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RETAIL

OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

Overview of the Legal and Regulatory Framework: **Retail**

March 2023

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I Overview of the Retail Industry in India

1. The Retail sector is defined as the part of a country's economy that is made up of businesses that sell goods through stores, the internet, etc. to the public.[1] This is a vast sector encompassing activities from groceries stores, to electrical appliances, to clothing and apparel. The retail sector is often said to be a key indicator of an economy's well-being since in a healthy economy there is high production, resulting in consumption which tends to be concentrated in the retail sector. Due to this, the first industry to take a hit during a time of crisis is retail and thus requires close monitoring by the Government.[2]

2. The Indian Retail Industry has been experiencing tremendous growth and recent trend predictions have been highly encouraging. The Indian retail market is estimated to reach $2 trillion by 2032. This sharp uprise is driven by socio-demographic and economic factors such as urbanisation, income growth, and a rise in nuclear families. Further, disruptive trends have entered the retail industry and the Indian e-commerce industry is expected to cross the $350 b mark by 2030, growing at a Compound Annual Growth Rate of 23%.[3] The significance of e-commerce in the retail industry has enlarged due to the impact of the global Covid-19 pandemic and the introduction of young millennial households (by 2030, India will add nearly 90 million new millennial households[4]) that were born into liberalization.

3. In the Union Budget 2023, Nirmala Sitharaman provided some welcome news to the Retail Sector. Primarily, there were custom-duty revisions on various commodities and products. Importantly, there was a reduction in the basic customs duty rate, other than for textile & agriculture, from 21 percent to 13 percent. This would provide a boost to making India a manufacturing hub. The breathing space allowed to the common man by revision of tax slabs too would be a boon for the Retail Sector, as there would now be further purchasing power for more consumers.

4. The Indian Retail Industry has carved a niche for itself within the global market. This is visible through a rising trend in foreign investments in this sector. India's retail trading sector saw investments amounting to US$ 3.96 billion between April 2000-March 2022.[5]

II Regulatory Overview

1. The Retail Industry in India covers a wide variety of products ranging from apparel to groceries. Each industry within the retail space has its own set of regulatory compliances. This section will elaborate on a few key compliances that entities in the retail sector need to adhere to.

i. OPERATIONAL LICENSES

2. Prior to starting a retail business of any kind, there are myriad licenses and permissions that need to be secured.

A. Trade License

3. A Trade License is a certificate issued by municipal authorities permitting one to carry out business in a specific location. "Trade premises" means any premises used or intended to be used for carrying on any trade or industry.[6] A retailer perhaps planning on establishing a physical warehouse, store, or any other commercial entity must approach the relevant municipal authority to secure their trade license.

4. For instance, take the case of Delhi, any person who desires to establish a business of a General Trade or Storage is required to obtain a license from the Municipal Corporation of Delhi.[7] In certain municipal regions, trade licenses can be obtained digitally by visiting the website of the respective municipal department, filling the relevant form, submitting the required documents, and paying the necessary fees.[8]

B. Shops and Establishment Registration

5. Each state in India has a Shops and Establishment act that regulates the conditions of employment in commercial establishments. Registration is mandatory for all kinds of commercial establishments under these federal establishments. For instance, Delhi is regulated by the Delhi Shops and Establishments Act, 1954. The occupier of a commercial establishment must approach the Chief Inspector of the Labour Commission, Government NCT of Delhi to register their establishment and receive a certificate for the same. This certificate is[9] required to be prominently displayed at the establishment.

6. The application for registering a commercial establishment requires the following information to be included:
   (a) the name of the employer and the manager, if any;
   (b) the postal address of the establishment;
   (c) the name, if any, of the establishment,
   (d) the category of the establishment, i.e., whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment; and
   (e) [the number] of employees working about the business of the establishment.[10]

C. GST Registration

7. Since July 2017, India moved to the Goods and Services Tax (GST) system that aimed to bring the entire nation under a single market. All businesses whether it be trade, commerce, or manufacturing must mandatorily get themselves registered on the basis of specified threshold turnovers. The registration can be obtained by filing an application online and the business will be provided with a GST Identification Number (GSIN). If a business operates from multiple states, then it must obtain registration for each state.

D. Incorporation of a Company

8. The Ministry of Corporate Affairs ("**MCA**") is primarily concerned with the administration of the Companies Act 2013, the Companies Act 1956, The Limited Liability Partnership Act, 2008 & other allied Acts, rules & regulations framed mainly for regulating the functioning of the corporate sector in accordance with law. Companies in India have to comply by the rules and regulations as established by The Companies Act, 2013.

9. Any company with operations in India would require to be incorporated. The MCA has recently developed the SPICe form or Form INC-32, which enables the creation of a business with a single application for reservation of name, incorporation of a new company, and/or allocation of Director Identification Number ("**DIN**"). Every company incorporated after February 2020 was required to submit an application using the two-part INC-32 or SPICe (Simplified Proforma for Incorporating a Company Electronically) form for the reservation of name, incorporation of the company, and, if applicable, the allocation of DIN.

10. At the point of incorporation, a company would require its Articles of Association and Memorandum of Association. Article of Association contains the rules and regulation that are relevant for the internal management of the company. The Article of Association have to be in a particular format as prescribed by Schedule 1 of the Companies Act, 2013. The Memorandum of Association ("**MOA**") is a document that contains the company's constitution and serves as the basis for its structure. It is known as the company's charter. It defines the extent of the company's activity, the aims for which it was founded, its authority, and its interactions with the outside world. MOA of the company needs to be submitted when the incorporation process is taking place.

11. There are certain other compliances that a company must adhere to at the stage or right after incorporation. A company must ensure that they conduct a minimum of 4 board meetings in one financial year.[11] A minimum of 120 days need to exist between 2 of these board meetings. A few other compliances that need to be met under The Companies Act, 2013 have been laid down below:

Figure 1

Date	Compliance
Within 30 days from Incorporation	A board meeting must be conducted where the director must disclose their interests.[12]
	Filling of Resolutions of the company to the Registrar [13]

	Appoint the 1st Auditor till the conclusion of first AGM [14]
	File the form INC 22 with the MCA to establish a registered office[15]
Within 2 months from Incorporation	Issuance of share certificates via Form SH-1.[16]
On or before 15th day of July every year	Foreign Liabilities and Assets Return [17]

E. Legal Metrology Packaged Commodities Regulations

The Legal Metrology Act, 2009 ('LM Act') enforces standards for weights and measures and regulates goods that are sold by weights and measures. The Legal Metrology framework becomes relevant for retail industry under the Legal Metrology (Packaged Commodities) Rules,2011 ('LM Packaged Commodities Rules') which regulates packaged items of all kinds. Every entity manufacturing importing or packing pre-packaged commodities, must get registered with the relevant Director/Controller of Legal Metrology in the appropriate area.[18]

F. Importer Exporter Code –

12. An Importer-Exporter Code ('**IEC'**) is a mandatory business identification code if any product is to be exported out of or imported into India. An application needs to be made to the Directorate General of Foreign Trade.

G. NOC from Fire Department

13. An NOC is needed from the Fire Department of the city where the entity is functioning in case certain conditions are met. These conditions vary from one state to another. These particular NOC also function as a fire safety certificate which need to also be periodically reviewed. Delhi for example requires all business buildings which have a height of more than 15 meters or having ground plus four upper stories need to get an NOC. These buildings need to get all this NOC before the construction of the building and must adhere to all the fire safety rules that the relevant legislation would require. These Fire Safety Certificates need to be renewed once every 3 years for non-residential building by submitting FORM I from the first schedule of the Delhi Fire Service rules 2010. Most fire departments of various states follow the code of practice as set forth by the National Building Code of India, 2005.

H. Pollution Control Board

14. There are certain provisions regarding pollution that need to be adhered to by a company. These are governed by the Ministry of Environment, forest and climate change, specifically the Central Pollution Control Board under it. Apart from these different states will have different sets of rules that need to followed. Such as a particular level of air quality must be maintained else further cause for investigation can arise for Delhi Pollution Control Committee to investigate.

I. Drugs and Cosmetics Licenses

15. A retail entity that desires to enter the business of drugs and cosmetics, then it must comply with the regulatory framework set up under the Drugs and Cosmetics Act, 1940 ('**DC Act**'). No person is permitted to manufacture for sale, distribute, sell, stock, exhibit, or offer for sale any drug or cosmetic, except in accordance with a valid license. The Drugs and Cosmetics Rules, 1945 for drugs, and the Cosmetics Rules, 2020 for cosmetics lay down the relevant registration/license procedures for obtaining permission to begin ventures in drugs and cosmetics. In terms of regulatory bodies, drugs are regulated by the Central Drugs Standard Control Organisation ('**CDSCO'**) and the State Drugs Standard Control Organisation ('**SDCO'**). Licenses and registration of cosmetics is handled by the Drugs Controller General of India and the state drugs controller, with their official designations varying from state to state. Lastly, the Department of AYUSH issues licenses for Ayurvedic, Unani, Siddha, Homeopathic, and herbal drugs and cosmetics.

