

INDIA NEWSLETTER

Quarter of July to September 2023



INDUSLAW 日本のニュースレター brings you key regulatory and legal developments in various sectors in India on a quarterly basis.

INDUSLAW is a top-tier Indian Law Firm, the 6th Largest in India, providing legal services to a wide range of International & Domestic clients across a variety of sectors. With over **400 lawyers** including **more than 60 Partners** spread across *Bengaluru, Chennai, Delhi & NCR, Hyderabad & Mumbai*, we have been fortunate to partner with and contribute significantly to many established businesses and new economy companies.

Our clients typically include financial institutions, investment funds, foreign multinationals operating in India, domestic corporations, growing Indian companies, start-ups, social enterprises and not-for-profit entities.

We work with clients across various sectors including bio-tech, energy (including renewable energy), education, financial services, healthcare, hospitality, infrastructure, manufacturing, micro-finance, natural resources, real estate and construction, retail (including online retail), technology, travel and tourism, telecom and trading.

Our clients generally structure sophisticated corporate and financial transactions or may be involved in complex litigation and dispute resolution proceedings.

CONTENTS

- **Part A:**
Sector-specific updates
 - **Part B:**
General updates for foreign investors
-

Editorial team: Saurav Kumar (Partner) | Rohit Ambast (Partner) | Shreya Chaturvedi (Associate) | Kajal Kashyap (Associate) | Roopam Dadhich (Associate) | Aryan Dhingra (Associate)

注目の最新情報 - 2023 年 7 月～9 月

パート A: 産業別最新情報

1. インド政府が製薬メドテックセクターの研究 & イノベーションを促進するスキームを導入 (PRIP)

インド政府は、(i) リサーチインフラの強化 (ii) 製薬メドテック (Medtech) 産業での研究の促進を 2 本柱として、産業と学術界の関係強化を目指す PRIP スキームに関する通達を行った。

2. ラップトップ、タブレット、PC の輸入制限

インド政府は、2023 年 11 月 1 日より、命名の統一システム (Harmonised System of Nomenclature : HSN) 8741 の対象となるラップトップ、タブレット、オールインワン PC、超小型フォームファクターコンピュータ、サーバーの輸入に対して制限を課すと発表した。

3. インド政府、国内を対象としたグリーン水素基準を導入

この基準は、再生可能資源を用いた水素が「グリーン」に分類される上で満たす必要のある排出量の閾値を定めるものである。対象範囲には、電気分解ベースおよびバイオマスベースの水素製造が含まれている。

4. カーボンクレジット取引スキームを導入

インド政府はインドでカーボン取引を促進するための枠組みを確立するためカーボンクレジットスキームを導入した。インド政府はこのスキームの下、全国執行委員会 (National Steering Committee) を設立した。この組織は、監督機関としての役割を持つほか、インドのカーボン市場の運営実現に向けて詳細な手続きの策定を行う。

パート B: 海外投資家向けの総合的な最新情報

1. インフラデットファンド向けガイドラインを訂正 - ノンバンクの金融企業 (IDF-NBFC)

インド準備銀行 (RBI) は IDF-NBFC 向けの規制枠組みのレビューを発行した。これにより、IDF-NBFC を対象とした純自己資本、スポンサー、規制資本などに関する規制の枠組みへの訂正が通達されている。

2. 故意の不履行者および大規模な不履行者への対処に関する指令の草稿

草稿では、故意の不履行者に関する基本通達の下、RBI が提供している既存の故意の不履行者に対する枠組みへの特定の変更を提案するほか、自然的正義の原則を盛り込み、故意の不履行者に分類する上での公正で、透明性の高い方法の確立を目指している。

3. 2023 年インド競争委員会 (企業結合) 規制の草稿を発表

インド競争委員会は、2023 年競争 (改正) 法を補完する規制の草稿を発表した。同法は 2002 年競争法に大幅な変更を加えている。規制の草稿ではたとえば「取引の価値」や「インドでの大規模な事業運営」を特定する際のガイダンスを提供している。

4. 2023 年デジタル個人情報保護法 (DPDP) の通達

DPDP 法は、データ提供者の権利を守った上でデジタル個人情報を処理するための枠組みを提供することを目標に掲げている。また法を順守して個人情報を処理するための枠組みを与えるものである。

5. Reduction of timeline for listing of shares in public issue 株式上場期間を短縮

インド証券取引委員会 (SEBI) は特定の株式上場の期間について、株式一般公開終了後 6 営業日から 3 営業日に短縮した。

6. すべての海外間接投資機関 (FPI) に取引主体識別子 (LEI) コードの取得が義務付けられる

SEBI は個人ではない海外間接投資機関 (FPI) の登録に LEI コードの取得を義務付けた。さらに既存の FPI も 2023 年 7 月 27 日から 180 日以内に LEI を取得しなければならない。

Key Updates from July to September 2023

Part A: Sector specific updates

1. **The Government of India (GoI) introduces Scheme for Promotion of Research and Innovation in Pharma Medtech Sector (PRIP)**

GoI has notified the PRIP scheme which is aimed at promoting linkage between industry and academia by emphasizing on two key components: (i) strengthening of research infrastructure; and (ii) promotion of research in pharma medtech industry.

