

THE  
LOW DOWN:

THE LOW DOWN

**IT IS  
ALL  
INSIDE**

# THE LOW DOWN:

Lex Consult Newsletter: A quarterly 'Low Down' of legal updates  
in the corporate world

LEX CONSULT EDITORIAL | JUL AUG AND SEPT 2024

SEGMENT ONE

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Reserve Bank of India (RBI)



**RESERVE BANK OF INDIA (TREATMENT OF WILFUL  
DEFAULTERS AND LARGE DEFAULTERS) DIRECTIONS,  
2024**

The RBI by its master direction dated July 30, 2024, provided a mechanism for identification, classification, and treatment of wilful defaulters and large defaulters. The direction applies to all lenders regulated by RBI. A brief summary of some of the important clauses has been provided below:

1. RBI has laid down the definition of a “wilful defaulter” to include:
  - (i) a borrower or a guarantor who has committed wilful default and the outstanding amount is INR 25 lakh and above, and
  - (ii) where the borrower or a guarantor committing the wilful default is a company, its promoters and the director(s), subject to the provisions of the directions.
2. Mechanism for identification and classification of a wilful defaulter - The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/ incidents.
3. Measures against the wilful defaulter - Various measures may be undertaken by the lenders against the wilful defaulters including a ban on additional credit to the wilful defaulter, initiation of criminal proceedings, and potential public disclosure of defaulters’ identities.
4. Reporting mechanism and dissemination of credit information of wilful defaulters - Every lender shall submit information with respect to large defaulters to all credit information companies (CICs) at monthly intervals.

The RBI by way of a circular dated August 12, 2024, has provided for a comprehensive review of the regulatory framework for Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), with the goal of harmonizing the regulations applicable to both sectors.

Since the transfer of regulation of HFCs from National Housing Bank (NHB) to RBI with effect from August 09, 2019, various regulations have been issued treating HFCs as a category of NBFCs. RBI has now advised that regulations governing NBFCs and HFCs should be interpreted and applied harmoniously and therefore the following regulations have been modified: (i) Master Directions – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021; (ii) Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016; and (iii) Master Direction – Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions, 2023.

The revised regulations will take effect from January 1, 2025.

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Considering the faster turnaround time in credit underwriting through digital processes and to ensure that the Credit Information Reports (CIRs) provided by Credit Information Companies (CICs) reflect a more current information, enabling lenders to make informed credit decisions, RBI has revised the reporting guidelines CIRs on 08 August 2024 (effective from 01 January 2025).

As per the revised guidelines, Credit Institutions (CIs) and CICs are now required to update/maintain the credit information on a fortnightly basis, or at such shorter intervals as mutually agreed upon between the CI and the CIC, as opposed to the earlier monthly reporting requirement. Such updated and maintained CIR is to be submitted by CIs within seven days of the relevant reporting period to CICs. Earlier the CICs had to process and ingest the credit information within 7 (seven) days of receiving it, this has been revised to 5 (five) calendar days from the date of receipt.

## REGULATORY FRAMEWORK FOR HFCS AND HARMONISATION OF REGULATIONS APPLICABLE TO HFCS AND NBFCs

## FREQUENCY FOR REPORTING OF CREDIT INFORMATION BY CREDIT INSTITUTIONS TO CREDIT INFORMATION COMPANIES

## SEGMENT TWO

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Securities and Exchange Board of India (SEBI)

# SEBI

## INTRODUCTION OF A NEW ASSET CLASS: BRIDGING THE GAP BETWEEN MUTUAL FUNDS AND PMS

SEBI by its consultation paper dated 16 July 2024 has indicated towards a move to bridge the gap between Mutual Funds (MFs) and Portfolio Management Services (PMS), SEBI has introduced the concept of the New Asset Class (NAC). This financial instrument targets investors who seek greater flexibility and are willing to take on higher risks but do not fit neatly into the existing MF or PMS categories. These products include Mutual Fund schemes which are retail oriented with a low ticket size, portfolio management services with a ticket size of INR 50 lakhs and Alternative Investment Funds with a minimum investment value of INR 1 crores. The introduction of NAC is to address the needs of investors seeking opportunities between these two extremes.

Given that NAC will offer a risk-return profile between MFs and PMS, the regulatory framework must support higher risk-taking than traditional MFs while implementing adequate safeguards. SEBI's proposal outlines strict eligibility criteria for Asset Management Companies (AMCs) to launch NAC products. AMCs with a strong track record—at least three years of operation and assets under management exceeding INR 10,000 crores—can apply. Alternatively, new or smaller AMCs can qualify by appointing experienced fund managers, including a Chief Investment Officer (CIO) with at least 10 years of experience and managing assets worth INR 5,000 crores, along with an additional fund manager experienced in managing INR 3,000 crores over seven years. These products will be governed by SEBI's Mutual Fund Regulations to ensure transparency and investor protection.

To maintain the sophistication of the NAC investor base, SEBI has set a minimum investment of INR 10 lakhs per investor, ensuring that only individuals prepared to take on higher risks participate. To prevent confusion with traditional Mutual Funds, SEBI proposes distinct branding and advertising guidelines for the NAC. AMCs will be required to use specific nomenclature and provide clear disclaimers in advertisements. In addition, regular portfolio disclosures will be mandated to maintain transparency, with monthly updates provided on the NAC's website. This initiative by SEBI aims to regulate a growing demand for flexible, high-risk investment products, providing a legal alternative to unregulated schemes and encouraging innovation while safeguarding investors.

