

CORPORATE LAW - YEAR 2021 IN REVIEW



The year 2021 saw various changes in Indian corporate laws, in view of (i) the Covid-19 pandemic, (ii) enhancing ease of doing business in India; and (iii) promoting the Indian government's 'Make in India' campaign.

This report, in brief, records the key updates for the year 2021 in various regulatory spaces such as company laws, securities laws, employment laws, data protection laws, banking laws, competition laws, and other material laws affecting operations and business of Indian corporate entities. This report also provides a summary of changes introduced in the regulatory space with respect to International Financial Service Centres ("IFSCs") and start-up companies in India.

The summaries of the key changes which occurred in the year 2021 are as follows:

1. COMPANY LAW

1.1. Corporate Social Responsibility ("CSR")

In January 2021, the Ministry of Corporate Affairs ("MCA") amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 to improve implementation and to bring in more accountability for companies undertaking CSR activities. To read more about this development, please click [here](#) (See paragraph 1.2 appearing at page no. 4).

1.2. Amendment to the Limited Liability Partnership Act, 2008 ("LLP Act")

The LLP Act was amended by way of the LLP Amendment Act, 2021 and certain minor offences were decriminalized. Amendments were also introduced to convert such offences into civil defaults and to convert the nature of punishment from fines to monetary penalties. To read more about this development, please click [here](#) (See paragraph 1.1 appearing at page no. 3).

1.3. Threshold for Small Companies and Incorporation of One Person Companies

In February 2021, the MCA increased the threshold for determination of a small company. The MCA also amended the residency requirement for incorporation of one person companies under the Companies (Incorporation) Rules, 2014 providing that the residency period to be considered as 120 (one hundred and twenty) days instead of 182 (one hundred and eighty-two) days. To read more about these developments, please click [here](#) (See paragraphs 1.1.1 and 1.3 appearing at page nos. 3 and 4 respectively).

1.4. **Accounting norms for companies**

In March 2021, the MCA amended Schedule III of the Companies Act, 2013 providing that the profit and loss statement of the company should also include the details of investment or trading conducted by a company in crypto or virtual currency in a financial year. The MCA also amended the Companies (Accounts) Rules, 2014 with respect to keeping accounts in electronic mode and the information and details to be mentioned in the directors' report of the company. The companies using accounting software for maintaining books of accounts are required to use only such accounting software which has a feature of recording audit trails of every transaction and creating an edit log of each change made in the books of accounts.

1.5. **Shareholder Activism**

- 1.5.1. During last year, shareholders' activism in respect of management of the affairs of the company increased notably and institutional investors took up an increasingly active role in the management of the affairs of companies. For instance: (i) in August 2021, an Employee Stock Option Plan ("**ESOP**") scheme introduced by Lupin Pharmaceuticals received backlash from its institutional investors; (ii) Pune-based Kinetic Engineering Limited's shareholders rejected the company's proposal to increase the managing director's remuneration; (iii) Ekta Kapoor and Shobha Kapoor, who are part of Balaji Telefilms' promoter group, faced shareholder ire and failed to obtain the necessary votes on resolutions to increase remuneration; (iv) shareholders voted down Siddhartha Lal's reappointment as Eicher Motors Limited's managing director as they were against the proposal of hike in Lal's salary by 10% (ten percent) as it outpaced the revenue and profit growth clocked by the firm last year amid the Covid pandemic; and (v) in August, an ESOP resolution at V-Mart Retail was defeated.

2. **SECURITIES LAW**

2.1. **Alternative Investment Funds ("AIF")**

In order to streamline and regulate the fund-raising activities through AIF in India, authorities like the Securities and Exchange Board of India ("**SEBI**"), International Financial Services Centers Authority ("**IFSCA**") and Reserve Bank of India ("**RBI**") have introduced various amendments. Amendments have been primarily introduced in the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**"). We have summarized below a few of the major amendments introduced by the above authorities:





2.1.1. Liability and responsibility of members of the investment committee of an AIF

One of the key changes made by SEBI with respect to liability and responsibility of the members of the investment committees (“IC”) of an AIF in the year 2020, was partially reversed by it in the year 2021. Pursuant to the amendment in October 2020, SEBI had made the members of the IC responsible for the investment decisions of an AIF. However SEBI vide its [notification](#) dated 08 January 2021, inserted a proviso to the relevant clause providing that if each of the investors in the AIF, who had committed to invest more than INR 700,000,000 (Indian Rupees Seven Hundred Million) or its equivalent, furnish a waiver in this respect, then the liability of the members of the IC could be foregone. The responsibility of the members of the IC was further limited in May 2021, to only ensuring that the decisions of the AIF are taken as per the internal policies and procedures of the AIF. This responsibility and liability could again be foregone by way of a waiver obtained from each of the investors who have committed more than INR 700,000,000 (Indian Rupees Seven Hundred Million).

2.1.2. Investments by AIFs in other AIFs, and limits on downstream investment in a single investee company

Through amendments to the AIF Regulations, SEBI has introduced changes in relation to downstream investment by the AIF. To read more about this development and the amendment to the AIF regulations please click [here](#) (See *paragraph 4.3 appearing at page no. 7*).

2.1.3. Removal of investment restrictions on Venture Capital Funds (“VCF”)

SEBI has increased the investment limits for Category I AIFs under the VCF sub-category in (i) unlisted equity shares or equity-linked instruments of a VCU or (ii) in companies listed or proposed to be listed on a Small and Medium Enterprise exchange or Small and Medium Enterprise segment of an exchange from two-thirds (66.67%) of the total investable funds to three fourth (75%) of the total investable funds vide its [notification](#) dated 13 August 2021.

2.1.4. Streamlining of reporting requirements

SEBI has also streamlined the reporting requirements wherein all AIFs are required to submit reports of their activities on a quarterly basis within 10 (ten) calendar days from the end of each quarter in the revised format. Category III AIFs shall also be required to submit its reports in the revised formats. Further, if AIFs make changes to their private placement

memorandums, it must be intimated to both investors as well as SEBI in a consolidated manner within 1 (one) month from the end of each financial year.

2.1.5. Identification of Accredited Investors and Accreditation Agency

SEBI introduced the concept of “Accredited Investors” (“AI”) and “Accreditation Agency”. SEBI laid down certain financial parameters that need to be satisfied to grant the AI status to resident Indians. Further, the concept of “large value funds” has been introduced wherein any AIF or any scheme of an AIF in which each investor (apart from the investment manager, sponsor, employees, and directors of the AIF / manager of the AIF) is an AI and invests more than INR 700,000,000 (Indian Rupees Seven Hundred Million) would be classified as a ‘large value fund for AI’.

