



# IP UPDATES **INDIA**

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## INTRODUCTION



The pandemic brought a dramatic disruption in the entire world. Living through a global pandemic isn't easy, and not a single individual, system, business, or industry has remained unaffected. But as they say, need is the biggest motivation. When sustenance and survival met a question

mark in its usual course, life took the revolutionary road! Intellectual Property (IP) regime in India also followed the pursuit with pathbreaking changes and reforms seeing the light of the day.

The last year saw the continuance of and the focus towards improvement of the electronic systems that have been adopted for easy access by the stakeholders. Initiatives have also been taken to provide quick and transparent mechanisms for redressal of grievances. The IP Office is also formulating strategies for speedy disposal of cases and bringing down backlog.

## BUDGET ALLOCATION TO THE IP LANDSCAPE

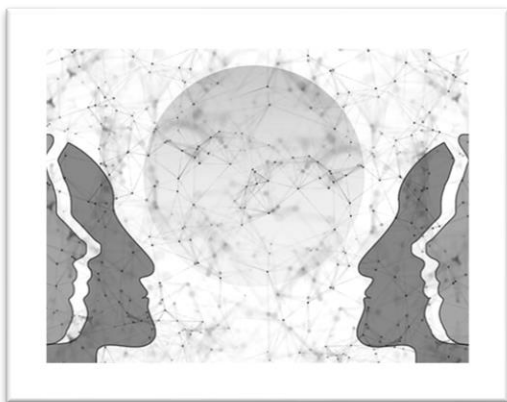


Union Budget 2023-24 has brought a 15% hike in the funds allocated for the intellectual property landscape this year. From last year's INR 285.41 crores (approx. USD 38.4 M), the budget has been elevated to INR 328.98 crore (approx. USD 40.1 M).

Around INR 281.60 (approx. USD 34.3 M) crores are allocated for the fortification of the Intellectual Property Rights Policy Management, and IDC GPDTM - Infrastructure Development in Controller General of Patents, Designs and Trade Marks.

Additionally, INR 0.83 crores (approx. USD 101,291) have been allocated in furtherance of the alliance between the Department for Promotion of Industry and Internal Trade (DPIIT) and WIPO based on the Service Level Agreement (SLA) to set up Technology and Innovation Support Centres (TISC) Network in India. The Indian Government has been in association with WIPO in an endeavour to bolster the country's Intellectual Property landscape. The DPIIT serves as the nodal department for the realisation of such initiatives between the Indian Government and WIPO.

## **OPEN HOUSE FOR DISCUSSION OF GRIEVANCES**



Shri Piyush Goyal, the Union Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution and Textiles, while addressing the august gathering in National Intellectual Property Conference 2022 on '*Strengthening IP Ecosystem for catalysing the growth of Knowledge Economy*' held on October 15, 2022 at New

Delhi, suggested initiation of an Open House communication system for IP Fraternity's concerns and grievances and for facilitating the discussion on the changes required into the IP Ecosystem.

The IP Office swiftly implemented the same and started conducting Open House sessions from October 17, 2022 for direct communications regarding various IP related matters. The open house discussions are conducted on every working Fridays from 4 p.m. to 5.30 p.m. (IST). It has been almost

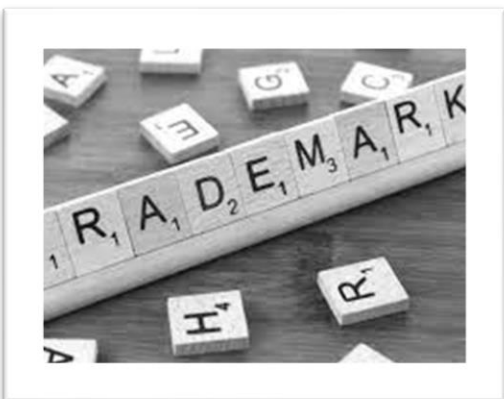


seven months and the discussions have addressed multiple challenges for various IP matters pertaining to different IP offices.

## **IPO GRIEVANCE PORTAL**

The IP Office has also launched a Grievance Portal wherein the stakeholders can lodge their grievances/complaints, if aggrieved by any of the officials for unnecessary demands for quick resolution of the issues faced by them during processing of their applications.

## **DYNAMIC CAUSE LIST FOR TRADEMARK HEARINGS**



In the year 2020, after the onset of pandemic, show cause hearings for trademark applications were shifted to online mode. Links were shared by hearings officers with trademark agents/attorneys on record one day prior to the hearing.

However, to ensure hassle-free disposal of trademark applications without the need for creation and sharing of hearings links, the IP Office has now launched a “dynamic cause list” on its official website for hearings via Video Conferencing (VC). The hearing rooms for each hearing officer are open for access from 10:30 AM to 1:30PM on the day of the hearing through the link provided in the dynamic cause list.

## **OPPORTUNITY FOR APPLICANTS TO AVOID ABANDONMENT OF TRADEMARK APPLICATIONS**

By way of a public notices dated February 06, 2023, the Trademarks Registry published a list of around 98,900 objected trademark applications in which examination reports were issued but no reply was found in the records of the Registry. An opportunity was given to the applicants to bring

their reply on record via email by March 06, 2023, if they had filed the reply earlier, so that those applications can be processed, otherwise they would be treated as abandoned.

Another list of around 82,700 opposed trademark applications was published where notice of opposition was served on the applicants, but no counter statements of the applicants were found in the records of the Registry. The Registry extended an opportunity to the applicants to bring their counter statements on record by March 06, 2023 via email, if they had filed the counter statement earlier, failing which the said applications would be deemed as 'abandoned'.

Subsequently, in continuation of above-mentioned public notices dated February 06, 2023 and after considering the emails received by the applicants, the IP Office issued two public notices dated March 27, 2023 with a revised list of applications, giving the final opportunity to the applicants to make submissions before the Grievance Cell of the Registrar of Trade Marks within a period of 45 days from March 27, 2023 i.e., by May 11, 2023.

Thereafter, Intellectual Property Attorneys' Association (IPAA) moved a writ petition before the Delhi High Order against the public notices dated February 06, 2023 and March 27, 2023. The IPAA moved the writ petition citing grievances on the abandoned status of several trademark applications. On April 13, 2023, this writ petition came up before the Court and the IP Office undertook to withdraw both public notices and submitted that all the applications will be reverted to their previous status, within a period of 10 days from the Court's order.

Therefore, with disposal of this writ petition, the public notices stand withdrawn, and all the applications will move before the Trade Marks Registry in accordance with the provisions of Trade Marks Act and Trade Marks Rules.



## UPDATE ON DISPOSAL OF TRADEMARK OPPOSITION CASES



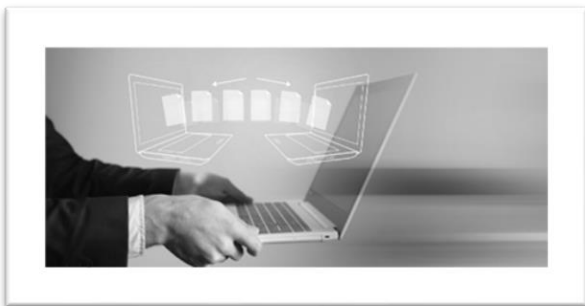
In the ongoing litigation between Dr Reddy's Laboratories and IP Office, the Controller has informed the Delhi High Court that it is intending to hire 250 contractual opposition hearing officers to exclusively address and reduce the pendency of trademark

opposition cases.