# SEBI

## CONSULTATION PAPER ON PROPOSAL TO IMPROVE EASE OF DOING BUSINESS WITH RESPECT TO THE ADDITIONAL DISCLOSURE FRAMEWORK FOR LARGE FPI

SEBI by its master circular dated 24 August 2023 introduced norms on Foreign Portfolio Investors (FPIs) or investor groups with assets under management (AUM) exceeding INR 25,000 crore. These norms require FPIs to provide detailed disclosures of all investors or stakeholders to identify whether an FPI is effectively domiciled in a Land Bordering Country (LBC). However, SEBI has now proposed, in its consultation paper dated 30 July 2024 (Consultation Paper), to replace this size-based approach with a risk-based method focused on the involvement of investors from LBCs.

The existing framework mandates that FPIs disclose detailed ownership information if they meet either of two criteria: (1) holding more than 50% of their Indian equity AUM in a single Indian corporate group (Concentration Criteria), or (2) having AUM exceeding INR 25,000 crore (Size-based Criteria). This was intended to differentiate FPIs as either LBC or non-LBC entities. However, SEBI acknowledged that these requirements impose significant compliance burdens on large FPIs with diverse investor bases. SEBI's new proposal introduces a revised threshold: FPIs where entities from LBCs control more than 50% of the AUM will be categorized as LBC entities, while those where non-LBC entities control over 67% will be categorized as non-LBC entities. If neither condition is met, the FPI will need to provide comprehensive ownership disclosures.

In addition, SEBI has clarified that FPI categorization should be based on verified disclosures by designated depository participants (DDPs), rather than on self-declarations alone. The updated risk-based approach is intended to simplify compliance obligations while ensuring necessary oversight of FPIs with potential LBC influence. The proposed shift to risk-based criteria reduces unnecessary disclosure burdens, especially for large FPIs with diversified investor bases. Thus, FPIs influenced by LBCs or non-LBCs based on specific ownership thresholds will be categorized accordingly, which may affect compliance requirements.

1. SEBI by its consultation paper focusing on revising the regulatory framework governing Investment Advisers (IAs) and Research Analysts (RAs). This paper seeks to modernize the regulatory landscape by simplifying compliance, reducing costs, and addressing the growing demand for professional investment advice by fostering a more accessible environment for professionals while ensuring the protection of investors through enhanced regulatory measures.
2. One of the key changes proposed is a relaxation of entry requirements for IAs and Ras. The current requirement of a postgraduate degree for IAs and RAs is to be reduced to a graduate degree, making it easier for younger professionals to enter the field. In addition, the requirement for maintaining a minimum net worth will be replaced with a deposit-based system, which will depend on the number of clients and revenue generated by the adviser or analyst. SEBI also aims to offer more flexibility in how IAs charge fees, removing the one-year waiting period for switching fee structures. Importantly, the proposed fee limits will apply only to investment advice related to regulated securities.
3. Furthermore, SEBI proposes to allow professionals to register as both IAs and RAs, provided they maintain an arm's-length relationship between these services to prevent conflicts of interest. SEBI clarifies that IAs may only provide investment advice on securities regulated by SEBI or investment products governed by other financial regulators. Advice on unregulated assets such as real estate or cryptocurrencies must be kept separate SEBI emphasizes the growing role of Artificial Intelligence (AI) in advisory and research services, underscoring that firms using such tools must remain fully responsible for compliance, data security, and client disclosures. Moreover, clear guidelines are proposed to ensure that IAs provide advice only on regulated securities, thus protecting investors from unregulated or risky financial products. RAs will be required to maintain a record of all research reports and recommendations, ensuring that their recommendations are always backed by appropriate research and data.

## REVIEW OF REGULATORY FRAMEWORK FOR INVESTMENT ADVISERS AND RESEARCH ANALYSTS

SEBI by its Master Circular dated 23 September 2024 has introduced Surveillance of the Securities Market (Master Circular), consolidating all previous circulars issued by SEBI on this topic. The Master Circular aims to provide clear, centralized guidance on market surveillance while promoting transparency, preventing market abuses, and protecting investor interests.

Some of the key provisions of the Master Circular are listed below.

1. **Trading Rules and Dematerialized Shareholding:** As per the Master Circular, SEBI has outlined specific trading rules for newly listed securities, particularly in cases involving mergers, demergers, or other corporate actions. Such securities are required to trade in a Trade-for-Trade (TFT) segment for the first 10 (ten) trading days.
2. **Monitoring Unauthenticated News Circulation:** SEBI through this Master Circular has mandated strict internal controls within these intermediaries to prevent the circulation of rumours or unverified news. As per the new provisions, all communication regarding the market shall be vetted by compliance officers of these intermediaries or companies, and any failure to do so could result in severe penalties. This measure by SEBI aims to protect market integrity and prevent undue market volatility caused by baseless information.
3. **Disclosure Reporting under Insider Trading Regulations:** The Master Circular reinforces the provisions under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations). The PIT Regulations require companies and market intermediaries to maintain records of disclosures by key personnel regarding their shareholding and trading activities.
4. **Automation of Continual Disclosures:** The Master Circular introduces automation for continual disclosures under Regulation 7(2) of the PIT Regulations. This system-driven mechanism applies to promoters, designated persons, and directors, ensuring that all trades involving equity shares and derivative instruments executed by the said people are automatically reported.

**Trading Window Closure and Restrictions:** SEBI establishes guidelines for enforcing trading window closures for designated persons, particularly during the period surrounding financial disclosures. SEBI mandates the freezing of Permanent Account Numbers (PAN) at the security level to prevent unauthorized trading during these sensitive periods. The framework for this restriction in the Master Circular ensures that any trading by designated persons during these windows is closely monitored and regulated by both depositories and stock exchanges. Certain transactions, such as Offer for Sale (OFS) and Rights Entitlements (RE), are exempted from these restrictions, provided they comply with SEBI's regulatory framework.

