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LKS | CORPORATE PRACTICE

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## FOREWORD

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We are pleased to present the latest edition of our quarterly newsletter, where we have covered significant amendments under company law, banking laws, securities laws and environmental laws.

On the corporate law front, significant amendments were made to the Companies (Incorporation) Rules, 2014 where the discretionary power with the Central Government to impose costs upon shifting of the registered office of a company from one state/ union territory to another has been revoked. Further, the Ministry of Corporate Affairs (“MCA”) through the Limited Liability Partnership (Third Amendment) Rules, 2023 and the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 introduced the regulatory framework for significant beneficial ownership in limited liability partnerships. The Companies (Management and Administration) Second Amendment Rules, 2023 were also introduced to provide for reporting of beneficial ownership in companies by ‘Designated Persons’. The Companies (Prospectus and Allotment of Securities) Rules, 2014 were amended to provide for mandatory dematerialisation of securities of private companies. The MCA notified the enforcement of Section 5 of the Companies (Amendment) Act, 2020 with effect from 30 October 2023. These changes allow certain public companies to issue certain securities for the purpose of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions as prescribed under section 23(3) of Companies Act 2013. The changes also provided for the establishment of the ‘Direct Listing Framework’ and granted exemption to certain permitted companies from compliance with the ‘Direct Listing Framework’.

Under the banking laws, the Reserve Bank of India (“RBI”) amended the Master Direction on Know Your Customer to align the master direction with the recent amendment to the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, Unlawful Activities (Prevention) Act, 1967 and the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. Further the master direction has been made applicable to ‘Asset Reconstruction Companies’ as well. The RBI also introduced the Payment Aggregator – Cross Border Guidelines which provides for non-banks Payment Aggregator-Cross Border services to apply for authorisations from the RBI by 30 April 2024. Further, the RBI issued certain guidelines, to address the concerns relating to evergreening of loans by regulated entities through investments in Alternate Investment Funds (“AIFs”). The RBI allowed non-resident investors to invest in certain specified categories of Central Government securities without any restrictions, apart from being available to domestic investors. Lastly, the RBI introduced Draft Master Direction on Managing Risks and Code of Conduct in Outsourcing of Financial Services. The draft directions provide for certain responsibilities upon the regulated entities, such as conducting due diligence on the service provider, having a robust grievance redressal mechanism to address customer complaints, having an outsourcing policy for selection of the service providers etc.

Under securities laws, the Securities and Exchange Board of India (“SEBI”), has released a circular relating to the process for issuance of units of dematerialised shares to investors who have not provided the details of demat account to AIFs. Further, SEBI has amended SEBI (Investor Protection and Education Fund) Regulations, 2009, which collectively has amended the following regulations: (a) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (b) SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2014 and (c) SEBI (Infrastructure

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Investment Trusts) Regulations, 2014; the key changes brought about are as follows: (i) any unclaimed amount for a period more than 7 (seven) years will be transferred to Investor Protection and Education Fund ("IPEF"); (ii) any amount remaining unclaimed or unpaid out of the distributors declared by a real estate investment trusts will be transferred to the IPEF; and (iii) any amount remaining unclaimed or unpaid out of the distributors declared by an infrastructure investment trusts will be transferred to the IPEF. Lastly, the SEBI has amended the guidelines on Anti-Money Laundering ("AML") Standards and Combating the Financing of Terrorism ("CFT") made under Prevention of Money Laundering Act, 2005. The amendment provides that the financial groups shall apply additional measures when the host country does not allow proper AML/CFT implementation consistent with home country requirements.

Under environmental law, the Ministry of Environment, Forest and Climate Change ("MoEFCC") has amended Plastic Waste Management Rules, 2016, which has enhanced the plastic waste management practices to promote environmental sustainability. The MoEFCC has amended the Battery Waste Management Rules, 2016, to provide for the obligations of producer in relation to the Extended Producer Responsibility ("EPR"), via environmentally sound management of pre-consumer waste battery. Further, the Eco-mark Certification Rules, 2023 were introduced to govern the labelling of products which have lesser environmental impact and to encourage consumers to adopt such products. Lastly, the Central Pollution Control Board has released a notification on E-Waste (Management) Rules, 2022, which provides that the EPR certificates will be issued against key metals recycled from e-waste.

Our team has curated this publication to provide an overview of the key amendments that have a bearing on Indian businesses, investors and other stakeholders.

Do reach out to us with your feedback and/or suggestions.



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# Key Updates Under Corporate Laws

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## 1. Companies (Incorporation) Third Amendment Rules, 2023

The Ministry of Corporate Affairs ("MCA") through a notification dated 23 October 2023 amended the Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**") through the Companies (Incorporation) Third Amendment Rules, 2023. Through this amendment, the MCA has amended Rule 30(9) of the Incorporation Rules by easing certain compliances related to shifting of the registered office of a company from one state or union territory to another.

Prior to this amendment, the Central Government had discretionary power to impose costs upon shifting of the registered office of a company from one state or union territory to another. This amendment has revoked the power of the Central Government to impose such costs.

Further, a new proviso has been added which provides that the shifting of the registered office may be allowed if the management of the company has been taken over by new management under a resolution plan approved under Section 31 of the Insolvency Bankruptcy Code, 2016 ("**IBC Code**") and no appeal against the resolution plan is pending in any court or tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan.



### LKS COMMENT:

The amendment revoking the power to impose costs seeks to enhance the Incorporation Rules and is a significant boost to companies and will reduce the compliance costs for shifting the registered office from one state or union territory to another. Further, the amendment authorising the Central Government to approve the shifting of registered office in case of a resolution plan approved under Section 31 of IBC Code is practical and convenient for all stakeholders.

