



Lakshmikumaran  
& Sridharan  
attorneys

LKS | CORPORATE PRACTICE

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## FOREWORD

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We are pleased to present the latest edition of our quarterly newsletter, where we have covered significant amendments under company law, foreign exchange laws, securities laws and environmental laws.

On the corporate law front, significant amendments were brought about to provide much needed clarity to registered valuers on adoption of valuation standards, enhance the disciplinary mechanism and offer operational flexibility to the stakeholders.

Amendments under foreign exchange laws include revising the late submission fee ("LSF") computation for reporting delays in foreign investments, external commercial borrowings and overseas investment related transactions order to bring about standardisation and uniformity on applicable LSF amounts across functions. The master direction on import of goods and services was amended, mandating deferred payment arrangements for import of capital goods. The master direction on export of goods and services were also amended to allow international trade settlement in Indian Rupee with a view to stabilise the Indian Rupee and reduce the outflow of US Dollars to tackle the trade deficit India is facing currently.

With the government looking to strategically disinvest and monetise its stakes in various listed entities, the Securities and Exchange Board of India ("SEBI") has introduced a plethora of amendments to various regulations with an objective of easing the process, compliances and regulatory hurdles faced in relation to disinvestments by the government, amending the procedure for appointment and removal of independent directors of listed entities to provide public shareholders a greater say in such matters, introducing the requirement for pre-filing of draft offer documents, mirroring the process followed in foreign jurisdictions amongst others.

Finally, The Ministry of Environment, Forest and Climate Change has notified a comprehensive new set of rules to govern proper and effective management, recycling and disposal of e-waste generated from the manufacture of electronic goods by manufactures, in addition to the existing range of waste management rules in force.

Our team has curated this publication to provide an overview of the key amendments that have a bearing on Indian businesses, investors and other stakeholders.

Do reach out to us with your feedback and/or suggestions.



## CONTENTS

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Key updates under the Companies Act, 2013 .....	<b>4</b>
Key updates under Foreign Exchange Laws .....	<b>6</b>
Key updates in Securities Law .....	<b>8</b>
Key updates in Environment Law .....	<b>12</b>

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# Key updates under the Companies Act, 2013

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## 1. Companies (Registered Valuers and Valuation) Amendment Rules, 2022

The Ministry of Corporate Affairs (“MCA”) vide notification dated 21 November 2022, introduced the Companies (Registered Valuers and Valuation) Amendment Rules, 2022 (“**Amendment Rules 2022**”). A registered valuer is a professional who assess the value of any asset or the net worth of a company or its liabilities under the Companies Act, 2013. While issuing new equity shares, buying back shares, etc., it is mandatory to have a registered valuer conduct a valuation of equity shares and prepare a valuation report.

The Amendment Rules 2022 have brought about the following changes to the extant rules:

**a. Partnership firms or companies are required to become members of registered valuer’s organisation**

The Amendment Rules 2022 stipulate that partnership entities must become members of a registered valuer’s organisation (a professional institute as set up under rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017, offering inter alia educational courses for individuals, prescribing code of conduct, conducting trainings, granting registration as valuers etc).

The Amendment Rules 2022 also prohibit a partnership entity from being a member of more than one such registered valuers’ organisation at a given point in time, to be recognised as a registered valuer. In addition, partnership firms and companies have been allowed a period of 6 (six) months to comply with the requirements under Amendment Rules 2022.

**b. Registered valuers are required to intimate authorities of any change in their personal details**

A new rule 7A has been inserted, which mandates that registered valuers inform the requisite authority of any change in their personal details, such as, modification in the composition of directors or partners, or any such change in the partnership deed or memorandum of association, which may have a bearing on the registration of registered valuer.

**c. Registered valuers are required to temporarily surrender membership on assuming employment**

A new explanation has also been added, which provides for temporary surrender of membership as a registered valuer, when such a member takes up employment. The explanation added clarifies that, though a registered valuer is not allowed to take up employment otherwise, holding the designation of a whole-time director shall still be allowed and shall not be considered to be ‘in employment’ of the company. Hence this shall not serve as a ground for temporary suspension of membership of such a member

**d. Clarification on Valuation Standards to be Adopted**

Valuers were facing ambiguity in relation to valuation standards required to be adopted in the absence of specific direction. The Amendment Rules 2022 remove the ambiguity in this regard by laying down

that valuers are free to follow either international valuation standards or valuation standards adopted by any registered valuer's organisation.



