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Inter alia... is a legal newsletter published each quarter by AZB & Partners for a select list of clients and colleagues. Each issue aims to provide a snapshot of the recent legal developments in certain critical areas: infrastructure, foreign direct investment, securities law, exchange control regulations, corporate law, media and entertainment, intellectual property and banking. We hope you will find the content informative and useful. If you have any questions or comments, please email us at: editor.interalia@azbpartners.com or call AZB & Partners.



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Inter alia...

❖ MCA Relaxation for Rights Issue Notices

❖ The Ministry of Corporate Affairs ('MCA') had issued a Circular dated May 11, 2020, clarifying that, for rights issues opening up to July 31, 2020, the inability of listed companies to dispatch such notices would not constitute a violation of Section 62(2) of the Companies Act, 2013 ('Companies Act'), so long as the requirements of the Circular dated May 6, 2020 issued by Securities and Exchange Board of India ('SEBI') are complied with (which grants certain relaxations regarding rights issues). This was issued in light of the difficulty being faced by listed companies in issuing notices due to the ongoing COVID-19 pandemic. By way of a Circular dated August 3, 2020, the MCA has extended the validity of its Circular to rights issues opening up to December 31, 2020.

❖ MCA Amends Scope of CSR Activities in light of COVID-19 Pandemic

❖ MCA, by a Notification dated August 24, 2020, has amended Rule 2(1)(e) of the Companies (Corporate Social Responsibility) Rules, 2014 ('CSR Rules'). Rule 2(1)(e) of the CSR Rules provides that the corporate social responsibility ('CSR') policy of a company should relate to activities undertaken by the company as specified in Schedule VII and are required to exclude activities which are undertaken by the company in the normal course of its business. Pursuant to the amendment, the MCA has introduced a carve out to this requirement whereby any company engaged in research and development activity of new vaccines, drugs and medical devices in its normal course of business may undertake, for CSR purposes, research and development activity of new vaccines, drugs and medical devices related to COVID-19 for the financial years 2020-21, 2021-22 and 2022-23 subject to certain specified conditions.

❖ Amendment to Acceptance of Deposits Rules for Start-up Companies

❖ MCA, by its Notification dated September 7, 2020 has amended the Companies (Acceptance of Deposits) Rules, 2014 ('Deposit Rules'). Pursuant to the amendment: (a) a deposit will not include an amount of ₹25 lakh (approx. US\$ 35,000) or more received by a start-up company in a single tranche from a person, by way of a convertible note which is convertible into equity shares or repayable within a period not exceeding 10 years (as opposed to five years provided earlier) from the date of issue; and (b) the maximum limit in respect of deposits to be accepted from members set out in Rule (3)(3) of the Deposit Rules (i.e. 35% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company) will not apply to a private company which is a start-up for 10 years (as opposed to five years provided earlier) from its date of incorporation.

❖ Extension of Timelines for Companies Act Compliances

❖ The MCA has, through Circulars dated September 28 and 29, 2020, extended the following relaxations introduced with respect to compliance with requirements under Companies Act and the rules thereunder, in light of the ongoing COVID-19 pandemic:

- i. The validity of the LLP Settlement Scheme, 2020 and Companies Fresh Start Scheme, 2020 which granted a one time opportunity to LLPs and defaulting companies, respectively, to make delayed filings without penalty has been extended from September 30, 2020 to December 31, 2020;
- ii. The clarifications and guidelines introduced by MCA in April on passing of resolutions by companies holding extra-ordinary general meetings through video conferencing and other audio visual means or passing of certain items through postal ballot without convening general meetings, are now valid until December 31, 2020, instead of September 30, 2020;
- iii. Deadlines for the following actions has been further extended from September 30, 2020 to December 31, 2020: (a) for companies accepting deposits, to create a deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21; and (b) to invest or deposit 15% of the amount of the debentures maturing during a particular year in specified instruments.

❖ Securities Contracts (Regulation) (Second Amendment) Rules, 2020

❖ The Ministry of Finance, by way of the Securities Contracts (Regulation) (Second Amendment) Rules, 2020 ('SCRA Amendment') dated July 31, 2020 has amended Rule 19A of the Securities Contracts (Regulation) Rules, 1957 which provides for maintenance of minimum public shareholding and the timelines for its attainment. Every listed company (other than public sector company) is required to maintain a public shareholding of at least 25%, provided that any listed public sector company which has public shareholding below 25%, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2018, was previously required to increase its public shareholding to at least 25%, within a period of two years from the date of such commencement. The SCRA Amendment now has increased such time for compliance to three years from the date of such commencement.

Foreign Exchange

❖ The Foreign Exchange Management (Non-Debt Instruments) (Third Amendment) Rules, 2020 notified on and effective from July 27, 2020 (**'Amendment Rules'**) have introduced the following key changes to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (**'NDI Rules'**): (i) the Amendment Rules empower the RBI to administer and interpret the NDI Rules, as well as to issue directions, circulars, instructions, clarifications for its effective implementation. Further, the RBI will no longer be required to consult with the Central Government when considering applications for the provision of any special approvals under the NDI Rules; and (ii) the NDI Rules previously treated overseas citizens of India (**'OCIs'**) on par with non-resident Indians, permitting both categories of persons to invest up to 100% in the air transport services sector, under the automatic route. The Amendment Rules revoke such permission for OCIs to invest in the air transport services sector under the automatic route. This amendment is in line with Press Note 2 of 2020 issued by the Department of Promotion for Industry and Internal Trade (**'DPIIT'**) dated March 19, 2020, as summarized here.