16. As there are several sorts of Drug and Cosmetic licenses, the type of license necessary is contingent on the goods, services, activities, and company type. The applicant must submit an online application in accordance with the categories listed below, together with the applicable fees and supporting documentation:[19] [20]

Figure 2

Form	Description
COS-1	Application for a certificate of registration to import cosmetics
COS-3	Permission to import or manufacture new cosmetics in India
COS-5	License to manufacture cosmetics for sale or for distribution
COS-6	Loan License to manufacture cosmetics for sale or for distribution
Form 8 & Form 8A	License to import drugs
Form 19 & 19A	License to sell, stock or exhibit or offer for sale, or distribute of drugs
Form 24	License to manufacture or distribution of drugs for sale purpose
Form 24A	Loan license for drug

J. Waste Management Compliance in India

17. There are various waste management and environmental legislations both centrally and specific to certain states. These legislations make retail companies liable to comply with them and sometimes give reports regarding the waste management done by their organization.

18. In the following table various legislations have been laid out along with the compliance liability that these legislations impose on the company.

Figure 3

Legislation	Compliances
Biomedical Waste (Management and Handling) Rules, 1998	All health care facilities need to comply with the obligations set forth in the act. Dispensaries that generate Biomedical waste need to submit an application, along with the relevant application fees, asking for authorization from the State pollution control board. This needs to be reauthorized every three years. The State Pollution Control Board must receive a yearly report detailing the categories and quantity of BM trash treated. Sanctions: Failure to comply with the aforesaid regulations will result in a fine of 1,000,000 INR and/or imprisonment for up to five years.
The Batteries (Management and Handling) Rules, 2001	Any entity which deals with lead-acid battery comes under the application of this particular act. They need to file an application for Importer registration or renewal at the BRMS (Batteries Registration and Management System). Bulk-Consumers need to file half yearly returns with the SPCB. An advance customs approval is necessary for the import of batteries into India from other countries for recycling purposes.
The E-Waste (Management and Handling) Rules, 2011	The collection and recycling or disposal of e-waste created during the production of electrical and electronic equipment. Any firm involved with the sale of electrical and electronic equipment's comes under the application of these particular rules. Products that are near their end of life need to be sent to a registered dismantler or recycler. Collection centres need to established by these particular firms. Contacts details of authorized collection centres also need to be provided to the consumers of their products.

	Need to submit an application for obtaining an authorization from the state pollution control board of pollution control committee. The authorization if granted will be valid for a period of five years. Renewal should be applied for a minimum of 60 days before the expiry of the previous license. Annual report of handling of the E-waste must be submitted on or before the 30th day of June.
The Plastic Waste (Management and Handling) Rules, 2011 Plastic Waste Management Rules, 2016	SPCB registration is mandatory for recyclers. Validity of which lasts for a total of three years. No shop may provide plastic bags without charge. Rules governing the separation of virgin, renewable, and biodegradable plastic must be followed. Single use plastic items which have low utility and high littering potential are not allowed to be used anymore
	Producers, importers, and brand owners who offer the items to the market are primarily responsible for the collecting of old multi-layered plastic sachets, pouches, or packaging. They must have a mechanism for collecting the plastic garbage that their goods generate. This collection plan must be provided to the State Pollution Control Boards together with the application for Consent to Establish, Operate, or Renewal. The Brand Owners whose consent was renewed prior to the announcement of these rules are required to submit this plan within one year of the notification of these rules and implement it within two years. The producer must apply for registration with the Pollution Control Board or Pollution Control Committee, as applicable, of the State or Union Territory administration concerned. No producer may manufacture or use plastic or multi-layered packaging for the packaging of goods without first registering with the relevant State Pollution Control Board or Pollution Control Committees. Every producer is required to maintain a record of the person engaged in the supply of plastic used as a raw material for the production of carry bags, plastic sheets, or similar products, plastic sheet covers, or multi-layered packaging.

K. FSSAI License –

19. Assuming that the retail entity wishes to engage in the business of food, then it must obtain a license to begin the same. The Food Safety and Standards Act, 2006 ('**FSS Act'**) defines a 'food business' as "*any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients*". There is an express provision under the FSS Act, restricting any person from carrying on any food business without a license.

    The FSS Act has set up a regulatory body, namely, the Food Safety and Standards Authority of India ('**FSSAI'**) to formulate regulations that carry out the functions of the FSS Act. To this effect, the FSSAI has notified the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011 ('**FSS Licensing Regulation**') with detailed provisions regarding the application, renewal, and suspension of licenses. Licenses are issued by FSSAI as per the 'Kind of Business' of the food business. For instance, a retail entity that merely sells food items without being involved in its production would require a 'trade/retail' license. A retail entity that sells food items manufactured by a third party but under its brand name would require a 'relabeller license'. A retail entity that sells its food items through an online portal would be obligated to obtain an 'e-commerce license'.[21]

20. There are two types of licenses under the FSS Licensing Regulation – A Central License and a State License. Businesses may get either a Central or State License as per the criteria laid down under the FSS Licensing Regulation.[22]Refer to Figure No.4 for a breakdown of which food businesses require which license.

Figure 4

TYPES OF LICENSES UNDER FSS LICENSING REGULATIONS

CENTRAL LICENSE

Authority – Central License applications are made to the Designated Officer appointed by the Chief Executive Officer of the FSSAI.

Entities that require a Central License –

- Dairy units including milk chilling units equipped to handle or process more than 50,000 litres of liquid milk/day or 2500 MT of milk solid per annum.
- Vegetable oil processing units and units producing vegetable oil by the process of solvent extraction and refineries.
- All slaughter houses equipped to slaughter more than 50 large animals or 150 or more small animals including sheep and goats or 1000 or more poultry birds per day.
- Meat processing units equipped to handle or process more than 500 kg of meat per day or 150 MT per annum.

STATE LICENSE

Authority – State License applications are made to the Designated Officer appointed by the Food Safety Commissioner of the relevant State or UT.

Entities that require a State License – All Food Businesses that are not mandated to obtain a Central License.

- All food processing units other than mentioned under aforementioned heads including relabellers and repackers having installed capacity more than 2 MT/day except grains, cereals and pulses milling units.
- 100 % Export Oriented Units.
- All Importers importing food items including food ingredients and additives for commercial use.
- All food business operators manufacturing any article of food containing ingredients or substances or using technologies or processes or combination thereof whose safety has not been established through FSSAI regulations or which do not have a history of safe use or food containing ingredients which are being introduced for the first time into the country
- Food Business Operator operating in two or more states.
- Food Business Operators selling their wares through the internet using e-commerce channels.

L. Agmark Certification

21 Agmark is a certification mark for agricultural produce assuring that they conform to the grade standard notified by the Directorate of Marketing & Inspection ('**DMI**'), Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture & Farmers Welfare under Agricultural Produce (Grading Marking) Act, 1937. These standards have been notified on a commodity-specific/cluster of commodities basis. To date, standards for 222 agricultural products have been notified. While this is a voluntary scheme, FSSAI has mandated certification for certain products under the Food Safety and Standards (Prohibition and Restriction on Sale) Regulations 2011.

Figure 5

Product wise conditions for mandatory Agmark Certification

Name of the Product/Product Category	**Conditions for Agmark Certification**	**Relevant Agmark Rules under Agricultural Produce (Grading Marking) Act, 1937**
Blended Edible Vegetable Oil	Mandatory Certification	Blended Edible Vegetable Oils Grading and Marking Rules, 1991
Fat Spread	Mandatory Certification	Fat Spread Grading and Marking Rules, 1994

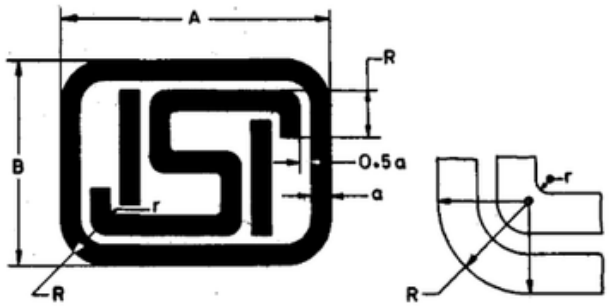
Ghee	Ghee having less Reichert value and a different standard for Butyro-refractometer reading at 400 C than that specified for the area in which it is imported for sale or storage is required to have mandatory Agmark Certification	Ghee Grading and Marking Rules, 1938
Muti-source Vegetable Oils		Vegetable Oils Grading and Marking Rules, 1955

M. BIS Certification

22 Bureau of Indian Standards ("**BIS**") is the National Standard Body of India, established under the BIS Act of 2016 for the harmonious development of standardization, marking, and quality certification of goods, as well as topics related to or incidental to these operations. The Indian Standards established by BIS form the basis for its Product Certification Schemes, which provide Third Party Assurance of the Quality, Safety, and Reliability of products to consumers.[23]

23 The BIS certification programme is essentially voluntary in nature. However, for a number of goods, conformity with Indian Standards is mandated by the Central Government for a variety of reasons, including public interest, protection of human, animal, or plant health, environmental safety, avoidance of unfair trade practices, and national security.[24] For such items, the Central Government in consultation with BIS issues a Quality Control Order ("**QCO**") mandating corresponding to the Indian Standard(s) mentioned in the QCO a requirement to bear the Standard Mark under a Licence or Certificate of Conformity from BIS. If a retailer wishes to affix, a Standard Mark on their products, then they must ensure that the same conforms to the relevant Indian Standard and then they must apply for a BIS license or a Certificate of Conformity.[25] BIS has made products liable for mandatory compliance with Indian Standards and placement of the standard mark through different schemes. These are briefly covered in **Annexure A.**

Figure 6 **Monogram for Standard Mark**



24 Bureau of Indian Standards also made a lot of Electronic and IT goods fall under the compulsory registration scheme.[26] According to the latest Order, no one may produce or store for sale, import, sell, or distribute the relevant goods unless they comply with the Indian Standard specified in the Order. Manufacturers must apply for registration with Bureau of Indian Standards (BIS) after having their products tested in BIS-recognized laboratories.[27]

ii. PERIODIC COMPLIANCES

25 The regulatory burden does not end once permissions are obtained for setting up a business. Several other routine regulatory compliances need to be observed.

