



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY & POLICY UPDATES

SEBI issued the circular mandating specific due diligence of investors and investments of AIF by the AIF, Manager of the AIF and Key Management Personnel of the AIF.

The Securities and Exchange Board of India (“SEBI”) through its circular dated 08.10.2024¹ (“AIF Circular”), has mandated specific due diligence of investors and investments of the Alternative Investment Funds (“AIFs”) required to be carried out by the AIFs, managers of the AIFs and their key management personnel of the manager and the AIF, to prevent circumvention of various laws and regulatory frameworks as specified by SEBI from time to time. The AIF Circular came into force on the date of its notification, i.e. -

08.10.2024. Key highlights of the AIF Circular are as follows:

- (i) In relation to investors availing benefits designated for QIBs/ QBs through AIFs: AIF’s have been designated as Qualified Institutional Buyers (“QIBs”) in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“SEBI ICDR”). There are certain benefits available to QIBs in terms of SEBI ICDR and other SEBI regulations. Further, AIFs have been notified as Qualified Buyers (“QB”) in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) and therefore are eligible to subscribe to Security Receipts (“SRs”) issued by an Asset Reconstruction Company (“ARC”). In order to

¹ SEBI circular on due diligence by AIF.

prevent AIFs from facilitating investors who are otherwise ineligible for QIB/ QB status on their own to avail benefits designated for QIBs/ QBs, the AIF Circular makes it mandatory for every scheme of AIFs having investor or investors belonging to the same group, contributing 50% (fifty percent) or more to corpus of the scheme, to conduct necessary due diligence as per the implementation standards formulated by the Standard Setting Forum for AIFs (“SFA”) prior to availing any benefits available to QIBs under SEBI ICDR and other SEBI regulations. Similarly, necessary due diligence as per the implementation standards formulated by SFA has to be conducted prior to making any investments in SRs issued by ARCs or availing benefits designated for QBs under the SARFAESI Act, for every scheme of AIFs having investor or investors belonging to the same group, contributing 50% (fifty percent) or more to corpus of the scheme.

- (ii) Reserve Bank of India (“RBI”) regulated entities ever-greening their stressed loans/ assets through AIFs: To address ever-greening of stressed loans/assets of RBI regulated lenders/entities through AIFs and to prevent circumvention of norms with respect to income recognition, asset classification, provisioning and restructuring stressed loans/ assets specified by RBI for its regulated lenders, the AIF Circular mandates, every scheme of AIF (a) whose manager or sponsor is an entity regulated by RBI; or (b) that has investors regulated by RBI who individually or along with investors of the same group contribute 25% (twenty-five percent) or more to corpus of the scheme of such AIF, or is an associate of the manager of the AIFs, or by itself/through its nominees has majority or veto power in voting over decisions of the investment committee set up by the manager, to carry out necessary due diligence as per the implementation standards formulated by SFA. Provided however that if an investor of the scheme is an AIF or a fund set up outside India or in International Financial Services Centre in India, then the criteria check for investor(s) regulated by RBI shall be carried out on a look through basis. The AIF Circular further clarifies that for such schemes falling under the above criteria, the manager of the AIF shall ensure that the scheme does not make any investment that would lead to the RBI regulated entity/ lender acquiring or holding an interest/ exposure in the investee company (that is, through investment in a scheme of an AIF), that they are not permitted to acquire or hold directly.
- (iii) Schemes of AIFs satisfying the above requirement are required to proceed with the proposed investment in accordance with the respective implementation standards as formulated by SFA. If the proposed investment of the schemes of AIFs does not satisfy the

aforesaid due diligence requirement, then such investors or investors of the same group must be excluded from the investment subject to necessary disclosure in the private placement memorandum of the AIF for exclusion of investors, or the investment altogether must not be made. Further, the AIF Circular mandates such schemes of AIFs to carry out due-diligence checks as per the implementation standards formulated by SFA for existing investments held by the scheme as on date of the AIF Circular. Where any of the existing investments of such schemes does not satisfy the due diligence checks for making investment, details of such investments need to be reported to the custodian of the AIF on or before 07.04.2025 in the format specified under Annexure I of the AIF Circular. However, where all the existing investments of such schemes satisfy all the relevant due diligence checks, in such case, the manager of the AIF is required to submit an undertaking to this effect to their respective custodian, on or before 07.04.2025.

