strengthening-corporate-governance-at-listed-entities-by-empowering-shareholders-amendments-to-the-sebi-lodr-regulations-2015_68261.html

are related to promoter; promoter group; and group companies in any manner, etc.[5]

- Furthermore, in its annual report for the Financial Year 2022- 23 or for the Financial Year 2023- 24, as appropriate, the listed firm will disclose the number of such enduring agreements, link to the webpage with complete details, including but not limited to their key characteristics and comprehensive data.[6]

In light of the aforementioned amendment in LODR Regulations, the issue at hand is whether the objective of transparency would justify contravention of the principle of confidentiality of such family-oriented businesses. The family arrangements contemplated to be covered by the amendment may include, inter alia, recording of succession plans, private wealth, etc., and this may also extend to revealing competitive information. Maintaining a balance between public disclosures and private domains will require further finetuning of the amendments, by inclusion of required exceptions and other material modifications concerning privacy.

RBI | Comments invited on Draft Circular to promote Card Network Portability

A Press Release was issued by the Reserve Bank India (**RBI**) on July 5, 2023 for the purpose of inviting comments on Draft Circular dated July 5, 2023, issued by RBI, on arrangements with the card networks for issue of debit, credit, and prepaid cards (**Draft Circular**).

The authorized card networks (such as the American Express Banking Corp, Diners Club International Ltd, Master Card Asia/Pacific PTE Ltd, National Payments Corporation of India) have a tie-up with the banks/non-banks for issuance of debit, credit, and prepaid cards to the customers. The choice of the affiliated network (such as American Express, Dinners Club International, Master Card, RuPay or Visa) for a card issued to a customer is decided by the card issuer and is linked to the arrangements that the card issuer has with the card networks in terms of their respective bilateral agreement. In other words, the customers do not have the choice to select the affiliated network, rather the choice of the affiliated network for a card issued to a customer is thrust upon him by the card issuer. The proposed direction of RBI aims to remove this flaw from the existing practice.

Key aspects:

- The RBI has under the power conferred upon it by Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007 proposed the following directions:
- Card issuers shall not enter into any arrangement or agreement with card networks that restrain them from availing the services of other card networks.
- Card issuers shall issue cards across more than one card network.
- Card issuers shall provide an option to their eligible customers to choose any one among the multiple card networks. This option may be exercised by customers either at the time of issue or at any subsequent time.
- Further, directions have been issued by the RBI to the card issuers and card networks to adhere to the above-mentioned directions and incorporate the same in the existing agreements of the parties at the time of amendments or renewal thereof, as well as the fresh agreements which shall be executed between the parties from the date of this Circular.
- The Draft Circular inter-alia states that the direction mentioned under the aforementioned Clauses (b) and (c) which provides that the card issuers shall issue cards across more than one card network and that the said card issuers shall provide an option to their eligible customers to choose any one among the multiple card networks available with them shall become effective from October 1, 2023.

RBI's proposed directions are aimed to empower the end customer by giving them the option to choose the network partner and prohibits the card issuers from entering into any agreement or arrangement with the card networks that restrains the issuers from availing the service of other card networks. This is a welcome move and will encourage more competition in this sector.

MCA | Responsibility of MCA and MeitY in the regulatory framework for digital markets

The Ministry of Corporate Affairs (**MCA**), vide a tweet, stated that a meeting between the officials of the MCA and Ministry of Electronics and Information Technology (**MeitY**) was held to discuss concerns relating to 'Systematically Important Digital Intermediaries'. The term Systematically Important Digital Intermediaries (SIDI) was first used in the 'Report of the Standing Committee on Finance for Anti-Competitive Practices by Big Tech Companies' (**Standing Committee**) dated December, 2022, wherein the Standing Committee opined to identify the small number of leading players that can negatively influence competitive conduct in the digital ecosystem as SIDI.

Pursuant to this meeting, the responsibility to frame the regulation for digital intermediaries with respect to the competition issues in the digital market has been delegated to the MCA, while the MeitY shall frame the regulation for digital intermediaries with respect to the sector-specific & technical issues involved in the digital market.

