WHITESPAN
Advisory

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter

AUGUST 31, 2024

WHITESPAN Advisory

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MAA FOUNDATION ACTIVITIES

MAA Foundation organizes regular skill development workshops and training programs to enhance women's professional and vocational skills. During the month of August 2024, MAA Foundation organized various POSH awareness sessions and also imparted vocational skills training to young girls under the "SUIDHAGAPROJECT"..

MESSAGE FROM THE CHIEF EDITOR

"When I let go of what I am, I become what I might be." – Lao Tzu

It gives us immense satisfaction to share the 88th Edition of "WINS – E-Newsletter" for August 2024, covering legal updates released during the month of August 2024, articles shared by respected professionals, Case Laws and compliance calendar for the month of August 2024.

In this issue, we have covered the following:

1. Corporate Updates from SEBI, RBI, CBIC, CBDT and other miscellaneous Laws
2. Articles Filling Civil Suits under Company Law, Privacy in the Digital Age, What the new Data Protection means for you, Scope of Arbitration in India
3. Case Laws
4. Compliance checklist for the month of September 2024.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor's Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at **vinayshukla@whitespan.in or +91 9810 624 262**

With warm regards,

TEAM WINS (Whitespan Information and News Services)
August 31, 2024

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

1. **Mr. Vinay Shukla,** a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
2. **Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
3. **Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
4. **Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
5. **Mr. Pushkar Garg,** Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
6. **Mr. Anuj Pathak,** Cleared CS Professional Exam and a graduate in Commerce from Lucknow University.
7. **Ms. Geetanjali Arya**, CS Professional Student and pursuing LLB from Choudhary Charan Singh University, Meerut and graduated from Maharishi Dayanand University, Rohtak.

WHITESPAN Advisory

Ministry of Corporate Affairs (MCA)

1. Limited Liability Partnership (Amendment) Rules, 2024

Date of General Circular: August 05, 2024

Effective Date : August 27, 2024

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=mvMzerxrXhRIKJfJXltgrg%253D%253D&type=open

MCA vide its notification dated August 05, 2024, notified the Limited Liability Partnership (Amendment) Rules, 2024. New Rule 37(1) of the Limited Liability Partnership Rules, 2009, post amendment shall now be read as:

Rule 37 - *Striking Off Name Of Defunct LLP*

(1) Where a limited liability partnership is not carrying on any business or operation-

(a) for a period of two years or more and the Registrar has reasonable cause to believe the same, for the purpose of taking *Suo Moto* action for striking off the name of the LLP; or

(b) for a period of one year or more and has made an application in Form 24 to the Registrar **the Centre for Processing Accelerated Corporate Exit**, with the consent of all partners of the limited liability partnership for striking off its name from the register, the Registrar **the Centre for Processing Accelerated Corporate Exit** shall send a notice to the limited liability partnership and all its partners, of his intention to strike off the name of the limited liability partnership from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice:

Provided that no such notice by Registrar the Centre for Processing Accelerated Corporate Exit shall be required under clause (b):

Provided further that where the limited liability partnership is regulated under a special law, the application for removal of its name shall be accompanied by approval of the regulatory body constituted or established under that law.

Explanation. - for the purposes of this sub-rule, the Centre for Processing Accelerated Corporate Exit means the office of Centre for Processing Accelerated Corporate Exit established by the Central Government.

*Amendments highlighted in bold.

2. Companies (Adjudication of Penalties) Amendment Rules, 2024

Date of Notification: August 05, 2024

Effective Date : September 16, 2024

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=ksyWu6kmYbS46oyUYmt6cw%253D%253D&type=open

MCA vide its notification dated August 05 amended the Companies (Adjudication of Penalties) Rules, 2014 by notifying Companies (Adjudication of Penalties) Amendment Rules, 2024.

With effect from September 16, 2024, all proceedings (including issue of notices, filing replies or documents, evidence, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose in form ADJ.

In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform.

In case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.

3. The Companies (Registration of Foreign Companies) Amendment Rules, 2024.

Date of Notification: July 15, 2024

Effective Date : Date of publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=nKOST6cNFJSgJGLOIBu6Yg%253D%253D&type=open

MCA vide its Notification dated August 13, 2024, notified the Companies (Registration of Foreign Companies) Amendment Rules, 2024. Rule 3 and Rule 8, of the Companies (Registration of Foreign Companies) Amendment Rules, 2024, post amendment shall now be read as:

Rule 3: *Particulars relating to directors and Secretary to be furnished to the Registrar by foreign Companies.*

(3) A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the **Registrar, Central Registration Centre** Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380 and the application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorized representative of such foreign company that no such approval is required**.**

Rule 8: Office where documents to be delivered and fee for registration of documents.

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated Outside India and these rules shall be construed accordingly.

Provided that the documents for registration by a foreign company referred to in sub-rule (3) of rule (3) shall be delivered in Form FC-1 to the Registrar, Central Registration Centre.

*Amendments highlighted in bold.

4. The Companies (Indian Accounting Standard) Amendment Rules, 2024

Date of Notification: August 14, 2024

Effective Date : Date of publication in Official Gazette

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=4iwngdxt9oFj%252Bpp05r1EZA%253D%253D&type=open

MCA, vide its Notification dated August 14, 2024, has issued the Companies (Indian Accounting Standards) Amendment Rules, 2024. In consultation with the National Financial Reporting Authority, these rules amend the Companies (Indian Accounting Standards) Rules, 2015. The amendments, update various aspects of Indian Accounting Standard (Ind AS) 101, including revisions to paragraphs and appendices related to insurance contracts and transitional provisions under Ind AS 117. Specifically, the changes involve updates to paragraph 39AE, modifications in Appendix B and D, and adjustments to Appendix 1 to align with international standards and remove obsolete references.

For the further detail, kindly refer the abovementioned Link

WHITESPAN Advisory

Securities Exchange Board of India (SEBI)

1. Institutional Mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front running and fraudulent transactions in securities

Date of Circular: August 05, 2024

Effective date: August 05, 2024

Link:

https://www.sebi.gov.in/legal/circulars/aug-2024/institutional-mechanism-by-asset-management-companies-for-identification-and-deterrence-of-potential-market-abuse-including-front-running-and-fraudulent-transactions-in-securities_85468.html

SEBI vide its circular dated August 05, 2024 Asset Management Companies (AMCs) must establish a comprehensive framework for detecting and preventing market abuse, including front-running and fraudulent transactions. This framework will include:

a. **Accountability**: The Chief Executive Officer (CEO) or Managing Director and the Chief Compliance Officer or such other officer of not below the analogous rank are responsible for implementing this mechanism.

b. **Alert-based Surveillance**: AMCs must develop systems to generate and process alerts promptly.

c. **Alert Processing**: AMCs will review all communications, including chats, emails, access logs, and CCTV footage if available. They will also monitor entry logs to premises.

d. **Standard Operating Procedures**: AMCs must create written policies for handling market abuse and have these approved by their Board of Directors.

d. Action on Suspicious Alerts: AMCs must act on any identified potential market abuse, including possible suspension or termination of involved individuals or entities.

e. Escalation Process: AMCs must inform their Board of Directors and Trustees about potential market abuse and the results of examinations.

f. Whistleblower Policy: AMCs must implement a whistleblower policy in accordance with SEBI regulations.

g. Periodic Review: Procedures and systems must be regularly reviewed and updated.

h. Trade Information: Exchanges and depositories will develop data-sharing systems with AMCs, in consultation with AMFI.

i. Reporting to SEBI: AMCs must report examined alerts and actions taken to SEBI in the Compliance Test Report (CTR and Half-yearly Trustee Report (HYTR), detailing alert types, observations, and actions.

j. Implementation Standards: AMFI, in consultation with SEBI, will issue detailed implementation standards within 15 days of this circular, which all AMCs must follow.

This directive is issued under Section 11(1) of the SEBI Act, 1992, and related SEBI regulations, aiming to safeguard investor interests and regulate the securities market effectively.

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

Date of Circular: August 05, 2024

Effective date: August 05, 2024

Link:

https://www.sebi.gov.in/legal/regulations/aug-2024/securities-and-exchange-board-of-india-alternative-investment-funds-fourth-amendment-regulations-2024_85550.html

SEBI vide its Notification dated August 05, 2024, notified the Securities and Exchange Board of India (Alternative Investment Funds) (Fourth Amendment) Regulations, 2024. Regulation 3, Regulation 13, Regulation 16, Regulation 17 of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2024, post amendment shall be now read as:

Regulation 3(4)(b)

Category II Alternative Investment Fund which does not fall in Category I and III and which does not undertake leverage or borrowing other than **to meet day to day operational requirements and** as permitted in these regulations.

