December 2022

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

Offshore subsidiaries and branches of Indian banks and All India Financial Institutions permitted to deal in structured financial products

The Reserve Bank of India ("**RBI**") has issued the notification dated December 1, 2022, titled 'Operations of subsidiaries and branches of Indian banks and All India Financial Institutions ("**AIFIs**") in foreign jurisdictions and in International Financial Services Centres (IFSCs) - Compliance with statutory/regulatory norms' ("**RBI Notification**").

The RBI Notification permits the subsidiaries/branches of Indian banks and AIFIs operating outside India and in GIFT City to deal in financial products (including structured financial products) that are not specifically permitted in the domestic market, subject to certain conditions specified in the RBI Notification, without the prior approval of the RBI. While dealing with such financial products, the offshore branches of the banks and AIFIs have to comply with all applicable laws, regulations and conditions prescribed by the regulator of the host jurisdiction in addition to the conditions set out in the RBI Notification.

Some of the key conditions that the parent bank or AIFIs needs to ensure while allowing their branches and subsidiaries outside India and in GIFT City ("**Offshore Branches**") in dealing with financial products are as follows:

1. the Offshore Branches should act as market makers for products only if they have the ability to price/value such products and the pricing of such products is demonstrable at all times;
2. the exposure and mark-to-market (MTM) of the Offshore branches on these products are appropriately captured and reported in the returns furnished to the RBI;
3. the Offshore Branches should not deal in products linked to Indian Rupee unless specifically permitted by the RBI; and
4. the Offshore Branches should not accept structured deposits from any Indian resident.

The RBI Notification is applicable to all banks regulated by the RBI (excluding co-operative banks, regional rural banks and local area banks) and AIFIs.

Updates to the RBI Loan Transfer Directions

The Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 ("**Loan Transfer Directions**") have been updated on December 5, 2022. The key updates to the Loan Transfer Directions are as follows:

1. Overseas branches of lenders which are Indian banks are permitted to undertake the following type of transactions in relation to transfer of loan exposures:
   a) acquisition of loans which are not in default from another Indian or foreign bank;
   b) transfer of all kinds of exposures, whether in default or not, pertaining to resident entities to another bank; and
   c) transfer of all kinds of exposures, whether in default or not, pertaining to non-residents to any financial sector entity in India or abroad.

   This clarification has cleared the ambiguity that there was a restriction on the overseas branches of foreign banks to acquire loans from any person other than those permitted under the Loan Transfer Directions.
2. The minimum holding period in relation to transfer of loans will be calculated from the date of registration of the underlying security interest with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India ("**CERSAI**"). Where security cannot be registered with CERSAI, the minimum holding period is calculated from the date of first repayment of the loan. The Loan Transfer Directions earlier provided that the minimum holding period will be calculated from the date of registration of underlying security.
3. All stressed loans that are in default in the books of the transferors have been permitted to be transferred to asset reconstruction companies. Earlier, loans which were in default for more than 60 (sixty) days or had been classified as non-performing assets in the books of the transferors could be transferred to asset reconstruction companies

Updates to the RBI Securitisation Directions

The Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 ("**Securitisation Directions**") have been updated on December 5, 2022. The key updates to the Securitisation Directions are as follows:

1. Loans with residual maturity of less than 365 days will not be eligible for securitisation by lenders.
2. The minimum holding period for commercial or residential mortgages will be calculated from the later of the date of disbursement of the loan and registration of the underlying security interest with the CERSAI

Norms for investment in Alternative Investment Funds ("AIFs")

The SEBI, vide its circular dated December 9, 2022, has provided revised norms in relation to raising of funds from any foreign investor. The key provisions of the circular are as follows:

- at the time of on-boarding investors, the manager of an AIF must ensure that:
  1) the foreign investor is a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to the bilateral memorandum of understanding with the SEBI. AIFs may accept commitment from an investor being Government or Government related investor, who does not meet the aforesaid condition, if such investor is a resident in the country as may be approved by the Government of India;
  2) the investor, or its underlying investors contributing 25% or more in the corpus of the investor or identified on the basis of control, is not the person(s) mentioned in the sanctions list as notified by the United Nations Security Council and is not a resident in the country as prescribed in the public statement of Financial Action Task Force.
- if an investor who has been on-boarded to scheme of an AIF, subsequently does not meet the conditions specified above, the manager of the AIF must not drawdown any further capital contribution from such investor, until the investor again meets the prescribed conditions.