As per the status report submitted by the Controller consisting of data relating to opposition proceedings for the months of October, November, and December 2022, the number of officials for hearing opposition matters has been increased which has resulted in marginal decrease in the pendency of opposition matters. In the stated period of three months, a total of 13,467 were either settled or otherwise disposed of.

However, until December 31, 2022, a total of 2,38, 951 trademark opposition cases are still pending and with the intended mass hiring, the IP office aims to bring down this backlog.

## E-FILING OF DESIGN APPLICATIONS AND ISSUANCE OF E-CERTIFICATES



On December 16, 2022, the IP Office notified that the Design Wing of the Patent Office has started issuance of e-certificates with effect from November 1, 2022.

The applicants have been encouraged to utilise the

option of online filing of forms and documents and henceforth, there is no requirement to submit physical forms and documents, except assignment, attested/notarised copy of the original Power of Attorney and original affidavit (if any) for e-filed applications. The forms and documents as prescribed in the Designs Rules, 2001 (as amended), which are required to be filed online, should be digitally signed in accordance with Section 3 and 4 of the Information Technology, Act, 2000. For reciprocity applications, the applicants are required to provide WIPO-DAS Code or priority documents in accordance with Rule 15 of the Designs Rules, 2001 (as amended).

## **FUNCTIONING OF INTELLECTUAL PROPERTY DIVISION AT THE DELHI HIGH COURT AND INTENDED CREATION IN OTHER JURISDICTIONS**



The Intellectual Property Appellate Board (IPAB) was abolished by way of an Ordinance which was later ratified by the Parliament and the abolition became effective from April 4, 2021. With this, all

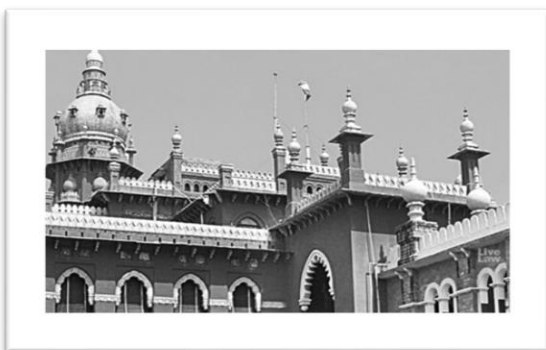
pending appeal matters and revocation/rectification actions before the IPAB were transferred to the commercial divisions of the High Courts at Delhi, Mumbai, Chennai, Gujarat, and Kolkata.

In July 2021, the Delhi High Court announced creation of Intellectual Property Division (IPD) to deal with IP matters including those which were to be transferred from erstwhile IPAB. The Delhi High Court *vide* notification dated February 24, 2022 issued the *Delhi High Court Intellectual Property Rules 2022*. These Rules regulate the matters listed before IPD and prescribe the practice and procedure for the exercise of the original and appellate jurisdiction of IPD and for other miscellaneous

petitions arising out of specific IP statutes. The IPD of the Delhi High Court started functioning from February 28, 2022. Its creation has resulted in separate benches for IP matters which are presently presided by Hon'ble Mr. Justice C. Hari Shankar, Hon'ble Mr. Justice Sanjeev Narula and Hon'ble Mr. Justice Amit Bansal. The advent of IP division has ushered in speedy disposal of cases, especially in cases of appeals from refusal orders issued by the Registrar of Trade Marks which may get decided within 1-2 hearings before the Court.

Madras High Court has also published IPD Rules in April 2023. Hearings of the transferred cases from IPAB as well as cases appeals/rectifications directly filed have also started in High Courts of Bombay, Gujarat and Calcutta; and creation of special intellectual property division along with rules is in pipeline.

### **MADRAS HIGH COURT INTELLECTUAL PROPERTY RIGHTS DIVISION RULES, 2022**



In line with the creation of Intellectual Property Division and announcement of IPD Rules by the High Court of Delhi, the High Court of Judicature at Madras has also notified the creation of Intellectual Property Division (IP

Division) in the Madras High Court presided over by a Single Judge Bench and a Division Bench to deal with disputes and cases concerning IPR. The High Court has also notified “Madras High Court Intellectual Property Rights Division Rules, 2022 (the “Madras High Court IPD Rules”), which will govern and regulate the proceedings before the IP Division. The IPD Rules has come into effect from April 5, 2023. The IPD had its first sitting on April 13, 2023, after its inauguration on April 12, 2023.

The Madras High Court IPD Rules prescribe the practice and procedure for the exercise of the original and appellate jurisdiction of IP Division and for other miscellaneous petitions arising out of specific IP statutes including the Patents Act, 1970, Trade Marks Act, 1999, the Copyright Act, 1957, the Designs Act, 2000, the Geographical Indications of Goods (Registration and Protection) Act 1999; the Protection of Plant Varieties and Farmers' Rights Act, 2001; the Semiconductor Integrated Circuits Layout- Design Act, 2000; and appeal under Section 62 of the Information Technology Act, 2000. Salient features of the Madras High Court IPD Rules are:

- Every IPR case or proceeding filed before, or transferred to, the IP Division shall be heard and decided by a Single Judge of the IP Division except those that are to be decided by a Division Bench.
- In case of multiple proceedings relating to the same or related IPR, irrespective of whether the said proceedings are between the same parties or not, the IP Division may on its own motion or on an application of any other parties, and after hearing such parties, direct consolidation of proceedings, hearings, and also to direct consolidated recording of evidence/ common trial and consolidated adjudication.
- The IP Division may seek assistance or opinion of any persons with special knowledge and skills on the subject matter of the IPR case. The opinion of such experts shall be recorded in writing and may be considered by the IPD. The party whose interest the evidence of the said experts is adverse to, shall be permitted to cross-examine such experts.
- The provisions of the Commercial Courts Act, 2015, Madras High Court Original Side Rules, 1994 as also the practice notes / directions issued from time to time, to the extent there is no inconsistency with the IPD Rules, shall be applicable to original petitions filed in the IP Division.

- Any order of the High Court in any IPR cases or proceedings involving any proceedings before the respective Intellectual Property Offices (IPO), shall be served upon the concerned IPO and the said IPO shall cause such changes to the entry(ies) in the respective Register or proceed in the matter as directed therein.
- Evidence is allowed to be recorded through video conference by Local Commissioner and/or videography and transcription technology or by use of any other technology.
- All cases under various categories received in the Madras High Court from the IPAB shall be renumbered, given the nomenclature as provided for in the IPD Rules without levy of any fresh or additional court fees.
- The Madras High Court IPD Rules clarify that the cases pertaining to the Information Technology Act, 2000 dealing with the rights and liabilities of intermediaries, online marketplaces, e-commerce platforms involving issues relating to any of the aforementioned rights, shall be deemed to be within the purview of Intellectual Property Rights.

