



July 2022

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance for the month of July 2022.

Prior approval for takeover/ acquisition of control of non-bank Payment System Operators (“PSOs”)

On July 4, 2022, the Reserve Bank of India (“RBI”) notified that non-bank PSOs must seek its prior approval in case of:

1. takeover or acquisition of control (as defined under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011) which may or may not result in change of management of non-bank PSO;
2. sale or transfer of payment system activity to an entity not authorized for undertaking similar activity;
3. non-bank PSO must also inform the RBI within 15 (fifteen) days in case of (i) change in management or directors; and (ii) sale or transfer of payment activity to an entity authorized for undertaking similar activity.

For a detailed analysis, please refer to our [M&A Prism](#).

Overseas foreign currency borrowings of authorized dealer category-I (“AD Cat-I”) banks

AD Cat-I banks have been permitted to utilize the funds raised from overseas foreign currency borrowings between July 8, 2022 and October 31, 2022, for lending in foreign currency to constituents in India, till the maturity/ repayment of the overseas foreign currency borrowings. This is subject to the end-use prescriptions as applicable to external commercial borrowings.

International trade settlement in Indian rupees (INR)

To promote growth of global trade, AD Cat -1 banks can put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR, with the prior approval of the RBI. Some key features of this arrangement are:

1. All exports and imports may be denominated and invoiced in INR and the exchange rate between the currencies of the two trading partner countries may be market determined.
2. For settlement of trade transactions, AD Cat -I can open ‘special rupee vostro accounts’ of correspondent banks of the partner trading country. The bank of a partner country may approach the AD Cat -1 banks in India for opening the account. The AD Cat -1 bank will seek approval from RBI with details of the arrangement. AD Cat -1 banks

maintaining the special rupee vostro account will ensure that the correspondent bank is not from a country or jurisdiction in the updated the Financial Action Task Force (“**FATF**”) Public Statement on High Risk & Non-Co-operative Jurisdictions on which FATF has called for counter measures.

For a detailed analysis, please refer to our [Banking and Finance Prism](#).

Investment by foreign portfolio investors (“FPI”) in debt

Short-term investments by FPIs in government securities (central government securities, including treasury bills and state development loans) and corporate bonds made till October 31, 2022, are exempted from the short-term limit of 30% of the total investment of the FPI in any category (“**Short-Term limit**”), till maturity or sale of such investments.

FPI investments in commercial papers and non-convertible debentures can be made with an original maturity of up to 1 (one) year up to October 31, 2022, instead of 3 (three) years. These investments will be exempted from the Short-Term limit till maturity or sale of such investments.

Zero coupon zero principal instrument

The Ministry of Finance (Department of Economic Affairs) *vide* notification dated July 15, 2022, notified that ‘zero coupon zero principal instruments’ will be considered as a security under the Securities Contracts (Regulation) Act, 1956. The notification defines it as an instrument issued by a ‘not-for-profit organization’ (“**NPO**”) which will be registered with the social stock exchange (“**SSE**”) segment of a recognized stock exchange in accordance with the regulations made by the Securities and Exchange Board of India (“**SEBI**”).

By way of an amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 the definition of ‘designated securities’ now includes a zero coupon zero principal instrument (“**ZCZPI**”) along with a separate chapter on obligations of social enterprises which includes ‘for profit social enterprise’ (“**FPSE**”) and NPO in case of listing of designated securities by such entities.

SEBI *vide* notification dated July 25, 2022 amended the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, including in relation to a ZCZPI as follows: -

1. In order to raise funds on SSE: (i) an NPO may raise funds by issuing a ZCZPI to institutional investors and/or non-institutional investors, donations through mutual fund schemes as specified by SEBI or any other means as specified by SEBI; and (ii) an FPSE may raise funds by issuing equity shares on the main board, small and medium enterprise platform or innovators growth platform or equity shares issued to an alternative investment fund including social impact fund, by way issuance of debt securities or any other means as specified by SEBI.
2. ZCZPIs can only be issued by NPO registered on SSE having a specific tenure.
3. ZCZPIs will not have any coupon and no principal amount is payable on maturity.
4. ZCZPIs will be issued in demat form.
5. The minimum issue size has to be INR 1,00,00,000 (Indian Rupees one crore). The minimum application size has to be INR 2,00,000 (Indian Rupees two lakh). The minimum subscription required to be achieved is 75% of the funds proposed to be raised through issuance of ZCZPIs.
6. The listing of ZCZPIs of a NPO on the SSE will terminate on the happening of either of the events: (i) the object for which the funds were raised has been achieved and a certificate to this effect is submitted to the SSE; or (ii) the tenure to achieve the object for which the funds were raised as provided in the fund raising document has expired.

