

**Newsletter**  
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## Editor's note

Dear Readers,

I am pleased to share with you our newsletter for the month of May, 2024, which covers significant legal and regulatory developments.

In recent developments pertaining to the Insolvency and Bankruptcy Code (IBC), several significant rulings and updates have been observed which provide clarity on various aspects of insolvency proceedings, responsibilities of resolution professionals, treatment of claims and the handling of fraudulent transactions. We have included key highlights from the National Company Law Appellate Tribunal (NCLAT), Principal Bench Delhi, and the Indian Banks' Association (IBA) in this issue.

The Delhi High Court's recent move on selection of empanelled counsels ensure effective legal representation in matters concerning corporate affairs.

The Reserve Bank of India (RBI) has introduced several pivotal updates and we have included key highlights in this issue which include the amendment brought to the Foreign Exchange Management (Deposit) Regulations and the Instructions on Money Changing Activities. RBI's decision to withdraw several outdated and superfluous circulars is notable and will help simplify and rationalize existing instructions.

The several updates introduced by SEBI are also noteworthy and aimed to foster a transparent, efficient, and compliant securities market.

In this edition, we have also included an article on Pre-Nuptial Agreements in India. Pre-nups occupy a grey area in India, balancing traditional views and evolving legal attitudes. While courts are increasingly open to such agreements, they must align with public policy and statutory rights to be considered valid. Find out more about prenups in India in this article authored by our Associate Partner, Jahnavi Dwakardas and Senior Associate, Avni Gupta.

I hope you will find this edition useful.

Best wishes,

*Rajesh Narain Gupta*

Founder & Chairman,  
SNG & Partners



## A. INSOLVENCY AND BANKRUPTCY CODE (IBC)

### 1. NCLAT, Delhi: Decision of new RP to not prosecute application filed by the erstwhile RP not to be interfered with

The Hon'ble NCLAT, Principal Bench Delhi opined that the decision of the New Resolution Professional (RP) cannot be objected by the Erstwhile Resolution Professional. Further, that the NCLT after noticing the statement of the New Resolution Professional disposed of the application, it became unnecessary to look into facts of the application.

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### 2. NCLAT, Delhi: Attachment of assets for recovery of Property Tax cannot be ground for refusal to handover the possession to the Resolution Professional (RP)

The Hon'ble NCLAT, Principal Bench Delhi expounded that merely because Appellant has attached the assets for recovery of its Property Tax, it cannot continue with attachment and refuse to handover the possession to the RP.

It was ruled that attachment of the asset property was by the Appellant for realisation of its Property Tax prior to the initiation of the Corporate Insolvency Resolution Process (CIRP), but by only attachment of the assets, the rights entitled in the property does not vest in the Appellant.

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### 3. NCLAT, Delhi rules that IBC proceedings can still be initiated against the Corporate Debtor which is stuck off

The Hon'ble NCLAT, Principal Bench Delhi opined that IBC proceedings can still be initiated against the Corporate Debtor which is stuck off. Further, the liabilities of the company cannot be simply washed out by the company's non-compliance of the provisions of Companies Act, non-filing of the relevant financial documents and other filings.

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### 4. NCLAT, Delhi opines that comparison of claims between homebuyers and financial creditors is not appropriate

The Hon'ble NCLAT, Principal Bench Delhi, opined that Homebuyers are creditors in a class and they have been recognized as Financial Creditors by amendments made in the IBC. Comparison of claims between homebuyers and financial creditors is not appropriate.

It was noted that it was a 'commercial wisdom' of the CoC, which approved the pay-out to different Creditors.

Regarding the valuation report, it was ruled that valuation of immovable property is not an exact science, nor can it be determined like an algebraic problem, as it abounds in uncertainties and no straitjacket formula can be laid down for arriving at exact market value of the land. The valuation of Experts cannot be disregarded on objection filed by dissenting Financial Creditors. The Valuation Reports have been shared to all Financial Creditors and after examining the Valuation Reports, the Resolution Plan was approved by an overwhelming majority.

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**5. IBA approves draft of Model Assignment Agreement & model Trust Deed**

The Reserve Bank of India published a report in 2021 vide which it recommended the IBA to review the standard Assignment Agreement and Trust Deed. It was done to ensure that the same reflect the changes and expectations of the investors.