The demarcation of responsibility between the MCA and MeitY can be traced back to 2 developments:

- An order issued by the Government of India trough MCA as on February 6, 2023 for the constitution of the Committee on Digital Competition Law (CDCL), to conduct research and prepare a report on the following points:

[5] https://www.sebi.gov.in/legal/circulars/jul-2023/disclosure-of-material-events-information-by-listed-entities-under-regulations-30-and-30a-of-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-201-_73910.html

[6] https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2023_72609.html

- To review whether existing provisions in the Competition Act, 2002 and the rules and regulation framed thereunder are sufficient to deal with the challenges that have emerged from the digital economy
- To examine the need for an ex-ante regulatory mechanism for digital markets through a separate legislation
- To study the international best practices on regulation in the field of digital markets
- To study other regulatory regimes/institutional mechanisms/government policies regarding competition in digital markets
- To study the practices of leading players/SIDI which limit or have the potential to cause harm in digital markets
- Any other matters related to competition in digital markets as may be considered relevant by the Committee

- The proposed Digital India Act, 2023 (**Digital India Act**) issued by MeitY on March 9, 2023 also mentions the need to update provisions in the Competition Act, 2002 as a key component of the Digital India Act.

Due to the setting up of CDCL by the MCA for the purpose of preparing a regulatory regime for competition in digital space and the release of the proposed Digital India Act by MeitY mentioning the need to update provisions of the Competition Act, 2002, concerns were raised by various stakeholders regarding the overlap of responsibilities between the MCA and MeitY when it came to regulating the digital companies.

The clarification provided by MCA clearly demarcates the responsibilities between MCA and MeitY while framing laws with regards to digital space. This move ensures harmonious construction and inter-ministerial co-operation between the MCA and MeitY to avoid regulatory over-lap and attendant difficulties.

Real Estate | Maharashtra Government slashes Stamp Duty to INR 100 on redevelopment of old buildings

Imposition of stamp duty on various instruments as a part of 'redevelopment of cooperative societies' in Maharashtra was challenged before the Bombay High Court. In February 2023, the High Court, in the case of ***Adityaraj Builders v. State of Maharashtra***[7], adjudicated that Permanent Alternate Allotment Agreement (PAAAs) executed in furtherance to a Development Agreement (DA) between a Developer and a Housing Society would not attract stamp duty beyond INR 100 and the circulars dated June 23, 2015 and March 30, 2017 were held to be ultra-vires.

SEBI recently implemented a more stringent framework for the disposal of undertakings by listed entities. The new regulations emphasize the need to safeguard the interests of shareholders and other stakeholders during the disposal of an undertaking and aim to enhance transparency, protect the interests of investors, and ensure fair market practices.

The following circulars were cited before the Court:

- **Circular dated June 04, 2013:** PAAAs are required to be stamped according to the value of the construction of the flats and the market value of any additional lands, if applicable.
- **Circular dated November 07, 2011:** Stamp duty on PAAAs would be calculated based on the construction cost of the retained area or, in cases where Fungible Floor Space Index (FSI) was employed, on the construction cost and the premium paid for the fungible area.
- **Circular dated June 23, 2015:**
  - If the DA has been executed between the Co-operative Society (original owner) and the Developer, it would attract stamp duty. All incidental instruments, thereafter, executed between the two would be treated as ancillary instruments attracting the applicability of Section 4 of the Maharashtra Stamp Act, 1958 (Stamp Act)
  - If the DA is executed exclusively between the Co-operative Housing Society and the Developer, the document PAAA facilitating the transfer of premises to the member Society shall be regarded as an independent instrument and stamped on the basis of the construction cost.
  - Succinctly stated, the above circular draws a distinction between two categories of agreements: the DA and the PAAA and where such distinctive agreements are executed, the benefit of Section 4 of the Stamp Act would not accrue to the PAAA.
- **Circular dated March 30, 2017:** This Circular was in clarification of the Circular dated June 23, 2015 and, in sum and substance, reiterated the above matrix of 2015 Circular. The following conditions afforded the benefit and applicability of Section 4 of the Stamp Act:
  - If the DA is in form of a tri-partite agreement between the Housing Society, members of the Housing Society, and the Developer
  - If the DA incorporates the condition of making separate transfer document of new flat in favor of each member
  - If the object of the transfer document is limited to transfer the built-up area in consonance with the DA
  - If the housing society is made the consenting party in the transfer document
- Based on an analysis of the statutory provisions, and in conjunction with the judicial precedents, the Court observed as under:
  - The two Circulars dated June 23, 2015 and March 30, 2017 are erroneous in law to the extent that the

