

NEWSLETTER

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Monthly Bulletin

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DOING BUSINESS IN INDIA

We are pleased to share our e-book titled

"Doing Business in India"



Please scan the **QR code** above
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e-book. Alternatively, you may
write to us at
info@clasislaw.com

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

FEATURED ARTICLE



ISSUANCE OF EQUITY INSTRUMENTS AGAINST IMPORT OF CAPITAL GOODS UNDER FOREIGN EXCHANGE AND MANAGEMENT ACT, 1999

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Under Foreign Exchange and Management Act, 1999 (**"FEMA"**), an Indian Company is permitted to import goods and services subject to the compliance of Foreign Trade Policy (**"FTP"**) and Foreign Exchange Management (Current Account Transactions) Rules, 2000 (**"Rules"**). Import of goods and services are current account transactions and regulated by the Directorate General of Foreign Trade (**"DGFT"**) under Ministry of Commerce & Industry, Government of India.

Further, an Indian Company is allowed to issue equity instruments^[1] to a person resident outside India subject to the compliance with Foreign Direct Investment Policy (**"FDI Policy"**) and Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**"NDI Rules"**). Issuance of capital instrument is a capital account transaction under FEMA and regulated by Reserve Bank of India (**"RBI"**). By and large, NDI Rules provide detailed framework for issuance of equity instruments to a person resident outside India subject to the prescribed sectoral caps, entry routes and pricing guidelines as may applicable to a particular investment.

NDI Rules permits an Indian Company to issue equity instruments to a person resident outside India against the import of capital goods^[1] (other than second-hand machinery). While issuing equity instruments against capital goods, the Indian company is required to comply with the provisions of NDI rules particularly the following requirements:

- a. The import of capital goods should be in accordance with the FTP and the regulations on imports issued under FEMA;
- b. An independent valuation report of the capital good is required to be obtained from an independent valuer from the country of import;
- c. The documents/ certificates issued by the customs authorities towards assessment of the fair-value of capital good are also required.

If the issuance of equity instruments against import of capital goods requires government route^[2], then the application to be submitted for government approval is to be accompanied with a special resolution^[3] passed by the company along with the documents mentioned in clause (b) and (c) above.

FEATURED ARTICLE

Further, as per press note 3 (series 2020) issued by Department for Promotion of Industry and Internal Trade, if an Indian company issues equity instruments (against import of capital goods) to an entity of a country, which shares land border with India or where the beneficial owner is situated in or is a citizen of any such country, then the investment can only happen after the government approval.

Once the Indian company has issued the equity instruments to a person resident outside India against the import of capital goods, then such issuance is to be reported to the Reserve Bank of India by submitting form FC-GPR along with the requisite documents such as valuation report, custom documents and board resolution.

FOOTNOTES :

[1] "Equity Instruments" means equity shares, convertible debentures, preference shares and share warrants issued by an Indian company.

[2] "Capital Goods" - means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

[3] "Government route" means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

[4] If a company issue shares for consideration other than cash, then it has to pass a special resolution under section 62(1)(c) of the Companies Act, 2013

LEGAL UPDATES

Exclusive Jurisdiction and Arbitral Procedure: Who Determines the Seat?

INTRODUCTION

In a recent decision in *M/S Viva Infraventure Pvt Ltd v. New Okhla Industrial Development Authority*, the Delhi High Court dismissed a petition under section 29A (5) of the Arbitration and Conciliation Act, 1996, on the grounds of lack of jurisdiction. The Court held that the exclusive jurisdiction clause in Clause 32 of the Contract Agreement, which designates Gautam Budh Nagar as the judicial seat, took precedence over the Arbitrator's Procedural Order fixing the arbitration seat at New Delhi, and accordingly determined that Delhi lacked supervisory authority in the matter.

FACTS OF THE CASE

The dispute between the Parties stemmed from the Contract Agreement dated 19.10.2015, for the construction of a 60-meter-wide road from Sector 115, 112 Hindon Pusta to Sector 1, Tech Zone-4, Greater Noida, including Biskh Road and Hindon Road, Noida. The Petitioner approached the Allahabad High Court under Section 11 of the Arbitration and Conciliation Act, requesting the appointment of a Sole Arbitrator to resolve the dispute. Following this, the Allahabad High Court appointed a Sole Arbitrator through an Order dated 13.09.2022. The appointed arbitrator, in turn, issued Procedural Order No. 1 on 15.10.2022, designating Delhi as the seat of arbitration.

The pleadings in the arbitral proceedings came to be completed on 07.04.2023. Further, the period of one year for concluding the arbitral proceedings and passing of the arbitral award in terms of section 29A(1) of the Arbitration Act expired on 22.03.2024. Thereafter, in terms of section 29A(3) of the Arbitration Act, with consent of Parties, the mandate of the Sole Arbitrator was extended by a further period of six months i.e., up to 21.09.2024.