2. **Import restrictions on laptops, tablets and personal computers (PC)**

The GoI has announced restrictions from November 1, 2023, on import of laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers falling under Harmonised System of Nomenclature (HSN) Code 8741, with certain exceptions.

3. **GoI introduces Green Hydrogen Standard for India**

The standard outlines the emission thresholds that must be met for hydrogen produced to be classified as 'green', i.e., from renewable sources. The scope of the definition encompasses both electrolysis-based and biomass-based hydrogen production methods.

4. **Carbon Credit Trading Scheme introduced**

The GoI introduced the Carbon Credit Trading Scheme (CCTS) for establishing a framework for facilitating carbon trading in India. As per the scheme, the GoI will constitute the National Steering Committee (NSC), which will exercise direct oversight and develop the detailed procedure for operationalising the Indian carbon market.

Part B: General updates for foreign investors

1. **Revised guidelines for infrastructure debt fund – nonbanking financial companies (IDF-NBFCs)**

The Reserve Bank of India (RBI) issued the Review of Regulatory Framework for IDF-NBFCs wherein revisions for the regulatory framework pertaining to net owned funds, sponsors, regulatory capital, etc., for IDF-NBFCs have been notified.

2. **Draft directions for treatment of wilful defaulters and large defaulters**

The draft proposes certain changes to the current framework on wilful defaulters provided by the RBI under the Master Circular on Wilful Defaulters and aims for a fair and transparent method to classify someone as a wilful defaulter, incorporating principles of natural justice.

3. **Draft Competition Commission of India (Combinations) Regulations, 2023 released**

The Competition Commission of India released the draft regulations supplementing the Competition (Amendment) Act, 2023, which recently brought about substantial modifications to the Competition Act, 2002. Amongst other changes, the Draft Regulations provide guidance on ascertaining the 'value of transaction' and 'substantial business operations in India'.

4. **Digital Personal Data Protection Act, 2023 (DPDP Act) notified**

The DPDP Act aims to provide a framework for processing of digital personal data in a manner which safeguards the rights of data providers and provides a framework for processing personal data for lawful purposes.

Section A: Sector specific updates

Pharmaceutical

Scheme for Promotion of Research and Innovation in Pharma Medtech Sector (PRIP)

In August 2023, the Government of India (GoI) notified the Scheme for Promotion of Research and Innovation in Pharma MedTech Sector (PRIP Scheme)¹ with a total budgetary outlay of approximately USD 600 million² spread over a period of 5 (five) years. Under the PRIP Scheme, the GoI aims to blend technology and pharmaceutical manufacturing processes to transform Indian Pharma MedTech sector from cost based to innovation-based growth by emphasizing on research and innovation. The PRIP Scheme aims to promote linkage between industry and academia by emphasizing on two key components: (i) strengthening of research infrastructure; and (ii) promotion of research in pharma medtech industry. The scheme proposes to establish centres of excellence in the 7 (seven) existing National Institute of Pharmaceutical Education and Research (NIPER) with each specialising in a distinct field. NIPERs are pharmaceutical education and research institutes which operate directly under the aegis of Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers. The outlay for this first component is approximately USD 84 million.

The second component seeks to promote research and development (R&D) in 6 (six) priority areas: (i) new chemical entity, new biological entity, phyto-pharmaceuticals; (ii) complex generics and biosimilars; (iii) precision medicine; (iv) medical devices; (v) orphan drugs; (vi) drug development for anti-microbial assistance. Previously, to promote the growth of the medical devices sector in India, the GoI had introduced schemes such as Assistance to Medical Device Clusters for Common Facilities (AMD-CF), Scheme for Strengthening of Pharmaceuticals Industry (SPI), Scheme for Promotion of Medical Device Parks, production linked incentive (PLI) scheme for domestic manufacturing of medical devices, etc. Additionally, for streamlining the regulatory framework, the GoI had devised the Medical Devices Rules, 2017 and National Medical Device Policy 2023. A detailed coverage of the National Medical Device Policy 2023 was provided in our last edition of the newsletter at <https://induslaw.com/publications/pdf/alerts-2023/Japan-Newsletter-Apr-Jun-twenty-twenty-three.pdf>.

The second component of the PRIP Scheme is further divided into 3 (three) categories:

- (i) **Category I:** 9 (nine) established pharma companies will be selected to carry out research in the priority areas in collaboration with GoI institutions. The companies would also be required to train scientists/students at such facilities and the investments made by the companies on such projects would receive financial support under the PRIP Scheme at the rate of 35% (thirty five percent) or approximately USD 15 million, whichever is lower.
- (ii) **Category II:** Financial assistance of 35% (thirty five percent) of the total cost incurred or approximately USD 12 million would be provided to 30 (thirty) research projects in the priority areas. The projects will be selected on the basis of a prescribed level measuring commercial potential, national or social impact of the product, affordability etc.

¹ Notification on Scheme for Promotion of Research and Innovation in Pharma MedTech Sector (PRIP), dated August 16, 2023, available at https://pharmaceuticals.gov.in/sites/default/files/Gazette%20Notification%20PRIP%20-%20Dated%2017%20Aug%2023_0.pdf last accessed August 29, 2023.