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## 2. Regulatory Framework for Significant Beneficial Ownership in Limited Liability Partnerships

The MCA through a notification dated 27 October 2023 amended the Limited Liability Partnership Rules, 2009 via the Limited Liability Partnership (Third Amendment) Rules, 2023 ("**LLP Amendment**"). Through this amendment the government aims to improve the disclosure norms of the beneficial interest in limited liability partnerships ("**LLPs**").

Key changes brought about by this amendment are as follows:

- a. **Maintenance of register of partners:** In addition to personal details, date of appointment of the

partner, date of cessation of partnership etc., the register shall also provide for all details pertaining to the contribution made by a partner. All existing LLPs have a period of 30 (thirty) days from the commencement of this amendment, to prepare and maintain such register of partners.

- b. Declaration of beneficial interest:** Any person who has his name in the register of partners of an LLP but is not the holder of any beneficial interest fully/ partly in contribution is required to file a declaration with the LLP in the prescribed format specifying the personal and other details of the person holding the beneficial interest. Such declaration is required to be filed within 30 (thirty) days of such registered partner's name being entered into the register of partners.

Further, any person who holds or acquires a beneficial interest in the contribution of an LLP, but such person's name is not recorded in the register of partners of the LLP, is required to file a declaration with the LLP in the prescribed format stating the nature of beneficial interest, particulars of the partner in whose name the contribution stands registered in the books of the LLP. Such declaration is to be filed within 30 (thirty) days of such person acquiring the beneficial interest in an LLP.

- c. Reporting by LLPs to the Registrar:** LLPs are required to record the declarations made by the registered partners and the beneficial partners in the register of partners and file a return with the jurisdictional registrar within 30 (thirty) days from the date of receiving of such declarations in the prescribed format.

In furtherance of the LLP Amendment, the MCA through a notification dated 9 November 2023 introduced the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 ("LLP SBO Rules"). LLP SBO Rules have been issued under Section 90 of the CA 2013 which was made applicable to all LLPs pursuant to a notification dated 11 February 2022.

Key highlights of the LLP SBO Rules are as follows:

- a. Definition of Significant Beneficial Owners:** Significant beneficial owner ("**SBO**") in relation to a reporting LLP means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting LLP, namely:
- i.** holds indirectly, or together with any direct holdings, at least 10% (ten per cent) of the contribution;
  - ii.** holds indirectly, or together with any direct holdings, at least 10% (ten per cent) of the voting rights in respect of the management or policy decisions in such LLP;
  - iii.** has right to receive or participate in not less than 10% (ten per cent) of the total distributable profits, or any other distribution, in financial year through indirect holdings alone or together with any direct holdings; or
  - iv.** has the right to exercise or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

To qualify as an SBO, an individual must qualify under the criteria outlined below:

S.No.	Partner of the reporting LLP (holding more than 10% (ten per cent))	Who will be considered an SBO
1.	Body corporate (irrespective of being registered in India or abroad)	An individual holding: a. majority stake in the partner; and b. majority stake in the ultimate holding company of that partner
2.	Hindu Undivided Family (through 'karta')	The individual being 'karta' of the Hindu Undivided Family.
3.	Partnership entity (through itself or a partner)	Individual being: a. a partner; or b. holder of a majority stake in the body corporate that is a partner of the partnership entity; or c. holder of a majority stake in the ultimate holding company of the body corporate that is a partner of the partnership entity.
4.	Trust	The individual is: a. a trustee (in case of a discretionary trust or a charitable trust); b. a beneficiary (in case of a specific trust); or c. author or settlor (in case of a revocable trust).
5.	Pooled investment vehicle itself or an entity controlled by it (based in the member state of the Financial Action Task Force ("FATF"), and the regulator of the securities market of such a member state is a member of the International Organization of the Securities Commission.)	The individual in the context of the pooled investment vehicle is: a. a general partner b. an investment manager; or c. a chief executive officer (in case the investment manager of such pooled vehicle is a body corporate or a partnership entity)
6.	Pooled investment vehicle itself or an entity controlled by such investment vehicle (situated in a jurisdiction other than those included in clause 5 above)	Any individual covered under clauses 1-4 above.

- b. Obligations of Reporting LLPs under the LLP SBO Rules:** Below is a list of key compliances required to be undertaken by reporting LLPs:
- i. Within 30 (thirty) days of receiving a declaration from any SBO, the reporting LLP must file Form LLP BEN 2 with the prescribed fee.
  - ii. The reporting LLP should maintain a register of SBO's.
  - iii. Every reporting LLP must take necessary steps to identify its SBOs. Further, a reporting LLP is also required to give a notice to every partner (other than an individual), holding no less than 10% (ten per cent) of its contribution, voting rights or the right to receive or participate in the distributable profits, or any other distribution payable in a year, seeking necessary information from such SBO.
  - iv. In the event an individual does not disclose the requisite information about its 'significant beneficial ownership' or has provided incomplete or unsatisfactory information, the reporting LLP may approach the relevant national company law tribunal to seek appropriate relief including restrictions on transfer of interest, suspension of the right to receive profits/ voting rights relating to a contribution coupled with any other related rights.
- c. Obligations of SBOs Under LLP SBO Rules:** Every individual who qualifies as an SBO for a reporting LLP is required to declare all necessary details to the reporting LLP within 90 (ninety) days from the date on which the LLP SBO Rules came into effect. Further, every individual who eventually becomes an SBO, or whose significant beneficial ownership changes, must file a declaration with the reporting LLP within 30 (thirty) days of becoming an SBO or from such change.
- d. Exemption From LLP SBO Rules:** LLP SBO Rules shall not apply to the extent the contribution of the reporting limited liability partnership is held by:
- i. the Central Government, State Government or any local authority;
  - ii. (A) a reporting LLP; (B) a body corporate, or (C) an entity, controlled by the Central Government or by one or more State Government;
  - iii. An investment vehicle regulated by the Reserve Bank of India ("RBI"), or Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.
  - iv. An investment vehicle registered with and regulated by the Securities and Exchange Board of India ("SEBI"), such as mutual funds, Alternative Investment Funds ("AIFs"), Real Estate Investment Trusts ("REITs") Infrastructure Investment Trusts ("InvITs").



