

# INDIA NEWSLETTER

*Quarter of January to March 2023*



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## 主な最新情報 (2023年1月～3月)

### パート A : 分野別最新情報

#### 1. インド政府（政府）が国家グリーン水素ミッションを承認

政府が、インドをグリーン水素の製造・輸出の「グローバルハブ」にすることを旨とする国家グリーン水素ミッションを承認した。

#### 2. 政府が 2001 年省エネルギー法を改正

この改正は、持続可能な開発目標の達成に向けて脱炭素化のスピードを速めるために、再生可能エネルギーの促進、国内炭素市場の構築、および非化石エネルギー源の使用の義務化を狙ったものである。

### パート B : 外国投資家のための全般的な最新情報

#### 1. 政府が 2023 年度国家予算案を発表

2023 年度国家予算案では、インクルーシブ開発、国民 1 人 1 人への到達、インフラ、投資、グリーン成長、若い世代の力および金融部門の 7 分野が重点項目として挙げられている。

#### 2. インド証券取引委員会（SEBI）が、非転換型証券に関する規則の改正を通達

今回の改正により、SEBI は、債務証券管理者が推薦する担当者（director）の任命を義務づけ、公募債の申込期間を規定し、グリーンボンドの定義を拡大した。

#### 3. 銀行の株式取得に関する指示

インド準備銀行（RBI）は、銀行の株式保有権および議決権の取得に関する法的枠組みを定める指示を通達した。

#### 4. 最低限の公開株式保有割合を維持する追加の方法が通達される

SEBI は、上場企業が規定の最小限公開株式保有割合を維持する方法に、次の 2 つを追加することを通達した。(i) 従業員ストックオプション制度に基づく株式の割当、(ii) 上場投資信託への株式の振替

#### 5. 最終裁定に対する 12 か月の期限は国際商事仲裁（ICA）には適用されず

インド最高裁判所は、TATA Sons Pvt Ltd. 対 Siva Industries and Holdings Ltd 事件において、1996 年仲裁・調停法第 29A 条(1)に基づき、ICA 案件では「できる限り迅速に」裁定を行い、「12 か月以内に処理をするよう努力することができる」と判示した。

6. **政府が、独立したデジタル競争法を制定するための委員会を設立**

デジタル市場における競争に関して独立した法律が必要かを評価するため、16名の委員からなるデジタル競争法に関する省庁間委員会が構成された。

7. **共同事業体（JV）の構成員全員がサードパーティーに対して連帯責任を負う**

デリー高等裁判所は、*ITD Cementation India Limited 対 SSJV-ZVS Joint Venture* 事件において、JV が仲裁廷で当事者になると、その構成員全員が仲裁判断結果に拘束され、個々の構成員を切り離して並べるという要件はない、と判示した。

8. **競争法改正案がインドの国会で可決される**

この法案は 2002 年競争法改正を目指すもので、200 億ルピー（2400 万米ドル相当）を超える額の合併および買収にはインド競争委員会の事前承認が必要となることが、主な改正内容の 1 つとなっている。

## Key Updates from January to March 2023

### Part A: Sector specific updates

1. **Indian government (Government) approves National Green Hydrogen Mission**

Government has approved the National Green Hydrogen Mission aiming to make India a 'global hub' for using, producing and exporting green hydrogen.

2. **Government amends Energy Conservation Act, 2001**

The amendment aims to promote renewable energy, develop a domestic carbon market and mandate the use of non-fossil sources to ensure faster decarbonization to achieve sustainable development goals.

### Part B: General updates for foreign investors

1. **Government announced the budget of 2023**

Budget for the year 2023-2024 focuses on 7 (seven) key areas viz., inclusive development, last mile delivery, infrastructure, investments, green growth, youth power and the financial sector.

2. **Securities and Exchange Board of India (SEBI) has notified revised regulation on non-convertible securities**

By way of this amendment, SEBI has mandated the appointment of a director nominated by the debenture trustee(s), prescribed the subscription period for public issues, and has widened the definition of green debt security.

3. **Directions on acquisition of shares in banking companies**

Reserve Bank of India (RBI) has notified directions laying down the legal framework in relation to the manner of acquisition of shareholding and voting rights in banking companies.

4. **Additional methods for maintaining minimum public shareholding notified**

SEBI has notified 2 (two) additional methods for listed companies to maintain the prescribed minimum public shareholding i.e., (i) allotment of shares under employee stock option scheme and (ii) transfer of shares to an exchange traded fund.

5. **Time limit of 12 (twelve) months for finalization of awards not applicable to International Commercial Arbitration (ICA)**

The Supreme Court of India has in the case of *TATA Sons Pvt Ltd. V. Siva Industries and Holdings Ltd*, held that under section 29A (1) of the Arbitration and Conciliation Act, 1996 award in the matter of an ICA 'may be made as expeditiously as possible' and that an 'endeavour may be made to dispose of the matter within a period of 12 (twelve) months'.

