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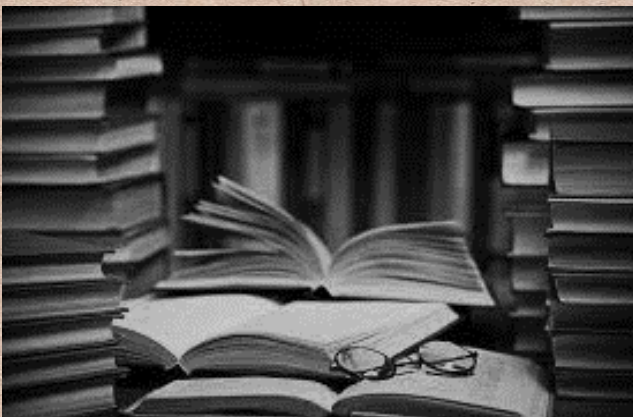
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INDEX[🏠]

- SEBI streamlines procedure for dealing with unclaimed funds
- SEBI carried out regulatory changes towards fraction investing for SM REITs and index providers, fresh investment by AIFs in dematerialised form
- Winter effect - SEBI done away with the freezing of folios
- No more hide and seek of ownership in LLPs now - MCA notifies LLP SBO Rules
- RBI notifies the master directions on information technology governance, risk, controls and assurance practices
- RBI notifies the regulatory measures towards consumer credit and bank credit to NBFCs
- MoEFCC notifies the Van (Sanrakshan Evam Samvardhan) Rules, 2023
- MoEFCC notifies the Water Purification Rules
- MoEFCC issues order specifying the terms and conditions for conducting surveys on forest lands
- MoEFCC notifies the guidelines to be abided by while considering exemptions provided under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980
- MoEFCC notifies conditions for considering proposals relating to assignment of forest land
- UGC issues guidelines for foreign universities to set up campuses in India
- Ministry of Commerce and Industry amends the Special Economic Zones Rules, 2006 to permit hybrid working for its employees
- Central Consumer Protection Authority issued the guidelines for Prevention and Regulation of Dark Patterns, 2023
- CERT-In exempted from the ambit of RTI
- Implementation of DCA under Telecom Commercial Communications Customer Preference Regulations, 2018

SEBI STREAMLINES PROCEDURE FOR DEALING WITH UNCLAIMED FUNDS

Securities Exchange Board of India ("SEBI"), *vide* its circulars dated November 8, 2023, has introduced a procedural framework for dealing with unclaimed funds lying with entities who have listed non-convertible securities, Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs") ("Circular No. 1, Circular No. 2, Circular No. 3" respectively) for both the entity and its investors/unitholders.

Regulation 61A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR") states that the listed entity is required to transfer the unclaimed interest/ dividend/ redemption amount to an escrow account. However, there were no procedural aspects which were covered thereunder for dealing with such funds for both investors and the listed entities. In order to bridge the gap, SEBI has, *inter-alia*, standardised procedures and steps to be followed for handling such unclaimed amounts and the said procedure has been detailed under Circular No. 1.

Regulation 18(6) of SEBI (REITs) Regulations, 2014 and SEBI (InvITs) Regulations, 2014 states 90% of the Net Distributable Cash Flows of the REITs/ InvITs shall be distributed to the unitholders. In case the amount was unclaimed, the same was required to be transferred to Investor Protection and Education Fund ("IPEF") account, however, there was no procedure which was specified under the specific regulations. SEBI has inserted Regulation 18(6)(f) and Regulation 18(6)(e) in the respective regulations for dealing with the unpaid/unclaimed amounts. The detailed procedure has been mentioned under Circular No. 2 and Circular No. 3, respectively.

The newly introduced frameworks, delineated in the aforementioned circulars, are scheduled to become effective from March 1, 2024.

To read Circular No. 1 [click here](#), to read Circular No. 2 [click here](#) & to read Circular No. 3 [click here](#)



SEBI CARRIED OUT REGULATORY CHANGES TOWARDS FRACTIONAL INVESTING FOR SM REITs AND INDEX PROVIDERS, FRESH INVESTMENT BY AIFs IN DEMATERIALISED FORM

SEBI, in its board meeting held on November 25, 2023, approved the following decisions:

- (a) Amendments to SEBI (REITs) Regulations, 2014, so as to create a regulatory framework for facilitating Small and Medium REITs ("SM REITs"). SM REITs with an asset value of at least INR 50 crores, shall have the ability to create separate scheme(s) for owning real estate assets through special purpose vehicle(s) constituted as companies. This is a departure from the present requirement of a minimum asset value of INR 500 crores for existing REITs.