The approved drafts of the Model Assignment Agreement & model Trust Deed are placed on the Indian Banks' Association's (IBA) website for reference.

These Model Templates are suggested to facilitate transactions within the framework set by the Reserve Bank of India (RBI) for the Transfer of Stressed Loans. The Model Template could be customized to facilitate alignment with the specific commercial terms of transfer of such exposures on case-to-case basis as mutually arrived at.

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**6. NCLAT, Delhi: NCLT can pass an order directing any person who was party to carrying on the business of Corporate Debtor under Sec. 66**

The Hon'ble NCLAT, Principal Bench Delhi ruled that as per Section 66 of the Insolvency & Bankruptcy Code, 2016 (IBC) NCLT can pass an order directing "any person", who was party to carrying on the business of Corporate Debtor in such manner as to defraud creditors of the Corporate Debtor, or for any fraudulent purpose, to make him liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. A plain reading clearly shows that action can be taken against 'any person' for recovery of amount involved in the fraudulent transaction.

It was further held that NCLT was empowered to pass an order for recovery from such fraudulent transactions as contribution to the assets of the Corporate Debtor.

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**7. NCLAT, Delhi: Payment made in wrong bank account cannot amount to discharge of liabilities**

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The Hon'ble NCLAT, Principal Bench Delhi examined the issue whether the cyber fraud committed against the Respondent falls within the ambit and canvas of pre-existing dispute in terms of the statutory construct of IBC.

On analysis of the material on record, the Bench opined that the Respondents admitted that they had become a victim of fraud by "an unknown third party". Further, the complaint was filed against the unknown persons and not the Appellant. Hence, prima facie this could not be treated as a dispute inter se between the parties.

It was further held that the Appellant could not have been held responsible in any manner for the payment being made in the wrong bank account. Since, payments were not made in the right bank account, the same could not be said to be discharge of liabilities.

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## B. MINISTRY OF CORPORATE AFFAIRS (MCA)

### 1. Delhi High Court concludes process of selection of empanelled counsels

The Hon'ble Delhi High Court concluded the process of selection of empanelled counsels. The Bench appointed 1 Senior Standing Counsel, 9 Standing Counsels, 6 Additional Standing Counsels and 4 Drafting Counsels.

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### 2. Relaxation of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No. 4D under the Limited Liability Partnership Act, 2000

Keeping in mind the transition of MCA-21 from version 2 to version 3, it has been decided by the competent authority to extend the date of filing the forms i.e., Form No. LLP BEN-2 and LLP Form No. 4D up to July 01, 2024 without payment of any additional fees.

It has been done to promote compliance on the part of reporting Limited Liability Partnerships.

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## C. RESERVE BANK OF INDIA (RBI)

### 1. Reserve Bank of India (Margining for Non-Centrally Cleared OTC Derivatives) Directions, 2024

Based on the feedback received from the market participants, the RBI finalized the Reserve Bank of India (Margining for Non-Centrally Cleared OTC Derivatives) Directions, 2024.

The Master Directions for Reserve Bank of India (Margining for Non-Centrally Cleared OTC Derivatives) Directions, 2024 has been uploaded.

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### 2. Margin for Derivative Contracts

The Circular with respect to Margin for Derivative Contracts were issued to allow posting and collection of margin for permitted derivative contracts between a person resident in India and a person resident outside of India. The instructions have been reviewed based on market feedback and now the Reserve Bank of India (Margin for Derivative Contracts), Directions, 2024 have been issued.

The Directions shall come into force with immediate effect.

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### 3. Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024

The Foreign Exchange Management (Deposit) Regulations, 2016 have been amended. Following is the amendment:

#### a. Regulation 7

A new sub-regulation has been inserted after sub-regulation 5:

“6) An authorised dealer in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and / or foreign currency for the purpose of posting and collecting margin in India, for a permitted derivative contract entered into by such person in terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020, dated October 23, 2020, as amended from time to time, subject to directions issued by the Reserve Bank in this regard.”

The amendment will come into force with effect from the date of publication in the Official Gazette.