**LKS COMMENT:**

Before the LLP Amendment only companies were required to disclose beneficial ownership in shares. Since LLP structures are gaining traction in the corporate world, the government has extended this disclosure requirement to LLPs as well. Therefore, existing LLPs should examine and evaluate their current structures in



light of this amendment.

Further, the Companies (Significant Beneficial Ownership) Rules, 2018 provide an exemption to subsidiary companies from undertaking reporting obligations under the rules, if its holding company is undertaking the obligations. However, such an exemption has not been granted under the LLP SBO Rules. Therefore, where an LLP holds majority contribution in another LLP, both LLPs must separately comply with the requirements under these LLP SBO Rules.

### 3. Companies (Management and Administration) Second Amendment Rules, 2023

The MCA through a notification dated 27 October 2023 amended the Companies (Management and Administration) Rules, 2014 via the Companies (Management and Administration) Second Amendment Rules, 2023 ("**MA Rules**").

Key changes brought about by this amendment are as follows:

- a. **Introduction of a 'Designated Person':** The MA Rules have introduced a concept of a 'designated person'. This means that every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the registrar or any other authorised officer with respect to beneficial interest in shares of the company.
- b. **Identification of a Designated Person:** For the purposes of reporting beneficial interest, a company may designate (i) a company secretary, if there is a requirement of appointment of such company secretary under the Companies Act 2013, ("**CA 2013**"), (ii) key managerial personnel, other than the company secretary; or (iii) every director, if there is no company secretary or key managerial personnel.
- c. **Deemed Designated Person:** Until a person is designated to report beneficial interest, the following persons shall be deemed to have been designated person: (i) company secretary, if there is a requirement of appointment of such company secretary under the CA 2013, (ii) every managing director or manager, in case a company secretary has not been appointed; or (iii) every director, if there is no company secretary or a Managing Director or Manager.
- d. **Reporting Requirement:** Every company shall disclose the details of the designated person in its annual returns. If the company changes the designated person at any time, it shall intimate the same to the registrar in e-form GNL 2 specified under the Companies (Registration Offices and Fees) Rules, 2014.



#### LKS COMMENT:

This amendment aims to bring about greater transparency and accountability in corporate governance affairs of companies and regulatory compliance by designating responsibilities upon identified individuals for reporting beneficial interest.

#### 4. Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

The MCA through a notification dated 27 October 2023 amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**") via the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ("**PAS Amendment**"). This amendment has introduced a framework for dematerialisation of share warrants issued by public companies and securities issued by private companies, other than small companies.

Key changes brought about by the PAS Amendment are as follows:

- a. **Additional requirements for public companies:** Every public company which issued share warrants prior to commencement of the CA 2013 and not converted into shares shall:
  - i. within a period of 3 (three) months of the commencement of these rules inform the registrar about the details of such share warrants in Form PAS 7; and;
  - ii. within a period of 6 (six) months of the commencement of these rules require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS 8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the state in which the registered office of the company is situated.

Further, in case any bearer of share warrant does not surrender the share warrants within the above-mentioned period, the company shall convert such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund ("**Fund**") established under Section 125 of CA 2013.

- b. **Obligations on private companies:** Every private company, other than a small company, shall:
  - i. issue the securities only in dematerialised form;
  - ii. facilitate dematerialisation of all its securities; and
  - iii. before making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996.

Further, every holder of securities of the private company referred to in sub-rule (2) of the PAS Rules:

- i. who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or

- ii. who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.

Lastly, a private company, which as on last day of a financial year, ending on or after 31 March 2023, is not a small company as per audited financial statements for such financial year, shall, within 18 (eighteen) months of closure of such financial year, comply with the provisions of Rule 9B of the PAS Rules.



#### LKS COMMENT:

Through the PAS Amendment, the MCA has now extended the requirement to compulsorily dematerialise securities to private companies bringing it in line with a similar amendment made to the PAS Rules for public unlisted companies. Dematerialisation of securities by private companies will boost ease of doing business in India, enable the government to address concerns arising from the issue of physical share certificates such as forgery, loss and theft of certificates, simplify the process to trace shareholders of private companies and help keep benami transactions in check. This move will also ease the process for foreclosure of shares, as the process for the foreclosure of dematerialised shares is comparatively simpler than that of physical shares.

For private companies, while the compulsory dematerialisation of shares may initially involve compliance costs, however, in the long run this will greatly simplify and smoothen future issuances, transfers and buy-back of shares etc. Further, excluding 'small companies' from the ambit of the PAS Amendment may be seen as a strategic move by the MCA to not burden small scale companies and start-ups with additional compliance costs at such a nascent stage of their corporate lifecycle.

## 5. Implementation of Section 5 of Companies (Amendment) Act, 2020

On 28 September 2020, the Indian Ministry of Law and Justice published the Companies (Amendment) Act, 2020 ("**Amendment Act**") to bring about changes to certain provisions of CA 2013. On 30 October 2023, the MCA notified enforcement of Section 5 of the Amendment Act with effect from 30 October 2023.

Following are the changes which have been brought about by implementing the changes specified in the Amendment Act:

- a. certain public companies ("**Permitted Companies**") are permitted to issue certain classes of securities ("**Permitted Securities**") for the purpose of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions as prescribed under Section 23(3) of CA 2013.
- b. the Central Government may exempt, by way of notification, Permitted Companies, or certain classes of Permitted Companies, from any of the provisions of Chapter III (Prospectus and Allotment of Securities), Chapter IV (Share Capital and Debentures), section 89 (Declaration in respect of beneficial interest in any share), section 90 (Register of significant beneficial owners in a company) or section 127 (Punishment for failure to distribute dividends) of CA 2013 ("**Direct Listing Framework**").



