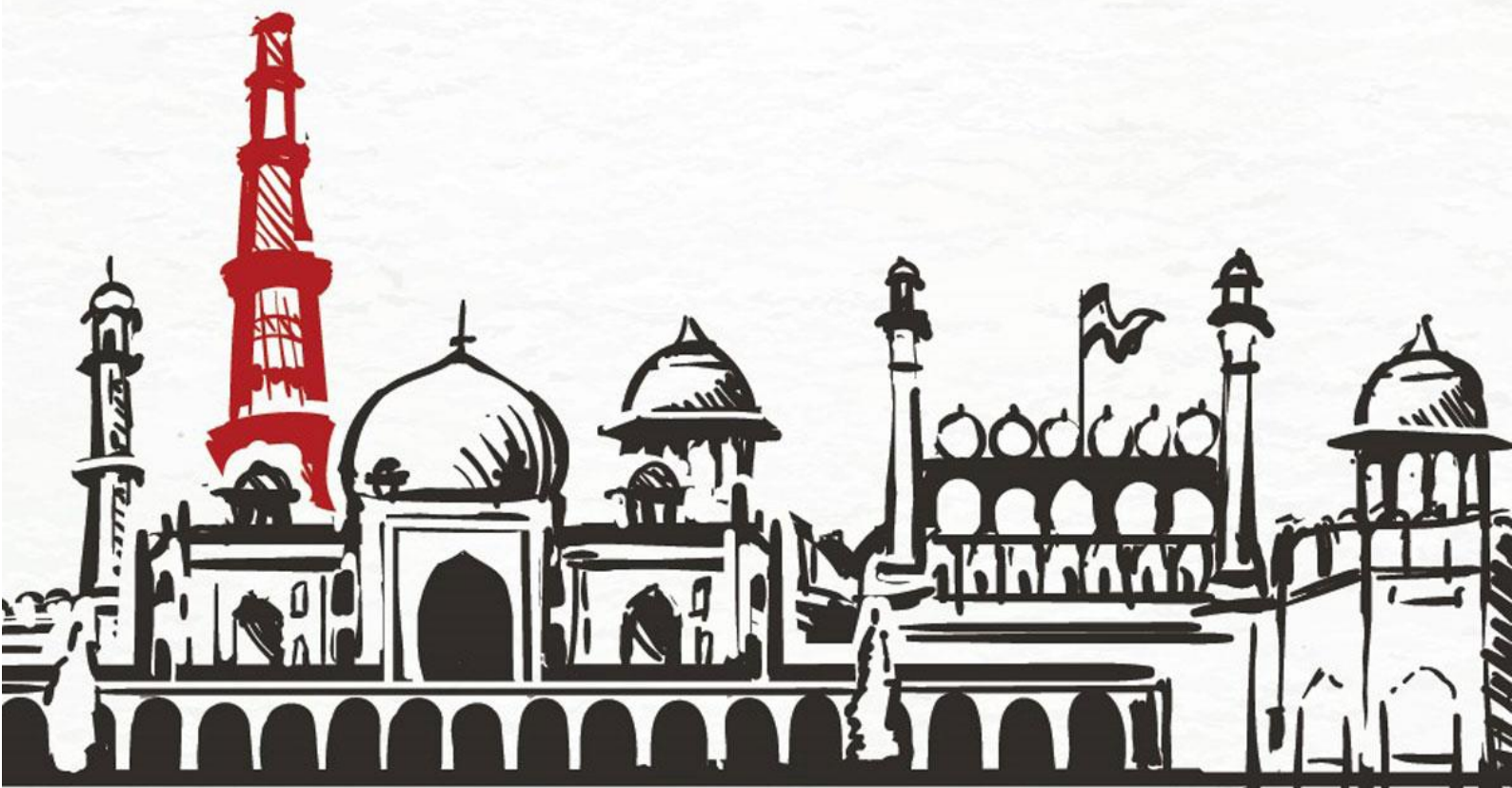


# INDIA NEWSLETTER

*Quarter of April to June 2024*



India and Japan share a dynamic and multifaceted partnership that spans strategic alliances, robust economic ties, and a rich cultural exchange encompassing technology, education, and traditional arts. Japan is one of the top investors in India, contributing significantly to various sectors, including infrastructure, automobile, and technology sectors etc.

Japan's focus on quality infrastructure development aligns with India's ambitious infrastructure projects, including the high-speed rail corridor and smart cities initiative. Japan's emphasis on sustainable development resonates with India's goals for renewable energy and environmental conservation, paving the way for joint ventures in green technology and energy-efficient solutions.

Recently, India was ranked as the #1 (one) destination for Japanese overseas operations for the second year in a row, by a survey of almost 1000 (one thousand) Japanese companies.

In this newsletter, we will delve into the key legal developments from the past quarter in India.

