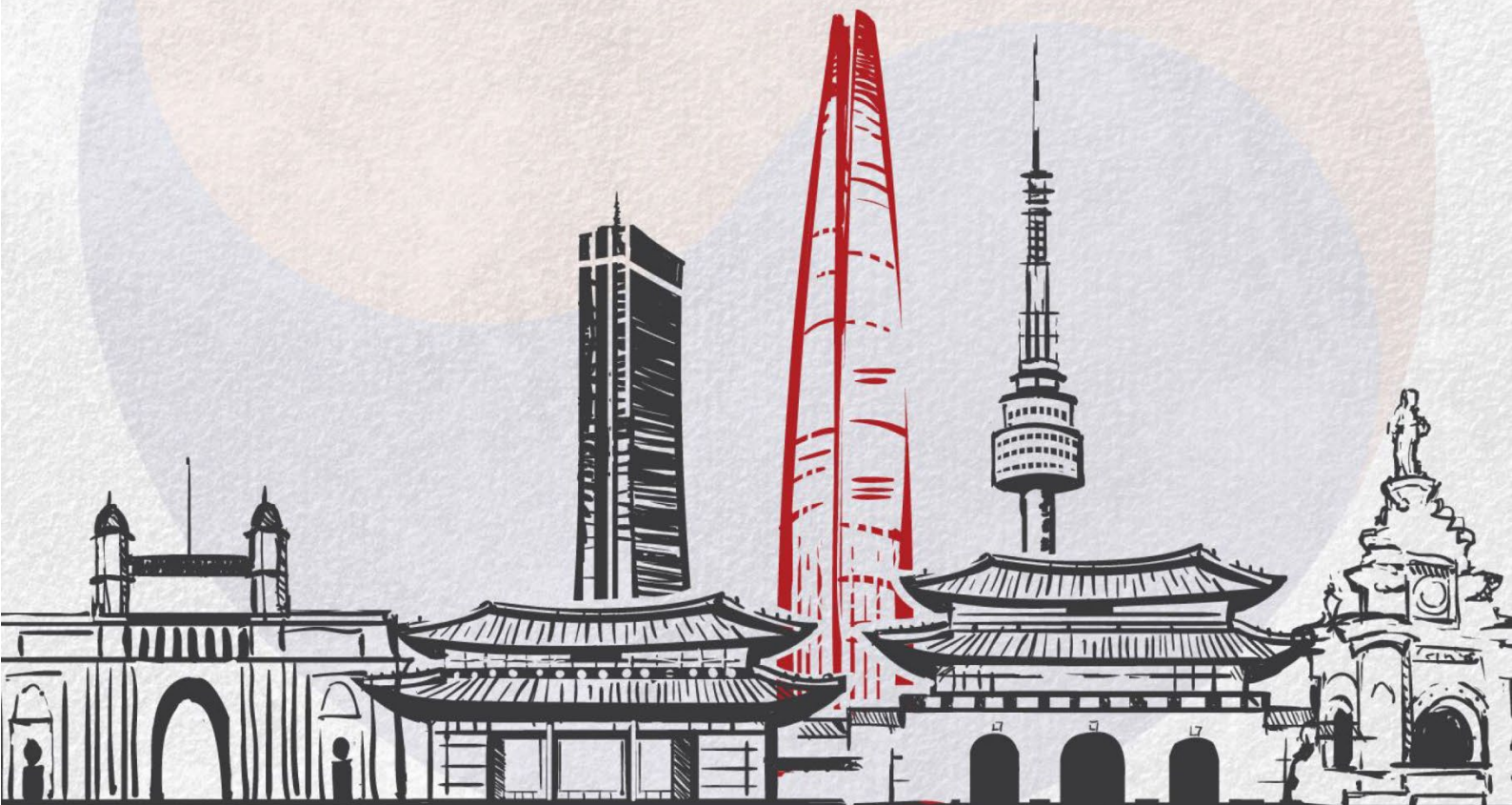


KOREA NEWSLETTER

Quarter of October to December 2022



In this newsletter, **INDUSLAW** brings you key legal, regulatory and policy updates from India (both sector- specific and general) for the recently concluded quarter.

INDUSLAW is a top-tier Indian Law Firm, the 6th Largest in India, providing legal services to a wide range of International & Domestic clients across a variety of sectors. With over **400 lawyers** including **more than 60 Partners** spread across *Bengaluru, Chennai, Delhi & NCR, Hyderabad & Mumbai*, we have been fortunate to partner with and contribute significantly to many established businesses and new economy companies.

We have been fortunate to partner with and contribute significantly to both established businesses and new economy companies. Our clients typically include financial institutions, investment funds, foreign multinationals operating in India, domestic corporations, growing Indian companies, start-ups, social enterprises and not-for-profit entities.

We work with clients across various sectors including, energy (including renewable energy), electronics, food processing, financial services, healthcare and pharmaceuticals, infrastructure, manufacturing, textile and garment, technology and automobile.

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2022 년 10 월~2022 년 12 월 주요 업데이트

파트 A: 섹터별 업데이트

1. 2022 년 신약 및 임상시험(3 차 개정) 규칙 - 승인으로 간주

새로운 개정 규칙은 신청서 제출일로부터 영업일 기준 45 영업일 이내에 승인을 받지 못한 경우 임상시험 윤리 위원회의 승인을 받은 것으로 간주하도록 규정하고 있습니다.

