

# INDIA NEWSLETTER

*Quarter of October to December 2022*



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

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

## CONTENTS

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

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## 主な最新情報（2022年10月～12月）

### パート A：分野別最新情報

#### 1. 2022年新薬および臨床試験（第3次改正）規則 - みなし承認

インド政府は国内の製薬産業を対象として、植民地時代以前に制定された1940年医薬品化粧品法に代わる、近代的で総合的な草案を新たに公示した。

#### 2. 政府が遺伝子組み換え食品に関する規則の草案を提示

インド食品安全基準局（FSSAI）が、食品使用および食品成分向け「遺伝子組み換え生物」を規制する規則を提案した。

#### 3. 食品業界における広告に関する改正

FSSAIは食品安全基準広告規則を改正することにより、食品の広告および強調表示において公平性を与え、顧客の利益を守るために強調表示や広告に対する食品事業の責任をより重くすることを目指す。特にラベル表示、記載事項、分量、表示パネル、一覧表、栄養価に関しては、具体的なガイドラインを遵守しなければならない。

#### 4. 自動車の燃料消費削減に向けた改正

道路交通省が中央政府自動車規則（CMVR）を改正した。2001年省エネルギー法で定められている目標を達成するため、とりわけM2、M3およびN2カテゴリの車両がインドの燃料消費を調査・削減することを目的とする。

#### 5. 政府が電気自動車（EV）のバッテリーの安全性に対する包括的検査パラメーターを導入

重工業省は、2023年4月1日から有効となる、EVバッテリーの安全性を強化する包括的検査パラメーターについて通知した。

#### 6. PLIスキームが承認される

高効率太陽光発電モジュールに関する国家プログラムに基づく生産連動型優遇（PLI）スキーム（トランシェ II）（スキーム）が承認された。このスキームは、インド国内での高効率太陽光モジュールの製造を促進することを目的とする。

#### 7. 2022年省エネルギー（改正）法案

政府は、とりわけカーボンクレジットの日付記入や、非化石エネルギー源使用義務、車両および船舶向けの基準を盛り込むため、2001年省エネルギー法の改正を提案した。

**パート B：外国投資家のための全般的な最新情報**

**1. IT ガバナンス、リスク、統制および保証業務に関する指示 (Master Direction) 草案**

インド準備銀行は、IT ガバナンス、リスク、統制、保証業務およびビジネス継続性・災害復旧管理に関する既存のガイドライン・命令・回章を組み込み、まとめ、更新する指示書 (master direction) の作成を提案した。

**2. 債券および非転換型償還優先株の額面金額の削減**

インド証券取引委員会 (SEBI) は、私募により発行された各債券または非転換型償還優先株の額面価格をおよそ 1 万 2228 米ドルとすること、また、取引ロットは額面と同じとすることを義務づけた。

**3. SEBI が AIF への外国投資に関する改訂された枠組みを導入**

SEBI はとりわけ、AIF へ投資している外国人投資家について、証券市場の監督当局が証券監督者国際機構 (IOSCO) 多国間覚書の署名当局であるか、または SEBI との二国間覚書の署名当局である国の居住者であることを義務づけた。

**4. Ansal Properties & Infrastructure Ltd. & Anr. 対 Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.**

デリー高等裁判所は、単なる契約の確認者は契約条件に基づく権利も義務も負わず、ある特別な状況においてやむを得ず仲裁をする可能性がある、と判示した。。

**5. RGA International Reinsurance Company Ltd. 対 Assistant Commissioner of Income Tax International Taxation**

所得税控訴裁判所ムンバイ法廷は、非居住者である再保険会社が受け取る再保険料に組み込まれた営業利益は、その再保険会社が自由裁量でインドに恒久的施設持たない場合、インドでは課税対象とならない、と判示した。

**6. 技術部門での反競争的慣行**

財務に関する常任委員会が、システム上重要なデジタル仲介者、デジタル競争法、アンチステアリングに焦点を当てた「大手テクノロジー企業による反競争的慣行」に関する報告書で見解と提案を示した。

**7. 2022 年法定計量 (一般) 改正規則**

2022 年法定計量 (一般) 改正規則は 2011 年法定計量 (一般) 規則を改正したもので、企業に対し、取締役 (director) を指名する代わりに、施設または支店の活動を計画し、指示し、そして管理する権限と責任を持つ施設長または支店長 (officer) を指名する権利を与える。

## Key updates from October 2022 - December 2022

### Part A: Sector specific updates

#### 1. New Drugs and Clinical Trials (Third Amendment) Rules, 2022 - Deemed Approval

The new amendment rules provide for deemed approval of ethics committee for clinical trials in case no approval is received within 45 (forty-five) working days from the date of submission of the application.