A. Labour Law Compliances

26 India has a plethora of labour and employment laws in place to regulate wages, industrial relations, and working conditions. The Ministry of Labour and Employment has recorded that there are over forty central labour laws under the Ministry. Key laws and compliances under the same are listed below:

Figure 7

Name of the Act	Key Compliances
Industrial Disputes Act, 1947 and the Industrial Disputes (Central) Rules, 1957	Employers of workmen in an industrial establishment shall give notices of commencement and termination of lay-off within seven days of such commencement or termination.
The Employees‟ Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Funds Scheme, 1952	The employer is required to pay both the contribution payable by himself and also, on behalf of the member employed by him directly or by or through a contractor, the relevant contributions to the provident funds.
The Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation & Abolition) Central rules, 1971	Contractors are prohibited from undertaking work through contract labour without a valid license from the licensing authority.
The Factories Act, 1948 and model rules under the Factories act, 1948	No site shall be used for the location of a factory or no building in a factory be constructed, reconstructed, extended or taken into use as a factory or part of a factory, or any other extension of plant or machinery carried out in a factory unless previous permission in writing is obtained from the State Government or the Chief Inspector.
The Minimum Wages Act, 1948 the Minimum Wages (Central) Rules, 1950.	A wage slip is required to be issued by every employer to every person employed by him at least a day prior to the disbursement of wages.

B. Compliances under Legal Metrology

27 Legal metrology is important for retailers as it establishes and enforces a standard of weight that needs to be adhered to. Any retailer will need to ensure that their product/s all comply with the various rules and compliances set forth under the Legal Metrology Act, 2009, and The Legal Metrology (Packaged Commodities) Rules, 2011.

28 Retail companies will need to make certain declarations on all their products which include the name and address of the manufactured of their product or the name and address of the importer of that particular product, Additionally the common or generic name of that product shall be mentioned along with the quantity of that product in standard unit of weight or measurement. The month and year of manufacturing or importing of the product along with the maximum retail price should also be on it

C. Compliances under FSSAI

29. The FSSAI has issued several regulations that food businesses must comply with if they seek to run operations in India.

Figure 8

Regulation	Details
Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011	• These regulations lay down standards along with a list of permitted additives that different categories of food products must comply with. Food items are broadly categorized into three types – ◦ Standardized Food – Foods for which standards have been laid down in these regulations. ◦ Proprietary Foods – Foods that are made of ingredients that are standardized. ◦ Others – These may include novel foods that require product approval from FSSAI • Food items that do not meet the standards specified in these regulations or contain additives that are not permitted, then they may be deemed as 'sub-standard' and/or 'unsafe'. • These regulations further establish a food category system with each category and sub-category of food having a unique identifier number.

Food Safety and Standards (Import) Regulations, 2017	• No person is permitted to import food into India without a valid import license in accordance with FSS Licensing Regulations. • Once a consignment of imported food arrives at the port, the Integrated Declaration Form filed by the importer will be forwarded to the Food Import Clearance System of FSSAI for processing. • The regulations also specify storage requirements for imported food so as to minimize cross-contamination with other food items and maintain its sanctity. • The FSSAI is empowered to order the prohibition of the import of any articles of food based on risk perception or outbreak of disease.
Food Safety and Standards (Advertising and Claims) Regulations, 2018	• These regulations lay down specifications regarding the advertising and claims that businesses may make regarding their articles of food. • In general, claims made regarding food must be truthful, unambiguous, meaningful, and not misleading and help consumers to comprehend the information provided. Claims regarding the nutritional or health attributes of food are required to be scientifically substantiated. • The regulations also stipulate certain criteria that must be met if advertisements/claims wish to use certain terms including but not limited to 'natural', 'fresh', 'pure', 'traditional', and 'original'.
Food Safety and Standards (Labelling and Display) Regulations, 2020	• All pre-packaged foods are required to be labelled as per the specifications in these regulations. • Pre-packaged foods cannot engage in labelling of foods in a manner that is false, misleading, or deceptive or is likely to create an erroneous impression regarding its character in any respect. • Some declarations on the labelling of food articles are mandated by these regulations. These include *inter alia:* a. Name of the food b. List of ingredients c. Nutritional information d. Declaration of veg/non-veg e. Declaration regarding food additives f. Name and address of manufacturer and marketer/re-packer g. FSSAI logo and license number h. Net quantity i. Retail Price j. Expiry/Use By date k. Declaration regarding allergens

Food Safety and Standards (Safe food and balanced diets for children in school) Regulations, 2020	• These regulations prohibit businesses from advertising, marketing or selling food products high in saturated fat or trans-fat or added sugar or sodium in school campus or to school children in an area within fifty meters from the school gate in any direction.
Miscellaneous	The FSSAI has also notified standards and special requirements for certain categories of foods, namely, Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food, Organic Foods, Alcoholic Beverages, Foods for Infant Nutrition, Ayurveda Ahara and Vegan Foods.

D. Compliances under Consumer Protection Act

30 In 2019, the Legislature enacted the Consumer Protection Act, 2019 to replace the Consumer Protection Act, 1986. The Act regulates matters relating to violation of consumer rights, unfair trade practices, misleading advertisements *inter alia*.

31 When the goods or services are hazardous, dangerous or unsafe the Central Consumer Protection Authority ("**CCPA**") has the power to recall goods. They can also pass an order which directs the seller to reimburse the price of the hazardous, dangerous or unsafe goods to the purchaser of such goods. They can also pass an order to discontinue practices that are unfair or prejudicial to the consumer's interest.[28]

32 If a seller engages in advertising that is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights then the CCPA can pass an order to make the seller discontinue such actions.[29] In case of non-compliance of such an order the Central Authority can also impose a fine up to 10 Lakhs, and further it may also prohibit the endorser of false advertisement to not endorsing and product or service for a period which may extend to one year.[30]

33 The Act also imposes certain conditions pertaining to liabilities of sellers:[31]

a. If the seller has substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused the harm.
b. If the seller altered or modified the product in a manner that such modification is the substantial factor in causing the harm.
c. If the seller made an express warranty of a product independent of any express warranty given by the manufacturer, and the product failed to correspond to his express warranty, causing the damage.
d. If the identity of the manufacturer of the product sold by the seller is known, or if the manufacturer of the product is not subject to law of the land in a way that is cannot be passed or enforced against him.
e. He failed to exercise reasonable care in assembling, inspecting, or maintaining the product, or he failed to pass on the warnings or instructions of the product maker on the hazards involved or the correct use of the product, and his failure was the direct cause of the injury.

E. FDI Policy

34 In 2018, FDI norms were liberalized to allow 100% FDI under the automatic route. Subsequently, to harmonize the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2017 with the FDI Policy, 2017, Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2018 were notified from March 26, 2018 to give effect to the 100% FDI rule. The Foreign Exchange Management (Non-debt Instruments) Rules, 2019 which were issued in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017, created ambiguity by stating that only 49% FDI will be allowed under automatic route in SBRT, and beyond 49% and up to 100% it will be allowed under Government approval route. Later, on December 5, 2019, through the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2019, this error was rectified and finally both the FDI Policy and NDI Rules came into agreement that 100 % FDI is allowed under automatic route in SBRT. This however did not mention online stores. Lastly, through the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2020, online stores were added to the rules and consistency was achieved.

35 The other avenue for FDI in retail is Multi Brand Retail Trading. As far as multi brand retail trading is concerned, FDI is limited to 51%, with prior government approval. No automatic route of FDI is available in case of MBRT. Moreover, retail trading in any form by means of e-commerce would not be permissible for companies with FDI engaged in the activity of multi-brand retail trading. In the past Indian Government has frowned upon creative joint venture models to circumvent majority foreign ownership in MBRT.

36 Subject to the requirements of the FDI Policy, e-commerce businesses would only participate in Business-to-Business (B2B) transactions and not Business-to-Consumer (B2C) transactions.

37 The marketplace paradigm of e-commerce allows for 100% FDI via the automated method. The inventory-based paradigm of e-commerce prohibits FDI.

38 Inventory-based model of e-commerce refers to an e-commerce activity in which products and services are held by the e-commerce firm and sold directly to customers.

39 Marketplace-based model of e-commerce entails the provision of an information technology platform by an e-commerce firm on a digital and electronic network in order to operate as a facilitator between buyer and seller.

