



# JSA Corporate InVision

August 2024

## SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

### Asset management companies to identify and deter potential market abuse

SEBI, *vide* notification dated August 2, 2024, has issued the SEBI (Mutual Funds) (Second Amendment) Regulations, 2024, amending the SEBI (Mutual Funds) Regulations, 1996 to include provisions relating to identification and deterrence of potential market abuse. The term 'market abuse' is defined to include manipulative, fraudulent and unfair trade practices which may contravene Section 12A of the SEBI Act, 1992 or any of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or the SEBI (Prohibition of Insider Trading) Regulations, 2015. Some of the key provisions are as follows:

1. an Asset Management Company ("AMC") must put in place an institutional mechanism, as may be specified by the SEBI, for the identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities;
2. the chief executive officer or managing director or such other person of equivalent or analogous rank and chief compliance officer of the AMCs will be responsible and accountable for implementation of such an institutional mechanism for deterrence of potential market abuse, including frontrunning and fraudulent transactions in securities; and
3. asset management companies must also implement a whistleblower policy providing confidential reporting channels and protection for whistleblowers.

Subsequently, *vide* circular dated August 5, 2024, SEBI has directed AMCs to put in place an institutional mechanism for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities. This mechanism must consist of enhanced surveillance systems, internal control procedures, and escalation processes such that the overall mechanism is able to identify, monitor and address specific types of misconduct, including front running, insider trading, misuse of sensitive information. The mechanism will ensure the following:

1. the chief executive officer or managing director or such other person of equivalent or analogous rank and chief compliance officer of the AMCs is responsible and accountable for implementation of the institutional mechanism for deterrence of potential market abuse;
2. AMCs must develop and implement systems and procedures to generate and process alerts in a timely manner; and

- while processing of alerts, AMCs will consider and review all recorded communications including chats, emails, access logs of dealing room and CCTV footage. AMCs must maintain and monitor entry logs to the AMCs' premises.

### Streamlining operational practices for Alternative Investment Funds

SEBI, *vide* notification dated August 6, 2024, has issued the SEBI (Alternative Investment Funds) ("AIF") (Fourth Amendment) Regulations, 2024, amending the SEBI (AIF) Regulations, 2012. Some of the key amendments are as follows:

- a Large Value Fund ("LVF") for accredited investors is permitted to extend its tenure up to 5 (five) years (*earlier this was 2 (two) years*), subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Further, the extension in tenure of any existing scheme of a LVF for accredited investors will be subject to such conditions specified by SEBI; and
- Category I and Category II AIFs may 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 such conditions specified by SEBI.

Further, *vide* circular dated August 19, 2024, SEBI has issued guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs for accredited investors. Category I and Category II AIFs (subject to the prescribed conditions) are allowed to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies. They must maintain 30 (thirty) days cooling off period between 2 (two) periods of borrowing, which must be calculated from the date of repayment of previous borrowing. An LVF may extend its tenure up to 5 (five) years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and subject to the prescribed conditions, such as:

- existing LVF schemes who have not disclosed definite period of extension in their tenure in the private placement memorandum or whose period of extension in tenure is beyond the permissible 5 (five) years, must align the period of extension in tenure with the requirement above, within 3 (three) months i.e., on or before November 18, 2024; and
- while realigning the period of extension in tenure, LVF schemes must have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

### Amendment to additional disclosures by Foreign Portfolio Investors

SEBI, *vide* circular dated August 1, 2024, has amended the Master Circular for Foreign Portfolio Investors ("FPIs"), Designated Depository Participants ("DDPs") and Eligible Foreign Investors' dated May 30, 2024, that mandated additional disclosures for FPIs. Pursuant to the amendment, university funds and university related endowments, registered or eligible to be registered as Category I FPI, are not required to make the additional disclosures as prescribed under the 'Master Circular for FPIs, DDPs and Eligible Foreign Investors' dated May 30, 2024, subject to them fulfilling the following conditions:

- Indian equity Assets Under Management ("AUM") being less than 25% of global AUM;
- global AUM being more than INR 10,000 crore (Indian Rupees ten thousand crore) equivalent; and
- appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

The eligible jurisdictions with respect to the exemption granted to university funds and university related endowments will be as specified by the SEBI from time to time.

