ACUITY LAW

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ABOUT ACUITY LAW LLP

Acuity Law LLP was founded in November 2011. Acuity Law LLP comprises of a team of young and energetic lawyers/ professionals led by Souvik Ganguly, Gautam Narayan and Deni Shah who have deep and diverse experiences in their chosen areas of practice. We advise Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law LLP takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into three departments. The Corporate practice is led by Souvik Ganguly, the Global Trade and Tax practice is led by Deni Shah and the Disputes practice is led by Gautam Narayan.

As part of the Corporate practice, Acuity Law LLP advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws;
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Global Trade and Tax practice, Acuity Law LLP advises on:

- Cross-border tax planning and jurisdiction analysis
- Strategies for acquisitions, mergers, divestitures, diversification or consolidation of businesses
- Inbound and outbound investment structuring
- Endowment planning / wealth management strategies
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- International supply chain optimization
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- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law LLP actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law LLP, please visit our website acuitylaw.co.in or write to us at al@acuitylaw.co.in.

INTRODUCTION

This newsletter covers recent key updates in Indian laws relating to banking law, company law, labour law, securities laws, and foreign exchange laws.

In particular, we have covered:

(1) Banking law: Notifications / Circulars by Reserve Bank of India ("**RBI**") - (a) Press release issued by RBI on On-Tap term liquidity facility to ease access to emergency health services; and (b) Circular and press release by RBI on prepaid payment instruments.

(2) Companies law: Circulars issued by Ministry of Corporate Affairs ("**MCA**") – (a) Contribution to corporate social responsibility ("**CSR**") under section 135 of Companies Act, 2013 for COVID-19; (b) Circulars issued by MCA relating to relaxations to companies in the light of COVID-19 pandemic with respect to: (i) Time period for holding board meetings; and (ii) Payment of additional fees for delayed filing of forms with the registrar of companies; and (iii) Time period for filing charge creation / modification forms.

(3) Labour law: Notifications issued by Ministry of Labour and Employment - (a) Notification on enforcement of section 142 of the Code on Social Security, 2020; and (b) Notification of draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021.

(4) Securities law – Notifications / Circulars / Consultation Papers by the Securities and Exchange Board of India ("**SEBI**") – (a) Notifications issued by the SEBI with respect to amendments following regulations: (i) SEBI (Portfolio Managers) Regulations, 2020, (ii) SEBI (Prohibition of Insider Trading) Regulations, 2015, (iii) SEBI (Alternative Investment Funds) Regulations, 2012, (iv) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and (v) certain SEBI regulations in relation to amendments to the framework for Innovators Growth Platform ("**IGP**"); (b) Circular on Business Responsibility and Sustainability Reporting ("**BRSR**") by listed entities; (c) Consultation paper on 'Review of the regulatory framework of promoter, promoter group, and group companies under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018'; (d) Report by SEBI technical group on social stock exchanges; and (e) Consultation paper on the proposed framework for a gold exchange in India and the draft SEBI (Vault Managers) Regulations, 2021.

(5) Foreign exchange law: Circulars issued by the RBI / SEBI - (a) Circular on sponsor contribution to an Alternative Investment Fund ("**AIF**") set up in overseas jurisdiction; and (b) Enhancement of overall limit for overseas investment by AIFs and Venture Capital Funds ("**VCF**").

1. BANKING LAW

Please see below the summary of the key banking law updates for May 2021

1.1. RBI Press Release on On-Tap Term Liquidity Facility to Ease Access to Emergency Health Services

1.1.1. The RBI on 07 May 2021 announced that it has decided to open an on-tap liquidity window of INR 500 billion with a tenor of up to 3 (three) years at the repo rate. The announcement was made to boost the provision of immediate liquidity for ramping up COVID-19 related healthcare infrastructure and services in the country. The scheme will remain operational from 07 May 2021 to 31 March 2022.

