

SAGUS SPEAKS



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

REGULATORY AND POLICY UPDATES

SEBI notifies SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations 2024¹

The Securities Exchange Board of India (“SEBI”) notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 (“LODR Amendment Regulations”) on 12.12.2024 which amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”). The LODR Amendment Regulations have come into force on 13.12.2024 except the amendments made to Regulation(s) 13 and 27 of the LODR which came into effect on 31.12.2024. The key

amendments introduced by the LODR Amendment Regulations are as follows:

A. Related Party Transactions

- i. Regulation 2(1)(zc) of LODR which defines related party transactions (“RPTs”) has been amended to include two new exclusions, *i.e.*, acceptance of current account deposits or saving account deposits by banks including any interest payment thereon in compliance with the directions issued by Reserve Bank of India (“RBI”) from time to time and the retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and on terms uniformly applicable/offered to all its employees and directors.

¹ [SEBI | Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\) \(Third Amendment\) Regulations, 2024.](#)

- ii. Regulation 23(2) of the LODR deals with all the RPTs that require prior approval of the audit committee which now includes *inter alia* any payment of remuneration and siting fees by the listed entity or its subsidiary to its director, key managerial personnels (“KMPs”) or senior management who is a part of promoter or promoter group and such payment is material in terms of the policy on materiality of RPT.
 - iii. The audit committee now can ratify RPTs within 3 (three) months from the date of the relevant transaction or in the immediate next meeting, whichever is earlier subject to fulfilment of certain conditions. Further, any failure to ratify RPT shall render the transaction in concern voidable at the option of the audit committee and the concerned director(s) would have to indemnify the listed entity against any loss incurred by it.
 - iv. Regulation 23(5) provides a list of RPTs which are exempted from taking approvals from the audit committee or any shareholders approval under LODR. LODR Amendment Regulations have added two new exemptions namely; (a) transactions which are in the nature of payment of statutory dues, fees or charges to Central or State Government, transactions between two public sector companies (including government companies); and (b) transactions between a public sector company and the Central or State Government (or any combination) even if they cross the materiality threshold. The reference of government is changed to public sector.
- B. Changes in Key Compliances/ Disclosures**
- i. The LODR Amendment Regulations put specific obligation on the KMPs, directors, promoters and promoters group or other related persons to disclose to the listed entity all the information which is relevant or necessary to be disclosed for the compliance with applicable laws.
 - ii. Regulation 6(1) of the LODR mandated appointment of a compliance officer who is in the whole-time employment of the listed entity, not more than one level below the board of directors and shall be designated as a KMP.
 - iii. Post the LODR Amendment Regulations, the requirement under Regulation 24(6) of the LODR for the approval of shareholders for sale, disposal or lease of assets of material subsidiary shall not be required if such a transaction is between two wholly owned subsidiaries of the listed entity.
 - iv. Regulation 24A which deals with Secretarial Audit, has been amended to make the appointment, re appointment of secretarial auditors’ procedure in line with the provisions under Section 139(1) and (2) of the Companies Act, 2013. Provided that the listed entity shall ensure that with effect from April 1, 2025, the secretarial compliance report submitted to the stock exchange(s) on an annual basis is signed only by the secretarial auditor or by a peer reviewed company.
 - v. Regulation 47(1) which mandated publishing of detailed newspaper advertisement containing the financial results of the listed entity has been amended. The listed entities now shall have the option to publish a relatively smaller advertisement with the QR code linking to the web page where the full financial results are accessible to the investors.
 - vi. Regulation 31A (3) which deals with reclassification of status of a promoter as public has been amended Further, SEBI has also revised the requirements under LODR for such reclassification with stricter timelines.
 - vii. Regulation 46 deals with documents which needs to be available on listed entity website has been revised and additional documents has been added which needs to be listed are (i) Memorandum & Article of Association; and (ii) brief profile of board of directors including full time positions in body corporates. Amongst other, the employee benefit scheme documents, excluding commercial secrets and such other information that would affect competitive position of the listed entity, framed in terms of the provisions of SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 is also required to be disclosed on the website.
 - viii. The LODR Amendment Regulations has now permitted integrated filings of periodic reports, statements, documents and any other information that is required to be filed as per the applicable laws including other changes made to simplify the compliance requirement.
 - ix. The listed entity is now required to file with the recognised stock exchange(s) on a quarterly basis a statement detailing the redressal of investor grievances instead of within a 21 (twenty-one) days’ time period.
 - x. Material subsidiary will be determined based on the turnover and net worth of the listed entity as opposed to the income and net worth criteria as was required under the LODR Regulations.
 - xi. A letter providing the web-link to be sent to those shareholders who have not registered their email ID instead of sending hard copies, including the exact path, where complete details of the annual report is available.
 - xii. Regulation 30(6) mandates listed entities to disclose all material events and information. The LODR Amendment Regulations incorporate additional provisos which provide that in case the board meeting ends after trading hours of the day but less than 3 (three) hours left in next trading day hours starts, then the disclosure should be made at the earliest but not later than 3 (three) hours of the conclusion of the meeting and in case board meeting

has been held for more than one day, the disclosure shall be done within 30 (thirty) minutes if the meeting is concluded in the trading hours of the day.

