LKS | CORPORATE PRACTICE

Quarterly Update

OCTOBER – DECEMBER 2024

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FOREWORD

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

On the banking law front, there have been a slew of regulatory updates. The Reserve Bank of India ("**RBI**") has introduced significant changes in the framework for foreign exchange transactions, including issuing directions on compounding of contraventions under the Foreign Exchange Management Act, 1999 ("**FEMA**"). RBI has also introduced a significant update by introducing an operational framework for reclassification of foreign portfolio investment to foreign direct investment. Other major updates under foreign exchange laws include designation of sovereign green bonds for non-resident investment under the fully accessible route, to facilitate non-resident investments in government securities.

The Securities and Exchange Board of India ("**SEBI**") has also brought in a host of amendments. Some of the key amendments include the amendment of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the SEBI (Alternative Investment Funds) Regulations, 2012, SEBI (Buy-Back of Securities) Regulations, 2018 and the SEBI (Infrastructure Investment Trust) Regulations, 2014. SEBI has also issued guidelines to facilitate ease of overseas investment in Mutual Funds/Unit Trusts.

Under environmental laws, the Ministry of Environment, Forest and Climate Change ("**Ministry**") has issued the Draft Liquid Waste Management Rules, 2024. The Ministry has also notified the Biological Diversity Rules, 2024 to replace the Biological Diversity Rules, 2004 laying down enhanced framework for regulating biological resources.

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 to [km@lakshmisri.com].

CONTENT

Key Updates under Banking Laws

1. RBI issues Directions on Compounding of Contraventions under FEMA

Foreign exchange transactions in India are regulated under the Foreign Exchange Management Act, 1999 ("**FEMA**"). The Reserve Bank of India ("**RBI**") is empowered under Section 15 of FEMA to handle compounding of contraventions, except those under Section 3(a) of FEMA.

Recently, the Government of India through a Notification G.S.R. 566(E) dated 12 September 2024 introduced the Foreign Exchange (Compounding Proceedings) Rules, 2024 ("**New Compounding Rules**"), replacing the erstwhile Foreign Exchange (Compounding Proceedings) Rules, 2000.

On 1 October 2024, RBI issued new Directions on Compounding of Contraventions ("**Directions**") advising Authorised Dealer Category – I ("**AD-I**") banks and Authorised banks to update their systems to ensure compliance with FEMA and ensure that internal checks are in place to prevent violations attributed to them.

Key provisions of the Directions are set out below:

a. **Streamlined Compounding Process:** As per Section 15 of FEMA, individuals or entities committing contraventions under Section 13 (except under Section 3(a)) may apply for compounding within 180 (one hundred and eighty) days from the contravention. The compounding applications will be RBI officers, as prescribed under the New Compounding Rules, will process these applications with the aim of reducing compliance burden and associated costs.

b. **Submission of Compounding Application:** Applications for compounding can be made physically or through the PRAVAAH portal of RBI, by paying a fee of INR 10,000 (ten thousand rupees) and applicable GST. The Applications are required to entail all necessary documents, including information on Foreign Direct Investment ("**FDI**"), and in case of any ongoing adjudication actions or enforcement, an undertaking to that effect.

c. **Exceptions to Compounding:** Repeated contraventions committed within 3 (three) years, contraventions in relation to money laundering or terrorism financing and non-compliance with Section 3(a) of FEMA are ineligible for compounding. Transactions involving unquantifiable sums or subject to enforcement actions are also excluded since such cases are referred to the Directorate of Enforcement ("**ED**") for investigation.

d. **Compounding Process:** The RBI, on receiving an application, is required to investigate the contravention, the sum involved and eligibility of the matter for compounding. The compounding amount is determined based on parameters including the economic impact of the contravention and any undue gains.

e. **Compounding Order:** The RBI is required to issue a compounding order within 180 (one hundred and eighty) days of receiving a compounding application. Applicants are permitted to request a personal hearing. Post determination of the compounding amount, it is required to be paid within 15 (fifteen) days of the order. Failure to do pay the compounding amount can lead to cancellation of the compounding application and imposition of contravention penalties under FEMA.

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LKS Comment

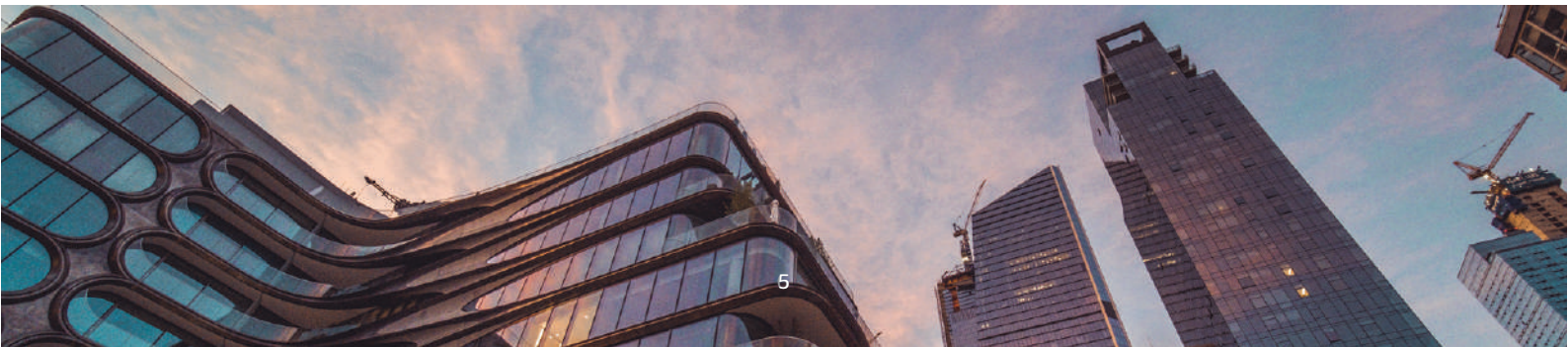
The New Compounding Rules and the Directions are a significant development in the regulatory regime for foreign exchange transactions in India. By streamlining the compounding process and reducing compliance burdens, the New Compounding Rules will enhance efficiency in handling of FEMA violations. As the regulatory landscape evolves, stakeholders involved in foreign exchange transactions should prioritise timely compliance to avoid penalties and legal repercussions.

2. RBI strengthens norms for Core Investment Companies under Core Investment Companies (Reserve Bank) Directions, 2016

Core Investment Companies ("**CICs**") are non-banking financial companies ("**NBFCs**") carrying out the business of acquisition of shares and securities. The regulatory framework for CICs is governed by the 'Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016' ("**CIC Master Directions**"). The Master Directions define CICs as core investment companies with an asset size of not less than INR 100 crores (one hundred crore rupees), either individually or in aggregate along with other CICs in the group and having access to public funds.

