BULLETIN

NIC LEGAL WORLD LLP

NATIONAL | INTERNATIONAL | COUNSELLING

Advocates, Solicitors and Consultants

OCTOBER 2023

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

A NEW POSSIBILITIES IN DIGITALLY EQUIPPED COURTROOMS

N K Gupta
Founder & Managing Partner

The Emergence

India's journey to setup **e-governance in the Indian Judicial System** commenced in the late 1990s but gained considerable momentum following the enactment of **the Information and Technology Act in 2000**. With the dawn of the 21st century, the focus shifted towards the digitization of court records and the establishment of e-courts nationwide. In 2006, the launch of e-courts as part of the National e-Governance Plan (NeGP) marked a significant milestone in this transformative journey.

Hon'ble Chief Justice of India D.Y. Chandrachud headed a project aimed at digitizing around one crore case files in just one year. While the use of video conferencing for matrimonial cases was approved by the Supreme Court in 2017, it was a short-lived direction. However, in 2018, the Supreme Court made a groundbreaking decision to allow the live-streaming of cases of constitutional and national importance, substantially enhancing transparency.

The digitalization of the judiciary is a pressing matter, as it addresses several challenges that the justice system faces today.

The Challenges

Digital Literacy: Many judges, court staff, and lawyers may lack familiarity **with digital technology, necessitating training and awareness programs. Providing judges, lawyers, and court staff with adequate training for e-courts effectively is essential.** This will help them to leverage technology to deliver justice more efficiently and effectively.

The digitalization of India's judiciary is a transformative leap towards efficiency, accessibility, and transparency. But like any journey, it will require collaboration, innovation, and a steadfast commitment to overcoming challenges.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

Providing judges, lawyers, and court staff with adequate training for e-courts effectively is essential. This will help them to leverage technology to deliver justice more efficiently and effectively.

Suggestions

To address this challenge, **we propose the implementation of a comprehensive and user-friendly digital document chain, seamlessly connecting all courts in India to the superior court. This revolutionary system ensures the authenticity of documents, eliminates redundancy, concealing of facts, and significantly expedites the legal process.**

By identifying specific case categories suitable for virtual hearings and making them mandatory can accelerate proceedings. This will also help to reduce the burden on litigants and the judicial system. Developers of legal technologies should implement self-regulation, while external regulation by the legislature and judiciary can safeguard privacy and ethics. This will ensure that technology is used ethically and responsibly in the justice system.
Effective data management and maintenance are crucial, including proper records of e-file minute entries, notifications, service, summons, and orders. This will ensure that data is secure and accessible to those who need it.

Conducting seminars and workshops to raise awareness about e-courts and legal technologies can facilitate greater acceptance among stakeholders. This will help to create a more conducive environment for the adoption of digital solutions.

The digitalization of India's judiciary is a momentous occasion that has the potential to revolutionize the way justice is delivered. With the support of all stakeholders, we can make this journey a success and create a judicial system that is more efficient, accessible, and transparent.

We hope for a world where justice is delivered in a timely and efficient manner, regardless of where you live or how much money you have. A world where litigants can track the progress of their cases with ease and access court proceedings from anywhere in the world. A world where the justice system is more transparent and accountable.

Let's work together to make it a reality.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

AI'S LEGAL RENAISSANCE: ENHANCING TIME EFFICIENCY BY AUTOMATING MUNDANE LAWYER TASKS

Prem Chandra Vaish
Senior Mentor

Imagine a world where science and technology serve as benevolent companions, rendering our work-lives not just convenient but remarkably efficient. In this age of marvels, **there's a captivating force that's captivating every facet of our existence– Artificial Intelligence, the brainchild of John McCarthy, hailed as the progenitor of AI.** Think of AI as a wondrous creation -a machine that possesses intellect, autonomy, and the capacity to mimic human behavior, all artfully coded to replicate human thought processes. Picture Google Translate effortlessly transmuting the written word into myriad languages, and you'll begin to grasp the immense power of AI.

In essence, AI is the mirror image of humanity, poised to perform tasks faster and more accurately than us mere mortals. From Alexa helping you order groceries to Spotify crafting playlists tailored to your musical preferences, AI has ingeniously infiltrated the legal domain as well.