2.1.6. Co-investment Portfolio Manager

SEBI vide an [amendment](#) to the AIF Regulations, introduced the definition of ‘co-investment’ which means investment made by the manager or a sponsor or an investor of a Category I or a Category II AIF in investee companies. Further, such co-investment is required to be made through a co-investment portfolio manager who shall obtain an additional registration under the SEBI (Portfolio Managers) Regulations, 2020.

2.1.7. Special Situation Funds

On 28 December 2021, SEBI in its [Board Meeting](#) introduced a new category of AIFs i.e., Special Situation Funds (“SSFs”). SSFs are a sub-category under Category I AIF and shall invest only in stressed assets such as (i) stressed loans available for acquisition in terms of RBI (Transfer of Loan Exposures) Directions, 2021 or as part of a resolution plan approved under Insolvency and Bankruptcy Code, 2016; (ii) security receipts issued by Asset Reconstruction Companies; (iii) securities of companies in distress; and (iv) any other asset/security as may be prescribed by SEBI. Recently, SEBI notified SSFs vide SEBI (AIF) (Amendment) Regulations, 2022 and it shall come into force with immediate effect. To read more about this development please click [here](#).

2.2. **Listed Companies**

In a year when the stock markets boomed and set new record highs, the market regulator took some key decisions in a bid to make the system more transparent for investors. Please see below a summary of the key updates for listed companies in 2021.





2.2.1. Changes introduced in SEBI (Listing Obligations and Disclosure Requirements) Regulations (“LODR Regulations”)

- (a) *Re-appointment of Managing Directors (“MDs”), Whole Time Director (“WTDs”) and Managers who fail to get appointed at a general meeting:* SEBI has introduced stricter norms relating to appointment / re-appointment of persons who fail to get elected as MD, WTD and Managers at the general meeting of a listed entity providing that prior approval of the shareholders will be required for such re-appointment. Further, a detailed explanation and justification from the company’s nomination and remuneration committee and the board of directors for recommending the person shall also be presented before the shareholders.
- (b) *New norms for appointment / re-appointment / removal of Independent Directors (“IDs”):* With an aim to further empower the IDs of a listed company, SEBI vide amendments to the LODR Regulations has provided that the appointment / reappointment / removal of IDs shall be subject to ‘dual approval’ policy, i.e., approval of the shareholder and approval by a simple majority of the minority shareholders. To read more about this development, please click [here](#) (See paragraph 4.7 appearing at page no. 8).
- (c) *Reclassification of promoters to public:* SEBI has amended the framework for promotor reclassification as prescribed under Regulation 31A of the LODR Regulations. SEBI has rationalised the timelines for the reclassification process and has provided exemptions from the procedure of reclassification, if the reclassification is pursuant to an open offer or a scheme of arrangement, provided that the intention of the existing promoter to re-classify has been disclosed in the letter of offer.
- (d) *BRSR Reporting:* SEBI has amended the LODR Regulations to extend the requirement of Business Responsibility and Sustainability Reporting (“BRSR”) on Environmental, Social and Governance (ESG) parameters, to the top 1,000 (One Thousand) listed entities based on market capitalization. BRSR replaces the existing Business Responsibility Reporting. BRSR compliance is mandatory from FY 2022-23 onwards.

- (e) *New norms for related party transaction (“RPT”)*: SEBI amended the LODR Regulations introducing several material changes in the corporate governance regime pertaining to RPT disclosures and approvals. To read more about this development, please click [here](#) (See paragraph 2.1 appearing at page no. 4).

2.2.2. Reduction in Lock-in Period for promoter contribution under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2015 (“ICDR Regulations”):

SEBI amended the ICDR Regulations, wherein it has reduced the lock-in period of minimum promoters’ contribution (i.e., 20% (twenty percent) of post issue capital) to 18 (eighteen) months from a period of 3 (three) years from the date of commencement of commercial production or date of allotment in the initial public offer (“IPO”), whichever is later. Further, the pre-IPO securities held by persons other than promoters shall be locked-in for a period of 6 (six) months from the date of allotment in IPO instead of existing 1 (one) year.

2.3. ***Consolidation of the SEBI (Issue & Listing of Debt Securities) Regulations, 2008 (“ILDS Regulations”) and SEBI (Issue & Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“NCRPS Regulations”)***

SEBI consolidated the ILDS regulations and NCRPS Regulations into a single SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”). The NCS Regulations shall be applicable on (i) issuance and listing of debt securities and non-convertible redeemable preference shares by an issuer by way of public issuance; (ii) issuance and listing of non-convertible securities by an issuer issued on private placement basis which are proposed to be listed; and (iii) listing of commercial paper issued by an issuer.



2.4. ***Delisting regulations***

SEBI (Delisting of Equity Shares) Regulations, 2021 has been notified in order to further streamline the delisting process for listed entities. The significant changes from the 2009 regulations on the same subject are as follows: (i) the acquirer along with persons acting in concert are responsible for compliance with the regulations; (ii) deposit of 25% (twenty five percent) of the total consideration in the escrow account, as against 100% (one hundred percent); and (iii) special provisions for a subsidiary company getting delisted through a scheme of arrangement, etc. SEBI has also amended the regulatory framework for direct

