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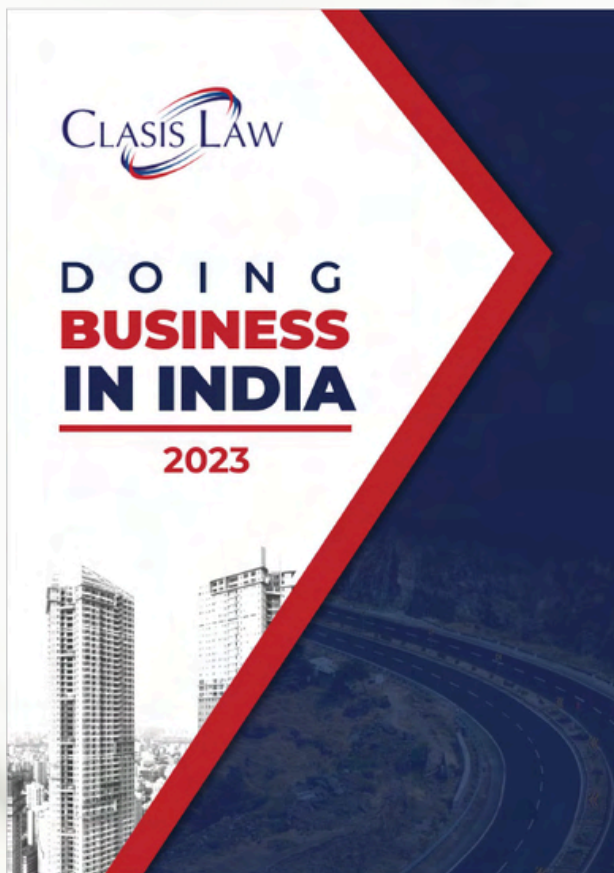
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DOING BUSINESS IN INDIA

We are pleased to share the **Fifth Edition** of our e-book titled ***"Doing Business in India"***.

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



Please scan the **QR code** above or [Click Here](#) to download the e-book. Alternatively, you may write to us at info@clasislaw.com for the copy.

FEATURED ARTICLE



FOREIGN EXCHANGE COMPOUNDING 2024: AN OVERVIEW OF THE LATEST RULES AND REFORMS

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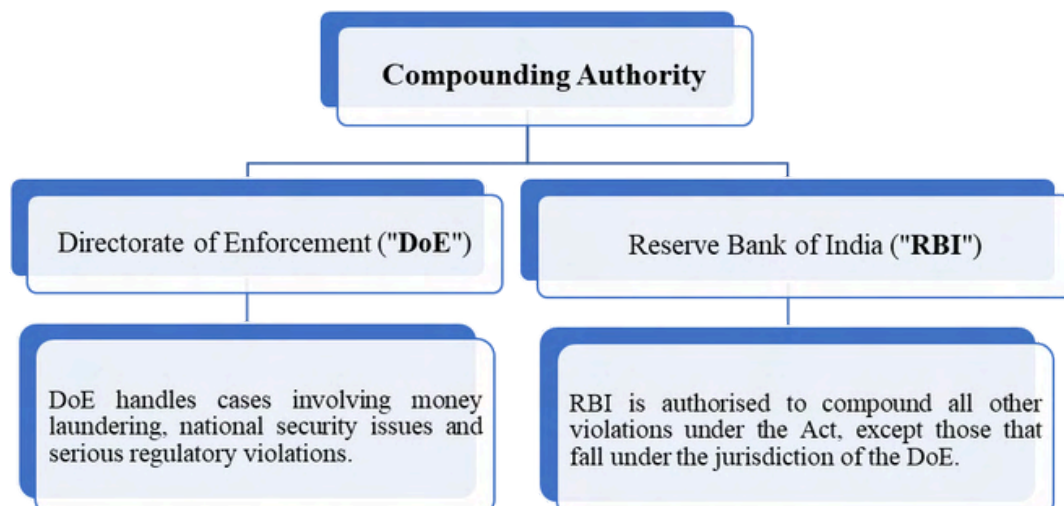
Introduction

As part of a broader effort to simplify and rationalize existing rules and regulations to improve the ease of doing business, the Ministry of Finance in consultation with the Reserve Bank of India (“**RBI**”), conducted a comprehensive review of the compounding proceedings rules. As a result, the Ministry introduced the Foreign Exchange (Compounding Proceedings) Rules, 2024 (“**Compounding Rules**”) replacing the Foreign Exchange (Compounding Proceedings) Rules, 2000 (“**Former Rules**”). In addition, RBI released the Directions on Compounding of Contravention under Foreign Exchange Management Act, 1999 (“**Compounding Directions**”), further clarifying the compounding application process. The Compounding Rules specify that the compounding applications filed prior to September 12, 2024 will be processed in accordance with the Former Rules.