We have witnessed significant qualitative and quantitative changes in the adjudication of IPR disputes with the creation of the IP Division at the High Court of Delhi in 2021. The appeal cases which were filed with the erstwhile IPAB and were pending for adjudication for over a decade or so, are now being taken up and disposed of in much faster manner. We expect to witness a similar result with the creation of IP Division in the Madras High Court.

## **ANNUAL REPORT OF THE OFFICE OF THE CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS (CGPD TM) FOR THE FINANCIAL YEAR 2021-22**

The Annual Report issued by the IP Office for the financial year 2021-22 illustrates its continued efforts in strengthening the IPR framework of the country and aligning it with global standard in the said year. Simplification and IT-enabled functioning of procedures as well as growth in technical manpower has considerably improved timelines of processing applications as well as reduced existing backlogs. Strategic steps have also been taken to make the IP system user friendly, environment friendly, and transparent. Manpower has also been increased which has led to faster disposal rates and reduced backlogs. Some of the highlights and trends mentioned in the annual report are:

### **Trademarks:**

- A total of 4,47,805 applications were filed in the reporting year and 2,61,408 registrations were granted showcasing an increase of 3.8% and 2.1% respectively from the previous year.
- The largest number applications have been filed in Class 5 with 16.05 % share in overall filings, followed by class 35 with 9.55% share. Even for registrations secured, Class 5 leads with 12.95 % share in total registrations followed by Class 35 with 8.41 % share.
- Top Foreign Applicants – U.S.A and China with 4599 and 1993 applications respectively.
- Oppositions/Rectifications – A total of 54990 oppositions and 4071 applications for rectifications were filed in the reporting year. A total of 7233 cases were disposed of. Maximum oppositions were filed in Delhi (22361) followed by Mumbai (11553) and Chennai (10258).

## **Geographical Indications (GI):**

- From September 2003 till March 31, 2022, GI Registry has received a total of 861 GI applications out of which, 420 have been registered, 310 are in process, 02 are under opposition and 129 have been met with other disposals.
- In the reporting year, a total of 116 applications were filed which is the second highest number, just after the year 2011-12 wherein we saw a total of 148 GI applications.

## **Copyrights:**

- Copyright (Amendment) Rules, 2021 have brought the following important changes:
  - Publication of a copyright journal on the Copyright Office website.
  - For registration of software works, the Applicant can submit the first 10 and last 10 pages of source code, or the entire source code if less than 20 pages, with no blocked out or redacted portions.
- Third party objections against any copyright application can now be filed online.
- 94% of the total applications filed in the relevant year have been through online mode.
- An increase of 26.7% has been recorded in the filing of copyright applications, 35.2% in examination and 26% in registration of copyright.



- Maximum number of copyright applications in the year 2021-22 have been registered for literary/dramatic works (12867), followed by artistic works (4227).

### **Designs:**

- An increase of 59.38% has been recorded in the filing of design applications, 59.75% in examination, 66.85% in registration and 66.85% in disposal.
- E-filing facility for new and amended design applications was upgraded to facilitate better functioning.
- Pendency in the examination of new applications continued to be around 1 month in the reporting year.
- E-register of Designs has been made available to public.
- Processing of various post-registration proceedings through electronic module was initiated.
- Leading top 5 foreign applicants for the reporting year were Koninklijke Philips N.V, HTL Furniture (China) Co. Ltd., Samsung Electronics Co. Ltd., Kohler Co., and Beijing Xiaomi Mobile Software Co. Ltd.

### **Patents:**

- In the reporting year, a total of 66,440 applications were filed showcasing an increase of 13.57% from the previous year's 58,503.

- The total number of applications filed by Indian Applicants has been 29,508, as compared to 24,326 in the previous year, exhibiting an increase of 21.3%.
- With respect to applications filed by foreign applicants, there has been an increase of 7.74% from the previous year's 30,612 to 32,977. Qualcomm Incorporated ranked first followed by Samsung Electronics Co., Ltd.
- 30,073 patents were granted in the reporting year as compared to 28,385 in 2020-21, showcasing an increase of 6%.

## INDIAN SPACE POLICY 2023



Government of India has published Indian Space Policy 2023 to enhance participation of non-government entities (NGEs) in carrying out end-to-end activities in the space domain and providing them a level playing field. The policy is aimed at augmenting space

capabilities of the country with a focus on encouraging advanced research and development in the space sector and promoting space related education and innovation.

The policy document lays down the roles and responsibilities of the different entities and organizations which are and will be involved in the space sector. Indian National Space Promotion & Authorisation Centre (IN-SPACe) shall function as an autonomous Government organization and a single window agency for the authorisation of space activities by government entities as well as non-government entities (NGEs), subject to

relevant Government directives, keeping in mind safety, national security, international obligations and/or foreign policy considerations.

ISRO, as the National Space Agency, will primarily focus on research and development of new space technologies and applications, and for expanding the human understanding of outer space.

The Department of Space (DOS) is the nodal department for implementation of the policy which shall oversee the distribution of responsibilities outlined in this policy and ensure that the different stakeholders are suitably empowered to discharge their respective functions, without overlapping into others' domain. It shall also interpret and clarify any ambiguities arising in implementation of the policy.

NewSpace India Limited (NSIL), as the Public Sector Undertaking under DOS, is responsible for (i) commercialising space technologies and platforms created through public expenditure, (ii) manufacturing, leasing, and procuring space components, technologies, and platforms and (iii) servicing the space-based needs of users, whether Government entities or NGEs.

## **FOREIGN TRADE POLICY 2023**



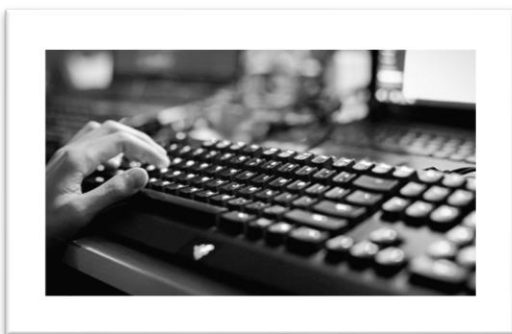
To boost exports from the country, Government of India has launched the Foreign Trade Policy 2023 (FTP 2023) which aims at process re-engineering and automation to facilitate ease of doing business for exporters. The policy is based on 4 pillars: (i) Incentive to Remission (ii) Export promotion

through collaboration - Exporters, States, Districts, Indian Missions, (iii) Ease of doing business, reduction in transaction cost and e-initiatives and

(iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining Special Chemicals, Organism, Materials, Equipment and Technologies (SCOMET) policy.

The FTP 2023 is based on tested schemes for facilitating exports and introduces a one-time Amnesty Scheme for exporters to close the old pending authorizations and start afresh. It also encourages recognition of new towns through “Towns of Export Excellence Scheme” and exporters through “Status Holder Scheme”. The Policy also seeks to facilitate exports by streamlining the popular Advance Authorization and Export Promotion Capital Good (EPCG) schemes and enabling merchanting trade from India.

### **ONLINE GAMING RULES 2023**



Government of India has introduced Rules for Online Gaming by way of amendment in existing Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The new Rules, called the Information Technology

(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2023, are aimed at enforcing greater due diligence by online gaming and social media intermediaries, and to prevent negative impact and psychological harm to the users and especially safeguard children by using parental and access controls.