Legal Tech, a field that has surged in prominence in recent years, began with humble tasks like document management and court updates but has since evolved into performing even the most 'mundane' legal tasks and research with unprecedented precision, substantially reducing the margin for human error.

For lawyers, grappling with mountains of paperwork and endless writing is a familiar chore. Amidst client feedback, reviews, and notes, it's all too easy to lose track of countless revisions and overlook critical proofreading checkpoints. It's crucial to differentiate between 'editing' and 'proofreading.' Editing entails scrutinizing the draft for overarching concerns like organization and paragraph structure, while proofreading zeroes in on rectifying errors in writing, grammar, and language.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

These tasks are not just time-consuming but can be frustratingly inefficient, especially when multiple individuals are reviewing a single draft, often leading to inconsistencies that epitomize the saying, 'too many cooks spoil the broth.' Quality legal documents demand uniformity in information, structure, content style, arrangement, and language; deviations can erode trust in the legal team.

Enter AI-powered legal proofreading tools. These tools don't just save lawyers time but elevate the quality of each draft with their blazing speed, laser precision, and impeccable checks.

The benefits of embracing AI in the legal arena are twofold:

1. Streamlined due diligence for contract and agreement reviews, saving countless hours daily.
2. A comprehensive legal research spectrum where AI compiles all pertinent case information, from past legal precedents to references, empowering lawyers with a wealth of knowledge for current cases.

Across the globe, these '**smart**' proofreading tools have become staples in the legal profession, and Indian lawyers are swiftly catching up with this automation trend. Some might argue that reliance on such tools could dull one's skills or detach them from the essence of their work, but consider this: law firms worldwide equip their associates with these legal tech solutions to eliminate the 'mundane' and 'error-prone' aspects, freeing up time for strategic thinking, client management, and personal enrichment.

They say AI is the bridge to the future, particularly in the legal domain. It promises to make legal teams operate more intelligently, efficiently, and multitask without sacrificing the quality of their work or missing deadlines. In this era of AI, the future of law is poised for transformation, enabling professionals to work smarter, better, and with newfound freedom to explore uncharted realms of legal expertise.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

RECOVERY OF TAX AT THE STAGE OF APPEAL PROCEEDINGS: A CRITICAL ANALYSIS

Puneet Agrawal
Sr. Partner

Introduction

The concepts of assessment, appeal, and recovery form an integral component of any taxing statute. When an assessment order confirming a tax demand is passed, the assessee has an option to either pay the tax due or to file a statutory appeal challenging the same. Simultaneously, the Revenue is entitled to carry out recovery proceedings as per the provisions of the relevant taxing statute. However, at times conflicts arises relating to recovery of tax at the stage of appeal proceedings.

Under the Central Goods and Services Tax Act, 2017("Act"), the recovery of tax is governed by the provisions of s. 78, which provides that if any order is passed against an assessee raising demand, he is liable to make good the demand within three months, barring which, the Act empowers the proper officers to initiate recovery proceedings u/s 79 of the Act.

Recently, there have been **cases of revenue overreach where departmental officers have initiated recovery proceedings in a high-handed manner without following the mandate of s. 78 read with s. 79 of the Act,** especially in cases where an appeal has already been filed upon payment of pre-deposit. The present article analyzes the scope & legality of recovery of tax at the stage of Appeal proceedings under GST, especially in view of non-constitution of GST Appellate Tribunal.

Relevant Provisions

Section 78 of the Act provides for initiation of recovery proceedings under the Act, wherein any order passed for an amount payable by a taxable person, is to be paid within three months of service of such order, failing which, proper officer is to initiate recovery proceedings u/s 79 of the Act. Section 79, provides for the modes of recovery under the GST Act, authorizing the proper officer under the act to recover such dues in the following modes-

a. Deduction out of money owed to the defaulter

b. Detaining and selling the goods belonging to defaulter
c. Recovery from any other person who owes money to the defaulter
d. Collection by detention of any movable or immovable property belonging to defaulter
e. Recovery through district collector
f. Recovery through magistrate
g. Recovery through execution of bond or instrument

It is pertinent to note that an assessee has a window of three months to either pay the demand amount or file a statutory appeal under the provisions of the Act. In this regard, **s. 107 of the Act, provides that any person, aggrieved by any order passed against him, shall have the option to file appeal within three months of the date of communication of such notice. Furthermore, s. 107(6) mandates a pre-deposit of 10% of the disputed tax for the filing of the appeal.**

As per s. 107(7) of the Act the effect of pre-deposit under sub-section (6) is that the recovery proceedings are deemed to be stayed. Therefore, it is clear that once the assessee has paid the pre-deposit amount, the recovery proceedings are deemed to be stayed until the disposal of the appeal.