❖ The DPIIT has issued Press Note 4 of 2020 on September 17, 2020 (**'PN 4'**), effective from the date on which a corresponding Notification is issued under the NDI Rules. The PN 4 prescribes an increased investment limit for foreign direct investment (**'FDI'**) in the defence sector, from the current 49% to 74% under the automatic route. The other key changes prescribed under the PN 4 are as follows:

- i. permission for FDI up to 74% under the automatic route for companies seeking new industrial licenses;
- ii. infusion of fresh foreign investment up to 49%, in companies which are not seeking an industrial license or which already have a Government approval, will require the submission of a declaration to the Ministry of Defence, for any change in the shareholding pattern or transfer of stake by an existing investor to a new foreign investor of up to 49%, within 30 days of such change. Proposals for raising FDI beyond 49% from such companies will require Government approval;
- iii. requirement of security clearance by the Ministry of Home Affairs (as opposed to the Ministry of Defence, as required currently) as per guidelines of the Ministry of Defence, for receipt of FDI in the defence sector; and
- iv. FDI in the defence sector will be subject to scrutiny by the Government on the grounds of national security.

Capital Markets

❖ The SEBI (Prohibition of Insider Trading) Regulations, 2015 (**'PIT Regulations'**), were amended on July 17, 2020 with immediate effect, to provide as follows:

- i. The board of directors or head of every organization required to handle unpublished price sensitive information (**'UPSI'**) is required to maintain a structured digital database containing the nature of UPSI, the names of persons who have shared such information, the names of persons with whom information is shared (along with their Permanent Account Number (**'PAN'**) or equivalent where PAN is not available);
- ii. This database is required to be maintained internally and cannot be outsourced. Further, the database is required to be maintained for a period of not less than eight years after completion of the relevant transactions and if SEBI initiates any investigation or enforcement proceedings relating to such matters, the relevant information is required to be preserved till the completion of such proceedings;
- iii. Any amounts collected by the relevant companies or organizations under their codes of conduct formulated under the PIT Regulations are required to be remitted to SEBI for credit to the Investor Protection and Education Fund. Further, such companies or organizations are now required to report violations of the PIT Regulations to the relevant stock exchanges (instead of SEBI), in the revised reporting format issued by SEBI by its Circular dated July 23, 2020.

❖ By its Circular dated July 23, 2020, SEBI has exempted offer for sale and rights entitlement transactions from the trading window restrictions in case of listed companies under the PIT Regulations, subject to compliance with applicable SEBI regulations, in addition to transactions previously exempted under the PIT Regulations.



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❖ Amendments to the Foreign Exchange Regulations

❖ Increase in Limit of FDI under the Automatic Route in the Defence Sector

❖ Amendments to Insider Trading Regulations

❖ Exemption from Trading Window Restrictions



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- ❖ Automation of Continual Disclosures under Insider Trading Regulations
- ❖ Recording of Encumbrances in Depository System
- ❖ Dispensation from Disclosure of Margin Pledge Created in Depository System
- ❖ Amendments to SEBI Settlement Proceedings Regulations
- ❖ SEBI Relaxation from Default Recognition due to COVID-19 Pandemic
- ❖ Administration and Supervision of Investment Advisors
- ❖ Resources for Trustees of Mutual Funds

❖ By its Circular dated September 9, 2020, SEBI has implemented system driven disclosures for members of promoter group and designated persons, in addition to promoters and directors of a company, under Regulation 7(2) of the PIT Regulations, regarding trading in equity shares and equity derivative instruments. The new system will run parallel to the existing system, i.e., the relevant persons will be required to independently comply with applicable disclosure obligations under PIT Regulations till March 31, 2021, and disclosures generated through the system will be displayed separately from disclosures filed with the exchanges. SEBI has directed the depositories and stock exchanges to make necessary arrangements for dissemination of such disclosures on the websites of the stock exchanges from October 1, 2020.

❖ By its Circular dated July 24, 2020, SEBI has required depositories to implement (within one month of the Circular) a system for capturing and recording all types of encumbrances required to be disclosed under Regulation 28(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations'), as the current system only provides a framework for pledges, hypothecations and non-disposal undertakings ('NDUs'). Depositories have been advised to follow processes and other norms similar to those stipulated for NDUs. The Circular further provides that freeze and unfreeze instructions executed by depository participants for recording encumbrances will be subject to 100% concurrent audit and the depository participant will not facilitate or be party to any type of encumbrance outside this system.

❖ Regulation 29(4) of the Takeover Regulations requires that for the purposes of disclosure under Regulations 29(1) and (2), shares taken by way of encumbrance are to be treated as an acquisition, shares given upon release of encumbrance are to be treated as a disposal, and disclosures are required to be made accordingly. By its Circular dated September 2, 2020, SEBI has dispensed with the requirement to make disclosures under Regulation 29(4) of the Takeover Regulations in relation to shares encumbered with trading member/ clearing member as collateral from clients for margin obligation in the ordinary course of stock broking business.

