



JSA Corporate InVision

May 2024

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Fund manager for mutual fund schemes investing in commodities and overseas securities

SEBI, *vide* circular dated April 30, 2024, has amended the master circular for mutual funds dated May 19, 2023. Some of the key changes are as follows:

1. the requirement to appoint a dedicated fund manager for making the prescribed overseas investments by schemes is now optional (earlier this was not optional); and
2. in case where a person is appointed as a fund manager for commodity based funds and for making prescribed overseas investment, the board of the Asset Management Companies will be responsible for: (a) ensuring that the person appointed should have adequate expertise and experience to manage investments in commodities market, and (b) reporting the same to the trustees, on a periodic basis.

Registration of Alternative Investment Funds ("AIFs")

SEBI, *vide* notification dated May 10, 2024, has issued a commencement notification for certain provisions of the SEBI (AIFs) (Second Amendment) Regulations, 2023. These amendments pertain to the eligibility criteria of AIFs for the purpose of the grant of certificate to an applicant. Accordingly, to meet the eligibility criteria, the key investment team of the manager of AIFs must have at least 1 (one) key personnel with relevant certification as specified by the SEBI.

Subsequently, SEBI, *vide* their circular dated May 13, 2024, has issued the certification requirement for the key investment team of manager of AIF. The criteria to obtain the prescribed certification by at least 1 (one) key personnel of the key investment team of manager of AIF, is applicable to all the applications for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024. Further, existing schemes of AIFs and schemes of AIFs whose applications for launch of schemes are pending with SEBI as on May 10, 2024, must comply with the requirement of obtaining the certification on or before May 9, 2025.

Disclosure of events or information by a company regarding buy-back of shares or other specified securities

SEBI, *vide* notification dated May 17, 2024, has issued the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2024 amending the SEBI (Buy-Back of Securities) Regulations, 2018. Some of the key amendments are as follows:

1. any company may buy-back its shares or other specified securities in physical form in the open market through a stock exchange provided that the effect on the price of the equity shares of a company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) (*disclosure of events or information: The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange*) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, for the determination of the volume weighted average market price; and
2. any company may buy-back its shares or other specified securities through the book-building process provided that the effect on the price of the equity shares of a company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) (*disclosure of events or information: The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange*) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, for the calculation of the lower end of the price range.

Amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

SEBI, *vide* notification dated May 17, 2024, has issued the (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2024 amending the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, with an aim to expand the scope of entities eligible to contribute towards capital issues, especially by non-individual public shareholders and entities within the promoter group holding at least 5% of the post-issue capital. Some of the key amendments are as follows:

1. under minimum promoters' contribution, if the post-issue shareholding of the promoters is less than 20%, any non-individual public shareholder holding at least 5% of the post-issue capital or any entity forming part of promoter group other than the promoter(s), may contribute to meet the shortfall in minimum contribution as specified for the promoters;
2. specified securities acquired by any non-individual public shareholder holding at least 5% of the post-issue capital or any entity (individual or non-individual) forming part of promoter group other than the promoter(s) during the preceding one year at a price lower than the price at which specified securities are being offered to the public in the initial public offer will not be eligible for the computation of minimum promoters' contribution;
3. for the computation of minimum promoters' contribution, equity shares arising from the conversion or exchange of fully paid-up compulsorily convertible securities, including depository receipts, that have been held by the promoters at least 1 (one) year prior to the filing of the draft offer document forming part of promoter group other than the promoter(s) will be eligible, provided full disclosures of the terms of conversion is made, and they are converted into equity shares prior to filing of the red herring prospectus; and
4. with respect to the period of subscription, in case of a force majeure event, the issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of 1 (one) working day (*earlier this was 3 (three) working days*);

Audiovisual ("AV") presentation of disclosures made in public issue offer documents