2. 정부, 유전자변형식품 대상 규칙 초안 제청

인도식품안전기준청(FSSAI)은 식품 사용 및 식품 성분을 목적인 '유전자 변형 유기체'를 규제하는 규정을 제안했습니다.

3. 식품 업계 내 광고 관련 개정

FSSAI 는 고객의 이익을 보호하기 위해 식품 사업체가 그러한 주장/광고에 대해 더 많은 책임을 지도록 식품 제품의 주장 및 광고에 공정성을 제공하기 위해 식품안전기준 규정을 개정했습니다. 특히 라벨링, 신고서, 제공량, 표시면, 일자, 영양가와 관련한 특정 지침을 준수해야 합니다.

4. 자동차 연료 소비 감소 관련 개정

도로교통부는 중앙자동차규칙, 특히 M2, M3 및 N2 차량 카테고리에 대해 2001 년 에너지 절약법에 따른 목표 달성을 위하여 인도의 연료 소비를 매핑하고 줄이도록 개정하였습니다.

5. 정부, 전기차("EV")의 배터리 안전을 위한 종합 테스트 매개변수 도입

중공업부는 2023 년 4 월 1 일부터 배터리 안전성을 강화하기 위해 전기차에 대한 종합 테스트 파라미터를 고시했습니다.

6. PLI 제도 승인

고효율 태양광 모듈을 위한 국가 프로그램에 따라 진행된 생산 연계 인센티브(PLI) 제도(Tranche II)(제도)는 인도에서 고효율 태양광 모듈 제조를 활성화하는 것을 목표로 승인되었습니다.

7. 2022 년 에너지 절약(개정) 법안

정부는 2001 년 에너지 보존법 개정안, *무엇보다도* 탄소 배출권 평가, 비화석 에너지원 사용 의무, 차량 및 선박 표준을 포함하는 내용을 제안하였습니다.

8. 정부, 국가 물류 포털 - Marine 을 런칭

국가 물류 포털 - Marine 은 해양, 내륙 수로 및 연안 상품 이동을 통해 정보처리를 전자적으로 공유하고 상호 운용 및 교환할 수 있는 중앙 시스템 역할을 수행하기 위해 런칭되었습니다.

9. **인도통신규제당국(TRAI), 방송 및 케이블 서비스에 대한 규제 프레임워크 개정안 고지**

TRAI 는 이해관계자가 제기한 문제에 따라 방송사 및 배급사에게 명확성을 규정하기 위해 서비스 요금 정리 및 서비스 상호 연결 규정 관련 내용을 개정했습니다.

10. **TRAI, 원치 않는 상업적 커뮤니케이션 제한 고지**

TRAI 는 원치 않는 상업적 커뮤니케이션을 제한하기 위해 홍보 메시지 수신에 대해 고객의 동의를 요하는 2018 년 통신 상업적 커뮤니케이션 고객 선호 규정을 발표했습니다.

11. **정부, 인도 반도체 프로그램(SIP) 승인**

정부는 전반적인 반도체 생태계 구축을 목표로 인도 내 반도체 및 디스플레이 제조 생태계 개발을 위해 약 USD 92 억을 지출하는 SIP 를 승인했습니다.

파트 B: 외국인 투자자를 위한 종합 업데이트

1. **IT 기술 거버넌스, 리스크, 컨트롤 및 보증 관행에 대한 마스터 지침 초안**

인도준비은행은 IT 거버넌스, 리스크, 컨트롤, 보증 관행 및 비즈니스 연속성/재해 복구 관리에 대한 기존 가이드라인/지침/회람을 편입, 통합 및 업데이트하는 마스터 지침을 정하길 제안했습니다.

2. **채무증권 및 상환비전환우선주 액면가 인하**

SEBI 는 사모 발행 기준으로 발행된 각 채무 증권 또는 상환비전환우선주의 액면가는 약 USD 12,228 이며, 거래량과 액면가가 같아야 함을 규정했습니다.

3. **인도 증권거래위원회(SEBI), AIF 에 대한 외국인 투자를 위해 프레임워크 개정안 도입**

SEBI 는 투하/AIF 에 투자하는 외국인 투자자는 증권시장규제기관이 국제 증권 위원회(IOSCO)의 다자간 양해각서에 서명하거나, SEBI 의 양자간 양해각서에 서명한 국가의 거주자여야 함을 규정했습니다.

4. **Ansal 부동산 & 인프라 Ltd. & Anr. v. Dowagers Maharanis 주거 시설 복지 및 편의 시설 Trust & Anr.**

델리 고등 법원은 계약 조건에 따른 권리나 의무가 없는 계약 당사자는 특정 예외 상황에서 중재를 강요받을 수 있다고 판결했습니다.

5. **RGA 국제 재보험사 Ltd. v. 소득세 국제과세 관리관**

뭄바이 소득세 항소 재판소의 판사는 비거주자 재보험 회사가 수령한 재보험 보험료에 내재된 사업 이익이 회사가 인도에 고정 사업장이 없는 경우 인도에서 과세되지 않는다고 판결했습니다.