**LKS COMMENT:**

The establishment of the Direct Listing Framework promises to stimulate capital generation for Indian companies who will have the chance to list their securities with prominent foreign stock exchanges. This would allow for fast-track adoption of international best practices on listing rules, information disclosures, investor interaction norms in India and have a positive impact on the competitiveness between Indian companies.

Previously, Indian companies could only list their securities indirectly through the issuance of depository receipts in accordance with Section 41 of CA 2013, the Companies (Issue of Global Depository Receipts) Rules, 2014, the Depositories Receipts Scheme, 2014 and certain notifications issued by the Reserve Bank of India from time to time.

While the Central Government has set the ball rolling with this Notification, it is yet to notify the criteria for determining key aspects such as (a) which classes of public companies can use this route; (b) what are the classes of securities which can be listed; (c) which are the foreign jurisdictions and permitted stock exchanges where such companies may list; and (d) what are the exemptions that may be offered to such companies in terms of procedural compliances to encourage direct listing. Thus, the detailed rules and corresponding alignment of other laws is awaited.

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# Key Updates under Banking Laws

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## 1. Amendment to the Master Direction on Know Your Customer ("KYC")

The RBI, through a notification dated 17 October 2023, amended the Master Direction on KYC ("**KYC Master Direction**").

Key highlights of the amendment are as follows:

### a. Extended Applicability:

- i. The RBI may advise the branches and majority owned subsidiaries of the Regulated Entities ("**REs**") which are located abroad to take further necessary actions including application of additional measures to be taken by the RE to manage the money laundering / terrorist financing risks.
- ii. The KYC Master Direction will now also be applicable to Asset Reconstruction Companies.

### b. Updates in relation to recent amendments to the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 ("**PMLA Rules**"):

- i. The criteria for determination of beneficial ownership for a partnership has been reduced to 10% (ten per cent). Further, the amendment clarified that 'control' also includes right to control the management or policy decision.
- ii. In relation to the customer due diligence process ("**CDD**"), certain supplementary measures such as (A) undertaking CDD using a 'reliable' and 'independent source of identification', (B) undertaking reasonable steps to seek information about the 'purpose' of the transaction, 'intended nature of business relationship' etc., have been added.
- iii. REs may rely on the CDD carried out by a third party obtained 'immediately'. Earlier, the REs were allowed to rely on the CDD data obtained within 2 (two) days.
- iv. REs shall have in place appropriate risk management systems to determine whether the customer or beneficial person is a politically exposed person. Further, the REs shall take reasonable measures for establishing the source of funds/ wealth.
- v. REs which are a part of a group are now required to implement group level policies and programmes to ensure compliance with the PMLA Rules.

### c. The REs will be required to maintain records of 'customer information'. Earlier the REs were required to maintain records of 'customer account information'.

- d. REs shall now apply enhanced due diligence measures which are effective and proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.
- e. If the RE is not able to complete the CDD, then the RE may consider filing a suspicious transaction report with the Financial Intelligence Unit – India.



**LKS COMMENT:**

These amendments have been made to align the KYC Master Direction with the recent amendment to the PMLA Rules, Unlawful Activities (Prevention) Act, 1967 and the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. Further, these amendments will have a significant impact on the processes and procedures of the REs in relation to the CDD.

## 2. **RBI Invites Comments on Draft Master Direction on Managing Risks and Code of Conduct in Outsourcing of Financial Services**

The RBI through a notification dated 26 October 2023, issued the Draft Master Direction on Managing Risks and Code of Conduct in Outsourcing of Financial Services ("**Draft Master Directions**"). The Draft Master Directions have been prepared by incorporating and harmonizing the extant directions/guidelines/instructions to enable REs to have all current instructions on outsourcing of financial services at one place for reference. The last date for submitting comments on Draft Master Directions was 28 November 2023.

Key provisions of the Draft Master Direction are as follows:

### a. **Responsibilities of the RE:**

- i. The RE must conduct due diligence on the service provider in order to ensure compliance with applicable laws, licensing and registration requirements etc., as though the services are being rendered by the RE itself. The RE must also ensure that they review the financial and operational condition of the service provider, at least on an annual basis.
- ii. REs will be equally responsible for the actions of the service providers and must ensure confidentiality of the customer information available with the service providers and retain the ultimate control of the outsourcing. Access to the customer information by the staff of the service providers will be on a 'need to know basis'. In case of any breach of security or leakage of confidential information of the customers, the RE will be liable to the customers.
- iii. The RE must ensure that the service provider, if not a group company must not be owned or controlled by any director or key managerial personnel of the RE or any other related party of the RE.
- iv. REs must have a robust grievance redressal mechanism and be responsible for implementing the redressal of customer's grievances relating to the outsourced activities.
- v. REs must have an outsourcing policy incorporating inter alia the criteria for selection of

activities to be outsourced, selection of service providers and parameters for determining material outsourcing.

- vi. REs are required to put in place a code of conduct for direct sales agents/ direct marketing agents/ recovery agents and must obtain their commitment to abide by the code. The REs and the recovery agents are prohibited from contacting the borrower/ guarantor before 8:00 a.m. and after 7:00 p.m.
- vii. REs are required to have a management structure in place, to monitor and control their outsourcing activities. A central record of all material outsourcing will also be maintained by the RE which will be updated promptly, and half yearly reviews will be placed before the board of the RE. Regular audits must also be conducted, at least annually by the RE to assess the adequacy of the risk management practices in place.
- viii. An annual compliance certificate is to be submitted by the RE to its supervisory authority with the details of its outsourcing contracts, periodic audits and findings, and any action undertaken by the board of the RE.
- ix. The termination of an outsourcing agreement due to fraud, leakage of data, breach of confidentiality/code of conduct by the service provider or blacklisting of the service provider by any regulatory or supervisory authority shall be published in the leading local newspaper and at a prominent website to curtail the customers from dealing with such service provider.