6. **Government sets-up committee to prepare a separate digital competition law**

A 16 (sixteen) member inter-ministerial committee on digital competition law has been constituted to assess the need for a separate law on competition in digital markets.

7. **All the members of a joint venture (JV) are jointly and severally liable to third parties**

The High Court of Delhi in the matter of *ITD Cementation India Limited vs. SSJV-ZVS Joint Venture* has held that when the JV is made a party before an arbitral tribunal, all its members are bound by the result of the arbitral award and there is no requirement to separately array individual members.

8. **Bill for amending the Competition Act approved by Indian Parliament**

The Bill aims to amend the Competition Act, 2002, with one of the key amendments being requirement of prior approval of the Competition Commission of India for mergers and acquisitions of value more than approx. USD 24 million.

## Section A: Sector specific updates

### Renewable energy

#### **Government of India (Government) approves National Green Hydrogen Mission**

The Government has approved the National Green Hydrogen Mission. The initial outlay under this mission will be around USD 2.4 billion, including an outlay of approx. USD 2.1 billion for the SIGHT programme (funding of domestic manufacturing of electrolysers and green hydrogen), approx. USD 178 million for pilot projects, approx. USD 48 million for research and development (R&D), and approx. USD 47 million towards other mission components. The Ministry of New and Renewable Energy (MNRE) will formulate the scheme guidelines for implementation of each of the components. The mission is expected to result in the following outcomes by the year 2030:

- (i) development of green hydrogen production capacity of at least 5 MMT (million metric tonne) per annum with an associated renewable energy capacity addition of about 125 GW in the country;
- (ii) over USD 97 billion in total investments;
- (iii) creation of over 600,000 jobs;
- (iv) cumulative reduction in fossil fuel imports over USD 12 billion; and
- (v) abatement of nearly 50 MMT of annual greenhouse gas emissions.<sup>1</sup>

### Power

#### **Key highlights introduced by the Energy Conservation (Amendment) Act, 2022 (Amendment Act)**

The Energy Conservation Act, 2001 (Energy Act) was enacted to encourage efficient use of energy and its conservation across various sectors of the economy. The Energy Act mandates designated consumers, who are large energy consuming entities, to comply with energy efficiency standards and to implement energy efficient measures in their operations. Overall, the Energy Act aims to reduce energy consumption, promote energy efficiency and conservation, and ultimately contribute towards the sustainable development of the Indian economy.

The Amendment Act aims to promote renewable energy and develop the domestic carbon market to combat climate change.<sup>2</sup> With the introduction of new concepts such as carbon trading and mandating the use of non-fossil sources to ensure faster decarbonisation, will help India achieve its sustainable development goals in line with the Paris Agreement of 2015 and various other actions related to climate change. The key highlights of the amendments are:

- (i) **Carbon credit trading**: The Amendment Act empowers the Government to specify a carbon credit trading scheme, which is a tradable permit, allowing the holder to emit a specified amount of carbon dioxide or other greenhouse gases. The Government or any authorised agency may issue carbon credit certificates to registered entities compliant with the carbon credit trading scheme.
- (ii) **Obligation to use non-fossil sources of energy**: The Amendment Act empowers the Government to specify a minimum limit for consumption of non-fossil sources by designated consumers as energy or feedstock. Different levels of consumption may be specified for different types of non-fossil sources for different designated consumers.

<sup>1</sup> Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1888545;https://www.financialexpress.com/business/defence-national-green-hydrogen-mission-creates-opportunities-for-strengthening-indias-renewable-energy-partnership-with-gcc-countries-2945017/>

<sup>2</sup> Please refer <https://egazette.nic.in/WriteReadData/2022/241246.pdf>



- (iii) **Energy conservation code for buildings**: Prior to the Amendment Act, the 'Energy Conservation and Building Code', which provided norms and standards for energy efficiency and conservation, use of renewable energy and other green building requirements for a building, was applicable only to buildings used or intended to be used for commercial purposes. However, the new 'Energy Conservation and Sustainable Building Code' expands the scope to include buildings used or intended to be used as an office building or for residential purpose.
  
- (iv) **Penalties**: The Amendment Act substitutes Section 26 of the Energy Act. It brings in new penalties and aggravates existing penalties for violations of certain provisions of the Energy Act. For instance, the Amendment Act enhances penalty for equipment and appliances that fail to conform with the energy consumption standards specified by the Government and for equipment and appliances that do not contain particulars as specified by the regulations. Apart from the maximum penalty of around USD 12,226 under the Energy Act, the Amendment Act introduces an extra penalty of at least approx. USD 24 and up to approx. USD 61 per appliance or equipment for which non-compliance has taken place.