Explanation. — For the purpose of this clause, Alternative Investment Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government, or any other Regulator shall be included.

*Amendments highlighted in bold are omitted.

Regulation 13(5)

In the absence of consent of unit holders, the Alternative Investment Fund shall fully liquidate within one year following expiration of the fund tenure or extended tenure

Provided that a large value fund for accredited investors may be permitted to extend its tenure up to five years subject to the approval of two-thirds of the unit holders by value of their investment in the large value fund for accredited investors.

Provided further that the extension in tenure of any existing scheme of a large value fund for accredited investors shall be subject to such conditions as may be specified by the Board from time to time.

*Amendments highlighted in bold.

Regulation 16(1)(c)

"**Category I Alternative Investment Funds shall not borrow funds directly or indirectly or engage in any leverage for the purpose of making investments or otherwise, except for borrowing funds to meet temporary funding requirements and day-to-day operational requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds and subject to such conditions as may be specified by the Board from time to time**

Provided that Category I Alternative Investment Funds may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonized Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions as may be specified by the Board from time to time."

* Amendments are highlighted in bold.

Regulation 17(c)

"Category II Alternative Investment Funds shall not borrow funds directly or indirectly or engage in any leverage for the purpose of making investments or otherwise, except for borrowing funds to meet temporary funding requirements and day-to-day operational requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds and subject to such conditions as may be specified by the Board from time to time:

Provided that Category II Alternative Investment Funds may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonized Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions as may be specified by the Board from time to time."

*Amendments are highlighted in bold

3. Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations.

Date of Circular: August 01, 2024

Effective date: August 01, 2024

Link:

https://www.sebi.gov.in/legal/regulations/aug-2024/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2024_85459.html

SEBI vide its Notification dated August 01, 2024, notified the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2024:

Sub-regulations (I) and (II) of Regulation 3 will take effect three months after the regulations are published in the Official Gazette. Sub-regulation (III) of Regulation 3 will take effect twelve months after the same publication date.

Provided that for asset management companies of mutual funds with assets under management of less than ₹10,000 crore, sub-regulations (I) and (II) of Regulation 3 will take effect six months after the regulations are published in the Official Gazette.

Regulation 2, Regulation 25, of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, post amendment shall be now read as

Submission Details:

The information memorandum must be submitted to SEBI before the expiry of the liquidation period, or any additional period granted.

The format for this memorandum is provided in Annexure I.

A Due Diligence Certificate from the merchant banker, as per Annexure II, must accompany the memorandum.

Additional Liquidation Period: AIF schemes whose liquidation period expires or is expiring within three months of the new regulations may apply for an additional liquidation period. Details for this submission are outlined in Annexure III.

In Specie Distribution:

Regulation 29(9) of the AIF Regulations allows for in specie distribution of investments during the liquidation period.

SEBI's circulars specify conditions and procedures for both mandatory and other in specie distributions.

Investor Approval: Any in specie distribution (excluding mandatory) must be approved by at least 75% of the investors by the value of their investment in the AIF scheme.

Responsibilities: The AIF's manager, trustee, and key personnel are responsible for ensuring compliance with these regulatory provisions.

Compliance Test: The trustee or sponsor must ensure that the Compliance Test Report, prepared by the manager, includes adherence to these circulars.

Regulation 2(1), below sub-regulation is inserted:

(nb) "market abuse" includes manipulative, fraudulent and unfair trade practices which may contravene Section 12A of the Act or any of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 or the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

*Amendments are highlighted in bold.

Regulation 25, below sub-regulations are inserted:

(27) The asset management company shall put in place an institutional mechanism, as may be specified by the Board, for the identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities.

(28)The Chief Executive Officer or Managing Director or such other person of equivalent or analogous rank and Chief Compliance Officer of the asset management company shall be responsible and accountable for implementation of such an institutional mechanism for deterrence of potential market abuse, including front-running and fraudulent transactions in securities.

(29) The asset management company shall establish, implement and maintain a documented whistle blower policy that shall —

(a) provide for a confidential channel for employees, directors, trustees, and other stakeholders to raise concerns about suspected fraudulent, unfair or unethical practices, violations of regulatory or legal requirements or governance vulnerability, and

(b) establish procedures to ensure adequate protection of the whistle blowers.

(c) *Amendments are highlighted in bold.

Fifth Schedule, Part B, Clause 2, sub-clause (b), below provision is inserted.

"Provided that face-to-face communication including out-of-office interactions may not be recorded."

4. Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (Res) .

Date of Circular: August 20, 2024

Effective date: August 20, 2024

Link:

https://www.sebi.gov.in/legal/circulars/aug-2024/cybersecurity-and-cyber-resilience-framework-cscrf-for-sebi-regulated-entities-res-_85964.html

SEBI, vide its Circular dated August 20, 2024, issued a framework on Cyber security and Cyber Resilience Framework (CSCRF). The framework provides a standardized approach to implement various cybersecurity and cyber resilience methodologies. Standards such as ISO 27000 series, CIS v8, NIST 800-53, BIS Financial Stability Institute, CPMI-IOSCO guidelines, etc. were referred to while formulating this framework.

The applicability of various standards and guidelines of CSCRF is based on different categories of REs. CSCRF follows a graded approach and classifies REs in the following five broad categories:

I. Market Infrastructure Institutions (MIIs)

ii. Qualified REs

iii Mid-size REs

iv. Small-size REs

v. Self-certification REs

For further Detail, kindly refer the above Link.

5.Valuation of Additional Tier 1 Bonds (“AT-1 Bonds”)

Date of Circular: August 05, 2024

Effective date: August 05, 2024

Link:

https://www.sebi.gov.in/legal/circulars/aug-2024/valuation-of-additional-tier-1-bonds_85470.html

The SEBI vide its Circular dated 5th August,2024 introduces key changes to the valuation of Additional Tier 1 (AT-1) Bonds, a financial instrument issued by banks to strengthen their capital base. These bonds are unsecured, perpetual, and non-convertible, offering higher interest rates but without a put option for investors. SEBI’s new guidelines, referencing its Master Circular from June 2024, mandate that mutual funds value AT-1 Bonds using the Yield to Call (YTC) approach. This method aligns with market practices where these bonds typically trade closer to their call dates rather than full maturity. The National Financial Reporting Authority (NFRA) supports this approach under Ind AS 113, which emphasizes market-based measurement. Despite this, SEBI retains the clause that treats the maturity of all perpetual bonds as 100 years for valuation purposes, ensuring that liquidity risks are adequately considered. This circular, issued under the authority of the SEBI Act of 1992 and SEBI (Mutual Funds) Regulations of 1996, aims to protect investors’ interests and enhance the regulation of the securities market.

6. Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria

Date of Circular: August 01, 2024

Effective date: August 01, 2024

Link:

https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-circular-for-mandating-additional-disclosures-by-fpis-that-fulfil-certain-objective-criteria_85371.html

SEBI, through Circular dated August 24, 2023, mandated additional disclosure requirements for Foreign Portfolio Investors (FPIs) meeting specific criteria outlined in the Circular. FPIs meeting any of the criteria enumerated in Para 8 of the Circular were exempt from these additional disclosure requirements, provided they adhered to the specified conditions. This Circular has since been incorporated into the Master Circular for Foreign Portfolio Investors, Designated Depository Participants, and Eligible Foreign Investors ("FPI Master Circular") dated May 30, 2024.

In this context, it has been decided that University Funds and University-related Endowments shall be exempt from the additional disclosure requirements stipulated in Para 1(xiii) of Part C of the FPI Master Circular, contingent upon meeting certain conditions. Accordingly, the FPI Master Circular is amended as follows: After Clause (g) of Para 1(xiv) of Part C, the following is added: "(h) University Funds and University-related Endowments, registered or eligible to be registered as Category I FPI, provided they meet these conditions: (i) Indian equity AUM is less than 25% of global AUM; (ii) Global AUM exceeds INR 10,000 crore equivalent; (iii) Appropriate return/filing with respective tax authorities in their home jurisdiction to demonstrate non-profit status exempt from tax." The eligible jurisdictions for this exemption will be specified by SEBI in consultation with the Custodians and DDPs Standards Setting Forum, per the Standard Operating Procedure outlined in Para 1(xii) of Part C of the FPI Master Circular.