- (b) Providing flexibility to not for profit organizations (“NPOs”) in raising funds through the social stock exchange (“SSE”) by reducing the minimum issue size in case of public issuance of zero coupon zero principal instruments by NPOs on SSE from INR 1 crore to INR 50 lakhs. The minimum application size in case of public issuance of zero coupon zero principal instruments has also been reduced from INR 2 lakhs to INR 10,000, thereby enabling wider participation of subscribers including retail.
- (c) Introducing a regulatory framework for index providers with the objective of fostering transparency and accountability in governance and administration of financial benchmarks in the securities market. The regulatory framework shall be in accordance with the International Organization of Securities Commissions (IOSCO) principles for financial benchmarks and the said regulations shall provide a framework for registration of index providers which license ‘Significant Indices’ notified by SEBI based on objective criteria.
- (d) Mandating all Alternative Investment Funds (“AIFs”) to appoint a custodian. Presently, the mandate for appointment of a custodian applied to schemes of Category III AIFs and to schemes of Category I and II AIFs with a corpus more than INR 500 crores. Further, any fresh investments made by AIFs, beyond September 2024, shall be compulsorily held in dematerialised form. These proposals have been approved towards facilitating ease of compliance and to strengthen protection of investor interest in AIFs.

To read the press release [click here](#)



WINTER EFFECT – SEBI DONE AWAY WITH THE FREEZING OF FOLIOS

SEBI, *vide* its circular dated November 17, 2023, on the subject “Simplified norms for processing investor’s service requests by Registrars to an issue and Share Transfer Agents (“RTAs”) and norms for furnishing PAN, KYC details and Nomination”, has amended the Master Circular for RTAs dated May 17, 2023 (“**Master Circular**”).

The Master Circular, *inter alia*, mandated all the holders of physical securities in listed companies to furnish PAN, nomination, contact details, bank a/c details and specimen signature for their corresponding folio numbers as per the annexure to the Master Circular by October 1, 2023, failure of which leads to freezing of the folios by the RTAs.

In light of the representation received from Registrars Association of India, feedback from investors, and to mitigate unintended challenges in this regard, SEBI has made the following amendments:

- (a) reference to the term “freezing/ frozen” has been deleted (*Para 19.2.1 of Master Circular*); and (b) referral of folios by RTAs/ listed company to the administering authority under the Benami Transactions (Prohibition) Act, 1988, and/or Prevention of Money Laundering Act, 2002, has been done away with (*Para 19.2.2 of the Master Circular*).

To read the circular [click here](#) & to read the Master Circular [click here](#)



NO MORE HIDE AND SEEK OF OWNERSHIP IN LLPs NOW – MCA NOTIFIES LLP SBO RULES

Ministry of Corporate Affairs (“MCA”), *vide* its notification dated November 9, 2023, has notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (“LLP SBO Rules”) which shall come into force from the date of their publication in the official gazette (“Effective Date”). The LLP SBO Rules are akin to the Companies (Significant Beneficial Owners) Rules, 2018 applicable to a company.

The LLP SBO Rules, *inter alia*, stipulates: (a) every individual who is Significant Beneficial Owner (“SBO”) in a reporting Limited Liability Partnership (“Reporting LLP”) on the Effective Date to file a declaration in Form No. LLP BEN-1 to the Reporting LLP within 90 days from the Effective Date; (b) every individual who subsequently becomes a SBO or where his significant beneficial ownership undergoes any change, shall file a declaration in Form No. LLP BEN-1 to the Reporting LLP within a period of 30 days of acquiring such significant beneficial ownership or any change therein; (c) the Reporting LLP in turn shall file a return in Form No. LLP BEN-2 with the registrar in respect of such declaration, within a period of 30 days from the date of receipt of such declaration by it along with the prescribed fees; and (d) the LLP shall maintain a register of SBO in Form No. LLP BEN-3.

To read the notification [click here](#)



RBI NOTIFIES THE MASTER DIRECTIONS ON INFORMATION TECHNOLOGY GOVERNANCE, RISK, CONTROLS AND ASSURANCE PRACTICES

Reserve Bank of India (“RBI”), *vide* its notification dated November 7, 2023, has notified the RBI (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023, with a view to consolidate and update the guidelines, instructions, and circulars on information technology governance, risk, controls, assurance practices and business continuity/ disaster recovery management. The directions shall come into effect from April 1, 2024.

