



September 2022

This Newsletter sets out some of the key legislative and regulatory updates in the banking, finance, and insolvency space for the month of September 2022.

Guidelines on Digital Lending

The Reserve Bank of India (“**RBI**”), vide circular dated September 2, 2022 (“**Guidelines**”) has issued detailed guidelines on digital lending based on the recommendations of the working group accepted for immediate implementation.

Further the RBI has reiterated that even if regulated entities (“**REs**”) enter into outsourcing arrangements with lending service providers (“**LSPs**”) or digital lending applications (“**DLAs**”), the REs will need to conform to the existing guidelines on outsourcing and ensure that the LSPs and DLAs engaged by them (or by the LSP) comply with the Guidelines. The Guidelines are applicable to existing customers availing of fresh loans and to new customers.

Some of the key considerations are:

1. The Guidelines are applicable to all commercial banks, primary (urban) co-operative banks, state co-operative banks, district central co-operative banks; and non-banking financial companies (including housing finance companies);
2. REs must ensure that all loan servicing and repayment is done directly between borrower’s bank account and RE’s bank account. Any pass-through account/pool account of the LSPs/DLAs or any other third party is not permitted. However, for disbursements for specific end use, the loan can be disbursed directly into the bank account of the end-beneficiary;
3. Collection of fees, penal / interest charges, are payable by REs to the LSPs in relation to the credit intermediation process, should be paid directly by the RE and not be charged by LSP to the borrower. Penal / interest charges to be disclosed upfront to the borrower (on an annualised basis) and calculated on the outstanding amount of the loan.;
4. Disclosures to borrowers:
 - (a) REs to provide a key fact statement (“**KFS**”) to the borrower before execution of the contract in a standardised format for all digital lending products;
 - (b) annual percentage rate as all-inclusive cost of digital loans to be disclosed upfront to borrowers in the KFS, failing; and
 - (c) KFS to contain *inter alia* details of grievance redressal officer, recovery mechanism, cooling off/look-up period.

5. RE must ensure that the RE, as well as the LSPs, appoint a nodal grievance redressal officer who will be responsible for dealing with fintech/digital lending related complaints or issues raised by the borrowers;
6. REs are required to provide borrowers with a cooling-off or look-up period (as determined by the RE's board) to exit the loan by paying only the principal amount and the proportionate annual percentage rate of the loan, without incurring any penalty. Borrowers will also be allowed to make pre-payments beyond the cooling-off period; and
7. REs to ensure that digitally signed documents, KFS, account statements, privacy policies, sanction letter are shared directly with the borrower on their registered email address / SMS, after execution.

Fees payable to interim resolution professional or resolution professional

The Insolvency and Bankruptcy Board of India (“**IBBI**”) vide the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 dated September 13, 2022 introduced provisions relating to the fees to be paid to interim resolution professional (“**IRP**”) or a resolution professional (“**RP**”). These include::

1. Regulation 34B – “fee to be paid to interim resolution professional and resolution professional” has been inserted that essentially provides for the minimum fee that must be paid to an IRP/ RP;
2. The applicant or the committee of creditors (“**CoC**”) will decide the fee of the IRP/RP as per the fee specified in regulation. In cases where the fee is fixed higher than the amount provided in the regulation, the CoC will have to record the reasons for granting a fee higher than what is prescribed in the regulation;
3. For resolution plans approved by the CoC on or after October 1, 2022, the CoC may decide, in its discretion, to pay performance-linked incentive fee, not exceeding INR 5,00,00,000 (Indian Rupees five crores); and
4. The fee under this regulation may be paid from the funds available with the corporate debtor, contributed by the applicant or the CoC and/or raised by way of interim finance and will be included in the insolvency resolution process cost.

Amendment of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IBBI notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 on September 16, 2022 and the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022 on September 20, 2022. The amendments reflect the intent and effort of IBBI to continuously evolve the corporate insolvency resolution process towards furthering the main objective of the Insolvency and Bankruptcy Code, 2016 being time bound insolvency resolution with maximisation of value.

For a detailed analysis, please refer to the [JSA Prism of October 10, 2022](#).

Non-acceptance of fees/charges

IBBI vide the IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2022 dated September 13, 2022 has inserted a new provision which makes it mandatory for an insolvency professional not to accept or share any fee or charges from any professional and/or support service provider who are appointed under the processes.