## **Board nomination rights to unitholders of Real Estate Investment Trusts/Infrastructure Investment Trusts**

SEBI, *vide* circulars dated August 6, 2024, has amended the Master Circulars for Real Estate Investment Trusts (“REITs”) and Infrastructure Investment Trusts (“InvITs”) dated May 15, 2024 (“Master Circulars”), in relation to the right to nominate a nominee director. The Master Circulars provided that eligible unitholder(s) are entitled to nominate 1 (one) unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate 1 (one) or more directors on the board of directors of the manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the manager or lender to the manager or the REIT/InvIT (or its HoldCo(s) or SPVs), then such entity in its capacity as unitholder, is not entitled to nominate or participate in the nomination of a unitholder nominee director.

Pursuant to the amendment, a proviso is inserted stating that the above restriction relating to the right to nominate a unitholder nominee director will not be applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)(e) of the SEBI (Debenture Trustees) Regulations, 1993.

On August 22, 2024, SEBI further amended the Master Circulars to promote ease of doing business by amending provisions related to the review of statement of investor complaints and timeline for disclosure of statement of deviation(s). Some of the key amendments are as follows:

1. all complaints including SEBI Complaints Redress System (SCORES) complaints received by the InvITs/REITs must be disclosed on the website of the InvIT/REITs and must also be filed with the recognised stock exchange(s). The statement must be placed, on a quarterly basis (*earlier, this was to be reviewed before submission to the stock exchange*), before the board of directors/governing body of the investment manager/manager and the trustee for review; and
2. pursuant to such review, the statement must be submitted to the stock exchange(s) along with the submission of the financial results (*earlier such submission was to be made within 21 (twenty-one) days from the end of each quarter*).

## **Restrictions in dealing with other entities**

SEBI, *vide* notification dated August 29, 2024, has issued the SEBI (Intermediaries) (Amendment) Regulations, 2024 amending the SEBI (Intermediaries) Regulations, 2008. A new chapter, ‘Chapter IIIA’, dealing with restrictions in having association with certain persons, is inserted. Some of the key provisions are as follows:

1. no person regulated by SEBI or the agent of such a person will have any direct or indirect association, with another person who provides advice or any recommendation in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by SEBI to provide such advice or recommendation; or makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person has been permitted by SEBI to make such a claim (this is not applicable in respect of an association through a specified digital platform); and
2. the person regulated by SEBI must ensure that any person associated with it, or its agent does not engage in the activities mentioned above without the necessary permission.

Further, SEBI *vide* notification dated August 29, 2024, issued the SEBI (Depositories and Participants) (Second Amendment) Regulations, 2024 amending the SEBI (Depositories and Participants) Regulations, 2018. Chapter VIIA, dealing with restrictions in having association with certain persons, is inserted. Some of the key provisions are as follows:

1. no depository or its agent, must have any direct or indirect association, with another person who: (a) provides advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by SEBI to provide such advice or recommendation; or (b) makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities,

unless the person has been permitted by SEBI to make such a claim (this is not applicable in respect of an association through a specified digital platform); and

2. the depository must ensure that any person associated with it or its agent does not engage in the activities mentioned above without the necessary permission.

## **Modalities for migration of Venture Capital Funds**

SEBI, *vide* notification dated August 19, 2024, has issued modalities for migration of Venture Capital Funds (“VCFs”) registered under the erstwhile SEBI (VCFs) Regulations, 1996 to the SEBI (AIFs) Regulations, 2012.

To initiate the migration, VCFs must submit an application to SEBI, including the original certificate of registration and the prescribed information as per the notification. The deadline for this application is July 19, 2025.

Conditions for migration:

1. schemes whose liquidation period has not expired can migrate provided they continue with the same tenure upon migration;
2. VCFs having at least 1 (one) scheme which has not been wound up post expiry of its liquidation period can migrate only if they do not have any unresolved investor complaints and get an extra year to liquidate;
3. the tenure of the migrated schemes will either continue as per the original disclosure in the private placement memorandum or, if no definite tenure was disclosed, the tenure will be determined before the migration application with the approval of 75% of investors by value; and
4. VCFs that do not opt for migration and whose liquidation period has not expired will be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under SEBI (AIFs) Regulations, 2012. Further, VCFs having at least 1 (one) scheme whose liquidation period has expired will be subject to appropriate regulatory action for continuing beyond the expiry of their original liquidation period.