The directions are applicable to the following entities who are collectively referred to as the “Regulated Entities”: (a) all banking companies, new banks, and the State Bank of India; (b) Non-Banking Finance Companies (“NBFCs”), including the ‘top layer’, the ‘upper layer’ and the ‘middle layer’ as defined in the scale based regulations; (c) credit information companies; and (d) EXIM bank, national bank, NABARD, NHB, SIDBI. However, it is clarified that these directions shall not be applicable to local area banks and NBFC – core investment companies. The key focus of these directions is to ensure that the Regulated Entities shall put in place a robust information technology governance framework.

To read the notification [click here](#)



RBI NOTIFIES THE REGULATORY MEASURES TOWARDS CONSUMER CREDIT AND BANK CREDIT TO NBFCs

RBI, *vide* its notification dated November 16, 2023, has notified regulatory measures towards consumer credit and bank credit to NBFCs with an aim to strengthen banks surveillance mechanisms, address build-up of risk and institute suitable safeguards for the banks' own interest.

A few key provisions of the regulatory measures are:

- (a) Consumer credit exposure of commercial banks - consumer credit exposure of commercial banks (outstanding as well as new) shall attract a risk weight of 125% as compared to 100% as per the earlier norms.
- (b) Consumer credit exposure of NBFCs - consumer credit exposure of NBFCs (outstanding as well as new) shall attract a risk weight of 125% as compared to 100% as per the earlier norms.
- (c) Credit card receivables - exposure of credit card receivables of scheduled commercial banks and NBFCs shall attract a risk weight of 150% and 125% respectively as compared to 100% and 125% respectively.
- (d) Bank credit to NBFCs - risk weight on exposure of scheduled commercial banks shall be increased by 25%. Loans to Housing Finance Companies and NBFCs which are eligible for classification as priority sector in terms of extant instructions shall be excluded.
- (e) Review of exposure limits - Regulated Entities ("REs") shall review their sectorial exposure limits for consumer credit by putting in place board approved limits in respect of sub-segments under consumer credit. The limits fixed shall be strictly adhered to and monitored on an ongoing basis by the risk management committee.
- (f) Regarding credit appraisal, prudential limits, and exposure, all top-up loans made by REs against movable assets that naturally depreciate such as vehicles shall be treated as unsecured loans.

The instructions listed above shall come into force with immediate effect. All REs shall comply with the provisions of implementing board limits at the earliest and shall implement them by no later than February 29, 2024.

To read the notification [click here](#)



MOEFCC NOTIFIES THE VAN (SANRAKSHAN EVAM SAMVARDHAN) RULES, 2023

Ministry of Environment, Forest and Climate Change ("MoEFCC"), *vide* its notification dated November 29, 2023, has notified the Van (Sanrakshan Evam Samvardhan) Rules, 2023 ("Forest Conservation Rules"), in supersession of the Forest (Conservation) Rules, 2022.

The key provisions of the Forest Conservation Rules are as follows:

(a) provides for the constitution of an advisory committee with regards to grant of approval under Section 2(1) (*Restriction on the dereservation of forests or use of forest land for non-forest purpose*) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 ("**Adhiniyam**") and under Rule 10(2) (*In-Principle approval of the proposal*) of the Forest Conservation Rules, along with any other matter connected with the conservation of forests. It also provides for a specific list of persons that are required to be appointed in the advisory committee; (b) provides for the constitution of a regional empowered committee to examine the proposals that are referred to it under Rule 10(3) of the Forest Conservation Rules and to grant approval for or to reject proposals under Section 2(1) of the Adhiniyam; (c) provides for the constitution of a project screening committee to examine the completeness of the proposals that are submitted under Section 2(1) of the Adhiniyam, and provides for a specific list of persons that are required to be appointed in the project screening committee; (d) proposals relating to, inter alia, linear projects and related to forest land up to 40 hectares are required to be examined in the regional office (*as established under the Forest Conservation Rules*); (e) proposals relating to, *inter alia*, dereservation, mining and regularisation of encroachment are required to be examined by the Central Government; (f) provides for the process of giving a final approval to any proposal, upon the receipt of the in-principle approval from the Central Government; and (g) provides for certain land which has neither been notified as a forest under the Indian Forest Act, 1927 or any other law, nor is managed as a forest by the Forest Department, to be designated for the purpose of compensatory afforestation, done in lieu of the diversion of forest land for non-forest purpose under the Adhiniyam.