6. 기술 부문의 반경쟁적 관행

금융상임위원회는 '대형 기술 기업의 반경쟁적 관행' 보고서에서 시스템적으로 중요한 디지털 중개자, 디지털 경쟁법 및 반덤핑에 초점을 맞춘 견해와 제안을 제시했습니다.

7. 2022 년 법적 계측(일반) 개정 규칙

2022 년 법적 계측(일반) 개정 규칙은 2011 년 법적 계측(일반) 규칙을 개정하여 회사의 이사를 지명하는 대신 각 시설의 활동에 대한 계획, 지시 및 통제에 관한 권한과 책임이 있는 시설 또는 지점의 임원을 회사에 지명할 권리를 규정합니다.

Key updates from October 2022 - December 2022

Part A: Sector specific updates

1. **New Drugs and Clinical Trials (Third Amendment) Rules, 2022 – Deemed Approval**

The new amendment rules provide for deemed approval of ethics committee for clinical trials in case no approval is received within 45 (forty-five) working days from the date of submission of the application.

2. **The Government proposes draft rules for genetically modified foods**

The Food Safety and Standards Authority of India (FSSAI) has proposed regulations for regulating 'genetically modified organisms' intended for food use and food ingredients.

3. **Amendments in relation to Advertising in the Food Industry**

FSSAI has amended Food Safety and Standards Advertising Regulations to provide fairness in claims and advertisements of food products to make food business more accountable for such claims/advertisements so as to protect the interest of the customers. Specific guidelines with respect to labelling, declarations, servings, display panels, schedules, nutritional values, amongst others, are required to be adhered.

4. **Amendments to reduce fuel consumption by automobiles**

The Ministry of Road Transport and Highways has amended the Central Motor Vehicle Rules, particularly for M2, M3 and N2 vehicle category, to map and reduce India's fuel consumption to meet the target aspired under the Energy Conservation Act, 2001.

5. **The Government introduces comprehensive testing parameters for safety of batteries in electric vehicles ("EVs")**

The Ministry of Heavy Industries has notified comprehensive testing parameters for electric EVs to enhance battery safety with effect from April 1, 2023.

6. **PLI Scheme sanctioned**

The Production Linked Incentive (PLI) scheme (Tranche II) (Scheme) under national programme on high efficiency solar PV modules has been approved that aims to promote manufacturing of high efficiency solar modules in India.

7. **Energy Conservation (Amendment) Bill, 2022**

The Government has proposed amendment to the Energy Conservation Act, 2001 to, *inter alia*, include carbon credit dating, obligation to use non-fossil sources of energy, and standards for vehicle and vessels.

8. **Government has launched National Logistics Portal - Marine**

National Logistics Portal - Marine has been launched to act as a central system for electronic sharing and exchange with interoperability across ocean, inland waterways, and coastal movement of goods.

9. **Telecom Regulatory Authority of India (TRAI) notifies amendments to the regulatory framework for broadcasting and cable services**

TRAI has amended its service tariff order and services interconnection regulations upon issues raised by the stakeholders and to provide clarity to broadcasters and distributors.

10. **TRAI notifies regarding curbing unsolicited commercial communication**

To curb the unsolicited commercial communication, TRAI has issued the Telecom Commercial Communications Customer Preference Regulation, 2018 mandating customer's consent for receiving promotional messages.

11. **Government approves Semicon India Programme (SIP)**

With an aim of building the overall semiconductor ecosystem, the Government has approved the SIP with an outlay of approx. USD 9.2 billion for the development of semiconductor and display manufacturing ecosystem in the country.

Part B: General updates for foreign investors

1. **Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**

The Reserve Bank of India has proposed to prescribe master directions that incorporate, consolidate, and update the existing guidelines/ instructions/ circulars on IT governance, risk, controls, assurance practices and business continuity/ disaster recovery management.

2. **Reduction in denomination for debt securities and non-convertible redeemable preference shares**

SEBI had mandated that the face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 12,228 and the trading lot shall be equal to the face value.

3. **Securities and Exchange Board of India (SEBI) introduces revised framework for foreign investment in AIFs**

SEBI, *inter alia*, has mandated that the foreign investor investing in AIFs must be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI.

4. **Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.**

The Delhi High Court has held that a mere confirming party to a contract, who has no rights or obligations under the terms of the contract, may be compelled to arbitrate in certain exceptional circumstances.

5. **RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation**

The Mumbai bench of the Income Tax Appellate Tribunal has held that the business profits embedded in the reinsurance premium received by a non-resident reinsurance company, is not taxable in India if the company has no permanent establishment in India, at its disposal.

6. **The Anti-competitive practices in the tech sector**

The Standing Committee on Finance presented views and suggestions in its report on 'Anti-Competitive Practices by Big Tech Companies' focusing on systemically important digital intermediaries, digital competition act, and anti-steering.

7. **Legal Metrology (General) Amendment Rules, 2022**

The Legal Metrology (General) Amendment Rules, 2022 have amended the Legal Metrology (General) Rules, 2011, to provide a company the right to nominate an officer of the establishment or branch who has the authority and responsibility for planning, directing, and controlling the activities of the respective establishment, instead of nominating a director of the company.

Section A: Sector specific updates

Pharmaceutical

New Drugs and Clinical Trials (Third Amendment) Rules, 2022 – Deemed Approval.