❖ SEBI amended the SEBI (Settlement Proceedings) Regulations, 2018 on July 22, 2020, with effect from the same date, as follows:

- i. Applicants will now have 30 (instead of 15) days from the date of receipt of the notice of demand to remit the settlement amount forming part of the settlement terms, which may be extended by the panel of Whole Time Members by 60 (instead of 15) days upon application by the settlement application (if made within the 30 day period);
- ii. SEBI has deleted the provision enabling it to issue settlement notice to afford the recipient to file a settlement application prior to issuance of a show cause notice. From the agenda of the SEBI board meeting dated June 25, 2020, it appears that SEBI now proposes to include a paragraph in the show cause notice itself informing the noticee regarding the option to file a settlement application;
- iii. SEBI made various amendments to the guidelines for arriving at settlement terms and has provided that the applicant will be provided opportunity of hearing or meeting only before the internal committee.

❖ SEBI had, by its Circular dated March 30, 2020, permitted credit rating agencies ('CRAs') to not consider a default as such if the delay in payment of interest / principal has arisen solely due to COVID-19 pandemic related stress. Now, SEBI has, by its Circular dated August 31, 2020, extended this temporary relaxation till December 31, 2020.

❖ On account of the growing number of SEBI registered investment advisers ('IAs'), SEBI has, by its Circular dated August 6, 2020, decided to recognize wholly owned subsidiaries of the stock exchanges ('Stock Exchange wos') to administer and supervise SEBI registered IAs and has specified requirements in relation to recognition criteria, setting up of requisite systems and responsibilities of such Stock Exchange wos in the Circular. Stock exchanges which fulfill such criteria can submit a proposal to SEBI in this regard.

❖ In order to provide administrative assistance to trustees of mutual funds in monitoring various activities of the asset management companies ('AMCs'), SEBI has, by its circular dated August 10, 2020 issued, *inter alia*, the following measures (effective from October 1, 2020): (i) trustees are required to appoint a dedicated officer having professional qualification and minimum five years of experience in finance and financial services related field; (ii) the officer so appointed is required to be an employee of the trustees and directly report to the trustees; and (iii) the role of such officer will be specified by the trustees to support the roles and responsibilities of the trustees.

❖ By way of Circular dated December 28, 2018, SEBI permitted creation of a segregated portfolio in a mutual fund scheme by an AMC in case of a credit event, which includes downgrade to below investment grade and subsequent downgrades in credit rating by the SEBI registered CRA. By way of Circular dated September 2, 2020, SEBI has introduced the following modifications to the aforesaid circular, which will be applicable till December 31, 2020:

- i. the date of proposal for restructuring of debt received by AMCs will be treated as the trigger date for the purpose of creation of segregated portfolio, and such proposal of restructuring of debt received by AMCs is required to be immediately reported to the valuation agencies, CRAs, debenture trustees and AMFI; and
- ii. AMFI, on receipt of such information, is required to immediately disseminate it to its members.

❖ SEBI had, on May 6, 2020, granted certain relaxations in relation to rights issues opening up to July 31, 2020, key details of which are covered in the June 2020 edition of *Inter alia*. Now, SEBI has (by way of circular dated July 24, 2020) extended the validity of such relaxations for rights issues opening up to December 31, 2020.

SEBI had, on May 14, 2020, granted certain relaxations in relation to open offers and buy-back through tender offers opening up to July 31, 2020, key details of which are covered in our Client Alert dated May 16, 2020. Now, SEBI has (by way of circular dated July 27, 2020) extended the validity of such relaxations for open offers and buy-back through tender offers opening up to December 31, 2020.

❖ Under the SEBI (Merchant Bankers) Regulations, 1992 ('**MB Regulations**'), merchant bankers registered with SEBI are allowed to carry out only securities market related businesses. Under the Companies (Registered Valuers and Valuation) Rules, 2017, with effect from October 18, 2017, only valuers registered with the Insolvency and Bankruptcy Board of India are allowed to issue valuation reports for the purposes of Companies Act, 2013. Through its informal guidance dated February 4, 2020 to Sundae Capital Advisors Private Limited, SEBI has clarified that Category I merchant bankers may obtain registration as registered valuers; however the assignments taken up by them should be restricted to activities allowed under the MB Regulations.

❖ SEBI had, by its circular dated April 21, 2020, given certain relaxations with respect to validity of SEBI observations and filing of fresh offer document in case of increase or decrease of issue size beyond a particular threshold, key details of which are covered in the June 2020 edition of *Inter alia*. Now, SEBI has (by a circular dated September 29, 2020) extended the validity of such relaxations, such that the validity of the SEBI observations expiring between October 1, 2020 and March 31, 2021 has been extended up to March 31, 2021. Further, for public issues or rights issues opening till March 31, 2021, all issuers whose offer documents are pending receipt of SEBI observations, have been permitted to increase or decrease the fresh issue size by up to 50% of the estimated issue size, without requiring to file fresh draft offer document with SEBI.