7.Master Circular for Stock Brokers

Date of Circular: August 09, 2024

Effective date: August 09, 2024

Link:

https://www.sebi.gov.in/legal/master-circulars/aug-2024/master-circular-for-stock-brokers_85605.html

The SEBI has issued an updated Master Circular for stockbrokers. This circular consolidates all relevant guidelines and directions issued to stockbrokers up until this date, superseding the previous Master Circular dated May 22, 2024. The new Master Circular rescinds specific provisions from earlier circulars that were listed in its appendix, ensuring that all actions taken under the rescinded circulars remain valid under the updated provisions. The update aims to streamline compliance by providing stockbrokers with a single reference document that encompasses all applicable rules and regulations. This circular is issued under the authority of Section 11(1) of the SEBI Act, 1992,and is available on the SEBI website. The update is part of SEBI's ongoing efforts to enhance regulatory clarity and accessibility for market participants.

For Further Detail, kindly refer the abovementioned link

8. SEBI (Research Analyst) (Second Amendment) Regulations, 2024

Date of Notification: August 21, 2024
Effective date: Date of publication in Official Gazette
Link:
https://www.sebi.gov.in/legal/regulations/aug-2024/securities-and-exchange-board-of-india-research-analysts-second-amendment-regulations-2024_86005.html

The SEBI has vide its notification dated August 21,2024 has introduced amendments to the SEBI (Research Analysts) Regulations, 2014, under its notification dated August 19, 2024. These changes, known as the SEBI (Research Analysts) (Second Amendment) Regulations, 2024. A significant update is the insertion of a new regulation, 15A, which permits Research Analysts to charge fees for their services, including from accredited investors, in a manner specified by SEBI. This amendment marks a continuation of SEBI's efforts to refine the regulatory framework for Research Analysts, building upon earlier amendments introduced between 2016 and 2024. The original regulations, first published on September 1, 2014, have undergone several revisions to address evolving market conditions and ensure effective oversight of research services within India's securities market.

For Further Detail, kindly refer the abovementioned link

9.Exemption under Rule 19A of Securities Contracts (Regulation) Rules, 1957

Date of Notice: August 01, 2024
Effective date: August 01, 2024
Link:
https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240801-51

In exercise of powers granted under sub-rule (6) of Rule 19A of Securities Contract (Regulation) Rules 1957, the Central Government hereby decides, in the public interest, that every listed public sector company, as defined in the SCRR. 1957, which has public shareholding below twenty-five percent and which could not increase its public shareholding to at least twenty-five per cent within the timeline stipulated in Rule 19A of SCRR, 1957. shall get exemption up to 1 August 2026 to increase its public shareholding to at least twenty-five per cent.

RESERVE BANK OF INDIA (RBI)

1. Review of regulatory framework for HFCs and harmonization of regulations applicable to HFCs and NBFCs.

Date of Notification: August 12, 2024

Effective date: August 12, 2024

Link:
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12719&Mode=0

RBI vide its Notification dated August 12, 2024, Master Direction- Non Banking Financial Company-Housing Finance Company (Reserve Bank) Directions, 2021, it has been decided to issue revised regulations. The revised regulations shall be applicable with effect from January 01, 2025.

The relevant Master Directions – Non- Banking Financial Company – Housing Finance Company – (Reserve Bank) Directions, 2021, Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, Non-Banking Financial and Master Direction- Reserve Bank of India (Non- Banking Financial Company- Scale Based Regulation) Directions, 2023 are being modified.

For the further detail, kindly refer the abovementioned Link.

2. Foreign Exchange Management (Non Debt Instruments) (Fourth Amendment) Rules, 2024.

Date of Notification: August 29, 2024

Effective date: August 29, 2024

FEMA vide its notification dated August 29, 2024 amended the NDI Rules, 2019 permitting cross-border share swaps between a person resident in India and a person resident outside India, allowing Indian shareholders to swap their shareholding of a company in India for shares of a foreign entity (i.e., a swap-up) or vice versa. In other words, secondary cross-border swaps, which were previously subject to regulatory approval in all circumstances, are now permitted. Needless to add, considerations around valuation, deferred consideration, eligibility limits for overseas investments would continue to apply notwithstanding this relaxation.

The Amendment Rules represent a significant step forward in aligning the regulatory framework for cross-border investments with the evolving global business landscape. The Amendment Rules have introduced much-needed clarity and flexibility, particularly in the area of cross border share swaps between Indian and foreign entities. These changes not only simplify the process for cross-border investments but also enhance India's attractiveness as a destination for foreign capital.

WHITESPAN Advisory

Central Board of Direct Taxes (CBDT)

Circular on Non-Applicability of Higher TDS/TCS Rates Due to Demise of Deductee/Collectee:

Date of Press Release: August 05, 2024

1. **Background:** Circular No. 06 of 2024, dated April 23, 2024, provided a deadline of May 31, 2024, for taxpayers to link PAN and Aadhaar to avoid higher TDS/TCS rates under sections 206AA and 206CC of the Income-tax Act, 1961, for transactions up to March 31, 2024.

2. **Issue:** Taxpayers have reported instances where the Deductee/Collectee passed away before the deadline, making it impossible to link PAN and Aadhaar, leading to higher TDS/TCS demands.

3. **Resolution:** The Board has specified that if a Deductee/Collectee passed away on or before May 31, 2024, before PAN and Aadhaar could be linked, the higher TDS/TCS rates under sections 206AA and 206CC will not apply. Instead, the regular TDS/TCS provisions under other sections of the Income-tax Act will be applicable.

WHITESPAN Advisory

CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS (CBIC)

1. Advisory for Form GSTR-1A

Date of Press Release: August 01, 2024
Link:
https://services.gst.gov.in/services/advisoryandreleases/read/509

As per the directions of the Government vide notification no. 12/2024 dated July 10, 2024, Form GSTR-1A has been made available to the Taxpayer from July 2024 tax period. It is an optional facility to add, amend or rectify any particulars of a supply reported/missed in the current Tax period's GSTR-1 before filing of GSTR-3B return of the same tax period. To know detailed key features of GSTR-1A, you can refer our WINS for the month of July-27 through https://www.whitespanadvisory.com/Image/WINS_AUGUST_Newsletter1_2024.pdf

GSTR-1A shall be open for the taxpayer after filing of GSTR-1 of a tax period or after the due date of GSTR-1 whichever is later.

Detailed manual for filing GSTR-1A:
https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Creation_of_Outward_Supplies_Return_in_GSTR-1.htm

FAQ on Filing GSTR-1A: https://tutorial.gst.gov.in/downloads/news/creative_faqs_on_gstr1a_fo_cr25785.pdf

2. Advisory in respect of Changes in GSTR 8

Date of Press Release: August 2, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read/512

Pursuant the decision taken by GST Council in its meeting held on June 22, 2024, TCS rate has been reduced from the current 1% (0.5% CGST + 0.5% SGST/UTGST, or 1% IGST) to 0.5% (0.25% CGST + 0.25% SGST/UTGST, or 0.5% IGST) effective from July 10, 2024, vide Notification No. 15/2024 dated July 10, 2024.

Thus, the following important aspects regarding the TCS rates effective from July 10, 2024, are to be noticed:

1.Period from July 01 to July 09, 2024:

During this period, the old TCS rate of 1% will continue to apply. Taxpayers are required to collect & report TCS at this rate for all transactions happened between these dates.

2.From July 10, 2024, onwards:

A revised TCS rate of 0.5% will come into effect from 10th July 2024. Taxpayers must ensure their systems and processes are updated to reflect this new rate for all transactions happened from 10th July forward.

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3.Advisory for furnishing bank account details before filing GSTR-1/IFF as per Notification No. 38/2024- Central Tax New Delhi, August 04, 2023.

Date of Press Release: August 23, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read/513

1. **Requirement**: As per Notification No. 38/2023 – Central Tax, taxpayers must provide valid bank account details within 30 days of registration or before filing FORM GSTR-1/IFF, whichever comes first
2. **Enforcement Date**: From September 01, 2024, the requirement will be enforced. For the tax period August 2024 and onwards, taxpayers will need to have their bank account details updated in their GST registration before they can file GSTR-1 or IFF.
3. **Action Required**: Taxpayers who have not yet updated their bank account details should do so immediately. This can be done by accessing Services > Registration > Amendment of Registration Non-Core Fields on the GST Portal.

4.Advisory for furnishing bank account details before filing GSTR-1/IFF as per Notification No. 38/2024- Central Tax New Delhi, August 04, 2023.