On 11 October 2024, RBI has notified amendments to the extant CIC Master Directions ("**Amendment**"). The key changes in the CIC Master Directions are set out below:

a. **Regulatory Structure under Scale Based Regulation for NBFCs:** The Amendment has a introduced layer-based regulatory structure for NBFCs entailing 4 (four) layers on account of their size, activity and perceived risk:



i. NBFC-BL: NBFC Base layer or NBFC-BL comprises NBFCs in the lowest layer and does not include CICs.

ii. NBFC-ML: NBCFs in middle layer are as NBFC – Middle Layer (NBFC-ML), which includes CICs.

iii. NBFC-UL: NBFCs in the upper layer are known as NBFC – Upper Layer (NBFC-UL) which comprises NBFCs which are specifically identified by RBI. The top 10 (ten) eligible NBFCs in terms of their asset size always reside in NBFC-UL, irrespective of any other factor. CICs are included within this layer.

iv. NBFC-TL: NBFC – Top Layer or NBFC-TL can get populated by RBI if there is a substantial increase in the potential systemic risk from specific NBFCs in NBFC-UL making such NBFCs to move to NBFC-TL from NBFC-UL.

b. Progressive application of regulations: The Amendment has inserted the stipulation that regulatory instructions applicable to the middle layer of CICs shall now be automatically applicable to CICs residing in higher layers, unless stated otherwise.

c. Internal Capital Adequacy Assessment Process ("ICAAP"): The CIC Master Directions now also require CICs to make a thorough internal assessment of the need for capital (as reflected in adjusted net worth ("**ANW**") and leverage ratio), commensurate with the risks in their business. This internal assessment shall be on similar lines as ICAAP prescribed for commercial banks under Master Circular – Basel III Capital Regulations, dated 1 April 2024 ("**Pillar 2**"). While Pillar 2 capital will not be insisted upon, CICs are required to make a realistic assessment of risks. Internal capital assessment shall factor in credit risk, market risk, operational risk and all other residual risks as per methodology to be determined internally. The methodology for internal assessment of capital is required to be proportionate to the scale and complexity of operations as per their Board approved policy.

d. Provision for Standard Assets: Pursuant to the amendment, only the CICs in middle layer are required to make provision for standard assets at 0.4 (zero point four) per cent of the outstanding which cannot be reckoned for arriving at net NPAs.

e. Investments in Alternative Investment Funds ("AIFs"): The Amendment has inserted a framework allowing CICs to make investments in units of AIFs as part of their regular investment operations. The framework also lays down restrictions on such investments as set out below:

i. CICs are prohibited from making investments in any scheme of AIFs which has downstream investments either directly or indirectly in their debtor company. This restriction excludes investments in equity shares of the debtor company of the CIC, but includes all other investments, including investment in hybrid instruments.

ii. In the event an AIF scheme, in which CIC is already an investor, makes a downstream investment in any such debtor company, then the CIC is required to liquidate its investment in the scheme within 30 (thirty) days from the date of such downstream investment by the AIF. CICs are also required to arrange to advise the AIFs suitably in the matter.

iii. In case CICs are unable to liquidate their investments within 30 (thirty) days, the CIC will be required to make 100 (hundred) percent provision on such investments. This provisioning requirement is applicable only to the extent of investment by the CIC in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the CIC in the AIF scheme

iv. Further, investments by CICs in the subordinated units of any AIF scheme with a 'priority distribution model' are subject to full deduction from the ANW of CICs. This restriction applies to all forms of subordinated exposures, including investment in the nature of sponsor units

v. The instructions under Paragraph 2(e)(iv) above are applicable in cases where the AIF does not have any downstream investment in a debtor company of the CIC. If the CIC has investment in subordinated units of an AIF scheme, which also has downstream exposure to the debtor company, then the CIC shall be required to comply with Paragraphs 2(e) (i) to (iii) above.

vi. Investments by CICs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of Paragraph 2(e).

f. **Corporate Governance and disclosure requirements:** The Amendment has also inserted compliance requirements in relation to corporate governance and disclosures such as:

i. At least 1 (one) of the directors of the CIC is required to have relevant experience of having worked in a bank or NBFC;

ii. The key managerial personnel of the CICs cannot hold any office (including directorships) in any other NBFC-ML or NBFC-UL, except for directorship in a subsidiary. A timeline of 2 (two) years is provided to ensure compliance with these norms;

iii. An independent director of the CICs shall not be on the board of more than 3 (three) NBFCs at the same time, subject to compliance with the permissible limits under the Companies Act, 2013. Further, the board of the CICs is required to ensure that there is no conflict arising out of their independent directors being on the board of another NBFC at the same time. A timeline of 2 (two) years is provided with effect from 1 October 2022 to ensure compliance with these norms. This restriction only applies to NBFC-ML or NBFC-UL; and

iv. CICs except Government owned CICs are required to put in place a board approved compensation policy, which should include constitution of a 'Remuneration Committee', principles for fixed/variable pay structures and malus/clawback provisions.

g. **Risk Management Committee:** CICs are now also required to constitute a Risk Management Committee ("**Committee**") either at the board or executive level. The Committee is responsible for evaluating the overall risks faced by the CICs including liquidity risk and shall report to the board.

h. **Submission of data to credit information companies:** With effective from 1 January 2025, CICs are required to submit credit information to credit information companies on a fortnightly basis or at such shorter intervals as mutually agreed upon between CIC and the credit information company. The fortnightly submission of credit information by CICs to the credit information companies shall be ensured within 7 (seven) calendar days of the relevant reporting fortnight.

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LKS Comment

The Amendment aims to enhance corporate governance, risk management and transparency in the framework regulating CICs. The introduction of layer-based regulatory structure, progressive application of regulations and requirements for internal capital adequacy assessment process and risk management committee are significant steps towards strengthening the CIC framework and ensuring increased accountability of CICs.

3. Sovereign Green Bonds designated for Non-resident Investment under 'Fully Accessible Route'

The RBI has introduced the fully accessible route ("**FAR**") to facilitate non-resident investments in government securities. FAR was introduced by RBI through Circular dated 30 March 2020 permitting certain government securities to be fully accessible to non-resident investors without restrictions, in addition to being available to domestic investors. Sovereign Green Bonds ("**SGrBs**") issued in second half of FY 2024-25 will now be included under this route.

FAR was created as a separate route in the Union Budget 2020-21 wherein the Government had announced opening up of the investments in certain specified categories of government securities up to 100% (one hundred per cent) to non-resident investors. This move was aimed at removing the investment ceilings that were imposed under existing investment routes, such as the Medium Term Framework ("**MTF**") and the Voluntary

Retention Route ("**VRR**"). The FAR operates as a separate, more non-resident-friendly channel for these investments in government securities, co-existing with MTN and VRR since 1 April 2020.

In a recent development, the RBI through Circular dated 7 November 2024, has designated SGrBs with a 10 (ten) year tenor as 'specified securities' under FAR. This designation applies to SGrBs to be issued by the Government in the second half of the fiscal year 2024-25. This designation has been made on account of the 'Issuance Calendar for Marketable Dated Securities for October 2024 - March 2025', announced on 26 September 2024.

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LKS Comment

The inclusion of SGrBs as specified securities under FAR is expected to attract significant investments from global investors by facilitating the inflow of investments from non-residents in the Indian government securities market.

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4. Operational Framework for Reclassification of Foreign Portfolio Investment to Foreign Direct Investment

Under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**"), foreign portfolio investment ("**FPI**") "(i.e., investment through equity instruments by a person resident outside India in an Indian investee entity ("**FPI Recipients**")" can be undertaken subject to the following conditions ("**Prescribed Threshold**"):

a. **Subscription:** Subscription to equity instruments of an FPI Recipient, which is a listed company, subject to such investment being less than 10% (ten per cent) of: (i) the total paid up equity capital of a listed company on a fully diluted basis; or (ii) the paid-up value of each series of equity instruments of a listed company in India.

b. **Purchase:** Purchase of equity instruments of a FPI Recipient, which is a listed / to-be listed company, subject to such investment being less than 10% (ten per cent) of: (i) the total paid up equity capital of a listed company on a fully diluted basis; or (ii) the paid up value of each series of series of debentures or preference shares or share warrants issued by such FPI Recipient.