An online game is defined as “a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.” The online games which are free to play are generally permissible and the entities offering the same have been classified as Online Gaming Intermediaries (“OGI”). However, in case of online real money games

which make the users put in monetary deposits, only such games are allowed which that are verified by self-regulatory body (SRB) designated by the Central Government as- (a) not involving wagering on any outcome; (b) being compliant with the obligations under these rules; (c) the age under law at which an individual is competent to enter into a contract, and (d) the framework made by the SRB.

Obligation has also been put on social media platforms and app stores to make reasonable efforts to not host, publish or share any online game that causes user harm, or which has not been verified as a permissible online game by an online gaming SRB. The Rules also prohibit intermediaries from hosting or displaying any advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game.

Further, if any non-real money online game has the potential to cause user harm or affect the security of India, the Central Government can require such online games to be subject to the obligations under the Rules as are applicable to online real money games.

## **MODIFIED SIPP SCHEME**

The scheme for Startups Intellectual Property Protection (SIPP) is a commendable initiative by the Government of India to promote and safeguard the intellectual property rights of startups and innovators in the country. The scheme aims to create awareness among startups about the importance of intellectual property rights and to provide them with the necessary assistance to protect their patents, trademarks, and designs both within India and abroad. The scheme was launched in 2016 on a pilot basis and was extended until March 31, 2023. The scheme is now being modified and further extended for a term of 3 years until March 31, 2026. Certain aspects of the scheme have been modified effective from April 1, 2023, based on the experience gained from its implementation so far.

Facilitators empanelled under the scheme will not charge any fees from eligible applicants and will be paid directly for any number of patents, trademarks, or designs applied for by the Central Government through the IP office and disbursed by the respective IP office. However, the eligible applicant must bear the statutory fees associated with each patent, trademark, or design application and PCT fees for an ISA application and payments under the Madrid System for an International Trademark application.

The scheme emphasizes that the ownership of the intellectual property rights (IPR) created shall remain with the eligible applicant, and it shall not be transferred to the facilitator or the government. The scheme does not provide any guarantee for grant or registration of the IPR, and the applications will be processed as per the relevant laws and rules. The modified SIPP scheme is a significant step forward in the government's effort to encourage startups and innovators to realize their full potential and contribute to the country's economic growth and development. Therefore, eligible startups and innovators should take advantage of this scheme and protect their intellectual property rights.

## **Promotions At The Indian Patent Office**

In a welcoming move by the CGPDTM, over 302 Assistant Controllers, more than 60 Deputy Controllers, and over 30 Joint Controllers were promoted at the Indian Patent Office at the beginning of May 2023. The move is expected to expedite the functioning of the Patent Office, overcome the gaps in manpower at the Office, and have a holistic effect in reducing the time frame of patent application processing.

## **Jan Vishwas (Amendment of Provisions) Bill, 2022**

The Jan Vishwas (Amendment of Provisions) Bill, 2022 was introduced in the parliament in December 2022 to decriminalise minor offences in 42 statutes, including the Patent Act, 1970. The Bill was referred to a Joint Parliamentary Committee, which submitted its report on March 17, 2023.

One of the objectives of the Bill is to abolish imprisonment for minor offences under the patent law and instead, increase fines for such offences.

For instance, a refusal or failure to supply information under sections 100(5) and 146 leads to a fine of up to INR 100,000 (USD 1,200). In the case of continuing refusal, in place of a fixed penalty of up to INR 1 million a further penalty of INR 1,000 may be imposed for every day during which the refusal continues. For furnishing false information the punishment of imprisonment is removed and substituted with a heavy fine of not less than INR 2.5 million. For falsely marking products as patented or patent pending under section 120, the fine is increased tenfold.

The Bill also gives adjudicating powers to the CGPDTM to determine the penalties that were earlier missing from the Act. Added section 124A provides for imposing penalties where the government is authorised to appoint adjudicating officers to determine penalties. Adjudicating officers will have the power to summon individuals to give evidence and conduct inquiries into violations of the Act. A new clause xiiia has been added to section 159(2), inserting the manner of imposing a penalty under section 124A(a). The Controller will thus have the power to adjudicate and impose penalties for any contravention or default under the Act in the manner which may be prescribed. This bill also proposes an appeal mechanism for any person aggrieved by an order made by an adjudicating officer, with appeals to be referred to the high courts.

The purpose of these amendments is to discourage any continuation of the default or contravention. This step will go a long way to ease doing business in India with regard to patented products. Without compromising the requirement to comply with the public interest provisions of patent law, this bill seeks to streamline the procedure before the controller. Penalties will be imposed only in cases where non-compliance is wilful and deliberate. The amendments to the Act emphasise that there must be strict compliance with orders made by the Controller. Defaulters will find that ignoring the new measures will lead to large and increasing financial penalties.



## National Medical Device Policy, 2023



The National Medical Devices Policy, 2023 was notified on May 2, 2023, to provide a roadmap for accelerated growth of the Indian medical devices sector with a mission of better access & universality, affordability, quality, patient centred & quality care, preventive & promotive health, security, research and

innovation and skilled manpower. The policy focuses on regulatory streamlining, reducing compliance burden, and enhancing the ease of doing research and business. It lays down the implementation of a 'Single Window Clearance System' for licensing medical devices in line with the National Single Window System (NSWS). It also broadens the role of Indian Standards setting bodies such as the Bureau of Indian Standards (BIS) and sectoral standards development organizations for processes, products, wireless technologies, and performances. It also calls for establishing new and improved medical device marks and clusters and outfitting them with world-class common infrastructure facilities.

The policy also focuses on promoting research & development endeavours in India and supplements the proposed National Policy on R&D and Innovation in the Pharma- MedTech Sector in India. Centres of Excellence in academic and research institutions, innovation hubs, and 'plug and play' infrastructures will also be established to extend support to startups. The policy aims to boost private investments, funding from Venture Capitalists, and Public-Private Partnerships (PPP) to foster innovation in the medical device sector. It also envisions creating a dedicated Export Promotion Council for the medical device sector to deal with any market access issues.

## Framework for Acceptance of Green Deposits by the Reserve Bank of India

On April 11, 2023, the Reserve Bank of India released the Framework for Acceptance of Green Deposits for Scheduled Commercial Banks including

Small Finance Banks and deposit-taking Non-Banking Financial Companies/Housing Finance Companies, which shall come into effect from June 1, 2023. The framework mandates the regulated entities to put in place a Board-approved Financing Framework (FF) for the allocation of green deposits to eligible green activities/projects in nine sectors namely Renewable Energy, Energy Efficiency, Clean Transportation, Climate Change Adaptation, Sustainable Water and Waste Management, Pollution Prevention and Control, Green Buildings, Sustainable Management of Living Natural Resources and Land Use, and Terrestrial and Aquatic Biodiversity Conservation.

## **The Biological Diversity (Amendment) Bill, 2021**



8On August 2, 2022, the Joint Parliamentary Committee submitted its report on the Biological Diversity (Amendment) Bill, 2021. The Bill aims at streamlining the compliance requirements for domestic companies and removing research and bio-survey activities from the purview of benefit sharing requirements. It also expands the provision relating to exempted

categories to include codified traditional knowledge, cultivated medicinal plants and its products, local people and communities of the area, including growers and cultivators of biodiversity, *vaid*s, hakims and registered AYUSH practitioners who have been practicing indigenous medicines, including Indian systems of medicine for sustenance and livelihood. Another key feature of the Bill is that it decriminalizes all the offences under the Biological Diversity Act, 2002 and lays down different penalties for such offences.