Since, the arbitration proceedings are currently at the stage of final arguments, the Petitioner filed an application under section 29A(5) for extending the mandate of the Arbitrator before the Hon'ble Delhi High Court.

OBSERVATION OF THE COURT

At the outset, the Hon'ble Court observed that, the agreed arbitration clause i.e. Clause 32 in the Contract Agreement encapsulates two things, *firstly*, the venue of the arbitration which is to be fixed by the arbitrator in his sole discretion and *secondly*, that any suit or application for the enforcement of the arbitration clause shall be filed in the competent court at Gautam Budh Nagar.

As per the principle laid down in *BGS SGS Soma*, [1] the venue of arbitration as decided by the Arbitrator shall also be construed as the seat of arbitration, unless there is a clear indication to the contrary. However, in the present case, the Hon'ble Court observed that if this principle is to be applied, it would result in completely ignoring the second part of the arbitration clause in the Contract Agreement, which grants exclusive jurisdiction to the competent courts at Gautam Budh Nagar.

In view of the foregoing, the Hon'ble Court analysed the issue whether the seat of arbitration so designated by the Arbitrator shall override an exclusive jurisdiction fixed by the Contract Agreement.

Placing reliance on the decision in *Precitech Enclosures Systems Pvt. Ltd. v. Rudrapur Precision Industries & Anr.*, [2] *CARS 24 Services (P) Ltd. v. Cyber Approach Workspace LLP*, [3] and *Hunch Circle (P) Ltd. v. Futuretimes Technology India (P) Ltd.* [4] the Hon'ble Court observed that it has been a settled position of law that the court

LEGAL UPDATES

identified in exclusive jurisdiction clause will be deemed to have supervisory jurisdiction over the seat of arbitration in agreements wherein the arbitration clause is covered under the exclusive jurisdiction.

Further, the court observed that the consent of the Parties in Procedural Order was limited to “Practice Directions” including the conduct and schedule of proceedings and the Parties have nowhere consented for the change of seat of arbitration. The Court further acknowledged the fact that the directions wherein the venue/seat of arbitration was fixed, does not include the phrase “*with consent of Parties,*” albeit being passed in the presence of the counsels for the Parties.

Consequently, New Delhi has been fixed as only the venue of arbitration vide Procedural Order dated 15.10.2022 and courts at Gautam Budh Nagar continue to hold supervisory jurisdiction over the arbitral proceedings as fixed under Clause 32 of the Contract Agreement. In view of the foregoing the Court adjudged that the Procedural Order passed by the Arbitrator does

not override the exclusive jurisdiction clause as agreed by the Parties in the Contract Agreement, when consent by the Parties has not been expressly rendered.

CONCLUSION

While considering the case at hand, the Court has reiterated and upheld the concept of party autonomy, wherein a mere presence of the Parties cannot be construed as consent of the Parties. The Court further encapsulated the fact that the Arbitrator does not have the power to override agreed clauses of an agreement, including the clause providing exclusive jurisdiction to a specific court as the seat of arbitration. Such alterations to a Contract Agreement is possible only when Parties expressly consent to such alterations. Without the specific consent being rendered by the Parties, no such changes could be enforced unilaterally by one party or on the sole discretion of the Arbitrator.

FOOTNOTES:

[1] *BGS SGS Soma JV vs NHPC Limited*, (2020) 4 SCC 234.

[2] *Precitech Enclosures Systems Private Limited vs Rudrapur Precision Industries & Anr.*, 2025 SCC OnLine Del 1609.

[3] *CARS 24 Services (P) Ltd. vs Cyber Approach Workspace LLP*, 2020 SCC OnLine Del 1720.

[4] *Hunch Circle (P) Ltd. vs Futuretimes Technology India (P) Ltd.*, 2022 SCC OnLine Del 361.

COMPILED REGULATORY UPDATES

1. Release of consultation paper on draft revamped regulatory framework for Global Access in the IFSCA

The International Financial Services Centers Authority (**'IFSCA'**) on May 30, 2025, issued revised consultation paper on draft revamped regulatory framework for Global Access in the IFSC. The key features of the revised framework are:

- Allowing broker-dealers and Global Access Providers to offer access to foreign stock exchanges. Entities must obtain authorisation, meet net worth and "fit and proper" criteria, and comply with KYC/AML norms.
- Expands the definition of Global Access Providers (GAPs) to include broker-dealers with foreign broker arrangements and introduces distinct roles for GAPs, Introducing Brokers, and Introdurers.
- A tiered net worth requirement structure is established to promote wider participation. The minimum net worth for subsidiaries and client-facing GAPs is reduced from USD 1 million to USD 500,000. Introducing Brokers can now enter with a lower threshold of USD 100,000 to ease market entry.
- Disclosures, data storage in IFSC, and quarterly reporting to the Authority are mandatory. Advertising must be accurate, and regulatory fees to apply.

