October 2022

RESERVE BANK OF INDIA (RBI)

Classification of multiple Non-Banking Financial Companies (“NBFCs”) in a group

RBI has *vide* its notification dated October 11, 2022 amended the classification norms applicable to NBFCs. If the consolidated asset size of all NBFCs in a group (or floated by a common set of promoters) is INR 1000,00,00,000 (Indian Rupees one thousand crore) and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the group will be classified as an NBFC in the “middle layer”. Further, statutory auditors must certify the asset size (as on March 31) of all the NBFCs in the group every year, which must be furnished to the relevant RBI office under whose jurisdiction the NBFCs are registered. These guidelines have become effective from October 1, 2022.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Segregation of client’s funds and securities by Portfolio Managers (“PMs”)

The SEBI has, *vide* circular dated September 30, 2022, prescribed the following conditions on PMs in relation to management of client’s funds and securities:

- they must put in place a written down policy, in compliance with the SEBI (Portfolio Managers) Regulations, 2020. It must include details of the activities, role and responsibilities of the teams engaged in the management of client funds and securities;
- they must also put in place a specific policy which must include: (a) specific situations where the orders must be placed for each client individually or pooled from trading account of PMs; (b) situations in which deviation from the allotment of securities as intended at the time of placement of order would be permissible; and (c) details on how such margins/ collaterals must be segregated/ placed from amongst various clients;
- they must constitute a dealing team which will be responsible for order placement and execution of all orders; and

- for equity, equity-related instruments and mutual funds units, PMs with assets under management of INR 10,00,00,00,000 (Indian Rupees one thousand crores) or more must have in place an automated system for ensuring effective funds and securities management.

These conditions will come into effect from April 1, 2023.

Two-factor authentication for mutual fund transactions

The SEBI has, *vide* circular dated September 30, 2022, prescribed a two-factor authentication (*for online transactions*) and signature method (*for offline transactions*), for subscription and redemption of units of mutual funds. In case of demat transactions, the process of two-factor authentication as laid down by the depositories must be followed. It is also clarified that in case of mandates/systematic transactions, the requirement of two-factor authentication is applicable only at the time of registration of mandate/systematic transactions.

Reduction in minimum face value/trading lot for debt securities and non-convertible redeemable preference shares

The SEBI has released a circular on October 28, 2022, reducing the minimum face value/ denomination for debt securities and non-convertible redeemable preference shares ("**Security(ies)**") being issued on a private placement basis ("**Circular**"). The key provisions of the Circular are:

- The existing minimum face value of each Security issued on private placement basis is INR 10,00,000 (Indian Rupees ten lakh). As a corollary the minimum trading lot would be the same denomination.
- Pursuant to feedback from market participants (including issuers), SEBI, concluded that such a high minimum ticket size was a deterrent to investors (especially retail investors), restricting access to such Securities and the growth of the debt market that has been the focus of the monetary policy over the past few cycles. A lower face value and trading lot would encourage participation from a wider spectrum of investors and result in a more liquid debt securities market.
- SEBI, pursuant to the Circular, amended the Operational Circular, reducing the face value of the Securities issued on private placement basis to INR 1,00,000 (Indian Rupees one lakh).
- The provisions of this Circular are applicable to all the Securities, on private placement basis, issued on or after January 1, 2023. However, in relation to shelf memoranda for existing private placements, valid on January 1, 2023, the issuer of the Securities may retain the option to continue with face value at INR 10,00,000 (Indian Rupees ten lakh) or modify the issuance of future Securities to a face value of INR 1,00,000 (Indian Rupees one lakh).

For a detailed analysis, please refer to the JSA Prism of October 31, 2022.

Execution of Demat Debit and Pledge Instruction ("DDPI")

The SEBI had, vide circular dated April 4, 2022, issued guidelines regarding execution of DDPI for transfer of securities towards deliveries/ settlement obligations and pledging/re-pledging of securities. The guidelines were aimed at curbing possible misuse of Power of Attorneys given by clients to the stock brokers. The SEBI has now, vide circular dated October 6, 2022, widened the scope of DDPI to include mutual fund transactions executed on stock exchange order entry platforms and tendering shares in open offers through stock exchange platforms. The provisions of this circular were to come into effect from November 18, 2022.

Electronic Book Provider ("EBP") platform and Request for Quote ("RFQ") platform

SEBI *vide* its circular dated October 10, 2022 has revised Chapter VI of the operational circular dated August 10, 2021 for issue and listing of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities and commercial paper. These amendments have been undertaken to address the issues of 'fastest finger first' i.e. allotment based on time priority in bidding for issuances with fixed parameters.