The New Drugs and Clinical Trials (Third Amendment) Rules, 2022 provides for the following key modifications: -

- a) Deemed approval of ethics committee for clinical trials if no approval has been received from the Central Licensing Authority by the applicant within 45 (forty-five) working days.
- b) Such approval shall be deemed to be legally valid for all purposes and the applicant shall be authorized to initiate clinical trial in accordance with the rules.

The deemed approval amendments ensure greater certainty in timelines and enable a speedier approval process for clinical trials.

Renewable Energy

PLI Scheme under ‘National Programme on High Efficiency Solar PV Modules’ approved

The Production Linked Incentive (PLI) scheme (Tranche II) (Scheme) under national programme on high efficiency solar PV modules discussed in our earlier issue (July to September) has been sanctioned by the cabinet.¹ The aim of this Scheme is to promote manufacturing of high efficiency solar modules in India with the aim to reduce imports in this sector. Earlier the Government had, in April 2021, approved a scheme for approx. USD 550 million that was availed by three bidders for setting up 8,737 MW capacity of fully integrated manufacturing units. Under this Scheme an amount of approx. USD 2.3 billion has been allocated to manufacture high efficiency modules with priority to fully integrated manufacturing units. Subject to certain conditions, a company, or a joint venture/consortium of more than one company can bid for availing the benefits under the Scheme. Manufacturers of solar modules will be chosen via a transparent selection procedure. PLI will be paid out for five years after the factories that make solar modules post commissioning of the same. There will be incentives for the domestic market's sales of high-efficiency solar modules. An estimated 65 GW of complete and partially integrated solar module manufacturing capacity would be developed each year, lowering solar imports by nearly USD 16.5 billion. Additionally, the project will result in a direct investment of almost USD 11.5 billion. It is anticipated that the programme will create 195,000 direct jobs and 780,000 indirect jobs.

Energy Conservation (Amendment) Bill, 2022

The Indian Parliament has approved the Energy Conservation (Amendment) Bill, 2022, amending the Energy Conservation Act, 2001 (ECA). The ECA establishes a framework for regulating energy usage while also encouraging energy efficiency and conservation. The amendment attempts to recognise concepts like green hydrogen, green ammonia, and carbon credits as significant climate change mitigating measures in light of the global emphasis on energy transition and significance of new energy in climate change. Some of the salient features of this amendment are listed below:

- a) **Carbon credit trading schemes:** Carbon credit is given to an organisation for lowering a predetermined quantity of carbon emission from its operations. Under this scheme, the relevant authority will provide the registered entities with a carbon credit certificate which will be tradable with other entities, while any person can also purchase the certificate voluntarily.

¹ F.No. 283/62/2020-GRID SOLA, Production Linked Incentive Scheme (Tranche II), Ministry of New and Renewable Energy, Government of India dated September 30, 2022.

- b) **Obligation to use non-fossil sources of energy:** The Government may impose a minimum percentage of energy consumption from non-fossil sources on specified users.
- c) **Standards for vehicles and vessels:** The bill allows for the specification of energy consumption criteria for equipment and appliances that consume, create, transmit, or provide energy.
- d) **Energy conservation code for large buildings:** The bill would establish standards for energy efficiency and conservation, the use of renewable energy, and other green construction criteria.

Food Processing

Approval process for non-specified foods

The Food Safety and Standards Authority of India (FSSAI) has through an amendment notified the process for granting prior approval to the manufacturer or importer of non-specified food.² The amendment provides for a time bound process for applying to FSSAI and for FSSAI to review and for the applicant to provide additional information for obtaining the approval.

The Government proposes draft rules for genetically modified foods

The Food Safety and Standards Authority of India (FSSAI) has proposed regulations that apply to genetically modified organisms (GMOs) intended for food use, food ingredients produced from GMOs.

While the Government had proposed regulations earlier in 2021 which were applicable to GMOs,³ genetically engineered organism, and living modified organisms, the 2022 Regulations only apply to GMOs. The 2022 Regulations mandate a prior approval of the food authority for manufacturing, packaging, selling, storing, marking or any other distribution or import of any food or food ingredient produced from GMOs. The 2022 Regulations, *inter alia*, provide for the procedure for grant of prior approval and labelling.

Since inception India has been very hesitant to the concept, presumably due to the unnatural nature of these products. But, since GMOs have become prominent and now a thriving industry, the Government has been taking cautious steps to regulate them.

Amendments in relation to Advertising in the Food Industry

The Food Safety and Standards Authority of India (FSSAI) has amended the Food Safety and Standards Advertising Regulations.⁴ The amendment focuses on providing fairness in claims and advertisements of food product to make food business more accountable for these claims/advertisements so as to protect the interest of the consumers. Specific guidelines are required to be followed by food businesses with respect to labelling, declarations, servings, display panels, schedules, nutritional values, nutrition comparative claims, additives, sodium elements, etc. This is developed to build transparency for consumers and accountability on the part of the food business operators.

Amongst others, the amended regulations mandate that the label of the product needs to specify the number of servings per day required to derive the claimed benefit from the food as opposed to the specified number of servings per day mandated in the pre-amended regulations. Further, the specification for the dimension of the disclaimer which can mislead the customers, on the label has been

² Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) First Amendment Regulations, 2022 dated October 11, 2022.