There have been instances where proper officers have arbitrarily continued with the recovery proceedings, even in cases where an assessee has made pre-deposit under section 107(6) of the Act. Moreover, **even where an appeal u/s 107 is decided against the assessee it has a statutory right to file an appeal u/s 112 before the GST Appellate Tribunal which has yet not been constituted, any recovery of tax during such period in in strict violation of principles of natural justice. In such scenarios, the relevant jurisdictional High Courts have proactively interfered to protect the interest of the assessee.**

Judicial Pronouncements

a) M/s Sri Ram Construction v. UOI & Ors, W.P. (T) No. 3402 of 2020- The Hon'ble Jharkhand HC court while setting aside the impugned garnishee notice held that upon deposit of 10% of the disputed tax by the Petitioner during pendency of the appeals the recovery of any remaining balance is deemed to have been stayed in view of s. 107(6) & (7) of the Act.

b) Sita Pandey v. State of Bihar & Ors., CWJC No. 5407/2023- In this case the proper official recovered the assessed tax due just after a day of dismissal of the appeal. The court observed that the assessee had the option to go for further appeal with tribunal albeit the same has not been constituted. The HC held, that the recovery was made arbitrarily and without any notice in contravention of the statutory provisions.

c) Gulf Oil Lubricants India Ltd. Vs JCST, Writ Petition No. 3097 of 2022- The Hon'ble Bombay HC held that intent to file an appeal in the Appellate Tribunal (which has not yet been constituted) bars recovery of tax dues. The court directed that if any demand is confirmed or appellate authority has created additional demand, in such cases, assessee shall submit a declaration in Annexure-I as per Circular dated 26.06.2020 issued under Maharashtra GST Act, before the jurisdictional tax officer stating that he is proposing to file an appeal u/s 112(1) against the appeal order within fifteen days from the communication of such order.

Way Forward

The action vis-a-vis recovery of tax at the stage of appeal proceedings has to be exercised cautiously and within the four corners of the Act. The right to file an appeal under the Act, is a statutory safeguard under the Act, to protect the assessees against unjust and exorbitant demands.

At the first appellate stage, where pre-deposit has been made by an assessee, any recovery proceeding lacks jurisdictional validity. Moreover, assessee willing to file appeal before the GST Appellate Tribunal, but are unable to do so due to its non-constitution, cannot be subjected to the rigours of recovery proceedings at the whims and fancies of the departmental officers. The above judicial pronouncements provide much clarity on the issue.

Moreover, where the department proposes to initiate recovery during the appeal proceedings, in order to protect the interest of the revenue, it must provide prior notice to the assessee, along with an opportunity of being heard, in compliance with the established principles of natural justice. However, the assessees must approach the appropriate judicial fora if department resorts to recovery proceedings in direct contravention of the statutory provisions and without following the principles of natural justice.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

LISTED COS. MUST DISCLOSE ARBITRATION MATTERS UNDER SCH. III OF LODR TO THE EXTENT PERMISSIBLE UNDER ARBITRATION ACT

Anil Kuamr Gupta
Sr Mentor

Informal Guidance No. SEBI/HO/CFD-PoD-2/OW/P/2023/40986, Dated: 04.10.2023

The SEBI, in its reply to an Informal Guidance sought by GAIL(India) Ltd., has stated that listed companies can make disclosures with regard to the details of arbitration proceedings or arbitral awards under Schedule III of the LODR Regulations to the extent it is legally permissible under the Arbitration and Conciliation Act, 1996.

The Disclosures would include disclosing initiation of arbitration proceedings, the amount of claim involved in such proceedings, the fact of passing of an arbitral award and its effect on the listed entity, the fact of termination of the arbitration proceedings, court orders in relation to the arbitration proceedings etc.