2. IFSCA's updated policies on Payment Service Providers

The IFSCA on June 6, 2025, issued a circular outlining updated policies for Payment Service Providers (**PSPs**) operating within the IFSC concerning their involvement in international payment systems. IFSCA now requires PSPs to obtain prior approval before participating in international payment systems for transactions with banks or financial institutions outside the IFSC. Furthermore, any international payment system that facilitates payments between PSPs or other financial institutions within the IFSC, thereby impacting domestic IFSC transactions, must secure specific authorization from the IFSCA. PSPs are permitted to join such internal IFSC-affecting systems only after confirming the system's compliance with this authorization requirement and obtaining the IFSCA's prior approval. The circular mandates all PSPs to review their current participation in international payment systems against these new policies and to report their compliance to the Department of Banking Supervision within 30 days. Additionally, PSPs must provide the IFSCA with a comprehensive list of all international payment systems they participated in as of May 31, 2025.

3. Amendment in Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2025

The Reserve Bank of India (**'RBI'**) on June 6, 2025, has issued the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2025. This amendment modifies the existing Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015. The amendment primarily focuses on extending the qualification period for opening a Diamond Dollar Account from 2 to 3 years for persons resident in India.

4. SEBI's consultation paper on responsible use of Artificial Intelligence

The Securities and Exchange Board of India ('SEBI') has released a consultation paper dated June 20, 2025, outlining proposed guidelines for the responsible use of Artificial Intelligence ('AI') and Machine Learning ('ML') in the Indian securities markets. The objective is to gather feedback from stakeholders to optimize the benefits of AI/ML while mitigating potential risks to investor protection, market integrity, and financial stability. The public stakeholders can submit their comments and suggestions on the consultation paper through a specified online link until July 11, 2025.

5. Draft Notification on Amendment to Rule 11(2) of the Companies (Meetings of Board and its Powers) Rules, 2014

MCA has issued a draft notification dated June 26, 2025, proposing an amendment to Rule 11(2) of the Companies (Meetings of Board and its Powers) Rules, 2014. Currently, NBFCs registered with the RBI and engaged in lending or providing guarantees/security in the ordinary course of business are exempt from most provisions of Section 186 of the Companies Act, 2013, except sub-section (1). The proposed amendment seeks to extend the same exemption to the IFSC entities, to promote ease of doing business within IFSC jurisdictions. The proposal has been reviewed by the MCA in consultation with the DEA, RBI, and IFSCA. Stakeholders may submit comments or suggestions on the draft notification through the e-Consultation Module on the MCA website by July 17, 2025.

6. Master Circular for Investment Advisors by SEBI

SEBI has issued a master circular for Investment Advisers. The circular aims to consolidate all applicable directions and guidelines issued to Investment Advisers up to June 11, 2025, providing a single reference document for ease of compliance. It supersedes the previous Master Circular dated May 21, 2024, incorporating updates issued since then. The updated circular has been issued under Section 11(1) of the SEBI Act, 1992, with the objective of protecting investors and maintaining orderly conduct in the securities market.

OFF BEAT SECTION

WORLD POPULATION DAY

World Population Day, established by the UN Development Programme in 1989, traces its roots to July 11, 1987 - "Five Billion Day," which marked the approximate date when the world's population reached five billion. In 1990, the UN General Assembly officially decided to continue this observance to raise awareness about population issues, including their impacts on the environment and development.

On 11 July 2025, we marked the World Population Day by reflecting on the critical role that population dynamics play in shaping our global future. The theme for this year, "Empowering young people to create the families they want in a fair and hopeful world," highlighted the need to equip youth with the tools and support they need to make informed decisions about family life in an increasingly complex world.

Global population growth has been driven by factors such as rising life expectancy and shifts in fertility rates, as well as significant trends like urbanization and migration. However, today's young people face numerous challenges, including economic uncertainty, gender inequality, health crises, the climate emergency, and ongoing conflicts. Despite these hurdles, they continue to demonstrate resilience, leadership, and a commitment to creating positive change.

Empowering the next generation through access to education, healthcare, and gender equality is crucial not only for fostering healthier families but also for building stable, sustainable societies. By addressing these foundational issues, we contribute to a future where all individuals have the opportunity to thrive, regardless of their background or circumstances.

Our firm is committed to advancing initiatives that foster equality and sustainable development, ensuring that the legal frameworks we uphold actively support the achievement of the global objectives.



Notable Recognitions & Accolades