³ Food Safety and Standards (Genetically Modified or Engineered Foods) Regulations, 2021.

⁴ Food Safety and Standards (Advertising and Claims) Regulations, 2018, amended via Food Safety and Standards (Advertising and Claims) Second Amendment Regulations, 2022 dated December 13, 2022.

elucidated in the said amendment. There also have been additions in the regulations specifically governing sodium/salt in the food products.

Automobile

Amendments to reduce fuel consumption by automobiles

The Ministry of Road Transport and Highways (MoRTH) has amended the Central Motor Vehicles Rules.⁵ These amendments are introduced to map and reduce India's fuel consumption to meet the target aspired for under the ECA. India aims to have 500 GW of non-fossil energy capacity and meet 50% of its energy requirements from renewable energy by 2030.

The amendment rules, *inter alia*, include a requirement for every manufacturer or importer of M2, M3 and N2 vehicle category, (except tippers and armoured vehicles), which are type approved under Rule 126, with gross vehicle weight between three and a half tonnes (3,500 kilograms) and twelve tonnes (12,000 kilograms), manufactured or imported for sale in India, to be tested for constant speed fuel consumption standard and comply with the fuel consumption target, notified under the ECA.

Further, every manufacturer or importer of M3 and N2 vehicle category, (except tippers and armoured vehicles), which are type approved under Rule 126, with gross vehicle weight of twelve tonnes (12,000 kilograms) and above, manufactured or imported for sale in India, on and from April 1, 2023, will be tested for constant speed fuel consumption standard and comply with the fuel consumption target, notified under the ECA.

The Government introduces comprehensive testing parameters for safety of batteries in EVs

The Ministry of Heavy Industries (MHI) has notified testing parameters for electric vehicles (EVs) to enhance their battery safety.⁶ Reportedly, these tests are widely accepted internationally for ensuring passenger safety in EVs, according to MHI. As a precondition for claiming incentives under the ministry's three flagship schemes, namely Product Linked Incentive (PLI) schemes for automobile and components, PLI scheme for Advanced Cell Chemistry (ACC), and the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) II scheme, MHI has made these tests mandatory for all EV and battery suppliers, with effect from April 1, 2023.

These testing parameters were earlier intended to be implemented from October 2022, but they are now being rolled out in two phases: phase I (December 1, 2022) and phase II (March 31, 2023). Since the parameters necessitate change in battery design, the extension has been given to allow manufacturers to work on new design and development to adhere to these parameters and ensure effective implementation.

Logistics

ULIP receives tremendous response from the industry⁷

Unified Logistics Interface Platform (ULIP), launched by Prime Minister, Shri Narendra Modi, as part of the 'National Logistics Policy (NLP)' on September 17, 2022 is receiving a positive response from the industry as 13 organisations have signed non-disclosure agreements (NDAs) to access data on ULIP. NDAs with 11 more organisations are in the process. The ULIP initiative proposes to simplify logistics procedures through inventory management, electronic document creation and exchange, track and

⁵ Central Motor Vehicle Rules, 1989 amended via Central Motor Vehicles (Nineteenth Amendment) Rules, 2022 dated November 22, 2022.

⁶ Available at

[https://pib.gov.in/PressReleasePage.aspx?PRID=1862596#:~:text=To%20strengthen%20the%20safety%20parameters,%2D038%20\(Rev%2022\).](https://pib.gov.in/PressReleasePage.aspx?PRID=1862596#:~:text=To%20strengthen%20the%20safety%20parameters,%2D038%20(Rev%2022).)

⁷ Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1864095>.

trace, grievance redressal, risk-based import clearance, and ease of cargo movement in India. It will bring together seven ministries, including the Ministry of Ports, Shipping, and Waterways, the Ministry of Civil Aviation, the Ministry of Road Transport and Highways, the Ministry of Commerce and Industry, the Ministry of Railways, the Ministry of Finance, and the Ministry of Electronics and Information Technology, on a unified platform to provide logistics companies with information on cargo movement in the country.

The NLP initiative aims to bring ease of doing business in the logistics sector by simplifying the logistics processes, improving its efficiency, bringing in transparency and visibility, and reducing logistics cost & time.

Government of India launches National Logistics Portal – Marine⁸

National Logistics Portal – ‘Marine’, has been launched by the Government on December 5, 2022 in order to act as a central system for electronic sharing and exchange with interoperability across ocean, inland waterways, and coastal movement of goods. The platform is available for use for marine traders, exporters and importers, including foreign investors operating in India, for collecting relevant information, exchanging documents and transacting business in relation to marine movement of goods. It will facilitate real-time information of activities that are generally not in reach of the importer, exporter, customs broker, including vessel-related information, terminal gate, and container freight station (CFS) gate transactions. It also enables digital transactions for payments required for the clearance process of import and export like CFS charges, shipping line charges, transportation charges, etc. It also includes a single-window certification device to approve transactions, as well as the integration of an online payment service. All services and documents generated are designed to be in line with global best practices and standards.