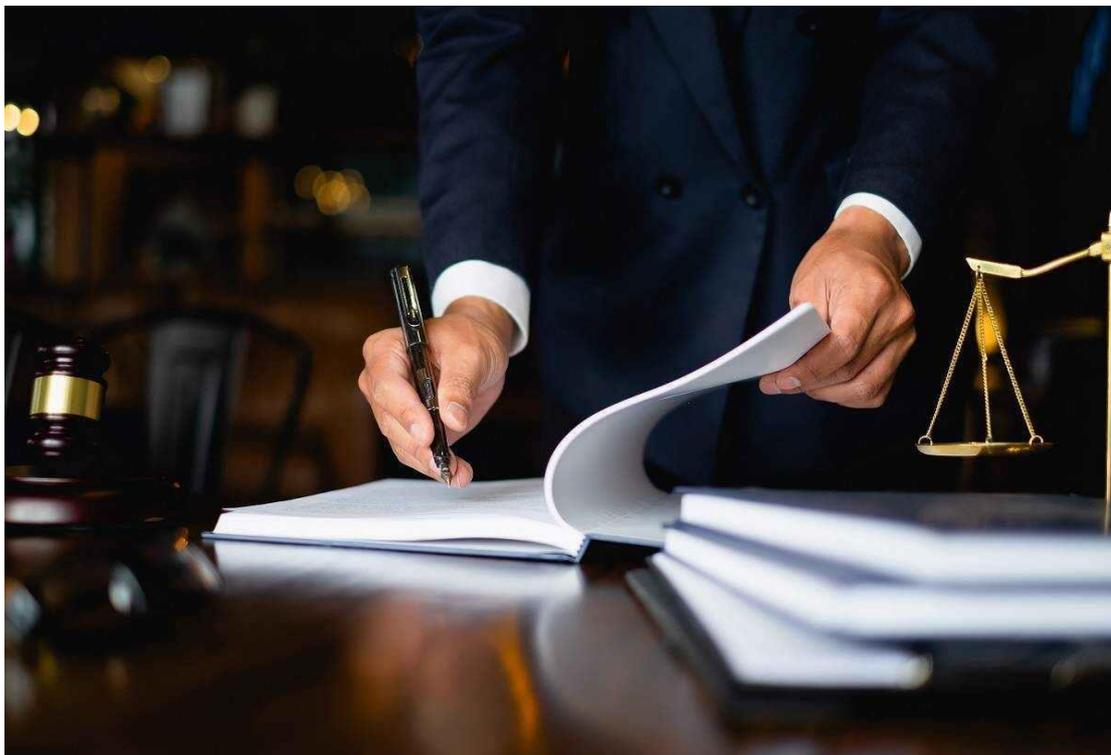
delisting of equity shares pursuant to open offer as provided under Regulation 5A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”). These amendments have been introduced to simplify and replace the earlier mechanism that was contradictory to the object of delisting of the listed entity.

2.5. **Amendments to the disclosure regime under SAST Regulations**

SEBI notified certain amendments to the SAST Regulations relaxing the following disclosure obligations with effect from 01 April 2022: (i) acquisition/ disposal of shares aggregating to 5% (five percent) of the listed company’s share capital; (ii) any further change of 2% (two percent) of the listed company’s share capital; (iii) annual shareholding; and (iv) creation/ invocation/ release of encumbrance registered with the depository.

2.6. **Changes in REITs and InvITs**

SEBI revised the minimum application value for REITs and InvITs to a range of INR 10,000 (Indian Rupees Ten Thousand) to INR 15,000 (Indian Rupees Fifteen Thousand) from the earlier INR 100,000 (Indian Rupees One Hundred Thousand). SEBI has also revised the minimum trading lot size to 1 (one) unit for REITs and InvITs. Further, SEBI approved the minimum number of unitholders in InvITs, other than sponsor, its related parties, and its associates, shall be 5 (five) together holding not less than 25% (twenty five percent) of the total units in the capital of the InvITs.



3. **BANKING LAW**

3.1. **New Umbrella Entity (“NUE”)**

In order to boost the retail payment system, the RBI proposed the concept of NUE, which is a system similar to the Unified Payments Interface (“**UPI**”). NUE is an alternative mechanism to India’s flagship processor, the National Payments Corporation of India (“**NPCI**”). To read more about this development, please click [here](#).

3.2. **Revised guidelines for Payment Aggregator and Payment Gateways**

RBI has introduced the following major changes in the revised guidelines for payment aggregators and payment gateways:

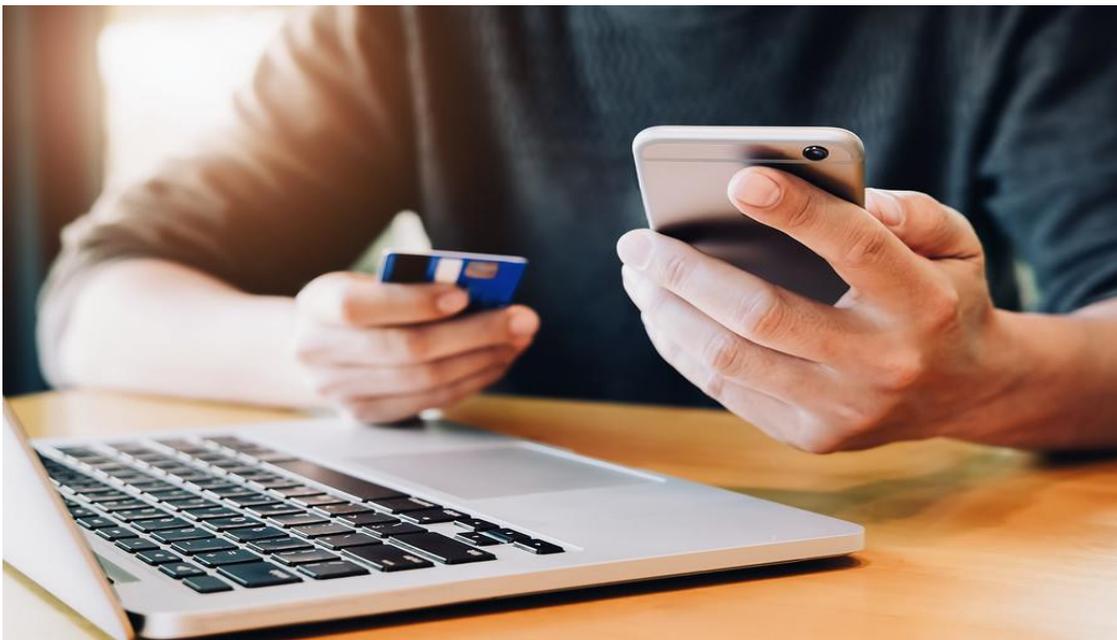
- 3.2.1. All non-bank entities offering payment aggregator (“**PA**”) services were directed to seek an authorization from the RBI under the Payment and Settlement Systems Act, 2007 (“**PSSA**”) on or before 30 June 2021. The RBI has clarified that the Payment Aggregators guidelines (“**PA Guidelines**”) will come into effect for non-bank PAs from the date of their authorisation with the RBI.
- 3.2.2. The RBI has also clarified that the PA Guidelines are not applicable to 'delivery versus payment' (“**DvP**”) transactions. However, they shall cover transactions where the payment is made in advance while the goods are delivered in a deferred manner.
- 3.2.3. The PA Guidelines prescribe strict minimum net worth criteria, which if not complied with, will require the relevant entity to wind up its payment aggregation business. The RBI has clarified that for existing non-bank PAs, the requisite certificate from chartered accountants to evidence compliance with the applicable net-worth requirement (as on 31 March 2021) will be required to be submitted to the RBI at the time of application for authorization.
- 3.2.4. Entities operating as online payment gateway service providers (“**OPGSP**”) and undertaking cross-border transactions should ensure compliance with RBI's directions on 'Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers' dated 24 September 2015.