[7] 2023 SCC OnLine Bom 540

Circulars create artificial criteria including the requirement of Tripartite Development Agreement, exclusive focus on transferring existing built-up area in the transfer document PAAA, and the requirement for the society's consent in the transfer document (PAAA), for conformity to avail the benefit of Section 4 of the Act, which is not tenable under the law.

- Succinctly, the Court emphasized on two scenarios:
  - Where the PAAAs is limited to rebuilt or reconstructed premises in exchange for the member's old premises, after stamping the development agreement, the PAAA cannot be subjected to separate stamp duty assessment beyond INR 100 requirement specified in Section 4(1) of the Stamp Act.
  - When the PAAA includes provisions for the purchase of additional area, the PAAAs to the extent of purchasing additional area shall constitute a separate transaction, thus will attract additional stamp duty.

- The above-mentioned processes were decreed to be illegal, on the ground that the government cannot dictate the fabric and framework of instruments. As a natural and expected corollary, the former two circulars dated 2015 and 2017 have been struck down.
- The transaction of redevelopment, being a single transaction, involves execution of multiple instruments, including the Development Agreement, PAAA, etc.
- Whilst there may be multiplicity in the parties, emanating from the fact that the transaction involves numerous stakeholders, the nature of the PAAA as an instrument incidental to the Development Agreement does not alter. This interpretation is bolstered by the fact that society as it exists, is a creation of law and acts for and on behalf of its constituents, that is its members.
- The cardinal essential for applicability of Section 4 is multiplicity of instruments, in furtherance to a single transaction backed by the legislative intent of avoidance of double incidence of stamp duty. This legislative intent, particularly for Development Agreements, is bolstered by the amendment carried out in Section 4, which specifically incorporated Development Agreements.
- The execution of a tripartite agreement as mandated by the Circulars, does not fulfill the essential condition of Section 4 and therefore, renders its applicability nugatory.
- The judgement has removed all ambiguities with regards to the stamping of various related instruments, reiterated the principles and intent governing Section 4 of the Stamp Act and illuminating the limit of government interference in the realm, fabric, and framework of contracts, generally.
- This shall indeed be a shot in the arm for developers and shall boost the real estate industry, encouraging developers to undertake more redevelopment projects and shall help change the state of buildings in dire need of redevelopment.