**LKS COMMENT**

The Amendment Rules 2022 seek to strike a balance between regulatory oversight and operational flexibility to the players. The Amendment Rules will set in place an effective disciplinary mechanism by limiting the registration of a valuer to only one valuers organization at a given point in time. Similarly, allowing the valuers to follow either the internationally accepted valuation standards or the valuation standards adopted by a registered valuer organization is a welcome change in view of the ambiguity currently faced by valuers.

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# Key updates under Foreign Exchange Laws

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## 1. Master Direction – Import of Goods and Services

The RBI on 21 November 2022, updated the Master Directions on Import of Goods and Services which was issued on 1 January 2016.

The update mandates deferred payment arrangements (including supplier's and buyer's credit) entered into for up to 3 (three) years in case of import of capital goods and up to 1 (one) year or the operating cycle whichever is less, in case of import of non-capital goods to be treated as trade credits.



### LKS COMMENT

Prior to the modification, deferred payment arrangements (including supplier's and buyer's credit) up to 5 (five) years were to be treated as trade credits.

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## 2. Master Direction – Export of Goods and Services

The RBI on 22 November 2022, updated the Master Directions on Export of Goods and Services which was issued on 1 January 2016.

Through the update, RBI allowed for all eligible current account transactions including trade transactions with Sri Lanka to be settled in any permitted currency outside the Asian Clearing Union.

Further, RBI allowed for International Trade Settlement in Indian Rupees to keep the Indian Rupee stable and cut down the use of the US Dollar.



### LKS COMMENT

This move will help reduce India's dependency on the US dollar. India is in a trade deficit and settling trades in Indian Rupee will save US dollar outflow.

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## 3. Standardizing late submission fees for reporting delays

The RBI vide a circular dated 30 September 2022 has revised the late submission fee ("LSF") computation matrix for reporting delays in Foreign Investment ("FI"), External Commercial Borrowings ("ECBs") and Overseas Investment ("OI") related transactions with effect from 7 November 2017, 16 January 2019 and

22 August 2022, respectively. This has been done in order to bring uniformity in imposition of LSF across functions.

Earlier, LSF was applied for all transactions, but the manner of its computation was not consistent. Previously, LSF for FI reporting delays was applied as a percentage of the amount involved and LSF in case of ECB reporting delays was applied as a fixed amount which is linked to the period of delay occurred and LSF for OI reporting delays was provided under the OI Directions, prescribing a different mechanism for computation of late fee.

The RBI, through this circular introduced a new uniform LSF matrix ("**New LSF Mechanism**") which will apply to all the reporting delays on or after September 30, 2022, for a period up to 3 (three) years from the due date of reporting / submission. The LSF has now been revised to INR 7,500 (seven thousand five hundred rupees) plus 0.025 per cent (zero point zero two five per cent) of the amount) for number of years of delay in submission or reporting of FI, ECB or OI transaction.

For delay in filing forms FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB, the LSF applicable will be INR 7,500 (seven thousand five hundred rupees) plus 0.025 per cent (zero point zero two five per cent) of the amount for number of years of delay in submission or reporting of the transaction.



#### LKS COMMENT

Through this circular, the RBI has streamlined and brought uniformity in applicable LSF amounts across functions for not reporting the transactions. The implementation of the circular will reduce the administrative burden of the entities and of the regulators as well.

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# Key updates under Securities Law

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## 1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2022

The Securities Exchange Board of India ("**SEBI**") vide notification dated 9 November 2022 amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Code**") to revise the pricing mechanism for acquisition of shares and control of Public Sector Undertakings ("**PSU**").