Compounding under Foreign Exchange Management Act, 1999 (“FEMA” or “Act”)

Compounding under FEMA refers to a process in which a person^[1] who has violated any provisions of the Act may voluntarily admit the violation, plead guilty and seek to resolve the matter through financial penalties. Applicants may file for compounding either suo moto or in response to a memorandum of contravention issued by the authority (ies).

According to the Compounding Rules, two authorities are responsible for compounding violations of the provisions of the Act, as outlined in the table below:



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The compounding authority needs to ensure that, before processing the compounding application, the applicant has completed the required administrative actions. Compounding Directions provides an inclusive list of administrative actions such as obtaining the requisite approvals or permissions, unwinding or reversing the transactions done in violation of provisions of the Act, repatriating any outstanding receivables, compliance with pricing guidelines or submission of a valuation certificate and compliance with reporting requirements.

The new rules have revised the monetary thresholds to determine the appropriate officer who will entertain the particular compounding application. The updated thresholds are as follows:

S. No.	RBI Officer Rank	Amount Involved in Contravention	
		Under Former Rules	Under Revised Rules
1.	Assistant General Manager	Up to INR 1 million	Up to INR 6 million
2.	Deputy General Manager	INR 1 million to INR 4 million	INR 6 million to INR 25 million
3.	General Manager	INR 4 million to INR 10 million	INR 25 million to INR 50 million
4.	Chief General Manager	Over INR 10 million	Over INR 50 million

The revised rules have also explicitly listed the contraventions that are not eligible for compounding. These include:

- i. violations under the Act where the amount involved is unquantifiable;
- ii. violations related to the holding, acquisition, possession, dealing or transfer of foreign exchange, securities or immovable property located outside India for which section 37A of the Act has already been invoked;
- iii. cases where the DoE has opinion that the violation poses a national security threat such as those related to money laundering or terrorist financing;
- iv. cases where the matter is under adjudication and the adjudicating authority has already passed an order imposing penalty under the Act;
- v. cases where the compounding authority believes that the contravention requires further investigation by DoE to ascertain the amount involved.

Key Changes in the Compounding Rules and Directions

The Compounding Rules and Compounding Directions have introduced procedural changes in the existing compounding process. Some of the important updates include:

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Flexibility in application submission - The new rules provide applicants with the flexibility to submit their applications either physically or online through the PRAVAAH portal.

Introduction of digital payment options - A significant reform in the Compounding Rules is the introduction of digital payment options for both the compounding application fee and compounded amount.

Increase in application fee - The compounding application fee has also been increased from INR 5,000 to INR 10,000.

Conclusion

The reform has aimed to expedite and streamline the processing of compounding applications, introduce digital payment options for application fees and compounding amounts and simplify the provisions to eliminate ambiguity and improve overall clarity.

Footnotes :

[1] As per section 2(h) of the Act, person includes— (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and (vii) any agency, office or branch owned or controlled by such person.

Disclaimer: This publication is not intended to cover all the aspects of those referred to herein and is only based on the understanding with respect to the Foreign Exchange Compounding Rules, 2024 and related directions. This publication has been prepared for information purposes only.

LEGAL UPDATES



SUPREME COURT CLARIFIES THE ROLE AND LIABILITY OF AUTHORISED SIGNATORIES: CORPORATE VS INDIVIDUAL RESPONSIBILITY

Introduction:

In a recent judgment^[1], the Supreme Court of India (SC) addressed a critical issue regarding the scope of sections 138, 143A, and 148 of the Negotiable Instruments Act, 1881 (the NI Act), particularly involving the liability of an authorised signatory of a cheque issued by a company. The SC clarified whether such a signatory could be considered as the "drawer" of the cheque and hence be liable to deposit compensation or fines under the Act.