**b. Other key provisions:**

- i. The outsourcing agreement should set out the nature of the legal relationship between the RE and the service provider. The agreement should address the risks and the risk mitigation strategies for undertaking the outsourcing activities. Any assignment of obligations under the agreement to the sub-contractors can only be with the prior consent of the RE. Where services are outsourced on a continuing basis, the outsourcing agreement will identify a specific period and no agreements will have an indefinite term.
- ii. The RE should display the grievance redressal procedure in a conspicuous place in all its branches and also place it on its website with details of the grievance redressal officer, escalation matrix and the time frame for responding to complaints. In the event a complainant does not receive a reply within 30 days after the RE received the complaint or is not satisfied with the reply of the RE, the complainant may resort to relief as set out under the RBI's ombudsman, the consumer education and protection cell, or the grievance redressal mechanism of the respective supervisory authority.
- iii. The REs are required to report all material outsourcing arrangements to the supervisory authority on a quarterly basis. The reporting format will be prescribed separately by RBI.
- iv. In case of outsourcing within a group entity where REs have a back office or service arrangements with group entities, e.g., sharing the building, premises, hardware, software applications, REs must act on an arm's length basis and keep a board approved policy in place. There is also a requirement to inform the customers about which entity is selling the product/

service. In the case of shared premises between the RE and group entities for cross-selling, the identity of the RE must be clearly distinguishable to the customers of the RE. The REs will not publish any advertisement or enter into any agreement that affixes the responsibility of the group entity on the RE.

- v. If the RE is outsourcing through a foreign service provider, the RE must establish appropriate contingency and exit strategies, risk assessment procedures, and closely monitor government policies and political, socio-economic, and legal conditions. The governing law in this case should be clearly specified in the agreement. The off-shore outsourcing of financial services will be governed by both this Draft Master Direction and the guidelines of the host country. In case there are differences, the more stringent one would prevail out of the two guidelines.



#### LKS COMMENT:

Due to lack in clarity of what can or cannot be outsourced, outsourced activities were not properly regulated and therefore exposed the RE as well as its customers to various risks including operational and legal risk. By identifying and setting out an illustrative list of permissible outsourcing arrangements and laying out principles for what cannot be outsourced, RBI has provided much needed clarity on this aspect. Further, where any personal data of customer is shared with a service provider for provision of a service, the RE will be deemed to be the 'data fiduciary' under the Digital Personal Data Protection Act, 2013 and will continue to be liable under the legislation for any breaches by the service provider. Accordingly, protective covenants should also be incorporated under outsourcing agreement with the service provider to adequately mitigate risk from a data protection standpoint.

### 3. Introduction of the Payment Aggregator – Cross Border Guidelines

The RBI through a notification dated 31 October 2023, introduced the Payment Aggregator – Cross Border Guidelines (“**PA-CB Guidelines**”). Through the PA-CB Guidelines the RBI has decided to bring all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator-Cross Border (“**PA-CB**”). Before the PA-CB Guidelines, the entities that used to process cross-border payments were called online payment gateway providers (“**OPGSP**”).

Key provisions of the PA-CB Guidelines are as follows:

- a. Non-banks which provide PA-CB services as on the date of this notification, shall apply to the RBI for authorisation by 30 April 2024; they shall be allowed to continue such services till they receive communication from the RBI regarding the decision on their application. Authorisation for PA-CB activity may be sought for any one of the following categories:
  - i. Export only PA-CB
  - ii. Import only PA-CB



- iii. Export and Import PA-CB
  - b. The entities, currently carrying out this activity should ensure adherence to the guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework within a period of 3 (three) months from the date of this notification and should be complied with on an ongoing basis thereafter. Non-adherence to these instructions may lead to the application for authorisation being refused.
  - c. If any authorised payment aggregator (“PA”) wants to commence PA-CB activity, they shall seek approval from Department of Payment and Settlement Systems, RBI and Central Office before commencement of such business. This shall also be applicable for any authorised non-bank PA-CB which wants to commence PA activity.
  - d. As a pre-requisite for seeking authorisation from the RBI, all non-bank PA-CBs (existing as on the date of this notification) shall register themselves with the Financial Intelligence Unit-India (“FIU-IND”).
  - e. Non-banks providing PA-CB services as on the date of this notification, shall have a minimum net worth of INR 15,00,00,000 (fifteen crore rupees) at the time of submitting application to the RBI for authorisation and a minimum net worth of INR 25,00,00,000 (twenty-five crore rupees) by 31 March 2026.
  - f. New non-bank PA-CBs (i.e. entities which have not commenced operations before the date of this notification) shall have a minimum net worth of INR 15,00,00,000 (fifteen crore rupees) crore at the time of submitting application to the RBI for authorisation and shall attain a minimum net worth of 25,00,00,000 (twenty-five crore rupees) by end of the third financial year of grant of authorisation.
  - g. Import only PA-CB shall maintain an Import Collection Account (“ICA”) with an AD Category-I scheduled commercial bank. Payment for imports shall be received in an escrow account of the PA. These payments shall then be transferred to the ICA of the PA-CB. Onward transfer to the foreign merchants shall be carried out only by debit to the ICA.
  - h. Export only PA-CB shall maintain Export Collection Account (“ECA”) – denominated in Indian Rupees (INR) and / or foreign currency (i.e. non-INR) – with an AD Category-I scheduled commercial bank. An ECA for each non-INR currency shall be maintained separately.
  - i. Every PA-CB shall undertake the CDD of the merchants onboarded by it. Further, for import only PA-CB, in case per unit goods / services imported is more than INR 2,50,000 (two lakh fifty thousand rupees) then the concerned PA-CB shall undertake due diligence of buyer also.