Current framework

Under Paragraph 1(a)(iii), Schedule II of the NDI Rules, a person resident outside India undertaking FPI ("**FPI Investor**") in a FPI Recipient in breach of the Prescribed Threshold will be required to divest their holdings in the FPI Recipient within 5 (five) trading days from the date of the settlement of the trades causing such breach ("**Time Limit**").

If such FPI Investor chooses not to divest its holdings, then: (a) the entire investment held by such FPI Investor and its investor group (if applicable) will be treated as FDI and no further FPI will be permitted by the FPI Investor and its investor group (if applicable) in the aforesaid FPI Recipient; and (b) the FPI Investor, through its designated custodian will have to notify the concerned depositories and the concerned FPI Recipient within 7(seven) days from the date of the settlement of the trades causing such breach. The potential divestment and reclassification is also subject to applicable conditions prescribed by the Securities and Exchange Board of India ("**SEBI**") and RBI.

Lastly, Paragraph 1(a)(iii), Schedule II of the NDI Rules also prescribes that in case of a breach of the Prescribed Threshold on account of purchase of equity instruments by a FPI Investor, the time undertaken between such purchase and divestment / reclassification, will not be treated as a contravention of the NDI Rules.

Reclassification framework

The RBI has issued a circular bearing reference no. RBI/2024-25/90 A.P. (DIR Series) Circular No. 19 dated 11 November 2024 ("**Circular**"), prescribing the operational framework under the NDI Rules for reclassification of FPI into FDI ("**Reclassification Framework**") which is effective from 11 November 2024 and is without prejudice to permissions/ approvals required under other laws.

Substantive conditions

The relevant substantive conditions of the Reclassification Framework are as follows:

a. **Prohibited Sectors:** FPI Investors cannot avail of the reclassification where their current FPI is in sectors prohibited for FDI. In such cases, divestment will be their only option.

b. **Prior approvals:** FPI Investors will be required to obtain the following approvals before undertaking any investment which would cause a breach of the Prescribed Threshold:
   i. Governmental approvals: Necessary governmental approvals, including where the investment causing a breach of the Prescribed Threshold will be made from land-bordering countries; and

ii. FPI Recipient approval: 'Concurrence' of the FPI Recipient for undertaking the reclassification (given that the FPI Recipient will also have to adhere to the applicable conditions for FDI prescribed under the NDI Rules

If an FPI Investor is unable to obtain the aforesaid approvals before undertaking an investment in breach of the Prescribed Threshold, then such investment will have to be divested in the manner provided in Paragraph 1(a)(iii), Schedule II of the NDI Rules. This ensures that the reclassification can only be undertaken ex-ante to a breach of the Prescribed Threshold.

c. **FPI Conditionalities:** FPI Investors will have to ensure that their investment pursuant to the reclassification will be in compliance with the applicable conditions for undertaking FDI such as pricing guidelines, sectoral caps, investment limits, etc. (as prescribed in the NDI Rules). It should be noted that the leading paragraph of the Circular classifies adherence to this requirement as a prior step (i.e., prior to breaching the Prescribed Threshold).

d. **Intent:** FPI Investors will be required to clearly articulate their intent of undertaking the reclassification and provide copies of the above-mentioned prior approvals to their custodian. The custodian shall then freeze any purchase transactions undertaken by such FPI Investors in equity instruments of the concerned FPI Recipients, till completion of the reclassification.

e. **Treatment of investment:** Following the date of reclassification (refer to Paragraph (c), Reclassification Framework – Procedural Conditions), the entire investment of a FPI Investor in the FPI Recipient will be treated as FDI. Such treatment would apply even if the investment subsequently falls below the Prescribed Threshold.

f. **Treatment of FPI Investor and its investor group:** FPI Investors along with their investor groups (if applicable) will be treated as a single person in relation to the reclassification.

Procedural conditions

The relevant procedural conditions of the Reclassification Framework are as follows:

a. **Reporting requirements:** Any investment classified as FDI pursuant to the reclassification will have to be reported in accordance with the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (i.e., in Form FC-GPR in case of subscription to equity instruments by the FPI Investor and Form FC-TRS in case of purchase of equity instruments by the FPI Investor). The concerned authorised dealer bank will also be required to report such investment as a divestment under the LEC (FII) reporting.

b. **Custodian's role:** Custodians will have to undertake the following steps after the relevant reporting requirements are completed and upon receipt of a request from a FPI Investor:

   i. Ensure that the reporting requirements are complete;
   ii. Unfreeze the equity instruments held by the FPI Investor (refer to Paragraph (d), Reclassification Framework – Substantive Conditions); and
   iii. Transfer the equity instruments held by the FPI Investor from its FPI demat account to its FDI demat account.

c. **Reclassification Date:** The date of investment will be treated as the date of reclassification.

d. **Adherence to the Time-Limit:** The reclassification/ divestment by the FPI Investor will have to be undertaken within the Time Limit.

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LKS Comment

The Reclassification Framework is a welcome step from the RBI which will aid FPI Investors in undertaking investments beyond the Prescribed Threshold.

SEBI has also modified its Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors, dated 30 May 2024 (through Circular No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/152 dated 11 November 2024) to align itself with the Reclassification Framework, by inter-alia directing FPI Investors to comply with the Reclassification Framework.

The efficacy of the Reclassification Framework remains to be seen and will only be determined once the relevant industry stakeholders take measures to align and comply with the Reclassification Framework.

5. Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Fourth Amendment) Regulations, 2024

The RBI on 19 November 2024 notified the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Fourth Amendment) Regulations, 2024 ("**Amendment Regulations**") to amend the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 ("**Erstwhile Regulations**").

The Amendment Regulations have substituted Explanation to Regulation 5 and Paragraph 1(vii) of Schedule I of the Erstwhile Regulations to provide that a 'startup' will mean an entity recognised as a startup by the Department for Promotion of Industry and Internal Trade ("**DPIIT**") as per Notification number G.S.R. 127(E) dated 19 February 2019 ("**2019 Notification**").

Earlier, a 'startup' meant an entity which complied with the conditions laid down in Notification no. G.S.R. 180(E) dated 17 February 2016 issued by DPIIT under which, a company could only be classified as a startup if it had a turnover of less than INR 25 crores (twenty-five crore rupees) and for a maximum of 5 (five) years. The 2019 Notification had raised the turnover cap to INR 100 crore (one hundred crore rupees) increased the threshold to 10 (ten) years from the date of formation.

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LKS Comment

For ease of doing business, it is important to remember that earlier this year, the Budget 2024–25 recommended harmonising the concept of a "startup" across multiple laws. The Amendment Regulations have made the definition of 'startups' consistent with the 2019 Notification, which aims to standardise the definition of a startup. Pursuant to this, more DPIIT-recognized startups will be able to create and maintain interest-bearing accounts in Indian Rupees or foreign currency as a result of these changes, which will also be reflected in the updated foreign exchange regulations.

Key Updates under Securities Laws

1. SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024

The SEBI through a gazette Notification No. SEBI/LAD-NRO/GN/2024/218, dated 12 December 2024 has issued amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").