## SEBI'S MASTER CIRCULAR ON SURVEILLANCE OF SECURITIES MARKET

## OPERATIONAL GUIDELINES FOR FOREIGN VENTURE CAPITAL INVESTORS (FVCIS)

SEBI vide its comprehensive Operational Guidelines for Foreign Venture Capital Investors (FVCIs) (Guidelines) dated 26 September 2024 aims at streamlining the registration process, ensuring compliance with evolving regulations, and providing a robust framework for FVCIs to function in India's financial markets.

Set out below are key highlights of the Guidelines:

1. **Registration of Foreign Venture Capital Investors (FVCIs):** The Guidelines emphasize the transition to a new FVCI regime, requiring existing FVCIs to engage Designated Depository Participants (DDPs) for due diligence and ongoing compliance by 31 March 2025. FVCIs that fail to engage a DDP within this timeline will face restrictions on making new investments and will be required to liquidate their holdings in listed securities by 31 March 2026, and other investments by 31 March 2027. After liquidation, FVCIs must apply for the surrender of their registration.
2. **Compliance and Due Diligence:** If an FVCI fails to meet the eligibility criteria, it cannot make fresh investments, though it may hold or sell existing assets. The Guidelines also mandate that DDPs monitor FVCIs for compliance with Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations.
3. **Eligibility Checks for FVCIs:** The Guidelines provide a structured framework for eligibility checks:
  - a. **Country Check:** FVCIs shall be from jurisdictions compliant with SEBI regulations, such as those with securities market regulators who are signatories to the IOSCO Memorandum of Understanding (MoU) or have bilateral MoUs with SEBI.
  - b. **Fit and Proper Person Test:** FVCIs shall meet SEBI's criteria regarding eligibility, ensuring they are fit to operate in India's securities market. DDPs are responsible for obtaining declarations from applicants and verifying their standing with respective regulators.
  - c. **Renewal of Registration:** FVCIs registered before 31 December 2019, shall renew their registration by paying the renewal fee and submitting any necessary documentation by 31 March 2025. Those failing to comply with renewal timelines will face penalties, including liquidating their investments in India. Renewal fees are payable every 5 (five) years, and late fees will apply in case of delays.
  - d. **Surrender of Registration:** The Guidelines lay out a process for the surrender of FVCI registration. DDPs shall ensure that all FVCI accounts, including securities and bank accounts, are closed, and the FVCI's Client Pool (CP) code is deactivated. Once the FVCI has no outstanding dues or pending legal proceedings, the DDP can seek a "No Objection Certificate" (NOC) from SEBI to process the surrender request.
  - e. **Material Changes in FVCI Information:** FVCIs shall promptly report any material changes in their information, such as changes in ownership, restructuring, or compliance status, to their DDPs.
  - f. **KYC Requirements and Periodic Review:** These Guidelines require FVCIs to complete KYC documentation through DDPs or other intermediaries. KYC reviews shall be conducted periodically, with annual reviews for FVCIs from high-risk jurisdictions and every 5 (five) years for others. The Guidelines also stresses on the importance of data security, with the KYC Registration Agencies (KRAs) ensuring personal information is shared on a "need-to-know" basis only after consent from the FVCI.
  - g. **Beneficial Ownership Identification:** FVCIs shall disclose information about their ultimate beneficial owners (UBOs), following a "look-through" approach to identify intermediate shareholders and individuals holding significant ownership stakes. This information shall be kept up-to-date, and any changes should be promptly communicated to the DDP.

SEGMENT THREE

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Ministry of Corporate Affairs (MCA)

**COMPANIES (COMPROMISES, ARRANGEMENTS  
AND AMALGAMATIONS) AMENDMENT RULES,  
2024**

MCA on 9 September, 2024 notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 through which it inserted a new sub rule (5) in Rule 25A to allow the inbound merger of foreign holding company into an Indian wholly owned subsidiary under the fast-track merger route under Section 233 of the Companies Act, 2013, effective from 17 September, 2024. It states that when a transferor foreign company, which is a holding company incorporated outside India, merges with a transferee Indian company that is a wholly owned subsidiary company incorporated in India, the following conditions must be met:

1. Both companies must obtain prior approval from the Reserve Bank of India.
2. The transferee Indian company must comply with the provisions of section 233.
3. The application for the merger or amalgamation must be made by the transferee Indian company to the Central Government under section 233, and the provisions of rule 25 apply to this application.
4. The declaration mentioned in sub-rule (4) must be made when submitting the application under section 233 of the Act.

The amendment has been brought towards ensuring ease of doing business in India and is a welcome move towards streamlining the approval process for 'Reverse Flipping' transactions.

**SEGMENT FOUR**

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**National Company Law Appellate Tribunal (NCLAT)/**

**National Company Law Tribunal (NCLT)**

# N C L A T

## CLAIM ARISING FROM ARBITRAL AWARD AFTER THE LIQUIDATION COMMENCEMENT DATE CANNOT BE ADMITTED

The NCLAT on 18 September 2024 stated that claims arising out of arbitral award filed after liquidation commencement date where the liquidator appointed under the Insolvency and Bankruptcy Code, 2016 (**Code**) participated in the arbitration proceeding during the liquidation process.

### **Brief facts**

The dispute revolved around SBS Holdings, a Japanese shareholder in SBS Transpole, challenging the rejection of a post-liquidation claim based on an arbitral award.