Revised provisions on listing of non-convertible securities and certain other securities

The SEBI, vide its circular dated November 30, 2022, has revised the timelines for listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper issued on private placement basis. The timeline for listing these securities is reduced from T+4 to T+3 days (wherein T refers to issue closure date). The timelines for each of the steps involved, from submission of the application for in-principle approval to the listing of the security on the stock exchange(s), are detailed in the circular. Depositories can activate the International Securities Identification Number ("**ISIN**") of such securities only after the stock exchange(s) have accorded approval for their listing. The provisions of this circular are in effect from January 1, 2023.

Further, the SEBI, vide its circular dated December 19, 2022, has clarified that (a) a change in underlying security; (b) creation of additional security; or (c) creation of security in case of unsecured debt securities, would not constitute a change in the structure of the non-convertible debt securities, provided there are no other changes to the terms/ nature of their issue. Accordingly, no new ISIN is required to be assigned in such cases.

The SEBI had also issued a circular on '*Scheme(s) of Arrangement by entities who have listed their Non-convertible Debt securities ("**NCDs**")/ Non-convertible Redeemable Preference shares ("**NCRPS**")*' dated November 17, 2022, which provided a detailed procedure which listed entities, stock exchanges and the SEBI are required to follow, pursuant to Regulations 59A and 94A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). The circular, *inter alia*, also provides that once a no objection letter is obtained from the stock exchange, listed entities should send the same to the holders of NCDs / NCRPS seeking approval for the scheme of arrangement. Further to this, the SEBI, vide its circular dated December 9, 2022, has clarified that the provisions of the circular dated November 17, 2022 will not apply to a scheme of arrangement which solely provides for an arrangement between a debt listed entity and its unlisted wholly owned subsidiary.

Quick Snapshots:

Change in repo rate under the Liquidity Adjustment Facility

The Monetary Policy Committee of the RBI ("**MPC**") has, on December 7, 2022, increased the policy repo rate under the Liquidity Adjustment Facility by 35 (thirty five) basis points from 5.90% to 6.25% with immediate effect. Consequently, the standing deposit facility rate and marginal standing facility rate stand adjusted to 6% and 6.5%.

Change in Bank Rate

The MPC has vide notification dated December 7, 2022, revised the Bank Rate[1] from 6.15% to 6.50% with immediate effect. Consequently, all penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate have also been revised as indicated the annexure of the said notification.

Change in repo rate for standing liquidity facility provided to primary dealers

Pursuant to the increase in the repo rate under the Liquidity Adjustment Facility from 5.90% to 6.25%, the MPC has vide notification dated December 7, 2022, revised the repo of the Standing Liquidity Facility provided to Primary Dealers to 6.25% with immediate effect.

[1] Bank Rate means the rate at which the RBI grants loans or advances to commercial banks.

Hedging of commodity price risk and freight risk in overseas markets

The RBI has issued the Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 ("**Hedging Directions**") Directions on December 12, 2022, for the purposes of laying down the modalities for authorised dealer category – I banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers / constituents. Eligible entities[2] having exposure to commodity price risk for any eligible commodity or exposure to freight risk may hedge such exposure in overseas markets using any of the permitted products (as defined in the Hedging Directions).

The RBI circular dated March 12, 2018, titled 'Hedging of Commodity Price Risk and Freight Risk in Overseas Markets' and RBI circular dated January 15, 2020, titled 'Hedging of Commodity Price Risk and Freight Risk in Overseas Markets – Amendment' have been repealed from the date of the Hedging Directions.

Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors

SEBI has issued the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated December 19, 2022 ("**FPI Master Circular**"), consolidating all the previous circulars issued by SEBI with respect to foreign portfolio investors, designated depository participants and eligible foreign investors. The circulars set out therein have been rescinded pursuant to the issuance of the FPI Master Circular.

Any other directions or guidance issued by SEBI that are applicable to foreign portfolio investors will continue to apply.

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.

[2] Eligible entities have been defined under the Hedging Directions as residents other than individuals.

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17 Practices and
24 Ranked Lawyers

16 Practices and
11 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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10 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 Women in 2022

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