SEBI, *vide* circular dated May 24, 2024, has permitted the salient disclosures made in the Draft Red Herring Prospectus, Red Herring Prospects and Price Band Advertisement for public issues, to be made available in AV format for ease in

understanding the features of public issues. Such AV format must be prepared and placed in the public domain for all main board public issues. The same will initially be in bilingual format i.e. English and Hindi. The contents of the AV must be as per the prescribed guidelines, such as:

1. the duration of each bilingual version of the AV must be approximately 10 (ten) minutes;
2. the total duration of the AV must be equitably distributed to cover material disclosures made under various sections of the Draft Red Herring Prospectus and Red Herring Prospects viz. about the company, risk factors, capital structure, objects of the offer, business of the issuer, promoters, management, summary of financial information, litigations, material developments and terms of the offer; and
3. the content of the AV must be factual, non-repetitive, non-promotional and must not be misleading in any manner.

The provisions of the circular are applicable on voluntary basis by July 1, 2024, and become mandatory requirement from October 1, 2024.

Subordinate units to be issued by privately placed Infrastructure Investment Trusts (“InvITs”) upon acquisition of an infrastructure project

SEBI, *vide* notification dated May 27, 2024, has issued the SEBI (InvIT) (Amendment) Regulations, 2024, amending SEBI (InvIT) Regulations, 2014 (“**Principal Regulations**”). Some of the key amendments are as follows:

1. a new term “**subordinate unit**” is defined to mean an instrument issued by an InvIT which can be reclassified as an ordinary unit, where ordinary unit holds the same meaning as the term unit in the Principal Regulations;
2. under the mandatory requirement for eligibility criteria of registration of an InvIT, there is only 1 (one) class of units, and all units carry equal voting rights and distribution rights. The unitholder(s) holding not less than 10% of the total outstanding units of the InvIT, are entitled to nominate 1 (one) director on the board of directors of the investment manager and are required to comply with stewardship code specified in Schedule VIII of the Principal Regulations;
3. under the right and responsibility of the sponsor and sponsor group(s), for the purpose of calculating the minimum unitholding requirements, subordinate units cannot be considered in computing total outstanding units of the InvIT and are not eligible for meeting the minimum unitholding requirement;
4. no InvIT can raise funds through public issue if any subordinate units have been issued and are outstanding;
5. a new chapter (*Chapter IVA*) is inserted regarding the framework for issuance of subordinate units; and
6. the investment manager must disclose the unitholding pattern for ordinary units and subordinate units separately as specified by the SEBI.

Amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI, *vide* circular May 17, 2024, has issued the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024. Some of the key amendments are as follows:

1. every recognized stock exchange must, at the end of the calendar year i.e., December 31, prepare a list of entities that have listed their specified securities ranking such entities on the basis of their average market capitalisation from July 1 to December 31 of that calendar year;
2. the meetings of the risk management committee must be conducted in such a manner that on a continuous basis not more than 210 (two hundred and ten) days (earlier this was 180 (one hundred and eighty) days) should elapse between any 2 (two) consecutive meetings;

3. where the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up a vacancy of chief executive officer, managing director, whole time director or manager, then the vacancies must be filled up by the listed entity at the earliest and in any case not later than 6 (six) months from the date of vacancy;
4. if a placement is done according to the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, no intimation regarding the determination of issue price in a qualified institutions placement is required; and
5. the promoter, director, key managerial personnel or senior management of a listed entity are obligated to provide adequate, accurate and timely response to queries raised or explanation sought by the listed entity for complying with the disclosure of market rumours, including prompt intimations with the stock exchange.

Amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

SEBI, *vide* notification dated May 17, 2024, has issued the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024. Pursuant to the amendment, while determining the offer price, the effect on the price of the equity shares of the target company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under Regulation 30 (11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Revised eligibility criteria for launching commodity futures contracts

SEBI, *vide* notification dated May 30, 2024, has revised the eligibility criteria for launching commodity futures contracts as prescribed under the Master Circular dated August 4, 2023 ("**Master Circular**"). Some of the key provisions are as follows:

1. all derivative contracts approved by SEBI, are allowed to be traded in the respective stock exchange(s) on a continuous basis without requiring further approval unless SEBI advises/directs otherwise;
2. all proposals of stock exchange for launch of new contract must be accompanied by complete information covering all the points appended at Annexure P of the Master Circular;
3. contract specifications on stock exchanges, except those allowed for modification at the exchange level, must not be altered without prior approval. Any changes in contract specifications require the stock exchange to notify market participants in advance. Once contracts have commenced, no terms can be changed without SEBI's prior approval;
4. stock exchanges must launch contracts within 6 (six) months of SEBI approval or apply for fresh approval if they fail to do so; and
5. contracts for continuous trading in agri-commodities must adhere to the lean month expiry policy and will be subject to SEBI's direction. The stock exchange must ensure that deposited commodities comply with regulations from other authorities such as Food Safety Standard Authority of India, Agmark, BIS, in addition to approved quality standards.

Industry standards on verification of market rumours

SEBI, *vide* notification dated May 21, 2024, in order to facilitate the ease of doing business issued a circular for the requirement to verify market rumours and has made it applicable to the top 100 listed entities with effect from June 1, 2024 and to the top 250 listed entities with effect from December 01, 2024. The Industry Standard Forum comprising from representatives from ASSOCHAM, CII and FICCI on a pilot basis has formulated industry standards in consultation with SEBI for effective implementation of the requirement to verify market rumours under Regulation 30(11) of SEBI

LODR Regulations, 2015. Stock Exchanges are advised to bring the contents of this circular to the notice of their listed entities and ensure its compliance.

RESERVE BANK OF INDIA (RBI)

Improving the effectiveness of operational risk management of Regulated Entities ("REs")

RBI, *vide* circular dated April 30, 2024, has issued a Guidance Note on Operational Risk Management and Operational Resilience ("**Guidance Note**"), focusing on operational resilience as an outcome of operational risk management. The Guidance Note is applicable to all commercial banks, non-banking financial companies ("**NBFCs**"), co-operative banks, and all India financial institutions. With the issuance of this Guidance Note the Guidance Note on Management of Operational Risk dated October 14, 2005, stands repealed. Through this Guidance Note, the RBI intends to:

1. bring in place a 3 (three) line defence model for the REs, where business unit will form the first line of defence, followed by organizational operational risk management function (including compliance function) and audit function forms the third line of defence;
2. update the guidance on change management with a specifically detailed principle on it;
3. keep separate principles for mapping of internal and external interconnections and interdependencies, incident management, Information & communication technology, and disclosures;
4. keep a focused principle on third-party relationship, which is a broader concept than outsourcing;
5. introduce new principles on lessons learned, exercise and continuous feedback mechanism; and
6. drop the approaches for operational risk capital calculation as some REs such as local area banks, small finance banks and payment banks are presently not required to maintain a separate regulatory capital for operational risk.

Amendments to the functions of Authorised Dealers ("ADs")

RBI, *vide* their circular dated April 30, 2024, has issued the Foreign Exchange Management ("**FEM**") (Margin for Derivatives Contracts) (First Amendment) Regulations, 2024, amending the FEM (Margin for Derivatives Contracts) Regulations of 2020. Pursuant to the amendment, ADs may:

1. post and collect margin, in India and outside India, for a permitted derivative contract entered into with a person resident outside India, and receive and pay interest on such margin;
2. post and collect margin, outside India, for a permitted derivative contract entered into with another AD, provided that at least one of the ADs is a branch of a foreign bank, and receive and pay interest on such margin; and
3. post and collect margin, in India and outside India, for derivative transactions of their overseas branches and International Financial Services Centre Banking Units and receive and pay interest on such margin.

Further, RBI, *vide* their notification dated May 6, 2024, have issued the FEM (Deposit) (Fourth Amendment) Regulations, 2024, amending the regulation on other deposits made or held by ADs, under the FEM (Deposit) Regulations, 2016. ADs in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees 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 FEM (Margin for Derivative Contracts) Regulations, 2020.

