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REVIEWS LEGAL INDUSTRY



In this edition, **Jacob Alexander**, our Editorial Director, talks about the reforms in the law of Arbitration in India and how arbitration has become an optimal choice for resolution of commercial disputes owing to the expediency, flexibility, and speed at which the proceedings can be concluded.

Contributing Law Firms



Banking & Finance

New Overseas Investment Framework

The new overseas investment framework ("**New Framework**") in India includes the Ministry of Finance notified Foreign Exchange Management (Overseas Investment) Rules, 2022 ("**OI Rules**") and the Reserve Bank of India's (RBI) Foreign Exchange Management (Overseas Investment) Regulations, 2022 ("**OI Regulations**"). The OI Rules and the OI Regulations, together, supersede the erstwhile Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015.

The New Framework has a number of key highlights with regard to overseas investments by Indian entities. These include, *inter alia* the following:

- The insertion of new defined terms and concepts such as that of '*foreign entity*'. This further clarifies the position regarding financial commitments to be made in foreign entities by Indian entities, regardless of the said entity being a group company, an affiliate, or a subsidiary of the Indian entity. Broadening the scope and meaning of foreign entity from the erstwhile framework, opens a wider range of investment opportunities for Indian entities.

- Investors whose overseas investment falls below 10% may continue holding their investment as an overseas investment even if such person / Indian entity loses '*control*' in the foreign entity. The term '*control*' has also now been defined to mean "*the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent, or more of voting rights or in any other manner in the entity*".

- The requirement to obtain approval of the RBI for making overseas investment by Indian entities under investigation has been done away with. Instead, the concept of a no objection certificate by the lender bank / regulatory body / investigative agency for making financial commitment or undertaking disinvestment in an account appearing as non-performing assets / willful defaulter / under investigation by a financial sector regulator has been introduced. Failure to provide such no objection within 60 days would lead to a deemed no objection.

- Permissibility to now make overseas investments in start-ups post obtaining necessary certification from the statutory auditors / chartered accountant of the Indian entity / investor.

- Introduction of '*Late Submission Fee*' for delay in filing / submitting the requisite form / return / document.



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- Liberalization of round tripping provisions for *bona fide* transactions.

- Pledge / charge can now be created in favour of overseas lenders (and not just an overseas bank!).

- No requirement to obtain a no objection certificate from an authorised dealer category-I bank prior to:

- a) creating charge on shares of a joint venture / wholly owned subsidiary / step down subsidiary in favour of domestic / overseas lender;

- b) creating charge on the domestic assets in favour of overseas lenders to the joint venture / wholly owned subsidiary / step down subsidiary; and

- c) creating charge on overseas assets in favour of domestic lender.

The changes introduced in the New Framework streamline certain processes associated with overseas investment by persons resident in India. A wider area of economic activity is covered and the need for seeking specific approvals has been condensed while also reducing the compliance burden.

This article was written with the collaboration of:

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Practice Area News

IFSCA framework for Ship Leasing. The International Financial Services Centres Authority in order to facilitate the ship leasing business in the International Financial Services Centers in India has notified 'ship lease' as a financial product *vide* gazette notification dated 7th January 2022. Click [HERE](#) to learn more.

RBI notification on International Trade Settlement in Indian Rupees. With a view to promote growth of global trade, the Reserve Bank of India has issued a notification on International Trade Settlement in Indian Rupees dated 11th July 2022 which highlights changes in:

- a) Invoicing and exchange rates;
- b) Settlement procedure;
- c) Documentation;
- d) Setting off of export receivables;
- e) Advance against exports;
- f) Bank guarantees;
- g) Surplus balance; and
- h) Approval process.

Click [HERE](#) to learn more.

RBI discussion paper on Climate Risk and Sustainable Finance. With a view to ascertain the risks and opportunities that may arise from climate change and environmental degradation in the financial market, the Reserve Bank of India has published a discussion paper on climate risk and sustainable finance dated 27th July 2022. Click [HERE](#) to learn more.

Liberalisation of Forex Flows. In order to further diversify and expand the sources of forex funding so as to mitigate volatility and dampen global spillovers, RBI has taken certain measures vis-à-vis:

- a) External commercial borrowings;
- b) Borrowing by authorized dealer category-I banks;
- c) Interest Rates on FCNR(B) and NRE Deposits; and
- d) FPI Investment in Debt.

Click [HERE](#) to learn more.

In the Firm

• Awards and Accolades

Well established as one of the leading law Firms in India, Juris Corp's capabilities have been widely recognized by our clients and several Global Law Firms. The Firm has received several international accolades symbolizing our commitment to help clients in achieving their objectives.

Click [HERE](#) to learn more on the awards and accolades of the Firm as well as that of the Banking and Finance practice.

• Environmental Social and Governance Practice

Environmental Social and Governance Framework ("ESG Framework") is at a very nascent stage in India. As a result, even laws permitting/enabling actions undertaken as a part of the ESG Framework are still in developing state. Often absence of clear enabling provisions under the law creates cloud on permissibility and act as a hinderance for corporates to undertake such transactions.

Juris Corp has bridged this gap by advising on permissibility of / marketing/ trading Carbon Offsets and providing guidance on safeguards that can be undertaken to comply with applicable licensing/ regulatory framework in India. With our assistance carbon neutrality can be ensured by them.

Infact, Juris Corp is one of the few law firms in India to setup a dedicated ESG practice. Members of the ESG team draw from their varied financial sector expertise to deal with the feasibility of simple transactions to nuances of structured lending. The forte of this practice is that it draws on the expertise of other teams such as the insolvency and bankruptcy team, banking & finance, capital markets, tax and dispute resolution to provide optimal solutions to clients.

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