- xiii. The LODR Amendment Regulations have reduced the time period for intimating a record date to the stock exchange from 7 (seven) working days to 3 (three) working days for the payment of interest, dividend and payment of redemption or repayment amount or such other purposes as specified by SEBI. Further, the listed entity shall ensure the time gap of at least 5 (five) working days (instead of 30 (thirty) days) between two record dates.

SEBI notifies Industrial Standards for Reporting of Business Responsibility and Sustainability Reporting Core

SEBI through its notification² dated 20.12.2024 (“Industry Standards for BRSR Core”) has notified industrial standards for the listed entities in Business Responsibility and Sustainability Reporting (“BRSR”) Core.

The Industry Standards Forum (“ISF”) comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, has formulated industry standards, in consultation with SEBI, for effective implementation of the BRSR Core under Regulation 34(2)(f) of LODR.

These standards are intended to facilitate the effective implementation of the BRSR Core. The members of ISF as well as the stock exchanges, must publish these industrial standards on their respective websites and stock exchanges shall also bring the contents of these industrial standards to the notice of their respective listed entities. This notification shall come into effect for the financial year 2024-25 and onwards.

SEBI notifies prior approval is required for change in control of a body corporate intermediary

SEBI through its circular for prior approval for change in control in relation to the transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control³ (“Transfer of shareholding Circular”) dated 27.12.2024, has issued clarifications on scenarios involving transfer and transmission of shareholdings among body corporates intermediaries. The provisions of this circular shall come into effect immediately.

The key clarification issued by SEBI are as follows:

² [SEBI | Industry Standards on Reporting of BRSR Core](#)

³ [SEBI | Prior approval for change in control: Transfer of shareholdings among immediate relatives and transmission of shareholdings and their effect on change in control](#)

- i. SEBI has issued a notification mandating that prior approval shall be required for any change in the control of a body corporate intermediary, where such change results from the transfer or the transmission of shareholdings in the intermediary.
- ii. In an unlisted body corporate intermediary, the transfer or transmission of shareholdings to an immediate relative shall not result in change of control in the company.
- iii. In proprietary firm type intermediary, any transfer or transmission of the business or capital to another person shall be deemed as a change in the legal formation or ownership of the firm. Consequently, such transfer shall be regarded as a change in control, and the transferee shall be required to obtain prior approval from SEBI and a fresh registration in the name of the transferee shall be required.
- iv. In partnership firm type intermediary, transfers between existing partners shall not be considered as a change in control, unless a new partner is introduced. In such cases, the prior approval and fresh registration of SEBI will be required. Furthermore, if the partnership deed contains a provision stipulating that, in the event of the death of a partner, the legal heir is admitted as a partner, in such scenario the partnership firm is reconstituted and transfer of partnership rights to the legal heir by way of transmission shall not be considered a change in control.
- v. Entities or shareholders joining the controlling interest in the intermediary, following the transfer or transmission of shares (whether from an immediate relative or not), must meet the “fit and proper person” criteria outlined in Schedule II of the SEBI (Intermediaries) Regulations, 2008.

GST Council recommends removal of GST charges payable on penal charges imposed by the banks and NBFCs

The GST council in its 55th meeting⁴ held on 21.12.2024 *inter-alia* made the following recommendation, that no goods and service tax shall be payable on the ‘penal charges’ levied and collected by Banks and NBFCs from the borrower(s) for non-compliance of terms and conditions of the loan agreement.

The RBI circular on ‘Fair Lending Practice - Penal Charges in Loan Accounts’ dated 18.08.2024 directed and mandated

⁴ [55th GST Council Recommendation](#)

Banks and NBFCs to impose penal charges instead of penal interest on non-compliance of terms and conditions of the loan agreement. Further, the GST Council made certain other recommendations which includes *inter-alia* changes in GST tax rates, provide relief to individuals, measures for facilitation of trade and measures for streamlining compliances in GST.

GOVERNMENT NOTIFICATIONS

MNRE issued Office Memorandum on Guidelines for implementing the “PM Surya Ghar: Muft Bijli Yojana”

The Ministry of New and Renewable Energy (“MNRE”) by its Office Memorandum dated 28.12.2024 issued the Operational Guidelines for implementation of Payment Security Mechanism Component (“PSM”) and Central Financial Assistance Component (“CFA”) for Renewable Energy Service Company (“RESCO”) Models or Utility Led/ State Led Aggregation Models (“ULA”) (hereinafter the “Operational Guidelines”) under the PM-Surya Ghar: Muft Bijli Yojana⁵ (“Scheme”).