## Section B: General updates

### Budget 2023 – Key Takeaways<sup>3</sup>

The budget this year focuses on 7 (seven) key areas viz., inclusive development, last mile delivery, infrastructure, investments, green growth, youth power and the financial sector.

- (i) **Pharmaceutical:** A new program is proposed to be introduced through centres of excellence, to promote research and innovation in pharmaceuticals and to encourage industry to invest in research and development in specific priority areas.
- (ii) **Automobiles:** Custom duty on imports of goods used in producing lithium-ion cells has been reduced from 21% (twenty one percent) to 13% (thirteen percent).
- (iii) **Renewable Energy:** The budget allocates a sum of around USD 1.2 billion to the Ministry of New and Renewable Energy. This is a 45% (forty five percent) hike from the previous allocation. In her speech, the finance minister announced India's first mega renewable energy transmission line project from Ladakh to Haryana.
- (iv) **Semiconductor:** The government will allocate approx. USD 365 million to the 'Indian Semiconductor Mission', aimed at fostering the development of the semiconductor and display manufacturing industries.

A detailed analysis of the 2023 budget can be found in our InfoLex article at [https://induslaw.com/publications/pdf/alerts-2023/Induslaw\\_Union\\_Budget\\_Analysis\\_2023.pdf](https://induslaw.com/publications/pdf/alerts-2023/Induslaw_Union_Budget_Analysis_2023.pdf)

### Reserve Bank of India (RBI)

#### **RBI releases directions on acquisition of shares in banking companies**

The RBI issued the RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023 (Directions).<sup>4</sup> The Directions lay down the legal framework in relation to the manner of acquisition of shareholding / voting rights in banking companies. It also provides various legal compliances required to be followed by the concerned acquirer and the relevant banking company, prior to and pursuant to acquisition of such shareholding in the relevant banking company. Additionally, the Directions also prescribe various reporting requirements to be complied with by the persons envisaging to acquire shareholding in a banking company. By the issue of these Master Directions, the erstwhile master directions in this regard have been repealed.

The Directions are applicable to all banking companies, including differentiated and specialised banks such as Local Area Banks, Small Finance Banks and Payments Banks operating in India as against the erstwhile master directions, which were applicable only to private sector banks. However, these Directions do not apply to foreign banks operating in India whether as a branch or as a wholly owned subsidiary. Key features of the Directions are:

- (i) **Prior consent of RBI for acquiring 'majority shareholding':** The Directions stipulate that any person who intends to acquire a 'major shareholding' in a banking company, is required to seek prior approval of the RBI. It can be interpreted that if any person acquires 5% or more of the paid up share capital or voting rights of a banking company either directly or indirectly, beneficial or

<sup>3</sup> Please refer <https://www.indiabudget.gov.in/>

<sup>4</sup> RBI/DOR/2022-23/95DOR.HOL.No.95/16.13.100/2022-23, dated January 16, 2023, available at [https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=12439](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12439)

otherwise, even along with his relatives, associate enterprises and persons acting in concert with him, then such person is said to acquire 'major shareholding' in a banking company and prior to such acquisition, the concerned person is required to obtain prior approval from the RBI.

- (ii) **Limits on shareholding:** Under the erstwhile directions the promoters could own up to 15% of the paid-up share capital or voting rights in the long term (15 years from the start of the business). The Directions provide for a revised limit that has been increased to 26% (twenty six percent). However, during the period prior to the completion of the 15 (fifteen) years, the promoters of banking companies may be allowed to hold a higher percentage of shareholding as part of the licensing conditions or as part of the shareholding dilution plan submitted by the banking company and approved by the RBI with such conditions as deemed fit.
- (iii) **Lock-in requirements:** The Directions stipulate a lock-in period for 5 (five) years from the date of acquisition for paid-up equity share capital ranging from 10% (ten percent) and 40% (forty percent). Where any person is permitted to have a shareholding of 40% or more of the paid-up equity share capital of the banking company, only 40% of paid-up equity share capital would remain locked-in for the first 5 (five) years from the date of completion of acquisition.
- (iv) **Grant of approval by RBI:** On receipt of the application and declaration from the applicant, the RBI may seek comments from the banking company (Target Banking Company) on the proposed acquisition. On receipt of the reference from the RBI, the board of directors of the Target Banking Company is required to conduct their due diligence based on the information provided by the applicant. The Target Banking Company is required to assess and deliberate on the proposed acquisition and assess the 'fit and proper' status of the applicant.