Query raised by the Applicant Company

The applicant company sought informal guidance on the following queries:
(a) Whether the details of arbitral proceedings of pending arbitration matters or arbitral awards can be disclosed to SEBI as it may contravene Section 42A of the Arbitration and Conciliation Act, 1996?
(b) In case, there are multiple litigations/cases with the same party, whether the claims by/against the said party in all such multiple litigants/cases are to be taken together for arriving at the cumulative figure (deciding materiality)?
(c) In any single litigation/case, whether the claim by listed entity and counter-claim against the listed entity need to be added together for the purpose of arriving at the cumulative figure (deciding materiality)?

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

Provisions specified in Regulation 30 read with Schedule III of LODR Regulations, 2015

As per Regulation 30(1) of LODR Regulations, every listed entity is required to make disclosures of any events or information which, in the opinion of the board of directors of the listed company is material.

Further, the listed entity must make disclosure of events specified in Para B of Part A of Schedule III, based on the application of the guidelines for materiality.

As per sub-para 8 of Para B of Part A of Schedule III of LODR Regulations, the pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity must be disclosed to the stock exchange.

The Relevant extract from SEBI Circular dated July 13, 2023 is reproduced as below -

On July 13, 2023, SEBI issued a circular titled as 'Disclosure of material events/information by listed entities under Regulation 30 and 30A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The relevant extract is reproduced below -

"The listed entity shall notify the stock exchange(s) upon it or its director or its key managerial personnel or its senior management or its promoter or its subsidiary becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact.

In case the amount involved in ongoing litigations or disputes with an opposing party becomes material on a cumulative basis, then the same shall also be required to be disclosed to the stock exchanges"

SEBI reply

In response to the query, SEBI clarified that the disclosure of details of arbitral proceedings or arbitral awards under Schedule III of LODR can be made to the extent it is legally permissible under the Arbitration and Conciliation Act, 1996.

Further, regarding the meaning of the term 'cumulative basis', the SEBI clarified that the cumulative figure is to be arrived at by taking together the claims by/against the party in all ongoing litigations or disputes with the same party. However, a claim by the listed entity and counter-claim against the listed entity in any single litigation/case may not be added together or set off for the purpose of arriving at the cumulative figure.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

MODES OF EXIT

Jatin Sehgal
Sr. Partner

Every Company faces certain entry and exit barriers associated with it and prominent studies have shown that various strategic as well as economic factors are responsible in keeping the company in business. These factors can range from low resale value of assets to cumbersome regulations.

The existence of various loopholes in the exit mechanism has been burdening and in order to fix these loopholes and streamline the exit process the Government introduced the Insolvency and Bankruptcy Code of India in 2016 and made certain amendments in the Companies Act 2013 with respect of winding up as well.

Exit Routes under Indian Laws

1. VOLUNTARY LIQUIDATION:

Solvent Companies can opt for this method as per Section 59 of IBC Laws 2016 wherein the company can conduct a General Meeting and pass a special resolution for voluntary liquidating the company and also for appointment of a Liquidator to carry out the compliances. Thereafter, the liquidator approaches the NCLT and NCLT passes an order of Dissolution of the company. It must be noted that if the company has any type of debt or creditors then the approval of at least 2/3rd majority has to be taken beforehand.

2. INSOLVENCY PROCESS:

Another option can be the Insolvency process more commonly known as Corporate Insolvency Resolution Process ("CIRP") under the IBC, 2016. This process can be initiated either by the financial creditor under section 7 or operational creditor under section 9. Upon default in payment by the company of Rs. 1 Crore or more, the creditor may file an application before the NCLT. The same process can be initiated by the Company itself u/s 10 of the Code by filing an application before the NCLT who will appoint a Resolution Professional to carry out the process in the due time.

3. WINDING UP BY THE COURT:

Winding up by the court refers to a situation where a company is ordered to be wound up by the court due to various reasons such as inability to pay debts, fraudulent activities, and public interest. The process of winding up by the court is regulated by the Companies Act, 2013. The court-appointed liquidator takes charge of the company and liquidates its assets to pay off the debts owed to the creditors.

4. SUMMARY LIQUIDATION:

Section 361 offers a faster route for specific companies fulfilling certain eligibility criteria mentioned in the provisions wherein Central Government (Regional Director) replaces the NCLT but the liquidator is still required to sell the assets with 60 days.

5. STRIKING-OFF:

Section 248 of the Companies Act provides a quick dissolution option for non-operational companies having nil assets and liabilities to dissolve in a quick and easy manner reducing dependency on the NCLT.