² Note: The USD values mentioned in this newsletter are converted from INR to USD at the rate of conversion as on October 30, 2023.

- (iii) **Category III:** Approximately USD 120,000 in financial support will be allocated to 125 (one hundred twenty-five) research projects focusing on priority sectors, with the aim of advancing research and development initiatives that bolster the Indian startup ecosystem.

Drugs (Eighth Amendment) Rules, 2022 comes into effect

The Drugs (Eighth Amendment) Rules, 2022 came into force on the August 01, 2023.³ The amendment now requires manufacturers of drug formulation products as specified in the newly inserted Schedule H2 to affix a bar code or quick response code on its primary packaging label or secondary package label (in case of inadequacy of space) that store data or information legible with software application to facilitate authentication. The stored data must include the following details: (i) unique product identification code; (ii) proper and generic name of the drug; (iii) brand name; (iv) name and address of the manufacturer; (v) batch number; (vi) date of manufacturing; (vii) date of expiry; and (viii) manufacturing licence number. The amendment will reportedly enhance the traceability of drug products from manufacturing to distribution, which is crucial for ensuring product authentication.

Electronics

Import restrictions on laptops, tablets and personal computers (PC)

The GoI has announced restrictions from November 1, 2023, on import of laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers falling under Harmonised System of Nomenclature (HSN) Code 8741. The HSN is a system that assigns a unique code to every product that is traded internationally. The import of the restricted items would be allowed only against a valid licence.⁴ The restriction does not apply to imports under Baggage Rules, 2016. Further, import of 1 (one) laptop, tablet, all-in-one personal computer, or ultra small form factor computer, including those purchased from e-commerce portals have been made exempt from the restrictions. Another exemption has been provided for research and development purposes, under which 20 (twenty) items per consignment have been made exempt from the restriction. These restrictions reportedly aim to boost domestic manufacturing, reduce reliance on foreign imports, particularly imports from China, and enhance self-reliance in India's technology sector.

Petroleum

Extended producer responsibility for used oil

By way of the Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023, the GoI has amended the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016, on September 18, 2023.⁵ The amendment mandates registration of producers, collection agents, recyclers and used oil importers with the Central Pollution Control Board. With this amendment, extended producer responsibility (EPR) for used oil has been introduced. The amendment in its draft form was analysed in our previous edition of the newsletter which can be accessed at <https://induslaw.com/publications/pdf/alerts-2023/Japan-Newsletter-Apr-Jun-twenty-twenty-three.pdf>.

³ Drugs (Eighth Amendment) Rules, 2022, dated November 17, 2022, available at https://cdsco.gov.in/opencms/opencms/system/modules/CDSKO.WEB/elements/download_file_division.jsp?num_id=OTIwMg== last accessed October 09, 2023.

⁴ Amendment in Import Policy of Items under HSN 8471 of Chapter 84 of Schedule-I (Import Policy) of ITC (HS), 2022-reg, dated August 3, 2023, available at <https://egazette.gov.in/WriteReadData/2023/247819.pdf> last accessed October 10, 2023

⁵ Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023, dated September 18, 2023, available at <https://egazette.gov.in/WriteReadData/2023/248814.pdf> last accessed October 10, 2023.

Renewable Energy and Power

Green Hydrogen Standard for India

The GoI notified the Green Hydrogen Standard for India on August 18, 2023.⁶ The standards outline the emission thresholds that must be met for hydrogen produced to be classified as 'green', i.e., from renewable sources. The scope of the definition encompasses both electrolysis-based and biomass-based hydrogen production methods. For green hydrogen produced through electrolysis (including water treatment, electrolysis, gas purification, drying and compression of hydrogen) as well as conversion of biomass (including biomass processing, heat generation, conversion of biomass to hydrogen, gas purification, drying and compression of hydrogen), the emission should not be more than 2 (two) kg CO₂ equivalent / kg H₂, taken as an average over last 12 (twelve) month period. The notification also provides Bureau of Energy Efficiency (BEE) as the nodal authority for green hydrogen production projects in India. This step is reported as a crucial step in eliminating ambiguity regarding the criteria for classifying green hydrogen and bringing clarity of the acceptable threshold of carbon footprint for hydrogen projects in India.

Carbon Credit Trading Scheme

The GoI introduced the Carbon Credit Trading Scheme (CCTS) for establishing a framework for facilitating carbon trading in India.⁷ The CCTS assigns a value, known as a carbon credit, to each tonne of carbon dioxide equivalent reduced or avoided. These credits could be bought, sold and traded within the country's carbon market framework. As per the scheme, the GoI will constitute the National Steering Committee (NSC), which will exercise direct oversight on the governance of the Indian carbon market. BEE will act as the administrator for the carbon market, developing the procedure for accreditation of carbon verification agencies. As the administrator, the BEE will identify sectors with potential for emission reductions, develop targets for obligated entities under the compliance mechanism and issue carbon credit certificates based on recommendations from the NSC. Further, the Central Electricity Regulatory Commission will be the regulator for the trading activities under the Indian carbon market and will register the power exchanges and approve the carbon credit certificate trading. Lastly, the CCTS states that the NSC and other authorities shall develop the detailed procedure for operationalising the Indian carbon market.

