



JSA Corporate InVision

April 2024

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Alternative Investment Fund (“AIF”) regulations amended to ensure investor protection

SEBI, *vide* notification dated April 25, 2024, has issued the SEBI (AIFs) (Second Amendment) Regulations, 2024, amending the SEBI (AIFs) Regulations, 2012. The key provisions are as follows:

1. Category I AIFs and Category II AIFs can create encumbrance on equity of 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 Central Government, only for the purpose of borrowing by such investee company and subject to the prescribed conditions by SEBI;
2. AIFs, manager of the AIFs and key management personnel of the manager must exercise specific due diligence, with respect to their investors and investments, to prevent facilitation of circumvention of laws specified by SEBI;
3. the liquidation period for a scheme of an AIF that has expired or is expiring within 3 (three) months, can be granted an additional liquidation period, subject to certain conditions as specified by the SEBI;
4. AIFs cannot launch any new liquidation scheme after the notification of these amendments;
5. provisions relating to the dissolution period are inserted. The term ‘dissolution period’ is defined to mean the period following the expiry of the liquidation period of the scheme for the purpose of liquidating the unliquidated investments of the scheme of the AIF. The scheme entering into a dissolution period has to file an information memorandum with SEBI through a merchant banker. The dissolution period of a scheme of an AIF must not be more than the original tenure of the scheme and must not be extended in any manner upon expiry of the dissolution period. The scheme of the AIF must not accept any fresh commitment from any investor and must not make any new investment during the dissolution period; and
6. the unliquidated investments of the AIF scheme that are not sold by the expiry of the dissolution period will be mandatorily distributed in-specie to the investors, as specified by the SEBI.

Changes in terms of Private Placement Memorandum (“PPM”) of AIFs

SEBI, *vide* circular dated April 29, 2024, has eased the requirement of intimation of changes in the terms of PPM of AIFs through merchant bankers. Pursuant to the SEBI Master Circular for AIFs dated July 31, 2023, intimation with

respect to any change in the terms of PPM of AIF was required to be submitted to SEBI through a merchant banker along with a due diligence certificate from the merchant banker. Now, certain changes in the terms of PPM, such as, changes made in the write-up on market opportunity/ Indian economy/ industry outlook, track record of investment manager, risk factors, legal regulatory and tax consideration, do not need to be submitted through a merchant banker and can be filed directly with SEBI. Similarly, changes with respect to,

1. information such as contact details (address, phone number etc.) of AIF, sponsor, manager, trustee or custodian,
2. (ii) auditor, registrar and share transfer agents, legal advisor or tax advisor, size of the fund/scheme, information related to Affiliates, commitment period, key investment team, key management personnel (except if the changes are due to change in control of manager and sponsor), advisory boards, expenses, disclosures, and other factual and routine updates need not be filed through a merchant banker.

Further, large value funds for accredited investors are exempted from the requirement of intimating any changes in the terms of PPM through a merchant banker. They can directly file any changes in the terms of PPM with SEBI, along with a duly signed and stamped undertaking by CEO of the manager of the AIF (or such other person with equivalent role/ position) and compliance officer of the manager of the AIF, in a pre-specified format.

Appointment of fund manager for Mutual Fund ("MF") schemes investing in commodities and overseas securities

To enhance ease of doing business, SEBI, *vide* circular dated April 30, 2024, has modified certain provisions of the Master Circular for MFs dated May 19, 2023. The key modifications are as follows:

1. for commodity-based funds, appointment of a dedicated fund manager is optional;
2. the requirement to appoint a dedicated fund manager for making the prescribed overseas investments is now optional;
3. in case where a person is appointed as a fund manager, he should have adequate expertise and experience to manage investments in commodities market or in overseas securities, as the case may be; and the board of the asset management companies will be responsible to ensure compliance and reporting regarding the same to the trustees, on a periodic basis.

MINISTRY OF HOME AFFAIRS (MoHA)

Extension of the validity of Foreign Contribution (Regulation) Act, 2010 ("FCRA") registration certificates

MoHA, *vide* their public notice dated March 28, 2024, has extended the validity of the registration certificates of the following categories of FCRA registered entities:

1. whose validity was extended till March 31, 2024 in terms of Public Notice dated September 25, 2023, and whose renewal application is pending, will now stand extended till June 30, 2024 or till the date of the disposal of renewal application, whichever is earlier; and
2. whose 5 (five) years validity period is expiring during April 1, 2024, to June 30, 2024, and who have applied/ will apply for renewal before the expiry period, will now stand extended upto June 30, 2024, or till the date of disposal of renewal application, whichever is earlier.