3.3. **Corporate Governance in Banks**

With an aim to strengthen the governance regime of the banking sector in India, the RBI has revised the provisions related to appointment of a bank's chairperson, tenure of directors, and constitution of committees in relation to private sector banks, small finance banks and wholly owned subsidiaries of foreign banks. To read more about this development, please click [here](#).

3.4. **Amendments in card Tokenization**

RBI in order to improve safety and security of card transactions, had permitted card networks for tokenisation in card transactions for a specific use case. Earlier, RBI had only extended this facility to mobile phones and tablets. However, keeping in view the feedback received from various stakeholders, RBI has extended the scope of tokenisation to include consumer devices such as laptops, desktops, wearables, and other Internet of Things (IoT) devices.





3.5. ***Amendments to Prepaid Payment Instruments (“PPI”) framework***

The RBI consolidated all the guidelines on PPI framework and introduced following key changes to the PPI framework:

- 3.5.1. PPIs have been limited to 2 (two) categories, i.e., 'small PPIs' and 'full-KYC PPIs', both of which can be issued by banks and non-bank entities.
- 3.5.2. RBI has reiterated its objective to mandate interoperability for full-KYC PPIs and identified the role of the NPCI and authorised card networks in this regard. RBI has advised all bank and non-bank PPI issuers to enable interoperability by 31 March 2022.
- 3.5.3. RBI has allowed the use of video-based identification processes for customer onboarding.
- 3.5.4. Norms for escrow account management, information security measures, and customer grievance redressal have been introduced.
- 3.5.5. The maximum amount outstanding in respect of full-KYC PPIs (KYC-compliant PPIs) has been increased from INR 100,000 (Indian Rupees One Hundred Thousand) to INR 200,000 (Indian Rupees Two Hundred Thousand).
- 3.5.6. All cash withdrawal transactions performed using a card / wallet, shall be authenticated by an Additional Factor of Authentication (AFA) / Pin.

3.6. ***Restriction on storage of card details***

RBI prohibited merchants from storing customer card details on their servers with effect from 01 January 2022 and mandated adoption of card on file (“Cof”) tokenisation as an alternative to card storage. Pursuant to a subsequent notification the timelines for implementation of Cof have been extended to 30 June 2022. As per new guidelines, online players will have to delete any credit and debit card data stored on their platforms and replace them with token to secure card details of consumers. Further, while extending the timelines for implementation of the guidelines, the RBI also directed the stakeholders to devise alternate mechanism(s) to handle any use case (including recurring e-mandates, EMI option, etc.) or post-transaction activity (including chargeback handling, dispute resolution, reward/ loyalty programme, etc.)

that currently involves / requires storage of Cof data by entities other than through card issuers and card networks.

3.7. ***Integrated Ombudsman Scheme***

RBI launched the Integrated Ombudsman Scheme, in order to replace the 3 (three) different ombudsman schemes currently in place. It adopts a 'One Nation-One Ombudsman' approach, for all customers of RBI-regulated entities, wherein all customers would have 1 (one) platform to lodge, track and monitor their complaints, making the redressal mechanism jurisdiction neutral. To read more about this development, please click [here](#) (See *paragraph 1.1 appearing at page no. 3*).

3.8. ***Digital Banks - Discussion Paper***

NITI Aayog released a discussion paper in November 2021 proposing the licensing and regulation of Digital Banks in India. It offers a template and roadmap for a Digital Bank licensing and regulatory regime for India. It recommended that in the restricted phase, a digital business bank may be required to bring in INR 200,000,000 (Indian Rupees Two Hundred Million) of minimum paid-up capital, which would be increased to INR 2,000,000,000 (Indian Rupees Two Billion) upon progression from the sandbox phase into the final stage. To read more about this development, please click [here](#) (See *paragraph 1.2 appearing at page no. 3*).

3.9. ***Revised framework for Scale Based Regulation (“SCB”) for Non-Banking Financial Companies (“NBFCs”)***

RBI has issued the revised framework for SCB for NBFCs. Following are the key changes introduced by RBI:

- 3.9.1. An independent director shall not be on the board of more than 3 (three) NBFCs (NBFC Middle Layer (“**NBFC-ML**”) or NBFC Upper Layer (“**NBFC-UL**”)) at the same time. A timeline of 2 (two) years is provided with effect from 01 October 2022 to ensure compliance with these norms.
- 3.9.2. NBFC-ML and NBFC-UL are required to disclose the following in their annual financial statement, with effect from 31 March 2023. Corporate Governance report containing composition and category of directors, shareholding of non-executive directors, etc.



- 3.9.3. NBFC Base Layer (“**NBFC-BL**”) shall constitute a risk management committee (“**RMC**”) either at the board or executive level. The RMC shall be responsible for evaluating the overall risks faced by the NBFC including liquidity risk and will report to the board of directors.
- 3.9.4. NBFC-ML and NBFC-UL shall appoint a chief compliance officer (“**CCO**”) and shall put in place a board approved policy laying down the role and responsibilities of the CCO.
- 3.10. **Revised Prompt Corrective Action (“PCA”) framework for NBFCs**

In order to further strengthen supervisory intervention at appropriate time for NBFCs, and to require the supervised entity to initiate and implement remedial measures in a timely manner, RBI issued the PCA framework for NBFCs which came into effect from 01 October 2022. The PCA framework shall be applicable to: (i) all deposit taking NBFCs (excluding government companies) and (ii) all non-deposit taking NBFCs in middle, upper and top layers (excluding - (a) NBFCs not accepting/not intending to accept public funds; (b) government companies, (c) primary dealers and (d) housing finance companies).