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**4. Issuance of partly paid units to persons resident outside India by investment vehicles under Foreign Exchange Management (Non-debt Instruments) Rules, 2019**

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The Foreign Exchange Management (Non-debt Instruments) Rules, 2019 were amended vide the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2024. The amendment enabled issuance of partly paid units to persons resident outside India by investment vehicles.

Now, it has been decided to regularise the issuances of partly paid units by Alternative Investment Funds to persons resident outside India prior to the said amendment through compounding under Foreign Exchange Management Act, 1999.

Before approaching the Reserve Bank for compounding, Authorised Dealer (AD) Category-I banks may ensure that the necessary administrative action, including the reporting of such issuances by Alternative Investment Funds to the Reserve Bank, through Foreign Investment Reporting and Management System (FIRMS) Portal and issuing of conditional acknowledgements for such reporting, is completed.

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**5. Internal Review- Internal Recommendations- Withdrawal of Circulars**

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RBI carried out an internal review and further to that it has been decided to remove obsolete/ outdated/ superfluous instructions, and to rationalize and simplify existing instructions.

Following are the circulars withdrawn with effect from close of business today:

- a. Meeting of Compliance Officers
- b. Internal Organisation and Control System
- c. Compliance Officers of Banks
- d. Checklist for Evaluation of Internal Inspection/Audit
- e. Compliance Officers of banks
- f. Overseeing the internal audit functions in Banks- setting up of audit committee
- g. Implementation of risk based internal audit in banks
- h. Compliance function in banks

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## 6. Instructions on Money Changing Activities

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Full Fledged Money Changers (FFMCs)/non-bank Authorised Dealers (ADs) Category-II may obtain their normal business requirements of foreign currency notes from other FFMCs and ADs in India. Further, they are also required to keep balances in foreign currencies at reasonable levels to avoid build-up of idle balances.

In this regard, it has been decided that from July 1, 2024, value of foreign currency notes sold by FFMCs / non-bank ADs Category -II to the public for permitted purposes should not be less than 75% of the value of foreign currency notes purchased from other FFMCs/ ADs, on a quarterly basis. Data of such sale and purchase should be maintained and made available for audit / inspection. FFMCs/ADs selling foreign currency may also ascertain the 'sale to public' requirement of the buying FFMCs/non-bank ADs Category II, by seeking relevant data from such entities.

Further, it has also been decided that FFMCs/non-bank ADs Category-II shall submit their annual audited balance sheet to the concerned Regional Office of the Reserve Bank along with a certificate from their statutory auditors regarding the Net Owned Fund (NOF) as on the date of the balance sheet, latest by October 31 of the year concerned.

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## D. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

### 1. Consultation paper on measures towards Ease of Doing Business for Non-Convertible securities

SEBI has sought comments from the public on the proposals related to Ease of Doing Business for Non-Convertible securities.

To align with the process of review with the budget announcement, SEBI recommended measures to simplify and ease compliances under various SEBI Regulations.

Following are the items for public comments:

- a. Deletion of disclosure regarding PAN and personal address of promoters of the issuers in the offer document;
- b. Disclosure in the offer document regarding time period for key operational and financial parameters;
- c. Disclosure by way of QR code and web-link regarding the details of branches or units of the issuer in the offer document;
- d. Alignment of disclosure requirement in the offer document regarding 'project cost and means of financing' with that in case of equity;
- e. Relaxation in the requirement of providing certain business and commercial details in case of purchase or acquisition of immoveable property in the offer document;
- f. Providing flexibility in the signatories for the purpose of providing attestation in the offer document; and
- g. Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper

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2. **Notification of NISM Series-XIX-C: Alternative Investment Fund Managers Certification Examination under Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007**

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The following notification has been issued by SEBI:

At least one key personnel, amongst the associated persons functioning in the key investment team of the Manager of an Alternative Investment Fund, shall obtain certification from the National Institute of Securities Market by passing the NISM Series-XIX C: Alternative Investment Fund Managers Certification Examination as mentioned in the communiqué No. NISM/ Certification/ Series-XIX-C: Alternative Investment Fund Managers/2024/01 dated January 10, 2024 issued by the National Institute of Securities Market.

The notification will come into force on the date of publication in Official Gazette.