#### 2. The Government proposes draft rules for genetically modified foods

The Food Safety and Standards Authority of India (FSSAI) has proposed regulations for regulating 'genetically modified organisms' intended for food use and food ingredients.

#### 3. Amendments in relation to Advertising in the Food Industry

FSSAI has amended Food Safety and Standards Advertising Regulations to provide fairness in claims and advertisements of food products to make food business more accountable for such claims/advertisements so as to protect the interest of the customers. Specific guidelines with respect to labelling, declarations, servings, display panels, schedules, nutritional values, amongst others, are required to be adhered.

#### 4. Amendments to reduce fuel consumption by automobiles

The Ministry of Road Transport and Highways has amended the Central Motor Vehicle Rules, particularly for M2, M3 and N2 vehicle category, to map and reduce India's fuel consumption to meet the target aspired under the Energy Conservation Act, 2001.

#### 5. The Government introduces comprehensive testing parameters for safety of batteries in electric vehicles ("EVs")

The Ministry of Heavy Industries has notified comprehensive testing parameters for EVs to enhance battery safety with effect from April 1, 2023.

#### 6. PLI Scheme sanctioned

The Production Linked Incentive (PLI) scheme (Tranche II) (Scheme) under national programme on high efficiency solar PV modules has been approved that aims to promote manufacturing of high efficiency solar modules in India.

#### 7. Energy Conservation (Amendment) Bill, 2022

The Government has proposed amendment to the Energy Conservation Act, 2001 to, *inter alia*, include carbon credit dating, obligation to use non-fossil sources of energy, and standards for vehicle and vessels.

**Part B: General updates for foreign investors**

1. **Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**

The Reserve Bank of India has proposed to prescribe master directions that incorporate, consolidate, and update the existing guidelines/ instructions/ circulars on IT governance, risk, controls, assurance practices and business continuity/disaster recovery management.

2. **Reduction in denomination for debt securities and non-convertible redeemable preference shares**

Securities and Exchange Board of India (SEBI) had mandated that the face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 12,228 and the trading lot shall be equal to the face value.

3. **SEBI introduces revised framework for foreign investment in AIFs**

SEBI, *inter alia*, has mandated that the foreign investor investing in AIFs must be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI.

4. **Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.**

The Delhi High Court has held that a mere confirming party to a contract, who has no rights or obligations under the terms of the contract, may be compelled to arbitrate in certain exceptional circumstances.

5. **RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation**

The Mumbai bench of the Income Tax Appellate Tribunal has held that the business profits embedded in the reinsurance premium received by a non-resident reinsurance company, is not taxable in India if the company has no permanent establishment in India, at its disposal.

6. **The Anti-competitive practices in the tech sector**

The Standing Committee on Finance presented views and suggestions in its report on 'Anti-Competitive Practices by Big Tech Companies' focusing on systemically important digital intermediaries, digital competition act, and anti-steering.

7. **Legal Metrology (General) Amendment Rules, 2022**

The Legal Metrology (General) Amendment Rules, 2022 have amended the Legal Metrology (General) Rules, 2011, to provide a company the right to nominate an officer of the establishment or branch who has the authority and responsibility for planning, directing, and controlling the activities of the respective establishment, instead of nominating a director of the company.



## Section A: Sector specific updates

### Pharmaceutical

#### **New Drugs and Clinical Trials (Third Amendment) Rules, 2022 – Deemed Approval**

The New Drugs and Clinical Trials (Third Amendment) Rules, 2022 provides for the following key modifications: -

- a) Deemed approval of ethics committee for clinical trials if no approval has been received from the Central Licensing Authority by the applicant within 45 (forty-five) working days.
- b) Such approval shall be deemed to be legally valid for all purposes and the applicant shall be authorized to initiate clinical trial in accordance with the rules.

The deemed approval amendments ensure greater certainty in timelines and enable a speedier approval process for clinical trials.