#### **Rationalization of reporting in Single Master Form (SMF) on Foreign Investment Reporting and Management System (FIRMS) portal<sup>5</sup>**

RBI has advised all Authorized Dealer Category-I banks (AD Bank) that significant modifications to the reporting of foreign investment has been made in SMF on the FIRMS portal. Accordingly, the forms submitted on the portal will now be auto-acknowledged. The AD Bank must verify the forms within 5 (five) working days based on the uploaded documents. Further, in cases of delayed reporting, the AD Banks may either advice payment of the applicable late submission fee or compounding of contravention. All forms submitted with the requisite documents will be auto-acknowledged on the FIRMS portal with a time stamp and an auto-generated e-mail will be sent to the applicant. These changes are a welcome step as previously AD banks used to take a longer period of time to verify the relevant forms which in turn caused unnecessary delays. This step is anticipated to help improve transparency and ensure quick and effective implementation of the reporting requirements.

#### **Securities Exchange Board of India (SEBI)**

##### **Participation of Alternative Investment Funds (AIF) in Credit Default Swaps (CDS)**

SEBI has amended the SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) to enable AIFs to participate in credit default swaps (CDS) as both buyers and sellers. A CDS is a financial agreement where the seller agrees to compensate the buyer in the event of a default on the debt. SEBI has classified AIFs into - Category I, Category II, and Category III based on their investment strategies and the level of risk they carry. Category I and II AIFs can buy CDS on underlying investment in debt securities only for the purpose of hedging. However, Category III AIFs can buy CDS for hedging or

<sup>5</sup> RBI/2022-23/160 A.P. (DIR Series) Circular No. 22, dated January 04, 2023, available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12433&Mode=0>

otherwise within permissible leverage.<sup>6</sup> In India, entities such as banks, non-banking finance companies (NBFCs), insurance companies, mutual funds, pension funds, etc., can participate in CDS as buyers or sellers, subject to the eligibility criteria set by the RBI.

In the recent years, AIFs have grown as an asset class in India, primarily due to the growing interest of investors in alternative investment options. AIFs are investment funds that pool money from high-net-worth individuals, institutional investors, and others to invest in a range of assets such as private equity, real estate, and hedge funds. One of the key factors driving the growth of AIFs in India is the regulatory framework that has been put in place by the SEBI.

### **Introduction of future contracts on Corporate Bond Indices (CBIN)**

SEBI has decided to allow stock exchanges and clearing corporations to introduce future contracts on CBINs based on their recommendations. Any stock exchange which wishes to introduce future contracts should submit a detailed proposal to SEBI for approval enlisting details related to underlying corporate bond index, the index methodology, contract specifications, applicable trading, clearing & settlement mechanism, risk management framework, safeguards to ensure market integrity, investor protection, surveillance systems, etc. In India, future contracts are permitted on various financial instruments traded in the securities and commodities markets, including equity stocks, stock indices, currency, commodities, etc. Reportedly, this move is aimed at deepening the bond market.<sup>7</sup>

### **SEBI allows launch of multiple contracts on same commodity**

SEBI has decided to permit stock exchanges to launch multiple contracts on a single commodity in the Commodity Derivatives Market (CDM), to attract more participation by value chain industry. The current framework allows multiple contracts only on specific commodities such as gold, silver and precious metals. Consequently, the investor participation specially in metal contracts remained limited. Therefore, SEBI's decision is expected to encourage broader participation of investors in CDMs. Multiple contracts on the same commodity will allow traders to take positions based on their market outlook and trading strategy. The availability of multiple contracts will also provide liquidity and depth to the market, making it easier for traders to buy or sell positions at fair market prices.

In stock exchanges, multiple future contracts on the same commodity can be traded simultaneously now. These contracts are differentiated by their expiration date, which is the date on which the contract expires, and settlement takes place. Traders can choose to trade in multiple contracts based on their trading strategy and market outlook. For instance, if a trader expects the price of crude oil to rise in the next two months, they may choose to buy a two-month future contract. Alternatively, if a trader expects the price of crude oil to fall in the next one month, they may choose to sell a one-month future contract.

### **SEBI amends Regulations on Issue and Listing of Non-Convertible Securities<sup>8</sup>**

The amended SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023 (NCS Amendment Regulations) came into effect on February 02, 2023. Some of the key amendments are:

- (i) **Change in definition of 'Green Debt Securities'**: The amended definition includes yellow, blue, and transition bonds and provides further clarity on which activities will be considered as 'green'

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<sup>6</sup> Circular no. SEBI/HO/AFD/PoD/CIR/2023/15, dated January 12, 2023, available at [https://www.sebi.gov.in/legal/circulars/jan-2023/participation-of-aifs-in-credit-default-swaps\\_67264.html](https://www.sebi.gov.in/legal/circulars/jan-2023/participation-of-aifs-in-credit-default-swaps_67264.html);

<sup>7</sup> Circular no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/11 dated January 10, 2023, available at [https://www.sebi.gov.in/legal/circulars/jan-2023/introduction-of-future-contracts-on-corporate-bond-indices\\_67187.html](https://www.sebi.gov.in/legal/circulars/jan-2023/introduction-of-future-contracts-on-corporate-bond-indices_67187.html)

<sup>8</sup> Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023 dated February 02, 2023, available at [https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2023\\_67798.html](https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-amendment-regulations-2023_67798.html)

and environmentally viable, thereby encouraging sustainable finance in such areas. This expansion is in line with the updated green bond principles issued by the International Capital Market Association (ICMA).