The key amendments are as follows:

- The threshold limit for applicability has been reduced to INR 50,00,00,000 (Indian Rupees fifty crore). Issue of debt securities and non-cumulative, non-convertible redeemable preference shares on private placement basis of issue size of INR 50,00,00,000 (Indian Rupees fifty crore) or more must be made on the EBP platform (this limit was earlier INR 100,00,00,000 (Indian Rupees one hundred crore)).
- The book building process is modified to ensure allocation based on 'best bids' rather than bidder with the best technology for placing the fastest bid. If 2 (two) or more bids have the same coupon/ price/ spread and time, then allotment will be done on 'pro-rata' basis.
- In order to enable issuers, assess the demand and receive assurance from certain prospective investors towards subscription, the concept of 'anchor investor' has been introduced. The issuer has the option to avail an 'anchor portion' within the base issue size.

Further, SEBI has, *vide* circular October 19, 2022, directed stock exchanges to put in place the necessary infrastructure for access and use of the RFQ platform. The key aspects of the RFQ platform are as follows:

- the RFQ platform is a system or interface for inviting and/ or giving quotes on an electronic platform. Further, the quotes will be bilaterally negotiated between the counterparties, based on specified parameters and the acceptance of a quote by a participant will be considered as mutual agreement between the parties for the given deal;
- the securities eligible for being traded on the RFQ platform are: (i) non-convertible securities; (ii) securitised debt instruments; (iii) municipal debt securities; (iv) commercial paper; (v) certificate of deposit; (vi) government securities; (vii) state development loans; and (viii) treasury bills;
- to enhance liquidity on the RFQ platforms of the stock exchanges, SEBI has, *inter alia*, mandated registered mutual funds and portfolio management services, to undertake a specified percentage of their total secondary market trades in corporate bonds through RFQ platform of stock exchanges; and
- the stock brokers registered under the debt segment of the stock exchange(s) are allowed to place/ seek bids on the RFQ platform on behalf of client(s), in addition to the existing option of placing bids in a proprietary capacity.

These provisions will come into effect from January 1, 2023.

MINISTRY OF COMMERCE AND INDUSTRY

Credit Guarantee Scheme for Start-ups ("Scheme")

By a notification dated October 6, 2022, the Central Government has approved the Scheme for the purpose of providing credit guarantees to loans extended by Member Institutions ("**MIs**") to finance eligible start-ups. The Scheme would make collateral free debt funding to start-ups more accessible. The key provisions of the Scheme are as follows:

- to be an eligible borrower, it must be a start-up: (a) as per the Gazette Notifications issued from time to time; (b) that has reached stage of stable revenue stream as assessed from audited monthly statements over a 12-month period, amenable to debt financing; (c) that should not be in default to any lending/investing institution and not classified as Non-Performing Asset as per RBI guidelines; and (d) whose eligibility is certified by the member institution for the purpose of guarantee cover;

- the institutions eligible for lending/ investing under the Scheme are scheduled commercial banks, financial institutions, RBI registered non-banking financial companies (*having BBB rating and above*) and having minimum net worth of INR 100,00,00,000 (Indian Rupees one hundred crore), and SEBI registered alternative investment funds;

- the maximum guarantee cover per borrower must not exceed INR 10,00,00,000 (Indian Rupees ten crore);
- the credit guarantee cover could be either transaction based or umbrella based;
- the instruments of assistance would be in the form of venture debt, working capital, subordinated debt/mezzanine debt, debentures, optionally convertible debt and other fund based as well as non-fund-based facility which has crystallized as a debt obligation.

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES (MSME)

MSMEs can avail non-tax benefits for 3 (three) years from re-classification

By a notification dated October 18, 2022, the Central Government has allowed MSMEs to continue to avail all non-tax benefits for a period of 3 (three) years from the date of re-classification. Where pursuant to an upward change in terms of investment in plant and machinery or equipment or turnover or both, there is a re-classification of an enterprise, such enterprise will continue to avail all non-tax benefits of the MSME category it was in before the re-classification, for a period of 3 (three) years from the date of such upward change. Earlier, an MSME was allowed to avail non-tax benefits only for 1 (one) year from the date of re-classification.

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

Central Government amends the First Schedule to the Information Technology Act, 2000

The Central Government *vide* a notification dated September 26, 2022, amended the First Schedule to the Information Technology Act, 2000 ("**IT Act**"), which specifies the documents or transactions excluded from the purview of the IT Act. The schedule has been amended in respect of the entries relating to negotiable instruments, power of attorney and contracts for sale or conveyance of immoveable property. The deletion of contracts for sale or conveyance of immoveable property from the First Schedule to the IT Act assumes importance, given its implication that real estate transactions can now be executed electronically. This amendment will further boost the process of digitization of documents and transactions that were earlier excluded from the application of the IT Act. However, it remains to be seen whether the above amendments to the IT Act that inter alia allow necessary digitization of widely used instruments in the real estate sector could potentially replace the current practice of physical execution of these documents.

For a detailed analysis, please refer to the JSA Prism of October 20, 2022.

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affairs. We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

This Newsletter has been prepared by:

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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

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13 winning Deals in
IBLJ Deals of the Year

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6 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021

Ranked #1
The Vahura Best Law Firms to Work
Report, 2022

Top 10 Best Law Firms for
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