



March 2023

MINISTRY OF FINANCE (MoF)

Enhanced reporting and due diligence for prevention of money-laundering

The MoF, *vide* notification dated March 7, 2023, has issued the Prevention of Money-laundering (Maintenance of Records) Rules, 2023 to strengthen provisions relating to reporting and due diligence by reporting entities like financial institutions, banking companies, or intermediaries. The key amendments are as follows:

1. the term 'Group' has been inserted in line with the definition under Section 286(9)(e) of the Income Tax Act, 1961 and includes a parent entity and all the entities in respect of which consolidated financial statements must be prepared. Groups are now mandated to implement group-wide policies to discharge reporting and record keeping obligations;
2. the term 'Politically Exposed Persons' is inserted to mean individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials. With the introduction of this definition, reporting entities will now also have to maintain records of transactions of politically exposed persons;
3. for the purpose of determining and identifying the beneficial owner of a client of the reporting entity, the threshold has been reduced from 25% to 10% for companies and from 15% to 10% for trusts; and
4. every reporting entity must register the details of a client, being a non-profit organisation, on the DARPAN Portal of NITI Aayog. It must maintain such registration records for a period of 5 (five) years after the business relationship between a client and a reporting entity has ended or the account has been closed (whichever is later).

The MoF, *vide* notification dated March 7, 2023, has included the following activities/transactions concerning virtual digital assets ("VDA") under the definition of "person carrying on designated business or profession" and thus bringing VDAs under the ambit of the Prevention of Money Laundering Act, 2002.

For a detailed analysis, please refer to the [JSA Prism of March 14, 2023](#).

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

Revised format for serving copy of application for initiating corporate insolvency resolution process to the IBBI

The IBBI, *vide* circular dated March 4, 2023, has prescribed a revised format for serving a copy of the application for initiating insolvency against a corporate debtor by the applicant before filing it with the adjudicating authority. This ensures filing of authentic information and enables the IBBI to share information with the information utility efficiently. A step-by-step guide for submission of the application has also been provided.

MINISTRY OF COMMERCE AND INDUSTRY (MCI)

Foreign Trade Policy ("FTP") 2023

The Ministry of Commerce and Industry ("MCI"), *vide* press release dated March 31, 2023, has issued the FTP. The Export Promotion Capital Goods Scheme ("EPCG Scheme"), which allows import of capital goods at zero customs duty for export production, has been further rationalised. The FTP will be adopted with a 'long-term' focus and there will not be an end date. Some key provisions are as follows:

1. Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added as an additional scheme eligible to claim benefits under the Common Service Provider Scheme of the EPCG Scheme;
2. the FTP benefits have been extended to e-commerce exports, which are estimated to grow to US\$ 200,000,000,000 (US Dollars two hundred billion) to US\$ 300,000,000,000 (US Dollars three hundred billion), by 2030. The value limit for exports through courier service has been increased from INR 5,00,000 (Indian Rupees five lakh) to INR 10,00,000 (Indian Rupees ten lakh) per consignment;
3. the dairy sector is to be exempted from maintaining Average Export Obligation – to support upgrade of the technology in the sector;
4. Battery Electric Vehicles of all types, Vertical Farming Equipment, Wastewater Treatment and Recycling, Rainwater Harvesting Systems and Rainwater Filters, and Green Hydrogen have been included in Green Technology products and will now be eligible for reduced Export Obligation requirement under EPCG Scheme;
5. Further facilitation of the Advanced Authorisation Scheme ("AAS") is also envisaged. This scheme provides for duty-free import of raw materials for manufacturing export items and is placed under similar footing to EOU and SEZ Scheme. However, the relevant domestic tariff unit would have flexibility to work both for domestic as well as export production. Relatedly, special AAS has been extended to export of apparel and clothing sector as identified in the FTP; as well as coverage of the Self Ratification Scheme for fixation of Input-Output norms has also been widened to certain additional categories; and
6. A couple of new introductions have also been made. In the space of merchanting trade, FTP would now allow for merchanting trade of restricted and prohibited items under the export policy (but would exclude goods/items classified in the CITES and SCOMET list). This would involve shipment of goods from one foreign country to another foreign country, without touching Indian ports, involving an Indian intermediary. The same would have to be subject to compliance with Reserve Bank of India guidelines. The FTP also introduces a one-time amnesty scheme, intended to provide relief to exporters who have been unable to meet their obligations under the EPCG and Advance Authorisations. Regularisation would entail payment of all pending custom duties that were exempted in relation to unfulfilled Export Obligation, where the interest payable would be capped at 100% (one hundred percent) of these exempted duties. No interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty and this is likely to provide relief to exporters as interest burden will come down.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Extended compliance period for large corporates raising funds through debt securities

The SEBI, *vide* circular dated March 31, 2023, has extended the compliance period for fund raising by large corporates. Currently, large corporates must raise a minimum of 25% of their incremental borrowings in a financial year through issuance of debt securities over a contiguous block of 2 (two) years from the financial year 2021-22. It has been decided to extend the compliance period from the contiguous block of 2 (two) years to a contiguous block of 3 (three) years reckoned from the financial year 2021-22. In case a large corporate is unable to comply with the requirement, such entities are required to provide an explanation for the shortfall to the stock exchanges in the manner prescribed.