- (iv) In terms of Rule 6 of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 read with Press Note 3 dated 17.04.2020 of FDI Policy 2020, a person resident outside India which shares land border with India or the beneficial owner of an investment into India who is situated in or as is a citizen of any such country, shall invest only with the approval of the government. For every scheme of AIFs where 50% (fifty percent) or more of the corpus of the scheme is contributed by investors: (i) who are either based out of or whose beneficial owners are from countries that share a land border with India; or (ii) whose beneficial owners, as determined in terms of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 are citizens of/ are from/ are situated in a country which shares land border with India, are required to conduct necessary due diligence as per the implementation standards formulated by SFA prior to making any investment. Upon carrying out the necessary due diligence, such schemes are required to submit the details of their investments which would result in the scheme holding 10% (ten percent) or more of equity/ equity-linked securities issued by an investee company, to their custodian within 30 (thirty) days of such investment in the format as may be specified by SFA. In case of existing investments where the scheme holds 10% (ten percent) or more of equity/ equity-linked securities issued by an investee company (on a fully diluted basis), the relevant schemes must report such investments to their respective custodians, on or before 07.04.2025, in the format as may be specified by SFA.

DERC notified the DERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024.

The Delhi Electricity Regulatory Commission (“DERC”) on 09.10.2024 notified the DERC (Terms and Conditions for Green Energy Open Access) Regulations 2024² (“GEOA Regulations”) for implementing a comprehensive framework for Green Energy Open Access (“GEOA”) in the National Capital Territory of Delhi.

The salient features of the GEOA Regulations are as follows:

- (i) The GEOA Regulations shall be applicable to electricity generated from green energy sources as well as energy from non-fossil fuel based municipal solid waste-to-energy or refuse-derived fuel plants for use of Intra-State Transmission System (“InSTS”) or distribution system, or both in the state, including InSTS and/ or distribution systems incidental to the inter-state transmission of electricity.
- (ii) All applicants seeking open access are required to submit an undertaking that they have not entered into a Power Purchase Agreement (“PPA”) or any other bilateral agreement with more than one person for the capacity for which open access is sought. However, the drawee shall be eligible to enter into PPA or any other bilateral agreement with more than one person within the quantum of open access granted or sought by it.
- (iii) Any consumer having contracted demand or sanctioned load of 100 KW or above, connected at 11kV, either through single or multiple connection aggregating to 100KW in the area of the distribution licensee shall be eligible for open access for sourcing green energy under these GEOA Regulations.
- (iv) The existing consumers/ generators including green energy shall continue to be governed under existing open access granted to them and they shall avail the open access for green energy/ customer/ licensee/ generator under existing open access regulations as per the existing agreements for the period specified in those agreements or orders of the DERC for the open access already granted.
- (v) The charges in respect of GEOA consumers will be payable directly to the state nodal agency and distribution licensees in accordance with the terms and conditions of payments specified in the GEOA Regulations. The state nodal agency is required to disburse the amount received to the appropriate licensees.

²Green Energy Open Access Regulations 2024.

³ [Maharashtra Ordinance No. XII of 2024](#)

GOVERNMENT NOTIFICATIONS

Amendment to the Maharashtra Stamp Act – Changes in the stamp duty rates in the State of Maharashtra.

The Maharashtra Ordinance No. XII of 2024³ (“Amendment Ordinance”) was published on 14.10.2024 under the authority of Governor of Maharashtra, amending Schedule I of the Maharashtra Stamp Act, 1958. Changes to the stamp duty rates for various instruments as revised by the Amendment Ordinance are provided in the table attached as Annexure ‘A’ hereunder.

The Amendment Ordinance has modernized and revised the stamp rates for around 16 (sixteen) legal instruments such as articles of association, arbitral award, partnership deed, work contracts, counterparts, conveyance, affidavits, etc.

MOP issued the modified Scheme of Budgetary Support for the cost of Enabling Infrastructure for Hydro Electric Projects.

The Ministry of Power (“MOP”) by Office Memorandum dated 30.09.2024⁴ modified the Scheme of Budgetary Support for the cost of Enabling Infrastructure for Hydro Electric Projects notified on 08.03.2019 (“Enabling Infrastructure Scheme”).

The MOP with the aim to accelerate pace of hydro-power development and to widen the ambit of budgetary support for the cost of enabling infrastructure, included four additional items in the Enabling Infrastructure Scheme, apart from the construction of roads and bridges, which are:

- (i) transmission line from powerhouse to the nearest pooling point, including upgradation of pooling substations of State or Central Transmission Utility;
- (ii) ropeways;
- (iii) railway sidings; and
- (iv) communication infrastructure.