## Public Notification on the Protection of Plant Varieties and Farmers' Rights Act, 2001



On April 04, 2022, the Protection of Plant Varieties and Farmers' Right Authority issued a public notification to invite applications from interested parties with the details of candidate variety namely botanical species, category of registration (variety of common knowledge or farmers' variety), source of origin (Indian or

abroad), method of propagation, available descriptors of distinguishing genetically inherited morphological characters on individual as well as population of the variety (as recorded by the plant breeder) along with the methodology of recording variations within the character, names of example/reference varieties available in India along with their trait expression data as per distinguishability from the candidate variety, suitable regions and public institutions for conduct of DUS testing, suitability production conditions for optimal agronomic expression in the trials for conduct of DUS tests, etc., in order to facilitate due examination of the extant variety application. The initiative has been taken with a view to expediting the registration of extant varieties of crop species that have not been notified yet.

### Notification on Class of Persons not covered under Angel Tax

Vide Notification No.: 29/2023/F. No. 370142/9/2023-TPL (Part-I), dated 24th May 2023, the Central Government notified three class or classes of persons, including categories of investors from 21 listed countries, for the purpose of exemption from the tax levied under Section 56 sub-section (2) clause (viib) of the Act ("Angel Tax").

The class or classes of persons exempted from Angel Tax under this notification include:

- (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is seventy-five percent or more;
- (ii) Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident;
- (iii) Any of the following entities, which is a resident of any country or specified territory listed under the Annexure to this notification, and such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident:
  - a. entities registered with Securities and Exchange Board of India as Category-I Foreign Portfolio Investors;
  - b. endowment funds associated with a university, hospitals or charities;
  - c. pension funds created or established under the law of the foreign country or specified territory;
  - d. Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than fifty and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

Further, the 21 exempted countries listed are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, United Kingdom, and United States of America.

## **Rules on the Display of Warnings and Disclaimers for Tobacco Products and Cigarettes by OTT Platforms**

On May 31, 2023, the Government notified the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules,

2023 (hereinafter the “Amendment Rules of 2023”) with a view to broadening the ambit of entities covered under these Rules.

These Amendment Rules of 2023 make it mandatory for publishers of any online curated content to display relevant anti-tobacco warnings and disclaimers similar to the content screened in theatres and television programmes.

The Rules shall apply to any "online curated content", which is defined as "any curated audio-visual content, other than news and current affairs content, owned by, licensed to, or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks including films, audiovisual programmes, documentaries, television programmes, serials, series, podcasts and other such content.”

The term “publisher of online curated content” is further defined as “a publisher who, while playing a significant role in determining what online curated content is being made available, makes available to users a computer resource enabling such them to access online curated content on the internet or computer networks and such other. The definition, while including persons functionally similar to publishers of online curated content, excludes any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity.”

Under these definitions, all the content published by any over-the-top (OTT) media channels operating in India shall be covered by these Rules. The Amendment Rules of 2023 introduce a new Rule 11 that makes it mandatory for any publisher of online curated content (OTT platforms) that displays tobacco products or their use to display the following information:

- Display anti-tobacco health spots for at least thirty seconds each at the beginning and during the programme.
- Display an anti-tobacco health warning as a prominent static message at the bottom of the screen during the period when tobacco products or their use is being displayed.

- Display an audio-visual disclaimer on the ill effects of tobacco use for at least twenty seconds at the start and during the programme.

Further, the anti-tobacco health warning message, health spot and audio-visual disclaimer must be in the same language as the one used in the online curated content. The anti-tobacco health warning message must also be legible and readable, with the font in black colour and white background, reading as “Tobacco causes cancer” or “Tobacco kills”. These health spots, messages, and disclaimers will be made available for the covered entities on the MoHFW website or the National Tobacco Control Programme website.

However, there must not be any display of brands of cigarettes or other tobacco products/any form of tobacco product placement or display of any tobacco products or their use in the promotional materials for the online curated content.

In the event of non-compliance by the publisher of online curated content with these display requirements, an inter-ministerial committee comprising representatives from the MoHFW, Ministry of Information and Broadcasting and Ministry of Electronics and Information Technology may take suo moto action, or act on a complaint against such publisher. The Committee shall first issue a note to the non-complying publisher, giving them an opportunity to elucidate on such non-compliance and a chance to make requisite rectifications to the content.

## **Cabinet Approval to National Research Foundation (NRF) Bill 2023**

The Union Cabinet, on June 28, 2023, approved the introduction of the National Research Foundation (NRF) Bill 2023 in Parliament. This significant move promises to reshape India's research landscape and propel scientific innovation to new heights.

The NRF's objective as envisaged in the Bill is to foster groundbreaking discoveries and ensure India's position at the forefront of global research excellence across various domains. The Bill once enacted into law would

be a revolutionary step for India's research ecosystem to create opportunities for transformative advancements in science and technology.

NRF is proposed to be governed by an esteemed Executive Council, chaired by the Principal Scientific Adviser to the Government of India. The council would comprise of experts from various scientific disciplines, will offer strategic guidance and foster a collaborative environment for research excellence.

The Bill underscores the government of India's unwavering commitment to scientific advancement and promoting a culture of research and development.

## **No Music License Required for Marriage Ceremonies: DPIIT**

On July 24, 2023, the Department of Promotion of Industry and Internal Trade (DPIIT) issued a Public Notice in response to several complaints received from stakeholders and the general public that copyright societies have been collecting royalties for communication and performance of copyrighted musical works and sound recordings in marriage functions. Via this Notice, the DPIIT clarified on account of the application of the exception given under Section 52(1)(za) of the Copyright Act, 1957, that performance or communication of any literary, dramatic, musical or sound recording work at any religious ceremony which includes marriage ceremony shall not amount to copyright infringement.

Via an earlier Notice dated August 27, 2019, the Copyright Office had already clarified that in view of the exception contained in Section 52(1)(za) of the Act, *read with the explanation thereto*, it is evident that utilization of sound recordings in the course of religious ceremonies including marriage procession and other social festivities associated with marriage will not amount to copyright infringement and no license is required to be obtained for the said purpose. Section 52(1)(za) is reiterated for reference below:

*52. Certain acts not to be infringement of copyright.— (1) The following acts shall not constitute an infringement of copyright, namely,—*



*(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.*

*Explanation—For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage;*

With the latest Public Notice issued by DPIIT, copyright societies have been directed to strictly refrain from entering into any acts that violate Section 52(1)(za) of the Act to avoid legal action against them, and a caution advisory has been issued to the general public to not oblige to any uncalled for demands of any copyright society/individual/organization that contravenes Section 52(1)(za) of the Act.

## **Proposal for 24x7 Virtual Courts in India**

The Indian Ministry of Law, on July 08, 2023, invited proposals from IIMs, IITs, law universities, and judicial academies across India to conduct an extensive study on 24/7 virtual courts for the disposal of all kinds of cases. The proposals were to be submitted by August 1, 2023.