Telecommunication

5G rollout in India⁹

Taking India’s digital transformation and connectivity to new heights, Government has launched 5G services in India on October 1, 2022. This milestone unlocks huge possibilities for India with high-tech technology and paves the way to bring transformation in crucial areas including agriculture, health, education, transport, logistics, smart cities, financial inclusion etc. 5G technology will bolster and propel India’s position as an economic and tech powerhouse globally and will provide new opportunities for start-ups to come up with innovative solutions to solve existing challenges, create jobs and contribute to India's economic resilience.

TRAI notifies amendments to the regulatory framework for broadcasting and cable services

Based on the responses received in relation to the consultation paper on the implementation of the New Regulatory Framework, 2020 and to protect consumer interest, the Telecom Regulatory Authority of India (TRAI) has issued the following amendments:

Service Tariff Amendment:

- (a) Only channels with a maximum retail price of USD 0.23 or less will be permitted to be a part of a bouquet offered to its customers by the broadcaster as opposed to the maximum retail price of USD 0.15 in Tariff Order, 2017.
- (b) The broadcaster has to now report any change in the name, nature, language, maximum retail price, etc., 45 days prior to implementing such change as opposed to 30 days pre-amendment. The

⁸ Available at <https://nlpmarine.gov.in/landings/about-new>.

⁹ Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1864246>.

broadcaster also has to communicate such changes to all the distributors of television channels with whom it has entered into interconnection agreement after the Service Tariff Amendment.

Services Interconnection Amendment:

The parameters of providing discounts in pay channels by the broadcasters have been amended. It is now mandated that the discounts offered as an incentive on the maximum retail price of the pay channel shall be based on combined subscription of that particular channel for both, a-la-carte subscriptions as well as in bouquet subscriptions. Therefore, the discounts offered are to be calculated more objectively now as compared to the subjective measures of calculation before the amendment.

TRAI notification regarding curbing unsolicited commercial communication¹⁰

To curb the Unsolicited Commercial Communication (UCC), TRAI had issued the Telecom Commercial Communications Customer Preference Regulation, 2018 (TCCCPR). With implementation of these regulations and support from all telecom service providers (TSPs), an ecosystem based on blockchain (Distributed Ledger Technology - DLT) has been created. A first of its kind in the telecom field in the world, DLT has given transparency amongst TSPs and the regulator in the management of UCC/spam. The TCCCPR mandates the registration of all commercial promoters and telemarketers on DLT platform and seek customer consent for receiving promotional messages at a time and day of their choice. There has been substantial reduction of customer complaint to the extent of 60% for registered tele marketers.

However, TRAI noticed that the complaints are now being reported against the Unregistered Tele Marketers (UTMs). This new development prompted the regulator to take steps to curb the UCC issue. TRAI with the aid and advice of stakeholders is taking necessary steps to check UCC from UTMs. Some of the steps include implementation of UCC detect system, provision of digital consent acquisition, intelligent scrubbing of headers and message templates using artificial intelligence and machine language.

TRAI has further taken an initiative to form a Joint Committee of Regulators consisting of TRAI, Reserve Bank of India, Securities & Exchanges Board of India and Ministry of Consumer Affairs to frame joint action plan to curb financial frauds using telecom resources.

TRAI releases recommendations on 'Regulatory Framework for Promoting data Economy through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India'¹¹

TRAI on November 18, 2022, released recommendations on the regulatory framework for promoting the data economy through establishment of data centres (DCs), content delivery networks, and interconnect exchanges in India under the National Digital Communications Policy, 2018. The policy envisages to evolve regulatory frameworks and provide incentives for promoting the establishment of international DCs, content delivery networks, and independent interconnect exchanges in India. TRAI concluded that availability of digital infrastructure is crucial for the global data economy initiatives. Some of the salient features of the recommendations are:

- (a) Facilitating & incentivizing the establishment of DCs and DC parks.
- (b) Developing India-specific building norms, standards, and security certification framework.
- (c) Improving reliable connectivity to cable landing stations.
- (d) DC and DC park sites should be allowed to operate as backup power infrastructure without hindrance from state pollution control boards or central pollution control boards.
- (e) Indian Green Building Council and Telecommunication Engineering Centre should be entrusted with framing certification standards for green DCs in India.

¹⁰ Available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1879565>.

¹¹ Available at [PR_No.71of2022.pdf \(traigov.in\)](https://traigov.in/PR_No.71of2022.pdf).

- (f) National Telecom Institute for Policy Research & Training under the Department of Telecommunication, Ministry of Electronics and Information Technology, All India Council for Technical Education, and the Telecom Sector Skill Council should closely collaborate with the DC industry to develop tailor-made short and long-term courses.
- (g) Addressing demand side issues of digital data infrastructure.

Semiconductor

Government approves Semicon India Programme (“SIP”)¹²

With an aim of building the overall semiconductor ecosystem, the Government has approved the SIP with an outlay of approx. USD 9.2 billion for the development of semiconductor and display manufacturing ecosystem in the country.