Real Estate | Maharashtra Government promotes self-redevelopment projects

- Self-redevelopment has emerged as a revolutionary change in the arena of Society Redevelopment and will further gain even more importance with the increasing popularity of successful self-redevelopment projects. It is evident that purchasers of flats in an under-construction building are often aggrieved by developers for granting timely possession of flats. Moreover, the issue of halt in ongoing construction projects has resulted in several litigation against the developers and promoters.
- The Government of Maharashtra (**GOM**) has been proactive in implementing rules for speedy redevelopment process with minimum requirements for various permissions. The initiatives undertaken by the GOM in recent years were with the intention to promote redevelopment of old and dilapidated buildings including allowance of more FSI, stamp duty concessions and relaxations in deemed conveyance procedure. In that regard, the GOM had issued a resolution dated September 13, 2019 (**GR 2019**) with an objective to encourage registered Co-operative Housing Societies (**CHS**) in the State to undertake self-redevelopment of their own buildings.
- GR 2019 also specifically stated that there was no requirement of entering into any agreement since there was no involvement of third party except for the existing CHS in the self-redevelopment project.
- **Government Resolution dated July 14, 2023:** Subsequently, GOM issued a Resolution dated July 14, 2023 (GR 2023) which stated that, the homeowners who decide to undertake self-redevelopment of their existing CHS shall be levied stamp duty of only INR 1000 towards allotment of flat in new building. However, the members who are desirous to purchase more space will have to pay stamp duty as per the prevailing stamp duty in the state. Generally, stamp duty for such an agreement was levied up to 5% to 7%. However, the initiative undertaken by the GOM shall encourage the homeowners to voluntarily out for self-redevelopment.
- **Deemed Conveyance to be issued within 1 month:** The GOM on May 31, 2023 had issued a circular stating that a CHS will first have to pass a resolution of self-redevelopment and apply for deemed conveyance or ownership of land on which it is situated. Upon application for the same, the GOM shall grant deemed conveyance within one month to the CHS. The introduction of such practice shall enable the societies to obtain deemed conveyance quicker compared to the earlier regulations for deemed conveyance the timeline of which was six months of the date of application.
- **Advantages self-redevelopment:**
  - The society members will have to pay less stamp duty
  - The society members will have full and complete control and transparency over the stages of redevelopment
  - Planning and development as per the conditions of the society

  - All profits from the saleable component will be a part of the society funds
- **Disadvantages self-redevelopment:**
  - Difficulty in obtaining consent of all the society members
  - Lack of proper knowledge and guidance in the arena of redevelopment can lead to delays and discrepancies between the societies and professionals involved
  - Difficulty in procuring huge sums of loans for construction
- It is pertinent to note that all relevant provisions of Real Estate Regulatory Authority, 2016 shall be applicable to the process of sale in the extra component of flats in the self-redeveloped project. The practice of maintaining transparency and timely completion shall remain to be followed in all the self-redevelopment projects. Moreover, the practice of appointment of a competent contractor, holding timely meetings and passing regular resolution is mandatory and shall also be applicable.

Taxation | Tax vigilance: The confluence of GSTN and PMLA

- The Goods and Services Tax Network (**GSTN**) is a non-profit enterprise which provides IT infrastructure and services to Central and State Governments, taxpayers, and other stakeholders for implementation of Goods and Services Tax (**GST**) in India. GSTN has built an indirect taxation platform for GST to help taxpayers perform various compliances such as facilitating registration, preparing, and filing returns, forwarding returns to relevant Central and State authorities, generating challans for tax payments, making payments of indirect tax liabilities, matching tax payment details with banking network, providing analysis of taxpayers' profile, matching invoices, etc. Additionally, GSTN plays a vital role in generating business intelligence, analytics, and other applications for taxpayers.
- The Prevention of Money Laundering Act, 2002 (**PMLA**) was enacted to fight against the criminal offence of legalizing income/profits from an illegal source. The law empowers the authorities to confiscate property derived from or involved in money laundering activities. Entities such as financial institutions, banks, intermediaries, and individuals engaged in business or professions are required to identify their clients, maintain records, and provide information to the Financial Intelligence Unit (**FIU**) in accordance with PMLA provisions. The Enforcement Directorate (**ED**) and FIU are the institutions responsible for investigating and taking preventive measures against money laundering cases.
- A wave of fake input tax credits and false GST invoices have led to confluence of GSTN and PMLA. In instances of fake input tax credit claims, individuals or businesses resort to generating fake GST invoices, essentially invoices raised without any actual supply of goods or services or without payment of GST. These forged GST invoices are then exploited to avail undue input tax credit. On July 06, 2022, Ministry of Finance (Department of Revenue) via Circular[8] issued clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices–Reg. In case the input tax credit availed or utilized by the taxpayer with the help of fake invoices exceeds INR 5 crore, the taxpayer can face imprisonment up to 5 years and a fine.
- As a significant move to combat tax evasion and money laundering, the Indian Government has brought GSTN under the ambit of the PMLA, through a notification in the official gazette on July 07, 2023 (**Notification**).[9] GSTN has been added as the 26th entity to the list of agencies, which are required to share information with the ED and FIU under the PMLA. Besides the ED and the FIU, agencies that need to share information includes the Competition Commission of India (**CCI**), Reserve Bank of India (**RBI**), Securities and Exchange Board of India (**SEBI**), Insurance Regulatory and Development Authority of India (**IRDAI**), Serious Fraud Investigation Office (**SFIO**), and Director General of Foreign Trade (**DGFT**). This list is updated from time to time by the Ministry of Finance (Department of Revenue).
- With the inclusion of GSTN under PMLA, ED gains access to data that can be utilized to identify and apprehend tax evaders, leading to cracking down of tax evasion facilitated by generation of fake tax invoices. By harnessing the power of GSTN's comprehensive database, ED can efficiently track and monitor transactions, thereby facilitating more effective investigations.
- The inclusion of GSTN in the list of entities for cross-sharing of information is a logical and expected step as GST law matures in India. However, it also means that businesses must be diligent in maintaining synchronized records and reconciliations from multiple tax and regulatory perspectives. Compliance costs may rise, and companies may be required to invest in training their compliance teams to handle inquiries and investigations that may arise from sharing of information. In case of unintended GST invasions, checks and balances along with advice from expert/professional advisors shall be required.
- Pursuant to the issuance of the Notification, it is imperative for businesses to embrace enhanced compliance measures and align their practices with evolving tax and regulatory requirements. By doing so, companies can not only protect themselves from legal repercussions but also contribute to the larger goal of building a robust and accountable financial ecosystem in the country.