Electricity (Amendment) Rules, 2023 – Captive Power Plants

The GoI notified the Electricity (Amendment) Rules, 2023, amending the Electricity Rules, 2005. The requirements for a plant to qualify as a captive generating plant, has now been modified. Earlier, a power plant could qualify as a 'captive generating plant' if: (i) not less than 26% (twenty six percent) of the ownership of the power plant was held by the captive user(s); and (ii) not less than 51% (fifty one percent) of the aggregate electricity generated by such plant (determined on an annual basis) was consumed for captive use. Now, a proviso has been added wherein if a captive generating plant is established by an affiliate company, then the captive user must hold at least 51% (fifty one percent) of the ownership in that affiliate company.⁸ The addition of this provision will reportedly permit subsidiaries of captive users to set up captive power plants and benefit from cross subsidy surcharge waiver provided under the Electricity Act, 2003. The amendment also designates Central Electricity Authority (CEA) as the verifying authority for captive power generation plans, the users of which are located in more than one state.

⁶ Green Hydrogen Standard for India, dated August 18, 2023, available at https://mnre.gov.in/img/documents/uploads/file_f-1692368402544.pdf last accessed October 09, 2023

⁷ Carbon Credit Trading Scheme, 2023, dated June 28, 2023, available at <https://beeindia.gov.in/sites/default/files/CCTS.pdf> last accessed October 09, 2023

⁸ Electricity (Amendment) Rules, 2023, available at https://powermin.gov.in/sites/default/files/webform/notices/Electricity_third_Amendment_Rules_alongwith_relevant_previous_amendments.pdf last accessed October 09, 2023.

Guidelines on power procurement from wind, solar hybrid projects through competitive bidding

The Government released the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects' on August 21, 2023, under the provisions of the Electricity Act, 2003.⁹ The guidelines have been issued for long-term procurement of electricity through competitive bidding process from hybrid power projects having: (i) bid capacity of 10 (ten) MW and above for projects connected to intra-state transmission system; and (ii) bid capacity of 50 (fifty) MW and above for projects connected to inter-state transmission system, provided that the rated power capacity of one resource (wind or solar) should be at least 33% (thirty three percent) of the total contracted capacity. The guidelines further state that the solar and wind projects of the hybrid project may be located at same or different locations, thereby allowing for flexibility. The guidelines outline the indicative timeline for the bidding process, i.e., 110 (one hundred ten) days, with a provision for additional time to bidders in case of any changes in request document. Further, bidders will be allocated the power capacity they offered only if their tariff offers fall within 2% (two percent) - 5% (five percent) of the lowest bid under the guidelines. The guidelines clarify that the projects already under implementation will continue to be governed by the erstwhile guidelines, but with respect to those with ongoing bids, the bid documents shall be appropriately modified to bring them in alignment with these guidelines.

Transportation

PM - eBus Sewa scheme launched

The GoI has approved a bus scheme 'PM- eBus Sewa' on August 16, 2023, for augmenting city bus operation by providing 10,000 (ten thousand) e-buses to 169 (one hundred sixty-nine) cities under the public private partnership (PPP) model.¹⁰ The scheme will help boost the deployment of electric buses in city bus operations, contributing to economic growth while addressing pressing urban mobility needs. The scheme is projected to create a direct employment opportunity surge, with an estimated range of 45,000 (forty-five thousand) to 55,000 (fifty five thousand) jobs. The estimated cost of the scheme is approximately USD 6.9 billion, out of which support of approximately USD 2.4 billion will be provided by the GoI. The scheme will have two segments. Under segment A, 10,000 (ten thousand) e-buses based on the PPP model will be provided to 169 (one hundred sixty-nine) cities. Under segment B, initiatives for developing transportation infrastructure, automated fare collection systems, charging facilities, etc. will be emphasized. The GoI has invited proposals from state governments for the implementation of the scheme.

⁹ Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects, dated August 21, 2023, available at https://powermin.gov.in/sites/default/files/webform/notices/Guidelines_for_TBCB_Process_for_Procurement_of_Power_from_Grid_Connected_Wind_Solar_Hybrid_Projects.pdf last accessed October 10, 2023.

¹⁰ Guidelines for PM-eBus Sewa August 2023, available at <https://mohua.gov.in/upload/uploadfiles/files/PM-eBus-Sewa-Guidelines-Part-I.pdf>.

Section B: General updates

Securities Exchange Board of India (SEBI)

Appointment of director nominated by the debenture trustee by certain entities other than companies

The SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) obligates a company incorporated under the Companies Act, 2013 to ensure that its Board of Directors (Board) appoint a director nominated by the debenture trustees. However, there is no similar obligation for issuers that are not companies. Considering the same, certain issuers have expressed their inability/concerns in appointing nominee directors by trustees. For instance, the (i) entities incorporated under different statutes are unable to appoint a nominee director by trustee as the relevant statute does not provide for such appointment, (ii) certain entities require prior approval of the President of India for appointment of any director on the board, and (iii) certain entities are unable to appoint nominee directors on their boards as their principal document/charter document does not provide for the same. Accordingly, for entities falling under the above-mentioned categories, non-executive or independent directors appointed or trustee or member of its governing body will be designated as nominee director for the purposes of NCS Regulations.¹¹