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## 重要アップデート概要

### パートA: 分野別アップデート

1. モデルとメーカーの承認リスト (ALMM)、及び、モデルとメーカーの修正リスト (RLMM) からの一部のエネルギー発電所の免除

新・再生可能エネルギー省は、経済特区に所在するか、又は、輸出志向型企業である再生可能エネルギー発電所に対し、ソーラーパネルについては ALMM から、及び、風力タービンについては RLMM から、その調達要件を免除した。

### パートB: 一般アップデート

1. インド証券取引委員会 (SEBI) による、上場義務及び開示要件規則 (LODR 規則) の改正

時価総額の決定基準を、前年の財務諸表から「平均時価総額」に修正した LODR 規則の改正が通知された。更に、2024 年 6 月 1 日からは、上位 100 (百) の上場会社、及び、2024 年 12 月 1 日からは、上位 250 (二百五十) の企業は、マスコミにより報道された市場価格に影響を及ぼす風評を開示し、検証する必要がある。

2. 2018年株式の発行及び開示要件規則の改正

株式発行後の5% (五パーセント) 以上を保有する、その他の創業者グループのメンバー (個人又は非個人)、及び、非個人株主は、現在、創業者最低出資の不足額を拠出する権利を有する。

3. インド準備銀行 (RBI) は、インド法人の認可国際取引所における直接上場を認めている。

インド国外における認可管轄内において、インド法人による、その普通株の直接上場を可能にした規則を導入したインド企業省に従って、RBI は、インド国内にて設立された法人の、国際取引所における普通株式の直接上場を、現在は資金調達方法として認め、その支払い方法を提供している。

4. RBI はフィンテック自主規制機関 (SROs) の最終的枠組みを発表している。

RBI は、フィンテック SROs が、利害関係人のフィードバックを複数の SROs 及び会費に取り込みつつ、多様な所有関係のもと、非営利として運営される為に必要な規則を最終的に決定した

5. 登録満了後の証券の取扱いにおける外国ポートフォリオ投資家 (FPIs) への順応性

SEBI は FPIs に対して次の事項を許可している。即ち、(i) その登録満了の場合、満了から 30 (三十) 日以内に、登録料 (延滞料と併せて) を支払うことにより、当該登録を継続すること、及び、(ii) 登録満了後の証券に関して、一定の期間内に処分すること。

6. **SEBIはFPIsの開示要件を修正する。**

SEBI は重大な変更に関する開示を、タイプ I とタイプ II に分類している。タイプ I の変更は、変更から 7(七)労働日以内に報告しなければならず、タイプ II は、直ちに報告しなければならない。

7. **RBIはインド法人及び個人に対し、海外投資オプションを拡大する。**

インド法人及び居住者は、規制対象になっている海外投資ファンドにより発行される様々な証券及びユニット型投資信託持分に投資することが認められている。これには、国際金融サービスセンター(IFSCs)におけるものも含まれる。

## SUMMARY OF KEY UPDATES

### Part A: Sectoral updates

1. **Exemption from Approved List of Models and Manufacturers (ALMM) and Revised List of Models and Manufacturers (RLMM) for certain energy power plants**

The Ministry of New and Renewable Energy has exempted the renewable energy power plants that are situated in the special economic zones or export-oriented units, from the requirement of sourcing solar panels from the ALMM and wind turbines from the RLMM.

### Part B: General updates

1. **Amendment to Listing Obligations and Disclosure Requirements Regulations (LODR Regulations) by the Securities and Exchange Board of India (SEBI)**

Amendment to LODR Regulations have been notified, that revises the criteria for determining market capitalisation from previous year financials to 'average market capitalisation'. Further, from June 01, 2024, the top 100 (one hundred) listed companies and from December 01, 2024, the top 250 (two hundred fifty) entities are required to disclose and verify any media-reported rumours affecting market prices.

2. **Amendment to Issue of Capital and Disclosure Requirements Regulations, 2018**

Other members of promoter group (individual or non-individual) and non-individual shareholders holding at least 5% (five percent) of the post issue capital are now eligible to contribute towards fulfilling any shortfall in the minimum promoter contribution.

3. **Reserve Bank of India (RBI) recognises direct listing of Indian companies on permissible international exchanges**

Pursuant to the Ministry of Corporate Affairs introducing rules enabling Indian companies to directly list their equity shares in permissible jurisdictions outside India, the RBI has now recognised direct listing of equity shares of companies incorporated in India on international exchanges, as a method of raising funds and provides the modes of payment for the same.

4. **RBI releases final framework for FinTech Self-Regulatory Organisations (SROs)**

The RBI has finalized rules requiring FinTech SROs to operate as non-profits with diversified ownership, incorporating stakeholder feedback on multiple SROs and membership fees.

5. **Flexibility to foreign portfolio investors (FPIs) in dealing with securities post-expiry of their registration**

SEBI has permitted FPIs to (i) continue their registration by paying registration fees (along with late fees) in case of expiry of their registration, within 30 (thirty) days of expiry; and (ii) dispose of their securities post expiry of their registration.

6. **SEBI revises disclosure requirement for FPIs**

SEBI has categorised disclosures in relation to material changes into type I and type II. Type I changes must be reported within 7 (seven) working days of the change and type II must be reported promptly.

7. **RBI expands overseas investment options for Indian entities and individuals**

Indian companies and residents are permitted to invest in various instruments and units issued by regulated overseas investment funds, including those in international financial services centres (IFSCs).