To read the notification [click here](#)



MOEFCC NOTIFIES THE WATER PURIFICATION RULES

MoEFCC, *vide* its notification dated November 10, 2023, has notified the rules to regulate use of water purification systems. The rules shall be called the Water Purification System (Regulation of Use) Rules, 2023 ("**Water Purification Rules**"). The Water Purification Rules shall come in force 1 year after their publication in the official gazette.

The key definitions and provisions of the Water Purification Rules are as follows:

- (a) "commercial water purification system" has been defined as equipment or a device, having reverse osmosis based water treatment system that reduces total dissolved solids, chemical contamination to safe level and removes physical particles including microbiological impurities in water at point of use;
- (b) "domestic water purification system" means equipment or device, having reverse osmosis based water treatment system with a capacity of 25 litres per hour that reduces total dissolved solids, chemical contamination to safe level and removes physical particles including microbiological impurities in water at point of use;

- (c) Regulation of use: (i) the users of domestic and commercial water purification system shall comply with the guidelines as issued by the Central Pollution Control Board ("**Board**"), guidelines shall be published by the Board within a period of 6 months from the date of publication of the Water Purification Rules for handling, storage, management and utilisation of reject water and discarded elements generated for domestic and commercial use; (ii) domestic water purification system whether imported, assembled or produced on or after the commencement of the Water Purification Rules shall bear the standard mark under a license from the Bureau of Indian Standard ("**Bureau**") as per ISI standard IS:16240; and (iii) discarded elements from domestic water purification systems shall be regulated as per the provisions of the Plastic Waste Management Rule, 2016, the E-Waste (Management) Rules, 2022 and the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016;
- (d) Further, the Water Purification Rules stipulate responsibilities on the manufacturer or user of domestic water purification system, such as: (i) standard mark certification by the Bureau within a period of 1 year from the date of publication of the Water Purification Rules; and (ii) compliance report to be submitted by the manufacturer to the State Pollution Control Board or the Pollution Control Committee, on or before November 30th of the following financial year;
- (e) Water supply agencies, local bodies, Public Health Engineering Department, Jal Nigam, Municipal Corporation, Jal Board, Municipalities, private and public sector agencies engaged in potable water supply shall inform the consumers about the water sources and quality, including the total dissolved solids in the water being supplied through medium of billing instruments, public advertisement in newspapers, and other mass media means; and
- (f) The domestic water purification system manufactured, imported, produced or assembled on or after commencement of the Water Purification Rules shall have affixed a conformance label meeting the following requirements: (i) label shall be durable; (ii) label shall be affixed on a part necessary for normal operation of the product and shall not require replacement during the life of the product; and (iii) label shall contain: name and address of the manufacturer, importer, producer or assembler, statement that the purifier conforms to these provisions of these rules, license number issued by the Bureau, date of manufacture of the purifier and in case of import, the date of import of the purifier and the rated recovery efficiency and corresponding water reject generation.

To read the notification [click here](#)



MOEFCC ISSUES ORDER SPECIFYING THE TERMS AND CONDITIONS FOR CONDUCTING SURVEYS ON FOREST LANDS

MoEFCC, *vide* its notification dated November 29, 2023, has issued an order specifying the terms and conditions, subject to which any survey, such as prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose in terms of Section 2(2) (*Restriction on the dereservation of forests or use of forest land for non-forest purpose*) of the

Adhiniyam ("Order"). These terms and conditions enumerated in the Order are also required to be followed by the State Government and Union Territory administrations.

The key terms and conditions of the Order are as follows:

(a) surveys, including seismic surveys other than for mining purposes, which are undertaken in the forest lands for developmental projects shall not be treated as non-forest purpose as long as these surveys do not involve any breaking of forest land or cutting of trees; (b) surveys conducted in forest lands for mining purposes which involve breaking of forest land, shall not be treated as a non-forest purpose as long as such surveys involves felling of up to 100 trees in the entire area proposed for the survey, and proposals involving felling of more than 100 trees shall require prior approval of the Central Government; (c) the State Government and Union Territory administrations are required to use the forms developed by the Central Government for submission of proposals, and such proposals shall be processed for approval on the ProActive and Responsive facilitation by Interactive and Virtuous Environmental Singlewindow Hub ("PARIVESH") portal; (d) no surveys for mining of minerals can be undertaken in the protected areas such as national parks, wildlife sanctuaries, tiger reserves, and tiger corridors; (e) survey activities can only be carried out on a temporary basis, with no permanent change of the forest land being allowed, and upon completion of the survey, the forest land is required to be reclaimed and restored to its original state; (f) surveys shall be completed within a period of 2 years, and in the event no commencement or completion of the surveys is undertaken within a period of 2 years, the approval that has been granted by the State or Union Territory administration to conduct such survey shall stand rejected and the possession of the forest land will be taken over by the local forest department; and (g) details of the proceedings such as, *inter alia*, minutes of the meetings, and copies of approvals granted, are required to be uploaded on the PARIVESH portal by the State Governments or the Union Territory administration.