Legal Entity Identifier (LEI) now mandatory for all individual Foreign Portfolio Investors (FPI)

The Reserve Bank of India mandates all non-individual borrowers having aggregate exposure of above approximately USD 3 million to obtain a LEI code. The LEI code is a 20 (twenty)-character alphanumeric code used to identify legally distinct entities that engage in financial transactions worldwide. It has been implemented to improve the quality and accuracy of financial data reporting systems for better risk management. Currently, FPIs may choose to provide their LEI details in the common application form on a voluntary basis. However, from July 27, 2023, all fresh registrations of non-individual FPIs requires LEI details.¹² Further, all existing FPIs that have not provided their LEIs are required to do so within 180 (one hundred eighty) days from the date of issuance of this circular, failing which their account shall be blocked until LEI is provided to their relevant depository participants.

Online Dispute Resolution (ODR) in the Indian securities market

On July 31, 2023, SEBI has streamlined the existing dispute resolution mechanism by proposing a common ODR portal, which harnesses online conciliation and online arbitration, for resolution of disputes arising in the Indian securities market.¹³ The ODR portal, once established, will be operated by stock exchanges and depositories. The circular provides for a mechanism for resolving disputes between investor or clients and listed entities or any of the specified intermediaries or regulated entities. The investor/client is required to first lodge their grievance directly with relevant entity, and thereafter if the dispute remains unresolved, escalate the same to SEBI Compliant Redressal System (SCORES) portal (an online portal for lodging complaints with SEBI) and after exhausting all available options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, they can initiate dispute resolution through the ODR portal. The dispute resolution through the ODR Portal can only be initiated when the complaint/dispute is not under consideration with the relevant entity, the SCORES portal or pending before any arbitral process, court, tribunal, or consumer forum or is non-arbitrable

¹¹ Circular no. SEBI/HO/DDHS/POD1/CIR/2023/112, Appointment of director nominated by the debenture trustee on boards of issuers, dated July 04, 2023, available at https://www.sebi.gov.in/legal/circulars/jul-2023/appointment-of-director-nominated-by-the-debenture-trustee-on-boards-of-issuers_73439.html.

¹² Circular no. SRBI/HO/AFD/AFD-PoD-2/CIR/P//2023/0127, Mandating Legal Entity Identifier (LEI) for all non-individual Foreign Portfolio Investors (FPIs) dated July 27, 2023, available at <https://www.sebi.gov.in/legal/circulars/jul-2023/mandating-legal-entity-identifier-lei-for-all-non-individual-foreign-portfolio-investors-fpis-74420.html>

¹³ Circular no. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145, Master circular for Online Dispute Resolution, dated July 31, 2023, available at https://www.sebi.gov.in/legal/master-circulars/aug-2023/online-resolution-of-disputes-in-the-indian-securities-market_75220.html

in terms of Indian law. While the ODR process would typically apply to securities market disputes involving any specified intermediaries/ regulatory entities and their clients or investors, in certain cases, such as disputes between merchant bankers and their corporate clients, SEBI has also allowed parties to contractually agree to alternate dispute resolution mechanisms, such as online institutional arbitration in India.

Mandatory additional disclosures by Foreign Portfolio Investors (FPIs)

SEBI has on August 24, 2023, issued a circular mandating additional disclosures by FPIs holding more than 50% (fifty per cent) of their Indian equity assets under management (AUM) in a single Indian corporate group or more than approximately USD 3 billion of equity AUM in the Indian markets.¹⁴ GoI and GoI related investors, public retail funds, exchange traded funds with less than 50% (fifty percent) exposure to India and India-related equity securities, pooled investment vehicles regulated by a regulatory authority in their home jurisdiction and certain categories of FPI are exempted from the additional disclosure requirements. The disclosures include granular details of all entities holding any ownership, economic interest, or control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold.

SEBI noted that the GoI issued Press Note 3 (PN3)¹⁵, recognizing the inherent risks of opportunistic takeover/ acquisition mandated investment from entities of countries sharing land borders with India or where the beneficial owner of an investment in India is situated in such country. However, PN3 is not applicable to FPI investments, leading to concerns of misuse of the FPI route by entities with large Indian equity portfolios.

The circular specifies the criteria for submission of disclosures by FPIs, the exemptions available for certain categories of FPIs, the timelines for compliance, and the consequences of non-compliance. The circular also outlines the roles and responsibilities of various intermediaries such as depository participants, custodians, depositories, stock exchanges, etc. for ensuring compliance with the circular. The circular also provides for blocking of accounts, restriction of voting rights, and invalidation of registration for non-compliant FPIs. The circular shall come into force from November 01, 2023.

We had previously discussed approval of such additional disclosure requirements by the SEBI board in our last edition of the newsletter at <https://induslaw.com/publications/pdf/alerts-2023/Japan-Newsletter-Apr-Jun-twenty-twenty-three.pdf>.