### Renewable Energy

#### **PLI Scheme under ‘National Programme on High Efficiency Solar PV Modules’ approved**

The Production Linked Incentive (PLI) scheme (Tranche II) (Scheme) under national programme on high efficiency solar PV modules discussed in our earlier issue (July to September) has been sanctioned by the cabinet.<sup>1</sup> The aim of this Scheme is to promote manufacturing of high efficiency solar modules in India with the aim to reduce imports in this sector. Earlier the Government had, in April 2021, approved a scheme for approx. USD 550 million that was availed by three bidders for setting up 8,737 MW capacity of fully integrated manufacturing units. Under this Scheme an amount of approx. USD 2.3 billion has been allocated to manufacture high efficiency modules with priority to fully integrated manufacturing units. Subject to certain conditions, a company, or a joint venture/consortium of more than one company can bid for availing the benefits under the Scheme. Manufacturers of solar modules will be chosen via a transparent selection procedure. PLI will be paid out for five years after the factories that make solar modules post commissioning of the same. There will be incentives for the domestic market's sales of high-efficiency solar modules. An estimated 65 GW of completely and partially integrated solar module manufacturing capacity would be developed each year, lowering solar imports by nearly USD 16.5 billion. Additionally, the project will result in a direct investment of almost USD 11.5 billion. It is anticipated that the programme will create 195,000 direct jobs and 780,000 indirect jobs.

#### **Energy Conservation (Amendment) Bill, 2022**

The Indian Parliament has approved the Energy Conservation (Amendment) Bill, 2022, amending the Energy Conservation Act, 2001 (ECA). The ECA establishes a framework for regulating energy usage while also encouraging energy efficiency and conservation. The amendment attempts to recognise concepts like green hydrogen, green ammonia, and carbon credits as significant climate change mitigating measures in light of the global emphasis on energy transition and significance of new energy in climate change. Some of the salient features of this amendment are listed below:

- a) **Carbon credit trading schemes:** Carbon credit is given to an organisation for lowering a predetermined quantity of carbon emission from its operations. Under this scheme, the relevant authority will provide the registered entities with a carbon credit certificate which will be tradable with other entities, while any person can also purchase the certificate voluntarily.

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<sup>1</sup> F.No. 283/62/2020-GRID SOLA, Production Linked Incentive Scheme (Tranche II), Ministry of New and Renewable Energy, Government of India dated September 30, 2022.

- b) **Obligation to use non-fossil sources of energy:** The Government may impose a minimum percentage of energy consumption from non-fossil sources on specified users.
- c) **Standards for vehicles and vessels:** The bill allows for the specification of energy consumption criteria for equipment and appliances that consume, create, transmit, or provide energy.
- d) **Energy conservation code for large buildings:** The bill would establish standards for energy efficiency and conservation, the use of renewable energy, and other green construction criteria.

## **Food Processing**

### **Approval process for non-specified foods**

The Food Safety and Standards Authority of India (FSSAI) has through an amendment notified the process for granting prior approval to the manufacturer or importer of non-specified food.<sup>2</sup> The amendment provides for a time bound process for applying to FSSAI and for FSSAI to review and for the applicant to provide additional information for obtaining the approval.

### **The Government proposes draft rules for genetically modified foods**

The Food Safety and Standards Authority of India (FSSAI) has proposed regulations that apply to genetically modified organisms (GMOs) intended for food use, food ingredients produced from GMOs.

While the Government had proposed regulations earlier in 2021 which were applicable to GMOs,<sup>3</sup> genetically engineered organism, and living modified organisms, the 2022 Regulations only apply to GMOs. The 2022 Regulations mandate a prior approval of the food authority for manufacturing, packaging, selling, storing, marking or any other distribution or import of any food or food ingredient produced from GMOs. The 2022 Regulations, *inter alia*, provide for the procedure for grant of prior approval and labelling.

Since inception India has been very hesitant to the concept, presumably due to the unnatural nature of these products. But, since GMOs have become prominent and now a thriving industry, the Government has been taking cautious steps to regulate them.

### **Amendments in relation to Advertising in the Food Industry**

The Food Safety and Standards Authority of India (FSSAI) has amended the Food Safety and Standards Advertising Regulations<sup>4</sup>. The amendment focuses on providing fairness in claims and advertisements of food product to make food business more accountable for these claims/advertisements so as to protect the interest of the consumers. Specific guidelines are required to be followed by food businesses with respect to labelling, declarations, servings, display panels, schedules, nutritional values, nutrition comparative claims, additives, sodium elements, etc. This is developed to build transparency for consumers and accountability on the part of the food business operators.