4. FOREIGN EXCHANGE LAW

4.1. *Liberalisation of the Insurance Sector*

In June 2021, the Insurance (Amendment) Bill, 2021 and the Press Note 2 by the Department for Promotion of Industry and Internal Trade, amended the Insurance Act, 1938 and the Foreign Direct Investment (“**FDI**”) policy respectively, to increase the permitted levels of FDI in the insurance sector from 49% (forty nine percent) to 74% (seventy four percent) under the automatic route. FDI in the insurance sector requires approval / verification from the Insurance Regulatory and Development Authority of India (“**IRDAI**”).

4.2. *FDI in the Telecom Sector*

- 4.2.1. The Indian Government vide notification dated 12 October 2021, allowed 100% (one hundred percent) FDI in the country’s telecom sector under the automatic route. Prior to the amendment, 100% (one hundred percent) FDI was permitted in the telecom sector, but only 49% (forty nine percent) was allowed via the automatic route, and prior approval had to be sought from the government for any FDI beyond 49% (forty nine percent).



4.3. **FDI in Petroleum and Natural Gas PSUs**

- 4.3.1. 100% (one hundred percent) FDI in petroleum and natural gas is allowed in exploration activities, as well as in marketing of petroleum products and natural gas, under the automatic route. Furthermore, 49% (forty nine percent) FDI is permitted under the automatic route, for petroleum refining by public sector undertakings.
- 4.3.2. The permitted thresholds for FDI in the petroleum and natural gas sector was amended to allow foreign investment up to 100% (one hundred percent) under the automatic route, for public sector undertakings that had received an 'in-principle' approval for strategic disinvestment by the Government.

5. **LABOUR LAW**

The 4 (Four) Labour Codes

In order to rationalize and simplify the labour laws in India, the central government had consolidated 29 (twenty-nine) out of 44 (forty-four) central labour laws into 4 (four) comprehensive codes namely (i) Code on Social Security, 2020; (ii) Occupational Safety, Health and Working Conditions Code, 2020; (iii) Industrial Relations Code, 2020 and; (iv) Code on Wages, 2019 (collectively referred to as “**Codes**”). The Codes were passed by both houses of the Indian Parliament in 2020, and draft rules under the same had also been issued. It is pertinent to note that the Codes have not yet come into force. In 2021, a number of state governments have pre-published their draft rules for the implementation of the Codes. As more and more states publish draft rules, it is likely that the Codes will be implemented in the financial year of 2022-23.

6. **DATA PROTECTION LAW**

6.1. ***Data Protection Bill, 2019 and the Report of the Joint Parliamentary Committee (“JPC”)***

On 16 December 2021, JPC tabled its report before both Houses of the Parliament on Personal Data Protection Bill, 2019 (“**Data Protection Bill**”). The report on Data Protection Bill (“**JPC Report**”) consists of various recommendations, as well as the revised Data Protection Bill. To read more about the key revisions and recommendations of the JPC Report please click [here](#) (See paragraph 3.1 appearing at page no. 5).



6.2. ***Intermediary Guidelines***

The Ministry of Electronics and Information Technology (“**MeitY**”) notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**Rules**”), superseding the Information Technology (Intermediaries guidelines) Rules, 2011. The Part-II of the Rules are applicable to intermediaries, and will be administered by the MeitY, while Part-III of the rules are applicable to digital media and will be administered by Ministry of Information and Broadcasting. The Rules prescribed the due diligence to be completed by internet intermediaries, including social media platforms, failing which they will not be entitled to safe harbour provisions. Intermediaries are also required to provide a grievance redressal mechanism for resolving complaints from users or victims.

6.3. ***New regime for geospatial data***

The Department of Science and Technology introduced the “Guidelines for acquiring and producing geospatial data and geospatial data services including Maps”. Under the new guidelines, there is no restriction, nor requirement of any approval, clearance, license, etc. on the collection, generation, preparation, dissemination, storage, publication, updating and / or digitisation of geospatial data and maps within the territory of India, subject to restrictions in the applicable law.

6.4. ***Data privacy standards***

The Bureau of Indian Standards has issued new standards for data privacy assurance. The new standards seek to provide a privacy assurance framework for organizations to establish, implement, maintain, and continually improve their data privacy management system.

6.5. ***Pegasus Spyware***

Following the reports of a spyware ‘Pegasus’ being deployed on Indian citizens for surveillance by foreign and Indian governments, a host of petitions were filed before the Supreme Court of India praying for independent investigation into such deployment. The Supreme Court went ahead and constituted a 3 (three) member committee to analyse the impact of alleged use of Pegasus on the right to privacy and was directed to recommend enactment or amendment to existing surveillance laws to ensure an improved right to privacy, cyber security, and threat assessment measures.

6.6. **Right to be forgotten**

In *Karthick Theodore v. The Registrar General*, the petitioner who was subject to criminal proceedings, prayed before the Madras High Court to redact his name from the court orders, in exercise of his right to be forgotten, to protect his reputation. The High Court dismissed the petition, relying on the Supreme Court's judgement in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, which upheld an individual's right to privacy and anonymity, while also observing that right to be forgotten cannot be exercised if the information is required for the performance of a task carried out in public interest. Right to be forgotten is an evolving law and the JPC report on Data Protection Bill contains provisions on 'right to be forgotten'.

6.7. **WhatsApp privacy policy**

In early 2021, WhatsApp updated its privacy policy and terms of use and required its users to agree to data sharing with Facebook. The Competition Commission of India ("CCI") initiated an investigation against WhatsApp, Inc. and Facebook, Inc. to assess the potential impact of the WhatsApp's updated policy. It was noted that the unilateral requirement on users to accept the update to WhatsApp's privacy policy vitiates their voluntary agreement and primarily appears to be unfair and unreasonable for its users. Subsequently, Delhi High Court also rejected the appeal filed by WhatsApp and Facebook against the order passed by CCI.

6.8. **Digital lending platform**

The report of the RBI constituted working group on 'Digital Lending including lending through online platforms and mobile apps' identified frequent faults regarding privacy occurred across digital lending apps, and recommended data storage in servers locally in India and that data should only be collected "from the borrower/ prospective borrower with prior information on the purpose, usage and implication of such data and with explicit consent of the borrower in an auditable way".