6. MERGERS/AMALGAMATIONS:

In case of Merger/Amalgamation the Transferor companies may dissolve as per merger schemes considering that the assets and liabilities are transferred the Transferor company can dissolve without any explicit application as such subject to shareholder, creditor, and NCLT approvals. The process can also be carried out in the form of Fast Tract mergers mentioned in Section 233 of the Companies Act.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

DELHI HIGH COURT PROTECTS ANIL KAPOOR'S PERSONALITY RIGHTS IN LANDMARK DECISION

The Delhi High Court in a ground breaking legal development, has issued an **interim John Doe order, safeguarding the personality rights of the renowned Bollywood actor, Anil Kapoor, against infringements by social media channels, e-commerce websites, and individuals. Kapoor's legal action sought protection from the misuse of his personality rights, including the use of emerging technologies like artificial intelligence, deepfakes, and GIFs.** The court's decision marks a significant step in the battle against the unauthorized commercial exploitation of celebrities' personalities.

The counsel for the plaintiff, highlighted the extensive misuse of generative AI and dark patterns to manipulate Kapoor's image and voice. The case also shed light on the improper use of Kapoor's iconic catchphrases and nicknames, such as **'Jhakaas,' 'Lakhan,' 'Mr. India,' and 'Majnu Bhai.' Kapoor's legal team argued that such actions not only violated his personality rights but also tarnished his image and the images of co-stars like Sridevi.**

Justice Prathiba M. Singh, presiding over the single-judge bench, issued the "ex-parte interim order" against multiple websites and platforms, responding to Kapoor's lawsuit. **The court acknowledged Kapoor's illustrious career and his voice, known for its distinctive quality, was also deemed an essential asset, having been featured in Hindi dubbing for popular films and characters like Balu the Bear and Karna in the Mahabharat 3D film.**

The court clarified that Kapoor's rights encompassed his personality, including his name, voice, image, likeness, manner of speaking, gestures, and signatures, and extended to common law rights like protection against passing off, dilution, and unfair competition.

Justice Singh emphasized the damaging effects of using Kapoor's name and image for illegal merchandise and forged autographs. The creation of derogatory images and videos through AI-driven manipulation was deemed not only harmful to Kapoor but also to the actresses whose likenesses were used in the morphed content.

The court underlined that while freedom of speech, including criticism, satire, and parody, is protected, it becomes illegal when it tarnishes, jeopardizes, or damages an individual's personality. Unauthorised websites or platforms misleading consumers and using a person's name, voice, image, or dialogue for commercial purposes without consent cannot be tolerated.

Moreover, the court acknowledged that celebrities' endorsement rights constitute a significant source of livelihood and should not be destroyed by illegal merchandise or unauthorized use of their persona.

The proliferation of advanced technological tools, especially AI, posed new challenges to protecting celebrities' personality rights. The court also recognized Kapoor's right to privacy, preventing his image, voice, and likeness from being portrayed negatively or being used on explicit websites.

In line with these considerations, the court issued a comprehensive order:

Defendants (1-16) were restrained from using Kapoor's name, image, voice, likeness, or personality to create merchandise, ringtones, or any commercial videos through technological tools like artificial intelligence, face morphing, or GIFs, for monetary gain or other commercial purposes.

Domain names like Anilkapoor.com and others were directed to be blocked and suspended by DMRs (Defendant Domain Registrars) 17, 19, and 20.

Unknown individuals were also restrained from disseminating videos, and all ISPs (Internet Service Providers) were ordered to take down related links immediately.

The Department of Telecommunications (DOT) and the Ministry of Electronics and Information Technology (MEITY) were directed to issue blocking orders for other links that might upload pornographic content.

Additionally, the court ordered DMRs to inform Anil Kapoor about the registrants of the domain names, allowing Kapoor to take over these domains within one week.

In conclusion, the **Delhi High Court's decision in the case of Anil Kapoor vs. Simply Life India & Ors. sets a significant precedent for the protection of personality rights in the digital age, emphasizing the importance of safeguarding celebrities' images and voices from unauthorized and potentially damaging exploitation.** This ruling reinforces the notion that freedom of speech must be exercised responsibly and within legal boundaries, respecting individuals' rights to their own identities and likenesses.