1.1.2. All banks eligible under the liquidity adjustment facility, which includes regional rural banks, scheduled cooperative banks and urban cooperative banks, can avail the funds to provide fresh lending support to entities and individuals. The loans provided under this scheme will be an extension of priority sector lending classification. The loans under this scheme can be delivered directly to the borrower or through intermediary financial entities.

1.1.3. Banks are required to create a COVID-19 loan book and as an incentive, such banks will be eligible to keep their surplus liquidity up to the size of the COVID-19 loan book with the RBI under the reverse repo window at a rate which is 25 bps lower than the repo rate.

1.1.4. Under the scheme announced by RBI, loan can be made available to vaccine manufacturers; importers/ suppliers of vaccine and priority medical devices; hospital/ dispensaries; pathology labs and diagnostic centres; manufacturers and suppliers of oxygen and ventilators; importers of covid related drugs; covid related logistics firms; and also patients for treatment.

1.1.5. Please click here to read the circular.

1.2. RBI Notification on prepaid payment instrument ("PPI")

1.2.1. The RBI has issued a notification on 19 May 2021 relating to operation of PPIs in India. The notification mandates PPI issuers to give the holders of full Know-Your-Customer ("**KYC**") compliant PPIs, interoperability through authorised card networks and Unified Payment Interfaces ("**UPI**"). The notification provides that the interoperability should be enabled by 31 March 2022. PPIs for mass transit systems are exempted from the applicability of this notification and gift PPI issuers will have the option to offer interoperability.

1.2.2. The notification further provides that the maximum outstanding amount in case of full KYC compliant PPIs shall be increased from INR 100,000 to INR 200,000.

1.2.3. The notification also provides that cash withdrawal shall be permitted in respect of full KYC compliant PPIs issued by non-bank PPI issuers, subject to the following conditions:

(a) Maximum limit of INR 2,000 per transaction with an overall limit of INR 10,000 per month per PPI;

(b) Cash withdrawal transactions shall be authenticated by additional factor of authentication or PIN;

(c) PPI issuer offering such facility shall have a customer redressal mechanism; and

(d) PPI issuer shall put in place suitable cooling period for cash withdrawal upon opening PPIs or loading / re-loading of funds into PPIs.

1.2.4. The notification also rationalises cash withdrawal limit from Point of Sale (PoS) terminal using debit cards and open system PPIs to INR 2,000 per transaction within an overall limit of INR 10,000 across all locations.

1.2.5. The notification also removes the requirement of submission of data relating to cash withdrawal to RBI.

1.2.6. Please click here to read the notification.

2. COMPANIES LAW

Please see below the summary of the key company law updates for May 2021.

2.1. MCA Circular on Contribution to Corporate Social Responsibility under section 135 of Companies Act, 2013 for COVID-19

2.1.1. The MCA in March 2020 through its circular had clarified that spending of CSR funds for COVID-19 would be considered as an eligible CSR Activity.

2.1.2. MCA has vide its circular dated 5 May 2021 clarified that fund spent on creating health infrastructure for COVID-19 care, establishment of medical oxygen generation, manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities would be considered as CSR expenditure. Further, research and development projects as well as contribution to public funded universities and certain organisations engaged in conducting research in science, technology, engineering, and medicine as eligible would also be considered as CSR expenditure.

2.1.3. The companies including Government companies may also undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies in accordance with (CSR Policy) Rules, 2014 and the guidelines issued by MCA.

2.1.4. Please click here to read the 5 May 2021 circular.

2.1.5. Further, the MCA vide circular 20 May 2021 has clarified that excess CSR amount contributed to PM CARES Fund by companies for FY 2019-20 can be set off against mandatory CSR obligation for FY 2020-21. However, such contribution should have been made by 31 March 2020 and the same should be certified by the Chief Financial Officer and statutory auditor.

2.1.6. Please click here to read the 20 May 2021 circular.

2.2. MCA Circulars on Covid – 19 Relaxation:

2.2.1. **Relaxation in time period for conducting of board meetings:**

(a) The MCA vide circular dated 3 May 2021 has relaxed the timelines for conducting of board meetings. Under the Companies Act 2013, companies are required to conduct at least 4 board meetings every year with a gap of not

more than 120 days between two consecutive board meetings. The interval period of 120 days has now been extended by additional 60 days.