## PART A: Sectoral Updates

### Renewable Energy

#### **Exemption from Approved List of Models and Manufacturers (ALMM) and Revised List of Models and Manufacturers (RLMM) for certain energy power plants**

On May 27, 2024, the Ministry of New and Renewable Energy (MNRE) exempted the renewable energy power plants that are situated in the special economic zones (SEZs) or export-oriented units (EOUs), from the requirement of sourcing solar panels and wind turbines from the ALMM and RLMM.<sup>1</sup> This exemption allows green hydrogen plants in SEZs and EOUs more flexibility in sourcing solar panels and wind turbines.

ALMM is a list issued by MNRE that specifies the solar photovoltaic module models and manufacturers that are authorized for use in government projects, government-assisted projects, projects under government schemes and programs, open access projects, and net-metering projects within the country. RLMM is also issued by MNRE and it identifies the wind turbine models and manufacturers that have been certified for type and quality and are eligible for installation in India.

This exemption is only available to the power plants that specifically supply power to green hydrogen production units.

A detailed analysis of the framework is provided in our InfoLex publication available at <https://induslaw.com/publications/pdf/alerts-2024/energizing-india-green-hydrogen-revolution-mnre-almm-and-rlmm-exemption-sparks-momentum.pdf>

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<sup>1</sup> Ministry of New and Renewable Energy, Office Memorandum No. 1/74/2023-NT, Exemption from ALMM requirements for renewable energy plants located inside an SEZ or EOU, dated May 27, 2024, available at <https://cdnbbsr.s3waas.gov.in/s3716e1b8c6cd17b771da77391355749f3/uploads/2024/05/20240528324622281.pdf>, last accessed June 01, 2024.



## Section B: General updates

In this section, we focus on the key regulatory developments that have been introduced in the quarter. The Securities and Exchange Board of India's (SEBI) amendment providing flexibility to foreign portfolio investors (FPIs) in dealing with securities held by them post expiry of their registrations indicates the regulator's drive towards promoting ease of investing in India. Similarly, the amendment by the Reserve Bank of India (RBI) providing Indian entities and residents the flexibility to invest in a wider variety of overseas funds allows Indian investors to access a wider market.

### SEBI

#### **Amendments to SEBI (Alternate Investment Funds) Regulations, 2012**

In April this year, SEBI notified amendments to provide ease of doing business and flexibility to alternate investment funds (AIFs).<sup>2</sup> Key amendments to the above-mentioned AIF regulations include:

- (i) Category I and category II AIFs are permitted to create encumbrance on the equity of an investee company which is in the business of development, operation, or management of projects in any of the infrastructure sub sectors listed in the Harmonised Master List of Infrastructure issued by the Government of India.<sup>3</sup> The list includes sub sectors such as roads and bridges, electricity generation, transmission and distribution, solid waste management etc. However, such encumbrance can only be created for borrowing by the investee company subject to conditions stipulated by SEBI. Further, SEBI has also issued a circular providing framework for the same which includes conditions such as duration of encumbrance and disclosure requirements.<sup>4</sup>
- (ii) AIFs are permitted to enter into a 'dissolution period' of not more than the original tenure of the scheme by filing an information memorandum with SEBI through a merchant banker. The dissolution period is a period following the expiry of the liquidation period of the scheme for liquidating the unliquidated investments of an AIF scheme. SEBI has also issued a detailed circular regarding the same which specifies certain conditions relating to an AIF scheme entering into dissolution period, mandatory in-specie distribution of unliquidated investments and one time flexibility to AIFs whose liquidation period expires on or before July 24, 2024, wherein such schemes will be granted a fresh liquidation period till April 24, 2025.<sup>5</sup>
- (iii) Every AIF, AIF manager, and key managerial personnel of the manager and the AIF are required to exercise specific due diligence with respect to their investment and investors to prevent facilitation of circumvention of laws.

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<sup>2</sup> Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2024, dated April 25, 2024, available at [https://www.sebi.gov.in/legal/regulations/apr-2024/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2024\\_83060.html](https://www.sebi.gov.in/legal/regulations/apr-2024/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2024_83060.html), last accessed June 5, 2024.

<sup>3</sup> Ministry of Finance, Notification F.No. 13.2017-INF, dated August 24, 2020, available at [https://dea.gov.in/sites/default/files/updated%20%20Harmonized%20Master%20%20List%20of%20%20In%20%20Sub-sectors%20dated%202024-8-2020\\_1.pdf](https://dea.gov.in/sites/default/files/updated%20%20Harmonized%20Master%20%20List%20of%20%20In%20%20Sub-sectors%20dated%202024-8-2020_1.pdf), last accessed April 30, 2024.

<sup>4</sup> Securities and Exchange Board of India, Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies, dated April 26, 2024, available at [https://www.sebi.gov.in/legal/circulars/apr-2024/framework-for-category-i-and-ii-alternative-investment-funds-aifs-to-create-encumbrance-on-their-holding-of-equity-of-investee-companies\\_83067.html](https://www.sebi.gov.in/legal/circulars/apr-2024/framework-for-category-i-and-ii-alternative-investment-funds-aifs-to-create-encumbrance-on-their-holding-of-equity-of-investee-companies_83067.html), last accessed April 30, 2024.