7. **COMPETITION LAW**

7.1. **Orders passed by the CCI**

- 7.1.1. Penalties: In the wake of pandemic, there has been a shift in the penalty practice of the CCI in the cases related to cartelization and bid rigging. Generally, the CCI may impose heavy monetary penalties on the contravening parties as a deterrent measure. However, the CCI has adopted a new approach where it has not imposed any kind of monetary penalties on

MSMEs and entities having a small annual turnover, considering various mitigating factors such as economic stress, small turnover, cooperation of the parties, etc., and has instead ordered the parties to cease and desist from unfair business practices. Contravening firms were treated differently for the first time under the Indian competition law, even though the ramifications of their conduct were proven to disrupt market competition. These orders can be accessed [here](#), [here](#) and [here](#).

- 7.1.2. Recently, the CCI has launched investigations against big tech companies like Google, WhatsApp, etc. for the alleged abuse of dominant position and while doing so, the CCI has expanded the scope of its jurisdiction, by holding privacy to be a non-price competition parameter. In the case of *re: updated terms of services and privacy policy for WhatsApp users*, the CCI took suo motu cognizance of the matter and initiated an investigation into policy and terms of use of the WhatsApp mobile application. CCI observed that the WhatsApp's privacy update takes away the consumer's choice to opt out. This is indicative of CCI actively looking into the matters relating to data of individuals and may even initiate *suo moto* investigation.
- 7.1.3. In the case of *re: Meru Travel Solution Pvt. Ltd. v. Uber & Anr.*, the CCI dismissed the case against Uber for alleged anti-competitive practices of charging prices below cost and entering into exclusive agreements with drivers. This decision clarifies that high market share alone is not an indicative of dominant position.



- 7.1.4. In India, there has been limited jurisprudence on CCI granting interim reliefs to the parties. Recently, in the case of *re: Federation of Hotel & Restaurant Associations of India & Anr. v. MakeMyTrip India (MMT) & Anr.*, the commission in its interim order directed MMT and Oyo to allow FabHotels and Treebo to be listed on its online portals, after observing that such delisting affects the competition in the market by denying the access to an important channel of distribution.
- 7.1.5. In the case of *re: Confederation of Real Estate Developers Association of India v. Greater Noida Industrial Development Authority & Anr.*, the CCI observed that merely because an agreement has been mutually entered into, does not restrict a person from approaching the CCI nor does it restrict the CCI from investigating, assessing and rectifying any competitive conduct of a dominant entity.

7.1.6. The CCI in the [proceedings against Amazon.com NV Investment Holdings LLC under Section 43A, 44 and 45 of the Competition Act, 2002](#), suspended its earlier approval of Amazon's investment In Future Coupons and imposed a penalty of total INR 2,000,000,000 (Indian Rupees Two Billion only) for not disclosing the true purpose of its acquisition. This is the first time the CCI has revoked its earlier approval.

7.2. **Market studies by CCI**

The CCI has been conducting various market studies to provide an overview of the emerging issues in the Indian economy. In the year 2021, CCI issued the following market studies:

7.2.1. In January 2021, the CCI published its [market study on the telecom sector](#), which highlights the issues related to the parameters of competition; net neutrality; traffic management; infrastructure management; spectrum acquisition; and data privacy and competition, etc.

7.2.2. In April 2021, the CCI in collaboration with Ernst & Young (EY) published its [discussion paper on blockchain technology](#), which explains competition law concepts in the context of blockchain technology and the issues that need further deliberation.

7.2.3. In November 2021, CCI came up with [market study on the pharmaceutical sector](#), which primarily focuses on generic drugs, role of trade associations, and online pharmacies. It also recommended creation of national digital drugs database to address information irregularities, among others.



8. **MISCELLANEOUS**

8.1. **Start-ups**

8.1.1. The Indian start-up ecosystem has thrived during 2020 and 2021 in spite of a global pandemic and has emerged as the 3rd largest ecosystem for start-ups globally with over 60,770 (Sixty Thousand Seven Hundred and Seventy) government recognized start-ups. It has seen record amounts of funding in 2021 and set benchmarks in terms of merger and acquisition deals.

8.1.2. 'Unicorns' have been flourishing in India, with nearly 44 (forty-four) start-ups turning into unicorns in 2021. Fintech sector dominated the unicorn club, with about 10 (ten) fintech start-ups becoming unicorns.

8.1.3. The year 2021 was also a landmark year for Indian start-ups going public. A total of 11 (eleven) Indian start-ups (including 8 (eight) unicorns) raised USD 7,160,000,000 (United States Dollars Seven Billion and One Hundred and Sixty Million) through public offerings.

8.1.4. Regulatory reforms

Various regulatory and/or legal reforms in the start-up space have been introduced to boost start-up formation and funding such as:

- (a) The MCA amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to introduce Rule 25 (1A) allowing a scheme of merger or amalgamation under section 233 of the Companies Act, 2013, between: (i) two or more start-up companies; or (ii) one or more start-up company with one or more small company. This shall facilitate and boost M&A transactions between start-ups through a simpler and faster process under the fast-track merger, wherein no approval is required to be taken from the National Company Law Tribunal.
- (b) The Central Government has approved the 'Startup India Seed Fund Scheme (SISFS) to provide financial assistance to start-ups for proof of concept, prototype development, product trials, with a corpus of INR 9,450,000,000 (Indian Rupees Nine Billion and Four Hundred and Fifty Million). This would provide sufficient capital to start-ups in the seed and proof of concept/trial stages, pursuant to which angel investors and venture capital firms shall provide funding to such start-ups.
- (c) The Income Tax exemption granted to start-ups under section 80 IAC of the Income Tax Act, 1961 has been extended for a period of 1 (one) year. An eligible start-up, incorporated between 01 April 2016 to 31 March 2022, can claim a 100% (one hundred per cent) deduction against its business income for 3 (three) consecutive years, allowing start-ups to meet their working capital requirements during their initial years of operation. The capital gains exemption for investments in start-ups has been extended for 1 (one) year up to 31 March 2022, for the purposes of boosting investments in start-ups.



- (d) A host of reforms were also introduced by SEBI to enable easier listing of start-ups on the Innovators Growth Platform ("IGP") as follows:
 - (i) Amendments were made in the SEBI ICDR Regulations for: (i) Reduction of period of holding pre-issue capital by eligible investors from 2 (two) years to 1 (one) year; (ii) the issuer company to be allowed discretionary allotment of up to 60% (sixty percent) of the issue size; (iii) companies which have issued superior voting rights equity shares will be allowed to list under the IGP framework; and (iv) other changes to facilitate the easing of start-up listing.