### **Primary Issue**

Can a claim based on an arbitral award, issued after the liquidation commencement date, be admitted in the liquidation proceeding?

**Decision:** The tribunal dismissed the appeal, ruling that claims must exist as of the liquidation commencement date and be submitted within the stipulated deadline. The Code does not allow admission of claims arising after this date, The tribunal ruled that claims must be determined based on the status as of the liquidation commencement date under the Code. The tribunal held that claims arising from arbitral awards after this date cannot be admitted, even if the liquidator participated in the arbitration. This decision reinforced the regulatory limitations on post-liquidation claims.

## SEGMENT FIVE

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The Supreme Court (SC)/ High Courts (HC)

# SC | HC

## ROYALTY ON MINERAL IS NOT A TAX

The Hon'ble SC on July 25, 2024 through a nine-judge bench, in Mineral Area Development Authority & Anr. v. M/s Steel Authority of India & Anr., held by way of a majority judgement of 8:1, that royalty is not a tax.

**Facts:** The substantive issue before the SC was ascertaining the ambit of constitutional powers of the State Legislatures to impose taxes on mineral rights in contrast to the constitutional powers of the parliament. On one hand, the parliament has the power to legislate on the subject matter 'regulation of mines and mineral development' and the parliament, exercising this power, has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), which provides for charging of royalty on the holder of mining lease in respect of any mineral removed or consumed from the lease area. On the other hand, states also have the power to legislate on the subject matter 'taxes on land and building' as well as 'taxes on mineral rights subject to any limitations imposed by the Parliament by law relating to mineral development'.

**Issue:** Whether the imposition of royalty under MMDR Act is a tax in itself.

**Judgement:** SC held that royalty is not a tax, inter alia, as: (i) the lessor charges royalty as a consideration for parting with the right to win minerals, while a tax is an imposition of a sovereign; (ii) royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law; and (iii) royalty generally flows from the lease deed as compared to tax which is imposed by authority of law.



**LOCK-IN PERIOD IN EMPLOYMENT AGREEMENTS DO  
NOT VIOLATE FUNDAMENTAL RIGHTS.**

The Delhi HC in the case Lily Packers Private Limited v. Vaishnavi Vijay Umak and Ors. held: (i) lock-in period clauses in an employment agreement during the term of employment are valid and do not violate any fundamental rights; and (ii) disputes relating to a lock-in period in employment agreements are arbitrable.

**Facts:** Lily Packers Pvt. Ltd. (Petitioner) filed the present case under Section 11(6) of the Arbitration and Conciliation Act, 1996 for constitution of arbitral tribunal basis the employment agreement with Ms. Vaishnavi Vijay Umak (Respondent). Petitioner was of the view that the Respondent employee is bound to serve the Petitioner company for a period of 3 years from the date of joining. However, the Respondent employee left the work without serving for the minimum lock-in period.

It was the contention of the Respondent that lock-in clauses in employment agreements would be contrary to law and in violation of the fundamental rights of life and employment and that disputes involving violation of fundamental rights are not arbitrable.

**Decision:** The Delhi HC observed that any reasonable covenant operating during the term of the employment agreement would be valid and lawful. Provisions such as lock-in period are negotiated terms and usually are included in agreements for executive roles. Such clauses are considered necessary for the purpose of stability and continuance of the employer organization. Therefore, it could not be argued that the lock-in period clause is violative of the fundamental rights. Moreover, disputes related to reasonable lock-in in employment agreements are contractual in nature and thus arbitrable.

**PRINCIPAL EMPLOYER WHO ENGAGES A CONTRACTOR IS LIABLE TO COMPENSATE FOR THE ACCIDENTAL DEATH OF A WORKER ENGAGED BY THE CONTRACTOR**

The HC of Jammu & Kashmir and Ladakh in the case State through Executive Engineer PHE Division, Doda v. Sakina Begum and Anr.

**Facts:** The husband of Sakina Begum (Respondent) was working as a labourer under the employment of a contractor who was appointed by State through Executive Engineer PHE Division, Doda (Appellate). The husband of the Respondent died as a result of the critical injury sustained while working at the site. The Respondent filed a case for grant of compensation under the provisions of the Employees' Compensation Act, 1923 (Act).

**Decision:** The HC observed that the provisions of Section 2(1)(e) and Section 12 of the Act make it abundantly evident that where a principal employer engaged a contractor for execution of some works, he is liable to compensate any employee engaged by the contractor for doing his work. The court also clarified that the principal employer in the circumstance, where the employee being engaged by the contractor or sub-contractor dies, or suffers some injuries in the course of employment, can seek indemnification from the contractor in view of the Section 12(2) of the Act.

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The Bombay HC in the case of Employees State Insurance Corporation v. Dinendra Ratansi & Ors. held that the occupier cannot be held personally liable for payments to ESIC even though he is liable for compliances.

**Facts:** The Employees State Insurance Corporation (ESIC) appealed a court order that prevented them from collecting dues personally from a factory occupier. The case involves M/s. Gold Mohur Mills Limited, a textile company taken over by NTC in 1983. ESIC tried to recover dues for 1981-1983 from a director/occupier personally. The ESI Court held that ESIC cannot recover the company's dues from the occupier personally, setting aside ESIC's original order.

**Decision:** The Bombay HC observed that the occupier or director of a company is not personally liable for the ESIC dues of the company. The court clarifies that while the liability to pay dues under the Employees State Insurance Act, 1948 is primarily that of the company, an occupier with ultimate control over the factory's operations may be liable to meet the demand. However, this liability is not a personal liability of the director. The court said that the ESIC dues should be recovered from the company or its assets, not from individual directors or occupiers personally.