To read the Order [click here](#)



MOEFCC NOTIFIES THE GUIDELINES TO BE ABIDED BY WHILE CONSIDERING EXEMPTIONS PROVIDED UNDER THE VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980

MoEFCC, *vide* its notification dated November 29, 2023, has notified the guidelines specifying the terms and conditions to be abided by the State Government or Union Territory, while considering exemptions provided under sub-section (2) of Section 1A of the Adhiniyam, namely: (a) exemption for strategic linear projects of national importance; (b) exemptions for security related and public utility infrastructure; (c) for the purpose of subclause (iii) of clause (c) of sub-section (2) of Section 1A of the Adhiniyam, wherein the following categories of public infrastructure works in the Left Wing Extremism (LWE) affected districts, as notified by the Central Government, in the forest areas, shall be considered as public utility projects, namely: (i) schools or educational institutes including technical education; (ii) dispensaries or hospitals; (iii) electrical and telecommunication lines including underground optical fibres cables; (iv) drinking water including underground drinking water supply lines; (v) water or rain water harvesting structures; (vi) minor irrigation canal; (vii) non-conventional sources of energy; (viii) skill up gradation or vocational training center; (ix) power sub-stations; (x) public roads; (xi) communication posts including mobile towers; and (xii) police

establishments; and (d) proposals located in forest lands protected under the provisions of the Wild Life (Protection) Act, 1972 shall be considered by the State Government or Union Territory.

Some of the other conditions mentioned in the notification are: (a) to compensate the loss of trees, the State Government or the Union Territory administration shall raise compensatory afforestation and realise net present value of the forest land, being diverted, from the user agency, in accordance with the relevant rules and guidelines issued by the Central Government in this regard from time to time for diversion of forest land; (b) the user agency to pay compensatory levies, including expenses for activities like raising compensatory afforestation, net present value, and any prescribed mitigation plans. These funds should be collected from the user agency and then deposited into the account of the state compensatory afforestation fund management and planning authority of the respective State or Union Territory; (c) the State Government or Union Territory administration shall grant approvals in two stages: first, an 'in-principle' approval, and subsequently, a 'final' approval. The 'final' approval will be granted by the State Government or Union Territory administration upon the user agency's satisfactory compliance with the conditions outlined in the 'in-principle' approval; (d) State Governments and Union Territory administrations must ensure that approvals include only legitimate conditions, aimed at the conservation and protection of forests. These conditions may include activities such as compensatory afforestation, payment of compensatory levies, and relevant mitigation measures; (e) the legal status of the diverted forest land must remain unaltered; (f) with the exception of defence or strategic projects, the proceedings of various authorities, including meeting minutes, copies of granted approvals, and submitted monitoring reports related to public utilities covered under sub-section (2) of Section 1A of the Adhiniyam, must be uploaded on the PARIVESH portal by the respective State Governments or Union Territory administrations; (g) the user agency is required to initiate the project within 2 years. If the commencement or completion of the project is not undertaken within this stipulated period, the approval granted by the State Government or Union Territory administration shall stand rejected. The local Forest Department will assume possession of the forest land in such cases. However, the State Governments or Union Territory administrations, upon the submission of valid and cogent reasons for the delay in project commencement or completion beyond 2 years by the user agency, can extend the period by an additional year; and (h) the State Government and Union Territory administration shall guarantee that the user agency obtains environmental clearance in accordance with the provisions of the Environment Impact Assessment Notification, 2006, as applicable. Additionally, the user agency shall implement the necessary mitigation measures outlined in the environment management plan in all instances.