Additionally, it was clarified that the strengthening of existing roads or bridges leading to the project will also be eligible for central government assistance under this Enabling Infrastructure Scheme.

The Enabling Infrastructure Scheme will be applicable to:

- (i) all hydropower projects of more than 25 MW capacity, including private sector projects allotted on transparent basis;
- (ii) all pumped storage projects (“PSPs”) including captive/ merchant PSPs, which have been allotted on a

⁴ Modification of Scheme of the Budgetary Support for the cost of Enabling Infrastructure for Hydro Electric Projects.

- transparent basis in alignment with extant policy/guidelines of the MOP; and
- (iii) projects to which the letter of award for first major package is issued till 30.06.2028.

The budgetary support for enabling infrastructure is capped at INR 1 Crore per MW for projects up to 200 MW, and INR 200 Crore plus INR 0.75 Crore per MW for projects above 200 MW. In exceptional cases, the budgetary support may be increased to INR 1.5 Crores per MW, provided there is sufficient justification based on the objective criteria specified by MOP in consultation with the Ministry of Finance. The total outlay of the Enabling Infrastructure Scheme is envisaged at INR 12,461 Crores from financial year 2024-25 to 2031-32. Additionally, a cumulative hydro capacity of approximately 31 GW, including 15 GW of PSP capacity, will also be supported under the Enabling Infrastructure Scheme.

MOP issued Guidelines for Installation and Operation of Battery Swapping and Battery Charging Stations.

The MOP issued Guidelines for Installation and Operation of Battery Swapping and Charging Stations⁵ (“BSCG Guidelines”) to promote battery swapping as an alternative method for powering electric vehicles. These guidelines are applicable to swappable battery providers or owners as well as operators of battery charging and swapping stations. The objective of the BSCG Guidelines is to develop a battery swapping ecosystem to promote Battery as a Service business models.

For implementation of the BSCG Guidelines, certain clauses from the Guidelines for Installation and Operation of Electric Vehicle Charging Infrastructure – 2024 will apply to Battery Charging Stations (“BCS”), Battery Swapping Stations (“BSS”), and battery providers. The existing electrical safety shall apply to BSSs and BCSs. The owners of BCS or BSS can use existing electricity connections, with or without increasing the connected load for charging the swappable batteries. The BSCG Guidelines further permit BCS or BSS to deploy liquid-cooled swappable batteries for larger vehicles like trucks and buses.

JUDICIAL PRONOUNCEMENTS

High Court of Delhi held that arbitral tribunal is not bound by Order XXXIX while passing orders under Section 17 of the A&C Act.

The High Court of Delhi through its judgment dated 04.10.2024 in the matter of *Lava International Limited v.*

⁵ Guidelines for Installation and Operation of Battery Swapping and Charging Stations.

⁶ ARB. A. (COMM.) 48/2024.

*Mintellectuals LLP*⁶ held that arbitral tribunal is not bound by Order XXXIX of the Code of Civil Procedure Code, 1908 (“CPC”) while passing an order under Section 17 of the Arbitration and Conciliation Act, 1996 (“A&C Act”). Order XXXIX of the CPC provides for grounds on which interim relief may be granted by the courts to the parties.

The High Court of Delhi, while relying on the judgment passed in the matter of *Green Infra Wind Energy Ltd. v. Regen Powertech Pvt. Ltd.*⁷ observed that the scope of interference with orders made under Section 17 of the A&C Act is limited and discretionary in nature and can only be challenged under Section 37(2)(b) of the A&C Act only if the interim order passed in perverse or manifestly arbitrary.

The High Court of Delhi held that the arbitral tribunal is not strictly bound by the principles of Order XXXIX of CPC but are merely guided by such principles.

NCLAT held that supply of electricity can be interrupted in case of non-payment of dues by the corporate debtor during the moratorium period.

The National Company Law Appellate Tribunal (“NCLAT”), New Delhi through its judgement dated 23.09.2024 in the matter of *Noida Power Company Ltd. v. Gaurav Katiyar RP of Earthcon Universal Infratech (P.) Ltd.*⁸ held that electricity can be disconnected for non-payment of electricity dues by the corporate debtor during the moratorium period. During a moratorium period, supply of essential goods or services to a corporate debtor can be interrupted if payments for those supplies are not made.

NCLAT relied on explanation to Section 14(1) and Section 14(2A) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) and held that the protection under Section 14(1) of the IBC is clearly subject to the fact that the corporate debtor does not default in payment of current electricity dues.