This amendment will enable acquirers of PSUs to enjoy flexibility in pricing their open offers for minority shareholders, as the amendment dispenses with the requirement of calculating the open offer price linked to 60 (sixty) days volume weighted average market price prior to the date of public announcement, in case of disinvestment of PSU companies wherein it results in its change in control, either by way of direct acquisition or indirect acquisition.

Through this circular, SEBI has permitted acquirers to provide an unconditional and irrevocable bank guarantee for the entire consideration payable under the open offer as an alternative to depositing cash, subject to RBI approval.



### LKS COMMENT

This is a positive change for strategic investors interested in investing in PSUs. It provides financial certainty to strategic investors over volatility in price owing to speculative trading in PSU stocks.

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## 2. Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2022

SEBI on 9 November 2022 amended the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and introduced a chapter for regulating the online bond platform providers entities, vide the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) (Second Amendment) Regulations, 2022.

The Online Bond Platform Providers ("**OBPPs**") are companies incorporated in India and are required to register themselves as stockbrokers in the debt segment of the stock exchange, as per the framework that would be effective immediately.

By way of this amendment, entities will have to comply with roles and obligations, technology, operating framework, access and participation, Know Your Client (KYC) for on-boarding investors and sellers and risk profiling of investors.





#### LKS COMMENT

There has been a marked increase in the number of OBPPs offering debt securities to investors and in the number of registered users that have transacted through such OBPPs. Through this amendment, SEBI seeks to bring these entities and the above-mentioned transactions within the purview of its regulatory framework.

### 3. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022

SEBI vide Notification dated 14 November 2022 has further amended the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR**"), with a view to provide greater flexibility in the procedure for appointment and removal of an independent director in a listed entity.

Prior to the Amendment, the appointment, reappointment, or removal of an independent director in a listed entity required shareholder approval through a special resolution. After the amendment, where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made. An independent director so appointed shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

In addition, SEBI now mandates that, for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within 60 (sixty) days from the end of the quarter to the recognised stock exchange(s).



#### LKS COMMENT

This amendment provides further clarity and an enhanced disclosure regime for the financial results of the last quarter. Further, the amendment provides for stricter and more detailed compliances and provides public shareholders a greater say in relation to the appointment and removal of an independent director.

### 4. Securities and Exchange Board of India (Alternative Investment Funds) (Fourth Amendment) Regulations, 2022

SEBI vide notification dated 15 November 2022, amended the Securities and Exchange Board of India (Alternative Investment Funds) Regulations 2012.

The amendment mandates that the manager and either the trustee or the trustee company or the Board of Directors or designated partners of the Alternative Investment Fund ("**AIF**") shall ensure that the assets and liabilities of each scheme of an AIF are segregated from other schemes of the AIF and bank accounts and

securities accounts of each scheme are segregated and ring-fenced.



#### LKS COMMENT

This amendment brings much needed clarity whereby assets of schemes are protected from potential litigation against or liquidation of other schemes of the AIF.

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## 5. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2022

SEBI on 21 November 2022, amended the Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation 2018 to insert Chapter III A which includes rules regarding the initial public offer on the main board through the pre-filing of the draft offer document.

The notification further provided that prior to making an initial public offer, the issuer may file 3 (three) copies of the draft offer document with the Board, in accordance with Schedule IV, along with fees as specified in Schedule III, through the lead manager(s).



#### LKS COMMENT

This amendment has introduced the requirement for pre-filing of draft offer documents, bringing it in line with the mechanism followed in foreign jurisdictions such as the United States of America, Canada and the United Kingdom.

In light of increased scrutiny of valuation of initial public offerings, the amendment seeks to put in place a robust and detailed disclosure mechanism of key performance indexes and pricing of primary issuances and secondary sales, along with clear linkages to justifying the offer price.

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## 6. Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2022

SEBI on 24 November 2022, amended the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 by putting restrictions on communication in relation to and trading by insiders in the units of mutual funds.

The amendment provides that no insider shall communicate, provide or allow access to any unpublished price sensitive information to any person, including other insiders. It stipulates that a structured digital database should be maintained indicating the nature of unpublished price sensitive information, and the details of such persons who have shared and received such information.