❖ Under the SEBI (Alternative Investment Funds) Regulations, 2012 ('**AIF Regulations**'), the minimum net worth criteria prescribed for individual investors and body corporates, in order to be considered as eligible "angel investors", is ₹2 crore (approx. US\$ 270,000) (excluding the value of the individual investor's principal residence) and ₹10 crore (approx. US\$ 1.4 million), respectively. Further, the AIF Regulations oblige a manager to obtain an undertaking from every angel investor confirming his approval prior to making investment in a venture capital undertaking. Through its informal guidance dated September 17, 2020 to Lets Venture Advisors LLP, SEBI has clarified that a limited liability partnership ('LLP') and its partners being distinct persons, the net-worth of the individual partners cannot be attributed to the LLP for the purpose of satisfying the ₹10 crore (approx. US\$ 1.4 million) net worth criteria for body corporates. SEBI has also clarified that waiver of the requirement of obtaining angel investor's approval prior to making investment in a venture capital undertaking, is not permissible.

Banking and Finance

❖ The Reserve Bank of India ('**RBI**') has, on July 1, 2020, prescribed the eligibility criteria for the special liquidity scheme ('**Liquidity Scheme**') announced by the Government of India with a view to improve the liquidity position of non-banking financial companies ('**NBFCs**') and housing finance companies ('**HFCS**') through a special purpose vehicle ('**SPV**').

NBFCs registered with the RBI (excluding core investment companies) and HFCS registered under the National Housing Bank Act, 1938 are eligible to participate in the Liquidity Scheme subject to compliance with certain thresholds, conditions and additional collateral require-



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❖ Review of Provision Regarding Segregation of Portfolio due to the COVID-19 Pandemic

❖ Relaxations Relating to Procedural Matters

❖ SEBI's Informal Guidance regarding Registration of Merchant Bankers as Registered Valuers

❖ Relaxation of Validity of SEBI Observations and Revision in Issue Size

❖ SEBI's Informal Guidance regarding Angel Investors

❖ Special Liquidity Scheme for NBFCs & Housing Finance Companies



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❖ Fair Practices Code for Asset Reconstruction Companies

ments, as may be decided by the SPV. As per the Liquidity Scheme, SBICAP, which is a subsidiary of the State Bank of India, has set up an SPV by the name, SLS Trust ('**SLS Trust**') which will purchase short-term papers from eligible NBFCs or HFCs, proceeds from which can be used by such NBFCs and HFCs only towards extinguishing existing liabilities. The instruments will be commercial papers and non-convertible debentures with a residual maturity of three months and rated as investment grade. The Liquidity Scheme will be effective till September 30, 2020 and all dues will be recovered by December 31, 2020 (or as may be modified subsequently under the Liquidity Scheme).

❖ The RBI has, by way of its circular dated July 16, 2020 ('**ARC Circular**'), advised asset reconstruction companies ('**ARCS**') registered with the RBI to adopt a fair practices code ('**FPC**'), in order to achieve the highest standards of transparency and fairness in dealing with stakeholders. The RBI has set out some minimum expectation in relation to the FPC, and each ARC's board is free to enhance its scope and coverage. ARCS are advised to put in place a duly approved FPC by their board, which is mandated to involve itself in the evolution and proper implementation of such FPC, including taking on periodic review of the compliance with the FPC. The FPC duly approved by the ARC's board is to be made available in public domain for information of all stakeholders.

❖ Revised Instructions for Opening Current Accounts

❖ The RBI has, on August 6, 2020, issued revised instructions to scheduled commercial banks and payment banks for opening current bank accounts with a view to improve credit discipline. Banks are required to comply with the revised instructions by November 5, 2020, in respect of all existing current, cash credit ('**CC**') and overdraft ('**OD**') accounts and monitor these accounts regularly. It bifurcates customers into those who have availed credit facilities in the form of CC or OD and those who have not.

The key takeaways from the revised instructions are:

- i. All transactions of customers who have availed CC or OD facilities will be routed through their CC or OD account and no current accounts will be opened for them;
- ii. If a bank's exposure i.e., sum of sanctioned fund and non-fund based facilities, to a borrower is less than 10% of the exposure of the banking system to the borrower ('**Banks with exposure less than 10%**'), credits will be freely permitted, however debits to the CC/OD account can only be for credit to the CC/OD account of that borrower with a bank that has 10% or more of the exposure of the banking system to that borrower, in each case subject to certain further conditions prescribed by the RBI;
- iii. If a bank has a share of 10% or more in the total exposure of the banking system to the borrower, it can provide CC and/or OD facility without requiring to comply with additional conditions applicable to Banks with exposure less than 10%;
- iv. If a customer has not availed CC or OD facility from any bank, a current account may be opened for a borrower, subject to satisfaction of specified conditions depending upon the extent of exposure of the banking system to the borrower;
- v. Bifurcation of working capital into loan and cash credit components is to be maintained at individual bank level, including consortium lending, in case of borrowers covered under the guidelines issued by the RBI dated December 5, 2018, on loan system for delivery of bank credit; and
- vi. Banks are directed to not route draws from term loans through current account. Funds for term loans are to be remitted directly to the supplier of goods and services. Day to day expenses of the borrower are to be routed through CC or OD account, or through a current account if the borrower does not have a CC or OD account.