<sup>5</sup> Securities and Exchange Board of India, Flexibility to Alternative Investment Funds (AIFs) and their investors to deal with unliquidated investments of their schemes, dated April 26, 2024, available at [https://www.sebi.gov.in/legal/circulars/apr-2024/flexibility-to-alternative-investment-funds-aifs-and-their-investors-to-deal-with-unliquidated-investments-of-their-schemes\\_83065.html](https://www.sebi.gov.in/legal/circulars/apr-2024/flexibility-to-alternative-investment-funds-aifs-and-their-investors-to-deal-with-unliquidated-investments-of-their-schemes_83065.html), last accessed June 04, 2024.



## **Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR)**

On May 17, 2024, SEBI notified amendments wherein a revised criteria for determining market capitalization based on 'average market capitalization' has been made applicable.<sup>6</sup> Prior to the amendment, market capitalization was based on the figures of March 31 of the preceding financial year. This change will become effective from December 31, 2024, after which, every recognised stock exchange will, at the end of each calendar year (i.e. December 31), prepare a list of listed entities based on average market capitalisation from July 1 to December 31 of that calendar year. Further, the timelines for compliance with the corporate governance provisions of the relevant SEBI regulation for high value debt listed entities<sup>7</sup> have been extended to March 31, 2025 from March 31, 2024. These include, inter alia, provisions for composition for board of directors, constitution of specialised committees, stipulations related to related party transactions, etc.

Additionally, effective from June 01, 2024, the top 100 (hundred) and from December 01, 2024, the top 250 (two hundred fifty) listed entities, by market capitalisation are required to mandatorily disclose and verify any reported event or information in the mainstream media indicating rumours about any specific event or information. Under SEBI LODR, unaffected price is considered for transactions on which pricing norms specified by SEBI, or the stock exchanges are applicable, provided that the rumour pertaining to such transaction has been confirmed within 24 (twenty-four) hours from the trigger of material price movement. Further, unaffected price will be considered for transactions on which SEBI pricing guidelines are applicable provided that the rumour pertaining to the transaction has been confirmed within 24 (twenty-four) hours from the trigger of material price movement.<sup>8</sup>

## **Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR)**

On May 18, 2024, pursuant to the release of interim recommendations of the expert committee, invitation of comments from the public and approval of amendments in its board meeting, SEBI notified amendments which include:<sup>9</sup>

- (i) Broadening the range of entities who can contribute to shortfall in minimum promoter contribution: Under the SEBI regulations, the promoter of an initial public offering (IPO) bound issuer is required to hold at least 20% (twenty percent) of the post-IPO paid up capital (MPC) of the issuer which is further locked in for a period of between 18 (eighteen) months to 3 (three) years. Prior to the amendment, any contributions towards fulfilling shortfall in the MPC (i.e. if the promoter of the issuer held less than 20% (twenty percent) of the post-IPO capital) could only be made by SEBI registered AIFs and foreign venture capital investors, scheduled commercial banks, public financial institutions, and insurance companies (subject to a maximum of 10% (ten

<sup>6</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024, dated May 17, 2024, available at [https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2024\\_83476.html](https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2024_83476.html), last accessed June 05, 2024.

<sup>7</sup> Under SEBI LODR Regulation 15, high value debt listed entities are entities which have listed its non-convertible debt securities and have an outstanding value of non-convertible debt securities of INR 500 crore (~USD 60 million).

<sup>8</sup> Securities and Exchange Board of India, Framework for considering unaffected price for transactions upon confirmation of market rumour, dated May 21, 2024, available at [https://www.sebi.gov.in/legal/circulars/may-2024/framework-for-considering-unaffected-price-for-transactions-upon-confirmation-of-market-rumour\\_83483.html](https://www.sebi.gov.in/legal/circulars/may-2024/framework-for-considering-unaffected-price-for-transactions-upon-confirmation-of-market-rumour_83483.html), last accessed May 29, 2024.

<sup>9</sup> Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024, dated May 17, 2024, available at [https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2024\\_83469.html](https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2024_83469.html), last accessed June 06, 2024.

percent) of post-issue share capital being contributed towards shortfall) without being identified as a “promoter”. Pursuant to the amendment, the ability to contribute to MPC shortfall has been extended to (a) other members of promoter group (individual or non-individual); and (b) non-individual shareholders holding at least 5% (five percent) of the post issue capital. The limit of 10% (ten percent) of MPC shortfall that can be contributed by such persons/ entities remains the same.