Facts of the Case:

A company named M/s Gee Pee Infotech Pvt. Ltd. (company), represented by its director, the Appellant, entered into an agreement with the Respondent for the distribution of BSNL e-recharge pins for which the company received the required payment from the Respondent. Thereafter, the Respondent alleged that most of the supplied merchandise was fake, which resulted in financial losses to the Respondent. To settle the dispute, the company issued several post-dated cheques as part of the settlement. However, when presented, the said cheques were dishonored, and subseque-

ntly, a complaint was filed by the Respondent against the company and the Appellant under Section 138 of the NI Act.

The trial court convicted both the company and the Appellant under Section 138 of the NI Act and imposed a fine of forty (40) lakh rupees, sentencing the Appellant to pay the fine or face imprisonment. Aggrieved by the conviction and sentence passed by the trial court, the Appellant preferred an appeal, where the appellate court suspended the sentence; however, it directed the Appellant to deposit 20% of the compensation as per Section 148 of the NI Act. The Appellant thereafter approached the Karnataka High Court, challenging the appellate court's said direction to deposit 20% of the fine/compensation amount. However, the Karnataka High Court upheld the appellate court's order. Aggrieved by the High Court's order, the Appellant approached the SC.

Observations of the SC:

The primary legal question before the SC was whether an authorised signatory (signing on a cheque issued in the name and on behalf of the company) could be considered its "drawer" under Sections

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143A and 148 of the NI Act. This determination affects whether such a signatory can be ordered to pay interim or additional compensation during appeals. The Supreme Court, in view of the facts and circumstances of the case, noted that the primary liability for an offence under Section 138 lies with the company, and the company's management is vicariously liable only under specific conditions provided in Section 141 and for the purpose of Section 143A of the NI Act.

A signatory merely authorised to sign on behalf of the company would not become the 'drawer' of the cheque and, therefore, could not be directed to pay interim compensation under Section 143A. The Court emphasised that sections 143A and 148 of the Act apply strictly to the "drawer" as defined under the NI Act, and the Penal statutes must be interpreted strictly, and liability cannot be extended beyond the express provisions of the law. The Supreme Court also noted that the High Court failed to consider the crucial aspects in the light of the dictum laid down by the SC in the decisions referred to while

considering the application for suspension of sentence for the conviction under Section 138 of the NI Act in the pending appeal.

Conclusion:

The SC ruled in favour of the appellant, setting aside the appellate court's order to deposit the fine. It held that an authorised signatory, merely acting on behalf of a company, cannot be deemed the "drawer" of the cheque for the purposes of Sections 143A and 148. The Court emphasized that corporate liability primarily rests with the company, and individual liability under such provisions requires explicit statutory conditions or evidence of direct culpability. By clarifying the scope of liability for signatories, the judgment protects corporate officers, particularly directors and officers signing cheques in their official capacity, from unwarranted financial penalties while upholding the legal framework for cheque dishonour cases under the Negotiable Instruments Act.

Footnotes

1. BIJAY AGARWAL VS M/S MEDILINES [2024 INSC 918]

CORPORATE REGULATORY UPDATES

1. Trade Receivables Discounting System platforms

On November 7, 2024, the Ministry of Micro, Small and Medium Enterprises issued a notification mandating all companies registered under the Companies Act, 2013, having a turnover of more than INR 250 crore and all Central Public Sector Enterprises to get themselves onboarded on the Trade Receivables Discounting System platforms. The onboarding process on the TRDSPs shall be completed by 31 March 2025.

2. SEBI proposes changes to the definition of “Unpublished Price Sensitive Information”

SEBI on November 9, 2024, issued a consultation paper on the proposed review of the definition of Unpublished Price Sensitive Information (‘UPSI’) under SEBI (Prohibition of Insider Trading) Regulations, 2015 (‘PIT Regulations’) to bring regulatory clarity, certainty, and uniformity of compliance in the ecosystem.