The key changes brought under the LODR Regulations have been set out below:

a. The definition of Related Party Transaction ("**RPT**") has been extended to include transactions of bank deposits and retail purchases from a listed entity or its subsidiary by its directors or its employees under uniform terms. Additionally, corporate actions such as dividend issue, rights issue and buybacks and uniform deposits offered by banks and NBFCs are excluded from the said definition.

b. Under Regulation 6, amendments have been made to the appointment and responsibilities of a Compliance officer, stating that a Compliance Officer must be a full-time employee, designated as a key managerial person ("**KMP**"), not more than one level below the board. Furthermore, during insolvency resolution, vacancies to this position must be filled within 3 (three) months, with a full-time KMP managing daily affairs on an interim basis.

c. Under Regulation 23, remuneration and sitting fees to directors, KMPs, or senior management (excluding promoters) will now require audit committee approval only if the same are found to be material transactions under Regulation 23(1). The audit committee may ratify non-material RPTs within 3 (three) months if the transaction value does not exceed INR 1,00,00,000 (one crore rupees), if the reasons for not seeking prior approval are presented.

d. Regulation 23(5) exempts certain RPTs from audit committee or shareholder approval, including payments of statutory dues to the government and transactions between public sector companies and government entities.

e. Additionally, Regulation 23(9) mandates listed entities to disclose RPTs biannually in SEBI-prescribed formats, publishing them on stock exchanges and the entity's website alongside financial results.

f. Regulation 31A (3) introduces a structured process for promoter reclassification, setting the following timelines: 30 (thirty) days for stock exchange decisions, 5 (five) days for no-objection applications, and 60 (sixty) days for shareholder approval, excluding promoters from voting.

g. The amendments to Schedule III, Part A, Sub-para 6, under Regulation 30, clarify disclosure requirements for listed entities. Fraud by senior management is required to be disclosed only if it directly affects the entity, while defaults now include instances like revolving credit facilities exceeding sanctioned limits for over 30 (thirty) days.

h. The requirement to send proxy forms will not apply to general meetings conducted exclusively through electronic means under the newly amended Regulation 44.

i. Under Regulation 46, listed entities are required to upload key documents like the Memorandum and Articles of Association, board profiles, and Employee Benefit Scheme documents (with approved redactions). All presentations for analysts must be shared before events, with earnings call recordings uploaded within 24 (twenty-four) to 48 (forty-eight) hours and transcripts of the same uploaded within 5 (five) days. Direct links to stock exchange pages are also permitted for certain disclosures.

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LKS Comment

The amendment to the LODR Regulations aims to simplify regulatory compliance for listed entities and their subsidiaries by relaxing approval and disclosure requirements for specific transactions. Regulated entities will need to reassess and redefine their RPT policies and frameworks to ensure alignment with the new changes.

2. Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024

SEBI through a gazette Notification No. SEBI/LAD-NRO/GN/2024/209 dated 18 November 2024, amended the SEBI (Alternative Investment Funds) Regulations, 2012 through the SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024 ("**AIF Amendment**").

Key changes brought by the AIFs Amendment are as follows:

a. Under Regulation 20, a new sub-regulation 21 has been inserted, which provides that the investors in schemes of alternative investment funds ("**AIF Schemes**") shall have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment, except as may be specified by SEBI from time to time, provided that the rights of the investors of a schemes of AIFs issued prior to the notification of this Fifth Amendment, which are not pro-rata to their commitment to the scheme and not exempted by SEBI, shall be dealt with in the manner specified by SEBI.

b. Under Regulation 20, a new sub-regulation 22 has been inserted, which provides that the rights of investors of a scheme of an alternative investment fund, other than that specified in sub-regulation (21) of this regulation, shall be pari-passu in all aspects provided that:

   i. differential rights may be offered to select investors of a scheme of an AIF, in the manner as may be specified by SEBI, without affecting the interest of other investors of the scheme.

   ii. the requirement under sub-regulation (22) of this regulation shall not apply to large value fund for accredited investors

   iii. any differential right already issued by an AIF prior to the notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2024, not falling within the first proviso of sub-regulation (22) of this regulation, shall be dealt with in the manner as specified by SEBI.

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LKS Comment

The AIF Amendment reflects SEBI's commitment to fostering a more robust and transparent framework for AIFs, balancing operational flexibility with necessary investor protections. This amendment is expected to encourage greater participation in the AIF sector while enhancing overall market integrity.

3. Securities and Exchange Board of India (Infrastructure Investment Trust) (Third Amendment) Regulations, 2024

SEBI through a gazette notification No. SEBI/LAD-NRO/GN/2024/207 dated 26 September 2024, amended the SEBI (Infrastructure Investment Trust) Regulations, 2014 through the SEBI (Infrastructure Investment Trust) (Third Amendment) Regulations, 2024 ("**InvITs Amendment**")

Key changes brought by the InvITs Amendment are as follows:

a. In Regulation 16(8) the existing clause (b) has been substituted to state that that the trading lot for trading units on the designated stock exchange shall be INR 25,00,000 (twenty-five lakh rupees). Earlier, the amount was INR 1,00,00,000 (one crore rupees).

b. In Regulation 18(6) the existing clause (c) has been amended to state that the distributions made by the InvIT and the special purpose vehicle shall be made within 5 (five) working days from the record date. Earlier, such distributions had to be made not later than 15 (fifteen) days from the date of declaration.

c. In Regulation 22(2) the existing clause (aa) has been amended to provide that the voting threshold shall be calculated based on the unit holders present and voting. An explanation to this clause states that, to determine the unit holders present and voting, the unit holders voting through electronic voting facility and postal ballot should be counted.

d. In Regulation 22(2) a new clause (c) has been added which provides that a meeting of the unit holders may be called after giving shorter notice than that specified in clause (c) if consent is granted by writing or in electronic mode. In the event of an annual meeting, consent by at least 95% (ninety five per cent) of the unit holders will be required and in case of any other meeting, consent by majority of the unit-holders would be required.

e. In Regulation 22 A new clause (f) has been added which provides that for all unit holder meetings, the manager should provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means as well as the option of remote electronic voting.

f. In Regulation 22(3)(b) clause (ii) has been amended to state that the votes in favour of a resolution shall be more than 50% (fifty per cent) of the total votes for the resolution unless otherwise specified.

g. In Regulation 26 sub-regulation (4) has been added which provides that the manager and trustee must ensure that adequate backup systems, data storage capacity as well as some other arrangements for alternative means of communication are maintained for the records that are maintained electronically.

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LKS Comment

The introduction of the InvITs Amendment signifies an ongoing commitment to refining the investment landscape in India, for infrastructure assets. The inclusion of unit-based employee

benefit scheme is intended to clarify the scope of employee benefits related to InvITs units and is expected to bolster investor confidence and enhance the overall integrity of the securities market.