- (ii) Inclusion of compulsorily convertible securities (CCS) towards MPC: SEBI regulations provide that only certain eligible securities can be utilised for the 20% (twenty percent) MPC limit. One eligibility criteria is that MPC shares should have been held by the promoters for at least 1 (one year) prior to the IPO. Prior to the amendment, CCS held for more than 1 (one) year prior to filing of the draft red herring prospectus (DRHP) were not considered to be eligible securities for utilisation towards MPC (since the converted equity shares were held for less than 1 (one) year), and issuers were required to obtain an exemption from SEBI on a case-by-case basis. Pursuant to the amendment, given the nature of CCS being compulsory convertible, such CCS have now been categorised as eligible for MPC, provided full disclosures of the terms of conversion is made in the DRHP, and they are converted into equity shares prior to filing of the red herring prospectus (RHP).
- (iii) Revised threshold for refiling of DRHP: Prior to the amendment, any increase or decrease in estimated issue size (as disclosed in the DRHP) by more than 20% (twenty percent), in case of a fresh issue and by more than 50% (fifty percent), in case of an offer for sale, triggered refiling of the DRHP. However, the provision did not provide whether the change in the estimated size would be tested in terms of number of shares or amount in Rupee. Pursuant to the amendment, the provision clarifies that the change in the fresh issue size will be tested in terms of rupee value i.e., an INR 100 crore fresh issue size at DRHP stage can increase to INR 120 crore and decrease to INR 80 crore, without mandating a refiling. Similarly, the changes in offer for sale must be tested on change in terms of rupee value. This change would remove any ambiguity around testing the refiling triggers at the updated DRHP stage.

A detailed analysis of the amendment is provided in our InfoLex publication available at <https://induslaw.com/publications/pdf/alerts-2024/summary-of-key-amendments-to-the-sebi-icdr-regulations.pdf>.

### **Audiovisual presentation of disclosures made in public issue offer document**

On May 24, 2024, SEBI issued a circular mandating that disclosures made in public issue offer documents such as the DRHP, RHP, and the price band advertisement will also have to be made in audiovisual (AV) format.<sup>10</sup> Such AV presentation which will be made available in bilingual format i.e., English and Hindi, will be prepared in accordance with the SEBI ICDR and will contain specific disclosures provided in the circular. The AV presentation will be made available on the websites and social media platforms of the issuer and the Association of Investment Bankers of India within 5 (five) working days of filing of the DRHP. Further, it will be updated with the information disclosed in the RHP and price band advertisement including details of the issue opening/ closing date, price/ price-band. The updated AV presentation will be uploaded on the date of publication of the price band advertisement or the date of filing of the prospectus (in case of fixed price issues). This circular is

<sup>10</sup> Securities and Exchange Board of India, Audiovisual (AV) presentation of disclosures made in Public Issue Offer Documents, dated May 24, 2024, available at [https://www.sebi.gov.in/legal/circulars/may-2024/audiovisual-av-presentation-of-disclosures-made-in-public-issue-offer-documents\\_83569.html](https://www.sebi.gov.in/legal/circulars/may-2024/audiovisual-av-presentation-of-disclosures-made-in-public-issue-offer-documents_83569.html), last accessed May 30, 2024.

applicable on all DRHPs filed with SEBI on or after July 01, 2024, on a voluntary basis and on a mandatory basis from October 01, 2024.

### **Norms for sharing real time price data with third parties**

On May 24, 2024, SEBI issued a circular addressing concerns about certain online gaming platforms (including apps and websites) offering virtual trading services based on real-time share prices of listed companies.<sup>11</sup> The circular stipulates that stock exchanges, clearing corporations, depositories, and registered market intermediaries must not share real-time price data with third parties.

As per the above-mentioned circular, sharing of real-time data is permitted to ensure the orderly functioning of the securities market or to fulfil regulatory requirements. In this regard, market price data can be shared for investor education and awareness activities, provided there is no monetary incentive for participants and the data is shared with a 1 (one) day lag.

The market institutions or intermediaries must enter into agreements with entities with whom they intend to share real-time price data. These agreements must clearly specify the activities for which the data will be used and justify its necessity for the orderly functioning of the securities market.

The provisions of this circular will become effective from June 23, 2024, which is the 30<sup>th</sup> (thirtieth) day following its issuance.

### **Modification in framework for offer for sale (OFS) of shares to employees through Stock Exchange Mechanism<sup>12</sup>**

The SEBI circular dated June 14, 2024, revises the previous framework for the OFS of shares to employees,<sup>13</sup> thereby requiring employees to place bids on T+1 (one) Day at the cut-off price of T Day, instead of the cut-off price at T+1 (one) Day.<sup>14</sup> The allotment must also be based on the cut-off price of the T Day. This change is based on the feedback received from stakeholders and deliberations by the Secondary Market Advisory Committee of SEBI. The updated provisions will be effective from July 14, 2024.

### **SEBI releases a circular for direct payout of securities to client's demat account<sup>15</sup>**

SEBI, in June, mandated clearing corporations to credit the client's demat account directly with the securities payout. Currently, the securities received in payout are pooled by the broker and then credited to the respective client's demat account. It must be noted that the direct payout to the client account was already facilitated on a voluntary basis from February 01, 2001. The circular takes effect

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<sup>11</sup> Securities and Exchange Board of India, Norms for Sharing of real time price data to third parties, dated May 24, 2024, available at [https://www.sebi.gov.in/legal/circulars/may-2024/norms-for-sharing-of-real-time-price-data-to-third-parties\\_83572.html](https://www.sebi.gov.in/legal/circulars/may-2024/norms-for-sharing-of-real-time-price-data-to-third-parties_83572.html), last accessed June 05, 2024.