The Government has also introduced four schemes under SIP:

- (a) Modified scheme for setting up of semiconductor fabs in India providing a fiscal support of 50% of the project cost, equally to all technology nodes.
- (b) Modified scheme for setting up of display fabs in India providing a fiscal support of 50% of the project cost, equally to all display fabs facilities.
- (c) Modified scheme for setting up compound semiconductors, silicon photonics, sensors fab, and semiconductor assembly, testing, marking and packaging (ATMP) facilities in India providing a fiscal support of 50% of the capital expenditure, equally to all compound semiconductors, silicon photonics, sensors fab, and semiconductor ATMP facilities.
- (d) Design linked incentive scheme to offer financial incentives, design infrastructure support across various stages of development and deployment of semiconductor design providing with a product design linked fiscal support to up to 50% of the eligible expenditure subject to a ceiling of approx. USD 1.8 million per application; and design linked fiscal support of 6% to 4% of net sales turnover over 5 years subject to a ceiling of approx. USD 3.6 million per application.

¹² Available at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1882058>.

Section B: General updates

Reserve Bank of India

Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

The Reserve Bank of India (RBI) has proposed to prescribe Master Directions on Information Technology Governance, Risk, Controls and Assurance Practices (Directions), to be implemented by regulated entities (REs).¹³ These rules apply to all REs (except the ones specifically exempted) such as scheduled commercial banks (except regional rural banks), small finance banks, payments banks, all non-banking financial companies etc. The Directions incorporate, consolidate, and update the existing guidelines/ instructions/circulars on IT governance, risk, controls, assurance practices and business continuity/ disaster recovery management. REs are required to formulate a robust governance framework comprising of governance structure and processes necessary for its business and strategic objectives. Such policies must be reviewed annually by the board. Further, the governance framework shall specify the role (including authority) and responsibilities of the board of directors / board level committee/ local management committee (in case of foreign banks operating as branches in India) and senior management. These directions shall come into force 6 months from the date of issue.

Inclusion of Goods and Services Tax Network

With a view to facilitate cash flow-based lending to Micro, Small & Medium Enterprises (MSMEs), the RBI has added Goods and Services Tax Network (GSTN) as a Financial Information Provider (FIP) under the Account Aggregator (AA) framework.¹⁴ Reportedly, GSTN is the technology backbone of India acting as a uniform interface for the taxpayer and also creates a common and shared information technology infrastructure between the centre and the states, with 1.40 crore taxpayers registered under it. The Department of Revenue will be the regulator of GSTN for this specific purpose and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, will now be included under the definition of 'financial information'.

Securities Exchange Board of India (SEBI)

Reduction in denomination for debt securities and non-convertible redeemable preference shares

SEBI had earlier mandated that the face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 12,228 and the trading lot shall be equal to the face value.¹⁵ On October 28, 2022 SEBI has notified that the face value of the listed debt security or non-convertible redeemable preference share issued on private placement basis shall be approx. USD 1,228.¹⁶ The provisions of this circular shall be applicable to all issues of debt securities and non-convertible redeemable preference shares, on private placement basis, through new international securities identification number, on or after January 01, 2023.

Schemes of AIFs which have adopted priority in distribution among investors

¹³ Draft Master Direction - Information Technology Governance, Risk, Controls and Assurance Practices dated October 20, 2022.

¹⁴ Inclusion of Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework dated November 23, 2022.

¹⁵ Operational Circular no. SEBI/HO/DDHS/P/CIR/2021/6 dated August 10, 2021.

¹⁶ Circular no. Page 1 of 2 CIRCULARSEBI/HO/DDHS/P/CIR/2022/00144 dated October 28, 2022.

As per SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations), Alternative Investment Fund (AIF) collects funds from investors, for investing it in accordance with a defined investment policy for the benefit of its investors.¹⁷ While it has not been explicitly restricted in AIF Regulations that the sharing of loss by a class of investors shall not be less than pro rata to their holding in the alternative investment funds (AIF) vis-à-vis other classes of investors/unit holders, it has been brought to SEBI's attention that certain schemes of AIFs have adopted a distribution waterfall in such a way that one class of investors (other than sponsor/manager) share loss more than pro rata to their holding in the AIF vis-à-vis other classes of investors/unit holders, since the later has priority in distribution over former (Priority Distribution Model).

The aforesaid matter is being examined by SEBI in consultation with policy advisory committee and other stakeholders. It has been decided that schemes of AIFs which have adopted the aforesaid Priority Distribution Model, will not accept any fresh commitment, or make investment in a new investee company, till a view is taken by SEBI in this regard.

SEBI introduces revised framework for foreign investment in AIFs

On December 9, 2022, SEBI issued a new framework for AIFs seeking funding from international investors.¹⁸ In this regard, SEBI has stated that when onboarding foreign investors, the manager of an AIF must ensure that the foreign investor of an AIF is a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI. Furthermore, the investor providing 25% or more of the corpus must not be a person included on the United Nations Security Council's Sanctions List or a resident of a nation named in the Financial Action Task Force (FATF) public statement.

Additionally, if an investor fails to satisfy the required requirements after joining a scheme, the AIF manager will not accept any future capital contributions until the investor comply with the conditions. This will also apply to investors who have already been accepted into existing AIF plans but do not fulfil the necessary conditions.