Amendment to the International Financial Services Centers Authority (Finance Company) Regulations, 2021 (“IFSC Finance Companies Regulations”)

International Financial Services Centers (“IFSC”) Authority (“IFSCA”) introduced the following key amendments on July 1, 2022 in relation to the regulations pertaining to IFSC finance companies:

1. An entity intending to carry out such permissible activities which are not covered under the framework or regulations under which it was previously granted registration or authorization if any, are required to obtain a certificate of registration. However, an entity which has obtained a certificate of registration or authorization for a specific activity under another framework is not required to seek a fresh registration, if the same is permissible under Regulation 5 of the IFSC Finance Companies Regulations.
2. A finance company¹ can either be set up as a subsidiary, joint venture, or a company as per the Companies Act, 2013 or any other form as may be specified by the IFSCA. If a parent of a finance company (instead of the earlier specified reference to “investing entity” in the finance company) is carrying out a regulated financial activity in its home jurisdiction, then a no objection certificate is required from its home country regulator for setting up a Finance Company in the IFSCs.
3. A finance unit² can be set up if the applicant is an incorporated entity in its home jurisdiction (earlier instead of the applicant, it referred to an investing entity or the ultimate parent of the investing entity). In case of a finance unit for “core activities”, the applicant should be engaged in the business of financial services, regulated by a financial sector regulator in its home jurisdiction and must also have obtained a no objection certificate from the home regulator for setting up a finance unit in the IFSC. However, such requirements are not applicable to an incorporated entity which desires to set up a global/ regional corporate treasury center for undertaking treasury activities.
4. The amendments clarify that if a finance company or a finance unit is carrying on a combination of activities classified under different categories, then it must always maintain the higher of the minimum capital or owned funds or net worth prescribed for each activity or category of activities specified in the regulations or under any relevant regulatory framework issued by the IFSCA, as applicable.
5. The permitted specialized activities including the (a) credit enhancement; (b) factoring and forfaiting of receivables; (c) any other specialized activity as may be permitted by the authority have been deleted as a separate sub-set. Instead, the amendment provides for a new expanded list of permitted core and non-core activities, and the permitted core activities now include (a) credit enhancement and (b) factoring and forfaiting of receivables.

Financial Services Institutions Bureau (“FSIB”)

The government decided to set up a FSIB as financial services institutions play a vital role in the development of the economy. FSIB will inter alia recommend persons for appointment as whole-time directors and non-executive chairpersons on the board of directors in the public sector banks, financial institutions and public sector insurers. FSIB will also advise the government on certain matters relating to personnel management and personnel training of these institutions. It will also help public sector banks, financial institutions and public sector insurers to develop business strategies and capital raising plans.

¹ Under the IFSC Finance Companies Regulations, a finance company is a financial institution as defined under section 3(1)(c) of the IFSCA Act, 2019 separately incorporated to deal in one or more of the permissible activities specified under regulation 5(1) of the IFSC Finance Companies Regulations, provided: (i) it does not accept public deposit from resident and non-resident, as defined in the IFSC Finance Companies Regulations; and (ii) it is not registered with the Authority as a Banking Unit.

² Under the IFSC Finance Companies Regulations, a finance unit is a financial institution as defined under section 3(1)(c) of the IFSCA Act, 2019, set up as a branch permitted under the IFSC Finance Companies Regulations, to deal in one or more of the permissible activities specified regulation 5(1) of the IFSC Finance Companies Regulations, provided: (i) it does not accept public deposit from resident and non-resident as defined in the IFSC Finance Companies Regulations; and (ii) it is not registered with the Authority as a Banking Unit.