4. Guidelines for investments in overseas mutual funds/unit trusts by Indian mutual funds

The Securities and Exchange Board of India through a Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/149, dated 4 November 2024 ("**Circular**") has laid down the following guidelines to facilitate ease of overseas investment in Mutual Funds/Unit Trusts ('**MF/UTs**'), with exposure to Indian securities, as also contemplated in the SEBI Master Circular (SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/90) dated 27 June 2024:

a. **Investment limitations:** Indian mutual funds may invest in overseas MF/UTs with exposure to Indian securities, provided that such exposure does not exceed 25% (twenty-five per cent) of the total assets of the overseas MF/UT.

b. **Conditions for investment:**

i. Pooling of investments: All investor contributions in the overseas MF/UT must be pooled into a single investment vehicle, without any segregated portfolios or sub-funds.

ii. Equal Rights: Investors shall have pari-passu and pro-rata rights to the returns, proportionate to their respective contributions.

iii. Independent Fund Management: The overseas MF/UT must be managed by an independent investment manager, free from any direct or indirect influence from investors.

iv. Transparency: The overseas MF/UT must disclose its portfolio on a quarterly basis.

v. No Advisory Agreement: Indian mutual funds shall not enter into advisory agreements with the overseas MF/UT to avoid conflicts of interest.

c. **Exposure breach:** If the exposure exceeds 25% (twenty-five per cent), a 6 (six) month observation period will be permitted for rebalancing. During this period, no new investments can be made.

d. **Rebalancing and Liquidation:** If the exposure remains above 25% (twenty-five per cent) after 6 (six) months, the Indian mutual fund must liquidate its position within the subsequent 6 (six) month 'liquidation period.'

e. **Non-Compliance:** Failure to comply with these requirements will result in the suspension of new subscriptions, new scheme launches, and the waiver of exit loads on investor redemptions.

f. **Fundamental Attribute Change:** In case of a breach exceeding 25% (twenty-five per cent), Indian mutual funds may switch to other overseas MF/UTs with similar investment objectives, subject to issuance of a notice to investors.

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LKS Comment

This Circular aims to facilitate investment opportunities for Indian mutual funds through the introduction of diversified investment portfolios opportunities. In addition, it emphasizes transparency and investor safety, enabling Indian mutual funds to efficiently access international markets while ensuring careful supervision of domestic investments.

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5. Securities and Exchange Board of India (Buy-Back of Securities) (Second Amendment) Regulations, 2024

The Securities and Exchange Board of India (SEBI) has issued SEBI (Buy-Back of Securities) (Second Amendment) Regulations, 2024 ("**Second Amendment**") to amend the SEBI (Buy-Back of Securities) Regulations, 2018.

Key changes brought by the Second amendment are set out below:

a. As per the amended provision the buy-back offer made by a company intending to buy-back its shares or other specified securities from the open market, shall require to be open not later than 4 (four) working days from the "date of public announcement" instead of "record date".

b. Further, now the company can issue the shares or other specified securities before the date of expiry of buyback period for the offer made under these regulations in discharge of subsisting obligations through conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares in contrast to the existing provisions providing for complete restriction of any such issue. In addition, some new disclosure requirements are added in public announcement and letter of credit for buy-back through tender offer. This Second Amendment shall come into force from 20 November 2024.

LKS Comment

The primary objective of this Second Amendment is to modify the buy-back conditions and obligations for the companies who want to buy-back its shares or other specified securities and it intends to streamline the process for buy back of shares.

Key Updates under Environmental Laws

1. Draft Liquid Waste Management Rules, 2024

The Ministry of Environment, Forest and Climate Change ("**MoEFCC**") vide gazette Notification No. SO4341(E) dated 7 October 2024 issued the Draft Liquid Waste Management Rules, 2024 ("**Draft Liquid Rules**"), which will come into effect on October 1, 2025.

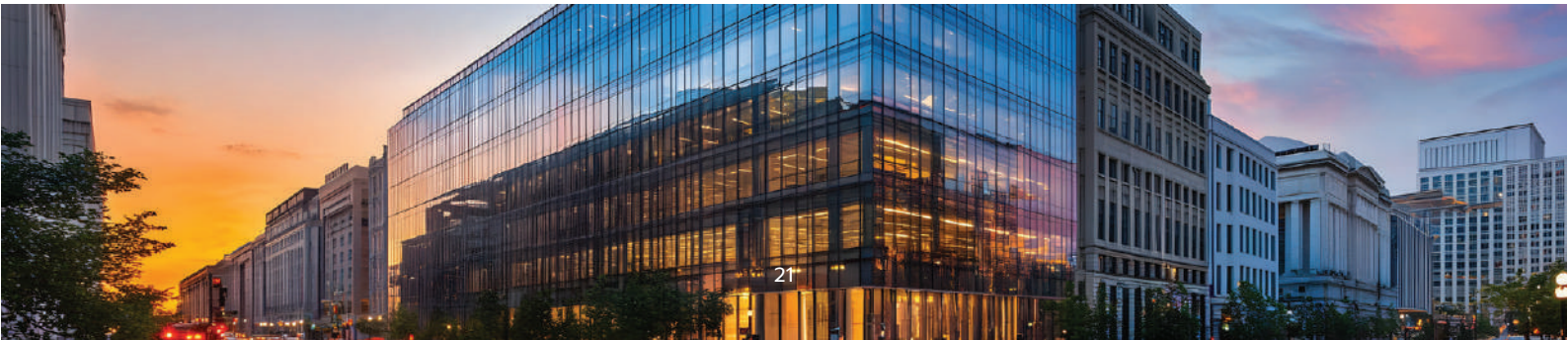
Key highlights of the Draft Liquid Rules are set out below:

a. **Application:** The Draft Liquid Rules shall apply to every urban body as well as rural local body and all public authorities and entities responsible for the generation and management of wastewater, sludge from wastewater treatment facilities and faecal sludge, including all entities within their jurisdictions whether being controlled and managed by the government, private sector or in public private partnership *viz.* special notified areas including industrial areas/ townships, special economic zones, food parks, and areas under the control of Indian railways including railway stations, railway tracks and land parcels adjacent to railway tracks, airports, airbases, ports and harbours, defence establishments, public and private establishments, State Government and Central Government organisations, places of pilgrims, religious and historical importance, all land owners public or private, individual or body corporate, in possession of land parcels, and every domestic, institutional, commercial and any other non-residential liquid waste generator including bulk user of water.

b. **Key definitions:**

i. *'bulk user of water'* means and includes buildings occupied by the Central Government departments or undertakings, State government departments or undertakings, local bodies, public sector undertakings or private companies, hospitals, nursing homes, schools, colleges, universities, other educational institutions, hostels, hotels, markets, places of worship, stadia and sports complexes or any other private or public commercial or institutional establishments or residential societies having an average water use exceeding 5000 litres per day;

ii. *'commercial unit'* means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to only these;



iii. *'liquid waste'* means any liquid/ wastewater and associated sludge, including faecal sludge, which is discharged into the environment in such a volume, composition and manner likely to cause an alteration of quality of the environment;

iv. *'liquid waste generator'* means and includes every person or group of persons, every residential premises and non-residential establishments, which generate liquid waste;

v. *'residential unit'* means a structure that is a residential unit which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to only these.

c. <u>Key duties of wastewater generator:</u>

According to Rule 1 of the Chapter II (*Environmentally sound management of wastewater including its reuse*), every wastewater generator shall, (a) dispose wastewater generated, other than from industries, in drainage systems provided by local body or an agency, authorised by the local body, if any; (b) not dispose wastewater generated on open land or in water body in a manner to adversely affect environmental quality; (c) pay such user fee as notified in the byelaws or appropriate regulation of the local body after approval of the State / Union Territory Government.