❖ Automation of Income Recognition, Asset Classification and Provisioning Processes in Banks

❖ The RBI had, by its circular dated August 4, 2011, advised banks, *inter alia*, to have appropriate information technology ('**IT**') systems in place for identification of non-performing assets ('**NPA**') and generation of related data/returns, both for regulatory reporting and the bank's own management information system requirements. Observing that several banks were still resorting to manual identification of NPAs and also over-riding the system generated asset classification by manual intervention in a routine manner, the RBI, in order to ensure completeness and integrity of automated asset classification, provisioning calculation and income recognition processes, by way of its circular dated September 14, 2020 ('**Automation Circular**') advised banks to put in place / upgrade their systems to conform to, the guidelines contained therein latest by June 30, 2021.

The automated IT based system ('**IT System**') for asset classification, upgradation, and provisioning processes is required to *inter alia* cover all borrowal accounts, including temporary overdrafts, irrespective of size, sector or types of limits, including the bank's investments, and asset classification rules and provisioning requirements should be configured in the IT System in compliance with the regulatory stipulations. The IT System based asset classification should be an ongoing exercise for both down-gradation and up-gradation of accounts. Banks should

ensure that the asset classification status is updated as part of day end process. The Automation Circular further states that exceptions may be granted from IT System driven classification in certain minimum and temporary circumstances, and the exceptions should be from automated classification and not from the Income Recognition and Asset Classification norms and should be subject to the conditions as explained in the Automation Circular.

If a separate application outside core banking system ('CBS') is used as the IT System for NPA/NPI identification and/or classification, the IT System must have access to the required data from the CBS and/or other relevant applications of the bank and the borrower/investment accounts should be updated back into the CBS automatically, wherever applicable, through straight through process ('STP'). Banks are required to ensure that there should be periodic system audit, at least once in a year, by internal / external auditors who are well versed with the system audit both on system parameters as also from the perspective of compliance to RBI guidelines on 'Income Recognition, Asset Classification and Provisioning'.



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Telecommunications

❖ TRAI by way of its Notification dated September 18, 2020 has provided directions to all Telecom Service Providers ('TSPs') on tariff advertisement. TRAI has *inter alia* directed the TSPs to prominently highlight additional terms and conditions and provide a link to specific terms and conditions for each of the tariff offerings while disseminating tariff related information, including on their website and mobile applications within 15 days from the issuance of these directions.

❖ TRAI has by its Notification dated September 30, 2020 issued the Telecom Consumers Protection (Eleventh Amendment) Regulations, 2020 in relation to prevention of unintentional usage of international mobile roaming ('IMR') service by the customers and the consequent levy of charges. The key features of the amendment include: (a) every service provider ('SP') is required to ensure that IMR service is inactive by default for all consumers and it will be activated/ deactivated only at the request of a consumer; (b) every SP, upon activation of IMR service, is required to immediately provide the consumer through SMS, email and mobile application ('Channels') information about the activation of the IMR service and the applicable tariff (if any) for such activation; and (c) every SP through the Channels, is required to provide an alert to the consumer at different stages of exhaustion of the data usage.

❖ TRAI has by its Notification dated July 10, 2020 issued the Telecommunication Interconnection (Second Amendment) Regulations, 2020 to simplify the framework for interconnection of calls between two Public Switched Telephone Networks ('PSTN') or between a PSTN and a National Long Distance network (collectively, 'Calls'). The revised framework for interconnection envisages that the location of point of interconnection ('POI') for the Calls within a service area will be a place mutually agreed between interconnection provider and interconnection seeker. If the provider and the seeker fail to agree, the location of POI for the Calls will be at the Long Distance Charging Center ('LDCC'); and the charges for carriage of Calls from LDCC to Short Distance Charging Center ('SDCC') and *vice versa* will be payable by the seeker to the provider. Further, the existing POIs at SDCC level for the Calls will remain in operation for at least five years or until the time mutually agreed between interconnected service providers to close such POIs, whichever is earlier.

❖ TRAI Issues Direction on Tariff Advertisement

❖ Amendment to the Telecom Consumers Protection Regulations

❖ Amendment to the Telecommunication Interconnection Regulations

Taxation

❖ The Ministry of Finance has introduced the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR') (with effect from September 21, 2020), which *inter alia* provide for the information that is required to be submitted by an importer to claim benefits under India's free trade agreements, preferential trade agreements, etc. with several countries and blocs ('Trade Partners'). The key aspects of CAROTAR are summarized below:

- i. Previously, in order to claim preferential duty, an importer was only required to submit to the customs authorities a Certificate of Origin ('CoO') issued by a competent authority of the Trade Partner. However, with the introduction of CAROTAR read with Section 28DA of the Customs Act, 1962 ('Customs Act'), an importer claiming a preferential rate of duty is required to, *inter alia*, make a specific declaration in the bill of entry with regards to goods qualifying as originating goods,

❖ Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020



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❖ Tax Benefits for Category III AIFs Located in IFSCs