Amongst others, the amended regulations mandate that the label of the product needs to specify the number of servings per day required to derive the claimed benefit from the food as opposed to the specified number of servings per day mandated in the pre-amended regulations. Further, the specification for the dimension of the disclaimer which can mislead the customers, on the label has been

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<sup>2</sup> Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) First Amendment Regulations, 2022 dated October 11, 2022.

<sup>3</sup> Food Safety and Standards (Genetically Modified or Engineered Foods) Regulations, 2021.

<sup>4</sup> Food Safety and Standards (Advertising and Claims) Second Amendment Regulations, 2022 dated December 13, 2022.



elucidated in the said amendment. There also have been additions in the regulations specifically governing sodium/salt in the food products.

## **Automobile**

### **Amendments to reduce fuel consumption by automobiles**

The Ministry of Road Transport and Highways (MoRTH) has amended the Central Motor Vehicles Rules<sup>5</sup>. These amendments are introduced to map and reduce India's fuel consumption to meet the target aspired for under the ECA. India aims to have 500 GW of non-fossil energy capacity and meet 50% of its energy requirements from renewable energy by 2030.

The amendment rules, *inter alia*, include a requirement for every manufacturer or importer of M2, M3 and N2 vehicle category, (except tippers and armoured vehicles), which are type approved under Rule 126, with gross vehicle weight between three and a half tonnes (3,500 kilograms) and twelve tonnes (12,000 kilograms), manufactured or imported for sale in India, to be tested for constant speed fuel consumption standard and comply with the fuel consumption target, notified under the ECA.

Further, every manufacturer or importer of M3 and N2 vehicle category, (except tippers and armoured vehicles), which are type approved under Rule 126, with gross vehicle weight of twelve tonnes (12,000 kilograms) and above, manufactured or imported for sale in India, on and from April 1, 2023, will be tested for constant speed fuel consumption standard and comply with the fuel consumption target, notified under the ECA.

### **The Government introduces comprehensive testing parameters for safety of batteries in EVs**

The Ministry of Heavy Industries (MHI) has notified testing parameters for electric vehicles (EVs) to enhance their battery safety.<sup>6</sup> Reportedly, these tests are widely accepted internationally for ensuring passenger safety in EVs, according to MHI. As a precondition for claiming incentives under the ministry's three flagship schemes, namely Product Linked Incentive (PLI) schemes for automobile and components, PLI scheme for Advanced Cell Chemistry (ACC), and the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) II scheme, MHI has made these tests mandatory for all EV and battery suppliers, with effect from 1st April 2023.

These testing parameters were earlier intended to be implemented from October 2022, but they are now being rolled out in two phases: phase I (December 1, 2022) and phase II (March 31, 2023). Since the parameters necessitate change in battery design, the extension has been given to allow manufacturers to work on new design and development to adhere to these parameters and ensure effective implementation.

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<sup>5</sup> Central Motor Vehicle Rules, 1989, amended via Central Motor Vehicles (Nineteenth Amendment) Rules, 2022 dated November 22, 2022.

<sup>6</sup> Available at

[https://pib.gov.in/PressReleasePage.aspx?PRID=1862596#:~:text=To%20strengthen%20the%20safety%20parameters,%2D038%20\(R%20Rev%202022\).](https://pib.gov.in/PressReleasePage.aspx?PRID=1862596#:~:text=To%20strengthen%20the%20safety%20parameters,%2D038%20(R%20Rev%202022).)

## **Section B: General updates**

### **Reserve Bank of India**

#### **Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**

The Reserve Bank of India (RBI) has proposed to prescribe Master Directions on Information Technology Governance, Risk, Controls and Assurance Practices (Directions), to be implemented by regulated entities (REs).<sup>7</sup> These rules apply to all REs (except the ones specifically exempted) such as scheduled commercial banks (except regional rural banks), small finance banks, payments banks, all non-banking financial companies etc. The Directions incorporates, consolidates, and updates the existing guidelines/ instructions/circulars on IT governance, risk, controls, assurance practices and business continuity/ disaster recovery management. REs are required to formulate a robust governance framework comprising of governance structure and processes necessary for its business and strategic objectives. Such policies must be reviewed annually by the board. Further, the governance framework shall specify the role (including authority) and responsibilities of the board of directors / board level committee/ local management committee (in case of foreign banks operating as branches in India) and senior management. These directions shall come into force 6 (six) months from the date of issue.