(b) Please click here to read the circular.

2.2.2. **Relaxation of time for filing forms**

(a) The MCA vide circular dated 3 May 2021 has provided exemption from paying additional fees with respect to delayed filing of forms with the Registrar of Companies, other than CHG-1, CHG-4 and CHG-9 forms, which were due for filing during 1 April 2021 to 31 May 2021. Accordingly, companies and limited liability partnerships required to file forms between 1 April 2021 to 31 May 2021 can file such forms till 31 July 2021 without any additional fees.

(b) Please click here to read the circular.

2.2.3. **Relaxation of time for filing charge creation / modification forms**

(a) Companies / charge holders are required to file forms in relation to creation / modification of charges within a period of 120 (one-hundred and twenty) days from date of creation / modification. The MCA vide circular dated 3 May 2021 has relaxed the timelines for registration of charges as follows:

i. The period beginning from 1 April 2021 to 31 May 2021 shall not be counted for calculating the number of days within which forms CHG-1 (creation / modification of charge, other than debentures) and CHG-9 (creation / modification of charge on debentures) are required to be filed. Where the form is filed after 31 May 2021, the applicable fees shall be charged after adding the number of days beginning from 1 June 2021 till the date of filing plus the time-period lapsed from the date of creation till 31 March 2021.

ii. Where a charge is created / modified on or between 1 April 2021 to 31 May 2021 and the form is filed after 31 May 2021, the applicable fees shall be charged after adding the days starting from 1 June 2021 till the date of filing the form.

(b) Please click here to read the circular.

3. **LABOUR LAW**

Please see below the summary of the key labour law updates for May 2021.

3.1. **Notification on Enforcement of Section 142 of the Code on Social Security, 2020 by Ministry of Labour and Employment**

3.1.1. The Ministry of Labour and Employment vide notification dated 3 May 2021 has enforced section 142 of the Code on Social Security, 2020.

3.1.2. Section 142 of the Code on Social Security provides for registration of employees or unorganized workers as beneficiaries of social security benefits and other benefits and identification of the employee and dependent family members through employee's Aadhaar Number. Therefore, in order to facilitate such benefits, the notification enables the Ministry to collect Aadhaar details to maintain such database.

3.1.3. Please click here to read the circular.

3.2. **Notification of Draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 by Ministry of Labour and Employment**

3.2.1. The Industrial Relations Code 2020 provides that there shall be a negotiating union or a negotiating council, in an industrial establishment for negotiating with the employer. The Ministry of Labour and Employment vide notification dated 4 May 2021, has published the draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021 ("**Negotiating Council Rules**").

3.2.2. The draft Negotiating Council Rules provide that the following matters can be negotiated by the Negotiating Council/Union:

(a) classification of grades and categories of workers;

(b) order passed by an employer under the standing orders applicable in the industrial establishment;

(c) wages of the workers including their wage period, dearness allowance, bonus, increment, customary concession or privileges, compensatory and other allowances;

(d) hours of work of the workers their rest days, number of working days in a week, rest intervals, working of shifts;

(e) leave with wages and holidays;

(f) promotion and transfer policy and disciplinary procedures;

(g) quarter allotment policy for workers;

(h) safety, health and working conditions related standards;

(i) such other matter pertaining to conditions of service, terms of employment which are not covered in the foregoing clauses; and

(j) any other matter which is agreed between employer of the industrial establishment and negotiating union or council

3.2.3. Further, the draft Negotiating Council Rules also provide for the following:

(a) where the only registered trade union in the establishment has at least 30% (thirty percent) of the workers of the establishment as its members, the same shall be recognised as the sole negotiating union;

(b) the employer of the industrial establishment shall appoint a verification officer for the purpose of verification of membership of the trade unions in the industrial establishment who shall be an independent officer and shall not have any interest with any of the trade union;

(c) verification of membership of trade unions through secret ballot; and

(d) manner of making application for adjudication of dispute before tribunal.