**LKS COMMENT:**

Through the PA-CB Guidelines the RBI intends harmonise the regulation of PA and PA-CBs. Further the PA-CB Guidelines imposes a significant compliance burden on the PA-CBs by requiring them to adhere with the existing guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework.

#### 4. Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

RBI earlier, through a notification dated 30 March 2020, introduced the Fully Accessible Route ("FAR") wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well. Now, through a notification dated 8 November 2023 the RBI has decided to also designate all Sovereign Green Bonds issued by the Central Government in the fiscal year 2023-24 as 'specified securities' under the FAR.



##### LKS COMMENT:

This move was made with the intent to enable non-residents to invest in specified Government of India dated securities. Eligible investors can now invest in specified Government securities without being subject to any investment ceilings. Allowing different avenues for investment into India is a welcome move and should boost the investment landscape in India.

#### 5. Investments in AIFs

The RBI through a notification dated 19 December 2023 issued certain guidelines to prevent evergreening of loans by REs through investments in AIFs. Key provisions of the notification are as follows:

- a. REs shall not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE. The debtor company of the RE, for this purpose, shall mean any company to which the RE currently has or previously had a loan or investment exposure anytime during the preceding 12 (twelve) months.
- b. If an AIF scheme, in which RE is already an investor, makes a downstream investment in any such debtor company, then the RE shall liquidate its investment in the scheme within 30 (thirty) days from the date of such downstream investment by the AIF. If REs have already invested into such schemes having downstream investment in their debtor companies as on date, the 30 (thirty) day period for liquidation shall be counted from date of issuance of this notification.
- c. In case REs are not able to liquidate their investments within the above-prescribed time limit, they shall make 100% (hundred per cent) provision on such investments.
- d. Investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model' shall be subject to full deduction from RE's capital funds.



##### LKS COMMENT

REs make investments in units of AIFs as part of their regular investment operations. However, certain transactions entail substitution of direct loan exposure of REs to borrowers, with indirect exposure through investments in units of AIFs. This notification is aimed to address the concerns relating to evergreening of loans by REs.

# Key Updates under Securities Laws

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## 1. SEBI circular on 'credit of units of AIFs in dematerialised form', 2023

SEBI has issued a circular dated 11 December 2023, relating to the process for issuance of units of dematerialised shares to investors who have not provided the details of demat account to AIFs.

Key aspects of the circulars are set out below:

- a. The AIFs will open a demat account named 'Aggregate Escrow Demat Account' ("**AED Account**") for holding the dematerialised share units on behalf of investors who does have demat accounts.
- b. AIFs schemes whose corpus is more than INR 5,00,00,00,000 (five hundred crore rupees) are mandated to credit the units of the investors (who are on boarded before 1 November 2023) who have not provided their demat account details in AED Accounts latest by 1 January 2024.
- c. AIFs schemes whose corpus is less than INR 5,00,00,00,000 (five hundred crores rupees) are mandated to credit the units of the investors (who have not provided their demat account details by 10 April 2024) in AED Accounts latest by 10 May 2024.
- d. AIFs who issue units (as on 30 April 2024) to investors who has provided the demat account details are required to be credited at the earliest, but not later than 10 May 2023.
- e. The AIFs units which are credited in AED Account will be transferred (subject to furnishing of account details) to the demat accounts of respective investors.
- f. The AIFs units which are held in AED Account can be redeemed and the proceeds of the same will be distributed to investors bank.
- g. The AIFs manager will have to maintain records of KYC details of investors who dematerialised share units are held in AED Account.



### LKS COMMENT:

This circular has eased the process for issuance of shares in dematerialised form. This circular aims to bring about greater transparency and accountability in the allotment of shares in dematerialised form to investors whose demat account details are not provided by maintenance of KYC records by the AIF managers.

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## 2. SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2023

SEBI through a notification dated 20 October 2023 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") via SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2023 ("**LODR Amendment**").

Key changes brought by LODR Amendment are set out below:

- a. By virtue of the LODR Amendment, Regulation 61A(3) has been inserted which provides that any unpaid or unclaimed amount of the person shall be transferred to the Fund constituted by the SEBI under SEBI (Investor Protection and Education Fund) Regulations, 2009 ("**IPEF Regulations**") and it shall not bear any interest.



### LKS COMMENT:

The primary objective behind the LODR Amendment is to bring about uniformity in the process of claiming unclaimed funds by investors.

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## 3. SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2023

SEBI through a notification dated 20 October 2023 amended the SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REITs Regulations**") via the SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2023 ("**REITs Amendment**").

Key changes brought by REITs Amendment are set out below:

- a. By virtue of REITs Amendment, Regulation 18(16)(f) has been inserted which provides that any unpaid or unclaimed amount out of the distributions declared by an REITs as per Regulation 18 of REITs Regulations, shall be transferred to the Fund constituted by the SEBI under IPEF Regulations and it shall not bear any interest.



### LKS COMMENT:

The primary objective behind REITs Amendment is to bring about uniformity in the process of claiming unclaimed funds by investors.

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## 4. SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2023

SEBI through a notification dated 20 October 2023, has amended the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvITs Regulations**") via SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2023 ("**InvITs Amendment**").

Key changes brought by InvITs Amendment are set out below:

- a. By virtue of InvITs Amendment, Regulation 18(6)(e) has been inserted which provides that any unpaid or unclaimed amount out of the distributions declared by an InvIT as per Regulation 18 of InvITs Regulations, shall be transferred to the Fund constituted by the SEBI under IPEF Regulations and it shall not bear any interest.



**LKS COMMENT:**

The primary objective behind InvITs Amendment is to bring about uniformity in the process of claiming unclaimed funds by investors.