F. Intellectual Property Laws

40 In the retail sector, compliances will fall mostly under the ambit of Trademark Law. Trademark registration provides exclusive rights to trademark owners, and can be obtained for words, logos, numerals, slogans, and devices. In India, the Trademarks Act, 1999 governs this realm. The process of registering a Trademark, and some compliances that will need to be obtained will be listed as follows. Prior to registration, a thorough trademark search needs to be conducted in order to ensure that no similar or identical trademarks exist. This ensures that no costly litigation ensues in the future. In order to register a trademark, one must go to Trademark Registry India and file an

application for the trademark after ensuring that it is legitimate. The application is filed under Form TM-A, with the prescribed costs. The application should contain Logo or the Trademark, Name and address of the trademark owner, Classification or Trademark Class, Trademark used since date, and a Description of the goods or services. The approval process for a trademark can take anywhere from 12 to 18 months, and upon completion, the trademark may be objected to, conditionally approved, or fully approved. If it is accepted unconditionally, the trademark can be published in the Trademark journal; if it is approved conditionally, the trademark will be published if the criteria are met. In the event of an objection, the party who filed it will have the chance to contest this specific decision. A possible third party will have three to four months after publication to file a challenge against the filing of this trademark. In the event of resistance, the Registrar will conduct a fair hearing, and if there is no opposition, the trademark will be registered. A registration certificate must be obtained by the business. This procedure must be performed every ten years. Renewal occurs on an application made under Form TM-R.

G. Compliances under GST

41 Any company which is conducting its business in India and meets the threshold for the aggregate turnover as prescribed the Government of India during a financial year is eligible for GST registration. Businesses that have a turnover of Rs.20 Lakhs or more in a financial year, as well as places like the North Eastern States and hill stations who have businesses with a turnover of about Rs. 10 Lakhs or more in a financial year will meet the minimum threshold set. If private limited company is registered under GST, it is compulsory for them to file GST return. A GST return is a document containing details of all income/sales and/or expenses/purchases that a GST-registered taxpayer (every GSTIN) is required to file with the tax administrative authorities. This is used by tax authorities to calculate net tax liability. Under the GST regime, regular businesses having more than Rs.5 crore as annual aggregate turnover have to file two monthly returns and one annual return.

42 Each state will also have its own SGST act that is going to be valid on entities. Companies need to register with their specific state as well, for example in Delhi, entities which have an aggregate turnover of more than 20 Lakh rupees need to register. After registration a Unique Identity Number will be granted pending verification.

43 IGST is a tax imposed on all interstate sales of goods and/or services or across two or more states or Union Territories. In addition, the IGST charge and collection are controlled by the IGST Act of 2017, as revised from time to time.

44 There are various compliances that need to be adhered to under the CGST Act, 2017. Firstly, there is a turnover based registration compliance where, if the prescribed threshold is crossed, the retailer will need to register under the GST regime. The limits are provided under Section 22 of the CGST Act. Next, a registered supplier in an invoice has to ensure the presence of the following- Invoice number and date; Customer name; Shipping and billing address; Customer and taxpayer's GSTIN; Place of supply; HSN code; Item details; Taxable value and discounts; Rate and amount of taxes; Whether GST is payable on a reverse charge basis; and Signature of the supplier. Filing of returns is the most important cog of compliance and needs to be done per the time prescribed.

H. Competition Act

45 Compliances under the Competition Act, 2002 are of three different types. Firstly, there should be no anti-competitive agreements that are entered into by retailers. Section 3 of the Competition Act defines and bans anticompetitive agreements. Anti-Competitive agreements refer to those, that would have a significant adverse impact on competition (AAEC) in Indian marketplaces. A business should NOT discuss, enter into an agreement with, or engage in any collaborative action with a rival on the price or quantity of items sold or the terms under which they are offered. There are two kinds of agreements that could be entered into. Horizontal Agreements, as defined by Section 3(3) of the Act, may be reached between firms operating at the same level of production or supply chain. "Vertical Agreements" under Section 3(4) of the Act are entered into between businesses operating at different levels of the value chain. These Horizontal and Vertical Agreements include any agreements that:

(a) determine directly or indirectly purchasing or selling prices;

(b) restrict or regulate production, supply, markets, technological development, investment or service provision;

(c) share the market or the source of production or the supply of services by allocating the geographical area of the market, the kind of products or services, the number of clients on the market, or in any other comparable manner;

(d) result directly or indirectly in bid-rigging or collusive bidding.

46 Secondly, the Competition Act under Section 4 prohibits any enterprise or group from abusing its dominant position in a way that would enable it to operate independently of the competitive forces prevailing in the market. This dominant position would allow it to affect its competitors or consumers or the market in its favour, and the same is prohibited. An abuse of dominant position occurs when a firm-

Directly or indirectly, imposes unfair or discriminatory

- condition in purchase or sale of goods or service; or
- price in purchase or sale (including predatory price) of goods or service

Limits or restricts

- production of goods or provision of services or market therefor; or
- technical or scientific development relating to goods or services to the prejudice of consumers; or

Indulges in practice or practices resulting in denial of market access in any manner; or

Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

Uses its dominant position in one relevant market to enter into, or protect, other relevant market.

47 Lastly, mergers, acquisitions, and combinations are regulated under Section 5 of the Act. There are reporting requirements that are imposed which need to be followed as well. Any acquisitions, mergers or combinations that exceeds the threshold limit, in terms of assets or turnover in India and abroad, are to be reported and scrutinized by the CCI.

III Recent Developments

A. FSSAI Developments –

i. Introduction of Food Safety and Standards (Labelling and Display) Regulations, 2020

1 In December 2020 the FSSAI revamped its pre-existing food labelling regulation (Food Safety and Standards (Packaging and Labelling) Regulations, 2011). The FSS Labelling Regulations introduced several new compliances such as declarations regarding food allergens, modified format for the non-vegetarian logo, labelling requirements on non-retail packaged foods, disclosure of the percentage of essential ingredients, extension of labelling requirements to food items being sold on e-commerce platforms and disclosure of the percentage of contribution to Recommended Dietary allowance along with the nutritional information. Food Business Operators ('**FBOs'**) were given until July 1st 2022 to modify their labels and packaging in accordance with the new regulations. Since the FSS Labelling Regulations were introduced, they have already been amended three times as of date.

ii. Regulations for special categories of foods –

2 With an increase in the demand and supply of vegan and/or organic products in the markets, FSSAI has responded with standards and labelling requirements for the same. To that effect, FSSAI has notified the Food Safety and Standards (Organic Foods) Regulations, 2017 ('**FSS Organic Foods Regulations**') and the Food Safety and Standards (Vegan Foods) Regulations, 2021 ('**FSS Vegan Foods Regulations**').

3 The FSS Organic Foods Regulation does not even provide a definition for 'organic foods'. It states that organic food offered for sale must comply with other organic food programmes such as the National Programme for Organic Production ('**NPOP'**) under the Agricultural and Processed Food Products Export Development Authority ('**APEDA'**) or the Participatory Guarantee System for India ('**PGS-India**') under Department of Agriculture and Farmers Welfare. Further, there is a requirement for a specific logo that needs to be affixed on organic packaged foods. Strangely, the requirement and format for the organic logo do not come from the FSS Organic Foods Regulation but instead from the FSS Labelling Regulations. This creates a framework wherein if an FBO desires to get organic certification and attach the organic logo to their product, they will have to comply with upwards of 3 regulations and Governmental Programmes.

4. The FSS Vegan Foods Regulations provide a definition of what constitutes vegan food and provide the requirement and format for a vegan logo to be affixed to packages of vegan foods. The Regulations go on to provide a certification mechanism for food products to qualify as vegan. However, complications similar to organic foods can be expected in vegan foods as well. APEDA has set up a committee to form policies, standards and certifying mechanisms for the manufacturing of vegan products targeted at the export market. It can be reasonably expected that APEDA's vegan policy will have its definitions, certification system and logo. This will lead to tremendous confusion among FBOs that wish to label their products as vegan.

III. Proposed amendments to front of the pack labelling that will potentially overhaul and over-complicate the labelling design and compliance mechanisms followed by FBOs.

5 FSSAI and the Legal Metrology Division of the Department of Consumer Affairs have come up with draft amendments that have sparked great debate in the food labelling regulatory space.

6 In August 2022 the Department of Consumer Affairs proposed amendments to the LM (Packaged Commodities) Rules requiring that prime constituents of any packaged commodities along with their percentages be declared on the Front of the Pack ('**FoP'**).

7 In September 2022, the FSSAI came out with draft amendments to the FSS Labelling Regulations. These introduced the concept of Front of Pack Nutritional Labelling ('**FoPNL'**) to discourage consumers from consuming High, Fat Sugar, salt ('HFSS') food. The draft amendment conceptualises a five-star rating system wherein a score would be calculated for each food item based on values assigned to them which then be generated into a rating out of 5. A logo containing the rating of each product is proposed to be mandatorily affixed to the FoP of packaged foods.

8 In status-quo, a majority of the declarations required to be made on food packages are required to be part of the Principle Display Panel ('**PDP'**). These amendments depict that Governmental authorities have extended their breadth of influence to micro-manage the FoP of packaged food items as well.

B. Competition Law Updates

9 The Competition Act of 2002 was created to foster and preserve market competition, safeguard consumer interests, and guarantee market players' freedom of trade.[32] It formed the Competition Commission of India (CCI) in order to eradicate practises that impede market competition. However, a decade has passed since the Competition Act, 2002 came into force. With the coming of the digital era the way businesses operate have fundamentally changed. In 2018, the Ministry of Corporate affairs set up the Competition Law Review Commit to align the Competition Law framework in India with the economic developments that have taken place in the country.