To read the notification [click here](#)



MOEFCC NOTIFIES CONDITIONS FOR CONSIDERING PROPOSALS RELATING TO ASSIGNMENT OF FOREST LAND

MoEFCC, *vide* its order dated November 29, 2023, in exercise of the powers conferred by clause (iii) of sub-section (1) of Section 2 read with Section 3C of the Adhiniyam, has issued the terms and conditions to be abided by the State Government or Union Territory administration while considering the proposals pertaining to assignment of forest land on lease to government as well as the private entities. The terms and conditions in the order are as follows:

- (a) an online application shall be made in the prescribed form on PARIVESH portal for the prior approval of the Central Government;
- (b) without the prior approval of the Central Government, no forest land shall be assigned on lease;
- (c) in the case of mining, breaking of forest land shall not be allowed. However, breaking of forest land to a limited extent such as plantation of trees, temporary or non-permanent construction may be allowed in case of assignment of forest land on lease for the purpose other than mining;
- (d) mining operations can be undertaken in forest land located within the mining lease only after obtaining approval of Central Government for diversion of the forest area;
- (e) user agency seeking assignment of forest land on lease for mining shall submit a mining plan approved by the competent authority indicating the detailed pre-mining and post mining plan for use of land, plan for mine closure and for activities other than mining a detailed project report or plan indicating the activities proposed on the forest land which shall be submitted by the user agency along with the proposal;
- (f) in the case of an existing mining lease having forest land in full or in part, for which the mining lease has already been executed at least before April 1, 2015, no mining shall be allowed until approval under clause (ii) of sub-section (1) of Section 2 of the said Adhiniyam for the entire forest land falling in such mining lease is obtained, and the net present value of the forest land falling in such mining lease is obtained;
- (g) approval granted for the assignment of forest land on lease for mining shall become null and void in case no proposal seeking approval under clause (ii) of sub-section (2) of Section 2 of the said Adhiniyam is submitted by the user agency within a period of 2 years from the date of issue of order of assignment of corresponding forest land on lease;
- (h) raising of plantations by the Government Department on the land recorded as forest in the Government records shall be considered as forestry activity and accordingly, provisions of the compensatory afforestation and net present value shall not be applicable for such plantation activities;
- (i) raising of commercial plantations of low rotation, including plantation of medicinal plants in the forest land shall be considered as non-forestry activities and, in such cases, prior approval of the Central Government under clause (iii) of sub-section (1) of Section 2 of the Adhiniyam shall be obtained and decision on such proposals will be undertaken by the Central Government on the merits of each case. Provisions of compensatory afforestation and net present value shall be applicable in such cases;
- (j) the validity for approval granted for the assignment of forest land on lease shall be valid for a period co-terminus with the period of mining lease granted under the relevant statute or for the period as may be specified by the Central Government;

- (k) raising of commercial plantations of low rotation, including plantation of medicinal plants in the forest land shall be considered as non-forestry activities; and
- (l) legal status of the forest land to assigned on such lease shall remain unchanged.

To read the notification [click here](#)



UGC ISSUES GUIDELINES FOR FOREIGN UNIVERSITIES TO SET UP CAMPUSES IN INDIA

University Grants Commission ("UGC"), *vide* its notification dated November 7, 2023, has notified the UGC (Setting up and Operation of Campuses of Foreign Higher Educational Institutions in India) Regulations, 2023, to facilitate Foreign Higher Educational Institutions ("Foreign HEI(s)") to set up campuses in India.

Foreign HEI(s) intending to establish campuses must fulfil the following eligibility criteria at the time of making an application to the UGC: (a) it/ they should have secured a position within the top 500 in the overall category or subject-wise category of global rankings; or (b) should possess outstanding expertise in a particular area.

In order to obtain UGC's approval, the Foreign HEI(s) shall make an online application on the UGC portal along with the requisite fees. The standing committee of the UGC shall assess each application, based on the recommendations of which, the UGC may, within a period of 60 days, initially grant in-principle approval and issue a letter of intent for the setting up of campuses in India within 2 years from the date of approval. Once Foreign HEI(s) convey readiness for the commencement of academic operations, and upon the standing committee examining such readiness, the UGC shall, based on the recommendations of the standing committee, issue approval to the Foreign HEI(s).

Few of the other salient features of these regulations are: (a) the education imparted by Foreign HEI(s) should be similar in aspects like curricula, pedagogy, assessment, etc., as that of its main campus; (b) the qualifications awarded in the Indian campus should be equivalent to the corresponding qualifications awarded by Foreign HEI(s) in its main campus; (c) Foreign HEI(s) are permitted to enter into a joint venture with Indian higher educational institutions or an Indian company; (d) 2 or more Foreign HEI(s) may collaborate to establish campuses in India; and (e) while online or open and distance learning programmes are disallowed, Foreign HEI(s) may offer lectures in online mode not exceeding 10% of the programme requirements.