3.2.4. Please click here to read the circular.

4. SECURITIES LAW

Please see below the summary of the Securities law updates for May 2021.

4.1. Amendment to the SEBI (Portfolio Managers) Regulations, 2020

4.1.1. SEBI has vide notification dated 26 April 2021, amended the SEBI (Portfolio Managers) Regulations, 2020. Pursuant to the amendment, portfolio manager entities are required to take prior approval from SEBI before any change in control of the portfolio manager entity is carried out.

4.1.2. Further, SEBI has vide circular dated 12 May 2021, laid down the procedure to be followed by portfolio managers if a change in control is proposed to be carried out. The circular lays down that approvals obtained by SEBI shall be valid for 6 (six) months and pursuant to receipt of approval, all the existing investors / clients of the portfolio manager shall be informed of the proposed change in control, so as to enable the investors / clients to make an informed decision regarding their continuance with the portfolio manager.

4.1.3. Please click here and here to read the SEBI notification and the circular.

4.2. Amendment to SEBI (Prohibition of Insider Trading) Regulations, 2015

4.2.1. SEBI has vide notification dated 26 April 2021, amended the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"). Pursuant to the amendment, clause 7 (1) (a) of the PIT Regulations has been omitted. Clause 7 (1) (a) provided for initial disclosures to be made promoters, key managerial personnel ("**KMP**"), and directors of entities listed on the stock exchange as on the date of the PIT regulations coming into effect, within 30 (thirty) days of the date of coming into effect of the PIT Regulations. Since the introduction of the PIT Regulations in 2015, the clause has become redundant and has accordingly been omitted.

4.2.2. The initial disclosures by the aforementioned persons upon appointment as a director or KMP, or upon becoming a promoter shall have to be made within 7 (seven) days as provided under Clause 7 (1) (b) of the PIT Regulations.

4.2.3. Please click here to read the SEBI notification.

4.3. **Amendment to the SEBI (Alternative Investment Fund) Regulations, 2012**

4.3.1. SEBI has vide notification dated 5 May 2021, amended the SEBI (Alternative Investment Fund) Regulations, 2012 ("**AIF Regulations**") and have made a number of significant changes to the regulatory framework regarding AIFs. A few of the key changes introduced by the circular are discussed hereinafter.

4.3.2. A definition for the term 'startup' has been introduced which includes private limited companies and limited liability partnerships that fulfil certain criteria as laid down by the Department of Promotion of Industry and Internal Trade. The introduction of the definition for the term 'startups' is pertinent as angel funds are now permitted to invest in these startups. Other requirements to be met by such startups are that they should not be promoted or sponsored by any group of related body corporates whose group turnover exceed INR 3 billion and that the startups should not be companies who have family connections with the angel investors.

4.3.3. Vide the amendment, the definition of venture capital undertakings has been modified to include all unlisted domestic companies.

4.3.4. Category I and Category II AIFs are no longer permitted to invest more than 25% (twenty five percent) of their investable funds in a single investee company, either directly or indirectly. A similar cap of 10% (ten percent) has been imposed on Category III AIFs. Investible funds mean the total amount of funds committed by investors of the AIF, minus the estimated management and administrative expenses of the AIF. Earlier, AIFs were permitted to invest more than the above limits in a single investee company if the investments were made indirectly.

4.3.5. An AIF which is permitted by its placement memorandum to invest in the units of other AIFs, shall not be permitted to accept investments / offer their units for subscription to another AIF.

4.3.6. AIFs need to obtain prior approval of 75% (seventy five percent) of its investors, if the AIF wishes to invest in the units of another AIF that is managed or sponsored by its own manager or sponsor or their associates.

4.3.7. A code of conduct has been introduced in the PIT Regulations, which shall have to be followed by all AIFs; the key managerial personnel, directors or designated partners of the AIF; its trustee; the trustee company; directors of the trustee company; manager of the AIF and its key managerial personnel; and the members of the investment committee of the AIF, if any. The code of conduct in the fourth schedule of the PIT Regulations provides specific requirements that must be fulfilled by each of the above parties.