10 *Key Changes under the new Bill:*

i. **Anti-competitive agreements**: According to the Act, anti-competitive agreements include any arrangement linked to the manufacture, delivery, storage, or control of goods or services that may have a significant negative impact on competition in India. If certain requirements are met, any agreement between organisations or individuals engaged in identical or similar operations would have a detrimental impact on competition. The bill states that also firms or individuals not involved in identical or similar operations would be deemed to be a member of such agreements if they actively participate in their advancement.

ii. **Regulation of combinations based on transaction value**: The Act forbids any person or business from engaging into a combination that may have a substantial anticompetitive impact. The restriction applies to transactions involving parties with: I cumulative assets more than Rs 1,000 crore or (ii) cumulative revenue greater than Rs 3,000 crore, subject to specified limitations. The bill increases the definition of combinations to encompass deals above Rs 2,000 crore in value.[33]

iii. **Time limit for combination approval**: The Act stipulates that the CCI must provide a decision on an application for combination permission within 210 days. The proposed legislation decreases this time restriction to 150 days.[34]

iv. **Decriminalization of certain offences:** The bill modifies the type of punishment for specific offences from fine to penalty. These offences mainly talk about noncompliance of commands of CCI and Director General directives against anticompetitive agreements and dominant position misuse.[35]

v. The Bill authorises the CCI to end an investigation if the business offers a settlement, or. CCI might specify the approach and execution of the framework of settlement and commitment by rules.[36]

C. Drugs and Cosmetics Updates

11 In 2020, the Ministry of Health and Family released the Cosmetics Rues 2020 in furtherance of the powers conferred to it under the Drugs and Cosmetics Act, 1940 in order to separately codify the rules for cosmetics. All the cosmetics licenses prior issued will be valid until eighteen months from the date of issue of the notification, i.e., 15th December 2020. Some of the key points of the rules are laid down below:

i. **New Cosmetics**: The Rules have introduced a different category for 'new cosmetics' defined as "a cosmetic which contains a novel ingredient that has not been used anywhere in the world or is not recognized for use in cosmetics in any National or International literature."[37] Persons who desire to import or manufacture new cosmetics are required to apply to the Central Licensing Authority along with data on the safety and effectiveness of the cosmetic.[38]

ii. **Cosmetics Quality**: The Cosmetic Rules 2020 prohibit the manufacturing and/or import of cosmetics that do not meet the essential quality and safety requirements. In addition, some raw materials (as listed in Annex A of Indian Standard IS 4707 Part 2) are forbidden.[39]

iii. **Imports**: The Cosmetic Rules 2020 ban the importation of cosmetics in the following circumstances:

   a. Sale, production, and distribution of the questioned cosmetic are forbidden in its country of origin.
   b. The cosmetic containing "hexachlorophene" (considered to be dangerous to humans);
   c. The Use by Date or Use Before Date is fewer than six months after the import date;
   d. The cosmetic that has undergone animal testing after November 12, 2014.[40]

iv. **Voluntary Recall Mechanism**: The Rules impose an additional obligation on the manufacturer/his authorised agent to withdraw cosmetics from the market if the manufacturer/their authorised agent believes or has reason to believe that such cosmetics are likely to affect the customer's health or have a negative impact, and are therefore potentially unsafe. In such a case, the responsible producer or certified agent must promptly remove the cosmetics from the market, declare the reasons for the withdrawal, and notify the SLA (State Licensing Authority) or the CLA (Central Licensing Authority), as applicable.[41]

v. **Manufacture of Cosmetics for Distribution or Sale:** The Cosmetic Rules 2020 require the applicant to provide a self-declaration confirming conformity with good manufacturing practises and other sets of regulations. It also illustrates the requirement of acquiring different permits for each location when production occurs at many locations. In addition, concurrent with the import of the Registration Certificate, the licence for manufacture/loan must be valid in perpetuity and be subject to the payment of a retention fee within five years on the date the licence was issued.

vi. **Digitisation of applications**: The Cosmetics Rules allow application forms to be submitted online in contradiction to the prior licensing requirements.

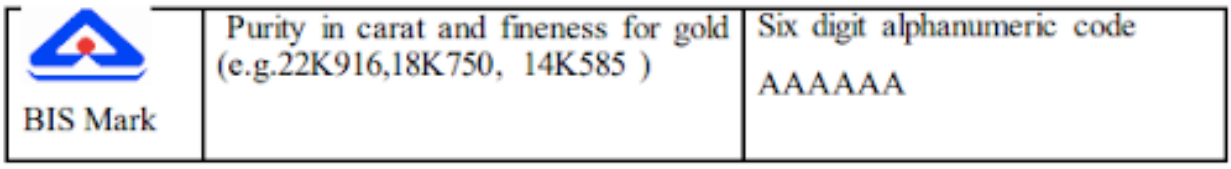
D. BIS Developments

12 On the 23rd of June 2021, the Government of India issued a Quality Control Order for mandatory hallmarking of gold jewellery/artefacts in 256 districts of the country.[42] Hallmarking is the accurate determination and official recording of the proportionate content of precious metal in the jewellery/artefacts or bullion/coins.[43]

13 For hallmarking of jewellery, a jeweller who desires to sell hallmarked jewellery must obtain a registration from BIS. The registration of jeweller's has been made online. The registration of obtained by a jeweller is free and valid for lifetime. Following registration, the registered jeweller submits the jewellery for hallmarking to BIS recognized Assaying & Hallmarking ("**A&H**") centre. These are testing centres where the jewellery is tested. After testing, the A&H centre applies a hallmark on the jewellery which are adhering to the required standard.

14 BIS has developed a digital solution wherein the entire workflow in assaying and hallmarking centre is automated and made online. The jeweller merely submits the request for hallmarking online along with all the relevant data. At the end of the testing process, a unique six-digit alpha numerical code is generated from the BIS server for each jewellery article and is laser marked by the A&H centre on the jewellery along with BIS logo and purity mark.

Figure 9 **Indicative format for Hallmarking**



E. Legal Metrology Developments

15 In 2020, the Legal Metrology Division of the Department of Consumer Affairs published a "Stakeholder consultation on proposal of decriminalization of Legal Metrology Act, 2009" ("proposal for decriminalization of LM Act"). The proposal for decriminalization recognizes that criminal offence often requires the standard of proof to be beyond reasonable doubt, a much higher threshold than the standard adopted for civil wrongs. This has brought into question the efficiency of criminal law in dealing with misconduct which are of technical nature, such as those covered under the Legal Metrology Act, 2009. Thus, the proposal aims to shift from criminal to civil liabilities for transgressions under the Act.

16 Below is a summary of the amendments proposed in the document:

i. Proposal includes amendment to certain sections of the Act with the intention of decriminalising them.

ii. Proposal increases the penalty for the sections that will be decriminalised. It also includes provisions for cancelling of licenses that have been granted if compounding is not done.
iii. Proposed Amendment to Section 49:
iv. Initially only a person at the director level could be nominated to be responsible but the proposed amendment will allow the nominated person to also be at the managerial level.
Proposed Amendment to Section 2(r): Harmonizes definition of sale with the one mentioned in the Constitution of India.
vi. Key difference being inclusion of the word 'services.'
vii. Addition of provision: Penalty for selling pre-packaged products over the MRP. Currently, the provision for it is under the Legal Metrology (Packaged Commodities) Rules, 2011.
viii. Amendment to Section 48: Penalties under Sections 26, 41, 42 & 43 may be made compoundable.

F. Consumer Protection Law Updates

17 In 2020, the Department of Consumer Affairs notified the Consumer Protection (E-Commerce) Rules, 2020 to specify the duties and liabilities of e-commerce entities and sellers.

18 Any business which sells any and all goods and services sold via the ecommerce platform will come under the new E-commerce rules. Any retailers online will come under these particular rules.[44] Key compliances under the rules are summarized below:

i. These rules make it an obligation upon to company to appoint a nodal officer who will ensure compliance with the provisions of this particular act. Since 2020 every E-commerce organization needs to establish and set up a grievance redressal mechanism and a grievance officer shall be appointed for the same. The information of this officer must also be displayed on their E-commerce platform.
ii. All complaints must be acknowledged within 48 hours and solved within a period of one month.
iii. No cancellation charges must be charged unless similar charges are also borne by the retailer.
iv. Consent taken for purchase of product should be explicit in nature, a pre-ticked check box for example will not qualify.
v. Every e-commerce firm must prominently display the following information on its platform in a clear and accessible manner for its users:
(A) legal name of the online business;
(B) the primary physical address of its headquarters and its branches;
(C) name and information about its website;
(D) contact information, including email address, fax, landline, and mobile phone numbers, for customer service and the grievance officer.

G. Labour Law Updates

19. As mentioned above, the labour law framework in India is overtly complex, consisting of a deluge of legislations. There are currently approximately 40 Central legislations and over 100 State Legislations regulating various aspects of labour law. The 2002 Second National Commission on Labour ("NCL") found existing legislation to be complex, with archaic provisions and contradictory definitions. To ensure ease of compliance and bring out uniformity in labour laws, the NCL recommended the coalition of central labour laws into broader groups such as (i) industrial relations, (ii) wages, (iii) social security, (iv) safety, and (v) welfare and working conditions.

20 In 2019, the Ministry of Labour and Employment introduced four labour codes to consolidate Central labour laws. The four codes are summarised below:

i. The Code on Wages, 2019

21 The Code applies to every employee. The federal government will make wage-related decisions for industries including railroads, mines, and oil fields. State governments will make all other employment-related decisions.