- (ii) **Adherence to specific delivery methods:** Issuers of non-convertible securities (NCS) must adhere to specific delivery methods for recall or redemption notices at least 21 (twenty-one) days prior to the maturity of the securities. This involves sending a soft copy to all eligible holders who have registered their email addresses with either the issuer or any depository and dispatching a hard copy to those holders who have not registered an email address with either the issuer or any depository.
- (iii) **Appointment of nominee director nominated by debenture trustees:** Debenture trustees were required to appoint a nominee director on the board under the SEBI (Debenture Trustee) Regulations, 1993 (Debenture Trustee Regulations), in case of (i) 2 (two) consecutive defaults in payment of interest, (ii) default in security creation for the debentures, or (iii) default in redemption of debenture. Now, irrespective of any conditionalities being met or not, under the NCS Amendment Regulations all debenture trust deeds are mandatorily required to include a provision mandating the issuer to appoint a nominee director, nominated by the debenture trustee, within 1 (one) month of being nominated. Further, issuers which are companies are now required to ensure that their Articles of Association (**AoA**) require the board of directors to appoint the nominee director nominated by the debenture trustee (in line with the Debenture Trustee Regulations) as a director on the board. Issuers with listed debt securities as of February 02, 2023, are required to amend their debenture trust deeds and AoA by September 30, 2023, where-as first-time issuers have 6 (six) months from the date of listing to amend their AoA, and stock exchanges are advised to obtain an undertaking to this effect at the time of granting in-principal approval for issuance.
- (iv) **Minimum and maximum subscription period:** The amendment provides new provisions setting minimum of 3 (three) working days and maximum of 10 (ten) working days as subscription periods for public issues of debt securities and non-convertible preference shares.

Further, it establishes non-refundable regulatory fees for issuing perpetual debt instruments, perpetual non-cumulative preference shares, and similar instruments.

### **SEBI permits different methods allowing public companies to maintain minimum public shareholding<sup>9</sup>**

SEBI has introduced revised and additional methods for listed entities to achieve compliance with the minimum public shareholding (MPS) requirements under Securities Contracts (Regulation) Rules, 1957 read with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).

SEBI regulations allow for a company to dilute between a minimum of 5% - 10% of its capital to the public through an initial public offering (IPO), depending on the IPO size. Subsequently, it requires listed companies to achieve minimum public shareholding of 25% (twenty five percent) within 3 years through the following methods notified from time to time: (i) the issuance of shares to public through prospectus, (ii) offer for sale of shares held by promoters through prospectus, (iii) sale of shares held by promoters through a specified secondary market window, (iv) open market sale of shares by the

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<sup>9</sup> Circular no. SEBI/HO/CFD/PoD2/P/CIR/2023/18 dated February 03, 2023, available at [https://www.sebi.gov.in/legal/circulars/feb-2023/manner-of-achieving-minimum-public-shareholding\\_67801.html](https://www.sebi.gov.in/legal/circulars/feb-2023/manner-of-achieving-minimum-public-shareholding_67801.html)

promoters/ promoter group<sup>10</sup>; (v) a qualified institutions placement, (vi) rights issue to public shareholders with promoters/promoter group forgoing their entitlement to equity shares, that may arise from such issue, (vii) bonus issue to public shareholders with promoters/promoter group forgoing their entitlement to equity shares, that may arise from such issue and (viii) any other method approved by SEBI on a case-to-case basis.

On February 03, 2023, two additional methods for achieving MPS have been notified namely, (i) allotment of shares under employee stock option scheme (ESOP), subject to a maximum of 2% (two percent) of the paid-up equity share capital of the listed entity, and (ii) transfer of shares held by promoters/promoter group to an exchange traded fund (ETF) managed by SEBI registered mutual fund, subject to a maximum of 5% (five percent) of the paid-up capital of the listed entity. Additionally, in case of an open market sale, promoters/promoter group can now choose to sell either up to 2% (two percent) of the total paid-up capital of the listed entity as allowed earlier or up to a maximum of 5% (five percent) of the paid-up capital of the listed entity during a financial year subject to the condition that the public holding in the listed entity shall become 35% (twenty five percent) after completion of such sale.

Specific conditions may apply to some methods, and listed entities must ensure compliance with all relevant legal provisions and prescribed conditions.