Contributed By
Ismat Chughtai
Associate

REGULATORY EVOLUTION: 2022 GUIDELINES ON OVERSEAS DIRECT INVESTMENT IN INDIA

In a groundbreaking development on August 22, 2022, the Ministry of Finance of the Government of India, with the Reserve Bank of India, unveiled a comprehensive set of guidelines governing Overseas Direct Investment (ODI) by resident Indian individuals and entities.

This significant regulatory overhaul encompasses three core components:

1. The Foreign Exchange Management (Overseas Investment) Rules, 2022 ("ODI Rules"): These rules, issued by the Ministry of Finance, lay the foundation for the new regulatory framework.

2. The Foreign Exchange Management (Overseas Investment) Regulations, 2022 ("ODI Regulations"): Issued by the Reserve Bank of India, these regulations provide detailed guidelines on the implementation of the ODI Rules.

3. The Foreign Exchange Management (Overseas Investment) Directions, 2022 ("ODI Directions"): Also issued by the Reserve Bank of India, these directions offer further clarity on the rules and regulations.

This comprehensive set of framework supersedes the previous regulatory framework, which included the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, and the Master Direction – Direct Investment by Residents in Joint Venture/Wholly Owned Subsidiary Abroad.

Terminological Evolution: Overseas Direct Investment (ODI)

One of the critical advancements in the new guidelines is the revised definition of Overseas Direct Investment (ODI). As per Section 2(e) of the ODI Rules, ODI now encompasses:

1. Acquisition of unlisted equity capital of a foreign entity.
2. Subscription as a constituent of the memorandum of association of a foreign entity, regardless of its listing status.
3. Investments in 10% or more of the capital of a listed foreign entity.
4. Investments that confer control in a listed foreign entity, even if the ownership is less than 10%.

The term "**control**" is critical and relates to the right to appoint a majority of directors and exert influence over management or policy directly or indirectly. This includes mechanisms like shareholding, management rights, shareholders' agreements, and voting agreements.

Restricting Overseas Investments and Ensuring Financial Stability

As per Rule 19 of the Foreign Exchange Management (overseas investment) Rules, 2022, residents of India are prohibited from making outbound direct investments in foreign entities engaged in real estate activities, gambling, or dealing with Indian rupee-linked financial products without specific approval from the Reserve Bank. **The term "real estate activity" excludes certain developments like townships or residential/commercial construction.** Investments in foreign start-ups must come from internal accruals. Additionally, a restriction limits foreign entities investing in India to have no more than two layers of subsidiaries (round-tripping), with exceptions for specific types of companies, including banks, non-banking financial firms, insurance companies, and government entities, in line with Companies (Restriction on Number of Layers) Rules, 2017. These rules are instrumental in regulating cross-border investments and ensuring financial stability.

Diverse Avenues for ODI Implementation

The ODI Rules provide various channels for implementing ODI, including subscription, acquisition through bidding and tenders, participation in rights issues and bonus shares, capitalisation of amounts payable, securities swaps, and involvement in mergers, demergers, and similar arrangements.

Defining "Financial Commitment"

The ODI Regulations introduce the concept of "financial commitment," which encompasses the cumulative investment made through ODI, non-Overseas Portfolio Investment (non-OPI) debt, and non-fund-based facilities extended to foreign entities by Indian residents. Indian residents are also granted the privilege to invest in debt instruments of foreign entities, provided specific conditions are met.

Overseas Portfolio Investment (OPI) Defined

The ODI Rules introduce Overseas Portfolio Investment (OPI), which includes any investment in foreign securities other than ODI. OPI excludes unlisted debt instruments and securities issued by Indian residents situated outside International Financial Services Centres.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

Prescribed Investment Limits

For Resident Individuals, investment limits abroad adhere to the Liberalised Remittance Scheme (LRS) set by the Reserve Bank of India. Presently, the LRS limit is USD 2,50,000 for a financial year. Companies have different constraints, with the total financial commitment in Joint Ventures or Wholly Owned Subsidiaries capped at US$ 1 billion or 400% of net worth, whichever is more conservative. Exceeding this limit requires specific permission from the Reserve Bank under a block allocation.

Deferred Consideration: A Novel Dimension

The ODI Guidelines introduce the concept of deferred payment of consideration for the acquisition of equity capital in a foreign entity through ODI. However, specific conditions apply when considering deferred payments.