22 According to the Code, the federal government will establish a minimum wage which will be called the floor wage that takes into consideration the living conditions of employees. Additionally, it may establish various minimum salaries for different geographic regions. Before determining the minimum wage, the federal government may confer with the Central Advisory Board and state governments.

23 The minimum wages set by the federal and state governments must be above the floor wage. If the present minimum wages set by the federal or state governments are more than the floor wage, the minimum wages cannot be then reduced.

24 The minimum wage shall be changed and reviewed no more often than every five years by the federal or state governments.

25 When determining minimum wages, the federal or state government may consider criteria such as:

a. the skill of employees and
b. the complexity of the task.

26 The federal or state government may determine the number of hours that constitute a standard workday. In the event that workers work beyond a standard workday, they are entitled to overtime pay, which must be at least double the standard rate.

27 Under the Code, an employee's pay may be withdrawn for a variety of reasons, including

a. penalties
b. absence from duty
c. accommodation provided by the employer
d. recovery of advances paid to the employee.

These deductions should not exceed fifty percent of the entire salary of the employee.

28 All workers whose monthly earnings do not exceed a certain sum, as determined by the federal or state government, will be eligible for a yearly bonus. The bonus will be at least 8.33 percent of his salary, or 100 rupees whichever is greater. The company will also share a portion of the gross profits to the workers. This will be provided according to an employee's yearly salary. The maximum bonus an employee may get is 20% of his yearly salary.

29 The Code prohibits discrimination based on gender in matters related to wages and recruitment of employees for the same or similar work. Work of similar nature is defined as work that requires the same level of skill, effort, experience, and responsibility.

30 The Code stipulates penalties for infractions committed by an employer, such as paying less than the required wages or violating any provision of the Code. Depending on the nature of the offence, the potential penalties include imprisonment for three months and a fine of up to one lakh rupees.

ii. The Industrial Relations Code, 2020

31 Infractions punishable by up to one year in jail or a fine will be compoundable. For offences carrying a fine, compounding is permitted for an amount equal to 50 percent of the maximum fine. For crimes punishable by jail, 75% compounding is permitted. 50% may be compounded if a "penalty" is imposed (e.g., for failing to maintain registers) and 75% may be compounded for "offences" (e.g., for falsifying records).

32 Under the 2020 Bill, establishments with at least 300 employees are obliged to get government approval prior to closure, layoff, or retrenchment.

33 The 2020 Code raises the requirement for the definition of a factory to 20 employees for manufacturing facilities that use electricity and 40 workers for manufacturing facilities that do not use electricity.

iii. The Code on Social Security, 2020

34 The Code stipulates varying application levels for the schemes. For instance, the EPF Scheme applies to businesses with 20 or more workers. The ESI Scheme will apply to select enterprises with 10 or more workers, as well as any establishments deemed by the central government to do hazardous or life-threatening work. These levels are subject to modification by the federal government. Unless they are already registered under another labour regulation, all qualifying enterprises are obliged to register under the Code.

35 The 2020 Bill modify the punishments for specific offenses. For instance, the maximum sentence for interfering with an inspector's duties has been reduced from one year to six months. Similarly, the penalty for unlawfully deducting an employer's contribution from an employee's wages has been reduced from one year in prison or a Rs 50,000 fine to a Rs 50,000 fine alone.

36 The 2020 Bill emphasises that schemes for gig workers and platform employees may be supported by a mix of federal, state, and aggregator contributions. Schedule 7 of the Bill contains a list of aggregators for this purpose. These include nine categories, such as ride-sharing services, food and grocery delivery services, content and media services, and e-marketplaces. Any contribution by such an aggregator may be between 1% and 2% of the aggregator's yearly revenue, as determined by the government. However, this contribution cannot exceed 5% of the total amount paid or due to gig workers and platform employees by an aggregator.

iv. The Occupational Safety, Health and Working Conditions Code, 2020

37 The initial 2019 Bill submitted before the parliament permitted the competent government to announce the maximum daily work hours for employees. The 2020 Bill sets the daily maximum at eight hours.

38 The 2019 Bill made it possible for the relevant authorities to restrict the employment of women for harmful activities. The 2020 Bill stipulates that women will be eligible for employment in all

institutions and for all sorts of job. It further stipulates that if they are obliged to engage in hazardous or risky tasks, the government may order the business to provide necessary safety precautions before hiring them.

40 The 2020 Bill creates a Social Security Fund for the benefit of unorganised employees. The Fund shall be credited with the amount collected from various Code fines, including the amount obtained via compounding. The government may also designate other funding sources for the Fund.

IV Issues and Challenges faced by the Retail Industry

A. Multiplicity of compliances which impacts ease of doing business – demand for platforms like Maharashtra's Maitri

1 The Indian regulatory framework is problematic for retailers in several ways but the biggest issue that it poses is that the whole system is too complicated in nature. There are myriads of forms that need to be submitted and a bundle of regulations to be complied with. In several cases these compliances are repeated in multiple legislative bodies and leading to redundancy and increase in compliance costs.

2 It is impractical for a company to be adhering to these many regulations and as a matter of fact increases the floor to enter the marketplace. A new retail firm trying to compete in a saturated marketplace will find itself unable to do so. A lot of these regulations also just have a criminal sentence attached to them which is quite unfair considering the complicated web of compliances that have been built by the regulatory bodies in India.

3 There have been steps taken in the right direction, the government is currently looking to decriminalize The Legal Metrology Act, 2009 which will reduce the punitive measures taken by the act. At the same time government platforms such as 'National Single Window System' which compiles all the approval requirement across 26 central departments and 16 state departments is a breath of fresh air. Such platforms must be encouraged and their scope increased to include more departments and regulatory bodies.

B. Demand for Industry Status

5 Almost every large industry in India is governed by a regulator, or has a Ministry that looks into its functioning and addresses issues that crop up from time to time. This is necessary for a situation where reactiveness is necessary to ensure that not only the industry, but also consumers feel relatively safe and protected. However, it is surprising that in India, an industry that is as large and contributes as much to the economy- the Retail Industry doesn't have 'industry' status yet. This is an oversight that has far reaching ramifications, and needs correction. Indeed, in light of the Covid-19 pandemic and the subsequent economic upheavals, the need for an 'industry status' is immediate. The MSME sector and retail are the biggest avenues for economic growth and have been one of the fulcrums of the India's post-Covid growth phase.

6. The issues that arise with this sector are primarily fuelled by the lack of a ministry or department which can act as a regulator to govern the retail industry. This leads to a lack of assistance and coordination for players in the retail industry in doing their business. This is however exacerbated by the fact that there exist a significant number of compliances and licenses that need to be applied for and complied with. Compliance with the weights and measurement act, food safety act, shop and establishment act, labour laws, board and signage law and fire laws, coupled with the fact that

there are multiple departments to seek permission and licenses from. This can be alleviated if the retail sector is provided with industry status. This will not only help in getting access to a department/ministry which can regulate them, but also provide reactive and quick changes when necessary for the market to function in a better and responsive way. The retail sector is the second largest employer in India after agriculture at present and an industry classification will help those employed by it in getting different benefits like access to bank funds at right rates, a chance to be in eyes of the foreign investors and face similar laws, pricing mechanism and costs across the country.

C. Growth of e-commerce and increasing relevance of big data

7 The Retail Industry in India has seen a reshaping, especially over the last decade. With the increasing penetration of digitization in both urban as well as rural areas, the way Indians shop has changed forever. What would otherwise have been a slow organic shift was sent into overdrive with the advent of the Covid-19 Pandemic. Lack of access to traditional marketplaces and shutdowns imposed by the government created the perfect environment for e-commerce to supplant the physical retail markets of earlier. India has a large consumer base for e-commerce goods, as cheap mobile data and access to smartphones has resulted in the growth of e-tailers like Flipkart and Amazon. Consequently, there has been an erosion of the consumer base for physical retailers, a challenge that the industry is facing. The sheer convenience offered by e-commerce platforms, backed by incentives that brick-and-mortar outlets cannot compete with are luring more consumers than ever. This has been helped by the mushrooming of different types of goods and services that are available on these platforms. Everyday use items, pharmaceuticals, luxuries, furniture and all kinds of allied services can be procured on e-commerce platforms.

8 Apart from convenience and variety, e-commerce platforms also bring with them Big-data backed analytics to create the best consumer experiences. From targeted advertisements to consumers which predict their needs and wants through an analysis of their consumption patterns, to inventory analysis by checking demand and supply, big data has revolutionized the retail marketplace. Analytics have allowed e-commerce retailers to turn their data into meaningful insights that they can leverage to define new go-to-market strategies with a better approach to winning customers.[45] Technology has been the biggest driving force in the last 3 decades, and the retail industry is no exception. Optimization has been the end goal for every business, and with big data analytics, that goal seems within reach for e-commerce platforms.

D. GST

9 With the advent of the updated regime of taxation under the Goods and Service Tax, new compliances were imposed on the retail industry. For smaller retailers especially, this introduced significant burdens in terms of restructuring and compliance which they had to account for. The intricacies of the law caused great confusion, and the subsequent amendments and changes for a few years caused even further hassle for the retail industry. Some of the difficulties that exist are highlighted here. Apart from increase costs which lead to lower profits, there were other compliance-based issues as well. An intended consequence was to reduce the amount of black money transactions that took place before the implementation of the GST regime. However, this has not been entirely effective as retailers with thin margins now choose to sell material without creating an official bill at all.