Upon refusal of the application for renewal of the registration certificates, the certificate will have deemed to have expired on the date of refusal and the registered entities will be ineligible to receive or utilise foreign contributions received.

RESERVE BANK OF INDIA (RBI)

Opening, holding and maintaining a Foreign Currency Account outside India

RBI, *vide* their notification dated April 19, 2024, has issued the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2024, amending the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015. Pursuant to this amendment, funds raised through direct listing of equity shares of companies incorporated in India on international exchanges, which are either pending their utilisation or repatriation to India, can now also be held in foreign currency accounts with a bank outside India, subject to compliance with the conditions regarding raising of funds and resources. This condition was initially applicable only to funds/ resources raised by external commercial borrowings or American Depository Receipts or Global Depository Receipts.

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024

On April 19, 2024, RBI notified amendments to the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, *vide* the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024. The amendment sets forth *amongst others* the mode of payment, remittance of sale proceeds and reporting norms in relation to investments in Indian public companies listed on International Exchanges. The said amendment bridges the gap in the antecedent Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 which had enabled eligible holders to invest in the equity shares of a public Indian company that is or is to be listed on an International Exchange.

For a detailed analysis, please refer to the [JSA Prism of May 2, 2024](#).

Limits for investment in debt and sale of credit default swaps by Foreign Portfolio Investors ("FPIs")

The RBI, *vide* their circular dated April 26, 2024, has set out the investment limits for the financial year 2024-25, which are as follows:

1. the limits for FPI investment in Government Securities ("G-Secs"), State Government Securities ("SGSs") and corporate bonds will remain unchanged at 6%, 2%, and 15%, respectively, of the outstanding stocks of securities for 2024-25;
2. all investments by eligible investors in the 'specified securities' must be reckoned under the fully accessible route;
3. the allocation of incremental changes in the G-Secs limit (in absolute terms) over the 2 (two) sub-categories – 'General' and 'Long-term' – is retained at 50:50 for 2024-25;
4. the entire increase in limits for SGSs (in absolute terms) has been added to the 'General' sub-category of SGSs; and
5. the aggregate limit of the notional amount of credit default swaps sold by FPIs is 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of INR 2,54,500 crore (Indian Rupees two lakhs fifty-four thousand five hundred crore) is set out for 2024-25.

MINISTRY OF FINANCE (MoF)

Revised limits for foreign investment through automatic route in the Space Sector

MoF, *vide* notification dated April 16, 2024, has issued the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2024 in line with the [Press Note 1 \(2024\) issued by the Government of India on March 4](#),

[2024](#), incorporating the changes made to the Foreign Direct Investment (“FDI”) policy in the space sector. The amendment seeks to liberalise the FDI policy provisions in the space sector by prescribing liberalised entry route and providing clarity for FDI in the space sector viz a viz satellites, launch vehicles and associated systems or subsystems. The liberalised entry routes are aimed to attract potential investors to invest in Indian companies in space and to encourage collaboration between public and private entities.

For a detailed analysis on the Press Note, please refer to the [JSA Prism of February 26, 2024](#).

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MeitY)

Revised MeitY advisory on deployment of Artificial Intelligence (“AI”) models

On March 1, 2024, the MeitY had issued an advisory (“**Old Advisory**”) in continuation to the advisory dated December 23, 2023 (“**December Advisory**”) directing all intermediaries and platforms to label any under-trial/unreliable AI models, and to secure explicit prior approval from the government before deploying such models in India.

For a detailed analysis, please refer to the [JSA Prism of March 7, 2024](#).

In light of the ambiguities arising in the Old Advisory, on March 15, 2024, MeitY issued a revised advisory on deployment of AI models (“**Revised Advisory**”) which effectively replaces the Old Advisory without modifying the December Advisory. The Revised Advisory has done away with mandatory prior government approval, submission of action taken-cum status report, extended the scope of due diligence to all AI intermediaries and platform and retain certain requirements from the Old Advisory.

For a detailed analysis, please refer to the [JSA Prism of April 22, 2024](#).

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

Clarification in relation to the permissible activities specified under the ‘Framework for Ship Leasing’ (“SL Framework”)

The IFSCA, *vide* circular dated April 2, 2024, has clarified that a lessor which has obtained a certificate of registration may undertake the permissible activities specified in clause 3 (E) (ii) of the SL Framework (i.e. voyage charters, contract of affreightments, employment in shipping pools and all other legal commercial transactions for employment of ships) only if such lessor has absolute or lease hold right over the ship/ocean vessel.