Date of Press Release: August 23, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read/513

1.Requirement: As per Notification No. 38/2023 – Central Tax, taxpayers must provide valid bank account details within 30 days of registration or before filing FORM GSTR-1/IFF, whichever comes first

2.Enforcement Date: From September 01, 2024, the requirement will be enforced. For the tax period August 2024 and onwards, taxpayers will need to have their bank account details updated in their GST registration before they can file GSTR-1 or IFF.

3.Action Required: Taxpayers who have not yet updated their bank account details should do so immediately. This can be done by accessing Services > Registration > Amendment of Registration Non-Core Fields on the GST Portal.

5. Introduction of RCM Liability/ITC Statement

Date of Press Release: August 23, 2024

Link:
https://services.gst.gov.in/services/advisoryandreleases/read/514

1.Introduction of New Statement: A new "RCM Liability/ITC Statement" has been introduced on the GST Portal to improve the accuracy and transparency of Reverse Charge Mechanism (RCM) transactions. This statement will track RCM liability and corresponding ITC for each return period.

2. Applicability:

- **For monthly filers:** From August 2024 onwards.
- **For quarterly filers:** From the July-September 2024 period.
- **Access:** Available via Services >> Ledger >> RCM Liability/ITC Statement.

3. Opening Balance Reporting:

- **Excess RCM Liability without ITC:** Report as positive value in RCM ITC opening balance.
- **Excess ITC without RCM Liability:** Report as negative value in RCM ITC opening balance.
- **Reclaiming Reversed RCM ITC:** Can be reclaimed through Table 4A(5) of GSTR-3B, not through Table 4(A)2 or 4(A)3. Reversed ITC does not need to be reported as opening balance.

. **Reporting Deadlines:**

- **Opening Balance Declaration:** By October 31, 2024.
- **Amendments:** Allowed until November 30, 2024, with up to three correction opportunities.

The amendment facility will end after November 30, 2024.

WHITESPAN Advisory

Miscellaneous Laws

IBBI

1.Generation of Valuation Report Identification Number for valuation conducted by Register Valuer under Insolvency and Bankruptcy Code, 2016

Date of Notification: August 12, 2024
Effective Date : August 12, 2024
Link:
https://ibbi.gov.in//uploads/legalframwork/fec61f0798e424d32aa521af3e82f344.pdf

The Insolvency and Bankruptcy Board of India (IBBI) has been designated as the Authority under the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "The Rules"), pursuant to Section 247 of the Companies Act, 2013. This designation encompasses the registration, monitoring, and development of valuers in accordance with the Rules. As per current regulations, valuations conducted under the Insolvency and Bankruptcy Code (hereinafter referred to as "The Code") must be performed solely by a Registered Valuer (RV) or Registered Valuers Entity (RVE).

To ensure the authenticity and traceability of valuation reports, it has been resolved to implement a Valuation Report Identification Number (VRIN) system for each valuation conducted under The Code. In this regard, IBBI has developed an online module in consultation with Registered Valuers Organisations, which is now available on the IBBI website at https://www.ibbi.gov.in. Registered Valuers and Entities shall use their existing login credentials to access the module and generate a unique VRIN for each valuation report prior to its submission. This VRIN must be clearly indicated on the front page of the valuation report. Additionally, a verification facility has been incorporated on the IBBI website to enable stakeholders to authenticate reports using the VRIN. This circular is applicable to all valuation reports dated on or after the issuance of this circular, and Insolvency Professionals (IPs) are instructed not to accept valuation reports without a VRIN in such instances

NSE

Reporting Forms for Social Enterprise listed and registered on SSE

Date of Notification: July 31, 2024
Effective Date : July 31, 2024
Link:
https://www.nseindia.com/companies-listing/circular-for-listed-companies-equity-market

The Securities and Exchange Board of India (SEBI), through Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/0059 dated May 27, 2024, titled "Timelines for Disclosures by Social Enterprises on Social Stock Exchange ('SSE') for FY 2023-24," has extended the deadline for the submission of Annual Disclosures and the Annual Impact Report to October 31, 2024. The Social Stock Exchange Advisory Committee (SSEAC), in its recent meeting, has proposed and sanctioned revisions to the formats for these disclosures. The revised formats are designed to align with the guiding framework on the logic model for integrating the theory of change into projects listed on the SSE. The updated formats are as follows:

a) **Form 1A**: Annual Self-Disclosure Report (covering general and governance disclosures not reliant on statutory financial audits).

b) **Form 1B**: Annual Self-Disclosure Report (covering disclosures related to general, governance, and financial aspects with references to audited financial statements) and the Annual Social Impact Report by Social Enterprises (to be prepared annually for significant social projects/programs not funded through SSE listing).

c) **Form 2.1**: Annual Social Impact Report by Social Enterprises (to be prepared annually for social projects/programs funded by securities listed on SSE).

d) **Guiding Framework on Logic Model**: Guidelines for integrating the theory of change into projects listed on the SSE.
The enclosed formats reflect these revisions, and all listed and registered Social Enterprises are advised to adhere to these updated formats for the disclosures pertaining to the financial year ending March 31, 2024, and onwards

Intellectual Property

FREQUENTLY ASKED QUESTIONS (FAQs) ON FORM 27

Date of Notice: August 26, 2024
Link: https://www.ipindia.gov.in/writereaddata/Portal/News/1001_1_Final_FAQs_Form-27_26thAugust2024.pdf

Office of the Controller General of Patents, Designs & Trade Marks vide its notice dated August 26, 2024 released Frequently Asked Questions (FAQs) ON FORM 27.

Form-27 is a statutory requirement under Section 146(2) of the Patents Act, 1970 (as amended) and Rule 131(1) of the Patents Rules, 2003 (as amended) for submission of a statement regarding the working of the patented invention on a commercial scale in India.

Article 1

Filling Civil Suits under Companies Act, 2013

Civil court not to have jurisdiction.—

Section 430 of the Companies Act, 2013 provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. Thus, the matters relating to the Companies Act, are to be dealt in the Tribunal constituted under section 435 of the Companies Act, 2013.

2. Filing the matters in the Civil Court

The matters which are not dealt with by the Companies Act or for which the Companies Act does not provide remedies, the ordinary civil court alone will have jurisdiction. *In Thiruvalluvar Velanmai Kazhagam (P) Ltd. v. M.K.Seethai Achi. (1988) 64 Company Cases, 304 (Madras),* in respect of all matters dealt with under the Companies Act, 1956, the court having jurisdiction is the court as defined under section 10 of the said Act. But in respect of the matters not dealt with by the Companies Act or for which the Companies Act does not provide remedies, the ordinary civil court alone will have jurisdiction. The court further held that a suit filed by a company against is former managing director for rendition of accounts cannot be considered to be a matter within the Companies Act and hence the ordinary civil court will have jurisdiction in the matter. *In R.R.Rajendra Menor (No.2) v. Cochin Stock Exchange Ltd And Another, (1990) 69 Company Cases, 256(Kerla)*, it is held that unless a particular matter is specified in the Companies Act, as one to be dealt with by the company court, it cannot exercise jurisdiction merely because it is also a matter which relates to a company. *In M.G.Doshit v. Reliance Petrochemicals Ltd., (1994) 79 Company Cases, 830 (Gujarat*), it is held that Section 10 of the Companies Act, 1956 which provides that the location of the registered office of the company would determine the territorial jurisdiction of the High Court cannot be construed to mean that the High Court has jurisdiction with respect to all matters relating to the company.