## 5. SEBI (Investor Protection and Education Fund) (Second Amendment) Regulations, 2023

SEBI through a notification dated 20 October 2023 amended the IPEF Regulations via SEBI (Investor Protection and Education Fund) (Second Amendment) Regulations, 2023 ("**IPEF Amendment**").

Key changes brought by IPEF Amendment are set out below:

- a. By virtue of IPEF Amendment, under Regulation 4(1), a new proviso has been inserted i.e., 4(1)(i), which provides that monies transferred in accordance with the Regulation 61-A (3) proviso of the LODR Regulations which stipulates that:
  - i. any amount transferred to the escrow account (AED) that remains unclaimed for 7 (seven) years will be transferred to the IPEF;
  - ii. monies transferred in accordance with the Regulation 18(16)(f) of the REIT Regulations which stipulates that any amount remaining unclaimed or unpaid out of the distributors declared by a REIT will be transferred to the IPEF; and
  - iii. monies transferred in accordance with the Regulation 18(6)(e) of the InvITs Regulations which stipulates that any amount remaining unclaimed or unpaid out of the distributors declared by a InvIT will be transferred to the IPEF.
- b. Regulation 5 of the IPEF Regulations is also amended which substitute sub-Regulation 3 of Regulation 5, which provides that:
  - i. the amounts disgorged and credited to the IPEF in accordance with Clause (h) of Sub-Regulation (1) of Regulation 4 (which provides amount which shall be credited to IPEF) of these regulations and the interest accrued thereon shall, in cases where the board deems fit to make restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws or for rewarding informants who provide original information to the board to recover amounts directed to be disgorged, be utilised only for the purposes of such restitution or reward; and
  - ii. the amounts credited to the IPEF in accordance with Clauses (j), (k) and (l) of

Sub-Regulation (1) of Regulation 4, shall be utilised for refund to the entities transferring the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the IPEF in the manner specified by the board.



**LKS COMMENT:**

The IPEF Amendment is a significant step for investor protection and fund management. It has expanded the funding sources, introduced a refund mechanism for entities, and specified fund usage which will help to achieve greater transparency and efficiency in the financial market.

## 6. SEBI Guidelines on Anti-Money Laundering Standards and Combating the Financing of Terrorism.

SEBI through circular dated 13 October 2023 has amended the guidelines on Anti-Money Laundering ("AML") Standards and Combating the Financing of Terrorism ("CFT") made under Prevention of Money Laundering Act, 2005.

Key changes brought by this amendment are set out below:

- a. A new addition has been made in paragraph 6 which is the requirement for financial groups to apply additional measures when the host country does not allow proper AML/CFT implementation consistent with home country requirements. These additional measures are aimed at managing Money Laundering ("ML") and Terrorist Financing ("TF") risks more effectively.
- b. A new proviso has been inserted 7B, which provides the financial groups are required to establish group-wide programs to deal with ML and TF. This will be applicable all branches of stock exchanges, registered intermediaries and their subsidiaries as under policies and procedures for information sharing for Customer Due Diligence ("CDD") and risk management purposes, both at the group level and among branches and subsidiaries. Adequate safeguards to prevent tipping-off are also emphasized, ensuring the confidentiality and integrity of shared information.
- c. A new proviso is added in paragraph 11 (ii), which provides reporting entities must ensure that trustees disclose their status at the commencement of an account-based relationship.
- d. Paragraph 11 (iii) has been substituted with proviso relating to identification of beneficial owners of various entities. These include companies, partnership firms, unincorporated associations or bodies of individuals, trusts, and entities listed on Indian stock exchanges or in specific jurisdictions. The criteria for identifying beneficial owners include ownership percentages, control, and senior managing officials.
- e. Paragraph 11 (viii) has been substituted with proviso related to registered intermediaries shall periodically update all documents, data or information of all clients and beneficial owners collected under the CDD process such that the information or data collected under client due diligence is kept up-to-date and relevant, particularly for high-risk clients.
- f. Insertion of paragraph 11B, which provides that no transaction or account-based relationship can be

undertaken without following the CDD procedure.



**LKS COMMENT:**

Through this amendment, the guidelines have become more stringent, and it strengthens monitoring of suspicious activities. It aims to provide adequate safeguard for information sharing by ensuring confidentiality. The CDD mechanism has also been tightened for ensuring transparency and accountability in cross-border financial activities.

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# Key Updates under Environment Laws

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## 1. Plastic Waste Management (Amendment) Rules, 2023

The Ministry of Environment, Forest, and Climate Change ("MoEFCC") through a notification dated 30 October 2023 has amended the Plastic Waste Management Rules 2016 ("PWM Rules") via Plastic Waste Management (Amendment) Rules 2023 ("PWM Amendment").

Key changes brought by PWM Amendment are set out below:

- a. Under rule 2, a new sub-rule (3) has been inserted which provides that rule 9(1) (which states that producers, importers and brand owners shall fulfil extended producers responsibility for plastic packaging as per guidelines specified in Schedule-II) will not apply to the export oriented units or units in special economic zones, notified by the Central Government under the Special Economic Zones Act, 2005, and to other units manufacturing plastic packaging or on plastic packaging used for packaging products for export against an order for export.
- b. Under Rule 3, a new sub-rule (c) has been inserted which stipulates the definitions of "carry bags" which means the bags made from plastic material or compostable plastic or biodegradable plastic, used for the purpose of carrying or dispensing, commodities, which have a self-carrying feature but do not include bags that constitute or form an integral part of the packaging in which goods are sealed prior to use" and the definition of "producer" now covers individuals engaged in the manufacture of plastic packaging.
- c. Rule 11 now mandates specific information on plastic packaging in English, including name and registration certificate number for producers or importers. These details must be generated through a centralised online portal, ensuring transparency and traceability. The effective dates for these requirements vary based on the type of plastic packaging.
- d. Rule 13 provides the new guidelines for registration and consent, aligning them with environmental laws such as the Water (Prevention and Control of Pollution) Act and the Air (Prevention and Control of Pollution) Act.
- e. A state level monitoring committee comprising of industry experts, ministry representatives, and relevant stakeholders has been introduced to ensure effective implementation of PWM Rules.
- f. Schedule II under the PWM Rules has been amended and few changes have been brought about, such as restrictions on dealings with unregistered entities, extensions for filing annual returns, and the purchase of extended producer responsibility certificates from different categories, based on surplus and deficit.