Issuance of partly paid units to persons resident outside India by investment vehicles under the FEM (Non-debt Instruments) Rules, 2019

RBI, *vide* circular dated May 21, 2024, has decided to regularize the issuances of partly paid units by AIFs to foreign residents prior to the FEM (Non-debt Instruments) (Second Amendment) Rules, 2024. This regularization is proposed to be done through the compounding process under the Foreign Exchange Management Act, 1999. Before approaching the RBI for compounding, AD Category-I banks are required to ensure that AIFs have completed the necessary administrative actions. These actions include reporting such issuances to the RBI via the Foreign Investment Reporting and Management System Portal and issuing conditional acknowledgements for the reports.

COMPETITION COMMISSION OF INDIA (CCI)

Government of India ("GoI") notifies amendments to the General Regulations, 2009

The GoI, *vide* notification dated May 10, 2024, has brought into force the CCI (General) Amendment Regulations, 2024 ("**Amended General Regulations**"), which amends the CCI (General) Regulations, 2009 ("**General Regulations**"). The Amended General Regulations *inter alia* provide as follows:

1. Undertaking in the form of an affidavit:
 - a) **For Claiming Confidentiality:** Previously, a party that wished to claim confidentiality on any information was required to furnish an undertaking certifying that the information on which confidentiality was sought meets the prescribed standards under the General Regulations. By way of the Amended General Regulations, the parties are now required to file an affidavit for confidentiality claims.
 - b) **For Confidentiality Ring:** Previously, a party was required to furnish an undertaking that the confidential information of a case accessed by it through the confidentiality ring would not be disclosed to any other person and would only be used for the purpose of the Competition Act. By way of the Amended General Regulations, the parties are now required to file an affidavit in relation to the same.
2. Timelines for accessing the confidential version of the case record: The Amended General Regulations set out the following timelines for setting up a confidentiality ring, submission of an affidavit, and to access the confidential version of the case record:
 - a) **Application for setting up of confidentiality right:** A party has to submit an application to the CCI for setting up of the confidentiality ring within 10 (ten) days from the receipt of the non-confidential version of the investigation report, which can further be extended to up to 7 (seven) days, if the CCI is satisfied with the reason of delay provided by a party;
 - b) **Filing of an affidavit for being part of the confidentiality ring:** Within 10 (ten) days from the date of receipt of the order passed by the CCI, setting up the confidentiality ring, which can further be extended to 5 (five) days, if the CCI is satisfied with the reason of delay provided by a party;
 - c) **Conducting inspection of the confidential case records:** The parties included in the confidentiality ring will:
 - I. file an application for conducting an inspection of case records within 7 (seven) days from the submission of the affidavits;
 - II. such inspection shall be completed within 21 (twenty-one) days of being allowed by the CCI;
 - III. apply for the getting the certified copies of the confidential documents within 7 (seven) days thereafter;

From receiving an application seeking certified copies of confidential documents, the CCI is obligated to provide the same within 14 (fourteen) days.
3. Revision in fee for conducting an inspection of the case records: Previously, the fee charged by the CCI for allowing the inspection of case records was INR 1,000 (Indian rupees one thousand). The same has now been increased to INR 2,500 (Indian rupees two thousand and five hundred).

(This summary has been prepared by the JSA Competition team)

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

Additional requirements for carrying out permissible activities under the Framework for Ship Leasing (“SL Framework”)

IFSCA, *vide* circular dated May 8, 2024, has outlined additional requirements for carrying out permissible activities by a finance company under the SL Framework. An applicant under the SL Framework or a lessor, who has obtained a certificate of registration under Regulation 3 of the IFSCA (Finance Company) Regulations, 2021, must not undertake transactions which involves transfer of the ownership and/ or leasehold right of a ship or ocean vessel from a person resident in India to an entity set up in the IFSC, for the purpose of providing services solely to person resident in India. However, the applicant or lessor may acquire a new ship or ocean vessel or enter into a new leasehold right contract with person resident outside India so as to cater to person resident in India.