The High Court does not have any general plenary or residuary jurisdiction to deal with all matters and all questions arising under the Companies Act. *In Sarat Chandra Chakravarti v. Tarak Chandra Chakravarti, AIR 19242 82*: "An injunction may be granted on the application of a director restraining the plaintiffs co-directors from wrongful excluding him from acting as a director; there is nothing excluding the jurisdiction of the court from entertaining such a suit. *In the case of Avanthi Explosives P. Ltd v. Principal Subordinate Judge, Tirupathi, And Another (1987) 62 Company Cases 301,* Andhra Pradesh High Court held that the director of a company could maintain a suit before the civil court challenging the validity of resolutions passed by its board of directors to the effect that he had been disqualified from being a directors as he had not disclosed his interest as required by sections 293 and 299 of the Companies Act, 1956 as a partner in a firm from which the company had taken a sub-lease of premises. *In Sikkim Bank Ltd And Or. Vs. R.S.Chowdhury And Ors., Calcutta High Court Date of Judgement: 11 January, 2000 Equivalent citation: [2000] 8CLA145(CAL).[2000]102COMPCAS387(cal).* The suit requires trial so at this stage the said suit can not be dismissed nor the plaint can be rejected. *In Prakash Roadlines Ltd And Another v. Vijaya Kumar Narang, (1995) 83 Company Cases, 569(Karnataka),* it is held that there is no particular provision in the Act which specifically provides for the enforcement of the right under sections 257 and 284 by invoking the jurisdiction of a special court or Tribunal. Therefore, a suit filed by a shareholder against refusal by the company to accept the notice given by the shareholder under section 284 and 257 to move certain resolutions for removal of directors and proposing the names of persons as directors in their place at the annual general meeting of the company, would be maintainable. *In Jai Kumar Arya & Ors. v. Chhaya Devi & Anr. , Delhi High Court Date of order: 7 November, 2017.* The court allowed the jurisdiction of the civil suit. *In R.Prakashamv. Sree Narayanan Dharma Paripalana Yoga, (1980) 50 CompCas 611 CS (OS) 51/2018 & Ors, page 18 of 45(Ker),* suit for declaration that the Annual General Meeting of the company was illegal, was held to be competent. *In Naresh DayalDayal & Ors vs. The Delhi Gymkhana Club Ltd, Delhi High Court Date of Judgement: 22 January, 2021.*

. *Equivalent citations: AIR 2021(NOC) 449 (DEL.) AIRONLINE 2021. DEL 79.* Section 242 of the Companies Act which provides for the power of the Tribunal contemplates an action relating to the affairs of the company which is being conducted in a manner prejudicial or oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members, but the facts justify the makings of a winding up order, the power of the NCLT can be invoked. The court is of the opinion that the plea of the defendant that the suit is not maintainable and only a petition before the NCLT is maintainable, is liable to be rejected.

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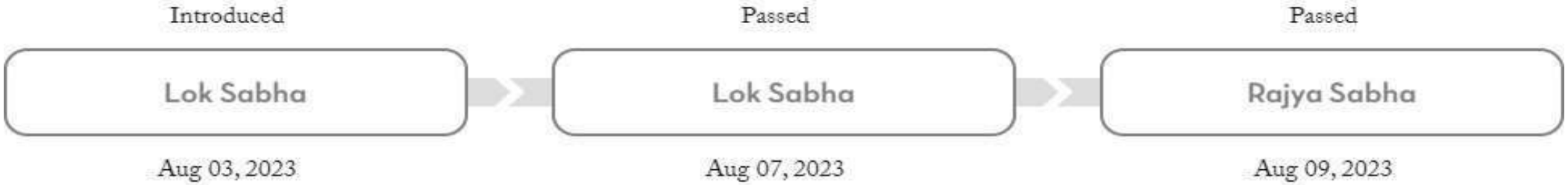
Article 2

The Digital Personal Data Protection Act, 2023
"Privacy in the Digital Age: What the New Data Protection Bill Means for you"

1. BACKGROUND: JOURNEY OF DIGITAL PERSONAL DATA PROTECTION FROM BILL TO ACT



India doesn't yet have a specific law just for data protection. Right now, personal data is mainly protected under the Information Technology (IT) Act of 2000

Mystery Created

In 2017, the Indian government saw the need for stronger data protection rules and set up a committee led by Justice B. N. Srikrishna to study the issue. The committee looked at how data should be protected and gave their recommendations in a report released in July 2018. Based on this report, the government introduced a new law called the Personal Data Protection Bill in December 2019. But before making it official, they wanted more people to look at it, so it was sent to a special committee in Parliament. This committee studied the bill and gave their feedback in December 2021. However, in August 2022, the government decided to pull back this bill to make some changes. A few months later, in November 2022, they released a new draft for people to review and comment on.

Mystery Resolved

Finally, in August 2023, a new version of the law, called the Digital Personal Data Protection Bill, 2023 ("DPDP Bill"), was introduced in Parliament. This new bill aims to provide clear rules on how personal data should be protected in India. On August 11, 2023, the DPDP Bill received the President of India's assent after being passed by both houses of the Indian Parliament, and was subsequently notified by the Central Go Government, in the Official Gazette, the DPDP Bill as Digital Personal Data Protection Act, 2023 ("DPDP Act").

Note: *The above mystery so created*, was preceded by a landmark 2017 judgment by India's Supreme Court in the matter of *Justice K.S. Puttaswamy and Anr.* v. *Union of India and Ors* The judgment declared that the right to privacy is part of the fundamental right to life in India and that the right to informational privacy is part of this right. The judgment, however, did not describe the specific contours of the right to informational privacy, and it also did not lay down specific mechanisms through which this right was to be protected.

Compared to the 2019 version of the bill, the DPDP Act is more modest. It has reduced obligations for businesses and protections for consumers. On the one hand, the regulatory structure is simpler, but on the other, it vests the central government with unguided discretionary powers in some cases.

2. APPLICABILITY

The DPDP Act applies to Indian residents and Businesses collecting the data of Indian residents. Interestingly, it also applies to non-citizens living in India whose data processing "in connection with any activity related to offering of goods or services" happens outside India

E.g. This has implications for, let say, a U.S. citizen residing in India being provided digital goods or services within India by a provider based outside India.

The DPDP Act only applies to personal data, whether collected in digital form or non- digital data, which is digitized subsequently. However, any personal data, processed by an individual for any personal or domestic purpose; or made publicly available by the data principal him/herself or any other person under a legal obligation, the DPDP Act does not apply.

Explanation:

"Data Principal" includes, not only, the individual as well as the parent/lawful guardian of a child to whom the personal data relates, but now also includes a lawful guardian of a 'person with disability'.

"Processing of Personal Data" defines 'processing' mean a 'wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organization, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.'

"Digital Personal Data" means 'Personal Data' in a 'Digital Form' and currently, not in Digital Form but subsequently digitalized by the Data Principal.

3. PURPOSES OF DATA COLLECTION AND PROCESSING

The DPDP Act allows personal data to be processed for any lawful purpose. The entity processing data can do so either by taking the concerned individual's consent or for "legitimate uses" Consent must be "free, specific, informed, unconditional and unambiguous with a clear affirmative action" and for a specific purpose. The data collected has to be limited to that necessary for the specified purpose. A clear notice containing these details has to be provided to consumers, including the rights of the concerned individual and the grievance redress mechanism. Individuals have the right to withdraw consent if consent is the ground on which data is being processed.

Explanation: "**Legitimate Uses**" are defined as: (a) a situation where an individual has voluntarily provided personal data for a specified purpose; (b) the provisioning of any subsidy, benefit, service, license, certificate, or permit by any agency or department of the Indian state, if the individual has previously consented to receiving any other such service from the state (this is a potential issue since it enables different government agencies providing these services to access personal data stored with other agencies of the government); (c) sovereignty or security; (d) fulfilling a legal obligation to disclose information to the state; (e) compliance with judgments, decrees, or orders, (f) medical emergency or threat to life or epidemics or threat to public health, and (g) disaster or breakdown of public order.

. 4. RIGHTS OF USERS/CONSUMERS OF DATA RELATED PRODUCTS AND ND SERVICES:

The DPDP Act also creates rights and obligations for individuals. These include the right to get a summary of all the collected data and to know the identities of all other data fiduciaries and data processors with whom the personal data has been shared, along with a description of the data shared. Individuals also have the right to correction, completion, updating, and erasure of their data. Besides, they have a right to obtain redress for these grievances and a right to nominate persons who will receive their data.

5. OBLIGATIONS ON DATA FIDUCIARIES ENTITIES:

The Entities responsible for collecting, storing, and processing digital personal data are defined as "**Data Fiduciary Entities**" and have defined obligations.
Obligations include: (a) maintaining security safeguards; (b) ensuring completeness. accuracy, and consistency of personal data; (c) intimation of data breach in a prescribed manner to the Data Protection Board of India (DPB); (d) data erasure on consent withdrawal or on the expiry of the specified purpose; (e) the data fiduciary having to appoint a data protection officer and set up grievance redress mechanisms: and (f) the consent of the parent/guardian being mandatory in the case of children/minors (those under eighteen years of age)

Note: *The DPDP Act also states that any processing that is likely to have a detrimental effect on a child is not permitted. The DPDP Act prohibits tracking, behavioural monitoring, and targeted advertising directed at children. The Government may prescribe exemptions from these requirements for specified purposes. This is potentially a problem since the powers to exempt are broad and without any guidelines.*

6. NEW REGULATORY STRUCTURE FOR REGULATING DATA PRIVACY:

The 2023 law completely changes the proposed regulatory institutional design.