10 It takes substantial manual efforts and time-consuming processes for extracting transactional level data from Point-of-Sale billing software for filing GST returns.

11 Unavailability of input tax credit on civil construction costs adds costs on retail sector companies who regularly update new stores and renovate their existing ones.

E. Government restrictions on FDI

12 Foreign Direct Invest policies in India have gone through a series of shifts. Single Brand Retail Trading (SBRT) refers to a situation where goods are sold both domestically and internationally under the same brand name. All goods sold by a business or entity must be sold under that single brand name. The FDI Policy on SBRT has been operational since 2006.

13 In 2006, the Guidelines for FDI in Retail Trade of 'Single Brand' Products was released by the Department of Industrial Policy & Promotion (FC Section) in a Press Note.[46] The Guidelines allowed FDI up to 51%, with prior Government approval, in retail trade of 'Single Brand' products. This was, per the Press Note itself, 'aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

14 Till 2011, the same Guidelines were applicable. However, the 2012 FDI Policy introduced a change in this regard.[47] It was decided to allow FDI up to 100% in the new Policy, increasing the limit from the previous 51%.[48] Interestingly however, the reasons for this increase were not any different from the ones in the 2006 Note. The 2012 Policy however increased the list of conditions required for availing this 100% FDI through the Government route.

15 The next major amendment came in 2014, when the FDI Policy allowed for 100% FDI, but liberalized the regime.[49] It allowed for the Automatic Route up to 49%, and the Government route beyond 49% only. This further eased the constraints on FDI in the retail sector.

16 The 2018 Policy further liberalized the regime by allowing 100% FDI through the automatic route, taking away governmental control on the sector.[50] This was done as part of the Governments initiatives to improve the ease of doing business in India, on January 10, 2018. Prior to the introduction of this move, approval from the Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion was required for FDI in SBRT over 49%. Further, for any addition to the product/ product categories to be sold under 'single brand', a fresh approval from the Government was required.[51]Removing government control over the industry is a fresh change and is better for the economy as a whole. Higher level of FDI allowed allows India to be a lucrative market space for foreign investors who will funnel high amount of capital into the emerging start up market. Reducing the complexity of the stringent regulatory framework also incentivizes more firms to look at FDI as a lucrative option.

17 From 2006 till 29.03.2018, information released by the government shows that 112 brands have obtained approval of Government for SBRT activities. FDI up to 100% under automatic route has been allowed in SBRT vide Press Note 1 of 2018 which was subsequently notified vide Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 on 26/03/2018.[52]

18 The 2018 Guidelines stated that for FDI in SBRT beyond 51%, 30% of the value of the goods procured should be sourced domestically, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. Such local sourcing requirement was required to be met as an average of 5 years' total value of goods purchased, at the beginning of April 1 of the year of opening of the first store by the SBRT entity and, thereafter, such condition was to be met on an annual basis.

19 The DPIIT clarified through Press Note 4 of 2019 that the sourcing requirement should be met, in the first instance, as an average of five years' total value of the goods procured, beginning April 1 of the year of opening of first store or start of online retail, whichever is earlier.[53] Further, entities could adjust their entire procurement of goods from India for their global operations against their mandatory 30% local sourcing requirements. Even sourcing for global operations done through group companies or indirectly via third parties such as contract manufacturers would be counted towards domestic sourcing obligations. This allowed for FDI in the e-commerce retail sector as well, a move that was lauded by foreign companies which wanted to expand in India.[54]

20 The situation became a little complex due to an error in the FEMA (Non-Debt Instruments) Rules, 2019, which mistakenly required that any FDI in SBRT under the automatic route was permitted only till 49% and for FDI beyond 49%, government approval was required under approval route.[55]These rules were subsequently amended a few months later to incorporate the changes made by the 2018 and 2019 regimes, through a retrospective amendment.[56] However, this still did not incorporate the word online store, for which a further amendment of the NDI Rules was required in 2020, thus making them consistent with the FDI Policy.[57]

21 The other avenue for FDI in retail is Multi Brand Retail Trading. As far as multi brand retail trading is concerned, FDI is limited to 51%, with prior government approval. No automatic route of FDI is available in case of MBRT. Moreover, retail trading in any form by means of e-commerce would not be permissible for companies with FDI engaged in the activity of multi-brand retail trading. In the past Indian Government has frowned upon creative joint venture models to circumvent majority foreign ownership in MBRT.

22 There is another significant issue relating to retail trading which needs clarification – whether 'sub-brands' constitute a single brand. For example, Marks & Spencer ('M&S') sell goods under sub-brands such as M&S Women, Autograph etc. under the M&S Parent brand. So, it becomes important form the perspective of restrictions under FDI Policy whether these sub-brands can be treated as a single brand or will fall under MBRT.

Annexure A

Scheme - I (ISI Mark Scheme) – Indicative list of Products

1	Cement (any variety of cement manufactured or sold in India) such as
2	Household Electrical goods
3	Batteries
4	Food & Related Products
5	Oil Pressure Stoves
6	Automobile Accessories
7	Cylinder, Valves and Regulator
8	Medical Equipment
9	Steel and Iron Products
10	Electrical Transformers
11	Electrical Motors
12	Capacitors
13	Chemicals, Fertilizers, Polymers & Textiles
14	Kitchen Appliances
15	Domestic Water Heaters for use with LPG
16	Air Conditioner and its related Parts, Hermetic Compressor and Temperature Sensing Controls
17	Plugs and Socket-Outlets and Alternating Current Direct Connected Static Prepayment Meters for Active Energy
18	Domestic Gas Stoves for use with Liquefied Petroleum Gases
19	Transparent Float Glass
20	Domestic Pressure Cooker
21	Cables
22	Rubber Hose for Liquefied Petroleum Gas (LPG)
23	Aluminium Foil
24	Non Electric Toys
25	Electric Toys
26	Flat Transparent Sheet Glass
27	Safety Glass

28	Woven Sacks
29	Butterfly Valves
30	Reflectors for Bicycles
31	Paper
32	Cattle Feeds
33	Automobile Wheel Rim Component
34	Foot Wear
35	Press Tool-Punches
36	Helmet for riders of Two Wheeler Motor Vehicles
37	Refrigerating Appliances
38	Centrifugally cast (Spun) iron pipes
39	Flux Cored (Tubular) Electrodes
40	Sewing Machine
41	Water Treatment System
42	Jute Bag

Scheme - II (Registration Scheme) – Indicative List of Products

Sl. No.	Title	Product Category
1.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Electronic Games (Video)
2.	Information Technology Equipment – Safety – General Requirements	Laptop/Notebook/Tablets
3.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Plasma/ LCD/LED Televisions of screen size 32" & above
4.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Optical Disc Players with built in amplifiers of input power 200W and above
5.	Safety of household and similar electrical appliances: Part 2 Particular requirements: Section 25 Microwave ovens	Microwave Ovens
6.	Information Technology Equipment – Safety – General Requirements	Visual Display Units, Video Monitors of screen size 32" & above
7.	Information Technology Equipment – Safety – General Requirements	Printers, Plotters

8.	Information Technology Equipment – Safety – General Requirements	Scanners
9.	Information Technology Equipment – Safety – General Requirements	Wireless Keyboards
10.	Information Technology Equipment – Safety – General Requirements	Telephone Answering Machines
11.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Amplifiers with input power 2000W and above
12.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Electronic Musical Systems with input power 200W and above
13.	Safety of household and similar electrical appliances: Part 2 Particular requirements: Section 26 Clocks	Electronic Clocks with Mains Powers
14.	Information Technology Equipment – Safety – General Requirements	Set Top Box
15.	Information Technology Equipment – Safety – General Requirements	Automatic Data Processing Machine
16.	Information Technology Equipment- Safety General Requirements	Power Adaptors for IT Equipments
17.	Audio, Video and Similar Electronic Apparatus-Safety Requirements	Power Adaptors for Audio, Video & Similar Electronic Apparatus
18.	General and Safety Requirements for UPS	UPS/Invertors of rating≤5kVA
19.	Safety of Lamp Control gear Part 2 Particular Requirements Section 13 d.c. or a.c. Supplied Electronic Control gear for LED Modules	DC or AC Supplied Electronic Control gear for LED Modules
20.	Secondary Cells and Batteries containing Alkaline or other non-acid Electrolytes-Safety Requirements for Portable sealed secondary cells, and for Batteries made from them for use in portable applications	Sealed Secondary Cells/Batteries containing Alkaline or other non-acid Electrolytes for use in portable applications
21.	Self-Ballasted LED Lamps for General Lighting Services Part 1 Safety Requirements	Self-Ballasted LED Lamps for General Lighting Services
22.	Luminaries Part 5 Particular Requirements Sec 1 Fixed General purpose luminaries	Fixed General Purpose LED Luminaries
23.	Information Technology Equipment-Safety-General Requirements	Mobile Phones