## **Consultation paper on expanding the scope of the sustainable finance framework in the Indian securities market**

SEBI, on August 16, 2024, released a consultation paper on expanding the scope of sustainable finance framework in the Indian securities market and sought comments from the public. The consultation paper proposes to broaden the scope of debt instruments by introducing new options such as social bonds, sustainable bonds and sustainability-linked bonds alongside the established green debt securities. This is being done with the intention to attract enhanced investments in projects focused on addressing Environment, Social and Governance issues.

For a detailed analysis, please refer to the [JSA Prism of August 28, 2024](#).

## **RESERVE BANK OF INDIA (RBI)**

### **Central Government notifies key amendments to the Foreign Exchange Management (Debt Instruments) Rules, 2019**

RBI, *vide* notification dated August 7, 2024, has issued the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024, amending the Foreign Exchange Management (Debt Instruments) Regulations, 2019. Pursuant to the amendment, persons resident outside India are permitted to purchase or sell sovereign green bonds in International Financial Services Centres in India. The amount of consideration for purchase of sovereign green bonds issued by the Government must be paid out of inward remittance from abroad through banking channels or out

of funds held in a foreign currency account maintained in accordance with the regulations issued by RBI and/or the International Financial Services Centre Authority. The sale/maturity proceeds, net of taxes, as applicable, of instruments held by persons resident outside India may be remitted outside India.

## MINISTRY OF FINANCE (MoF)

### Central Government notifies key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019

The Department of Economic Affairs of the MoF *vide* notification dated August 16, 2024 (“**Notification**”) issued the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024. The amendments follow from the union budget announcement to simplify rules and regulations governing Foreign Direct Investment (“**FDI**”) and Overseas Direct Investment (“**ODI**”). The amendments introduced pursuant to the Notification signify a welcome and much-awaited initiative. They not only remove certain limitations that previously existed under the cross-border investment framework but also bring regulatory clarity to the rules governing FDI and ODI. Particularly, the amendments relating to cross-border share swaps are expected to provide an important push for non-cash strategic transactions undertaken by Indian companies.

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

## MINISTRY OF CIVIL AVIATION (MoCA)

### Ease in the process of drone ownership

MoCA, *vide* notification dated August 23, 2024, has issued the Drone (Amendment) Rules, 2024, amending the Drone Rules, 2021 to simplify the procedure for registration and de-registration/transfer of drones. Form D-2 relating to registration of drones and Form D-3 relating to de-registration or transfer of drones are amended to include, proof of identity and proof of address, such as a voter’s ID card, ration card or driving license, in addition to Indian passport number.

## JAN VISHWAS ACT

### Jan Vishwas (Amendment of Provisions) Act, 2023

1. The Ministry of Agriculture and Farmers Welfare, *vide* notification dated July 31, 2024, states that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 (“**JVA**”) with respect to the Agricultural Produce (Grading and Marking) Act, 1937, are in force with effect from July 31, 2024.
2. The MoF *vide* notification dated August 1, 2024, states that the entries in the JVA with respect to Public Debt Act, 1944, are in force with effect from August 1, 2024.
3. MoF, *vide* notification dated August 13, 2024, states that the entries in the JVA with respect to the Prevention of Money laundering Act, 2002, are in force with effect from August 13, 2024.
4. The Ministry of Commerce and Industry, *vide* notification dated August 14, 2024, states that the entries in the JVA with respect to the Marine Products Export Development Authority Act, 1972, are in force with effect from August 16, 2024.
5. The Ministry of Health and Family Welfare, *vide* notification dated August 19, 2024, states that the entries in the JVA with respect to the Pharmacy Act, 1948, will come into force with effect from December 31, 2024.



## MINISTRY OF CORPORATE AFFAIRS (MCA)

### E-adjudication platform for penalties

MCA, *vide* notification dated August 5, 2024, has issued the Companies (Adjudication of Penalties) Amendment Rules, 2024, amending the Companies (Adjudication of Penalties) Rules, 2014. Some of the key amendments are as follows:

1. provisions pertaining to 'Adjudication Platform' are inserted stating that all proceedings (including issue of notices, filing replies or documents, evidence, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under the principal rules must take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose;
2. if the email address of any person (to whom a notice or summons required to be issued), is not available, the adjudicating officer will send the notice by post at the last intimated address or address available in the records and the officer will preserve a copy of such notice in the electronic record in the e-adjudication platform; and
3. Form No. ADJ (*Memorandum of Appeal*) is substituted.