**LKS COMMENT**

The amendment is applicable to all units of mutual funds, listed or unlisted, given the involvement of retail investors/ public participation in such mutual fund schemes. While it is yet to be seen if this move will deter investments by the employees in their own mutual fund schemes, it will definitely increase the compliance burden for asset management companies.

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**7. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022**

SEBI on 5 December 2022, through the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022 amended the SEBI LODR.

After due consideration of the interest of the investors and the securities market and for the development of the securities market, the amendment allows SEBI to relax the strict enforcement of any of the requirements of SEBI LODR, upon the Central Government making an application regarding its strategic disinvestment in a listed entity.

**LKS COMMENT**

This amendment would reduce the compliance burden on listed government entities in which the government is aiming to systematically disinvest its stake. In context of recent developments, with the government looking to strategically disinvest and monetise its stakes in various listed government entities, SEBI is now empowered, if the Centre makes an application, to relax the requirements of SEBI LODR.

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# Key updates under Environment Law

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## 1. E-Waste (Management) Rules, 2022

The Ministry of Environment, Forest and Climate Change ("**MoEF**") vide notification dated 2 November 2022 has notified the E-Waste (Management) Rules, 2022. These rules shall come into force from 1 April 2023.

Following is a list of major highlights introduced in the E-waste management regime in India via these rules:

### a. Application:

The rules shall apply to every manufacturer, producer, refurbisher, dismantler and recycler involved in manufacturing, sale, transfer, purchase, refurbishing, dismantling, recycling, and processing of e-waste or electrical and electronic equipment, including their components, consumables, parts and spares which make the product operational.

However, these rules do not apply to waste batteries, packaging plastics, micro enterprises and radio-active wastes.

'E-waste' has been defined to include electrical and electronic equipment, including solar photo-voltaic modules or panels or cells, whole or in part discarded as waste, as well as rejects from manufacturing, refurbishment and repair processes.

### b. Restrictions:

Taking due notice of loss of lives due to exposure to radioactive material, the government has placed a restriction on employing hazardous substances while manufacturing electrical and electronic equipment ("**EEE**"). The rules also call for using lead, mercury, cadmium, amongst others, in reduced quantities while manufacturing electronic equipment.

### c. Reuse and Recycle:

Manufacturers have been made responsible to use such technology or methods to ensure that the end-product is ultimately recyclable and to also ensure compatibility of components or parts made by different manufacturers with each other, so that the quantity of e-waste is reduced.

### d. Strict Monitoring:

In order to ensure due compliance with the provisions relating to reducing the use of hazardous substances, the Central Pollution Control Board shall randomly conduct samplings of products placed in the market. In case a product fails the investigation, the manufacturer will immediately be ordered to withdraw all such products from the market.

**e. Introduction of Extended Producer Responsibility (“EPR”) Certificates:**

These rules have introduced a registration requirement for all entities, such as manufacturers, producers, refurbishers and recyclers to obtain EPR Certificates

**f. Setting up of E-waste exchange facilities:**

In order to facilitate collection and recycling of e-waste, producers are required to set up e-waste exchange facilities under EPR, so that specific responsibility is duly assigned to bulk consumers of electronic products for safe disposal of e-waste.

**g. Imports permitted only for compliant electronic equipment:**

Compliance of electronic equipment with these rules has been made a pre-requisite for manufacturers or producers looking to imports or sell/place in the market.

**h. Manufacturers responsibility for disposal of e-waste produced during manufacturing:**

All manufacturers are now required to collect e-waste generated during the process of manufacture and to ensure its proper recycling or disposal. They are also required to file annual and quarterly returns in this regard on the government portal.



**LKS COMMENT**

These rules are a welcome addition to the existing repertoire of waste management rules as they set in place a mechanism to effectively manage e-waste generated in manufacturing electronic goods and seeks to reduce the harmful impact caused by improper handling/ disposal of e-waste.