INDIAN NATIONAL SPACE PROMOTION AND AUTHORIZATION CENTRE (IN-SPACE)

Norms, guidelines and procedures for implementation of Indian Space Policy, 2023 in respect of authorization of space activities

IN-SPACE, on May 3, 2024, notified the Norms, Guidelines and Procedures for Implementation of Indian Space Policy, 2023 in respect of Authorization of Space Activities (“NGP”). In April 2023, the Indian Space Policy was notified, which identified the space activities that require the authorisation of IN-SPACE. The NGP has further extended the list of space activities which need authorization from INSPACE, prescribed the criteria for granting the authorisation, and stipulated the necessary conditions/guidelines to be adhered by an applicant for obtaining the authorization. Application templates seeking authorization have also been provided in the NGP.

For a detailed analysis, please refer to the [JSA Prism of May 8, 2024](#).

JSA UPDATES

Supreme Court of India holds that for the parties to be referred to arbitration, there must be a specific and conscious incorporation of an arbitration clause from another contract

In *NBCC (India) Limited vs. Zillion Infraprojects Pvt.Ltd.*, the Supreme Court of India has held that a general reference in a contract (“**Contract 1**”) to a separate contract (“**Contract 2**”) would not incorporate the arbitration clause contained in Contract 2 for resolution of disputes that arise under Contract 1. In view of this judgment, if the parties want to incorporate an arbitration clause from another contract, they should ensure that there is a specific reference in Contract 1 to the arbitration clause contained in Contract 2.

For a detailed analysis, please refer to the [JSA Prism of May 3, 2024](#).

Arbitrators can calculate liquidated damages on the basis of “honest guesswork” and “rough methods” in case of insufficient evidence

By a recent judgment, the Division Bench of the High Court of Delhi (“**Delhi HC**”) in the case of *Cobra Instalaciones Y Servicios v. Haryana Vidyut Prasaran Nigam Ltd.* upheld the Arbitral Tribunal’s quantification of liquidated damages on the basis of “honest estimations” and “rough methods” to arrive at a fair assessment of damages in a case where the quantification was complex and there was insufficient evidence on record.

For a detailed analysis, please refer to the [JSA Prism of May 21, 2024](#).

Delhi HC refuses to interfere with order under Section 16 of the Arbitration and Conciliation Act, 1996; holds that order must shock the conscience for interference under writ jurisdiction

In the recent decision of *Oriel Financial Solutions Private Limited v. Bestech Advisors Private Limited*, the Delhi HC refused to interfere with an order by which the petitioner's application under Section 16 of the Arbitration and Conciliation Act, 1996 had been rejected. The Delhi HC reasoned that since the impugned order was not so perverse so as to shock the conscience of the court, no interference was warranted in the exercise of writ jurisdiction.

For a detailed analysis, please refer to the [JSA Prism of May 20, 2024](#).

Failure of Internal Committee ("IC") to serve copy of complaint to the accused is violative of principles of natural justice

In the recent case of *Vineeth V.V. v. Kerala State Electricity Board and Ors.*, a single judge bench of the Hon'ble High Court of Kerala quashed the inquiry report prepared by the IC and held that failing to serve a copy of complaint and other relevant documents to the accused, which is mandatory under Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, is in violation of principles of natural justice.

For a detailed analysis, please refer to the [JSA Prism of May 20, 2024](#).

High Court of Karnataka strikes down the applicability of employees' provident fund benefits to international workers

A single judge bench of the High Court of Karnataka in its recent judgement in *Stonehill Education Foundation v. The Union of India & Ors.* has struck down para 83 of the Employees Provident Fund Scheme, 1952 and para 43A of the Employees' Pension Scheme, 1995, as wholly arbitrary and unconstitutional.

For a detailed analysis, please refer to the [JSA Prism of May 20, 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 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:



Sajai Singh
Partner







Bhavya Sriram
Partner



Pooja Veerabahu
Associate



Maitrayi Jain
Associate

		
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<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023 ----- Banking & Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
		
<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>

For more details, please contact km@jsalaw.com

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