To read the notification [click here](#)



MINISTRY OF COMMERCE AND INDUSTRY AMENDS THE SPECIAL ECONOMIC ZONES RULES, 2006 TO PERMIT HYBRID WORKING FOR ITS EMPLOYEES

Department of Commerce, Ministry of Commerce and Industry, *vide* its notification dated November 7, 2023, has notified the Special Economic Zones (Fourth Amendment) Rules, 2023 ("**SEZ Amendment Rules**"). The SEZ Amendment Rules aim to introduce the concept of hybrid working for the employees working in special economic zones in India.

The key provisions of the SEZ Amendment Rules are:

(a) hybrid working has been defined as "*a flexible work model whereby an employer may permit its employees to work from office or from any location outside the employer's office from time to time*"; (b) employees have been defined as "*all persons employed on the rolls of the Unit or under a direct contract or where the Unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis for work to the Unit and the Unit administers the control on their attendance*"; (c) specific categories of employees have been permitted by their units to work from any place outside the special economic zones, up to December 31, 2024, which are: (i) employees of information technology units and information technology enabled services; (ii) employees who are temporarily incapacitated; (iii) employees who are travelling; and (iv) employees who are working offsite; (d) in the event a unit permits its employees for hybrid work, it is required to intimate the same to the Development Commissioner by way of an email on or before the date on which such hybrid work is permitted; (e) the units are required to maintain a list of employees who have been permitted hybrid work and this list shall be submitted to the Development Commissioner for verification, whenever required; (f) the work required to be done by an employee under hybrid work is required to be as per the services approved by each unit and must be related to the project of that unit; (g) the units are required to provide to each employee duty-free goods which are allowed to be taken outside the special economic zones, including laptop, desktop and other electronic equipment needed by the employee for hybrid work. Such goods must be provided without payment of duty or integrated goods and services tax on a temporary basis, but must be accounted for in appropriate records required for verification purposes; and (h) notwithstanding anything in sub-rule (1) of Rule 50 of the Special Economic Zones Act, 2005, the temporary removal of duty-free goods shall be allowed for a period corresponding with the validity of the facility for hybrid work. However, if such duty-free goods are not brought back by a unit into the special economic zone within the period specified in this sub-rule, the unit would be liable to pay the duty applicable on such goods.

To read the notification [click here](#)



CENTRAL CONSUMER PROTECTION AUTHORITY ISSUED THE GUIDELINES FOR PREVENTION AND REGULATION OF DARK PATTERNS, 2023

Central Consumer Protection Authority, *vide* its notification dated November 30, 2023, has issued the Guidelines for Prevention and Regulation of Dark Patterns, 2023. Dark patterns are any practices or deceptive design pattern using user interface or user experience interactions on any platform that is designed to mislead or trick users to do something they originally did not intend or want to do, by subverting or impairing the consumer autonomy, decision making or choice, amounting to misleading advertisement or unfair trade practice or violation of consumer rights. The guidelines apply to: (a) all platforms, systematically offering goods or services in India; (b) advertisers; and (c) sellers. The guidelines prohibit any person including any platform from engaging in any dark pattern practice.

Any person, including any platform, shall be considered to be engaging in a dark pattern practice if it engages in any practice specified in Annexure 1 of the guidelines. Annexure 1 of the guidelines lists down 13 specified dark patterns and illustrations thereto, namely:

- (a) 'False urgency' - falsely stating or implying the sense of urgency or scarcity to mislead a user into making an immediate purchase or taking an immediate action;
- (b) 'Basket sneaking' - inclusion of additional items such as products, services, payments to charity or donation at the time of checkout from a platform, without the consent of the user, such that the total amount payable by the user is more than the amount payable for the product or service chosen by the use;
- (c) 'Confirm shaming' - using a phrase, video, audio or any other means to create a sense of fear or shame or ridicule or guilt in the mind of the user to nudge the user to act in a certain way that results in the user purchasing a product or service from the platform or continuing a subscription of a service, primarily for the purpose of making commercial gains by subverting consumer choice;
- (d) 'Forced action' - forcing a user into taking an action that would require the user to buy any additional goods or subscribe or sign up for an unrelated service or share personal information in order to buy or subscribe to the product or service originally intended by the user;
- (e) 'Subscription trap' - the process of: (i) making cancellation of a paid subscription impossible or a complex and lengthy process, or (ii) hiding the cancellation option for a subscription, or (iii) forcing a user to provide payment details or authorization for auto debits for availing a free subscription, or (iv) making the instructions related to cancellation of subscription ambiguous, latent, confusing, cumbersome;
- (f) 'Interface interference' - design element that manipulates the user interface in ways that (i) highlights certain specific information, and (ii) obscures other relevant information relative to the other information, to misdirect a user from taking an action as desired;