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# LOCATIONS

## NEW DELHI

5 Link Road, Jangpura Extension,  
New Delhi 110 014

PHONE: 011-4129 9800

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B-6/10, Safdarjung Enclave,  
New Delhi 110 029

PHONE: 011-4129 9900

E-MAIL: [Lsdel@lakshmisri.com](mailto:Lsdel@lakshmisri.com)

## MUMBAI

2<sup>nd</sup> Floor, CNERGY IT Park,  
Old Standard Mill,

Appa Saheb Marathe Marg,  
Prabhadevi,

Mumbai 400 025

PHONE: 022-2439 2500

E-MAIL: [Lsbom@lakshmisri.com](mailto:Lsbom@lakshmisri.com)

## CHENNAI

2, Wallace Garden, 2<sup>nd</sup> Street,  
Chennai 600 006

PHONE: 044-2833 4700

E-MAIL: [Lsmds@lakshmisri.com](mailto:Lsmds@lakshmisri.com)

## BENGALURU

World Trade Center,  
No. 404-406, 4<sup>th</sup> Floor, South Wing,

Brigade Gateway Campus,

No. 26/1 Dr. Rajkumar Road,

Malleswaram West,

Bengaluru 560 055

PHONE: 080-4933 1800

E-MAIL: [Lsblr@lakshmisri.com](mailto:Lsblr@lakshmisri.com)

## HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,  
Opp. Methodist Church, Nampally,  
Hyderabad 500 001

PHONE: 040-2323 4924

E-MAIL: [Lshyd@lakshmisri.com](mailto:Lshyd@lakshmisri.com)

## AHMEDABAD

B-334, SAKAR-VII,  
Nehru Bridge Corner, Ashram Road,  
Ahmedabad 380 009

PHONE: 079-4001 4500

E-MAIL: [Lsahd@lakshmisri.com](mailto:Lsahd@lakshmisri.com)

## PUNE

607-609, Nucleus,  
1 Church Road, Camp

Pune 411 001

PHONE: 020-6680 1900

E-MAIL: [Lspune@lakshmisri.com](mailto:Lspune@lakshmisri.com)

## KOLKATA

2<sup>nd</sup> Floor, Kanak Building,

41, Chowringhee Road,

Kolkata 700 071

PHONE: 033-4005 5570

E-MAIL: [Lskolkata@lakshmisri.com](mailto:Lskolkata@lakshmisri.com)

## CHANDIGARH

SCO No. 59, 1<sup>st</sup> Floor,

Sector 26, Madhya Marg,

Chandigarh 160 026.

PHONE: 0172-492 1700

E-MAIL: [Lschr@lakshmisri.com](mailto:Lschr@lakshmisri.com)

## GURUGRAM

OS2 & OS3, 5<sup>th</sup> Floor,

Corporate Office Tower,

AMBIENCE Island, Sector 25-A,

Gurugram 122 001

PHONE: 0124-477 1300

E-MAIL: [Lsgurgaon@lakshmisri.com](mailto:Lsgurgaon@lakshmisri.com)

## PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)

Colvin Road, Lohia Marg,

Prayagraj 211 001

PHONE: 0532-242 1037/242 0359

E-MAIL: [Lsallahabad@lakshmisri.com](mailto:Lsallahabad@lakshmisri.com)

## KOCHI

1<sup>st</sup> Floor, PDR Bhavan,

Palliyil Lane, Foreshore Road,

Ernakulam, Kochi 682016

PHONE: 0484-486 9018/486 7852

E-MAIL: [Lskochi@lakshmisri.com](mailto:Lskochi@lakshmisri.com)

## JAIPUR

2<sup>nd</sup> Floor (front side),

Unique Destination, Tonk Road,

Near Laxmi Mandir Cinema Crossing,

Jaipur, Rajasthan 302015

PHONE: 0141-4561200

E-MAIL: [Lsjaipur@lakshmisri.com](mailto:Lsjaipur@lakshmisri.com)

## NAGPUR

1<sup>st</sup> Floor, HRM Design Space,

90-A, Next to Ram Mandir,

Ramnagar, Nagpur 440033

PHONE: 0712-2959038/2959048

E-MAIL: [Lsnagpur@lakshmisri.com](mailto:Lsnagpur@lakshmisri.com)



Lakshmikumaran  
& Sridharan  
attorneys

[www.lakshmisri.com](http://www.lakshmisri.com)

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