**DIRECTOR OF A COMPANY WHO IS ALSO THE OCCUPIER OF THE FACTORY IS NOT PERSONALLY LIABLE TO PAY THE ESIC DUES OF THE COMPANY**

The Delhi HC in Asian Colour Coated Ispat Ltd.vs Assistant Commissioner of Income Tax and Anr, quashed a notice for escaped income under section 148 of the Income Tax Act, 1961 (IT Act) by Income Tax department on the grounds that such a claim was not made during CIRP Process. Asian Colour Coated Ispat Limited (ACCIL), challenged a notice issued under Section 148 of the Income Tax Act, 1961. This notice pertained to the reopening of assessment for the financial year 2014-15.

**Brief facts:** ACCIL contended that all liabilities existing before the resolution plan's approval were extinguished, following the NCLT order dated October 26, 2020. Thus, the income tax department had no jurisdiction to issue reassessment notices concerning the period prior to this approval.

**Primary Issue:** The primary issue of the case was whether the Income Tax Department can initiate reassessment after the approval of the resolution plan by the NCLT.

**Decision:** The Delhi HC held that the reassessment action under Section 148 of the IT Act was unsustainable. The court directed the tax authorities to reconsider the objections raised by the petitioner and suspended any further action until a decision on those objections was made.

This ruling emphasizes that once a resolution plan is approved by the NCLT, pre-approval liabilities are extinguished, making it unlawful for authorities to pursue claims that arise from the period before such approval.

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**Introduction:** The HC of Punjab and Haryana in the case of Bahadur Singh v. P.R.T.C. & Ors. held that the termination of employment of an employee cannot be applied retrospectively to an earlier date.

**Facts:** Bahadur Singh (Petitioner) was a bus driver for PRTC. He was made to retire by the employer by an order dated 08 July 1995 (but with effect from 31 December 1994 ) based on an assumption about his birth year derived from his driving license issue date. He was not provided with employment benefits for this period. The date of birth that was recorded in the employer's service book was 20 July 1938 and he was to be superannuated on 31 July 1996 on attaining the age of 58 years. However, the Petitioner was retired retrospectively on the assumption that his date of birth should have been December, 1936 because the Driving License for heavy vehicles cannot be issued before the age of 20 years.

**Decision:** The HC of Punjab and Haryana observed that the termination cannot be applied retroactively to an earlier date (backdated) which means that the employee's benefits earned during their service cannot be taken away by making the termination effective before it actually happened. In essence, the employees' rights and benefits accrued during their service are to be protected and the employer cannot retroactively deprive them of those benefits by backdating the termination. The court ordered that the Petitioner be granted all the consequential benefits from 01 January 1995 till 08 June 1995.

**REASSESSMENT UNDER INCOME TAX ACT  
QUASHED FOR BEING MADE POST THE  
APPROVAL OF THE RESOLUTION PLAN.**

**AN EMPLOYEE CANNOT BE DEPRIVED  
FROM HIS SERVICE BENEFITS BY  
BACKDATING THE TERMINATION OF HIS  
EMPLOYMENT.**

Bombay HC holds the amendments to Information Technology Act 2000 (IT Act) as unconstitutional.

**Facts:** Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (Rules), were inserted vide amended on 6 April 2023 (Amendment), which granted authority to the Central Government to establish fact-checking unit to detect any 'fake, false or misleading' information relating to the business of Central Government on intermediary platforms. The Amendment was challenged on the grounds that it violates Article 14, Article 19(1)(a) and Article 19(1)(g) of the Constitution of India. The petitioners in this case contended that the Amendment violated the principles of natural justice. It was also pleaded that the Amendment may lead to arbitrary censorship.

**Issue:** Whether the Amendment is violative of the Constitution of India and ultra vires the provisions of IT Act.

**Judgment:** The Division Bench of the Bombay HC delivered a split verdict on 31 January 2024, wherein Justice Ghokale upheld the Amendment while Justice Patel struck it down, stating that the Amendment was violative of the Constitution of India and ultra vires the IT Act. The Chief Justice of the Bombay HC, appointed Justice AS Chandurkar to adjudicate upon the difference in the split verdict. Justice AS Chandurkar delivered the final judgment on 26 September 2024. He opined that under the right to freedom of speech and expression, there is no right to truth, nor any responsibility conferred on the state to ensure that citizens are only entitled to non-fake or non-false information. Justice AS Chandurkar determined that the Amendment was violative of Article 19(1)(g) of the Constitution of India, as the central government aims solely to determine what information is fake, false or misleading in digital media and the censorship provided by virtue of the Amendment will make the government act as an arbiter of its own cause. Therefore, the Amendment was struck down as unconstitutional.

## DATA PRIVACY JUDGMENT

## CREATION OF RED ENTRY/CHARGE OVER THE PROPERTIES OF CORPORATE DEBTOR DURING MORATORIUM PERIOD AND AFTER ADMISSION OF LIQUIDATION NOT PERMISSIBLE

The HC of Himanchal Pradesh held that it was not permissible for the state and the income tax department along with others (Respondents) to create a charge on the property of the Su-Kam Power System Ltd (Petitioner Company) once moratorium has commenced.

**Brief facts:** The Petitioner filed a writ petition challenging a red entry in the land revenue records for outstanding government dues, imposed during moratorium period. After NCLT had approved the sale of the company through e-auction, which included no further claims by operational creditors, the red entries were not removed, prompting the petition.

**Primary Issue:** Whether the Respondents can continue to enforce its tax claims against the properties of Petitioner after the approval of the acquisition plan under the IBC, which extinguishes prior debts and claims?