Previous Update: The 2019 bill proposed an ***"independent regulatory Data Protection Agency (DPA)"*** The DPA was proposed on the lines of similar government agencies in many EU countries that function independently of government and implement the GDPR The proposed Indian DPA was arguably more powerful since it was proposed to have much more extensive regulation-making powers than DPAs under the GDPR In addition to framing regulations, the DPA would have been responsible for framing codes of conduct for businesses, investigating cases of noncompliance, collecting supervisory information, and imposing penalties on businesses.

Current Update: In contrast, the DPDP Act establishes the "Data Protection Board of India (DPB)". The DPB is not a regulatory entity and is very different from the DPA.

Compared to the DPA, the DPB has a limited mandate to oversee the prevention of data breaches and direct remedial action and to conduct inquiries and issue penalties for noncompliance with the DPDP Act. DPB does not have any powers to frame regulations or codes of conduct or to call for information to supervise the workings of businesses. It can only do so during the process of conducting inquiries.

The members of DPB will be appointed by the government as an adjudicating body, and the terms and conditions of their service will be prescribed in rules made by the government. The DPDP Act states that these terms and conditions cannot be varied to a member's disadvantage during their tenure.

7. MODERATION OF DATA LOCALIZATION REQUIREMENTS

The DPDP Act reverses course on the issue of Data Localization. While the 2019 bill restricted certain data flows, the DPDP Act only states that the government may restrict flows to certain countries by notification. While this is not explicit, the power to restrict data flows seems to be to provide the government necessary legal powers for national security purposes. The DPDP Act also states that this will not impact measures taken by sector-specific agencies that have or may impose localization requirements. For example. the Reserve Bank of India's localization requirements will continue to be legally valid.

Explanation: In general parlance, "Data Localization" is the practice of keeping data within the region it originated from. For E.g. if an organization collects data in the UK, they store it in the UK rather than transferring it to another country for processing.

8. EXEMPTIONS FROM OBLIGATIONS UNDER THE DPDPACT:

The DPDP Act provides exemptions from consent and notice requirements as well as most obligations of Data Fiduciaries and related requirements in certain cases: (a) where processing is necessary for enforcing any legal right or claim; (b) personal data has to be processed by courts or tribunals, or for the prevention, detection, investigation, or prosecution of any offenses; (c) where the personal data of non-Indian residents is being processed within India, and so on

In addition to above, the DPDP Act exempts certain purposes and entities completely from its purview which include:

a) Processing in the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, maintenance of public order, or preventing incitement to any cognizable offense. This will allow investigative and security agencies to remain outside the purview of this law.

b) Data processing necessary for research, archiving, or statistical purposes if the personal data is not to be used to take any decision specific to a data principal. c) The government can exempt certain classes of data fiduciaries, including startups, from some provisions notice, completeness, accuracy, consistency, and erasure.

9. DISCRETIONARY POWER IN THE HANDS OF GOVERNMENT:

One problematic provision allows the government to, "before expiry of five years from the date of commencement of this Act," declare that any provision of this law shall not apply to such data fiduciary or classes of data fiduciaries for such period as may be specified in the notification. This is a significant and wide discretionary power and is not circumscribed by any guidance on the basis for such exemption, the categories that may be exempted, and the time period for which such exemptions can operate.

10. FINANCIAL PENALTIES FOR BREACH OF RIGHTS, DUTIES AND OBLIGATIONS:

The DPDP Act allows DPB to impose monetary penalties of up to₹250 Crores (approximately $ 30.5 million). Appeals from the DPB's orders will go to an existing Tribunal ie the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). In addition to monetary penalties, the DPDP Act allows Data Fiduciary Entities to provide voluntary undertakings to the DPB as a form of settlement of any complaints against them. Therefore, the DPB is a very different institution in design compared to the DPA

***Penalties for Data Fiduciary Entities:**

- Breach of Data Protection Obligations for Data Fiduciary Entities
- Violation of Data Principal Rights
- Failure to Notify Data Breaches
- Non-Compliance with Consent Management
- Misrepresentation or Failure to Comply with Board Directions
- Processing Children's Data Without Compliance

General Penalty for Other Violations:

For any other violations of the DPDP Act that do not fall under the specific categories mentioned above, there is a general provision for imposing penalties up to 10 Crores (approximately $ 1.2 million) for other non-specific breaches.

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Article 3

Scope of Arbitration in India

Abstract

Arbitration in India has emerged as a pivotal mechanism for resolving commercial disputes, leveraging its efficiency and flexibility. This process is governed primarily by the Arbitration and Conciliation Act, 1996, which aligns with international standards to enhance its effectiveness. Recent amendments to the Act aim to streamline procedures, reduce delays, and increase transparency, reflecting India's commitment to improving its arbitration landscape. Despite these advancements, challenges persist, including inconsistent application of laws, issues with arbitrator neutrality, and the enforcement of awards. This abstract provides an overview of the current state of arbitration in India, highlighting recent legislative reforms, practical issues, and ongoing efforts to strengthen the arbitration framework to meet global best practices. Despite these advancements, challenges such as inconsistent application of rules and concerns about impartiality persist. This abstract provides a concise overview of arbitration's current landscape, highlighting key reforms and ongoing issues to offer a snapshot of its evolving role in dispute resolution.

The Significance of Arbitration and ADR Today:

Today, the judiciary is the starting point for resolving commercial issues in India. Initially, foreigners were upheld when they refused to submit to the jurisdiction of Indian courts because of the delays and obstacles inherent in Indian law, and soon Indian parties also realized the benefits of resolving disputes more easily and much faster. In fact, the Indian government is also aware that improving the efficiency of decision-making and management processes is a strategy to improve its ranking in the World Bank's ease of doing business rankings. Business Environment ReportIndia's 'contract management' ranking rose from 172nd place in 2016 to 164th place in 2017 and 1st place in 2019. 163rd place in 2019.

Development of the Arbitration Regime in India:

The concept of arbitration is not new to India. Even before the arrival of the British, village elders or "panchayats" used to resolve disputes between village members. The first arbitration law in India was the Arbitration Act, 1899 (based on the English Arbitration Act, 1899). It was also amended in Schedule II of the Code of Civil Procedure, 1908, when its jurisdiction was extended to all parts of British India. Later, the law governing arbitration was divided into several laws: the Indian Arbitration Act, 1940 (relating to domestic arbitration); the (Recognition and Enforcement) Act, 1961 (relating to recognition and enforcement of foreign awards under both the Geneva Protocol and Convention and the New York Convention). > The Arbitration and Arbitration Act, 1996 is a model of the UNCITRAL Model Law on International Commercial Arbitration and integrates the Arbitration Act of India and repeals all the provisions enacted by our laws. The Constitution, which came into force during the period of India's economic liberalization and internationalization, is expected to accelerate this process and provide alternative solutions through decisions. It is suggested that India should reform its judicial system to bring it in line with today's laws and consider cooperation between the judiciary and the judiciary while limiting the influence in the courts. Almost two decades later, criticism has reached its peak and India's reputation has reached its lowest point.

Indian courts are considered particularly effective even when they exercise jurisdiction outside India. The slow progress of the Indian judiciary has led the country to seek stardom on the world stage at all costs to avoid being the decision- making centre. In the Free Trade case, three judges of the ICC court ruled that the Indian government did not provide free trade "in good faith" and police authority – shame on them4. The Court of Appeal's important decision in the "BALCO" case 5 and 2 amendments to the Act 6 Culminated in the Report No. 2 of the 20th Law Commission. 1. 246 (published in August 2014 and a supplementary notification Published in February 2015), regarding the proposed amendment. The report revisits various flaws in the bill and court decisions that have emerged over the years and proposes some long-awaited reforms.

The Conciliation (Amendment) Act, 2015, came into force on 23 October 2015 (the "2015 Amendment"). The 2015 Amendment clearly expresses its preference for organisational decision-making by making special exceptions in this regard, such as the selection of fashion organisations and their jury members according to the fees specified in the Four-Time Tariff. Tariffs (it is assumed that each school has its own fee schedule, carefully determined as high and indicative).