Currently, 21 virtual courts operate in India's 17 states and Union Territories, with more than 2 crore (20 million) cases of traffic challans handled, and over INR 360 crore (USD 43 million) worth of online fines realised.

The establishment of 24/7 virtual courts for all kinds of cases is expected to reduce footfall in courts and eliminate the need for the physical presence of advocates or violators. The proposed virtual courts will be led by virtual judges with extended jurisdiction over the entire state and 24/7 working hours. This arrangement is hoped to save invaluable judicial hours and eliminate the need for the judge or the litigant to come to the court physically.

The ministry has also invited proposals for evaluating the performance of commercial courts and the timelines for disposing of cases. The institutes to which the project will be assigned would also have to come up with innovative suggestions and proof of concept based on extensive research studies that can be further extended to try other types of cases through virtual courts.

The digitalisation of the Indian court system has been a priority of the Government in recent times, with the allocation of INR 7000 crores for the launch of the third phase of the e-courts project in the Union Budget 2023-24. The setting up of 24/7 virtual courts will be a significant step towards establishing a prompt justice delivery system in the country, along with reducing the redundancy of physical presence for small matters.

## **India Taking Steps towards IP Financing**

The Intellectual Property (IP) generation and protection regime in India has been continuously evolving over the past decade mainly due to the Indian Government's constant efforts towards increasing ease of doing business and strengthening the rights of IP holders. A few factors contributing towards building a resilient Intellectual Property regime in India include its vibrant digital economic growth stemming from the 'Digital India' initiative, IP support provided under the 'Make in India' initiative, Global economic policy reforms by the Government, and the recently modified Startups Intellectual Property Protection scheme.

In the entire past decade, the Government of India has been launching several schemes to nurture the start-up ecosystem, such as the SIDBI Funds of Fund Scheme, Startup India Seed Fund Scheme, Startup India Investor Connect, etc. These schemes aim to raise the budding entrepreneurs of the country which can turn into the next billion-dollar block of the second fastest-growing economy of the world.

Intellectual property possesses tremendous value, which can be sifted to identify and leverage significant financial power. Traditionally, such instances have been sparse, and IP financing is still a concept in discussion – a blueprint in the making!

The Indian Government recently announced the decision to lay down an action plan and blueprint for the promotion and institutionalisation of intellectual property financing in India. This step is being taken in an endeavour to improve the country's finances by leveraging IP rights vested in patents, trademarks, designs, copyrights, etc.

The strategic blueprint and action plan will be formulated under the Department for Promotion of Industry and Internal Trade (DPIIT), the nodal department for the administration of the IP regime in India.

It is widely known that India is a regulated market with constant interventions from the Government on policy changes and regulations. From large organisations to new startups, every enterprise needs access to capital to grow, scale up or diversify. Yet, raising funds is one of the most challenging tasks for any business. The Government of India's newest attempt to align IP financing with the overall 'Credit System of India' is aimed at addressing some of these challenges and enabling businesses to monetise their intellectual property effectively.

IP financing involves using intellectual property rights to avail credit, generate revenue, and avail other financial benefits by using such intangible assets as collateral in financial transactions. The concept of IP financing is gaining recognition as it propels financial innovation, increases accessibility to credit, and enhances capital base by allowing IP holders to leverage the value of their intellectual property.

More investors have started identifying a well-managed IP portfolio as an addition to a company's overall value. IP protection indicates the high potential of a business for performing well against its competitors in the market. The ownership of a business in intellectual property serves as a testament to its innovative products or services, thereby strengthening its potential to be a profitable business with a larger market share and fewer competitors.

Several countries such as South Korea, Canada, China, and Japan are developing systemic plans to help Small & Medium-sized Enterprises (SMEs) raise financing (either equity and/or debt) in a big way towards securing loans and raising capital to fund the innovation ecosystem. In South Korea, state-owned banks like the Korea Development Bank and the

Industrial Bank of Korea run IP finance transactions in the country. Interestingly, the Korea Development Bank also holds a USD 60 million IP recovery fund. The Chinese government has also been encouraging the sale and leaseback model as a base for optimising loan lending. In Japan, the government has been aiding commercial lenders engaged in IP-backed financing through valuation assistance and a lower degree of direct market intervention. The government plans to analyse and implement measures and procedures already enforced by foreign counterparts towards the adoption of IP financing.

Further, it is planned to identify all the reasonable methods for formulating a uniform system for the valuation of intellectual property as an intangible asset, in order to further devise a mechanism to identify and appoint IP evaluators and optimise evaluation of assets by financial institutions. It would also include putting in place, relevant mechanisms for insurance protection against the financial risks associated with IP.

Due to the lack of recognition of intellectual property as a valuable asset, businesses often tend to overlook it when it comes to financing. Further, most banks and financial institutions remain unwilling to assume the contingencies associated with IP as an asset. Owing to these factors, IP financing is still an extremely niche product in the mostly traditional Indian loan market.

It's imperative to understand that valuing the intangible nature and associating the potential revenue gains from IP can be a challenging task. The journey of transforming IP as a valuable financial instrument may witness its set of unprecedented challenges and will require new and innovative ways of financial modelling and breakthroughs.

A blueprint for IP financing would act as an assertive step towards solving a globally posed question of how to capitalise on IP and may offer a viable and resilient financial solution to the world. Such a step by the Indian Government can also be seen as a recognition of the complex nature of the problems relating to IP financing that may dampen its implementation. Additionally, the Government of India is working towards building an interface that can bring together different stakeholders and facets of the IP and finance industry, thereby making it a truly collaborative and united effort.

An action plan for IP financing in India will also attract numerous economic benefits including financial innovation and the creation of more optimised financial technologies, corporate securities, new derivative contracts, and new pooled investment products. This move by the Indian government can also help in a systematic valuation of IP assets for businesses, especially for startups that often wish to raise capital from investors for financial institutions or resell their IP.

## **The Cinematograph (Amendment) Bill, 2023**

The Parliament passed the Cinematograph (Amendment) Bill, 2023 ('the bill'), with the bill receiving the nod from Lok Sabha on July 31<sup>st</sup>. The bill comes in furtherance of the Cinematograph (Amendment) Bill, 2021. This bill was first introduced in the Rajya Sabha, which is the upper house of the Indian legislature, in February 2019. The initial bill only dealt with changes with respect to film piracy. It was then referred to the Standing Committee on Information Technology which submitted its report in March 2020, after which the revised bill of 2021 was opened to the public. Following consultations with industry stakeholders and receiving public comments, the bill was again revised to become as it stands today.

In a nutshell, the bill proposes some key changes to the Cinematograph Act, 1952 ('the Act') with respect to the certification of films, copyright coverage, the menace of piracy as well as the extent of governmental control over the Central Board of Film Certification ('CBFC' or 'the Board').

The bill proposes the following changes to the Act:

- **Expansion of Copyright Protection–**

The bill has introduced two Sections 6AA and 6AB which will respectively deal with the 'Prohibition of unauthorized recording' and 'Prohibition of unauthorized exhibition of films'. It also makes the *attempt* and *abetment* of these acts punishable.