- in addition to producing the CoO. Further, the bill of entry should also contain certain prescribed details of the CoO;
- ii. A comprehensive list of information, related to country of origin criteria, including the regional value content and product specific criteria, has been prescribed which the importer is required to retain for a period of five years, and submit the same to the relevant officer on request;
 - iii. If an importer fails to provide the specified information, or if the information and documents are considered insufficient to conclude that the origin criteria has been met, a *verification proposal* is to be sent by the customs authorities in India to the relevant authorities of the Trade Partner to verify the genuineness or authenticity of the CoO and the information therein. Basis the response, the claim for preferential duty is to be processed;
 - iv. The Principal Commissioner / Commissioner of Customs has been empowered to disallow the claim of preferential duty *without further verification*, where: (a) the importer relinquishes such claim; or (b) the information and documents furnished by the importer and available on record provide sufficient evidence to prove that the goods do not meet the origin criteria prescribed in the respective Rules of Origin;
 - v. Separately, if it is determined that the goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner / Commissioner of Customs may reject other claims for preferential duty for identical goods imported from the same exporter or producer;
 - vi. Failure of the importer to submit information or documents or to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished can also result in the customs authorities *suo moto* verifying assessment of all subsequent bills of entries filed with the claim of preferential rate of duty;
 - vii. If an importer has suppressed facts, made willful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, he would be liable for penal action under the Customs Act or any other law in force in addition to disallowance of his claim of preferential rate of duty.

❖ The Government of India, recently notified the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('**Amending Act**') amending the Income-tax Act, 1961 ('ITA'), to provide tax incentives to Category III Alternative Investment Funds ('AIFs') located in International Financial Services Centres ('IFSCs'), with effect from April 1, 2020, as summarised below:

- i. The tax exemption under Section 10(4D) of the ITA provided to Category III AIFs located in IFSCs, of which all the unitholders (other than the sponsor / manager) are non-residents ('**Specified AIF**'), has been extended to income from: (i) the transfer of securities (except shares of an Indian company); (ii) securities issued by a non-resident (not being permanent establishment of a non-resident in India), which income does not otherwise accrue or arise in India; and (iii) a securitisation trust (which income is classified as business income). This exemption is limited to the extent such income is attributable to units held by non-residents (not being permanent establishment of the non-resident in India) and calculated in the prescribed manner;
- ii. Section 10(23FBC) has been inserted into the ITA, providing a tax exemption to the unitholders of a Specified AIF with respect to any income accruing / arising or received from such AIF or from the transfer of units in such AIF;
- iii. Section 115AD of the ITA has been amended to prescribe a tax rate of 10% (plus surcharge and cess) on income received by a Specified AIF from securities (such as dividend and interest income). This tax rate applies only to the extent of income that is attributable to units held by non-residents (not being permanent establishment of the non-resident in India) and calculated in the prescribed manner;
- iv. Section 115JEE of the ITA has been amended to provide an exemption from the applicability of alternate minimum tax provisions to Specified AIFs, organised as trusts or limited liability partnerships.

❖ Specified Investments by ADIA, Sovereign Wealth Funds and Pension Funds

❖ The ITA had previously been amended to exempt dividend, interest and long-term capital gains arising from investments made in specified infrastructure businesses in India by: (i) wholly owned subsidiaries of the Abu Dhabi Investment Authority; (ii) notified sovereign wealth funds; and (iii) notified pension funds, subject to certain conditions. On July 6, 2020, the Government issued a notification specifying that investments in the infrastructure sub-sectors mentioned in the Updated Harmonised Master List of Infrastructure Sub-sectors dated August 13, 2018, will be eligible for the aforementioned exemption. The Government has also recently

introduced the application forms for the notification of sovereign wealth funds and pension funds with respect to the aforementioned exemption, as well as prescribed certain tax compliance and reporting obligations to be adhered to by such funds.

❖ The Central Government, on August 13, 2020, has extended the Faceless Assessment Scheme, 2020 ('FAS') to all pending tax assessments, excluding proceedings assigned to the Central Charges or International Tax Charges of the Income Tax Department. The Government has also specified detailed guidelines and procedures for implementation of the FAS through a National e-Assessment Centre ('NeAC') and a network of Regional e-Assessment Centres ('ReAC'). The ReAC network conducts the assessment, verification and review of matters, while the NeAC will act as the gateway for the flow of information to and from tax payers and third parties. No physical meetings will be conducted between taxpayers and officers, and all functions will be through electronic means. However, if a request for a personal hearing is made by the assessee, the same may be conducted through video conferencing.

The Central Government has also announced the Faceless Appeal Scheme, 2020 on September 25, 2020 ('FAPS') for the disposal of income tax appeals before the Commissioner (Appeals), in a faceless manner with the exception of appeals relating to serious fraud, major tax evasion, sensitive and search matters, matters relating to international tax and matters under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The FAPS will be implemented through a National Faceless Appellate Centre ('NFAC') and a network of Regional Faceless Appellate Centres ('RFAC'). The scheme contemplates the electronic allocation of appeals, communication of notice/questionnaires, verification and enquiry as well as electronic hearing and communication of appellate orders. The entire appellate process will be online, dispensing with the need for physical interfacing between the appellant and the department.

Further, the Government, through the Amending Act, has modified various provisions of the ITA to enable notification of similar schemes for transfer pricing proceedings, collection of information and inspection, auditing of accounts and valuations, initiation and sanctioning of reassessment proceedings for income escaping assessment, rectifications, revisions etc., to be conducted in a faceless manner.