JSA UPDATES

Supreme Court of India (“Supreme Court”), in exercise of curative jurisdiction, sets aside arbitral award on the grounds of patent illegality and perversity

A 3 (three) judge bench of the Supreme Court, while deciding a curative petition filed with regard to the decision in *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*, has set aside an arbitral award on the ground of patent illegality and perversity, recognised as grounds for challenge under Section 34(2A) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) An award rendered is perverse or irrational where the findings are: (a) based on no evidence; (b) based on irrelevant material; and (c) award ignores vital evidence. Further, an award is considered patently illegal when the award contains no reasons at all, so as to be considered as a reasoned award.

For a detailed analysis, please refer to the [JSA Prism of April 12, 2024](#).

Investments with returns in the form of interest are “commercial” transactions and outside the purview of the Consumer Protection laws

In the recent decision of *Annapurna B. Uppin & Ors. v. Malsiddappa & Anr.*, the Supreme Court held that investments such as those by which the complainant derives benefit in the form of interest is outside the summary jurisdiction of the Consumer Protection Act, 1986.

For a detailed analysis, please refer to the [JSA Prism of April 16, 2024](#).

Supreme Court clarifies ‘workman’ status under Industrial Disputes Act, 1947 (“ID Act”) and an employee cannot dictate terms of his employment to his employer

In *M/s Bharti Airtel Limited vs. A.S. Raghavendra*, the Division Bench of the Supreme Court holistically analysed the actual role of the respondent in the appellant’s company and relied upon multiple facets such as terms of his appointment letter, nature of his supervisory duties with respect to the 4 (four) managers reporting to him, and his prior work experiences, to determine whether he qualified as a “workman” under Section 2(s) of the ID Act. The Supreme Court also clarified that the absence of the power to appoint, dismiss, or hold disciplinary inquiries against other employees (i.e., powers that are typically exercised by persons in managerial/supervisory roles) would not and could not be the sole determining criterion on the issue and qualify him as a “workman” under the ID Act.

For a detailed analysis, please refer to the [JSA Prism of April 17, 2024](#).

Supreme Court holds that stamp duty is not payable on every increase in the authorised capital of a company if the prescribed maximum duty is already paid

The Supreme Court in its recent judgement *State of Maharashtra & Anr., Vs National Organic Chemical Industries Limited*, has held that once the maximum duty payable on the authorised share capital of a company is paid, as prescribed under the relevant stamp laws, no additional duty is payable for subsequent increase in the share capital, unless the law specifically requires payment of additional stamp duty. The Supreme Court further clarified that the form filed with the registrar of companies, notifying the increase in the authorised share capital of a company is not an instrument for the purpose of levying stamp duty. This judgement of the Supreme Court is significant since it settles the law that, if the state laws do not expressly provide for stamping every increase in the authorised capital, then no additional duty is payable for increase in the authorised capital if the maximum prescribed duty has been paid earlier.

For a detailed analysis, please refer to the [JSA Prism of April 18, 2024](#).

State of Maharashtra to levy stamp duty on delivery orders under the Maharashtra Stamp Act, 1958

The division bench of the Bombay High Court (“**Bombay HC**”) has in *Saurer Textile Solutions Pvt Ltd v. The State of Maharashtra & Ors and Connected Writ Petitions*, held that the action of the State of Maharashtra in levying stamp duty on delivery orders under Article 29 of Schedule I of the Maharashtra Stamp Act, 1958 – (a) is within the legislative competence of the State; (b) does not intrude upon the legislative domain of the Parliament as reserved in Entries 41 and 83 of List I of Schedule VII to the Constitution of India; and (c) is not ultra vires Articles 246(1), 286(1)(b) and 286(2) of the Constitution of India.

For a detailed analysis, please refer to the [JSA Prism of April 18, 2024](#).

An arbitral tribunal has the power to implead a non-signatory to arbitration proceedings under Section 16 of Arbitration Act

A single bench of the Bombay HC has in *Cardinal Energy and Infra Structure Private Limited & Anr. v. Subramanya Construction and Development Co. Limited & Ors.*, held that the power to implead a non-signatory to an arbitration

proceeding vests in an arbitral tribunal on the basis of the group of companies doctrine laid down in *Cox and Kings Limited v. SAP India Private Limited & Anr.*

For a detailed analysis, please refer to the [JSA Prism of April 19, 2024](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affairs. 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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<p>Innovative Technologies Law Firm of the Year 2023 ----- 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 ----- Employer of Choice 2021</p>	<p>7 Ranked Practices, 16 Ranked Lawyers ----- Elite – Band 1 - Corporate/ M&A Practice ----- 3 Band 1 Practices ----- 4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022</p>  <p>7 Practices and 2 Ranked Lawyers</p>

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