Taxation | 28% tax on online gaming, horse-racing and casinos

- On June 11, 2023, the Union Finance Minister announced the outcome of the 50th GST Council meeting wherein changes in GST tax rates for various products and services, as well as measures to enhance trade facilitation and streamline compliance processes were brought in.

[8] https://www.livelaw.in/pdf_upload/cir-171-03-2022-cgst-424819.pdf

[9] Gazette of India, Part II, Section 3(i), (July 7, 2023), p.2, available at- https://egazette.gov.in/WriteReadData/2023/247128.pdf

- These recommendations are aimed at fostering economic growth, promoting tax uniformity, and simplifying GST procedures.
- One of the most significant changes recommended in GST rates is the levy of GST on casinos, horse racing, and online gaming to be fixed at a uniform rate of 28% on full face value.
- The revised GST rates as recommended by the GST Council will have significant implications on industries in online gaming, horse racing, and casino. The profitability of game developers will be significantly affected as the increased GST rates will increase the operational costs and slim their profit margins.
- The rate will be chargeable on 'gross revenue' basis, i.e., on the total stake value and not on the platform fee paid by the user.
- The increased rate of GST from 18% to 28% will result in an increased number of compliances for the existing as well as new emerging players in the market, which might lead to significant headwinds.
- The implementation of 28% GST on online gaming in India will directly affect the total prize pools and the face value of online games. Essentially, this tax will be applied to the funds collected by gaming companies from consumers. Consequently, consumers themselves will bear the burden of this tax, leading to increased costs for players. In essence, for every INR. 100 spent by a player, there will be an additional 'sunk cost' of INR 28 towards GST, on top of the INR. 5-10 charged by the gaming platform and a 30% tax deducted at source on any winnings earned by the player. This will severely discourage consumers from participating in online gaming, thereby negatively impacting the overall growth of the industry.
- Following the implementation of the new GST rules, taxes on online gaming will be imposed without differentiation based on whether the games require skill or are based on chance. This will eliminate the distinction between betting, gambling, and games of skill as defined by the constitution and various state laws, effectively bringing the entire online gaming sector under the umbrella of gambling.
- The increase in GST rate may result in a substantial fall in the share prices of the industries involved in the online gaming industry. The said move by the GST Council may lead to a major setback to the flourishing online gaming industry which may result in the slow death of the booming industry in India.

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