SEBI reduces validity period of approval granted for overseas investment to Alternate Investment Funds (AIFs) and Venture Capital Funds (VCFs)

Under the provisions of Guidelines for Overseas Investments by Venture Capital Funds dated August 09, 2007¹⁶ and Master Circular for Alternative Investment Funds dated July 31, 2023,¹⁷ AIFs and VCFs are required to obtain prior approval from SEBI for making overseas investment and have a time limit of 6 (six) months from date of such approval for making the allocated investment in offshore venture capital undertakings. On August 4, 2023, in an effort to efficiently utilize allocated investment limits, SEBI announced that the time limit for making overseas investments by AIFs and VCFs has been

¹⁴ Circular no. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148, Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria dated August 24, 2023, Available at https://www.sebi.gov.in/legal/circulars/aug-2023/mandating-additional-disclosures-by-foreign-portfolio-investors-fpis-that-fulfil-certain-objective-criteria_75886.html

¹⁵ Press Note 3 (2020 Series) dated April 17, 2020 available at https://dpiit.gov.in/sites/default/files/pn3_2020.pdf, last accessed August 25, 2023.

¹⁶ Circular No.: SEBI/VCF/Cir no. 1/ 98645 /2007, Guidelines for Overseas Investments by Venture Capital Funds dated August 09, 2007 available at https://www.sebi.gov.in/legal/circulars/aug-2007/guidelines-for-overseas-investments-by-venture-capital-funds_8308.html, last accessed September 26, 2023.

¹⁷ Master Circular for Alternative Investment Funds (AIFs) dated July 31, 2023 available at <https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-alternative-investment-funds-aifs-74796.html>, last accessed September 26, 2023.

reduced from 6 (six) months to 4 (four) months from the date of approval from SEBI.¹⁸ In case the AIF does not utilize the limits within the stipulated period, the unutilized limit will be allocated to other applicants. This circular is applicable to the overseas investment approvals granted by SEBI subsequent to the issuance of this circular.

Reduction of timeline for listing of shares in public issue

SEBI has reduced the timeline for listing of specified securities after the closure of public issue to 3 (three) working days (T+3 days) as against the present requirement of 6 (six) working days (T+6 days); 'T' being the issue closing date.¹⁹ The revised timeline is applicable: (i) on a voluntary basis for public issues opening on or after September 01, 2023; and (ii) on a mandatory basis for public issues opening on or after December 01, 2023, is required to be appropriately disclosed in the offer documents of the relevant public issues.

We had previously discussed approval of such timelines by the SEBI board in our last edition of the newsletter at <https://induslaw.com/publications/pdf/alerts-2023/Japan-Newsletter-Apr-Jun-twenty-twenty-three.pdf>.

Disclosure of material events/information by listed entities under Regulation 30 and 30A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations)

SEBI vide circular dated July 13, 2023 has notified the disclosure requirements for material events/information by listed entities under Regulations 30 and 30A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations),²⁰ under four annexures as follows:

- (i) **Annexure I:** specifies the details that needs to be disclosed for the events that are deemed to be material as specified in Paragraphs A and B of Part A of Schedule III of the LODR Regulations, which includes events of acquisitions, amalgamations, de-mergers, sale/ disposal of undertakings or other restructuring, entry into certain categories of material agreements, filing of winding-up petition, loan agreements, giving guarantee/indemnity to a third party, issuance, split, consolidation or buyback of securities, etc.
- (ii) **Annexure II:** specifies and clarifies the timelines for disclosing the material events.
- (iii) **Annexure III:** provides guidance on when an event or information can be said to have occurred for disclosures under Regulation 30 of the LODR regulations.
- (iv) **Annexure IV:** provides guidance on the criteria for determining the materiality of events/information as specified under Regulation 30(4) of the LODR regulations.

Reserve Bank of India (RBI)

Revised guidelines for infrastructure debt fund - nonbanking financial companies (IDF-NBFCs)

The RBI issued the Review of Regulatory Framework for IDF-NBFCs on August 18, 2023, wherein

¹⁸ Circular No. SEBI/HO/AFD/PoD/CIR/P/2023/137, Validity period of approval granted by SEBI to Alternative Investment Fund and Venture Capital Funds for overseas investment, dated August 04, 2023, available at https://www.sebi.gov.in/legal/circulars/aug-2023/validity-period-of-approval-granted-by-sebi-to-alternative-investment-funds-aifs-and-venture-capital-funds-vcfs-for-overseas-investment_74979.html, last accessed September 26, 2023.

¹⁹ Circular no. SEBI/HO/CFD/TPD1/CIR/P/2023/140, Reduction of timeline for listing of shares in public dated August 09, 2023, available at https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html, last accessed September 26, 2023.

²⁰ Circular no. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123, 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, 2015, dated July 13, 2023, available at 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

revisions for the regulatory framework for IDF-NBFCs have been notified.²¹ An IDF-NBFC has been defined as a non-deposit taking NBFC which is permitted to – refinance post commencement operations date (COD), infrastructure projects that have completed at least 1 (one) year of satisfactory commercial operations; and finance toll operate transfer (TOT) projects as the direct lender. The key highlights of the revised guidelines are:

- (i) **Net owned funds and regulatory capital:** Under the revised framework, an IDF-NBFC is required to have net owned funds of at least approximately USD 36 million and capital-to-risk weighted assets ratio of minimum 15% (fifteen percent) (with minimum tier 1 (one) capital of 10% (ten per cent)).
- (ii) **Sponsor requirements:** Under the earlier guidelines, an IDF-NBFC was required to be sponsored by a bank but now this requirement has been withdrawn and sponsors of IDF-NBFCs will be subjected to scrutiny as applicable to other NBFCs.
- (iii) **Raising of funds:** IDF-NBFC will raise funds through issue of either rupee or dollar denominated bonds of minimum five-year maturity. Funds can be raised through shorter tenor bonds and commercial papers from the domestic market to the extent of up to 10% (ten percent) of their total outstanding borrowings.

