



JSA Corporate InVision

May 2023

MINISTRY OF FINANCE (MoF)

Activities by 'person carrying on designated business or profession' under the Prevention of Money-laundering Act, 2002

The MoF, *vide* notification dated May 9, 2023, clarified that the following activities carried out in the course of business will be included within the meaning of the term 'persons carrying on designated business or profession':

- acting as a formation agent of companies and limited liability partnerships;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

For a detailed analysis, please refer to the [JSA Prism of May 19, 2023](#).

MINISTRY OF COMMERCE AND INDUSTRY (MCI)

Amendment to Special Economic Zones Rules, 2006 ("SEZ Rules")

The MCI, *vide* notification dated May 1, 2023, notified the Special Economic Zones (Second Amendment) Rules, 2023. Pursuant to the amendment, a new Rule 53A (*Exemption*) has been introduced which exempts units providing financial services in an International Financial Service Centre from the requirements outlined in Rule 53 of the SEZ Rules. Rule 53 (*Net Foreign Exchange Earnings*) of the SEZ Rules stipulates that all units set up in an International Financial Service Centre should achieve positive net foreign exchange within a period of 5 (five) years from the commencement of production.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Introduction of Legal Entity Identifier (“LEI”) for issuers who have listed and/ or propose to list non-convertible securities, securitised debt instruments and security receipts

The SEBI, *vide* circular dated May 3, 2023, introduced LEI for issuers who have listed and/ or propose to list non-convertible securities, securitized debt instruments and security receipts (collectively referred to as “**Listed Securities**”). Issuers:

- having outstanding Listed Securities as on August 31, 2023, must report/ obtain and report the LEI code in the centralized database of corporate bonds (for non-convertible securities) and/or depositories (for securitized debt instruments or security receipts), on or before September 1, 2023; and
- proposing to issue the Listed Securities, on or after September 1, 2023, must report their LEI code in the centralized database of corporate bonds and/or depositories, as applicable, at the time of allotment of the International Securities Identification Number (“**ISIN**”). The SEBI has also mandated the depositories to map the LEI code to existing ISINs by September 30, 2023, and for all future issuances, map the LEI code with ISIN at the time of its activation.

Additional requirements for the issuers of transition bonds

The SEBI, *vide* circular dated May 4, 2023, issued additional requirements for the issuers of transition bonds. The key requirements are as follows:

- issuers must use a denotation ‘GB-T’ to differentiate transition bonds from other categories of green debt security;
- issuers must disclose the denotation in the centralised database for corporate bonds/ debentures by filling the denotation;
- the transition plan must be included in the offer document, providing details of (i) interim targets and timelines, (ii) project implementation strategy, (iii) technology used for project implementation, and (iv) a mechanism for overseeing fund utilisation and plan implementation;
- issuers must annually report any revisions to the transition plan to the stock exchanges, accompanied by an explanatory statement; and
- the annual report should include the transition plan along with a brief on the progress of plan implementation.

Real Estate Investment Trusts (“REITs”) and Infrastructure Investment Trusts (“InvITs”)

On May 16, 2023, the SEBI issued a consultation paper to invite comments from the public and market participants on the matter of, *inter alia*, providing special rights to unitholders of REITs and InvITs and the role of sponsor in REITs and InvITs. Based on the feedback and representations, SEBI has proposed the following: any unitholder holding a minimum of 10% of units, will be entitled to nomination rights, i.e., for every 10% held, the unitholder will be entitled to nominate 1 (one) director on the board of the Manager/Investment manager of the REIT/InvIT;

- constitution of unitholders council with nominees of unitholders of REIT/InvIT holding certain percentage of units (“**Unitholders Council**”);
- extending the applicability of the Stewardship Code to entities having representation on the board/Unitholders Council;
- members of Unitholders Council will be considered as ‘insider’ for the purpose of SEBI (Prohibition of Insider Trading) Regulations, 2015;

- provisions of self-sponsored REITs/InvITs *inter alia* set out that REIT Regulations and InvIT Regulations mandate the sponsor to hold 15% of total units of REIT/InvIT on post-issue basis for a period of at least 3 years, post its completion the sponsor has the option to divest its stake below 15% and/or declassify itself as a sponsor.