**Decision:** The HC of Himanchal Pradesh ruled in favour of the Petitioner stating that since moratorium was in effect and since the provisions of the said Code had overriding effect on all laws it was not permissible for the Respondents to create a charge on the property of the Petitioner. Also, after the Petitioner was ordered to be liquidated, under section 33(5) of the Act, no legal proceeding could be instituted by or against the Petitioner. The HC of Himanchal Pradesh directed to stop the continuance of the charge on the grounds that the approval of the acquisition plan was not challenged by the Respondents earlier.

SEGMENT SIX

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Foreign Direct Investment (FDI) / FEMA

**FOREIGN EXCHANGE  
MANAGEMENT (NON-  
DEBT INSTRUMENTS)  
(FOURTH  
AMENDMENT) RULES,  
2024 (AMENDMENT  
RULES) TO AMEND THE  
FOREIGN EXCHANGE  
MANAGEMENT (NON-  
DEBT INSTRUMENTS)  
RULES, 2019 (NDI  
RULES).**

The Amendment Rules inter alia (a) relax cross-border share swaps, (b) clarify downstream investments made entities owned by Overseas Citizens of India (OCIs) on a non-repatriation basis, (c) standardise the definition of 'control' and 'start-up company', etc.

(a) Standardising the definition of the term 'control':

The definition of the term 'control' as provided under explanation (d) to Rule 23 of the NDI Rules has been omitted and a new definition of such term has been inserted under Rule 2 of the NDI Rules. The introduction of such a new definition of the term 'control' is clarificatory in nature and there is no change in the construct of the scope of the definition, except that the new definition makes reference to the definition of the term 'control' for a company as provided under the Companies Act, 2013. Further, no change has been made vis-à-vis 'control' of a limited liability partnership.

(b) Aligning the definition of the term 'startup company':

The definition of the term 'startup company' has been amended to align the same with the latest notification issued by DPIIT on February 19, 2019, which provided key changes in relation to the criteria for recognizing a company as a 'startup company', which included an increase in the turnover threshold for a company from INR 250 million to INR 1 billion for any of the financial years since its incorporation and also an increase in the time period for recognition as a 'startup' from five years to ten years from the date of its incorporation.

(c) Insertion of new Rule 9A in relation to swap of equity instruments and equity capital:

The existing NDI Rules permitted 'issue' of 'equity instruments' by an Indian company to a person resident outside India against swap of equity instruments of another Indian company. However, transfer of equity instruments of an Indian company between a person resident in India and a person resident outside India against swap of equity instruments of another Indian company was not specifically permitted in the NDI Rules.

Pursuant to the Amendment Rules, a new Rule 9A has been inserted which makes provision for transfer of equity instruments of an Indian company between a person resident in India and a person resident outside India, against: (i) swap of equity instruments of another Indian company; (ii) swap of equity capital of a foreign company. It has been further provided that the requirement of obtaining prior government approval will apply for transfer of equity instruments in such share swap arrangements, wherever government approval is required under law.

(d) Clarification on downstream investment:

The existing NDI Rules do not consider investments made by Indian entities owned and controlled by non-resident Indians (NRIs) on a non-repatriation basis when calculating indirect foreign investment. However, such investments made by Indian entities owned and controlled by OCIs were considered indirect foreign investments. Pursuant to the Amendment Rules, investments by entities owned and controlled by OCIs will now be treated at par with investments by entities owned and controlled by NRIs. Such investments will not be considered for calculation of indirect foreign investment.

(e) Sectoral cap for white label ATMs:

100% foreign direct investment under the automatic route is permitted in this sector, subject to specified conditions.

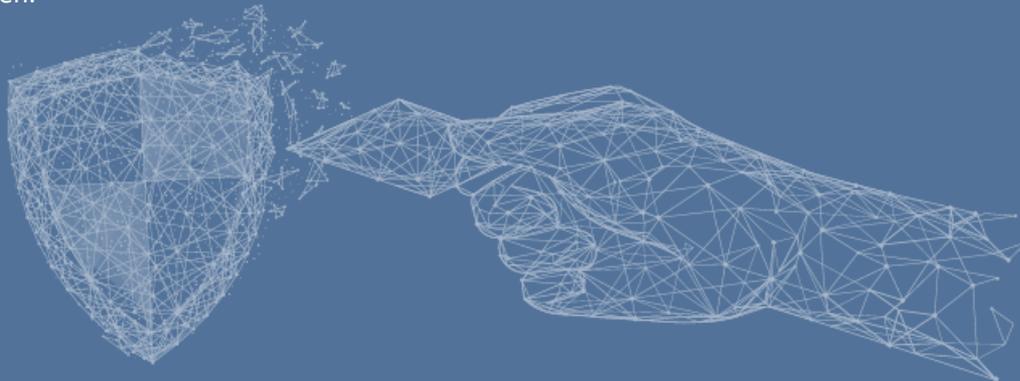
SEGMENT SEVEN

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Artificial Intelligence (AI)

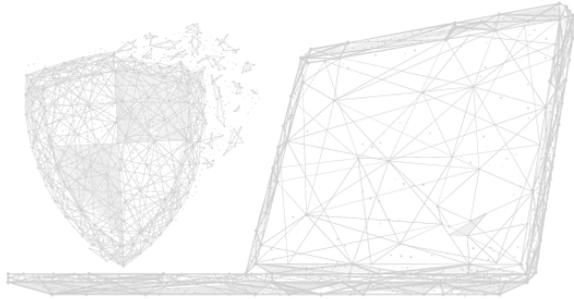
By its meeting held on 18 July 2024, the Ministry of Electronics and Information Technology (Meity), asked various technology and social media companies to implement “appropriate technical and organizational measures” as per Section 8(4) of the Digital Personal Data Protection Act, 2023 (DPDP Act) to ensure compliance by devising solutions to manage age-gating requirements on their platforms on a trial basis in accordance with the Section 9 of the DPDP Act. It was observed that the earlier suggested methods such as use of Aadhaar or DigiLocker to both verify the age of children, as well as to seek parental consent, were unfeasible.