The Operational Guidelines have been issued for implementation of the CFA Component to residential consumers for eligible consumer categories only through RESCO/ ULA Models as well as for implementation of the PSM. The implementation period of the Scheme shall be till 31.03.2027.

The Operational Guidelines aim to achieve the following objectives:

- i. establishment of the implementation mechanism supporting installations through RESCO and ULA models for Rooftop Solar System (“RTS”) for eligible consumer categories;
- ii. establishment of the method for leveraging PSM to ensure timely payments to RESCO developers;
- iii. to enable DISCOMS/State Governments/State Designated Entities (“SDA”) to support RTS development under RESCO and ULA models of deployment.

For the purpose of being eligible for CFA, residential RTS should be a grid-connected solar power system tagged to a particular residential power connection of the DISCOM and only installations on roofs, terraces, balconies, elevated structures as well as special RTS installations such as a Building Integrated Photovoltaics, will be eligible for CFA support. Virtual Net Metering shall be eligible for CFA if it is approved by the DISCOM. CFA for ULA Proposals shall

be released against households for which installed capacity is up to 3 kW.

Households with pre-existing RTS will not be eligible under RESCO and ULA models. However, no CFA will be provided to non-residential segments of consumers, including government segment, commercial and industrial segment etc. The structure of CFA for residential sector shall be as per the provisions of MNRE Office Memorandum dated 07.06.2024 (“OM”) and will be fixed as per benchmark rates established under the Scheme as per the OM, irrespective of any price/ cost discovery undertaken by the State entities under ULA. The RTS may include additional technology components but the CFA calculation shall be based on the CFA structure under the Scheme as per capacity of solar modules installed in the system.

The Operational Guidelines provides for installation of modules complying with Domestic Content Requirement (“DCR”) conditions to be eligible for CFA. Use of non-DCR modules in any form will render the installation ineligible for CFA. RESCO will submit a declaration form from the equipment manufacturer certifying DCR compliance.

Under the Operational Guidelines, there will be a corpus of Rs 100 crore for a PSM-RTS that would be managed and administered by the National Program Implementation Agency in an interest-bearing bank account. The ULA proposals from SDA can access the PSM-RTS to provide payment security for projects in which RESCO have been contracted. The PSM-RTS will be utilized only for making payments for demands raised based on automated billing system, irrespective of any other disputes, claims etc. that may be made by the utility or the vendor. The PSM may be supplemented through other grants, funds and sources after due approval of the Ministry and the Technical Committee will oversee and monitor the implementation of PSM process and recommend modifications, if any, for seeking due approval.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that courts/ tribunals cannot assume jurisdiction of RBI by imposing a ceiling on the rates of interest charged by banks.

The Supreme Court by its judgement dated 20.12.2024 in *Hongkong and Shanghai Banking Corporation v. Awaz & Ors.*⁶ held that courts/ tribunals cannot impose a ceiling on rate of interest charged by banks from credit card holders on the premise that rate of interest is usurious or unfair trade practice, as the same amounts to encroachment upon RBI’s domain.

⁵[Guidelines for PM Surya Ghar Muft Bijli Yojana](#)

⁶Civil Appeal No. 5273 of 2008.

The Supreme Court observed that RBI is the prime banking institution, and a statutory authority conferred with supervisory role over banking within the country which has issued binding directions having statutory force. Further, policy decisions pertaining to the rate of interest and trade practices is a regulatory function of the RBI and it cannot be issued directions to enact a particular legislation.

The Supreme Court held that an administrative policy decision of a bank does not constitute provisions/facilities of banking, which may come under the umbrella of 'service' defined under Section 2(1)(o) of the Consumer Protection Act 1986 ("CPA").

Supreme Court held that no registration or stamp duty is required for a compromise deed between parties when one of the parties had a pre-existing right on the property.

The Supreme Court by its judgement dated 20.12.2024 in *Mukesh v. The State of Madhya Pradesh*⁷ held that stamp duty is not chargeable on a consent decree passed in favour of a party pursuant to a compromise in a suit for adverse possession if such party already had a pre-existing right to the suit property.

The Supreme Court held that a consent decree passed in a suit for adverse possession cannot be said to be conveyance for the suit property as no right is transferred and it merely confirms a pre-existing right. It observed that stamp duty is not chargeable on an order/decree of the court as the same does not fall under the documents specified in Schedule I or I-A read with Section 3 of the Indian Stamp Act, 1899 which provides for the instruments chargeable with stamp duty.