d. <u>Key duties of bulk user of water:</u>

According to Rule 1 of the Chapter II (*Environmentally sound management of wastewater including its reuse*), every bulk user of water, other than industries having water consumption of more than 5000 (five thousand) litres per day ("**LPD**") or pollution load of more than 10 (ten) kg per day in terms of BOD; (a) shall have to register, through Form 1(A) on the centralised online portal. The certificate of registration shall specify conditions required to be fulfilled for registration to remain valid. Any change in the information provided during registration and the conditions specified in the registration shall be notified to the local body; (b) shall have Extended User Responsibility (EUR) obligation for wastewater generated based on water consumed to: (i) ensure treatment of wastewater generated; (ii) reuse treated wastewater for designated uses as per targets given in Table 1 (provided under the Draft Liquid Rules).

e. <u>Key duties of industries:</u>

According to Rule 1 of Chapter IV (*Treatment and reuse of wastewater by industry*), industries having water consumption of more than 5000 (five thousand) LPD or pollution load above 10 (ten) kg per day in terms of BOD:

i. shall have to register on the centralised online portal. The certificate of registration shall specify conditions required to be fulfilled for registration to remain valid. Any change in the information provided during registration and the conditions specified in the registration shall be notified to the local body;

ii. shall obtain and adhere to consent to establish ("**CTE**") and consent to operate ("**CTO**") from the respective SPCBs, ensuring that all effluent management activities align with the specific conditions laid down in these consents;

iii. shall provide by 7th of every month, quantitative data on the operation of ETP in respect of water consumed, wastewater generated, wastewater treated, reuse/sale of treated wastewater, quality of treated water discharged, sludge and/ or organic manure/soil conditioner/ biogas generated after treatment of wastewater and other relevant details on the centralised online portal;

iv. shall file annual returns by 30th June of every year to SPCB in respect of ETP, for water consumed, wastewater generated, wastewater treated, reuse/sale of treated wastewater, quality of treated water discharged, sludge and/ or organic manure/soil conditioner/ biogas generated after treatment of wastewater, and other relevant details on the centralised online portal; and

v. shall provide by 7th of every month, quantitative data in respect of water consumed, wastewater generated, wastewater sent to CETP for treatment, and other relevant details on the centralised online portal, in case the industry does not have ETP.

f. <u>Key duties of operator of ETP/CETP:</u>

i. Each ETP/CETP operator, (A) shall regularly monitor the quality of treated effluents using in-house facilities or third-party laboratories accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL); and (B) shall submit regular reports on effluent quality to the SPCBs, including data on pollutants as specified by consent conditions. Online monitoring systems may also be mandated for continuous real time data submission.

g. <u>Centralised Online Portal:</u>

i. Central Pollution Control Board ("**CPCB**") shall establish an online system for the registration as well as for filing annual returns of all obligated entities under these rules within 6 (six) months of commencement of these rules. The system shall also ensure registration as well as for filing annual returns by the SPCBs for liquid waste management in the State/UT within 6 (six) months of commencement of these rules.

ii. It shall also reflect the details regarding the audit of the registered generators of wastewater and entities involved in collection, treatment/ recycling and reuse of wastewater and/or sludge/faecal sludge.

iii. The system shall ensure a mechanism wherein the volume balance of wastewater as per Extended User Responsibility obligations of bulk users as well as non-obligated entities is reflected.

iv. It shall also reflect the details regarding the audit of the obligated entities involved in collection, treatment of wastewater and/or sludge/faecal sludge and reuse/utilisation of treated wastewater and/or treated sludge/faecal sludge.

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LKS Comment

The Draft Liquid Rules are designed to create a detailed framework for managing liquid wastewater, encompassing its collection, minimisation, treatment, reuse, and disposal. The Draft Liquid Rules will promote the reuse of treated wastewater and encourage innovation within the sector. Moreover, certain industries such as thermal power plants, textiles, pulp and paper, and iron and steel will be mandated to achieve specific minimum targets for the reuse of treated wastewater.

2. Biological Diversity Rules, 2024

The MoEFCC through gazette notification number G.S.R. 665(E) dated 22 October 2024 has notified the Biological Diversity Rules, 2024 ("**BDR 2024**"), which will replace the Biological Diversity Rules, 2004 rules and become effective from 25 December 2024.

Key highlights of the BDR 2024 are set out below:

a. Formulation of a new online portal for submission of applications to the National Biodiversity Authority ("**Authority**"), for bio-survey and bio-utilisation and a declaration to claim exemption for accessing cultivated medicinal plants among other changes as enumerated below.

b. <u>Procedure for access to biological resources and knowledge associated thereto</u>:

i. Any person, referred to in sub-section (2) of section 3 of the Act, seeking approval of the Authority for access to biological resources and knowledge associated thereto for research or for bio-survey and bio-utilisation shall make an application on the web portal of the Authority in Form 1, and for commercial utilisation shall make an application on the web portal of the Authority in Form 2.

ii. Any person, referred to in sub-section (2) of section 3 of the Act, who was in possession of a biological resource before the coming into force of the Biological Diversity (Amendment) Act, 2023, shall seek approval of the Authority for the purpose of research, commercial utilisation, bio-survey and bio-utilisation

c. <u>Restricting access to biological resources and knowledge associated with such biological resources</u>:

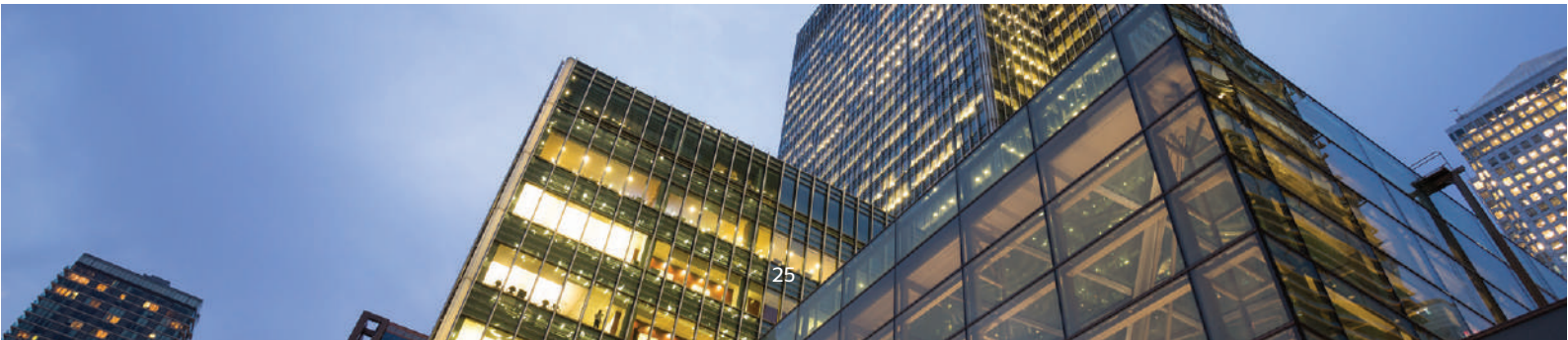
i. The Authority after conducting such enquiry as deemed appropriate in respect of any provisions of this rule, shall take steps to restrict or prohibit access to biological resources or knowledge associated with such biological resources for the following reasons, namely: (A) the request for access is for any threatened and/ or endemic species including those notified under section 38 of the Act; (B) the request for access may result in an adverse impact on the livelihood and/ or socio-cultural aspects of the local communities; (C) the request for access may result in adverse environmental impact(s)which may be difficult to control and mitigate; (D) the request for access may cause genetic erosion or affect the ecosystem functions including in the areas notified under section 37 of the Act; (E) the request is for the use of resources for purposes contrary to national interest and other related international agreements entered into by India; (F) for any other reasons to be recorded in writing.

d. <u>Procedure for seeking approval for sharing or transferring results of research to persons covered under sub-section (2) of section 3 of the Act</u>:

Any person who intends to share or transfer any result of the research relating to biological resources or traditional knowledge associated thereto to persons covered under sub-section (2) of section 3 of the Act shall make an application on the web portal of the Authority in the following Forms, namely:

i. Form 3 for seeking prior approval of the Authority by any person for sharing or transferring the results of research to persons covered under sub-section (2) of section 3 of the Act for commercial purposes or otherwise;
ii. Form 4 for registration by the transferee (persons covered under sub-section (2) of section 3 of the Act) to use the results of research for further research;

iii. Form 5 for seeking prior approval from the Authority to use the results of research for commercial utilisation by the transferee (persons covered under sub-section (2) of section 3 of the Act);



iv. Form 6 for seeking prior approval of the Authority to use the results of research for obtaining intellectual property rights by the transferee (persons covered under sub-section (2) of section 3 of the Act).