Section 9 of the DPDP Act, which deals with the processing of children's personal data requires data fiduciaries to obtain 'verifiable consent' from a parent or legal guardian before processing children's personal data and prohibit data fiduciaries from undertaking: (i) any processing that is likely to cause any detrimental effect on the well-being of a child; and (ii) tracking or behavioural monitoring of children, or targeted advertising directed at children.



**MEITY ASKED PLATFORMS TO DEVISE  
SOLUTIONS FOR AGE-GATING REQUIREMENTS**

**RUSSIA LEGALISES AND REGULATES  
CRYPTOCURRENCY MINING AND PAYMENT OF  
CRYPTO CURRENCIES FOR INTERNATIONAL  
TRADES**



**EU AI ACT COMES INTO FORCE - FIRST  
REGULATION ON AI**

On 30 July 2024, the Government of Russia passed 2 laws to: (1) legalize the cryptocurrency mining with effect from 1 November 2024 (Bill No. 237585-8); and (2) pave way for the central bank of Russia to authorize selected companies to conduct cross-border settlements and exchange trading in digital currency, with effect from 1 September (Bill No. 341257-8). These laws were part of Russia's efforts to skirt Western sanctions imposed after Russia's invasion of Ukraine.

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On 1 August 2024, the Artificial Intelligence Act, 2024 (AI Act) - world's first comprehensive regulation on artificial intelligence (AI), has become effective. The AI Act is designed to ensure that the AI technologies developed, deployed and used within the EU are trustworthy and are aligned with fundamental human rights, whilst creating a supportive environment for innovation and investment.

The AI Act adopts a risk based approach to determine the level of compliance to be followed. To complement this system, the AI Act also introduces rules for 'general-purpose AI models', which are highly capable AI models that are designed to perform a wide variety of tasks like generating human-like text.

The member states of the EU have until 2 August 2025 to designate national competent authorities, who will oversee the application of the rules for AI systems and carry out market surveillance activities. The majority of rules of the AI Act will start applying on 2 August 2026.

On 5 September 2024, Australia's Department of Industry, Science and Resources introduced a Voluntary AI Safety Standard (Standard) which offers practical guidance for organizations in the AI supply chain through 10 voluntary guardrails, emphasizing testing, transparency, and accountability.

Alongside this voluntary measure, the Australian government has proposed 10 mandatory guardrails for AI systems in "high-risk" settings in their proposals paper, which includes: (i) a proposed definition of high-risk AI; (ii) 10 proposed regulatory guardrails to reduce the likelihood of harms occurring from the development and deployment of AI systems; and (iii) regulatory options to mandate guardrails, building on current work to strengthen and clarify existing laws.

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The UN Secretary-General's High-level Advisory Body on Artificial Intelligence (HLAB-AI) has released a pivotal report titled "Governing AI for Humanity," outlining a global framework to address AI's risks while maximizing its benefits. The report highlights governance gaps, noting that only 7 of the 193 UN Member States are involved in key AI initiatives, with the global south largely excluded.

Key recommendations of the report include: establishing an international scientific panel on AI; launching bi-annual policy dialogues; creating an AI standards exchange; and developing a global AI capacity network. The report calls for urgent action to foster global cooperation and equity in AI's development.

## AUSTRALIA INTRODUCES VOLUNTARY AI SAFETY STANDARD AND PROPOSES MANDATORY GUARDRAILS FOR HIGH-RISK AI



## THE UNITED NATIONS (UN) RELEASES 'GOVERNING AI FOR HUMANITY' REPORT, PROPOSES GLOBAL AI GOVERNANCE FRAMEWORK

SEGMENT EIGHT

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Pharmaceutical/ Healthcare

## **STRICTER PENALTIES FOR MEDICAL NEGLIGENCE UNDER THE BHARATIYA-NYAYA SANHITA (BNS)**



## **FSSAI MANDATES NUTRITIONAL LABELLING TO PROMOTE HEALTHIER CONSUMER CHOICES**



## **UNION BUDGET 2024: CUSTOMS DUTY RELIEF FOR CANCER DRUGS AND MEDICAL EQUIPMENT**

The new criminal code, Bharatiya Nyaya Sanhita (BNS), which came into force and effect from 01 July 2024, has replaced the Indian Penal Code (IPC) and introduced stricter penalties for medical negligence. A registered medical practitioner, if while performing medical procedure causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine.

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The Food Safety and Standards Authority of India (FSSAI) has approved a proposal to display nutritional information regarding Total Sugar, Salt and Saturated Fat in bold letters and relatively increased font size on labels of packaged food items. The decision to approve the amendment in the Food Safety and Standards (Labelling and Display) Regulations, 2020 regarding Nutritional information labelling was taken in the 44th meeting of the Food Authority. The amendment aims to empower consumers to better understand the nutritional value of the product they are consuming and make healthier decisions.

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In the Union Budget 2024, significant relief measures have been introduced for cancer patients, including the exemption from customs duty on three essential cancer drugs. The three cancer drugs exempted from customs duty are: (i) Trastuzumab Deruxtecan; (ii) Osimertinib; and (iii) Durvalumab. Additionally, to align with domestic capacity growth, the basic customs duty on X-ray tubes and flat panel detectors used in medical X-ray machines has been reduced under the 'Phased Manufacturing Programme'. These steps aim to enhance accessibility and affordability of critical medical resources.