Further, NCLAT observed that Section 14(2A) prohibits interruption, termination or suspension of supply of goods or services to the corporate debtor which the resolution professional considers critical to protect and preserve the value of the corporate debtor as a going concern. It was held that such prohibition is subject to the fact that the corporate debtor pays the current outstanding dues for such critical supplies.

APTEL held that SERCs do not have jurisdiction under Section 86(1)(b) of the Electricity Act, 2003 to adjudicate disputes involving a distribution franchisee.

⁷ 2018 SCC OnLine Del 8273.

⁸ Company Appeal (AT) (Insolvency) Nos. 1209 and 1210 of 2024.

The Appellate Tribunal for Electricity (“APTEL”) by its judgment dated 10.10.2024 in the matter of *City Corporation Limited v. Maharashtra Electricity Regulatory Commission*⁹ upheld the order passed by the Maharashtra Electricity Regulatory Commission holding that the State Electricity Regulatory Commission (“SERC”) under Section 86(1)(f) of the Electricity Act 2003 (“Electricity Act”) does not have the jurisdiction to adjudicate upon the dispute between a distribution licensee and a distribution franchisee.

APTEL opined that in terms of Section 86(1)(f) of the Electricity Act, the SERC’s jurisdiction is limited to adjudication of disputes between licensees and generators. APTEL further observed that “franchisee”, as defined under Section 2(27) of the Electricity Act, can be any person authorized by the distribution licensee to distribute electricity in the area of supply of the distribution licensee and under seventh proviso to Section 14 of the Electricity Act, a franchisee authorized by the distribution licensee need not obtain any separate license to distribute electricity.

APTEL concluded that a “franchisee” does not fall within the ambit of a “licensee” and therefore any dispute involving a distribution franchisee cannot be adjudicated by SERCs under Section 86(1)(f) of the Electricity Act.

CERC issued suo motu directions to NLDC, RLDCs and SLDCs for anticipated surge in demand of electricity during October 2024.

The Central Electricity Regulatory Commission (“CERC”) by its *suo motu* order dated 07.10.2024¹⁰, issued directions to the National Load Dispatch Centre (“NLDC”), Regional Load Dispatch Centre (“RLDC”) and State Load Dispatch Centres (“SLDC”) for the proper implementation of Regulations 31 and 33 of the CERC (Indian Electricity Grid Code) Regulations, 2023 (“Grid Code”) to address the anticipated surge in demand of electricity during October 2024 on account of seasonal variations.

CERC obtained details of the load-generation scenario for September and October 2024 and observed that the projected requirement of generation is significantly higher than the annual growth of electricity and addition of generation capacity.

Accordingly, CERC directed all the SLDCs and RLDCs to furnish details of operational planning taken by them in terms of Regulation 31(4)(a) of the Grid Code, especially for October 2024. It further directed the SLDCs and RLDCs to prepare for worst case scenario due to possible surge in demand during the period 01.10.2024 to 31.01.2024 and further, assess demand-generation scenario in the up-coming months to ensure optimum generation to avoid planned outages. It directed the distribution companies to procure

power from surplus or requisitioned capacity of other states in case of shortage and directed the generation companies to fix their technical issues to ensure maximum generation. Similarly, the SLDCs and RLDCs shall issue system alerts for possible deficits during likely surge in demand.

CERC appointed a single member bench to examine the responses from NLDC, RLDCs and SLDCs, which are to be submitted by 16.10.2024, and submit a report to the CERC on the preparedness of system operators and other stakeholders to meet challenges arising out of surge in demand of power and give recommendations with respect to remedial measures to be taken in future. Thereafter, on reconsideration of report to be submitted by the single member bench of the CERC, the CERC will issue appropriate directions.

⁹Appeal No. 447 of 2024.

¹⁰ Suo-Motu Petition No. 9/SM/2024.