4.3.8. Please click here to read the SEBI notification.

4.4. **Amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

4.4.1. SEBI has vide notification dated 5 May 2021 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). A few of the key changes introduced have been discussed hereinafter.

4.4.2. The most important amendment to the LODR Regulations, is in relation to the procedure for reclassification of promoters. The timelines for the process of reclassification of promoters has been consolidated and the minimum and maximum time durations between the board meeting and the shareholder meeting is now 1 (one) month and 3 (three) months, respectively. Further, shareholder approval for reclassification shall not be required if the promoter seeking reclassification holds less than 1% (one percent) of the shares and does not have any control over the listed entity. Additionally, relaxations have been given from the process of reclassification, if the reclassification is pursuant to an order passed by any regulator or if the reclassification is pursuant to an open offer or a scheme of arrangement, provided that the intention of reclassification should have been disclosed in the letter of offer or the scheme of arrangement.

4.4.3. Pursuant to amendments to clause 7 (3) and clause 40 (9) of the LODR Regulations, the compliance certificate required to be issued by listed entities and their share transfer agents, to stock exchanges, shall now be issued on an annual basis, instead of on a half-yearly basis.

4.4.4. The amendment has modified the framework relating to the constitution and working of the risk management committees of listed entities. The top 1000 (one thousand) listed entities, determined on the basis of market capitalisation are mandatorily required to organise risk management committees and follow all provisions related to the same. The amendment has also laid down the method of composition and the role of the risk management committee. Details of composition of the risk management committee will have to be disclosed in the annual report of the listed entity.

4.4.5. A new requirement of submission of a secretarial compliance report has been added under clause 24A of the LODR Regulations. All listed entities shall be required to submit the secretarial compliance report to stock exchanges within 60 (sixty) days from the end of each financial year. Further, the quarterly compliance report, pursuant to clause 27 may now be submitted within 21 (twenty one) days instead of within 15 (fifteen) days of the end of the quarter.

4.4.6. Other changes introduced by the notification provide that the top 1000 (one thousand) listed entities, determined by market capitalisation shall be required to mandatorily maintain a dividend distribution policy.

4.4.7. Additionally, amendments have also been made to the list of disclosures required to be made on the website of the listed entity.

4.4.8. Please click here to read the SEBI notification.

4.5. **SEBI Circular on Business Responsibility and Sustainability Reporting by listed entities**

4.5.1. SEBI has vide circular dated 10 May 2021, laid down that the top 1000 (one thousand) listed entities, determined on the basis of market capitalisation, shall be required to make reporting in the BRSR format. The BRSR shall replace the Business Responsibility Reporting that the listed entities are presently required to do. Reporting of the BRSR is voluntary for the financial year 2021-22 and shall be mandatory from the financial year 2022-23. Appropriate changes in relation to this requirement have also been made to the LODR Regulations.

4.5.2. A few of the key disclosures that are to be made through the BRSR are:

(a) An overview of the material environmental, social and governance ("**ESG**") risks of the listed entity;

(b) Sustainability related goals and targets;

(c) Environment related disclosures covering aspects like resource usage, air pollution emissions, green-house emissions, etc.; and

(d) Social related disclosures covering the workforce, value chain, communities and consumers.

4.5.3. The renewed format of reporting shall ensure that the investors in a listed company have access to standardised disclosures on ESG parameters which will bring in greater transparency and also enable investors to identify and assess sustainability related risks and opportunities of listed companies and aid them in making better investment decisions.