### **Introduction of Issue Summary Document (ISD) and dissemination of issue advertisements<sup>11</sup>**

SEBI *vide* its Circular dated February 15, 2023 introduced ISD in extensible business reporting language (XBRL) format, for the following:

- (i) public issues of specified securities (initial public offer/further public offer),
- (ii) further issues (preferential issues, qualified institutions placement, rights issue, issue of American depository receipts, global depository receipts, foreign currency convertible bonds),
- (iii) buyback of equity shares (through tender offer or from the open market),
- (iv) open offer under SEBI substantial acquisition of shares and takeovers regulations,
- (v) voluntary delisting of equity shares where exit opportunity is required under SEBI delisting regulations.

The ISD is designed to make relevant information with regards to public issues on stock exchanges and depositories in a structured manner for consumption by stakeholders such as researchers, policy makers, market analysts and market participants.

ISD shall be filed in two stages. In the first stage, ISD will be filed containing pre-issue / offer fields. In the second stage, ISD will be filed containing post-issue / offer fields after allotment/offer is completed, as applicable for respective ISD. SEBI has issued prescribed formats (Table I to Table X in Annexure A of the given circular) and provided a timeline for submission of the details and also casts responsibility on the entity responsible for the submission. Stock exchanges have been directed to develop a utility in order to facilitate the filing of the ISD by submitting entities. This will be implemented in a phased manner from March 2023 to May 2023.

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<sup>10</sup> Sale of shares held by the promoters/promoter group up to 2% (two percent) of the total paid-up equity share capital of the listed entity in the open market, subject to 5 (five) times average monthly trading volume of the shares of the listed entity.

<sup>11</sup> Circular no. SEBI/HO/CFD/PoD-1/P/CIR/2023/29 dated February 15, 2023, available at [https://www.sebi.gov.in/legal/circulars/feb-2023/introduction-of-issue-summary-document-isd-and-dissemination-of-issue-advertisements\\_68057.html](https://www.sebi.gov.in/legal/circulars/feb-2023/introduction-of-issue-summary-document-isd-and-dissemination-of-issue-advertisements_68057.html)



## Extension of compliance period for raising funds

Chapter XII of NCS Operational Circular 1 on 'Fund raising by issuance of Debt Securities by Large Corporates' (LCs Chapter), amongst other things, mandates large corporates to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities over a contiguous block of two years. SEBI has through circular dated March 31, 2023 notified that the contiguous block of two years over which large corporates need to meet the mandatory requirement of raising minimum 25% of their incremental borrowings in a financial year through issuance of debt securities will be extended to a contiguous block of three years (from the present requirement of two years) reckoned from financial year 2021-2022 onwards.<sup>12</sup>

## Master circular for Foreign Venture Capital Investors (FVCI)

SEBI, through a circular dated March 03, 2023,<sup>13</sup> notified the master circular for FVCIs that has superseded earlier circulars dated July 03, 2009, January 12, 2010 and July 06, 2017.<sup>14</sup> In order to enable the stakeholders to have an access to all the applicable requirements / circulars at one place, the provisions of the above-mentioned circulars are incorporated in this master circular. The key elements of the circular include (i) Applicants desirous of registering with SEBI as FVCI are required to obtain firm commitment from their investors for contribution of an amount of at least USD 1 million; and (ii) FVCIs are directed to submit the report on venture capital activity on the SEBI portal within 7 (seven) days from the end of each calendar quarter. Further, the online portal can be used for registration application, reporting and filing under the provisions of FVCI regulations.

## Arbitration

### 12 (twelve) months' time limit for making awards under the Arbitration Act not applicable to International Commercial Arbitration

Section 29A of the Arbitration and Conciliation Act, 1996 (Act) deals with the time limit for passing an arbitral award. A total period of 12 (twelve) months from the time of completion of pleadings is available for an arbitral tribunal to pass an award in a matter. The timeline can be further extended by another six months only with the mutual consent of the parties. The said timeline has been introduced through the amendment of the Act made by way of the Arbitration and Conciliation (Amendment) Act of 2019, which was rendered effective through a notification dated August 30, 2019. While the said timeline is mandatory for domestic arbitration, it is only recommendatory for international commercial arbitration (ICA) which means an arbitration relating to the disputes arising out of legal relationships which are considered as commercial in India and at least one of the parties is (i) an individual who is a national of, or habitually resident in, any country other than India; or (ii) a body corporate which is incorporated in any country other than India; or (iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or (iv) the Government of a foreign country.