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3. **Commencement notification for certain provisions of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023**

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SEBI has issued notification stating that the amendments in the sub-regulation (III) of regulation 3 of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023 shall come into force on the date of publication of this notification in the Official Gazette.

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4. **Framework for administration and supervision of Research Analysts and Investment Advisers**

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As per the Regulation 38A of the SECC Regulations, a recognised Stock Exchange may undertake the activities of administration and supervision over specified intermediaries on such terms and conditions and to such an extent as may be specified. Accordingly, Stock Exchange shall now be recognised as Research Analyst Administration and Supervisory Body (RAASB) and Investment Adviser Administration and Supervisory Body (IAASB) under Regulation 14 of the 'RA Regulations' and 'IA Regulations' for administration and supervision of Research Analysts ('RAs') and Investment Advisers ('IAs') respectively.

The provisions governing enlistment including enlistment of existing RAs/IAs and of applicants whose registration applications are under process as on the effective date of



this circular are specified in the enclosed framework.

SEBI has rescinded the existing framework for administration and supervision of IAs as specified through SEBI circular number SEBI/HO/IMD/IMD-I/DOF1/P/CIR/2021/579 dated June 18, 2021 and subsequently incorporated under the head “Administration and Supervision of Investment Advisers” of Master Circular for Investment Advisers numbered SEBI/HO/MIRSD-PoD-2/P/CIR/2023/89 dated June 15, 2023.

A fulfilment criteria has been annexed in the present circular. To ensure efficiency, it has been now provided that RAASB and IAASB shall be one and the same stock exchange.

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#### **5. Facilitating collective oversight of distributors for Portfolio Management Services (PMS) through APMI**

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Regulation 23(11) of the SEBI (Portfolio Managers) Regulations, 2020, states that the portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with the SEBI (Portfolio Managers) Regulations, 2020 and circulars issued thereunder from time to time.

The Portfolio Managers are required to ensure compliance by the distributors with the Code of Conduct provided in Annexure 2B.

To simplify and ease compliances, a working group was constituted which recommended measures to promote ease of doing business.

It has now been decided, that any person or entity involved in the distribution of portfolio management services shall obtain registration with Association of Portfolio Managers in India (APMI). Portfolio Managers shall ensure that any person or entity engaged in the distribution of its services has obtained registration with APMI, in accordance with the criteria laid down by APMI.

This circular shall come into effect from January 01, 2025. APMI shall issue the criteria for registration of distributors by July 01, 2024.

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**6. Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures**

SEBI has decided the following:

a. Ease in digital on-boarding process for clients of Portfolio Managers

While on-boarding the client, it has to be ensured that:

- the client has understood the structure for fees and charges
- the new client has separately signed the annexure on fees and charges and added a note, that they have understood the structure for fees and charges, in the following manner:

handwritten, in case the client is on-boarded through physical mode; typed using keyboard or written electronically using fingers/ a stylus pen, in case the client is on-boarded through digital mode

The above provision shall be applicable from October 01, 2024.

b. Fee calculation tool

Portfolio Manager shall provide a fee calculation tool to all clients that highlights various options with multi-fee year calculations.

The tool shall incorporate the high watermark principle. The link to access the tool shall be provided in advance to the clients on-boarded on or after October 01, 2024.

c. Most Important Terms and Conditions Document

- In order to facilitate ease of understanding of the critical aspects of the Portfolio Manager-client relationship, Portfolio Manager shall additionally provide to its client a “Most Important Terms and Conditions (MITC)” document, which shall be duly acknowledged by the client.

The Portfolio Manager shall ensure that no additional fees and charges are levied, other than the ones specified in the annexure on fees and charges to the PMS-client agreement.

The circular shall come into effect from October 01, 2024.

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## **7. Periodic reporting format for Investment Advisers**

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The Investment Advisers are required to furnish to SEBI, information and reports as specified by SEBI from time to time.

SEBI has recognized Investment Advisers Administration and Supervisory Body (“IAASB”) for the purpose of administration and supervision of Investment Advisers (“IAs”) under regulation 14 of the IA Regulations. At present, the IAASB has been seeking reports from IAs on an ad-hoc basis. It is decided to specify a standardized format for periodic reporting for IAs.