The amendments will come into force from September 16, 2024.

## JSA UPDATES

### Judicial role encompasses the duty to direct the executive branch to review the working of the statutes and audit the statutory impact

The Hon'ble Supreme Court of India ("Supreme Court"), in a recent judgment dated July 30, 2024, in *Yash Developers vs. Harihar Krupa Co-operative Housing Society Limited*, while examining the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Maharashtra Slum Areas Act") *vis-à-vis* scope of judicial review against an order passed by the Apex Grievance Redressal Committee under Section 13 of the Maharashtra Slum Areas Act, *inter alia* held that:

1. assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the Executive branch;
2. judicial role encompasses the duty to direct the Executive branch to review the working of the statutes and audit the statutory impact; and
3. judicial review is ineffective until and unless duty is identified with accountability.

For a detailed analysis, please refer to the [JSA Prism of August 23, 2024](#).

### 'Effect of 'accord and satisfaction' or 'full and final settlement' on arbitration; unsuitability of 'eye of the needle' and 'ex-facie meritless' tests in modern day arbitrations; and role of the referral courts

In *SBI General Insurance Ltd. vs. Krish Spinning*, the Supreme Court has held that parties may refer a dispute to arbitration even after full and final settlement of the contract, if the party said to have executed the contract (a discharge voucher in the present case) alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party. Furthermore, in exercise of its powers under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), the referral court will only look into the existence of the arbitration agreement and will refuse arbitration only where it was manifest that the claims were ex-facie time barred, or the claims are ex-facie frivolous and non-arbitrable. A referral court may reject arbitration only in exceptional cases where the plea of fraud or coercion appears to be ex-facie frivolous and devoid of merit. The Supreme Court has reiterated and clarified that at the stage of deciding an application under Section 11 of the Arbitration Act, the referral court must

not conduct an intricate evidentiary enquiry into the question as to whether the claims are time barred and must leave that determination for the arbitrator.

For a detailed analysis, please refer to the [JSA Prism of August 6, 2024](#).

### **Lock-in period provision in an employment agreement during the term of employment is valid and does not infringe the fundamental rights of an employee; disputes on lock-in period are arbitrable under the Arbitration Act**

In *Lily Packers Private Limited vs. Vaishnavi Vijay Umak and Ors.* (the “Lily Case”), a single judge of the Delhi High Court (“Delhi HC”) adjudicated on the validity of the lock-in period provision in the employment agreement(s) of the respondent employees with the petitioner company; and whether the dispute on lock-in period was arbitrable under the Arbitration Act. The Delhi HC held that the lock-in period as a restrictive covenant in the employment agreements was valid, enforceable during the term of employment and did not infringe the fundamental rights of the employees under the Constitution of India. It also held that the dispute on lock-in period was arbitrable. The Lily Case validates the enforceability of lock-in period and gives employers the legal sanction to incorporate such negative covenants in the employment agreements provided that these covenants are operative during the period of employment.

For a detailed analysis, please refer to the [JSA Prism of August 14, 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 emphasise 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>18 Practices and 25 Ranked Lawyers</p>	<p>7 Ranked Practices, 16 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners</p>
	<p>Elite – Band 1 - Corporate/ M&amp;A Practice</p>	<p><b>IFLR1000 APAC Rankings 2023</b></p>
<p>14 Practices and 38 Ranked Lawyers</p>	<p>3 Band 1 Practices</p>	<p>Banking &amp; Finance Team of the Year</p>
	<p>4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p>Fintech Team of the Year</p>
<p>20 Practices and 22 Ranked Lawyers</p>		
<p>Ranked Among Top 5 Law Firms in India for ESG Practice</p>	<p>Recognised in World's 100 best competition practices of 2024</p>	
		
<p>Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Employer of Choice 2024</p> <p>Energy and Resources Law Firm of the Year 2024</p> <p>Litigation Law Firm of the Year 2024</p> <p>Innovative Technologies Law Firm of the Year 2023</p> <p>Banking &amp; Financial Services Law Firm of the Year 2022</p>	<p><b>Ranked #1</b> <b>The Vahura Best Law Firms to Work Report, 2022</b></p> <p>Top 10 Best Law Firms for Women in 2022</p>
		
		<p>7 Practices and 3 Ranked Lawyers</p>

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