<sup>12</sup> Securities and Exchange Board of India, Modification in Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism, dated June 14, 2024, Available at: [https://www.sebi.gov.in/legal/circulars/jun-2024/modification-in-framework-for-offer-for-sale-ofs-of-shares-to-employees-through-stock-exchange-mechanism\\_84170.html](https://www.sebi.gov.in/legal/circulars/jun-2024/modification-in-framework-for-offer-for-sale-ofs-of-shares-to-employees-through-stock-exchange-mechanism_84170.html), last accessed on July 01, 2024.

<sup>13</sup> Securities and Exchange Board of India, Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism. dated January 23, 2024.

<sup>14</sup> Securities and Exchange Board of India, Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism. dated January 23, 2024.

<sup>15</sup> Securities and Exchange Board of India, Enhancement of operational efficiency and Risk Red securities directly to client demat account, dated June 05, 2024, Available at [https://www.sebi.gov.in/legal/circulars/jun-2024/enhancement-of-operational-efficiency-and-risk-reduction-pay-out-of-securities-directly-to-client-demat-account\\_83930.html](https://www.sebi.gov.in/legal/circulars/jun-2024/enhancement-of-operational-efficiency-and-risk-reduction-pay-out-of-securities-directly-to-client-demat-account_83930.html), last accessed on July 03, 2024.

from October 14, 2024, with implementation standards to be set by August 05, 2024, through industry collaboration under SEBI's oversight.

### **Flexibility to FPIs in dealing with securities post expiry of their registration<sup>16</sup>**

SEBI has recently notified the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024 (Amendment Regulations), thereby amending the SEBI (Foreign Portfolio Investors) Regulations, 2019. The Amendment Regulations provide FPIs with the flexibility to deal with their securities even after expiry of their registration. Pursuant to the Amendment Regulations, on June 05, 2024, SEBI also released a circular providing the framework and timelines in relation to dealing with securities post expiry of the registration of FPIs (Framework).

Under the 2019 regulations, FPIs holding securities in India are required to have a valid registration with SEBI. FPIs are required to pay a registration fee and provide supporting documents, if required, to their respective Designated Depository Participants (DDPs) before the expiry of their existing registration. Previously, FPIs that failed to pay the registration fee to the DDP before the expiry of their registration were not permitted to apply for continuance as FPI. Such FPIs had to surrender their registration and make a fresh application for registration. However, pursuant to the Amendment Regulations, FPIs are allowed to pay the registration fee, along with a late fee, within 30 (thirty) days of expiry of their registration. Further, FPIs have also been permitted to dispose of the securities held in their account during this period, within 180 (one-hundred eighty) days from the expiry of the above-mentioned period. Previously, there was no provision for this effect.

Previously, in the event of reclassification of a FPI resulting from non-compliance with the eligibility requirements under the registered category, the FPIs were allowed to sell their securities within 180 (one-hundred eighty) days from blocking of fresh purchases. Further, in case of change of compliant jurisdiction of the FPI, the sale was allowed without a specified timeline. Under the Amendment Regulations and the Framework, in case of reclassification due to both the aforementioned reasons, the FPI is permitted to continue to hold the securities or sell them till the later of (i) expiry of an existing registration; or (ii) 180 (one-hundred eighty) days from the date of notification of change by the FPI or change in jurisdiction.

Additionally, in the event FPIs are unable to sell their securities within the prescribed 180 (one-hundred eighty) days, subject to certain conditions, an additional 180 (one-hundred eighty) day period has been provided to the FPIs to dispose of their holdings. Throughout the extended period, FPIs retain corporate benefits and voting rights associated with their holdings. After the extended period, unsold securities are deemed written off, and FPIs lose beneficial interest in them.

### **Disclosures of material changes and other obligations for FPIs**

In June, SEBI notified amendments changing certain disclosure norms and obligations for FPIs in India.<sup>17</sup> This circular has revised the timelines for the disclosure of material changes and other obligations. Under the applicable regulations, FPIs are supposed to inform SEBI in case of any change in material information furnished by it to the DDP and SEBI which has a bearing on the certificate granted to the FPI. The amendment categorises material changes into type I and type II, requiring type

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<sup>16</sup> Securities and Exchange Board of India, Framework for providing flexibility to Foreign Portfolio Investors in dealing with their securities post expiry of their registration, available at [https://www.sebi.gov.in/legal/circulars/jun-2024/framework-for-providing-flexibility-to-foreign-portfolio-investors-in-dealing-with-their-securities-post-expiry-of-their-registration\\_83940.html](https://www.sebi.gov.in/legal/circulars/jun-2024/framework-for-providing-flexibility-to-foreign-portfolio-investors-in-dealing-with-their-securities-post-expiry-of-their-registration_83940.html), last accessed July 04, 2024.

<sup>17</sup> Circular No. SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/76, Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors, dated June 05, 2024, available at [https://www.sebi.gov.in/legal/circulars/jun-2024/disclosures-of-material-changes-and-other-obligations-for-foreign-portfolio-investors\\_83939.html](https://www.sebi.gov.in/legal/circulars/jun-2024/disclosures-of-material-changes-and-other-obligations-for-foreign-portfolio-investors_83939.html), last accessed July 04, 2024.