Revised directions for classification, valuation, and operation of the investment portfolio of commercial banks

Based on the feedback received on its discussion paper released in January 2022, the RBI has revised its norms for classification, valuation, and operation of investment portfolios of commercial banks on September 12, 2023.²²

Under the revised directions, banks will have to classify their investment portfolio under three categories: (i) held to maturity (HTM), (ii) available for sale (AFS); and (iii) fair value through profit and loss (FVTPL). Further, the existing held for trading (HFT) category will become a sub-category of the FVTPL. The banks will have to undergo a half-yearly review of the investment portfolio. Treasury transactions will be subjected to concurrent audit by internal auditors and the results of their audit will be placed before the chief executive of the bank once every month. The audit committee will keep the board of directors informed about the overall exposure to capital markets, the compliance with the RBI and board guidelines, adequacy of risk management and internal control systems. The RBI has included fair valuation requirements along with accounting treatment for gain or loss to ensure that investment portfolios are assessed accurately, presenting the current market value. As per the revised guidelines, banks will not reclassify investments between categories without the approval of their board of directors and the Department of Supervision (DoS), RBI.

Draft directions for treatment of wilful defaulters and large defaulters

RBI released the 'Draft Master Direction – Treatment of Wilful Defaulters and Large Defaulters' on September 21, 2023 that proposes certain changes to the current framework on wilful defaulters provided by the RBI under the Master Circular on Wilful Defaulters.

Under the current regime, lenders are obligated to identify and share information about wilful defaulters with an outstanding debt of approximately USD 30,000 and above. A two-step process is provided involving an identification committee and a review committee for labelling wilful defaulters. The identification committee issues a notice to the defaulter, reviews their response, and may allow a

²¹ Review of Regulatory Framework for IDF-NBFCs, dated August 18, 2023, available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12528&Mode=0> last accessed October 10, 2023.

²² Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023, dated September 12, 2023, available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12534&Mode=0> last accessed October 10, 2023.

hearing before passing a reasoned order. This order is then reviewed by the second committee for final classification.

The draft directions aim for a fair and transparent method to classify someone as a wilful defaulter, incorporating principles of natural justice.²³ Defaulters can now present their case to both the identification and review committees for which a 15 (fifteen) day window period is provided. The term 'lender' is expanded to include non-banking financial companies, and the definition of 'wilful default' now also covers failure to infuse equity that the borrower committed to do, based on which loans/concessions were provided, despite having the ability to do so.

No additional credit facility will be granted by any lender to a wilful defaulter or any entity with which a wilful defaulter is associated. Another company will be deemed to be associated with a wilful defaulter company if it is a subsidiary, joint venture or an associate company of the wilful defaulter as defined under the Companies Act, 2013. Further, if the wilful defaulter is a natural person, all entities in which the person is associated as promoter, or director, or as in charge and responsible for the management of the affairs of the entity, then that person will be deemed to be associated.

Arbitration

Unstamped arbitration agreements not valid in the eyes of law: 7 (seven) judge bench to reconsider

A 5 (five) judge bench of the Supreme Court (SC), in the matter of M/s. N.N. Global Mercantile Pvt Ltd vs. M/s. Indo Unique Flame Ltd. and Ors,²⁴ has held that unstamped or inadequately stamped arbitration agreements are not valid in the eyes of law. A detailed coverage of the same was provided in our last edition of the newsletter (<https://induslaw.com/publications/pdf/alerts-2023/korea-newsletter-apr-jun-twenty-twenty-three.pdf>) and in our InfoLex article (<https://induslaw.com/publications/pdf/alerts-2023/Infolex-news-alert-nn-global.pdf>).

Considering the wide ramifications of such a ruling in arbitration landscape, the SC has formed a 7 (seven) judge bench to hear the judgment concerning the admissibility of unstamped arbitration agreements. The bench has commenced hearing on the said issue from October 11, 2023.

Competition Law

Draft regulations for settlements and commitments

The Competition Commission of India (CCI) released the draft Competition Commission of India (Commitment) Regulations, 2023²⁵ and draft Competition Commission of India (Settlement) Regulations, 2023,²⁶ on August 23, 2023.

The draft commitment regulations state that an entity can file a commitment application if an investigation has commenced against it in relation to offences under the Competition Act, provided the investigation is not complete. After this, the CCI would form a prima facie opinion as to its satisfaction. In case the CCI does not find the commitments offered to appropriately address its concerns, the CCI has the power to reject the proposal and resume its investigation.