#### **Inclusion of Goods and Services Tax Network**

With a view to facilitate cash flow-based lending to Micro, Small & Medium Enterprises (MSMEs), the RBI has added Goods and Services Tax Network (GSTN) as a Financial Information Provider (FIP) under the Account Aggregator (AA) framework.<sup>8</sup> Reportedly, GSTN is the technology backbone of India acting as a uniform interface for the taxpayer and also create a common and shared information technology infrastructure between the centre and the states, with 1.40 crore taxpayers registered under it. The Department of Revenue will be the regulator of GSTN for this specific purpose and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, will now be included under the definition of 'financial information'.

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

#### **Reduction in denomination for debt securities and non-convertible redeemable preference shares**

SEBI had earlier mandated that the face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 12,228 and the trading lot shall be equal to the face value.<sup>9</sup> On October 28, 2022 SEBI has notified that the face value of the listed debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 1,228.<sup>10</sup> The provisions of this circular shall be applicable to all issues of debt securities and non-convertible redeemable preference shares, on private placement basis, through new international securities identification number, on or after January 01, 2023.

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<sup>7</sup> Draft Master Direction - Information Technology Governance, Risk, Controls and Assurance Practices dated October 20, 2022.

<sup>8</sup> Inclusion of Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework dated November 23, 2022.

<sup>9</sup> Operational Circular no. SEBI/HO/DDHS/P/CIR/2021/6 dated August 10, 2021.

<sup>10</sup> Circular no. Page 1 of 2 CIRCULARSEBI/HO/DDHS/P/CIR/2022/00144 dated October 28, 2022.

## **Schemes of AIFs which have adopted priority in distribution among investors**

As per SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations), Alternative Investment Fund (AIF) collects funds from investors, for investing it in accordance with a defined investment policy for the benefit of its investors.<sup>11</sup> While it has not been explicitly restricted in AIF Regulations that the sharing of loss by a class of investors shall not be less than pro rata to their holding in the alternative investment funds (AIF) vis-à-vis other classes of investors/unit holders, it has been brought to SEBI's attention that certain schemes of AIFs have adopted a distribution waterfall in such a way that one class of investors (other than sponsor/manager) share loss more than pro rata to their holding in the AIF vis-à-vis other classes of investors/unit holders, since the later has priority in distribution over former (Priority Distribution Model).

The aforesaid matter is being examined by SEBI in consultation with policy advisory committee and other stakeholders. It has been decided that schemes of AIFs which have adopted the aforesaid Priority Distribution Model, will not accept any fresh commitment, or make investment in a new investee company, till a view is taken by SEBI in this regard.

## **SEBI introduces revised framework for foreign investment in AIFs**

On December 9, 2022, SEBI issued a new framework for AIFs seeking funding from international investors.<sup>12</sup> In this regard, SEBI has stated that when onboarding foreign investors, the manager of an AIF must ensure that the foreign investor of the AIF is a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI. Furthermore, the investor providing 25% or more of the corpus must not be a person included on the United Nations Security Council's Sanctions List or a resident of a nation named in the Financial Action Task Force (FATF) public statement.

Additionally, if an investor fails to satisfy the required requirements after joining a scheme, the AIF manager will not accept any future capital contributions until the investor complies with the conditions. This will also apply to investors who have already been accepted into existing AIF plans but do not fulfil the necessary conditions.

## **Arbitration**

### **Confirming party to a contract may invoke arbitration clause if test of 'implied consent' is satisfied**

The Delhi High Court in *Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*<sup>13</sup>, held that a mere confirming party to a contract, who has no rights or obligations under the provisions of the contract, may under certain rare circumstances, be compelled to arbitrate. The parties entered into a joint venture agreement (JVA) for renovation and development of the said property with 'Ansal properties' being only a confirming party. Though the Court recognized that in normal circumstances, a non-signatory to an arbitration agreement cannot be compelled to arbitrate and cannot be assumed to have acceded to arbitration, the said rule is flexible and that the surrounding circumstances must be taken into consideration for determination of the same. The Court applying the first theory of 'implied consent' of the twin test laid down by the Supreme Court<sup>14</sup> ruled that the very fact that the confirming party signed the JVA containing the arbitration clause, implies that it consented to all disputes being decided through arbitration. The Court therefore

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<sup>11</sup> Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2022/157 dated November 23, 2022.

<sup>12</sup> Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2022/171 dated December 9, 2022.

<sup>13</sup> *Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*, A.P. No. 1050 of 2021.