The Growth of Institutional Arbitration in India:

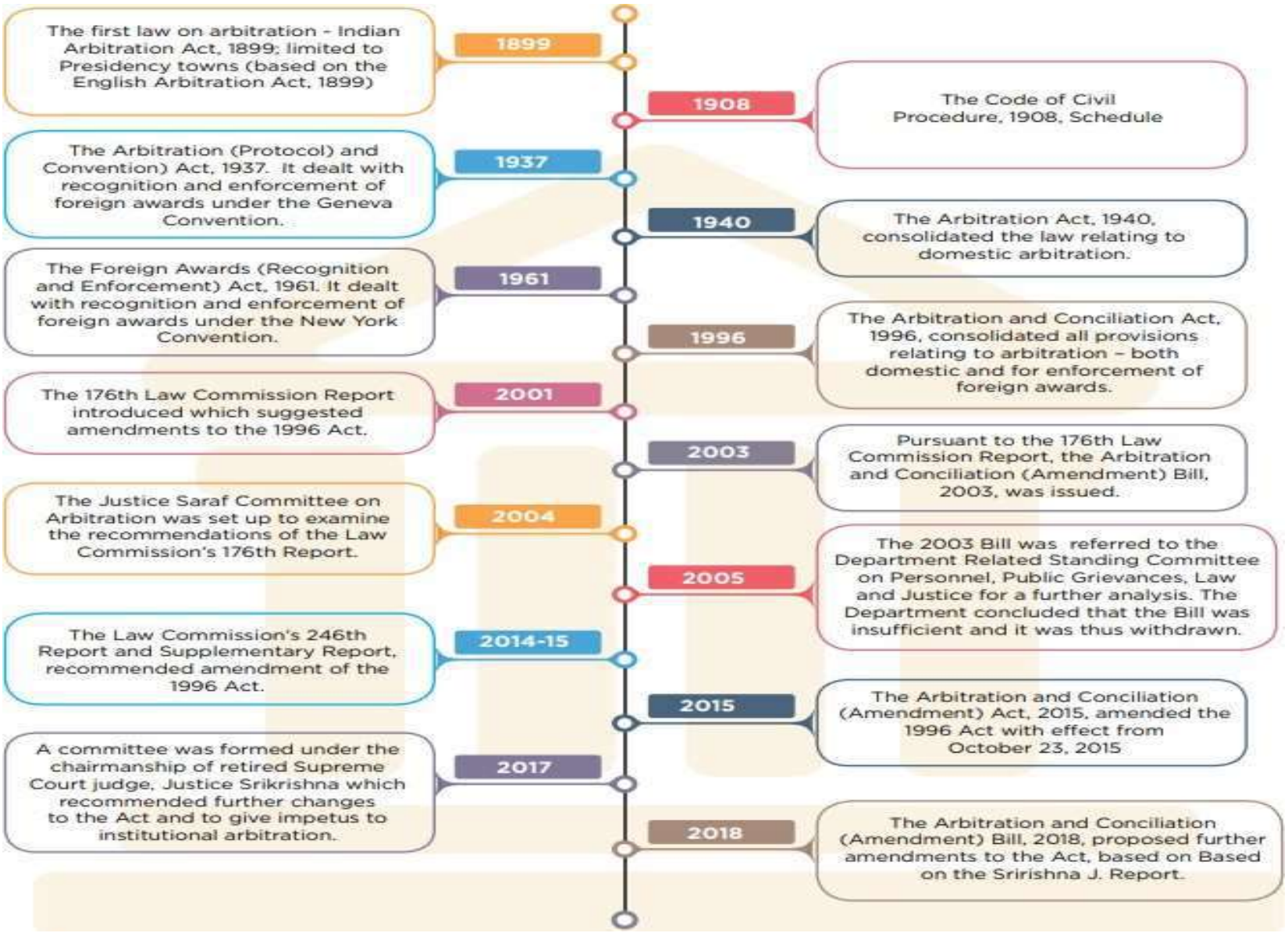
With the development of analysis of "international arbitration" practices and procedures, there has been an increasing interest in arbitration by private parties in India and abroad and by governments themselves. Competition for awards is set to increase. The Singapore International Arbitration Centre ("SIAC") recently opened a second office in India in 2009 and Indians are known to be the most frequent arbitration clients at SIAC's discretion. Similarly, institutions such as the International Chamber of Commerce's International Court of Arbitration ("ICC") and the London Court of International Arbitration ("LCIA") are also popular and confirm the clear preference for home-based decisions. This is to enforce organizational decision-making in 2014, the government published a report stating that "ad hoc arbitration often faces many legal and strategic challenges that lead to excessive delays and costs in implementation. General rules of arbitration. To address the need for further amendments to the law and the merits of domestic arbitration, the government has constituted a committee task force to study the judiciary in India. Mechanism Presidential by Senior Justice of the Supreme Court.

B. N. Srikrishna. The report, submitted in August 2017, suggested several measures to enhance the overall efficiency and effectiveness of Indian arbitration institutions and present India as a suitable table for consideration, if not the first choice.

Other amendments made in the Arbitration and Cooperation (Amendment) Act, 2018 ("2018 Amendment") include the most significant boost to institutional arbitration without a decree-based decision. It seems to have suffered delay (like court). With the support of the government, a set of international best practices was developed and a report was issued to the institutions to consider all government contracts exceeding Rs. 50 million and choose MCIA as their preferred institution.

WHITESPAN Advisory

History of Arbitration in India



Number of Arbitrators

According to Article 10 of the Arbitration and Arbitration Law of 1996, the parties are free to choose the arbitrators they want, but this number should not be an even number and if the two parties are unable to do so, the arbitration panel must have one arbitrator. judge. . This is a requirement of the Law and even the parties cannot go beyond these rules.

Appointment of arbitrators

1. The nationality of the arbitrator is not important unless agreed by both parties. The parties may also agree on a process for selecting an arbitrator. Each person must select a judge.
2. Two judges sit together with a third judge who will serve as the first judge. The power to appoint judicial bodies lies with the Supreme Court and the High Court. Judicial bodies are assessed by the Supreme Court of India under Section 43-I of the Act. If the Supreme Court does not have a hierarchical judicial body, the Chief Justice of the Supreme Court shall constitute a panel of judges and examine them.
3. Article 4 states that there are two conditions for requesting the action specified in (Article 3):
4. Each party shall appoint an arbitrator within thirty days of receiving the request from the other persons. The two arbitrators shall agree to the appointment of the third arbitrator within thirty days of the appointment. Application or petition to the Supreme Court or the High Court.
5. Section 5 provides that if there is no agreement on the appointment, the parties shall agree to the appointment of the arbitrator within thirty days of receiving the request from both parties. Appointed by a tribunal appointed by the Supreme Court or the High Court upon the application or request of the parties.
6. In cases where both parties have agreed on the appointment procedure in Section 6, if one of the parties fails to follow the procedure, or if the parties or the judge decide that the contract has not been completed in accordance with the agreement process, or if the person or entity on which the distribution is based is not working, the parties may apply other methods specified in the Agreement, if any. or upon the application or request of either party, by the Supreme Court or an arbitration board appointed by the Supreme Court.
7. The Supreme Court and the appointment of the Supreme Court cannot be considered as a representative body of the judiciary. The arbitration tribunal shall take into account the following when making a decision: the appointment of an

1. If the parties are of different nationalities and need to appoint an arbitrator or a third arbitrator, the Court of Cassation or the arbitrator appointed by the Court of Cassation shall appoint an arbitrator of a nationality different from that of the parties.
2. In the event of multiple requests or requests to multiple arbitration institutions within the period in which one of the above provisions applies, only the arbitration institution to which the first request was submitted shall initiate proceedings. In international commercial decisions, only the decision-making body of the Court of Cassation participates, and the decision-making body of the Court of Cassation does not participate.
3. The arbitration institution shall immediately submit an application or request for the appointment of an arbitrator. It shall be made within thirty days from the date of sending the notification to the other party.
4. When the Supreme Court intervenes, the main regional court is the Supreme Court of its own region.
5. The arbitration board shall determine the expenses and payments to be made to the arbitration board after taking into account the expenses specified in Schedule 4 of this Law. However, the interpretation of this article provides that in international arbitration on non-commercial matters, the parties may agree to determine the expenses according to the rules determined by the jury.

Grounds for challenge:

Section 12 of the Judiciary and Arbitration Act 2015 adds specific provisions on fairness and disclosures by arbitrators. According to this act, the party to the dispute who calls the arbitrator must directly or indirectly disclose in writing all the facts. A document explaining the past or present relations with the parties, the lawyer or the content and consequences of the decisions, which may give rise to complaints about justice and freedom for financial, professional, commercial or other reasons, as well as preventing the judge from doing so.

There is sufficient time to invest in the decision, it cannot be completed and given to both parties within 12 months. The judge must report according to the standards and conditions specified in Schedule 6. Therefore, the judge has the duty to disclose all the facts before the decision is initiated.