Further, both Sections use the terminology "infringing copy" which will be added in the definition clause under Section 2 (*ddd*) of the Act and shall

have the same meaning as assigned to it under sub-clause (ii) of clause (m) of Section 2 of the Copyright Act, 1957 ('the Copyright Act').

- **Punishment for Piracy–**

While there is no definition provided for 'piracy', as per the proposed Section 7 (1A), the abovementioned offences under Sections 6AA and 6AB will be punishable with imprisonment for a minimum period of 3 months and a maximum of 3 years, and a fine of minimum INR 300,000 (USD 4000) which may be extendable up to 5% of the audited gross production cost. This will however be subject to Section 52 of the Copyright Act which lays down the exceptions to copyright infringement.

The proposed Section 7 (1B) further goes on to state that any person aggrieved by the offences committed under the abovementioned Sections 6AA and 6AB shall not be prevented from taking suitable action for infringement under Section 51 of the Copyright Act or for computer-related offences under Section 66 of the IT Act, 2000.

- **Age-based Certification–**

In addition to the current U, UA, A and S ratings as given under Section 5A of the Act, the bill trifurcates the UA rating into further age-based indicators namely, **UA 7+**, **UA 13+** and **UA 16+** which will indicate that the film is suitable for children above the respective ages of 7, 13 and 16 under parental guidance.

These changes will take effect through Section 4 under 'Examination of films' and in the definition clause under Section 2 (i) of the Act.

It is pertinent to mention that this new classification system aligns with the graded-age classifications implemented for streaming platforms under the IT Rules, 2021.

- **Recertification of films for TV and other media–**

Historically, films rated for adults in India have been under a blanket ban from being televised since a 2004 Order of the Bombay High Court in the case of *Pratibha Naitthani v. Union of India*. As a result, the producers of the films used to apply for recertification of the film after making

appropriate cuts to make it eligible for the UA certificate. However, the bill will now formalize the process under proposed Section 4 (3) of the Act, by empowering the Board to sanction films with a separate certificate for exhibition on television or such other media as may be prescribed.

- **Perpetual validity of Certification–**

As per Section 5A (3) of the Act, the validity of a certificate granted under the Act is prescribed as 10 years, however, the bill has proposed to remove this limit thereby making the certification perpetual.

- **Extent of Government Regulation–**

Giving effect to the judgment of the Supreme Court in *Union of India v. K. M. Shankarappa*, the bill proposes to curtail the Revisional Powers of the Central Government by removing Section 6 (1) of the Act in its entirety. With this, the autonomy of the CBFC is emphasized and strengthened.

Overall, the Cinematograph (Amendment) Bill, 2023 is a welcome step towards tackling some significant issues that have been ailing the film industry for decades. In addition to curbing piracy, the bill has also harmonized the law with the Copyright and the IT Act, both of which play a crucial role with respect to audio-visual, cinematographic as well as digital content. The harmony of laws is imperative for the smooth functioning of any system, and this bill seems to have the potential to act as a facilitator towards achieving that climax.

The bill will amend the Cinematograph Act almost 40 years after its last significant amendment in 1984. Could this then be called its coming of age? Only time will tell.

## **Gujarat Semiconductor Policy 2022 – 27**

The global semiconductor industry is valued at USD 400 billion and the Indian Semiconductor Industry, in 2020, was valued at USD 15 billion and is expected to rise to USD 63 Billion by 2026.



To achieve this objective, the Government of India (GOI) has set-up the India Semiconductor Mission (ISM), that aims to build a vibrant semiconductor and display ecosystem to enable India's emergence as a global hub for electronics manufacturing and design, and has launched 4 schemes viz.

- "For setting up Semiconductor Fabs",
- "For setting up Display Fabs",
- "For setting up Compound Semiconductors/ Silicon Photonics/ Sensor Fab and Semiconductor Assembly, Testing, Marking and Packaging (ATMP)/ OSAT facilities", and
- "Design Linked Incentive (DLI) Schemes".

GOI has pledged INR 76,000 Crore for these schemes and schemes for setting up semiconductor fabs and display fabs receive the maximum benefits. For setting up the semiconductor fabs, the GOI has pledged to support up to 50% of the project cost on Pari-passu basis and for setting up display fabs, the GOI has pledged up to 50% of the project cost for projects valued up to INR 12,000 crore.

The government of Gujarat state in line with the vision of GOI has come up with the Gujarat Semiconductor Policy 2022-27 ("Policy"). With the presence of 48 ports, 17 operational airports and airstrips with 2 international airports and premier educational institutes, Gujarat government has taken up the initiative to become the pioneer state in realizing the GOI's mission to make India as a global hub for Electronics System Design and Manufacturing ecosystem.

Fiscal support pledged by the Gujarat Government under Policy:

- Additional capital assistance of 40% of the capex assistance given by GOI,
- 75% subsidy on first 200 Acres of Land for FAB project (*only on land allocated by DSIRDA, the Government or their agency*),

- All eligible projects entitled for ONE time reimbursement of 100% of Stamp Duty and Registration fee paid for lease/ Sale/ Transfer of the land for the purpose of the project,
- Water supply at INR 12/cubic meter for 5 years,
- Capital subsidy of 50% is an eligible semiconductor fab or display fab builds a desalination plant, and
- Power subsidy of INR 2/unit for 10 years.

Non – Fiscal Incentives:

- Gujrat State Electronics Mission (GSEM) will act as the POC of all eligible projects,
- Easy access to Common Effluent Treatment Plants (CETPs) and Treatment, Storage and Disposal Facilities (TSDFs),
- Uninterrupted Power and Water Supply, and
- Facilitation in Land Procurement.

The policy implementation will be done by GSEM which has been set up, by Department of Science and Technology (“DST”) Gujrat. The primary objective of GSEM is to organize efforts for promoting Semiconductors and Display industry in a more structured, comprehensive, and focussed manner. It will facilitate the adoption of electronics by developing smooth trade linkages to establish supply chain for raw materials, specialty chemicals, gases and manufacturing equipment.

For approval of Semiconductor Fab and Display Fab projects and projects having proposed investment of minimum INR 1,000 crore, a high-powered committee (“HPC”) has been set-up. The HPC constitutes members from various Gujrat State run departments viz. DST, GSEM, Industry and Mines Department, Energy and Petrochemicals Department, Narmada, Water Resources, Water Supply and Kalpsar Department, Revenue Department, Finance Department, Dholera Special Investment Region Development Authority and Roads & buildings Department.

For projects having an investment of less than INR 1,000 crore, a State Level Empowered Committee (“SLEC”) has been set up comprising members from DST, Finance Department, Industries Commissioner, Directorate of ICR and e-Governance amongst others.

The overall idea is to have a vibrant ecosystem for electronics & semiconductor sectors to enable Gujarat’s emergence as a national hub for electronics manufacturing and design.

## **50th GST Council Meeting: Key Recommendations for the GST Regime in India**

The 50<sup>th</sup> Goods and Services (GST) Council Meeting was held on July 11, 2023, resulting in some key recommendations and discussions on GST tax rates on different goods and services, exemption from GST implication, improvements in trade activities, and optimisation of the GST compliance requirements. Numerous recommendations have been made with an aim to streamline the indirect taxation system, provide exemptions where necessary and promote certain industries.