It seeks to align the definition of UPSI in PIT Regulations with events from Para A and Para B of Part A of Schedule III as defined under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

3. SEBI relaxes rules for Infrastructure Investment Trusts (“InvITs”), and employee benefit schemes and aligns timelines for distribution

SEBI issued a circular on November 13, 2024, to provide relaxation from certain provisions for units allotted to an employee benefit trust

for the purpose of a unit-based employee benefit scheme, alignment of timelines for making a distribution by InvITs and provide the format of quarterly report and compliance certificate. As per the circular, the lock-in and allotment-related restrictions provided under Chapter 7 of the Master Circular for InvITs dated May 15, 2024, shall not apply to the employee benefit trust. Further, the timelines for making distributions by InvITs have been aligned with the InvIT Regulations which were amended on September 27, 2024. Lastly, in order to ensure uniformity across the industry, Bharat InvITs Association (“BIA”), in consultation with SEBI, shall specify the format of the quarterly report and compliance certificate required to be submitted under InvIT Regulations and publish it on its website. All InvITs are required to follow the aforementioned format specified by BIA.

4. SEBI seeks public comments on the regulatory framework for Angel Funds

SEBI issued a consultation paper on November 13, 2024, on a review of the regulatory framework for Angel Funds in SEBI (Alternative Investment Funds) Regulations, 2012. This paper aims to seek views from the public on the need for channelling capital from Angel investor pools through a regulated structure. If the need for a regulatory environment for Angel Funds is acknowledged, the paper also aims to seek views on proposals to streamline the regulatory framework for Angel Funds to: (a) rationalise their fundraising processes; (b) strengthen disclosure and governance requirements; and (c) provide operational clarity and investment flexibility. The public

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comments on the consultation paper were to be submitted by November 28, 2024.

5. Exemptions from AML/CFT/KYC Guidelines

On November 18, 2022, the International Financial Services Centres Authority (“**IFSCA**”) announced exemptions for certain entities and activities from the applicability of the International Financial Services Centres Authority (AML/CFT/KYC) Guidelines, 2022.

Exempted Entities/Activities:

- Global-in-House Centres under IFSCA (Global In-House Centres) Regulations, 2020.
- International Branch Campuses (IBC) or Offshore Educational Centres (OEC) of foreign universities registered under IFSCA regulations.

- Financial Crime Compliance Services Providers under IFSCA (Book-keeping, Accounting, Taxation, and Financial Crime Compliance Services) Regulations, 2024.
- Financial Institutions serving only entities within their financial group in countries not identified by FATF as high-risk jurisdictions, provided business risk assessments are conducted.

Additional Requirements:

- Exempted entities must conduct and document Business Risk Assessments.
- If AML/CTF risks are identified during the assessment, compliance with the Prevention of Money Laundering Act, 2002, and AML/CFT/KYC Guidelines, 2022, is mandatory.
- All financial institutions must transact through accounts maintained with Banking Units in IFSC.

Off Beat Section

Unpacking the True Spirit of Boxing Day

Celebrated on December 26th, Boxing Day stands as a day steeped in history, reflecting the evolving nature of generosity, class dynamics, and modern-day traditions. Despite its name, Boxing Day has little to do with gloves or fighting. Originating in Victorian England, this day was created as an opportunity for the wealthy to give back to their servants and tradespeople, offering small gift boxes, coins, or even food in appreciation of their services during the Christmas season.

For many, Boxing Day also carried religious significance, tied to the story of St. Stephen, a Christian martyr renowned for his good works. Churches would open their alms boxes filled with donations from parishioners, distributing them to the poor on this day. Over time, the day transitioned into a broader celebration of community spirit.

Today, Boxing Day has become a blend of historical reflection and modern festivity. Countries such as the UK, Australia, Canada, and New Zealand observe it with distinctive traditions. While football matches, cricket matches, and horse racing bring communities together in some places, others flock to malls and shops to enjoy massive post-Christmas sales, reminiscent of the Black Friday frenzy in the U.S. Whatever the form, Boxing Day continues to carry the message of giving and togetherness, making it a day worth celebrating.

Did You Know ?

- ▶ The holiday's name comes from "Christmas boxes", which wealthy families gifted to their staff, tradespeople, and servants.
- ▶ Boxing Day is closely associated with St. Stephen, the patron saint of charitable acts, whose feast day is celebrated on December 26th.
- ▶ Fox hunting was once a significant Boxing Day tradition in the UK but has been replaced by modern, trail-following hunts since its ban in 2004.
- ▶ In Australia, the Boxing Day Test cricket match has become an iconic event, while Canada celebrates with some of the year's biggest shopping sales.



Notable Recognitions & Accolades



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