4.5.4. Please click here to read the SEBI Circular.

4.6. **Consultation paper by SEBI on 'Review of the regulatory framework of promoter, promoter group, and group companies under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018'.**

4.6.1. SEBI has released a consultation paper on the 'Review of the regulatory framework of promoter, promoter group and group companies as per SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 ("**ICDR Regulations**")' on 11 May 2021. Some of the key proposals set out in the consultation paper are:

(a) Shift from the concept of a 'promoter of a company' to 'a person in control': As per the ICDR Regulations, a promoter is any person who exercises control over the functions of a company or has been named as such in the offer documents or the annual returns of the listed entity. The shareholding composition in listed entities have undergone significant changes in last few years, as investors' shareholding in most entities have become substantial compared to promoter group's shareholding. Persons identified in the offer documents or the annual returns of companies may not actually be in control over the affairs of the company. Accordingly, it was highlighted that a shift from the concept of promoter to a person in control is required to ensure that additional compliance responsibilities and duties are only imposed on persons who are actually in control of a listed entity.

(b) Reduction in the lock-in period for the minimum promoter's contribution and the contribution by other shareholders at the time of public issuance: It has been proposed that, the minimum promoter's contribution shall only be required to be locked in for a period of 1 (one) year as opposed to the existing requirement of 3 (three) years. Further, the rest of the pre-issue capital, including promoters' holdings beyond the minimum contribution shall be required to be locked in for a period of 6 (six) months instead of 1 (one) year.

(c) Amendment of definition of the term 'promoter group': The proposed amendment to the definition of the term 'promoter group' shall result in the exclusion of any body corporate in which a group of companies holds 20% (twenty percent) or more of shares and if the same group also holds 20% (twenty percent) in the listed entity as well. This change is proposed to rationalise the definition of promoter group so as exclude unrelated companies with common institutional investors within the ambit of the term 'promoter group'.

(d) Rationalise the disclosure requirements for group companies.

4.6.2. Please click here to read the SEBI consultation paper.

4.7. **Report by SEBI technical group on Social Stock Exchanges**

4.7.1. A technical group formed by SEBI has released its report on the establishment of a 'Social Stock Exchange' in India on 6 May 2021. Some of the key proposals are:

(a) The proposed social stock exchange shall permit the listing of for-profit social enterprises as well as non-profit organisations.

(b) The entities proposing to list on the social stock exchange shall be selected on the basis of their social impact. The entity should be focussed on any 1 (one) of the 15 (fifteen) broad eligible activities as identified on the basis of activities mentioned in Schedule VII of the Companies Act, 2013, the sustainable development goals and other priority areas identified by the Niti Aayog. The activities of the entities should be focused on the underserved and less privileged sections of the society. Few eligible activities are education, poverty, gender equality, and environmental sustainability.

(c) The entities proposing to list must show that at least 67% (sixty seven percent) of its revenue, expenditure or customer base is a part of any of the eligible activities.

(d) Corporate foundations that are funded by a parent corporate entity; institutions with political or religious affiliations; and professional or trade associations shall not be eligible to list on the social stock exchange.

(e) Non-profit organisations shall be permitted to raise funds through issue of equity (in case of companies incorporated under Section 8 of the Companies Act, 2013), zero coupon zero principal bonds, social impact funds or through mutual funds.

(f) Non-profit organisations will be required to first obtain registration with the social stock exchanges before their listing is permitted. A process for registration and mandatory qualification criteria for registration have also been laid down in the report by the technical group.

(g) For-profit social enterprises would be permitted to list their equity or debt securities or may raise funds through social impact funds and development impact bonds.

4.7.2. The report provides for the establishment of a Capacity Building Fund and for amending the present regulatory framework surrounding social venture funds.

4.7.3. The report also lays down the disclosure requirements for entities that would be listed on a social stock exchange. The disclosure requirements shall include making an annual report on social impact, disclosures related to stakeholder redressal, and disclosures relating to details of program wide fund utilisation.

4.7.4. Please click here to read the report of the SEBI technical group.

4.8. **Consultation paper by SEBI on the proposed framework for a Gold Exchange in India and the draft SEBI (Vault Managers) Regulations, 2021.**

4.8.1. SEBI has released a consultation paper on 17 May 2021, on the proposed framework for establishment of a gold exchange in India and the draft SEBI (Vault Managers) Regulations, 2021. SEBI has sought comments from the relevant stakeholders.