### Changes in GST Rates of Goods

- Exemption of IGST on Medicines and Food for Special Medical Purposes (FSMP) imported for personal use to support rare disease treatment. Further, such exemption will be extended to FSMP imported by Centres of Excellence for Rare Diseases and recommended institutions.
- IGST exemption for Dinutuximab (Quarziba) medicine when imported for personal use.
- Reduction in the GST rate on uncooked/unfried snack pellets to 5% and regularisation of past GST payments on an "as in basis".
- Reduction in the GST rate on imitation Zari thread or yarn from 12% to 5% and regularize past GST payments.
- Reduction in the GST rate on LD slag from 18% to 5% to promote environmental protection and utilization and regularisation of past GST payments.

- Reduction in the GST rate on fish soluble paste from 18% to 5% to support environmental protection and regularize past GST payments.
- Amendment to the entry 52B in compensation cess notification to cover all utility vehicles that have the Length over 4000 mm, Engine capacity of more than 1500 cc and Ground Clearance of 170 mm & over and inclusion of an explanation to define the meaning of 'Ground clearance' as Ground Clearance in un-laden condition.
- Regularisation of matters relating to desiccated coconut for the period July 7, 2017 to July 27, 2017 on an "as is basis" in view of genuine interpretational issues.
- Taxability of the supply of raw cotton, including kala cotton, by agriculturists to cooperatives under reverse charge mechanism and regularisation of past GST issues on "as in basis".
- Regularisation of matters related to trauma, spine, and arthroplasty implants prior to July 18, 2022, on an "as is basis" due to genuine interpretational issues.
- Regularisation of GST issues relating to plates and cups made of areca leaves before October 1, 2019, and biomass briquettes for July 1, 2017 to October 12, 2017.
- Notification of the former ad valorem rate applicable on March 31, 2023 for levying Compensation Cess on pan masala, tobacco products, etc., that do not legally require a declaration of retail sale price.
- Inclusion of RBL Bank and ICBC Bank in the list of specified banks for IGST exemption on imports of gold, silver or platinum and appraisal of the list of such eligible banks based on Annexure 4B (HBP) of Foreign Trade Policy, 2023.

#### Changes in GST Rates on Services

- Extension of GST exemption on satellite launch services by private sector organizations similar services supplied by ISRO, Antrix Corporation Limited and New Space India Limited (NSIL) to encourage start-ups and boost the space industry.
- Simplification of the process for filing declaration for paying GST under forward charge for Goods Transport Agencies (GTAs) by eliminating the requirement to file such declaration every year. When a GTA exercises this option for a specific financial year, it will be deemed to be exercised for the next and future financial years, unless they choose to revert to reverse charge mechanism (RCM). The last

date to pay GST under forward charge will be March 31 of the preceding financial year and the start date for exercising this option will be January 1 of the preceding financial year.

- Services supplied to the company by a company's director in their private or personal capacity, including services such as renting of immovable property to the company or body corporate, will not be taxable under RCM. However, services supplied as or in the capacity of a director of the company shall be taxable under RCM.
- Supply of food and beverages in cinema halls will be taxable as a restaurant service if such services are supplied by way of or as part of a service and independently of the cinema exhibition service. In case such supply is bundled with the sale of cinema tickets, such services will be considered as composite supply, and will be taxable at GST rate applicable to the service of exhibition of cinema.

### GST on Online Gaming, Horse Racing, and Casino

One of the most significant recommendations is the taxation of casinos, horse racing, and online gaming activities. These activities will be taxed at a uniform rate of 28%, regardless of the amount of money involved. This is in line with the recommendations of the Group of Ministers (GoM) on the taxation of these activities. For casinos, the face value of chips purchased shall be taxable. In the case of horse racing, the full value of bets placed with bookmakers/totalisators shall be taxable, and for online gaming, the full value of bets placed shall be taxable.

### Measures for Facilitation of Trade

The GST Council has made the following recommendations with a view to facilitating trade:

- Setting up a GST Appellate Tribunal
- Simplification of Annual Returns & Exemption from Filing
- Simplification of the Input Services Distributor (ISD) Mechanism
- Issuance of a Circular to Deal with Refund-related Issues
- Issuance of a Circular to Deal with TCS Liability in E-commerce
- Simplification of the Tax Invoice Requirements

- Issuance of Clarification Circulars to remove uncertainty and legal disputes on an array of issues,
- Verification of Input Tax Credit
- Additional Suggestions
- Special procedure to be provided under Section 148 of CGST Act, 2017 for manual filing of appeal against the orders passed by proper officers in respect of TRAN-1/ TRAN-2 claims of the registered persons.
- Extension of amnesty schemes as notified vide notifications dated March 31, 2023 regarding non-filers of FORM GSTR-4, FORM GSTR-9 & FORM GSTR-10 returns, revocation of cancellation of registration and deemed withdrawal of assessment orders issued under Section 62 of CGST Act, 2017, till August 31, 2023.
- An extension for the filing of FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for April, May and June 2023 for the registered persons of the State of Manipur is also suggested till July 31, 2023.

### Recommendations for Streamlining Compliance

With an aim to improve efficiency and curb fraud in the system, the council has suggested the following changes to the compliance and other GST processes:

- E-way Bill Requirement for Gold and Precious Stones
- Capacity-based Taxation and Special Composition Scheme
- Amendments in the CGST Rules, 2017 for Strengthening Registration Process
- Risk-based Biometric-based Aadhaar Authentication
- Insertion of Rule 142B in the CGST Rules, 2017, along with the introduction of Form GST DRC-01D for Recovery of Tax and Interest
- Mechanism to Address ITC Differences
- Discipline in Annual Return Filing
- Amendments for OIDAR Service Providers
- Insertion of Explanation 3 after Rule 43 of the CGST Rules, 2017 for Duty-Free Shops and Exempt Supplies
- Insertion of sub-rule (3A) in Rule 162 of the CGST Rules, 2017 for Compounding Amount and Information Sharing

- Insertion of sub-rule (3A) in Rule 162 of the CGST Rules, 2017 has been advised to prescribe the compounding amount for offences under Section 132 of the CGST Act.
- Insertion of a clause (ca) in sub-section (1) of Section 10 of the IGST Act, 2017 for Clarification on Place of Supply for Goods to Unregistered Persons
- Formation of a State-Level Coordination Committee
- Implementation of IT System Reforms

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The background of the entire page is a collage of four photographs of modern, multi-story office buildings. The buildings are rendered in a monochromatic orange-brown color scheme. The top-left photo shows a building with a curved facade and multiple windows. The top-right photo shows a building with a prominent glass facade and a central entrance. The bottom-left photo shows a building with a flat roof and a series of windows. The bottom-right photo shows a building with a flat roof and a series of windows, similar to the one in the bottom-left. The overall aesthetic is professional and corporate.

## CHOOSING LEXORBIS

With a complete range of IP Services, and a qualified team of trained professionals, our working philosophy is to tailor our services to individual needs and help clients navigate all stages of the intellectual property lifecycle. Our attorneys, while focusing on quality as their first goal, use their diverse experience and knowledge to achieve the kind of partnership that leads to mutual trust and respect.

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New Delhi – 110001

### **Mumbai**

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### **Chennai**

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