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❖ Faceless Assessments and Appeals

Employment

❖ The Factories (Haryana Amendment) Act, 2018 ('Factories Amendment Act') received the Presidential assent on June 16, 2020 and the Government of Haryana has subsequently, on July 20, 2020, issued a Notification to publish it for general information purposes. The Factories Amendment Act seeks to increase the applicability threshold of the Factories Act, 1948 ('Factories Act') in the State of Haryana. For factories working with the aid of power, the threshold has been increased from 10 to 20 workers; and for factories working without the aid of power, the threshold has been increased from 20 to 40 workers. Additionally, workers are allowed to work overtime for a maximum of 115 hours, at a stretch, per quarter, as against the earlier limit of 75 hours. The Factories Amendment Act further provides for an application for exemption, pursuant to which women workers can be allowed to work in a factory between 7:00 p.m. to 6:00 a.m., subject to provision of adequate safety and security measures.

❖ Amendment to the Factories Act in Haryana

❖ The Government of Karnataka has, by way of its Notification dated July 31, 2020, promulgated the Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance, 2020 which amends three labour statutes i.e. the Industrial Disputes Act, 1947, the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970. The Ordinance has been made effective as on July 31, 2020. Please click here for further details in this regard.

❖ Karnataka Ordinance to Boost Ease of Doing Business

Intellectual Property

❖ The Delhi High Court in **Gujarat Cooperative Milk Marketing Federation Limited v. Amul Franchise**¹ passed an *ex parte ad interim* order dated August 28, 2020, *inter alia*, directing several domain name registrars to suspend/block/delete certain fraudulent websites containing the well known mark 'AMUL' as part of their respective domain names, as well as restraining such domain name registrars from offering for further sale, any other domain names in future, containing the term "Amul" with or without a prefix or suffix.

❖ Delhi HC Restrains Domain Name Registrars from Registering Infringing Domain Names

¹ CS(COMM) 350/2020.



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The suit was filed by the plaintiff against multiple defendants, including: (i) certain domain name registrars; and (ii) banks where the principal defendants had opened a bank account; as they received complaints from across the country that fraudulent websites (incorporating the well known trademark ‘AMUL’) were being registered by such defendants, which was being used to deceive the public at large by drawing an association with the plaintiff, resulting in the defendants offering dealership, distributorship and jobs in relation to the trademark ‘AMUL’ and asking for deposits from individuals who were seeking such jobs/franchises/dealerships into various bank accounts.

The abovementioned interim order of the Delhi High Court also directed various defendants to disclose various bank account related details. This part of the interim order was modified by way of a subsequent order dated September 8, 2020 further directing a freeze of such bank accounts.

This order is extremely significant to protect brand holder rights being a first of its kind order which restrains domain name registrars from offering domain names in future to third parties which incorporate the plaintiff’s trademark or otherwise infringe plaintiff’s trademark rights. Further, this order demonstrates the ‘zero tolerance’ policy which Indian Courts have been adopting towards rogue and fraudulent websites and the owners and operators of such websites.

Information Technology

❖ Additional Applications Banned due to Security Concerns

❖ The Government of India, through the Ministry of Electronics and Information Technology (‘MEITY’) has issued a Press Note dated September 2, 2020, blocking access to 118 mobile applications (‘Applications’).² As with the previous Press Note issued by MEITY dated June 29, 2020, the Applications have been blocked under Section 69A of the Information Technology Act, 2000 read with the Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009 (‘Blocking Rules’).

MEITY has stated, based on available information, that it believes these Applications are engaged in activities prejudicial to the sovereignty and integrity of India, the defence of India, the security of state and public order. MEITY has also stated that it has received various complaints that the concerned Applications surreptitiously steal and transmit user data, in an unauthorized manner to servers located outside India. MEITY has further received exhaustive recommendations from the Indian Cyber Crime Coordination Centre, Ministry of Home Affairs for the blocking of these Applications. A committee set up under the Blocking Rules, will recommend whether these restrictions should continue or be lifted, until which time the Applications will continue to remain blocked.

Litigation & Arbitration

❖ sc Rules on Applicability of Limitation Act on IBC

❖ The Supreme Court (‘sc’) in the case of **Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd.**³ while upholding its judgement of **B.K. Educational Services v. Paras Gupta & Associates**⁴, has held that the three year period of limitation from the date of default for an application for initiation of the corporate insolvency resolution process (‘CIRP’) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘IBC’) is only extendable under Section 5 of the Limitation Act, 1963, if an appropriate case for condonation of delay is made out. sc further observed that while ‘date of acknowledgement of debt’ may extend the limitation as per Section 18 of the Limitation Act, 1963 the same is only relevant for recovery suits and is not applicable for initiation of CIRP under the IBC.

❖ Benefit of Extension of Limitation will not Extend to Delayed Filings Made Prior to Lockdown

❖ In the context of the COVID-19 pandemic lockdown extension of limitation order passed on March 23, 2020, by the sc, the sc has clarified that this order would only benefit cases where the ‘time period’ prescribed under the Limitation Act has not expired and will not apply to cases where time period had expired prior to the COVID-19 pandemic lockdown.

❖ sc Lays Down Tests to Identify ‘Serious Allegations of Fraud’ with respect to Arbitrability of Fraud

❖ sc in the case of **Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Ltd.**⁵ specified two tests to identify what ‘serious allegations of fraud’ mean when determining arbitrability of a dispute:

- 2 It appears that a significant number of such Applications are operated and/or developed by Chinese companies.
- 3 *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd.*, 2020 SCC OnLine SC 647.
- 4 *B.K. Educational Services v. Paras Gupta & Associates*, AIR 2018 SC 5601.
- 5 *Avitel Post Studioz Limited & Ors. v. HSBC PI Holdings (Mauritius) Ltd*; 2020 SCC Online SC 656.