Operational guidance on buy-back through stock exchange route

The SEBI, *vide* circular dated March 8, 2023, has released guidelines chalking out restrictions on placements of bids, price and volume for a company seeking to buy back its shares through the exchange route. Restrictions placed on companies undertaking buy-back through stock exchange route are as follows:

1. the company must not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the 10 (ten) trading days preceding the day on which such purchases are made;
2. the company must not place bids in the pre-open market, the first 30 (thirty) minutes, and the last 30 (thirty) minutes of the regular trading session; and
3. the company's purchase order price should be within the range of $\pm 1\%$ from the last traded price.

The relevant company as well as its appointed broker are required to ensure the compliance with the aforesaid provisions.

Revised timelines for disclosures by foreign portfolio investors

The SEBI has amended the SEBI (Foreign Portfolio Investors) Regulations, 2019, by notifying the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023 ("**Amendment Regulations**"). Brought into effect from March 15, 2023, the Amendment Regulations, have, *inter alia*, revised the timelines for making certain disclosures to the SEBI, stock exchange and the designated depository participant.

1. A foreign portfolio investor must, within 7 (seven) working days, inform the SEBI and designated depository participant:
 - a) if any information or particulars previously submitted to the SEBI or designated depository participant are found to be false or misleading, in any material respect;
 - b) if there is any material change in the information including any direct or indirect change in its structure or common ownership or control or investor group previously furnished by the foreign portfolio investor to the SEBI or designated depository participant; and
 - c) if there is any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against such foreign portfolio investor.
2. All designated depository participants who have been granted approval by the SEBI must, within 2 (two) working days, inform the SEBI in writing:
 - a) if any information or particulars previously submitted to the SEBI are found to be false or misleading, in any material respect; and
 - b) if there is any material change in the information previously furnished to the SEBI.

3. All designated depository participants who have been granted approval by the SEBI must, inform the SEBI, depositories and stock exchange within 2 (two) working days, in case of any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by any regulator against a designated depository participant.

Extension of timelines for submission of nomination details

The SEBI, vide circular dated March 27, 2023, has extended the timeline for mandatory submission of 'choice of nomination' for existing trading and demat accounts till September 30, 2023 (earlier this was March 31, 2023).

Revised time limit for disclosure of Net Asset Value ("NAV") of mutual fund schemes investing overseas

SEBI vide circular dated March 29, 2023, has revised the time limit for disclosure of NAV of mutual fund schemes investing overseas. With effect from July 1, 2023, the revised timelines for declaration of NAV for the following schemes are as follows:

1. for (a) schemes investing atleast 80% of total assets in permissible overseas investments; and (b) index funds and exchange traded funds investing atleast 80% of total assets in permissible overseas investments - 10 AM on T+1 day (earlier it was 11 PM on T day); and
2. for schemes unable to disclose NAV as per the prescribed timelines, due to inability in capturing same day valuation of underlying investments- Such time as per disclosure made in the Scheme Information Document along with reasons for such delayed disclosure (earlier it was 11 PM on T day or 10 AM on T+1 day).

While complying with the new timelines, asset management companies must ensure that NAV of schemes are disclosed based on the value of underlying securities/ funds as on the T day (i.e., date of investment in mutual funds units in India).

Comprehensive FAQs on SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations")

The SEBI has, on March 31, 2023, issued updated FAQs (which were originally issued on April 29, 2021) providing clarifications on several evolving issues pertaining to PIT Regulations (more particularly, with regard to structured digital database and contra-trade). For ease of reference, the FAQs have now been classified under various headings, such as, trading, structured digital database, disclosures, pledge, trading plan, pre-clearance, trading window closure, contra-trade, and those relating to designated person and immediate relatives, as well as other general matters.

Norms for scheme of arrangement by unlisted stock exchanges, clearing corporations and depositories

The SEBI, vide circular dated March 28, 2023, has issued a detailed framework for scheme of arrangement by unlisted Market Infrastructure Institutions ("MII"). Some key provisions are as follows:

1. the unlisted MII desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement as per the provisions of Companies Act, 2013 must file the draft scheme of arrangement along with a non-refundable fee with the SEBI for obtaining the observation letter or no-objection letter, before filing such scheme with any Court or Tribunal;
2. it must pay a fee at the rate of 0.1% of the paid-up share capital of the unlisted or transferee or resulting company, whichever is higher, post sanction of the proposed scheme, subject to a cap of INR 5,00,000 (Indian Rupees five lakhs).

3. these provisions may not apply to schemes which solely provide for merger of a wholly owned subsidiary or its division with the parent company. Notwithstanding, such draft schemes would still have to be filed with the SEBI for disclosure purposes, as well as disseminated on the website of the unlisted MII.

JSA Updates

Bombay High Court clarifies the position regarding payment of stamp duty on Permanent Alternate Accommodation Agreements when stamp duty has already been paid on the Development Agreement

A division bench of the Bombay High Court in its recent judgment of Adityaraj Builders v. State of Maharashtra & Ors *inter alia* held that once requisite stamp duty has been paid on a development agreement entered into between a developer and co-operative housing society, the ancillary Permanent Alternate Accommodation Agreements, executed between the developer and the individual members of the co-operative housing society, are not liable to be separately assessed and stamped beyond the requirement under Section 4(1) of the Maharashtra Stamp Act, 1958.

For a detailed analysis, please refer to the [JSA Prism of March 10, 2023](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys *provide* innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also *provide* assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
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