- (ii) The SAST Regulations were amended to relax the trigger for open offer from 25% (twenty-five percent) to 49% (forty nine percent) for start-ups listed on the IGP platform.
- (iii) Under the AIF Regulations, AIFs have also been allowed to invest directly in units of other AIFs and investee companies.
- (e) The IRDAI has allowed insurance companies to invest in Fund-of-Funds (FoF) that invest within the country subject to certain conditions. However, insurers are not allowed to invest in fund of funds that invest in overseas companies. This shall have the effect of private equity and venture capital funds having better access to capital which may in turn be available to be invested in start-up companies.
- (f) The Ministry of Labour and Employment has allowed the Employee Provident Fund Organisation to invest up to 5% (five percent) of their investible surplus in Category I and II AIFs registered with SEBI. This will unlock retirement savings for start-ups and small enterprises and raise large sums for them. Funds shall invest only in those AIFs whose corpus is equal to or more than INR 1,000,000,000 (Indian Rupees One Billion).
- (g) Amendment in the definition of start-ups - An entity shall be considered as a start-up up to a period of 10 (ten) years from the date of incorporation/ registration and turnover of the entity for any of the financial years since incorporation/ registration has not exceeded INR 1,000,000,000 (Indian Rupees One Billion)

8.2. **International Financial Services Centre**

The IFSCA manages the affairs of the units operating in the IFSC Gujarat International Finance Tec-City ("**GIFT City**"), Gujarat. In order to streamline the activities of the units established in the IFSC, IFSCA has introduced a series of economic reforms, policy changes and other developments for different sectors like (i) Finance; (ii) Capital markets; (iii) Insurance; and (iv) Banking, etc. Below are some major reforms notified by IFSCA in the year 2021:

- 8.2.1. **Finance Company:** In order to provide a regulatory framework for setting up of finance companies and non-banking financial institutions in GIFT City, a new set of regulations were issued by IFSCA. The regulations are aimed at providing a competitive regulatory environment for the activities to be performed by finance companies and non-banking financial institutions to complement the role of banking in providing finance, and innovative products and services from the IFSC. In order to commence its business as finance company or finance unit in IFSC, the applicant shall be required to obtain a certificate of registration from IFSCA. Further, the IFSCA also issued various clarification and circulars to ensure accountability, transparency, and sustainability for the finance company in order to foster investor confidence and achieve long term sustainable business goals.
- 8.2.2. **Capital Market:** IFSCA has issued a series of notifications and circulars in order to streamline the activities related to capital market in the IFSC GIFT City, Gujarat. Following are the key amendments issued by IFSCA:
 - (a) In order to conduct, organize or assist in organising any stock exchange or perform any clearing corporation or depository services, a prior recognition from IFSCA is required.
 - (b) A company incorporated in an IFSC or in India or in a foreign jurisdiction shall be eligible to list its securities on a recognised stock exchange, subject to compliance with the regulations issued by IFSCA. IFSCA further notified that a start-up company or a small and medium enterprise can also list its specified securities on a recognised stock exchange, subject to the criteria laid down by the IFSCA.
 - (c) IFSCA has also provide much-needed regulatory clarity on a Special Purpose Acquisition Company ("**SPAC**"). SPACs are blank check companies listed on a stock

exchange, set up by investment funds/ sponsors exclusively for the purpose of acquiring operating companies within a time period specified by the authorities.

- (d) IFSCA has also notified the regulations in respect of registration, obligations and responsibilities, fees, inspection, and enforcement of various types of capital market intermediaries such as broker dealers, clearing members, depository participants, investment bankers, portfolio managers, investment advisers, custodians, credit rating agencies, debenture trustees and account aggregators.
- 8.2.3. Banking sector: IFSCA has taken various measures as part of its endeavour to adopt the international best practices for development, regulation, and supervision of the banking businesses in the GIFT City. With a view to further enhance the ease of doing banking business in GIFT City, the IFSCA issued the IFSCA Banking Handbook ('**Handbook**') which will act as a compendium of all the detailed directions issued by IFSCA to the banking units operating in GIFT City, as branch of a banking company incorporated in India or outside India. The Handbook consists of the following 3 (three) components: (i) Handbook on General Directions; (ii) Handbook on Conduct of Business and; (iii) Handbook on Prudential Directions. The provisions of the Handbook have come into effect from 01 January 2022. IFSCA further notified that the provisions of the circulars issued by the RBI and adopted by IFSCA vide its circular dated 04 December 2020 shall cease to be applicable to the operations of the IFSCA Banking Units from the date of coming into effect of the directions in the Handbook. Moreover, it has been notified by IFSCA that the banking units established in the IFSC are now permitted to undertake investment banking activities in the IFSC, in accordance with the framework stipulated by the IFSCA.
- 8.2.4. Insurance Sector: IFSCA has notified the regulations for registration and operations of insurance companies in IFSC GIFT City. The Indian insurers / reinsurers, foreign insurers / reinsurers, society of Lloyd's and managing general agents are permitted to set up its IFSC insurance offices ("IIO") by obtaining registration certificate from IFSCA. The IIO may carry out the following activities, subject to conditions as may be specified by the IFSCA: (i) Life insurance business, (ii) General insurance business, (iii) Health insurance business and (iv) Re-insurance business. Apart from registration of IIO in IFSC, IFSCA has also permitted the insurance intermediaries like insurance brokers, reinsurer broker, corporate agent etc., to perform its activities, subject to compliance with the regulations stipulated by IFSCA.
- 8.2.5. Framework for Aircraft Operating Lease: IFSCA notified the framework for aircraft leasing in GIFT City. The framework allows leasing companies to set up a company, a limited liability partnership or a trust in India. Entities registered with the IFSCA as a 'lessor' can be engaged in the business of providing aircraft or helicopters and the engines of aircraft or helicopters or any other part thereof under lease arrangements, including sale and lease back, purchase, transfer, assignment, and novation.
- 8.2.6. Ancillary Services at IFSC: Considering the importance of professional and other service providers for the development of financial products, financial services, and financial institutions in the IFSC, a framework for enabling ancillary services has been notified by IFSCA. The framework shall be applicable to the service providers engaged in legal, compliance and secretarial; auditing, accounting, bookkeeping and taxation services; professional and management consulting services; administration, assets management support services and trusteeship services and any other services as approved by IFSCA from time to time. Further, in order to undertake regulated activities such as debenture trustee, investment advisor, AIF, fund management, etc, a separate registration certificate shall have to be obtained from the IFSCA.
- 8.2.7. International Trade Finance Services (ITFS) at IFSC: With a view to further develop and regulate the financial services, financial products, and financial institutions in IFSC, IFSCA issued a framework for setting up and operating the ITFS for trade finance services at IFSC. The framework will enable the exporters and importers to avail various types of trade finance facilities at competitive terms, for their international trade transactions through a dedicated electronic platform viz, ITFS. This will help in their ability to convert their trade receivables into liquid funds and to obtain short term funding.