I changes, such as jurisdictional shifts or restructuring, to be reported within 7 (seven) working days and supporting documents to be submitted within 30 (thirty) days. Type II changes, encompassing other material alterations, must also be reported promptly and documented within 30 (thirty) days of the change. The circular emphasizes DDP oversight and mandates re-evaluation of FPI eligibility based on reported changes, with severe infractions requiring fresh registration. Delays in reporting of material change must be justified to the DDPs along with the reason for such delay. The DDPs must inform SEBI of such delay (along with the reason), as soon as possible but not later than 2 (two) working days of the FPIs informing them about the same.

## **RBI**

### **Amendment to the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2024 and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024**

In January this year, the Ministry of Corporate Affairs notified the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 prescribing the framework for eligible entities to directly list outside India. Currently, for the purposes of direct listing, international financial services centre (IFSC) in India has been recognised as a permissible jurisdiction, and the India international exchange and NSE international exchange in IFSC are recognised as permitted stock exchanges. In furtherance of these rules, the RBI has now brought out amendments to recognise direct listing of equity shares of companies incorporated in India on international exchanges, as a method of raising funds and also provides the modes of payment for the same i.e., through banking channels to a foreign currency account of the Indian company or as an inward remittance.

The proceeds of purchase or subscription of equity shares of an Indian company listed on an international exchange are required to either be remitted to a bank account in India or deposited in a foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 (as amended from time to time). The sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

The investee Indian company through an AD Category I bank is required to report to the RBI in Form LEC (FII) regarding the purchase or subscription of equity shares (where such purchase or subscription is classified as FPI under the rules).

We have provided a brief summary of these rules in the previous edition of the newsletter available at <https://induslaw.com/publications/pdf/alerts-2024/korea-newsletter-Jan-Mar-2024.pdf> and a detailed coverage of the same is available at our InfoLex article 'Listing beyond Borders: Direct listing of Indian companies on IFSC exchanges', available at <https://induslaw.com/publications/pdf/alerts-2024/listing-beyond-borders-direct-listing-of-indian-companies-on-ifsc-exchanges.pdf>.

### **RBI (Asset Reconstruction Companies) Directions, 2024**

RBI has issued master directions for asset reconstruction companies (ARCs) registered with the RBI.<sup>18</sup> An ARC is a financial institution that buys the non-performing assets (NPAs) or bad assets from banks and financial institutions so that the latter can clean up their balance sheets. The directions outline norms regarding the registration of ARCs, the requirement of having a minimum net-owned fund,

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<sup>18</sup> Reserve Bank of India, Master Direction, Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024, dated April 24, 2024, available at [https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=12669](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12669), last accessed May 05, 2024.



activities of ARCs, and guidelines on ARCs. Further, ARCs must have a board-approved policy regarding a change in or takeover of management. Key highlights of the master direction include:

- (i) **Registration:** Before commencement of the business of securitisation or asset reconstruction, an ARC is required to apply for registration and obtain a certificate of registration (CoR) from the RBI.
- (ii) **Capital requirements:** To commence the business of securitisation or asset reconstruction, an ARC is required to have a minimum net owned fund (NOF) of approximately USD 3.5 billion. ARCs, existing as on October 11, 2022, are required to achieve the minimum NOF requirement by March 31, 2026.
- (iii) **Financial asset acquisition policy:** Every ARC is required to frame a board-approved 'financial asset acquisition policy' within 90 (ninety) days of grant of the CoR which must provide that transactions take place in a transparent manner and at a fair price in a well-informed market and the transactions are executed on arm's length basis by exercise of due diligence.

### **Framework for self-regulatory organisations (SRO) in the FinTech sector**

The RBI released the final draft of the framework for SROs in the FinTech sector after releasing a draft inviting comments and suggestions from stakeholders in January this year.<sup>19</sup> As per the framework, SRO should be set up as a not-for-profit company registered under Section 8 of the Companies Act, 2013, with a diversified shareholding, where no entity should hold 10% (ten percent) or more of its paid-up share capital, either individually or acting in concert. Further, it should have a minimum net worth of USD 240,000 within a period of 1 (one) year after recognition as an SRO by RBI, or before commencement of operations as an SRO, whichever is earlier. The framework further provides the characteristics of a self-regulatory organisation in the FinTech sector and includes, broad functions, governance standards, eligibility criteria and regulatory expectations for grant of recognition as an SRO.

Several stakeholder comments provided by IndusLaw during the consultation process have been included by the RBI in the final draft of the framework including: (i) enabling multiple SROs instead of a single all-encompassing SRO; (ii) permitting differential membership fee based on size, intent and capability of the applicant entity with equal rights and representation for all members; and (iii) mandating strict confidentiality requirements for the surveillance data and restriction of data collection to essential information.

### **Amendment to Master Direction on Risk Management and Inter-Bank Dealings**

The RBI on May 03, 2024, has notified amendments allowing standalone primary dealers (SPDs) to access overdraft facilities in nostro accounts solely for operational use. SPDs are either subsidiaries of scheduled commercial banks or entities incorporated abroad or those incorporated under the Companies Act, 2013, and registered as non-banking financial companies. A nostro account is a bank account held in another country by a domestic bank, but in the currency of the foreign country. If the overdraft facility is exceeded by SPDs and is not adjusted within 5 (five) days of such withdrawal, the reporting for such excess withdrawals should be done with the RBI within 15 (fifteen) days from the end of the month in which the limits are exceeded.