24.	Information Technology Equipment-Safety-General Requirements	Cash Registers
25.	Information Technology Equipment-Safety-General Requirements	Point of Sale Terminals
26.	Information Technology Equipment-Safety-General Requirements	Copying Machines/Duplicators
27.	Information Technology Equipment-Safety-General Requirements	Smart Card Readers
28.	Information Technology Equipment-Safety-General Requirements	Mail Processing Machines/Postage Machines/Franking Machines
29.	Information Technology Equipment-Safety-General Requirements	Passport Reader
30.	Information Technology Equipment-Safety-General Requirements	Power Banks for use in portable applications
31.	Mobile Phone Handsets Part 3 Indian Language Support for Mobile Phone Handsets – Specific Requirements	Mobile Phones
32.	Luminaires Part 5: Particular Requirements Section 2 Recessed Luminaires	Recessed LED Luminaries
33.	Luminaires – Part 5: Particular Requirements Section 3 Luminaires for Road and Street Lighting	LED Luminaires for Road and Street lighting
34.	Luminaires – Part 5: Particular Requirements Section 5 Flood Lights	LED Flood Lights
35.	Luminaires – Part 5: Particular Requirements Section 6 Hamp Lamps	LED Hand lamps
36.	Luminaires – Part 5: Particular Requirements Section 7 Lighting Chains	LED Lighting Chains
37.	Luminaires – Part 5: Particular Requirements Section 8 Luminaires for Emergency Lighting	LED Luminaires for Emergency Lighting
38.	General and Safety Requirements for UPS	UPS/Inverters of rating ≤ 10kVA
39.	Audio, Video and Similar Electronic Apparatus – Safety Requirements	Plasma/ LCD/LED Television of screen size up-to 32”

40.	Information Technology Equipment –Safety General Requirements	Visual Display Units, Video Monitors of screen size up-to 32”
41.	Information Technology Equipment –Safety General Requirements	CCTV Cameras/CCTV Recorders
42.	Safety of Household and similar electrical appliances Part 1 General requirements	Adapters for household and similar electrical appliances
43.	Information Technology Equipment –Safety General Requirements	USB driven Barcode readers, barcode scanners, Iris scanners, Optical fingerprint scanners
44.	Information Technology Equipment –Safety General Requirements	Smart watches
45.	LED modules for general lighting: Part 1 safety requirements	Standalone LED Modules for General Lighting
46.	Luminaries: Part 5 Particular Requirements Section 9 Rope Lights	Lighting Chain (Rope Lights)
47.	Information technology equipment – safety part 1 general requirements	Keyboard
48.	Safety of household and similar electrical appliances: part 2 particular requirements, section 6 cooking ranges, hobs, ovens and similar appliances	Induction Stove
49.	Information technology equipment – safety part 1 general requirements	Automatic Teller Cash dispensing machines
50.	Information technology equipment – safety part 1 general requirements	USB Type External Hard Disk Drive
51.	Audio, video and similar electronic apparatus-safety requirements	Wireless Headphone and Earphone
52.	Information technology equipment – safety part 1 general requirements	USB Type External Solid-State Storage Devices (above 256 GB capacity)
53.	Audio, video and similar electronic apparatus-safety requirements	Electronic Musical System with input power below 200 Watts

54.	Information technology equipment – safety part 1 general requirements	Standalone Switch Mode Power Supplies (SMPS)with output voltage 48 V (max)
55.	Audio, video and similar electronic apparatus-safety requirements	Television other than Plasma/ LCD/LED TVs
56.	safety of household and similar electrical appliances: part 2 particular requirements: section 15 appliances for heating liquids	Rice Cooker
57.	Audio, video and similar electronic apparatus-safety requirements	Wireless microphone
58.	Information technology equipment – safety part 1 general requirements	Digital Camera
59.	Audio, video and similar electronic apparatus-safety requirements	Video Camera
60.	Audio, video and similar electronic apparatus-safety requirements	Webcam (Finished Product)
61.	Audio, video and similar electronic apparatus-safety requirements	Smart Speakers (with and without Display)
62.	Particular requirements for Electronic switches standards for Switches for household and similar fixed electrical installations.	Dimmers for LED products
63.	Audio, video and similar electronic apparatus-safety requirements.	Bluetooth speakers

Sl. No.	Title	Product Category
1.	Crystalline Silicon Terrestrial Photovoltaic (PV) modules – Design Qualification And Type Approval	Crystalline Silicon Terrestrial Photovoltaic (PV) modules (Si wafer based)
2.	Thin-Film Terrestrial Photovoltaic (PV) Modules – Design Qualification and Type Approval	Thin-Film Terrestrial Photovoltaic (PV) Modules (a-Si, CiGs and CdTe)
3.	Safety of Power Converters for Use in Photovoltaic Power Systems Part 2-Particular Requirements for Inverters	Power converters for use in photovoltaic power system
4.	Test Procedure of Islanding Prevention Measures for Utility-Interconnected Photovoltaic Inverters	Utility –Interconnected Photovoltaic inverters
5.	Secondary Cells and Batteries for Solar Photovoltaic Application General-Requirements and Methods of Test	Storage battery

Sl. No.	Title	Product Category
1.	Low – Voltage switchgear and controlgear: Part 2 circuit – Breakers (First Revision)	Low – Voltage switchgear and controlgear: Circuit – Breakers
2.	Low – Voltage switchgear and controlgear: Part 3 switches, disconnectors, switch disconnectors and fuse – Combination units	Low – Voltage switchgear and controlgear: switches,disconnectors, switch disconnectors and fuse – Combination units
3.	Low – Voltage switchgear and controlgear: Part 4 contactors and motor – Starters: Sec 1 electromechanical contactors and motor – Starters(FirstRevision)	Low – Voltage switchgear and controlgear: electromechanical contactors and motor – Starters
4.	Low – Voltage switchgear and controlgear: Part 4 contactors and motor – Starters: Sec 2 a.c semiconductor motor controllers and starters First Revision)	Low – Voltage switchgear and controlgear: a.c semiconductor motor controllers and starters
5.	Low – Voltage switchgear and controlgear: Part 4 contactors and motor – Starters: Sec 3 a.c. semiconductor motor controllers and contactors for non – Motor loads (Second Revision)	Low – Voltage switchgear and controlgear: a.c.semiconductor motor controllers and contactors for non – Motor loads
6.	Low – Voltage switchgear and controlgear: Part 5 control circuit devices and switching elements: Sec 1 electromechanical control circuit devices (First Revision)	Low – Voltage switchgear and controlgear: electromechanical control circuit devices
7.	Low – Voltage switchgear and controlgear: Part 5 control circuit devices and switching elements: Sec 2 proximity switches	Low – Voltage switchgear and controlgear proximity switches
8.	Low – Voltage switchgear and controlgear: Part 5 control circuit devices and switching elements: Sec 5 electrical emergency stop devices with mechanical latching function	Low – Voltage switchgear and controlgear: electrical emergency stop devices with mechanical latching function

1	Ortho Phosphoric Acid – Specification	Ortho Phosphoric Acid
2	Polyphosphoric Acid – Specification	Polyphosphoric Acid
3.	Trimethyl Phosphite – Technical Grade	Trimethyl Phosphite

Scheme - IV (Grant Of Certificate Of Conformity) – Indicative list of Products

1	Stampings/laminations/cores of transformers (with or without winding)
2	Requirement of Retro-Reflective Devices for Bicycles

Annexure B

Scheme - I (ISI Mark Scheme) – Indicative list of Products

S. No.	Particulars	Department
1	Legal Metrology Packers Registration	Department of Legal Metrology, Maharashtra
2	EPR Registration for Plastic Waste Management	Central Pollution Control Board
3	Registration Certificate under Plastic Waste Management Rules	Maharashtra Pollution Control BoardNote: This Registration is mandatory under Rule 13(1) of the PWMR 2016.
4	Shops and Establishment Certificate	Department of Labour, Mumbai
5	Trade License	Bombay Municipal Corporation (BMC)
6	Importer Exporter Code (IEC)	Office of Zonal Director of Foreign Trade
7	Fire NOC followed by Inspection Report	Maharashtra Industrial Development Corporation, Urban Development
8	Occupancy Certificate	Town Planning Department, Maharashtra Industrial Development Corporation
9	Consent to establish (under Plastic Waste Rules)	Maharashtra Pollution Control Board
10	GST Certificate	Department of Revenue
11	Sales Tax Registration	Commercial Taxes Department
12	Custom Registration	Office of the Chief Commissioner of Customs
13	Pan Card	Department of Income Tax
14	Tan Certificate	Department of Income Tax
15	VAT Registration	Department of Income Tax
16	Police NOC	Office of the Deputy Commissioner of Traffic Police, Mumbai

17	Lift and Escalator Inspection Certificates	Executive Engineer, Electrical Inspectorate, Maharashtra
18	Import and Store of Petroleum Permission (HSD)	Petroleum & Explosives Safety Organization (PESO)
19	DG Set Plan Sanction	Department of Energy, Maharashtra
20	DG Set Charging Permission	Department of Energy, Maharashtra
21	Registration of Diesel Generators Sets	Department of Energy, Maharashtra
22	Registration and License under Contract Labour Act	Department of LabourP.S: This license is required when an establishment or a contractor is employing labour on contractual basis.
23	Consent to Operate Approval	Maharashtra State Pollution Control Board
24	Sale Deed	Registrar Office, Mumbai
25	Load Sanction Letter	Superintending Engineer, Mumbai
26	Consent to Establish/ NOC for Pollution	Pollution Control Board
27	Exemption permission for Operating 24 X 7	Department of Labour, Maharashtra
28	Certificate of Registration for Contract Labour	Labour Commissioner, Department of Labour, Mumbai

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