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LKS Comment

The BDR 2024 aim to enhance re designed to improve the oversight and management of biological resources and related knowledge, fostering uniformity in environmental laws and enforcement practices. Furthermore, the BDR 2024 establishes a new framework for the appointment of adjudicating officers, the conduct of investigations, and the imposition of penalties, in accordance with recent changes in environmental legislation.

3. Environment Protection (Extended Producer Responsibility for Packaging made from paper, glass and metal as well as sanitary products) Rules, 2024

The MoEFCC through gazette Notification No. S.O.5282(E) dated 6 December 2024 issued the draft Environment Protection (Extended Producer Responsibility for Packaging made from paper, glass and metal as well as sanitary products) Rules, 2024 ("**Draft Rules**").

Key highlights of the Draft Rules are set out below:

a. **Application:** According to Rules 2 of the Draft Rules, Draft Rules shall apply to: (i) producers, who introduce any packaging made from glass, metal and paper including paper board as well as sanitary products in the market; (ii) importers, who introduce any packaging made from glass, metal, paper including paper board as well as sanitary products in the market; (iii) brand owners, who introduce any packaging made from glass, metal and paper including paper board as well as sanitary products in the market; (iv) waste processors of packaging made of paper including paper board or glass or metal and sanitary waste ("**Entities**").

b. **Key Definitions:**

i. *"Extended Producer's Responsibility (**"EPR"**)"* means the responsibility of a producer for the environmentally sound management of the product until the end of its life;

ii. *"Importer"* means a person who imports for commercial use, any packaging made from glass, metal and paper and sanitary products

iii. *"Waste Processors"* means recyclers and entities engaged in using solid waste for energy (waste to energy);

iv. *"Producer"* means persons engaged in manufacture of packaging made from glass, metal and paper and sanitary products;

v. *"Recyclers"* are entities who are engaged in the process of recycling of packaging waste.

c. **Registration:** According to Rule 6 of the Draft Rules, the Entities shall register on the centralised online portal of EPR. The Entities shall not carry out any business related to packaging made of paper or glass or metal, without obtaining registration through on-line centralised portal developed by the CPCB.

d. **Coverage of EPR:** According to Rule 5 of the Draft Rules, the following are covered under EPR:

i. packaging made of paper;
ii. packaging made of glass;
iii. metal packaging, excluding non-ferrous metal-based packaging covered under Hazardous Waste and Other Wastes (Management and Transboundary Movement) Rules, 2016; and
iv. sanitary products.

The EPR on packaging made of paper, glass and metal covers the following elements: (i) recycling; (ii) use of recycled content; and (iii) end of life disposal.

e. **Targets for EPR of PIBOs:** The EPR targets for the PIBOs shall be determined packaging material wise. Under Rule 7 of the Draft Rules prescribe the EPR targets which need to be fulfilled by the Entities for fulfilment of their EPR obligations.

LKS Comment

The Draft Rules aims to reduce environmental pollution by extending the responsibility of waste management to the waste generators and producer and foster sustainable practices and promote a circular economy that emphasizes reuse, recovery, and recycling.

4. Solid Waste Management Rules, 2024

The MoEFCC vide gazette Notification No. S.O. 5369(E) dated 9 December 2024 issued the Solid Waste Management Rules, 2024 (**"SWM Rules"**) which will become effective from 1 October 2025.

Key highlights of the SWM Rules are set out below:

a. **Application:** According to Rule 2 of the SWM Rules shall apply to every urban body as well as rural local body, including all entities within their jurisdictions whether being controlled and managed by the government, private sector or in public private partnership viz. special notified areas including industrial areas/townships, special economic zones, food parks, and areas under the control of Indian railways including railway stations, railway tracks and land parcels adjacent to railway tracks, airports, airbases, Ports and harbours, defence establishments, public and private establishments, State Government and Central Government organisations, places of pilgrims, religious and historical importance, all land owners public or private, individual or body corporate, in possession of land parcels, and to every domestic, institutional, commercial and any other non-residential solid waste generator situated in the areas except hazardous chemicals, bio medical wastes, and radio-active waste, that are covered under separate rules framed under the EPA.

b. **Key definitions:**

i. *'brand owner'* means a person or company who sells any commodity under a registered brand label.

ii. *'bulk waste generator'* covers the following: entities, given below, if they satisfy at least one of the following criterion (1) buildings with floor area of 20, 000 (twenty thousand) sq.m. or above (2) water consumption of 5000 litres per day (3) solid waste generation of 100 kg per day:

A. Institutional users including buildings occupied by the following:
   I. Central government departments or undertakings, State government departments or undertakings;
   II. local bodies;
   III. public sector undertakings or private companies; and
   IV. schools, colleges, universities, and other educational institutions.

B. Commercial users including commercial establishments including railways, bus stations/depots, airports, ports and the following:
   I. malls, multiplexes;
   II. hotels, hospitals, nursing homes;
   III. hostels;
   IV. wholesale markets, including mandis for agricultural and horticultural produce, fish and meat; and
   V. sports complexes.

C. Residential societies.

iii. *'contractor'* means a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job for service providing authority;

iv. *'service provider'* means an authority providing public utility services like water, sewerage handling, electricity, telephone, roads, drainage, etc;

v. *'solid waste'* means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding liquid waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in Paragraph 5(a)(i) above

vi. *'waste generator'* means and includes every person or group of persons, every residential premises and non-residential establishments including Indian railways, defense establishments, which generate solid waste.

c. <u>Key duties of waste generator:</u>

According to Rule 1 of the Chapter II (*Environmentally sound management of solid waste*) of the SWM Rules, every waste generator shall:

i. adopt measures to prevent or reduce environmental pollution caused by solid waste;

ii. segregate and store the waste generated by them in four separate streams at source namely wet waste, dry waste, sanitary waste and special care waste; and handover segregated waste to authorised waste pickers or waste collect;

iii. store separately construction and demolition waste, as and when generated, in their own premises and shall dispose off as per the Construction and Demolition Waste Management Rules, 2016; and

iv. store horticulture waste or garden waste generated from their premises or land separately in their own premises and dispose of as per the directions of local bodies authorities from time to time.