Further, the Supreme Court laid down the criteria for taking the benefit of the exceptions under Section 17(2)(vi) of the Registration Act 1908, whereby consent decrees are exempted from registration, as follows:

- i. the consent decree must have been obtained without any collusion.
- ii. the consent decree must pertain to the subject property in the suit.
- iii. there must be a pre-existing right over the subject property and the consent decree should not create a right afresh.

Supreme Court held that there is no requirement of default for a debt to be termed as a financial debt under the IBC.

The Supreme Court by its judgement dated 20.12.2024 in *China Development Bank v. Doha Bank Q.P.S.C. & Ors.*⁸

held that there is no provision in the Insolvency and Bankruptcy Code 2016 ("IBC") stipulating that debt becomes financial debt only when a default occurs and therefore, any person to whom financial debt is owed becomes the financial creditor even in the absence of default in payment of debt under Section 5(7) of IBC.

The Supreme Court observed that that while default has been defined under Section 3(12) of IBC, it becomes relevant only while invoking the provisions of Section 7 of IBC to initiate Corporate Insolvency Resolution Process ("CIRP") against a corporate debtor. Therefore, the moment it is established that debt is owed to any person, such person becomes a financial creditor and can submit a claim in accordance with the public announcement of CIRP under Section 15 of the IBC for which, default is not a requirement.

High Court of Delhi quashed ED's refusal to grant NOC for Overseas Investment.

The High Court of Delhi by its order dated 17.12.2024 in *Times Internet Limited and Bennett Coleman & Co. Ltd. v. Directorate of Enforcement*⁹ quashed the rejection of NOC by the Enforcement Directorate ("ED") under Rule 10 of the Foreign Exchange Management (Overseas Investment) Rules, 2022.

The High Court held that mere issuance of summons under Section 37(1) of the Foreign Exchange Management Act, 1999 ("FEMA") in the absence of any formal adjudication or determination of contravention of FEMA or allegations of violations under Sections 131 or 132 of the Income Tax Act, 1961 cannot constitute sufficient grounds for denying an NOC.

The High Court held that ED's denial to grant NOC for the proposed investment without any substantive evidence or clear linkage with the alleged violations is arbitrary and inconsistent with the principles of natural justice. It was observed that the regulatory mechanism under FEMA already safeguards against potential misuse and banks are tasked to ensure compliance therewith. It noted that the penalty for FEMA violations is fiscal in nature, thereby rendering the denial of NOCs, which obstructs legitimate business operations, disproportionate and unreasonable.

CERC issued suo-motu clarificatory and practice directions regarding Modalities for Scheduling of Infirm Power.

The Central Electricity Regulatory Commission ("CERC") passed its *suo-motu* order dated 22.12.2024¹⁰, issuing clarifications and practice directions for removal of

⁷Civil Appeal No. 14808 of 2024.

⁸Civil Appeal No. 7298 of 2022.

⁹W.P. (C) 15242 of 2023.

¹⁰Petition No. 11/SM/2024

difficulties in the CERC (Indian Electricity Grid Code) Regulations, 2023 (“Grid Code”).

The CERC observed that Modalities for Scheduling of Infirm Power (“Modalities”) before Commercial Operation Date (“COD”) are yet to be notified in terms of the Grid Code but scheduling of power is being carried out, hence, there is a requirement to specify the modalities of such scheduling till the time amendments are notified to the Grid Code. The CERC noted the following:

- i. The requirements to be completed under the Grid Code by a generating station before issuance of a successful trial run certificate as per Regulation 25 of the Grid Code (“Certificate”) are critical from a system’s perspective before allowing the scheduling of such power into the grid.
- ii. Notwithstanding any provisions to the contrary in the Power Purchase Agreement (“PPA”), any scheduling of power shall be allowed only after issuance of a Certificate by the Regional Load Dispatch Centre (“RLDC”).
- iii. Prior to issuance of the Certificate, generating stations would require prior permission of RLDC on each occasion of interchange of infirm power with details such as those relating to the specific commissioning activity, testing, full load testing, duration and the intended period of interchange as per Regulation 19(7) of the Grid Code.
- iv. RLDCs shall maintain information for each such occasion and specific testing carried out by the generating station as per the Grid Code.
- v. Once successful trial operation is achieved, a generating station should declare COD at the earliest or record reasons in writing for not doing so. Further, in the event the PPA provides for treatment of power post successful trial operation, the power shall be treated in that manner.
- vi. In all other cases, beneficiary/ intermediary will have right of first refusal with advance notice of 7 (seven) days. If there is no response from beneficiary/ intermediary, it will be deemed to be a refusal, and the power can be sold in the market.

ABOUT SAGUS LEGAL

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