The Periodic reporting format has been enclosed in Annexure I.

IAs shall submit periodic report for half-yearly periods ending on September 30 and March 31 of every financial year. IAs shall submit periodic report in the format specified in Annexure I from the half-period ending on March 31, 2024.

The circular shall become applicable with immediate effect.

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## **8. Certification requirement for key investment team of manager of AIF**

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The key investment team of the Manager of an Alternative Investment Fund (AIF) shall have at least one key personnel with relevant certification as may be specified by SEBI from time to time, as an eligibility criterion for obtaining certification of registration as an AIF.

The following has been specified by SEBI:

- a. The requirement for at least one key personnel of the key investment team of manager of AIF to obtain the aforesaid certification, shall be applicable as an eligibility criterion to all the applications for registration of AIFs and launch of schemes by AIFs filed after May 10, 2024.
- b. The requirement of obtaining certification shall be complied on or before May 09, 2025 for the following:
  - Existing schemes of AIFs and
  - Schemes of AIFs whose application for launch of scheme pending with SEBI as on May 10, 2024.

The circular shall come into force with immediate effect.

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## 9. Review of validation of KYC records by KRAs under Risk Management Framework

SEBI in circular dated October 12, 2023 specified the Risk Management Framework as KRAs wherein the attributes for verification by KRAs were mentioned.

For ease of transaction by clients, the provisions of aforementioned circular were reviewed.

Now, it has been decided to modify the circular. Accordingly, the following has been directed:

a. Para 96 of circular to be modified:

As a part of risk management framework, the KRAs shall verify the following attributes of records of all clients within 2 days of receipt of KYC records:

- Permanent Account Number (PAN)
- Name
- Address

b. Para 100 to be read as:

The records of those clients in respect of which all attributes mentioned in Para 96/97 above are verified by KRAs with official databases (such as Income Tax Department database on PAN, Aadhaar XML/Digilocker/M-Aadhaar) and PAN-Aadhaar linkage has also been verified as referred to in Rule 114 AAA of the Income Tax Rules, 1962 shall be considered as Validated Records.

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## 10. Industry Standards on verification of market rumours

To facilitate ease of doing business, the Industry Standards Forum (ISF) has formulated industry standards in consultation with SEBI for effective implementation of the requirements to verify the market rumours.

The industry associations which are part of ISF and the stock exchanges are required to publish the industry standards on their websites.

The listed entities must follow the industry standards.

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## **11. Enhancement of Dynamic Price Bands for scrips in the Derivatives segment**

SEBI in its consultation paper dated May 20, 2023 titled Price Band formulation for scrips in Equity Derivatives segment to strengthen volatility management and minimise information asymmetry summarized the Principles behind construct of dynamic price band, existing formulation and the need for enhancement.

To take care of issues related to sudden price movement / fat finger error etc., the conditions precedents, as mentioned at Para 1(c) of this Circular, are enhanced to 50 trades, 10 unique UCCs and 3 trading members on each side.

As scrip price keeps trending in one direction, it is required to provide adequate time to market participants to assimilate any company / market specific news flow thereby resulting in orderly price movement while reducing strain on settlement systems on account of extreme price movements in one direction.

Accordingly, in modification of the requirement mentioned at Para 1(b) and 1(d) of this circular, it has been decided that the cooling off period of 15 minutes would be increased and the flexing percent of 5% would be decreased, in a calibrated manner.

A temporary price floor or ceiling for options in the sentimental direction of price trend in the underlying, as applicable, would be placed in the options, once underlying scrip triggers cooling off

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## **12. Norms for sharing of real time price data to third parties**

Certain online gaming platforms, apps, websites etc. are providing virtual trading services or fantasy games based on the movement of real time share prices of listed companies. Some of these platforms even offer monetary incentives based on the performance of the virtual stock portfolio.

The issue of sharing of real time price data with third parties was deliberated and based on the recommendations of the Secondary Market Advisory Committee, and further to curb misuse or unauthorized use of such data, it has been decided:



- a. Stock exchanges, clearing corporations and market intermediaries shall ensure that no real time price data is shared with any third party except where sharing of such information is required for orderly functioning of the securities market or for fulfilling regulatory requirements.
- b. Market price data may be shared for investor education and awareness activities without offering any kind of incentive (monetary) to the participants with a lag of 1 day.
- c. To ensure due diligence while sharing such data. The legal agreement for sharing data shall have the provisions to prevent any kind of misuse of the same by the entities.