In the case of *TATA Sons Pvt Ltd. v. Siva Industries and Holdings Ltd*,<sup>15</sup> the Supreme Court held that the original provisions of Section 29A of the Act mandated that all awards (domestic arbitration as well as

<sup>12</sup> Circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/049, March 31 2023, Available at [https://www.sebi.gov.in/legal/circulars/mar-2023/extension-of-compliance-period-fund-raising-by-large-corporates-through-issuance-of-debt-securities-to-the-extent-of-25-of-their-incremental-borrowings-in-a-financial-year\\_69574.html](https://www.sebi.gov.in/legal/circulars/mar-2023/extension-of-compliance-period-fund-raising-by-large-corporates-through-issuance-of-debt-securities-to-the-extent-of-25-of-their-incremental-borrowings-in-a-financial-year_69574.html)

<sup>13</sup> SEBI/HO/AFD/PoD/P/CIR/2023/34 dated March 03, 2023, available at <https://www.sebi.gov.in/legal/master-circulars/mar-2023/master-circular-for-foreign-venture-capital-investors-fvcis-68650.html>

<sup>14</sup> SEBI Circular No. IMD/DOF-1/FVCI/CIR.No.1/2009 dated July 03, 2009; SEBI Circular No. SEBI/IMD/DOF-1/FVCI/CIR-1/2010 dated January 12, 2 2010; SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated July 06, 2017.

<sup>15</sup> Misc. app no. 2680/2019 in Arb Case (civil) no. 38 of 2017.

ICA) shall be made within a period of 12 (twelve months) from the date on which the arbitral tribunal enters upon the reference. After the amendment, Section 29A(1) stipulates that the award ‘*in matters other than international commercial arbitration*’ shall be made within a period of 12 (twelve) months. This is further reaffirmed in the proviso to Section 29A(1) which stipulates that the award in the matter of an ICA ‘*may be made as expeditiously as possible*’ and that an ‘*endeavour may be made to dispose of the matter within a period of 12 (twelve) months.*’ Hence, post the amendment, the 12 (twelve) months’ timeline prescribed in Section 29A is only directory in nature for an ICA. It is pertinent to note that the amendment to Section 29A in 2019 is remedial in nature in that it carves out ICA from the rigorous timeline of 12 (twelve) month and it should be applicable to all pending arbitral proceedings as on the effective date i.e., August 30, 2019. This judgment further emphasizes upon the limited intervention of Indian courts in ICAs, especially with respect to timelines and extensions thereof. It is an encouraging step for the international arbitral institutions to monitor and control the timelines for conclusion of arbitral proceedings in ICAs without being bound by statutory timelines.

**In case of any inconsistency between two arbitration clauses of the same agreement, the former prevails over the latter**

The Delhi High Court has in the matter of *Sunil Kumar Chandra v. M/s Spire Techpark Pvt Ltd*,<sup>16</sup> reiterated that where there is any inconsistency between the two provisions of a same document, the former clause shall prevail over the latter one. In the present case the petitioner, Mr. Sunil, had paid the consideration amount to respondent for a lockable unit. However, the respondent had leased the same to someone else. Owing to an unsuccessful resolution of the dispute, the parties invoked the arbitration clause of the agreement which provided for jurisdiction of Courts of New Delhi in case of any disputes concerning the agreement and Courts of Gautam Buddha Nagar to resolve disputes. The bench concluded that the former clause (arbitration clause), under which the parties agreed to resolve “any” dispute arising under the agreement through arbitration, shall have a prevailing effect over the latter clause, which was not clear as no clear and unambiguous meaning was given regarding what kind of disputes shall be referred to the courts in the specified jurisdiction.

**Arbitration clause can be invoked by assignee of rights under contract**

The High Court of Bombay in *M/s. Siemens Factoring Pvt Ltd v. Future Enterprises Pvt Ltd*,<sup>17</sup> has held that an arbitration agreement is assignable, just as any other contract, and where the obligations and rights under an agreement, containing an arbitration clause, are assigned in favour of an assignee, the remedy of arbitration would also stand assigned in its favour. The court held that there was no need for executing a separate arbitration agreement between the parties as all the rights of the original party to the arbitration agreement (assignor) had been assigned in favour of the assignee/ claimant, and the said assignment was specifically acknowledged by the counter party.

**All the members of a joint venture (JV) are jointly and severally liable to third parties and there is no need to separately make individual members a party to arbitration**

The High Court of Delhi in *ITD Cementation India Limited v. SSJV-ZVS Joint Venture*,<sup>18</sup> has held that all the members of a JV are jointly and severally liable to any third parties with which the JV enters into an agreement. The Court held that a JV is a quasi-partnership where two or more entities may come together and jointly undertake a particular transaction or contract for mutual profit. It was further held that the parties to a JV agreement may provide for different rights or obligations amongst themselves, however, this arrangement between parties would not have any effect on the right of a third party to proceed jointly or severally against any individual member of the JV. The Court also held that when the JV is made a party before an arbitral tribunal, all its members are bound by the result of the arbitral award and there is no requirement to separately array individual members.

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<sup>16</sup> 2023/DHC/000492.