Through a notification dated 06 September, 2024, Department of Pharmaceuticals (DoP) has introduced significant updates to marketing practices in the medical devices industry with the launch of the Uniform Code for Marketing Practices in Medical Devices (UCMPMD 2024) aimed at curbing unethical practices, which includes misleading advertisement of the product, extending extensive hospitality, monetary benefits to medical staff, and not following prescribed complaint redressal mechanisms. As part of the code, a medical device must not be promoted prior to receipt of product approval by the regulatory authority. UCMPMD 2024 aims to enhance industry standards by imposing rigorous guidelines on promotional activities.

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The GST Council has reduced the Goods and Services Tax (GST) rate on cancer drugs from 12% to 5%. The decision was made during the 54th GST Council meeting held in New Delhi on 09th September 2024.

**DEPARTMENT OF PHARMACEUTICALS  
INTRODUCES UCMPMD 2024 TO  
REGULATE MEDICAL DEVICE MARKETING  
PRACTICES**



**GST COUNCIL REDUCES TAX RATE ON  
CANCER DRUGS**



SEGMENT NINE

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COMPETITION

# COMPETITION

## KEY CHANGES TO THE COMPETITION LAW REGIME:

On 9 September 2024 the Ministry of Corporate Affairs (MCA) introduced changes to the competition law regime. The key changes are listed below:

**Deal value threshold:** Any acquisition, merger or amalgamation with the value of the transaction exceeding INR 2000 and where the target has substantial business operations in India would require prior approval of the Competition Commission of India (CCI).

**Transaction not constituting as combination:** Any transaction wherein the target company has value of assets less than INR 450 crores and value of turnover less than 1250 crores, then such transaction cannot be termed as a combination.

**Timelines:** The timeline for clearing combinations by CCI is reduced to 150 days from 210 days. Moreover, the timeline for providing a prima-facie opinion on combination by CCI has been reduced to 30 calendar days from 30 working days.

**Exemption from standstill obligations:** The acquirer no longer needs prior approval from CCI for acquisition through open market. However, an intimation needs to be given to the CCI within the prescribed timelines and the acquirer should not influence the enterprise which has been acquired. Till the approval of the CCI is received, the acquirer can avail economic benefits and exercise voting rights only in certain matters.

**Changes in definition of 'control':** The definition of control now includes the ability of an enterprise or group to exercise material influence over strategic decisions of another enterprise or group.

**New criteria for an 'affiliate':** An enterprise will be considered as an affiliate of another enterprise if it has: (a) 10% or more of the shares or voting rights of such entity; (b) right or ability to have a representation on the board of directors of such entity either as a director or observer; or (c) right or ability to access commercially sensitive information of the entity.

**Increase in fees and penalties:** Penalties on enterprises can be up to 1% of the total turnover or assets or the value of transaction, whichever is higher. Moreover, the fees to file Form I and Form II are increased to INR 30 lakh and INR 90 lakh respectively.

Through the notifications, the following rules have been notified: Competition (Minimum Value of Assets or Turnover) Rules, 2024; Competition (Criteria of Combination) Rules, 2024; and Competition (Criteria for Exemption of Combination) Rules, 2024.

SEGMENT TEN



OTHER UPDATES

In the Budget for 2024-25, Finance Minister Nirmala Sitharaman made a significant decision to abolish the Angel Tax. This tax, which had been a source of concern for startups and investors, was levied on the capital raised by unlisted companies from any individual against an issue of shares in excess of the fair market value. By eliminating this tax, the Government of India aimed to provide a boost to the startup ecosystem and encourage investment in early-stage companies.

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The proposed amendments by the Draft Rights of Persons with Disabilities (Amendment) Rules, 2024, update the application process and introduce the Unique Disability Identity (UDID) cards.

Under the new rules, individuals with disabilities can apply for a disability certificate or UDID card through the UDID portal, with additional requirements including proof of identity, a recent photograph, and Aadhaar details. The medical authority is required to issue the certificate and UDID card within three months of application, with three color-coded UDID cards based on the severity of the disability: White for below 40%, Yellow for 40% to 80%, and Blue for above 80%.

## VALUATION NORMS

### CHANGES INTRODUCED BY THE DRAFT RIGHTS OF PERSONS WITH DISABILITIES (AMENDMENT) RULES, 2024.

**DISCLOSING AND OBTAINING  
INSURANCE POLICY NOW  
REQUIRED UNDER MAHARASHTRA  
S&E ACT.**

The Government of Maharashtra issued a notification (No. MS&EA -08/2021 /C.R.153/ Labour-10) in the form of Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2024 which introduced certain amendments to the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018.

The notification mandates that shops / establishments present in Maharashtra to include details of their insurance policy in various compliance related forms that are required to be submitted to the government.

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**TRADING AND SETTLEMENT OF  
SOVEREIGN GREEN BONDS  
(SGRBS) WITHIN INDIA'S  
INTERNATIONAL FINANCIAL  
SERVICES CENTRE (IFSC)**

The RBI has launched a new scheme on 29 August 2024, aimed at facilitating the trading and settlement of Sovereign Green Bonds (SGrBs) within India's International Financial Services Centre (IFSC).

The new scheme allows eligible foreign investors to invest in SGrBs issued by the Government of India, effective immediately. It amends foreign exchange management regulations, outlining participation scope, settlement processes, and the roles of different entities within the IFSC.

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