Increased fee payments for information utilities

IBBI has, *vide* the IBBI (Information Utilities) Second Amendment Regulations, 2022 dated September 20, 2022, amended the conditions for registration and fees payable to IBBI under the IBBI (Information Utilities) Regulations, 2017. The key amendments are as follows:

1. The non-refundable application fee payable at the time of registration/ renewal of registration as an information utility is increased from INR 5,00,000 (Indian Rupees five lakhs) to INR 10,00,000 (Indian Rupees ten lakh); and
2. The fee payable to the IBBI within 15 (fifteen) days of receipt of intimation of registration/ renewal as an information utility is increased from INR 50,00,000 (Indian Rupees fifty lakhs) to INR 1,00,00,000 (Indian Rupees one crore).

Preservation of records in a voluntary liquidation process

IBBI has, *vide* the IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 dated September 16, 2022, introduced detailed provisions relating to preservation of records in a voluntary liquidation process.. These include :

1. The liquidator must preserve copies of all records which are required to give a complete account of the voluntary liquidation process.
2. The liquidator must preserve copies of records relating to or forming the basis of: (i) his appointment; (ii) initiation of voluntary liquidation process; (iii) public announcement; (iv) engagement of professionals, such as registered valuers; and (v) all filings with the respective adjudicating authority- High Courts, Supreme Court; and
3. An electronic copy of all records (physical and electronic) must be preserved for a minimum period of 8 (eight) years and a physical copy of records must be preserved for a minimum period of 3 (three) years from the date of dissolution of the corporate person.

Quick Snapshots

Review of Prudential Norms – Risk Weights for exposures guaranteed by credit guarantee schemes (CGS)

The Master Circular on Basel III Capital Regulations, issued on April 1, 2022, permits banks to apply zero percent risk weights in respect of claims on Credit Guarantee Fund Trust for Micro and Small Enterprises (“**CGTMSE**”), Credit Risk Guarantee Fund Trust for Low Income Housing (“**CRGFTLIH**”) and individual schemes under National Credit Guarantee Trustee Company Ltd (“**NCGTC**”).

In this regard, the RBI, *vide* notification dated September 7, 2022, has advised that the risk weight of zero percent will be applicable to exposures guaranteed under any existing or future schemes launched by the CGTMSE, CRGFTLIH and NCGTC, in order to have a consistent approach with regard to risk weights for exposures guaranteed by these entities. The RBI has stipulated certain conditions pertaining to prudential aspects, restrictions on permissible claims, etc. that need to be fulfilled in order to apply the risk weight of zero percent. Further, for any future schemes to be eligible for zero percent risk weight, the scheme needs to *inter alia* provide for settlement of eligible guaranteed claims within 30 (thirty) days from the date of lodgment.

RBI launches three key digital payment initiatives

RBI Governor launched three key initiatives– RuPay Credit Card on UPI, UPI LITE and Bharat BillPay Cross Border Bill Payments during the Global Fintech Fest 2022, held in Mumbai on September 20, 2022. While the RuPay Credit Cards

are proposed to be linked to a virtual payment address (VPA) i.e., UPI ID, thereby directly enabling safe and secure payment transactions; UPI Lite will provide users with a convenient solution for faster and simpler low-value transactions. Further, Bharat BillPay Cross-Border Bill Payments is aimed at making bill payments easier for people residing out of India (and maintaining a house in India) by enabling them to undertake utility, water, and telephone-related bill payments on behalf of their families in India.

Notification under Section 55(2) of the Insolvency and Bankruptcy Code, 2016

The Ministry of Corporate Affairs (“MCA”) vide its notification dated September 2, 2022 (“**IBC Notification**”) has amended its previous notification dated June 14, 2017, in respect of fast-track insolvency resolution process for “Startups”. Under the IBC Notification, the MCA has widened the definition of “Startup” to have the meaning as defined in the notification dated February 19, 2019 issued by the Government of India in the Ministry of Commerce and Industry under which the definition of “Startup” was widened to provide that an entity is considered a Startup for a period of 10 years from the date of its incorporation/registration (from the then existing limit of 7 years) and the threshold for turnover was increased from INR 25,00,00,000 (Indian Rupees twenty five crores) to INR 100,00,00,000 (Indian Rupees one hundred crores).

New threshold limits of ‘capital’ and ‘turnover’ for small companies

On September 15, 2022, the Ministry of Corporate Affairs notified the Companies (Specification of Definition Details) Amendment Rules, 2022 amending the definition of ‘small company’ under the Companies Act, 2013. By this amendment, the maximum threshold of the paid-up capital of a small company is now increased to INR 4,00,00,000 (Indian Rupees four crores) from INR 2,00,00,000 (Indian Rupees two crores) while the threshold for turnover is increased to INR 40,00,00,000 (Indian Rupees forty crores) from INR 20,00,00,000 (Indian Rupees twenty crores).

For a detailed analysis, please refer to the [JSA Prism of September 22, 2022](#).

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



11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices

13 winning Deals in
IBLJ Deals of the Year

6 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
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Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
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