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TEST 1: When the arbitration clause or agreement itself cannot be said to exist. e.g., where the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all; and

TEST 2: In cases where allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or malafide conduct, *'thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain.'*

It further held that the earlier two decisions by SC—**Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**⁶ and **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.**⁷ which held that: (i) cases involving prosecution for criminal offences, or (ii) disputes which give rise to or arise out of criminal offences, are non arbitrable must now be read with a caveat that:

- i. the same set of facts may lead to both, civil and criminal proceedings; and
- ii. if it is clear that it is a civil dispute which involves questions of fraud, misrepresentation, etc. (such as under Section 17 of the Indian Contract Act, 1872 and/or the tort of deceit), then the mere fact that criminal proceedings have also been instituted in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so.

AZB & Partners successfully represented HSBC PI Holdings (Mauritius) Ltd. in this matter.

❖ A Division Bench of the Delhi High Court, in the case of **Ashwani Minda v. U-shin Ltd**⁸ has, *inter alia*, held that Courts can only be approached for interim reliefs by parties to an ongoing arbitration, when there is no efficacious remedy available before the arbitral tribunal.

In this case, the appellants had filed a petition under Section 9 of the Arbitration and Conciliation Act 1996 ('**Arbitration Act**') before the Delhi High Court seeking interim reliefs. On May 12, 2020, the Single Judge held that this petition was not maintainable, *inter alia*, because the issues had already been raised before an emergency arbitrator, which precluded the appellants from raising the same issues again before the Court; as the Court cannot sit in appeal against the order of the emergency arbitrator. An appeal against the order of the Division Bench of the Delhi High Court was filed before the SC. However, the same was dismissed on July 30, 2020.

❖ In **Balasore Alloys Limited v. Medima LLC**⁹, the SC was confronted with the issue of two different arbitration clauses existing in 2 related agreements between the same parties relating to the same transaction. The SC while relying upon its decision in **Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan**¹⁰, held that in order to harmonise or reconcile and arrive at a conclusion as to which of the arbitration clauses would be relevant; it was necessary for the Court to refer to the manner in which the parties invoked the arbitration clause and the nature of the dispute that was sought to be resolved through arbitration. In the present case SC held that the parties should get their disputes resolved pursuant to the arbitration clause in the main agreement rather than under a purchase order (which was for a limited purpose).

❖ In **Government of India v. Vedanta Ltd.**¹¹ the SC enforced a Malaysian seated foreign award under Section 47 of the Arbitration Act passed in favour of Vedanta Ltd. & Ors and against the Government of India. The SC *inter alia* held:

- i. The period of limitation for filing a petition for enforcement of a foreign award in India would be governed by Article 137 of the Limitation Act, which prescribed a period of 3 years from when the right to apply accrues. In case of delay, a party may file an application under Section 5 of the Limitation Act, 1963, for condonation.
- ii. Section 48 of the Act which was amended in 2015, would not have retrospective operation since the amendments were substantial in nature.
- iii. The merits of an arbitral award are not open to review by the enforcement Court, which lies within the domain of the Courts where the arbitration was seated. Accordingly, errors in a judgment are not a sufficient ground for refusing enforcement of a foreign award. The enforcement Court exercising jurisdiction under Section 48, cannot refuse enforcement of a foreign award by applying a different interpretation of the terms of the contract.

❖ Section 9 Petition Maintainable before Court Only in the Absence of a Remedy Before Arbitral Tribunal

❖ SC Upholds Harmonious Construction of Different Arbitration Clauses between Same Parties Relating to the Same Transaction

❖ SC Deals with Limitation and Enforcement of Foreign Arbitration Award in India

⁶ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd; (2010) 8 SCC 24 at para 27 (vi)

⁷ Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd; (2011) 5 SCC 532 at para 36 (i).

⁸ 2020 SCC OnLine Del 721.

⁹ Arbitration Petition (Civil) No. 15/2020.

¹⁰ (1999) 5 SCC 651.

¹¹ Civil Appeal No. 3185 of 2020.



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❖
Outstanding Law Firm of the Year, India
Asialaw Profiles, 2021

❖
Law Firm of the Year
VC Circle, 2020

❖
Best Overall Law Firm of the Year
India Business Law Journal, 2020

❖
Ranked No.1
by Deal Value in Any Indian Involvement Announced League Table
Refinitiv Emerging Markets M&A Review–Legal Rankings, Q1-Q3 2020

❖
Ranked No. 1
by Deal Volume and Deal Count in the India M&A Announced Deals League Table
Bloomberg's Global M&A Market Review–Legal Rankings, Q1-Q3 2020

❖
Ranked No. 1
by Deal Value in the Asia Pacific (Excluding Japan) League Table
Mergermarket's Global and Regional M&A–League Tables of Legal Advisors, H1 2020

❖
Ranked No.1
RSG Top 50 Indian Law Firms Ranking, 2019
RSG Top 40 Indian Law Firms Ranking, 2017

❖
Corporate Law Firm of the Year
Chambers Forum India Awards, 2019

❖
Best Indian Law Firm
International Legal Alliance Summit Awards, 2019

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