ANNEXURE A

Article	Stamp duty before 14.10.2024	Stamp duty after 14.10.2024
Article 4 – Affidavit, that is to say, a statement in writing purporting to be a statement of facts, signed by the person making it and confirmed by him on oath or, in the case of persons by law allowed to affirm or declare instead of swearing, by affirmation.	INR 100	INR 500
Article 5 – Agreement or its records or memorandum of an agreement, 5(B) - if not otherwise provided for	INR 100	INR 500
Article 8 – Appraisalment or Valuation, made otherwise than under an order of the court in the course of a suit.	INR 100	INR 500
Article 9 – Apprenticeship-Deed, including every writing relating to the service or tuition of any apprentice clerk or servant, placed with any master to learn any profession, trade or employment, not being articles of clerkship (Article 11)	INR 100	INR 500
Article 10 – Articles of Association of a Company	0.2% on share capital or increased share capital, as the case may be, subject to a maximum of INR 50,00,000	0.3% on share capital or increased share capital, as the case may be, subject to a maximum of INR 1,00,00,000
Article 12 – Award, that is to say, any decision in writing by an arbitrator or umpire, on a reference made; otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to Arbitration but not being an award directing partition.		<p>12. Award, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to Arbitration but not being an award directing partition–</p> <p>(a) relating to immovable property: the same duty as is leviable on a conveyance under clause (b) of article 25.</p> <p>(b) relating to movable property–</p> <p>(i) where the amount granted in the award, does not exceed INR 50,00,000: 0.75% of the amount granted in the award.</p> <p>(ii) where the amount granted in the award, exceeds INR 50,00,000 but does not exceed INR 5,00,00,000: INR 37,500 plus 0.5% of the amount granted in the award.</p> <p>(iii) where the amount granted in the award, exceeds INR 5,00,00,000: INR 2,62,500 plus 0.25% of the amount granted in the award.</p>

Article	Stamp duty before 14.10.2024	Stamp duty after 14.10.2024
Article 27 – Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.	INR 100	INR 500
Article 30 – Divorce - Instrument of, that is to say, any instrument by which any Person effects the dissolution of his marriage.	INR 100	INR 500
Article 38 – Letter of Licence, that is to say, any agreement between a debtor and his creditor, that the latter shall, for a specified time, suspend his claims and allow the debtor to carry on business at his own discretion.	INR 100	INR 500
Article 44 – Note of protest by the master of a ship	INR 100	INR 500
Article 47 – Partnership- Instrument of any partnership inclusive of, Limited Liability Partnership and Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind 47(1) (b) where such share contribution brought in by way of cash is in excess of rupees 50,000.	INR 15,000	INR 50,000
Article 49 – Protest of bill or note, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	INR 100	INR 500
Article 50 – Protest by the master of a ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.	INR 100	INR 500
Article 52 – Release, that is to say, any instrument (not being an instrument as is provided by section 24) whereby a person renounces a claim upon other person or against any specified property- 52(a)- if the release deed of an ancestral property or part thereof is executed by or in favour of brother or sister (children of renouncer's parents) or son or daughter or son of predeceased son or daughter of predeceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations [without consideration in any form].	INR 200	INR 500
Article 58 – Surrender of lease including an agreement for surrender of lease-- 58(a) without any consideration;	INR 200	INR 500
Article 63 – Works Contract, that is to say, a contract for works and labour or services involving transfer of property in goods (whether as goods or in some other form) in its execution and includes a sub-contract	(a) where the amount or value set forth in such contract does not exceed INR 10,00,000	(a) where the amount or value set forth in such contract does not exceed INR 5,00,000

Article	Stamp duty before 14.10.2024	Stamp duty after 14.10.2024
	(b) where it exceeds INR 10,00,000: INR 500 plus 0.1% of the amount above INR 10,00,000 subject to maximum of INR 25,00,000/-.	(b) where it exceeds INR 5,00,000/- : INR 500 plus 0.3% of the amount above INR 5,00,000 subject to maximum of INR 25,00,000/-.

ABOUT SAGUS LEGAL

Sagus Legal is a full-service law firm that provides comprehensive legal advisory and advocacy services across multiple practice areas. We are skilled in assisting businesses spanning from start-ups to large business conglomerates including Navratna PSUs, in successfully navigating the complex legal and regulatory landscape of India. Our corporate and M&A, dispute resolution, energy, infrastructure, banking & finance, and insolvency & restructuring practices are ranked by several domestic and international publications. We also have an emerging privacy and technology law practice.

Delhi Office:

Ground Floor, B-7/8
Safdarjung Enclave, Delhi-110029

Gurugram Office:

I-46, Emaar Emerald Hills,
Sector 65, Gurugram – 122001

Satellite Office:

Bhubaneswar, Odisha
Email: info@saguslegal.com
Phone No.: +91 1146552925
Website: <https://www.saguslegal.com/>



The contents of this Newsletter are for general information only. It shall not be construed as legal advice. For any specific legal or factual query/ opinion, kindly obtain appropriate professional advice.