The draft settlement regulations would allow an entity found to be in breach of the provisions of the Competition Act after inquiry by the Director General to file a settlement application. Just like the

²³ Available at https://www.rbi.org.in/scripts/bs_viewcontent.aspx?Id=4318.

²⁴ Judgement dated 25 April 2023 in Civil Appeal Nos. 3802-3803 of 2020.

²⁵ The Competition Commission of India (Commitment) Regulations, 2023, dated August 23, 2023, available at <https://www.cci.gov.in/images/stakeholderstopticsconsultations/en/draft-commitment-regulations1692788680.pdf> last accessed October 10, 2023.

²⁶ The Competition Commission of India (Settlement) Regulations, 2023, dated August 23, 2023, available at <https://www.cci.gov.in/images/stakeholderstopticsconsultations/en/draft-settlement-regulations1692787026.pdf> last accessed October 10, 2023

commitment process, the CCI will form a prima facie opinion on the commitment applications as well. The CCI will determine the settlement amount, with a possible discount of up to 15% (fifteen percent) based on cooperation, disclosure, and settlement proposal. Unlike in a commitment offer, a settlement proposal entails an admission of guilt by the parties.

A detailed analysis of the draft regulations can be found in our InfoLex article at <https://induslaw.com/publications/pdf/alerts-2023/competition-commission-of-india-publishes-draft-regulations-on-commitments-and-settlements.pdf>.

Draft Competition Commission of India (Combinations) Regulations, 2023

The Competition Commission of India released the Draft Competition Commission of India (Combinations) Regulations, 2023 (Draft Regulations) on September 5, 2023 supplementing the Competition (Amendment) Act, 2023 (Amendment Act), which recently brought about substantial modifications to the Competition Act, 2002.²⁷ The Amendment Act introduced the concept of ‘deal value threshold’ under which the CCI will be able to review transactions where the global deal value threshold is more than approximately USD 244 million and where the entity acquired has substantial business operations in India. Amongst other changes, the Draft Regulations provide guidance on ascertaining the ‘value of transaction’ and ‘substantial business operations in India’. The value of transaction is defined in an extensive manner and includes “every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise”. Further, the acquired company will be deemed to have substantial business operations in India, if 10% (ten percent) of its global: (i) users, subscribers, customers, or visitors were from India, at any point in time during the period of 12 (twelve) months preceding the transaction date; or (ii) gross merchandise value was from India, for the 12 (twelve) months preceding the transaction date; or (iii) turnover for the preceding financial year derived from all products or services was from India.

A detailed analysis of the Draft Regulations can be found in our InfoLex article at <https://induslaw.com/publications/pdf/alerts-2023/infolex-alert-competition-commission-of-india-publishes-draft-combination-regulation.pdf>.

Others

Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 (DPDP Act) was notified on August 11, 2023²⁸ and aims to provide a framework for processing of digital personal data in a manner which safeguards the rights of data providers and provides a framework for processing personal data for lawful purposes. DPDP Act emphasizes on the processing of data on a consent basis and places several obligations on data fiduciaries, including ensuring accuracy and completeness of personal data, deleting the personal data if the data principal withdraws consent, personal data breach notification, etc. Cross border transfer of data has been allowed, except to certain countries specifically notified by the GoI. It also provides various rights to data principals including the right to access information about personal data and right to correction and erasure of personal data. The Data Protection Board would be established for the enforcement of DPDP Act. Monetary penalties of up to approximately USD 30 million could be levied, depending on the nature of contravention.

A detailed analysis of the DPDP can be found in our InfoLex article at https://induslaw.com/publications/pdf/alerts-2023/Induslaw_FAQs_on_The_Digital_Personal_Data.pdf.

²⁷ Competition Commission of India (Combinations) Regulations, 2023, dated September 5, 2023, available at <https://www.cci.gov.in/images/stakeholdertopicsconsultations/en/draft-combinations-regulations1693891636.pdf> last accessed October 11, 2023

²⁸ Digital Personal Data Protection Act, 2023, dated August 11, 2023, available at <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf> last accessed October 10, 2023.

INDUSLAW JAPAN TEAM KEY CONTACTS



Gaurav Dani

Partner
Delhi Office
Admitted to practice in India and New York
LL.B., University of Buckingham (1999)
LLM, Boston University (2001)
gaurav.dani@induslaw.com



Saurav Kumar

Partner
Delhi Office
Admitted to practice in India
LL.B., ILS Law College, University of Pune (2002)
LL.M., University of Bristol (2003)
saurav.kumar@induslaw.com

OUR OFFICES

BENGALURU

101, 1st Floor, "Embassy Classic" # 11
Vittal Mallya Road
Bengaluru - 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD

306, Ashoka Capitol, Road No. 2
Banjara Hills
Hyderabad - 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI

#11, Venkatraman Street,
T Nagar, Chennai - 600 017
T: +91 44 43546600
F: +91 44 43536600
E: Chennai@induslaw.com

DELHI & NCR

2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

9th Floor, Block-B

DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

MUMBAI

1502B, 15th Floor
Tower - 1C, One World Centre
Senapati Bapat Marg, Lower Parel
Mumbai - 400 013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor

A Wing, Mittal Court
Jammalal Bajaj Marg
Nariman Point
Mumbai - 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com