Whether such an event has occurred or whether a reason specified in Schedule 5 or
6 is present will be determined when presented by the judge. [MANU/SC/ 1066/2017] The Supreme Court held that if a person falls under category Seven, he is not eligible for appointment. Section 12(5) read with Schedule 7 makes it clear

that if an arbitrator falls under any of the categories mentioned in Schedule 7, the arbitrator shall be deemed to be unconstitutional and he is entitled to be appointed as an arbitrator of the dispute and shall be appointed with. Others should be replaced by Schedule 7. On the contrary, if the disclosure falls under Schedule Five and is prejudicial to honesty, justice and freedom, the arbitrator can be questioned before the arbitration tribunal under Section 13 of the Act.

Termination of appointed arbitrator:

If the arbitrator is legally and practically unable to perform his/her duty or fails to do so without delay, this situation will form the basis of the arbitration bench's decision. Legal incapacity of judges means that they are unable to perform their duties and do not have the right to fulfill their responsibilities. For example, if the judge has not paid unemployment benefits, is bankrupt or is guilty. Actual incapacity means that the judge is unable to perform his/her duty during the trial due to physical illness or disease. The dispute will be referred to arbitration and the decision must be given within this period. After the reforms in 2015, the time limits for each step of the judicial process were clarified and the law was strictly followed. Therefore, the arbitration board must decide and give its decision within the time limit, otherwise it will lead to the arbitration board's decision.

Jurisdiction Of Arbitration:

Section 16 empowers the court to decide whether it has jurisdiction to hear the matter. The arbitral tribunal also has jurisdiction to decide on any objection to the existence or validity of the arbitration agreement. . Furthermore, a party is not prevented from presenting such cases merely because he has participated in the selection of an arbitrator. has been brought up in the judicial system.

If the arbitral tribunal decides that delay is necessary, it may accept the objection at a later stage than the one mentioned above. However, it is in the sole discretion of the court to decide that delay is not necessary after considering the situation. If such application is made directly to the court, the court shall reject the application and direct the

. MANU/SC/1609/2016, (2017) 2 SCC 228, [2016] 9 SCR 83] has stated that any question regarding jurisdiction may be raised by a person in the proceedings or by an outsider. However, if it is raised by a party, it must be raised during the proceedings or at the inception stage.

Interim measures by Arbitral Tribunal:

If there is no limitation in the arbitration agreement, the arbitral tribunal may, on the request of one of the parties, direct the other party to use the defence from time to time, if it deems it necessary in the nature of the dispute. In such a case, it will decide on the provision of necessary protection for the exercise of its power. The power must also be exercised in terms of exercise or discretion.

The powers of the arbitral tribunal are limited and any interim award must be combined with the final award in order to be enforceable. Sections 17 and 9 of the Act deal with the issues of interim relief and a party seeking interim relief in his favour can approach the court under Section 9 and the said court under Section 17. Gulmali Amrulla Babul Vs. In the case of Shabbir SalebhaiMahimwala [MANU/MM/2926/2015], the Court held that a party seeking enforcement under Section 17 can later file a writ petition under Section 9 seeking the same relief as ordered by the court.

Therefore, the proceedings under Section 9 are not judicial proceedings before the arbitral tribunal. This does not mean that the order passed by the tribunal cannot be followed in accordance with law even if the Court takes the same view under the Article 9 process.

Conclusion:

Arbitration in India has made significant strides towards becoming a more efficient and effective means of dispute resolution. The legislative reforms introduced under the Arbitration and Conciliation Act, 1996, particularly with recent amendments, have sought to address many of the traditional challenges associated with arbitration, such as delays and procedural inefficiencies. These reforms have been instrumental in aligning Indian arbitration practices with international standards, fostering a more favourable environment for both domestic and international parties.

However, while progress is evident, the system is not without its challenges. Issues such as inconsistent application of legal principles, concerns about the neutrality of arbitrators, and the enforceability of awards continue to pose hurdles. Moving forward, it is crucial for stakeholders—legislators, practitioners, and institutions—to collaborate in addressing these issues.
Enhancing transparency, reinforcing procedural fairness, and ensuring the consistent application of reforms will be essential in fortifying India's arbitration framework.

As India continues to integrate itself into the global legal landscape, ongoing efforts to refine and adapt arbitration practices will be key to sustaining its role

as a preferred dispute resolution mechanism. The commitment to continual improvement will not only bolster confidence in the arbitration process but also reinforce India's position as a competitive destination for international commercial arbitration.

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WHITESPAN Advisory

Case Laws

1. Dani Wooltex Corporation & Ors vs Sheil Properties Pvt. Ltd. & Anr.

Judgment- The Supreme Court bench of **Justice Abhay S. Oka and Justice Pankaj Mithal** held that the power under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible.

The bench held that the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible.

It held that:

"The abandonment of the claim by a claimant can be a ground to invoke clause c of subsection 2 of Section 32 The abandonment of the claim can be either express or implied The abandonment cannot be readily inferred There is an implied abandonment when admitted or proven facts are so clinching that the only inference that can be drawn is of the abandonment Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up hisher claim can an inference of abandonment be drawn Even if it is to be implied there must be convincing circumstances on record which lead to an inevitable inference about the abandonment Only because a claimant after filing his statement of claim does not move the Arbitral Tribunal to fix a date for the hearing the failure of the claimant per se will not amount to the abandonment of the claim"

2. Pam Developments Private Limited v. State of West Bengal & Anr.

Judgment- The Supreme Court recently emphasized that the courts and arbitral tribunals have the duty to examine the contract clauses in proceedings concerning arbitration.

While upholding Calcutta High Court's decision to set aside the arbitrator's decision to award the amount for loss due to idle machinery and labor despite it being prohibited under the contract, the Court said :

"*In fact, High Court did what the Arbitrator should have done. Examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and Court alike and without exception, for contract is the foundation of the legal relationship…The Arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove.*"

The bench of Justice Pamidighantam Sri Narasimha and Justice Pankaj Mithal also observed that under Section 31(7) of the Arbitration and Conciliation Act, 1996, the Arbitrator has the authority to grant interest for the pre-reference period unless the contract prohibited it.

"*the High Court had no reason to interfere with the Arbitral Award with respect to grant of pre-reference interest, since the Contract between parties does not prohibit the same*", the Court observed.

3. Radheshyam & Ors. v. State of Rajasthan & Anr.

Judgment- The Supreme Court recently observed that mere non-performance of an Agreement to Sell by itself does not amount to the offences of cheating and criminal breach of trust. Quashing a criminal case against three persons for failing to execute a sale despite an agreement to sell a property, the Court observed :

"*Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed, and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurize the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no.2 is trying to abuse the criminal machinery for ulterior motives*", the court observed.

A bench of **Justice Vikram Nath and Justice Prasanna Bhalakrishna Varale** held that dispute was of civil nature and the judicial process cannot be used as a tool to enforce specific performance of a contract.

"*The act of the appellant at best constitutes a civil wrong and does not call for any criminal action against them. A civil wrong cannot be given a criminal colour merely to coerce the appellants into registering the sale. The judicial process cannot be used as a tool to enforce specific performance of an agreement*", the court stated.

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4. Sri Sujies Benefit Funds Limited V. M. Jaganathuan

Judgment- The Supreme Court held that once a person admits the handing over of a signed cheque with an amount written on it, then he cannot raise disputes regarding the interest rate as a defence in a prosecution for the offence of the dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881

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WHITESPAN Advisory

Compliance Checklist

WHITESPAN Advisory

COMPLIANCE CALENDAR FOR SEPTEMBER 2024

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

TAX RELATED COMPLIANCE	
15th	Advance Tax payment Second instalment of advance tax for the assessment year 2025-26
7th	TDS payment and return
14th	Issuance of TDS certificate under section 194-IA, 194-IB, 194M
30th	Challan cum statement for tax deducted under section 194-IA, 194M, 194S,
20th	GSTR-3B- Other than QRMP service GSTR-5A-OIDAR Services
10th	GSTR 7 (GST-TDS) -report the details of tax deducted at source (TDS) by government authorities on payments made to suppliers GSTR 8(GST-TCS)- report the supplies made through e-commerce platforms and to discharge the tax liability on such supplies.
11th	GSTR 1 (Other than QRMP scheme).
13th	GSTR 5 Non-Resident Taxable person GSTR 6 Input Tax Distributor
SEBI COMPLIANCE	
15th	Filing of Quarterly financial results by listed companies to disclose their financial performance for the preceding quarter.
MISCELLANEOUS	
15th	ESIC Payment
15th	EPF Payment

MCA COMPLIANCE	
30th	Form FC-3 - Annual accounts of foreign companies. Annual general meeting. DIR-3-KYC for DIN holders

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