For a detailed analysis, please refer to the [JSA Prism of May 24, 2023](#).

On May 22, 2023, the SEBI issued two circulars on 'Dematerialization of securities of Hold Cos and SPVs held by InvITs' and 'Dematerialization of securities of Hold Cos and SPVs held by REITs. Under these circulars, InvITs and REITs are now required to hold the securities of holding companies and special purpose vehicles (as defined in the relevant regulations) solely in dematerialized form. The SEBI has directed the managers of InvITs and REITs to ensure compliance with this requirement and to dematerialise any existing securities held in physical form by InvITs and REITs, of holding companies and special purpose vehicles, on or before June 30, 2023.

MINISTRY OF CORPORATE AFFAIRS (MCA)

Filing of forms relating to removal of names of companies

The MCA, *vide* notification on May 10, 2023, amended the Company (Removal of Names of Companies from the Register of Companies) Rules, 2016. The amendment provides that a company cannot file an application for removal of names unless it has filed overdue financial statements and overdue annual returns up to the end of the financial year in which the company ceased to carry its business operations. If the company intends to file an application after the Registrar of Companies has sent a notice for removal, it must file all financial statements and annual returns before making such an application. A company cannot file an application once the Registrar of Companies has published a notification in the Official Gazette pursuant to its *suo motu* action under Sections 248 (1) and (5) of the Companies Act, 2013.

Revised timelines for fast-track mergers

The MCA, *vide* its notification dated May 15, 2023, notified the Companies (Compromises, Arrangement and Amalgamations) Amendment Rules, 2023 ("**Amendment Rules**"), which come into effect from June 15, 2023. The Amendment Rules imply specific timelines for government authorities such as the registrar of companies and the official liquidator to provide their observations or confirmation to a scheme of merger.

For a detailed analysis, please refer to the [JSA Prism of May 18, 2023](#).

JSA Updates

Supreme Court ("SC") reiterates that the relief of specific performance of a contract can only be granted when the party claiming such relief shows its readiness and willingness to perform its obligations under the contract

A 2 (two) judge bench of the SC has in *Gaddipati Divija and Another v. Pathuri Samrajyam & Ors.*, *inter alia* reiterated that specific performance of a contract under Section 16 (c) of the unamended Specific Relief Act, 1963 can only be allowed if the party seeking specific performance avers and proves that it has always been ready and willing to perform its obligations under the contract. The SC further reiterated that in a suit for specific performance of a contract concerning the sale of immovable property, time would not usually be of the essence unless it is shown from the express terms of the contract that time was of the essence.

For a detailed analysis, please refer to the [JSA Prism of May 8, 2023](#).

Defects in authorisations for signing pleadings in arbitration proceedings are curable

A division bench of the Bombay High Court has in *Palmview Investments Overseas Limited v. Ravi Arya & Ors. inter alia* held that an infirmity with a board resolution authorising signatories to affirm and sign pleadings on behalf of a company in an arbitration proceeding is a curable defect.

For a detailed analysis, please refer to the [JSA Prism of May 15, 2023](#).

SC holds that revised resolution plan cannot be approved by the Adjudicating Authority without being placed before the Committee of Creditors

SC in the case of *M. K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr.*, has held that, while commercial wisdom of the Committee of Creditors (“CoC”) must be respected, certain factors having a material bearing on the process of approval of the resolution plan should also be borne in mind. The SC dealt extensively with the objections raised by the Resolution Applicant (“RA”) as well as the Resolution Professional and held that: a) it could not have been overlooked that the RA was ineligible due to the restriction under Section 88, Indian Trusts Act, 1882 as well as Companies Act, 2013, and b) the revised resolution plan was directly sent for approval of the Adjudicating Authority instead of being placed before the CoC.

For a detailed analysis, please refer to the [JSA Prism of May 18, 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.

This Newsletter has been prepared by:



Nitin Potdar
Partner



Rinku Ambekar
Partner



Reshma Oak
Principal Associate



17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
**IFLR1000 APAC
Rankings 2022**

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
9 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the
Year 2021



Ranked #1
The Vahura Best Law Firms to
Work Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this newsletter disclaim all and any liability to any person who takes any decision based on this publication.