4.8.2. Under the proposed mechanism, trading of gold on the gold exchange would take place in three tranches. The first tranche would include the deposit of physical gold with vault managers, who shall generate electronic gold receipts ("**EGRs**") and issue them to the depositing entity. Under the second tranche, the EGRs would be freely tradeable on the gold exchange. The electronic gold receipts may be converted back into physical gold by the beneficial owners by depositing them with the vault managers in the third tranche. After deposit of the EGRs with the vault managers, the EGRs would be destroyed.

4.8.3. The consultation paper has sought comments on a few important questions related to the establishment of a separate exchange, the denominations for trading, interoperability between vault managers and tax incentives / exemptions that may be given to the market participants.

4.8.4. The consultation paper has also released draft regulations relating to the vault managers. The draft regulations lay down provisions for mandatory registration of vault managers with SEBI, the net worth eligibility criteria and the infrastructure requirements of vault managers. The draft regulations also lay down other provisions relating to maintenance of records by vault managers, inspection by SEBI of the vault managers and the vault manager's indemnity in relation to any loss or destruction of the physical gold stored with them.

4.8.5. Please click here to read the consultation paper.

4.9. **Amendments to numerous SEBI regulations in relation to amendments to the framework for Innovators Growth Platform ("IGP").**

4.9.1. SEBI has vide numerous notifications dated 5 May 2021, amended certain provisions of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The amendments have been carried out to give effect to the changes approved by SEBI at its board meeting dated 25 March 2021 in relation to the framework for Innovators Growth Platform.

4.9.2. Please click here to read our earlier newsletter covering the proposed amendments to the Innovator's Growth Platform.

5. **FOREIGN EXCHANGE LAWS**

Please see below the summary of the foreign exchange law updates for May 2021.

5.1. **RBI Circular on sponsor contribution to an AIF set up in overseas jurisdiction**

5.1.1. RBI has released an AP DIR Circular dated 12 May 2021, permitting Indian entities to provide sponsor contributions to AIFs, set up in overseas jurisdictions, including in International Financial Service Centres ("**IFSCs**").

5.1.2. Under the SEBI (International Financial Services Centre) Guidelines, 2015, AIFs desirous of operating in an IFSC are required to comply with the provisions relating to registration under the SEBI guidelines and the sponsor and manager of the AIF had to be an entity that was set up in the IFSC and the sponsor and / or the manager are required to ensure a continuing interest in the fund of at least 2.5% (two point five percent) of the corpus of $750,000 whichever is lower.

5.1.3. There was no clarity on whether Indian entities were permitted to act as a manager or sponsor to AIFs set up in overseas jurisdictions and whether RBI approval would be required to provide the necessary funding for maintaining the skin in the game requirements. There were also potential round tripping issues, in relation to these AIFs subsequently investing in Indian entities.

5.1.4. Pursuant to the circular, it has been clarified that Indian entities can now provide the sponsor / manager contribution, subject to certain conditions under the FEMA regulations, and the sponsor / manager contribution shall be treated as overseas direct investment. Further, Indian entities can now act as a sponsor and manager to AIFs set up in an IFSC or in any other overseas jurisdiction without having to first obtain RBI approval and subsequently those AIFs would also be permitted to invest in Indian entities.

5.1.5. Please click here to read the RBI circular.

5.2. **Enhancement of overall limit for overseas investment by AIFs and Venture Capital Funds**

5.2.1. SEBI has released a circular dated 21 May 2021, increasing the overall limit for overseas investment by AIFs and VCFs. AIFs and VCFs are permitted to invest in overseas entities subject to a maximum limit of 25% of their investable funds. Presently, AIFs and VCFs desirous of making investments in offshore unlisted companies are required to submit their proposal for investment to SEBI for prior approval. The overall limit for overseas investments by all AIFs and VCFs combined is USD 750 million, beyond which approval from SEBI would not be granted. The overall limit has now been enhanced to USD 1.5 billion. All other provisions in relation to overseas investment by these entities remain the same.

5.2.2. Please click here to read the SEBI circular.

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