<sup>17</sup> CARAP-174-2022.

<sup>18</sup> 2023/DHC/001634.



## Court may decline to refer parties to arbitration if dispute doesn't correlate to arbitration agreement

The High Court of Delhi in *GTM Builders and Promoters Pvt Ltd v. Sneh Development Pvt Ltd*,<sup>19</sup> has reiterated that mere existence of an arbitration agreement or arbitration clause would not be sufficient to refer the parties to arbitration and that even in the presence of an arbitration agreement, the court may decline to refer the parties to arbitration if the dispute does not correlate to the said agreement. While dismissing the petition, the Court remarked that while adjudicating arbitration petitions, a court shall endeavour to evaluate whether the party has made out a prima facie arbitrable case or not. In other words, the dispute should fall within the scope of the arbitration agreement and the language and terms of the agreement should be broad enough to cover the specific issue in question.

## Competition law

### Government sets up committee to prepare draft digital competition law

With an aim to regulate the digital markets, the Competition Commission of India (CCI) in consultation with various stakeholders has identified certain anti-competitive practices in the digital sector and proposed enactment of a sui generis law, namely the Digital Competition Act (DCA) to ex-ante regulate the digital market. Pursuant to the Committee's report, the Ministry of Corporate Affairs (MCA), on February 06, 2023, constituted a 16-member inter-ministerial 'Committee on Digital Competition Law' (CDCL) to assess the need for a separate law on competition in digital markets. The committee will review whether existing antitrust laws in the country are equipped to deal with the challenges that have emerged from the digital economy and submit to the government a draft Digital Competition Act within 3 (three) months.

A detailed analysis of the need for a separate digital act can be found in our InfoLex article at [https://induslaw.com/publications/pdf/alerts2023/Infoplex\\_Alert\\_Digital%20Competition\\_Bill\\_Conversations\\_India\\_Prepare\\_To\\_Regulate\\_Gatekeeper\\_Platforms.pdf](https://induslaw.com/publications/pdf/alerts2023/Infoplex_Alert_Digital%20Competition_Bill_Conversations_India_Prepare_To_Regulate_Gatekeeper_Platforms.pdf)

### Competition (Amendment) Bill, 2023 (Bill) cleared by Indian Parliament

The Bill seeks to amend the Competition Act, 2002, which gives the Competition Commission of India (CCI) its powers to prevent practices that harm competition and the interests of consumers. It aims to bring the competition regime up to speed with the changes in how businesses operate currently, especially in the digital markets. Key features of the Bill are:

- (i) **Mergers and acquisitions exceeding USD 250 million in value must be notified:** If the value of any merger or acquisition exceeds USD 250 million, it would require CCI approval, provided that the party which is being acquired or amalgamated has "substantial business operations in India,". The scope of 'substantial business operations in India' should be defined by the CCI to reduce ambiguity.
- (ii) **Reduction in the time limit for assessment of combinations:** The overall time limit for the assessment of combinations will be reduced to a period of 150 days from 210 days.
- (iii) **Objections to combinations by CCI and proposal of modifications:** If CCI is of the opinion that a combination is likely to harm competition, it will state the objections to the parties identifying the appreciable adverse effect on competition, and then, direct the parties to explain why such a combination should be allowed to take effect.
- (iv) **Penalty based on income or global turnover:** The Bill proposes to expand the computation of penalty from 'relevant turnover' to 'global turnover derived from all the products and services'

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<sup>19</sup> 2023/DHC/2019.

by the contravening parties. Thus, this proposal (if passed into law) will result in much higher penalties for global multiproduct enterprises.

- (v) **Settlements and commitments framework:** Earlier in 2022, an amendment bill proposed to introduce a mechanism for settlements and commitments, enabling the parties with the flexibility to choose settlements in anti-trust cases (except in cartel cases). While the commitments can be offered at any time before the investigation report is submitted by the Director General to the CCI, the settlements can be only offered after the investigation report is submitted, but before the issuance of the final order by the CCI. Further, the Bill allows that the aggrieved party can file for a compensation claim against the contravening enterprise in anti-trust cases even in case of settlements.
- (vi) **Limitation date on complaints:** CCI will not entertain any complaint beyond the period of three years from the date of cause of action unless it is satisfied with the reasons given by the parties for such delay in initiating the complaint.

A detailed analysis of the draft amendment bill can be found in our InfoLex article at [https://induslaw.com/publications/pdf/alerts-2023/Infolex\\_News\\_Alert\\_Competition\\_Amendment\\_Bill\\_2023\\_One\\_step\\_forward\\_two\\_steps\\_back\\_February\\_2023.pdf](https://induslaw.com/publications/pdf/alerts-2023/Infolex_News_Alert_Competition_Amendment_Bill_2023_One_step_forward_two_steps_back_February_2023.pdf)

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