8.3. **Vehicle Scrapping and Electric Vehicles (“EV”)**

In 2021, there was an increase in the demand of EVs in India due to which, many EVs were launched in Indian markets. In the year 2021, sale of EVs in India jumped over two-fold. In order to achieve further adoption and integration of EVs in India, the Government of India has taken a number of steps, including norms in relation to scrapping of old vehicles and other changes as discussed below:

- 8.3.1. On 25 September 2021, the Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021 (“**Vehicle Scrapping Rules**”) came into effect, to decrease the use of old vehicles, which in turn is expected to provide a push to the EV sector.



- 8.3.2. The Ministry of Road Transport and Highways has also notified an amendment to Central Motor Vehicle Rules 1989 which will come into effect from 1 April 2022. As per this amendment, fees for issue of certificate of registration will not be levied if the buyer deposits the ‘certificate of deposit’ obtained under Vehicle Scrapping Rules for scrapping old vehicle. In addition to this, an incentive for scrapping, a concession is stipulated in the motor vehicle tax for (i) up to 25% (twenty five percent) for non-transport vehicles; and (ii) up to 15% (fifteen percent) for transport vehicles, in relation to a vehicle registered against submission of ‘certificate of deposit’ obtained under Vehicle Scrapping Rules.
- 8.3.3. The Ministry of Road Transport and Highways also issued a notification permitting the sale and registration of two wheelers and three wheelers EV without pre-installed batteries and batteries which can be separately supplied by the relevant original equipment manufacturers. This will help the EV industry to reduce the upfront vehicle cost and unbundle the procurement of main components.
- 8.3.4. Furthermore, the Ministry of Heavy Industries for the promotion of manufacturing of electric vehicles, has set up 2 (two) production linked incentive (“**PLI**”) schemes namely, (i) for setting up manufacturing facilities for advance chemistry cell (ACC) battery storage in India; (ii) for Automobile and Auto Components. These PLI schemes shall have the effect of promoting EV production and integration in India.
- 8.3.5. Apart from the above incentives and subsidies, many state governments have also come forward with their own incentives & benefits programmes to promote EV in their state. Recently, Rajasthan released the Rajasthan Electric Vehicles Policy, 2021 (“**Rajasthan EV Policy**”). The Rajasthan EV Policy is focused on ramping up sales of electric two wheelers and electric three wheelers. However, there were no subsidies offered to purchase of electric cars and electric buses in Rajasthan. The Rajasthan EV Policy also does not mention anything on EV charging infrastructure. The States of Gujarat and Telangana have also released their respective EV policies.

8.4. Gaming Laws



- 8.4.1. In India, there has been an upward trend in the online gaming industry in the last few years due to the increase in mobile usage and internet penetration. Generally, the games are distinctive on the basis of its nature, whether it is a game of skill or a game of chance. In 2020, the Supreme Court while hearing an appeal upheld the order passed by Rajasthan High Court which concluded that the online fantasy games like “Dream11” involve skill and would accordingly not amount to gambling.
- 8.4.2. However, in the year 2021, many states sought to implement prohibitions on online games, irrespective of its nature. Recently, Karnataka prohibited all forms of gaming that includes wagering or betting, including games of skill. Prior to the recent amendment, Karnataka permitted online games of skills played for stakes and notably, only prohibited all forms of wagering or betting in connection with any games of chance. Pursuant to the strict prohibitions, it may be interesting to see how gaming companies restructure their operations in Karnataka and cater to the users. It must be noted that the constitutionality of these amendments has been challenged before the Karnataka High Court.
- 8.4.3. Similarly, Kerala government issued a notification clarifying that online rummy when played for stakes would not enjoy exemption from the general prohibition of gaming and gambling. However, Kerala High Court quashed the notification and held that the notification was arbitrary, illegal and violates the fundamental constitutional rights including the right to freedom of trade which is accorded to stakes in games of skill.
- 8.4.4. Further, the Madras High Court has also struck down certain amendments introduced by the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, as unconstitutional in the matter of *Jungle Games India Private Limited v. State of Tamil Nadu*. The court observed that the ban was contrary to the precedent established by the Supreme Court which is to permit games of skill.
- 8.4.5. Accordingly, while there has been an increasing trend of State governments introducing blanket restrictions so far as online gaming is concerned, the judicial authorities have decidedly struck down such restrictions as unconstitutional. It will be interesting to see how such states attempt to regulate the online gaming industry in the near future.



9. GOING FORWARD

- 9.1. **Data Protection:** The year 2022 is going to be a year of data regulations and the Indian government is all set to pass the landmark Data Protection Bill in the year 2022 which will establish guardrails for the booming digital economy.
- 9.2. **Labour Law Codes:** Government is likely to implement the new labour law codes in 2022. Upon implementation of the new labour law codes and rules, companies will be required to make substantial changes in their internal compliance infrastructure to abide by these labour codes.
- 9.3. **Cryptocurrency Bill:** It is observed that there is a delay in introduction of Cryptocurrency bill as it failed to find a place during the winter session of the parliament. The Indian Government also recently announced the introduction of its own Digital Currency which will be issued by the RBI in 2022-23 using blockchain technology.
- 9.4. **SPAC Regulations:** SPACs could potentially provide Indian entities access to foreign capital. However, despite the introduction of SPACs under the IFSCA regulations, there still exist legal impediments on which the regulatory authorities need to provide additional clarity.
- 9.5. **IFSC:** The government is all set to enable world class foreign university and institutions to set up facilities in IFSC GIFT City, Gujarat. Apart from this, the Hon'ble Finance Minister also proposed to set up an International Arbitration Centre in IFSC GIFT CITY Gujarat. This move will enhance the ease of doing business and human resource development in IFSCs.
- 9.6. **Electronic Vehicle (EV):** Since India has committed to reduce its carbon footprint, the government plans to have 30% of cars, and majority of the two and three-wheelers in the EV category by 2030. This shift towards an EV-centric commute is going to witness greater momentum in 2022.

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