The FSIB will be a professional body with autonomy in its affairs and have its own secretariat. All assets, interests and liabilities, books of accounts, registers, records and all other documents of the Banks Board Bureau will stand transferred to FSIB and any cause of action, suit, decree, appeal or other proceeding pending by or against Banks Board Bureau before any court or other authority may be continued and enforced by or against FSIB.

FSIB will develop an appropriate methodology to search and recommend high-calibre persons for appointment as whole-time directors and non-executive chairpersons.

The FSIB is funded by 3 (three) categories of financial institutions (namely public sector banks, financial institutions and public sector insurers).

The FSIB will consist of a chairperson who will be nominated by the central government having at least 25 (twenty-five) years of experience in public administration with experience in banking and financial sector. To ensure that the members are clear from conflict of interest, the part time members will either be retired or if working, will be required to discontinue from work. Additionally, the members are required to have no commercial relationship with any commercial entity that has any commercial relationship with any institutions mentioned above.

FAQs on Master Directions – Reserve Bank of India (Regulatory Framework Microfinance Loans) Directions, 2022 (“MF Directions”)

The RBI issued the MF Directions which came into effect from April 1, 2022. Accordingly, on July 25, 2022, RBI released FAQs on the MF Directions. Some of the key clarifications provided by FAQs are as follows:-

1. In view of implementation related difficulties expressed by some regulated entities, they are required to implement these at the earliest on the best effort basis but not later than October 1, 2022.
2. The MF Directions require assessment of income and indebtedness at household level. There is no requirement of treating all members of the household as applicants/ borrowers of a loan which can be provided to an individual member. The board approved policies of regulated entities may include the methodologies/ operational frameworks to assess income and indebtedness of all members of the household.
3. Microfinance loans are collateral free loans and therefore loans backed by hypothecation of any security will not be treated as microfinance loans.
4. The expected income from asset/ activity financed by a microfinance loan is not included for estimation of household income.
5. All collateral-free loans to individual/s belonging to low-income households, i.e., households having annual income up to INR 3,00,000 (Indian Rupees three lakh) are treated as microfinance loans.
6. The factsheet is required to contain information related to only pricing of microfinance loans. All non-credit products (both financial products such as investment products, insurance products etc. as well as non-financial products such as solar lanterns, sewing machines etc.) will be provided only if there is an explicit consent from the borrower. The regulated entities are required to ensure that there is no direct or indirect linkage between the loan provided to the borrower and other non-credit products. As a pre-condition for the loan product, no non-credit product is required to be sold. The regulated entities are required to prominently display that the purchase of any non-credit product by microfinance borrowers is on a voluntary basis.
7. The RBI has made it mandatory for lenders to display the minimum, maximum and average interest rates charged on microfinance loans in all their offices, in the literature (information booklets/ pamphlets) issued by them and details on their website.

Finance Practice

JSA has a widely recognised market leading banking & finance practice in India. Our practice is partner led and is committed to providing quality professional service combining domain knowledge with a constructive, consistent, comprehensive and commercial approach to issues. Clients trust our banking lawyers to take a practical and business-oriented approach to achieving their objectives. Our lawyers have a clear understanding of the expectations and requirements of both sides to a financing transaction and provide tailored advice to each client's needs. The practice is especially praised for its accessibility and responsiveness and its ability to work well with international firms and clients. We represent a variety of clients including domestic and global banks, non-banking finance companies, institutional lenders, multi-lateral, developmental finance and export credit institutions, asset managers, funds, arrangers and corporate borrowers in different sectors on a wide range of financing transactions.

Our full spectrum of services includes advising clients on corporate debt transactions (including term and working capital debt), acquisition finance, structured finance, project finance, asset finance, real estate finance, trade finance, securitisation, debt capital markets and restructuring and insolvency assignments.

Our practice has been consistently ranked in the top-tier for several years, and several of our partners are regarded highly, by international publications such as Chambers and Partners, IFLR, Asia Law, Legal 500, Asia Legal Business, IBLJ and Leaders League.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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