<sup>14</sup> *Chloro Controls India (P) Ltd. v. Seven Trent Water Purification Inc.*, (2013) 1 SCC 641.

held that, since the JVA featured an arbitration clause for dispute settlement, which was determined to be binding on all parties as a result of each of the four parties being a signatory to it.

### **Arbitral award which rewrites the contract is completely impermissible and bound to be set aside**

The Delhi High Court in *Calcom Cement India Ltd. v. Binod Kumar Bawri & Ors.*<sup>15</sup> has held that where the parties have agreed to mutually make amendments to an original agreement, the same would only constitute an "agreement to agree" and is not enforceable in law. The court held that it is legally impermissible for two parties to rewrite a contract, particularly in a commercial deal. As a result, an arbitral decision that modifies the terms of the contract must be overturned. Several agreements were executed among M/s Calcom Cement India Ltd. (Calcom), Dalmia Cement (Bharat) India (Dalmia), and the Bawris. The dispute arose from certain clauses of the Shareholder Agreement (SHA). The Bawris commenced arbitration procedures against Calcom and Dalmia. The Bawris admittedly failed to fulfil the project responsibilities as required by the SHA, and Dalmia said in counterclaims before the Arbitral Tribunal that this failure made remedy for Dalmia more appropriate than payment of the amount sought by the Bawris. The Tribunal held in favour of the Bawris as firstly, the obligations listed in the clauses of the SHA were to be met by the Bawris only as long as the Bawris retained control of Calcom and secondly, that the subsequent shift of control then made Dalmia responsible for fulfilling the project obligations instead. The High Court determined that the Tribunal's ruling amounted to a rewriting of the provision requiring the Bawris to comply with project requirements. It was further held that an arbitral judgement that does not fit this condition must be set aside, as such rewriting was declared to be entirely unlawful in the eyes of the law. The tribunal is also expected to make decisions that are consistent with the terms of the actual contract.

## **Tax**

### **RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation**

The Mumbai bench of the Income Tax Appellate Tribunal (ITAT) held that the business profits embedded in the reinsurance premium received by a non-resident reinsurance company, is not taxable in India if the company has no permanent establishment (PE) in India which is at its disposal<sup>16</sup>. Accordingly, the ITAT stated that a particular place cannot be deemed to be the assessee's PE unless it is the one that the assessee has access to. The ITAT, further, observed that since the assumption of risk, which is at the basis of the reinsurance business, was done outside of India, the reinsurance profit could not be ascribed to RGA India.

## **Competition Law**

### **The Anti-Competitive Practices by Big Tech Companies**

The Standing Committee on Finance presented its report on 'Anti-Competitive Practices by Big Tech Companies' on December 22, 2022. The Committee's views and suggestions are presented in this report, which analyses key anti-competitive behaviours by big tech corporations. The Committee's key observations and recommendations include:

- a) **Systemically important digital intermediaries (SIDI):** The Committee highlighted that there is a growing worldwide agreement that it is vital to identify big tech companies or SIDI who potentially have a detrimental impact on competitive behaviour in the digital ecosystem and subject them to ex-ante requirements to promote fair competition in digital marketplaces.

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<sup>15</sup> *Calcom Cement India Ltd. V. Binod Kumar Bawri & Ors.*, O.M.P. (COMM) No. 152 of 2021.

<sup>16</sup> *RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation*, ITA No.8243/Mum/2010.

- b) **Digital Competition Act:** To promote a fair, transparent, and contestable digital ecosystem, the Committee recommended that the Government enact a Digital Competition Act. Furthermore, the Committee believes that the Competition Commission of India's role in addressing anti-competitive behaviour in digital marketplaces should be enhanced through monitoring SIDIs.
- c) **Anti-steering:** Anti-steering clauses forbid business users of a platform from directing their clients to offers other than those made available by the platform. The Committee advised SIDIs against making access to their platform dependent on using or purchasing goods or services that are not integral to or related to the platform.

## Others

### **Legal Metrology (General) Amendment Rules, 2022**

The Legal Metrology (General) Amendment Rules, 2022 have amended the Legal Metrology (General) Rules, 2011.<sup>17</sup> A company can now nominate an officer of the establishment or branch who has the authority and responsibility for planning, directing, and controlling the activities of the respective establishment or branch or unit in any establishment or branch. The amendment would help the companies to nominate a person who is actually responsible for the day-to-day activities of an establishment or branch or unit of the company instead of the director of the company.

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<sup>17</sup> Legal Metrology (General) Amendment Rules, 2022 dated October 6, 2022

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