### LKS COMMENT:



The PWM Amendment is a comprehensive effort to enhance plastic waste management practices and promote environmental sustainability.

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## 2. Battery Waste Management (Amendment) Rules, 2023

The MoEFCC through a notification dated on 25 October 2023 has amended the Battery Waste Management Rules, 2022 via the Battery Waste Management (Amendment) Rules, 2023 ("**Amendment**").

Key changes brought by this Amendment are set out below:

- a. The Amendment has revised the functions of producer relating to the Extended Producer Responsibility ("**EPR**"), via environmentally sound management of pre-consumer waste battery and the registration process. Producer will now have to furnish a return regarding the battery manufactured or assembled or imported in the preceding financial year in Form 1(C) to the Central Pollution Control Board ("**CPCB**") on or before 30 June of every year. While earlier, the obligation was for the batteries which they introduced in the market, now the batteries which they put to self-use also comes under the ambit.
- b. The total weight of waste battery processed by entity involved in refurbishment of waste battery has to be made available on the portal developed by CPCB for generation of EPR certificates. CPCB will fix the highest and lowest price for EPR certificate every 6 (six) month or as required. The operation and regulation of electronic platform, for trade of EPR certificates between obligated entities, will be as per guidelines notified by the Central Government based on the recommendations of CPCB. The mandatory targets of waste battery collection, recycling or refurbishment of electric vehicles battery of three-wheelers has been revised.
- c. Form 1(B) relating to the "Format for Grant of Registration to Producers" has also been substituted. Registration will be obtained from the CPCB through centralised online portal. Earlier, there was a time limit of expiration of registration, now, it will be valid until it is cancelled or withdrew by the producer.



### LKS COMMENT:

This Amendment has been introduced with the intention of ensuring enhanced accountability by producers. It is expected to increase sustainability within the battery-waste generating supply chains. The public disclosure of the battery waste generated will now be linked to the generation of the EPR certificate. Further, the EPR certificates being regulated by the CPCB allows for increased oversight over producers covered under the Amendment. This Amendment will increase accountability through annual reporting requirements and by linking waste generation with issuing of EPRs which will urge them to act in a responsible manner and adopt sustainable practices which are environmentally conscious.

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## 3. Eco-mark Certification Rules, 2023

The MoEFCC through a notification dated 11 October 2023 has released the Eco-mark Certification Rules, 2023 ("**Eco-mark Rules**").

Key provisions of the Rules are set out below:

- a. The Eco-mark Rules seek to govern the labelling of products which will have lesser environmental impact and encourage consumers to adopt such products. The criterion shall be for broad environmental levels and is measured on how they fare relative to comparable products: (i) substantially less pollution, minimise waste (ii) recyclable or made out of recyclable products (iii) include contribution to saving non-renewable resources (iv) reduction in respect of such product primary criterion (raw materials) which have an adverse impact.
- b. The steering committee comprising of industry experts, ministry representatives, and relevant stakeholders will meet twice a year to notify the framework, product categories, recognition of the domestic and international certification process. It will further have the role of making recommendations and reviewing the implementation of the Eco-mark Rules.
- c. The CPCB plays the role of the administrator and must develop guidelines in accordance with the Eco-mark Rules, including identifying the products which will be covered, identifying the body of persons to mark a product with the label.
- d. The Eco-mark Rules provide the administrator the option to constitute a technical committee for the development of the specific eco-mark criterion for a product and make its recommendation to the administrator. The Eco-mark Rules provide for the creation of an eco-mark portal wherein all entities seeking eco-mark labelling will need to be registered, along with the designated eco-mark verifiers.
- e. Further, a knowledge and database platform will be developed by the Administrator wherein all eco-mark verified products will be available. Market-surveillance wherein random sampling of goods to check whether there is misuse of the eco-mark is also provided for in the Eco-mark Rules.



**LKS COMMENT:**

The introduction of the Eco-mark Rules is a significant step for promotion of eco-friendly/ environment friendly products. The usage of eco-friendly/ environment friendly products will produce less waste and emissions and will have no adverse impact on nature, climate change and biodiversity.

#### 4. **EPR Certificates under E-Waste (Management) Rules, 2022**

The CPCB through a notification dated 3 October 2023 has released the framework for the generation of EPR certificate under E-Waste (Management) Rules, 2022.

Key provisions of the framework are set out below:

- a. The framework provides that the EPR certificates will be issued against key metals recycled from e-waste. The key metals are classified into three groups namely precious metals, non-ferrous metals, and ferrous metals. It also states that in the initial 2 (two) years, the key metals for generating EPR certificates will be limited to the precious metal gold, non-ferrous metals, iron including steel and galvanised iron.

- b. The EPR certificate for rare earth and other precious materials will also be considered and incentivised under the EPR regime. Producers who fulfil their obligations in excess of the assigned target for a particular electronic and electrical equipment item in the current financial year will have the option to reduce their EPR liability for gold or purchase a reduced quantity of non-ferrous metals in the following financial year.



**LKS COMMENT:**

The framework issued by the CPCB is made with an objective to curb the waste generated by the re-use/ recycle of the waste generated from metals. This framework will provide a mechanism to track the recycling of the e-waste generated by the manufacturers, importers and recyclers by issuance of EPR certificates which will have positive impact environment and biodiversity.

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