The circular will be applicable from the 30th day of issuance.

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## E. PRE-NUPTIAL AGREEMENTS IN INDIA

A pre-nuptial agreement is a contract between two parties who intend to marry each other. The contract typically lays down mutually agreed terms and conditions regarding the division of the estate, protection from each other's debts, maintenance, infidelity, and child custody in the event the marriage ends. While globally countries like France, Denmark, Germany, and Canada have legally accepted pre-nuptial agreements, India's position on pre-nuptial agreements continues to be ambiguous. A layer of complexity is added due to marriages being governed by personal laws.

In absence of any formal legislation, the law on the subject is largely judge-made. Pre-nuptial agreements have traditionally been perceived as being against public policy. While Indian culture continues to lay emphasis on the traditional nature of marriage, it is undeniable that the attitude towards marriage has been evolving. Spouses are increasingly becoming more comfortable regulating their affairs during the subsistence and after the end of their marriage. Similarly, over time, the judiciary has been looking at such agreements more liberally, recognizing the personal rights and preferences of partners and encouraging the evolution of matrimonial laws.

### **Judgments relating to invalidity of Pre-nuptial Agreements**

In *Thirumal Naidu v. Rajammal*, (1967), the court was contemplating the question whether an agreement between a couple to live separately can be relied upon in a suit on restitution of conjugal rights. It was held that a prenuptial agreement for future separation is contrary to the public policy and therefore, void as marriage under Hindu law is sacramental and such an agreement may instigate separation.

In the case of *S Barik v. Padma* (1968), the parties signed a pre-nuptial agreement wherein the father-in-law and the petitioner had agreed that after petitioner's marriage, the petitioner will stay at his spouse's home. The court refused to give effect to the document keeping in mind that limiting a spouse's liberty is contrary to public policy.

### **Judgments relating to validity of Pre-nuptial Agreements**

In *Pran Mohan Das v. Hari Mohan Das* (1925), the marriage was solemnized on the promise that the bride's father will gift a house to his daughter. Although the father followed through with his promise initially, he later sued to recover the house. Here, the Calcutta High Court held the validity of the pre-nuptial agreement. Further a "part-performance of a contract" estopped the plaintiff from recovery of the property.

*Sandhya Chatterjee v. Salil Chandra Chatterjee* (1980) although discusses post-nuptial agreements becomes relevant as it was remarked that post-nuptial agreements between two free consenting adults also constitute public policy. The wife's demand to live separately and claim maintenance was not against public policy.

In 2023, while issuing a divorce decree, the Family Court in Mumbai, observed that the parties, being middle aged anticipated future concerns and therefore entered into a

pre-nuptial agreement. While the court didn't delve deeply on the enforceability of the prenup, it remarked that the agreement can be relied upon to understand the intention of the parties.

Having examined the case laws, it is demonstrative that all pre-nuptial agreements are tested against the touchstone of public policy as any contract against public policy is considered invalid. It would follow that any agreement that overrides/ ignores statutory rights and obligations would be deemed invalid. By way of example, agreements that pre-determine aspects of custody of children, or deprive a spouse of his/ her statutory right to maintenance and alimony or waive a spouse's right to live in her matrimonial home, have been struck-off by Courts as against public policy and are therefore, invalid.

Our experience with pre-nuptial agreements has led us to several key insights. Primarily, the objective of such agreements should be to strengthen the marriage rather than to facilitate its dissolution. The agreement should clearly delineate the individual and joint assets of each party, specifying the rights to these assets in the event of a breakdown. It is imperative that both parties possess the legal capacity to contract and provide informed consent to the terms of the agreement. Furthermore, the agreement must not infringe upon any statutory rights afforded to either party under the law, nor should it pre-determine issues such as child custody. To ensure fairness and clarity, it is highly recommended that each party obtains independent legal advice during the negotiation and execution of a pre-nuptial agreement.

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