In conclusion, the collaborative efforts of the Ministry of Finance and the Reserve Bank of India have resulted in meticulously structured guidelines for Overseas Direct Investment in 2022. These guidelines redefine key terminologies, introduce the concept of financial commitment, specify investment limits, and pioneer the practice of deferred consideration. It is essential for Indian residents and entities venturing into overseas investment to understand and adhere to these regulations diligently to navigate the intricate landscape of Overseas Direct Investment effectively and lawfully.

Contributed By
Aarushi Gairola
Associate

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

APPLICABILITY ON ARTIFICIAL INTELLIGENCE

This act applies to your AI business if it collects, stores, analyzes, shares, or processes personal data within or outside India for activities related to offering goods or services to individuals in India.

Suppose your business determines how and why this data is processed. In that case, it may be collecting personal data through various means, such as scraping non-public data and obtaining it from users, developers, or third parties like data brokers and businesses.

This act doesn't apply to your AI model under two conditions

- If your AI model solely utilises publicly accessible data, meaning it can freely use personal data that individuals or legally obligated entities have made public. This includes information like publicly available web pages, non-private social media content, and market disclosures.
- Suppose your AI model is exclusively used for statistical, research, or archival purposes. However, in such cases, the processing must adhere to predefined standards and should not result in making specific decisions concerning an individual data subject.

Here are the essential obligations for training your AI model on personal data processing:

- You must provide users with a notice outlining the processing purposes in English and all official Indian languages.
- Allow users to provide consent through a clear, affirmative action for the purposes specified in the notice. Your processing should strictly align with these specified purposes.
- When dealing with individuals under 18 years of age or disabled individuals under guardianship, you must obtain verifiable consent from their parent or guardian.

If you've already gathered personal data and obtained consent before the Act started:

- You must promptly furnish data subjects with a notice containing the information mandated by the Act.
- You can continue processing the data until the data subject decides to revoke their consent.
- However, if you didn't have prior consent, you need to obtain new consent in accordance with this Act.
- Key Obligations for AI Models:

For AI models involved in decision-making affecting data subjects, ensure that the personal data processed is complete, accurate, and consistent.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

Prohibited Activities for AI Models:

- Avoid processing that may harm a child's well-being.
- Do not engage in tracking, behavioural monitoring of children, or targeted advertising directed at children unless government exemptions apply.

Significant Data Fiduciary Responsibilities:

- You may be designated as a Significant Data Fiduciary based on factors like data volume and sensitivity.
- Appoint a Data Protection Officer in India and an independent auditor.
- Perform data protection impact assessments, periodic audits, and other government-prescribed measures.
- Integrating Third-Party AI:
- If you integrate third-party AI into your products or services for processing personal data, you are responsible for ensuring their compliance with the Act.
- Enter into a valid contract with them to pass down necessary obligations, including security safeguards and respecting data subjects' rights.
- If the third-party AI developer determines the purpose and means of processing, they become data fiduciaries under the Act.
- Ensure your contract reflects this understanding and includes the required representations and commitments.

EXEMPTIONS

- If you are processing personal data for the purpose of preventing, detecting, investigating, or prosecuting an offence or violation, such as using AI models to filter child sexual abuse material, you are exempt from most data fiduciary obligations. However, you must still implement and mandate reasonable security measures to prevent personal data breaches.
- Government exemptions are granted based on the volume and nature of the personal data being processed. For instance, a recognized startup using an AI model for limited data processing, like a chatbot, is exempt from several obligations, including providing notices, ensuring data accuracy, adhering to data retention limits, complying with Significant Data Fiduciary (SDF) obligations, and the right to access.

Contributed By
Nancy Girdhar
Associate

DISCLAIMER

This newsletter contains general information only, and NIC LEGAL WORLD LLP is not using this document, rendering accounting, business, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking action that may affect your business, you should consult a qualified professional advisor.

About NIC Legal World LLP

A law firm of experienced advocates in respective fields with a vision to provide the best legal support on National and International bedrock for personalised legal services for its clients without losing time, money and efforts. Having a presence in all the States of the Country and a few countries.

- 20+ YEARS OF EXPERIENCE OF ALL THE PARTNERS
- 860+YEARS OF EXPERIENCE AS PARTNERS/DIRECTORS
- 21 OFFICES

Registered & Head Office:

C-582, Defence Colony, New Delhi-110024