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<sup>19</sup> Reserve Bank of India, Framework for Self-Regulatory Organisation(s) in the Fin-Tech Sector, dated May 30, 2024, available at <https://rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1263>, last accessed June 04, 2024.

We have provided a brief summary of Master Direction on Risk Management and Inter Bank Dealings in our previous edition of the newsletter, available at <https://induslaw.com/publications/pdf/alerts-2024/korea-newsletter-Jan-Mar-2024.pdf>

### **Amendment to Foreign Exchange (Deposit) Regulations, 2016 (Deposit Regulations)**

The RBI, on May 06, 2024, notified amendments to the Deposit Regulations, permitting an AD Bank in India to allow a non-resident to open and maintain an interest-bearing account in INR and/ or foreign currency for the purpose of posting and collecting margin in India, for a permitted derivative contract entered into by such person in terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020.<sup>20</sup> Prior to this amendment, an AD Bank was permitted to allow unincorporated joint ventures between foreign and Indian entities, to open and maintain a 'non-interest bearing foreign currency account' for the purpose of undertaking transactions in the ordinary course of its business.

### **Amendment to the Foreign Exchange Management (Overseas Investment) Directions, 2022<sup>21</sup> (ODI Directions)**

The RBI notified amendments to the ODI Directions liberalizing investment in overseas funds by Indian entities and individuals. The erstwhile provisions allowed overseas portfolio investment (OPI) into an overseas fund only if the investment was made in units of the overseas fund and the overseas fund was regulated by the financial regulator in the host country. The amendment now provides that investment in units or 'any other instrument' issued by an overseas investment fund, regulated by the financial sector regulator in the host jurisdiction will be treated as OPI, thereby permitting investment in any form of fund (i.e., corporate bodies or partnerships). It has been clarified that an 'investment fund overseas, duly regulated' includes funds whose activities are regulated by the financial sector regulator of the host country or jurisdiction through a fund manager. Accordingly, OPI in an overseas fund regulated through their fund manager is now permitted.

Additionally, provisions related to OPI in an IFSC in India by a person resident in India have also been amended to permit an unlisted Indian entity to make OPI in any instrument issued by an investment fund or vehicle in an IFSC.

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<sup>20</sup> Notification No. FEMA 5(R)/(4)/2024-RB, Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024, dated May 06, 2024, available at [https://m.rbi.org.in/scripts/BS\\_FemaNotifications.aspx?Id=12684](https://m.rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=12684), last accessed on June 06, 2024.

<sup>21</sup> Circular No. 09, RBI/2024-25/41 A.P. (DIR Series), Foreign Exchange Management (Overseas Investment) Directions, 2022 dated June 07, 2024, Available at: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12381&Mode=0>, last accessed on July 04, 2024.



## Market Bulletin

Key market developments in the months of April to June 2024 included the following:

1. YG-1 Co. Ltd., a global cutting tool manufacturer based in South Korea, announced an investment of USD 150 million in Karnataka. The company already operates a manufacturing facility in Tumakuru Machine Tool Park in Karnataka.
2. Sharp, a leading Japanese electronics company is looking to establish India's first display fab semiconductor unit with an investment of USD 3-5 billion.
3. Manipal Hospitals acquired Kolkata based hospital chain Medica Synergie for approximately USD 170 million.
4. Australian Macquarie group launched a USD 1.5 billion EV focussed platform on India. The platform will be focussed on electrifying fleets of commercial vehicles, financing, fleet management and charging infrastructure.
5. Tata Electronics signed a deal with Tesla Inc. for the supply of semiconductors for Tesla Inc's global operations.
6. Lightfury games, an Indian mobile games developer raised USD 8.5 billion from Indian venture capital fund Blume Ventures, Japanese mobile entertainment firm Mixi and micro venture capital firm Gemba Capital.
7. Warburg Pincus, a leading global growth investor acquired Shriram Housing Finance Limited, the housing finance subsidiary of Shriram Finance Limited for approximately USD 523.5 million.
8. Sumitomo Mitsui Financial Group (SMFG) invested approximately USD 156 million in its subsidiary, SMFG India Credit Co Ltd (SMICC) through a rights issue. SMFG acquired SMICC, a non-banking financial investment and credit company in 2021 for approximately USD 2 billion.
9. Bain Capital along with Temasek and Blackstone along with Abu Dhabi Investment Authority and Singapore sovereign wealth fund GIC have submitted competing non-binding offers for acquisition of controlling stake at a valuation of approximately USD 8.5 billion.
10. State owned Indian Oil Corporation Limited entered into a 50:50 joint venture with GPS Renewables Private Limited aimed at integrating advanced biogas technologies to convert organic waste into compressed biogas (CBG) and accelerate the deployment of CBG plants across India.
11. The National Company Law Tribunal, on June 06, 2024, has approved the merger of Tata Sons-owned Air India with Vistara, effectively dissolving Vistara within 9 (nine) months.

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