Arbitration

Confirming party to a contract may invoke arbitration clause if test of 'implied consent' is satisfied

The Delhi High Court in *Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*¹⁹, held that a mere confirming party to a contract, who has no rights or obligations under the provisions of the contract, may under certain rare circumstances, be compelled to arbitrate. The parties entered into a joint venture agreement (JVA) for renovation and development of the said property with 'Ansal properties' being only a confirming party. Though the Court recognized that in normal circumstances, a non-signatory to an arbitration agreement cannot be compelled to arbitrate and cannot be assumed to have acceded to arbitration, the said rule is flexible and that the surrounding circumstances must be taken into consideration for determination of the same. The Court applying the first theory of 'implied consent' of the twin test laid down by the Supreme Court²⁰ ruled that the very fact that the confirming party signed the JVA containing the arbitration clause, implies that it consented to all disputes being decided through arbitration. The Court therefore held that, since the JVA featured an arbitration clause for dispute settlement, which was determined to be binding on all parties as a result of each of the four parties being a signatory to it.

¹⁷ Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2022/157 dated November 23, 2022

¹⁸ Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2022/171 dated December 9, 2022

¹⁹ *Ansal Properties & Infrastructure Ltd. & Anr. v. Dowagers Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*, A.P. No. 1050 of 2021.

²⁰ *Chloro Controls India (P) Ltd. v. Seven Trent Water Purification Inc.*, (2013) 1 SCC 641.

Arbitral award which rewrites the contract is completely impermissible and bound to be set aside

The Delhi High Court in *Calcom Cement India Ltd. v. Binod Kumar Bawri & Ors.*²¹ has held that where the parties have agreed to mutually make amendments to an original agreement, the same would only constitute an "agreement to agree" and is not enforceable in law. The court held that it is legally impermissible for two parties to rewrite a contract, particularly in a commercial deal. As a result, an arbitral decision that modifies the terms of the contract must be overturned. Several agreements were executed among M/s Calcom Cement India Ltd. (Calcom), Dalmia Cement (Bharat) India (Dalmia), and the Bawris. The dispute arose from certain clauses of the Shareholder Agreement (SHA). The Bawris commenced arbitration procedure against Calcom and Dalmia. The Bawris admittedly failed to fulfil the project responsibilities as required by the SHA, and Dalmia said in counterclaims before the arbitral tribunal that this failure made remedy for Dalmia more appropriate than payment of the amount sought by the Bawris. The Tribunal held in favour of the Bawris as firstly, the obligations listed in the clauses of the SHA were to be met by the Bawris only as long as the Bawris retained control of Calcom and secondly, that the subsequent shift of control then made Dalmia responsible for fulfilling the project obligations instead. The High Court determined that the Tribunal's ruling amounted to a rewriting of the provision requiring the Bawris to comply with project requirements. It was further held that an arbitral judgement that does not fit this condition must be set aside, as such rewriting was declared to be entirely unlawful in the eyes of the law. The tribunal is also expected to make decisions that are consistent with the terms of the actual contract.

Tax

RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation

The Mumbai bench of the Income Tax Appellate Tribunal (ITAT) held that the business profits embedded in the reinsurance premium received by a non-resident reinsurance company, is not taxable in India if the company has no permanent establishment (PE) in India which is at its disposal²². Accordingly, the ITAT stated that a particular place cannot be deemed to be the assessee's PE unless it is the one that the assessee has access to. The ITAT, further, observed that since the assumption of risk, which is at the basis of the reinsurance business, was done outside of India, the reinsurance profit could not be ascribed to RGA India.

Competition Law

The Anti-Competitive Practices by Big Tech Companies

The Standing Committee on Finance presented its report on 'Anti-Competitive Practices by Big Tech Companies' on December 22, 2022. The Committee's views and suggestions are presented in this report, which analyses key anti-competitive behaviours by big tech corporations. The Committee's key observations and recommendations include:

- a) **Systemically important digital intermediaries (SIDI):** The Committee highlighted that there is a growing worldwide agreement that it is vital to identify big tech companies or SIDI who potentially have a detrimental impact on competitive behaviour in the digital ecosystem and subject them to ex-ante requirements to promote fair competition in digital marketplaces.
- b) **Digital Competition Act:** To promote a fair, transparent, and contestable digital ecosystem, the Committee recommended that the Government enact a Digital Competition Act. Furthermore, the

²¹ *Calcom Cement India Ltd. V. Binod Kumar Bawri & Ors.*, O.M.P. (COMM) No. 152 of 2021.

²² *RGA International Reinsurance Company Ltd. v. Assistant Commissioner of Income Tax International Taxation*, ITA No.8243/Mum/2010.

Committee believes that the Competition Commission of India's role in addressing anti-competitive behaviour in digital marketplaces should be enhanced through monitoring SIDs.

- c) **Anti-steering:** Anti-steering clauses forbid business users of a platform from directing their clients to offers other than those made available by the platform. The Committee advised SIDs against making access to their platform dependent on using or purchasing goods or services that are not integral to or related to the platform.

Others

Legal Metrology (General) Amendment Rules, 2022

The Legal Metrology (General) Amendment Rules, 2022 have amended the Legal Metrology (General) Rules, 2011.²³ A company can now nominate an officer of the establishment or branch who has the authority and responsibility for planning, directing, and controlling the activities of the respective establishment or branch or unit in any establishment or branch. The amendment would help the companies to nominate a person who is actually responsible for the day-to-day activities of an establishment or branch or unit of the company instead of the director of the company.

²³ Legal Metrology (General) Amendment Rules, 2022 dated October 6, 2022.

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