d. <u>Key duties of bulk waste generator:</u>

According to Rule 2 of the Chapter II (*Environmentally sound management of solid waste*) of the SWM Rules, every bulk waste generator,

i. shall register themselves with the concerned local body through the centralised online portal. The certificate of registration shall specify conditions required to be fulfilled for registration to remain valid. Any change in the information provided during registration and the conditions specified in the registration shall be notified to the local body;

ii. shall make necessary arrangements for collecting and handing over of dry waste, sanitary waste, special care waste, to the local body or agency authorised by it; and

iii. shall make necessary arrangements to collect and process wet waste and/or horticulture waste if applicable, generated by them, in a decentralised manner through composting or biomethanation or any other approved technology.

e. <u>Creation of centralised online portal:</u>

According to Rule 1 of the Chapter VI (*Implementation Framework*):

i. The CPCB shall establish an online system for the registration as well as for filing annual returns of all obligated entities under these rules within 6 (six) months of commencement of these rules. The system shall also ensure registration as well as for filing annual returns by local bodies and concerned entities for solid waste management within 6 (six) months of commencement of these rules.

ii. The portal shall provide details of sanitary/ operational landfills and legacy waste dumping sites, as applicable. Such data shall be made available in public domain.

iii. The State Pollution Control Board ("**SPCB**") and local bodies/ authorities shall use centralised online portal for registration of obligated entities. The portal shall have separate modules for obligated entities for specific solid waste management activities.

iv. Centralised online portal would act as the single point data repository with respect to orders and guidelines related to implementation of these rules.

v. Centralised online portal shall reflect the details of the solid waste received, sorted and sent to processors and to SLFs/ operational landfills.

vi. Centralised online portal shall also reflect the details regarding the audit of the producers and entities involved in collection, treatment/ processing/ recycling.

vii. The CPCB may charge fees from obligated entities for the use of the portal as per the guidelines prepared by the CPCB.

f. <u>Imposition of Environmental Compensation:</u>

According to Rule 2 of the Chapter VI (*Implementation Framework*):

i. The environmental compensation shall also be levied based upon polluter pays principle on persons who are not complying with the provisions of these rules, including the following activities: (A) Entities carrying out activities without registration as mandated under these rules; (B) Providing false information /wilful concealment of material facts by the entities registered under these rules; (C) Submission of forged/ manipulated documents by the entities registered under these rules; (D) Entities engaged in collection, treatment and reuse in respect to not following sound handling of solid waste/ processed waste; and (E) Implementation Committee constituted by the CPCB under rule shall prepare guidelines for imposition and collection of environment compensation from entities involved in collection, sorting, transportation and treatment/ processing of solid waste in case of violation or non-compliance under the SWM Rules.

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LKS Comment

The SWM Rules represent a significant advancement in enhancing waste management practices in India and strive to establish a more sustainable and effective waste management framework.

5. Introduction of the Environment Protection (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024

The MOEFCC through a gazette notification dated 4 November 2024 has introduced the (*Environment Protection (Manner of Holding Inquiry and Imposition of Penalty*) Rules, 2024 ("Inquiry Rules") to enhance the efficiency and transparency of adjudication under the Environment Protection Act ("**EPA**"). This Inquiry Rules is effective from the date of publication in the gazette notification i.e., 4 November 2024.

The Inquiry Rules specify procedures for: (a) filing complaints by bodies such as the CPCB, SPCB, CAQM, and MOEFCC Integrated Regional Offices; and (b) conducting inquiries and adjudicating contraventions by designated authorities, ensuring streamlined and consistent enforcement.

Key Provisions:

a. <u>Complaint Filing</u>: Authorised bodies including the CPCB, the SPCB, CAQM, and MOEFCC and MOEFCC's Integrated Regional Offices can file complaints regarding

violations of Sections 7 to 11 of the Environment (Protection) Act, 1986. Complaints should be submitted using Form-I via electronic means, speed post, or by hand to the designated adjudicating officer.

b. **Inquiry Procedure:** Upon receiving a complaint, the adjudicating officer must issue a show-cause notice within 30 (thirty) days, allowing the alleged violator at least 15 (fifteen) days to respond. If an inquiry proceeds, the officer will schedule a hearing where the accused can present evidence. The officer has the authority to summon individuals and request documents pertinent to the case. The inquiry process is not bound by the strict evidentiary rules of the Bhartiya Sakshya Adhiniyam, 2023, providing flexibility in evidence assessment.

c. **Penalty Assessment:** When determining penalties, the adjudicating officer will consider factors such as the project's scale, industry type, nature and extent of the violation, health and environmental impacts, any undue financial gains from non-compliance, and whether the offense is a repeat violation. This ensures that penalties are proportionate to the severity and impact of the contravention.

d. **Service of Notices and Orders:** Notices or orders can be served personally, through electronic means, by registered or speed post, or, if necessary, by affixing them to a conspicuous part of the individual's residence or place of business.

e. **Transfer of Complaints:** If an adjudicating officer lacks jurisdiction, they must transfer the complaint to the appropriate officer within 15 (fifteen) days, ensuring that the inquiry continues without unnecessary delays.

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LKS Comment

The Inquiry Rules aim to streamline the process for determining the penalties scale by assessing size, location, industry types, and the nature of violations of environmental laws. In addition, the Inquiry Rules emphasize on the prevention of delayed resolution of environmental disputes and ensure that environmental disputes are resolved in a timely manner.

6. CPCB Issues Guidelines to Standardise E-Waste Recycling Facility Operations and Capacity Determination

The CPCB introduced updated guidelines to standardise the assessment of processing capacity for e-waste recycling facilities ("**E-waste Guidelines**") via notification dated 4 November 2024. This will be implemented by the PCB and Pollution Control Committee

("**PCC**") to evaluate and grant CTO for such facilities. The E-waste Guidelines aim to ensure uniformity and efficiency in the regulation of e-waste recycling.

Key highlights of the E-waste Guidelines are set out below:

a. Processing Capacity Determination:

i. The capacity of e-waste recycling facilities will be calculated based on the maximum hourly output of installed machinery and equipment, assuming up to 20 (twenty) hours of daily operation.

b. Facility Space Requirements: Recycling facilities must provide sufficient space for:

i. Recycling operations
ii. Storage of raw materials (e-waste)
iii. Storage of recycled products, non-recyclable materials, and hazardous waste
iv. Pollution control equipment
v. Operational control areas

c. Defined End Products:

i. E-waste Guidelines specify permissible recycling outputs, including metals like gold, copper, aluminium, and iron.

d. CTO Conditions:

i. SPCBs/ PCCs will grant CTOs specifying the annual processing capacity in terms of e-waste weight.

ii. Standalone dismantling facilities are permitted, but recyclers must take accountability for material flow and report details in their annual returns.

e. Record Maintenance Requirements

Recyclers must maintain comprehensive records of material flow at all stages of the recycling process, detailing input and output weights. Additionally, they are required to document the following:

i. Other recoverable metals (e.g., tin, palladium, platinum, silver, rare earth metals)
ii. Plastics, rubber, oil, and refrigerant gases
iii. Non-recyclable residues and hazardous waste disposed of at TSDF facilities

f. Data Protection Measures

To protect personal information, recyclers are required to implement systems for sanitizing data from electronic devices during the recycling process.

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LKS Comment

E-waste Guidelines aim to (a) promote responsible e-waste recycling operations; (b) minimise environmental impact through efficient waste management; and (c) enhance the regulation and oversight of recycling activities by standardising the determination of processing capacity. The CPCB's initiative is a significant step toward improving sustainability and accountability in India's e-waste recycling sector.

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