- (g) 'Bait and switch' - the practice of advertising a particular outcome based on the user's action but deceptively serving an alternate outcome;
- (h) 'Drip pricing' - (i) elements of prices are not revealed upfront or are revealed surreptitiously within the user experience, or (ii) revealing the price post-confirmation of purchase, or (iii) a product or service is advertised as free without appropriate disclosure of the fact that the continuation of use requires in-app purchase, or (iv) a user is prevented from availing a service which is already paid for unless something additional is purchased;
- (i) 'Disguised advertisement' - practice of posing, masking advertisements as other types of content such as user generated content or new articles or false advertisements, which are designed to blend in with the rest of an interface in order to trick customers into clicking on them;
- (j) 'Nagging' - dark pattern practice due to which a user is disrupted and annoyed by repeated and persistent interactions, in the form of requests, information, options, or interruptions, to effectuate a transaction and make some commercial gains, unless specifically permitted by the user;
- (k) 'Trick Question' - deliberate use of confusing or vague language like confusing wording, double negatives, or other similar tricks, in order to misguide or misdirect a user from taking desired action or leading consumer to take a specific response or action;
- (l) 'Saas billing' - process of generating and collecting payments from consumers on a recurring basis in a software as a service (SaaS) business model by exploiting positive acquisition loops in recurring subscriptions to get money from users as surreptitiously as possible; and
- (m) 'Rogue Malwares' – use of ransomware or scareware to mislead or trick user into believing there is a virus on their computer and aims to convince them to pay for a fake malware removal tool that actually installs malware on their computer.

Where a dark pattern practice is regulated under any other law for the time being in force or the rules or regulations made thereunder, the provisions contained in these guidelines shall be in addition to and not in derogation of such other laws.

To read the notification [click here](#)



CERT-IN EXEMPTED FROM THE AMBIT OF RTI

Ministry of Personnel, Public Grievances and Pensions, *vide* its notification dated November 23, 2023, has inserted Indian Computer Emergency Response Team ("CERT-In") in the Second Schedule to the Right to Information Act, 2005 ("RTI"). The Second Schedule corresponds to Section 24 of RTI and lists down the organisations on which RTI does not apply.

Consequently, CERT-In is now added to the above-mentioned list which also includes 26 other intelligence and security organisations. The exemption allows CERT-In to reject any application for

information, even on policy related matters, other than when the sought information pertains to the allegation of corruption and human rights violations.

To read the notification [click here](#)



IMPLEMENTATION OF DCA UNDER TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER PREFERENCE REGULATIONS, 2018

Telecom Regulatory Authority of India (“TRAI”), *vide* its press release dated November 7, 2023, as a significant step to curb the menace of spams through Unsolicited Commercial Communications (“UCC”), has requested various entities such as banks, other financial institutions, insurance companies, trading companies, business entities, real estate companies (“Principal Entities”) to take urgent necessary steps to be onboard the development and deployment of the Digital Consent Acquisition (“DCA”) facility as per the timelines prescribed in direction issued by TRAI regarding implementation of Digital Consent Acquisition under Telecom Commercial Communications Customer Preference Regulations, 2018 dated June 2, 2023 (“DCA Direction”).

The DCA Direction states the need for the development and deployment of a DCA facility by all access providers (*access providers includes the basic telephone service provider, cellular mobile telephone service provider, unified access service provider, universal access service provider and virtual network operator as defined in the respective licenses issued by Department of Telecommunications (DoT)*) for creation of a unified platform and process to register telecom subscribers’ consent digitally across all access service providers and Principal Entities. The DCA Direction was covered in the [earlier edition of Legalaxy](#).

The timelines mentioned under the DCA Direction are as follows:

I.	Development and deployment of the DCA facility	By July 31, 2023
II.	User initiated consent acquisition	To start from August 1, 2023
III.	Whitelisting of existing URLs/ APKs/ OTT/ links/ call-back numbers	By August 31, 2023
IV.	Principal Entity initiated consent acquisition	To start from September 1, 2023
V.	On-boarding of Principal Entities belonging to the banking, insurance, finance, and trading sectors	By September 30, 2023
VI.	On-boarding of Principal Entities belonging to remaining sectors	By November 30, 2023

To read the press release [click here](#) & to read the DCA Direction [click here](#)



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Disclaimer:

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We hope you like our publication. We look forward to your suggestions. Please feel free to contact us at mumbai@vaishlaw.com.

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