
January-February 2023

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance and insolvency space for the months of January and February 2023.

## Changes being considered to the Insolvency and Bankruptcy Code, 2016

To strengthen the functioning of the Indian Bankruptcy Code ("**IBC**"), the Ministry of Corporate Affairs ("**MCA**") has proposed changes in relation to the various aspects of corporate insolvency resolution process ("**CIRP**") including the following key provisions being considered are as follows:

1. **More importance to financial information available to Information Utilities**: Before making an application to initiate the CIRP, the relevant information regarding the occurrence of a default or dispute may be ascertained at the Information Utilities by the financial creditors ("**FCs**"), operational creditors ("**OCs**") and corporate debtors ("**CD**"). The financial information will be considered authenticated if the CD does not respond to the financial information within a stipulated period;
2. **Mandatory admission of CIRP in case of default**: Section 7 of the IBC may be amended to clarify that while considering an application for initiation of the CIRP by FCs, if a default is established, it is mandatory for the National Company Law Tribunal ("**NCLT**") to admit the application and initiate the CIRP – this is to address the ratio of the decision of the Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited* which has resulted in confusion in the market regarding the scope of the NCLT;
3. **Easier and separate fast-track CIRP:** Provisions dealing with fast-track CIRP may be amended to provide that unrelated FCs of a CD may select and approve a resolution plan through an informal out-of-court process and involve the NCLT only for its final approval (*or a moratorium, if needed*);
4. **Expansive rollout of Pre-packs** - Pre-packaged insolvency resolution process ("**PPIRP**") are presently applicable to only micro, small and medium enterprises. It is now being considered that *inter alia* (a) the scope of PPIRP be expanded to apply to a broader range of CDs in addition to the micro, small and medium enterprises; and (b) the threshold for approval of unrelated FCs be lowered from 66% to 51%;
5. **Project specific insolvency**: For a CIRP in respect of a CD who is the promoter of a real estate project, and the default pertaining to one or more of its real estate projects, the AA, at its discretion, may admit the case but apply the CIRP provisions only with respect to the real estate projects under which default has been made. Further, the IBC may be amended to enable the resolution professional to transfer the ownership and possession of a plot, apartment or building to the allottees with the consent of the committee of creditors ("**CoC**");
6. **Multiple resolution plans**: The individual or collective assets of the CD may be resolved in one or more resolution plans.

7. **Mandating use of challenge method:** CoC may be mandated to transparently consider competing plans through an appropriately designed challenge mechanism.
8. **Segregation of approval of resolution plan and scheme for distribution of proceeds**: the IBC may be amended to segregate the concept of the resolution plan from the manner of distribution of proceeds received from the successful resolution applicant;
9. **Reinstating CIRP**: Permit reinstatement of the CIRP during the liquidation process where the liquidator continues to carry on the CD's business and it is possible to revive the CD as determined by the CoC;
10. **Equitable distribution waterfall**: Statutorily provide an equitable scheme of distribution of proceeds received pursuant to a resolution plan(s) through a separate waterfall mechanism in the CIRP. Under this scheme, creditors will receive proceeds up to the CD's liquidation value for their claims in the order of priority provided in section 53 of the IBC with any surplus over such liquidation value being rateable distributed between all creditors in the ratio of their unsatisfied claims;
11. **Piercing of the corporate veil in case of corporate and personal guarantor assets**: In cases where assets of the CD and its guarantor (corporate or personal) are inseparable meaningful resolution of the CD is not viable in a separate proceeding, a mechanism may be provided under the IBC to include assets of the guarantor in the general pool of assets available for the CIRP;
12. **Enforcement of security interest through CIRP:** Where a secured creditor (who has benefit of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) has taken possession of a secured asset of a guarantor but has not sold the asset, then such creditor may be permitted to use IBC process for causing consolidated sale of the asset, belonging to such guarantor;
13. **Domestic group insolvency**: In order to resolve inter-dependent entities, it is proposed that a common AA and Insolvency Professional ("**IP**") be considered for the CD and its related parties a detailed framework for the domestic group insolvency procedure being provided;
14. **Rejigging of the waterfall mechanism:** The waterfall mechanism under section 53 of the IBC be amended to treat all unsecured creditors (FCs, OCs and any government or authority) other than the workmen and employees equally and all debts owed to central government and state government (irrespective of whether they are secured creditors pursuant to a security interest created by a mere operation of statute) be treated equivalent to the debts owed unsecured creditors (this modification is to address the Supreme Court decision in *State Tax Officer v. Rainbow Papers Limited*[1] which has caused confusion by treating government dues having a statutory charge being considered as secured debts);
15. **Disclosure of Valuation Estimate**: Information memorandum is proposed to contain an estimation of the valuation of the corporate debtor's assets;
16. **Certain OCs to honour contracts with the CD** – after the approval of the resolution plan, unless the CD fails to fulfil any obligations arising from any arrangement with respect to grants or rights, the Central or state government, local authorities or statutory authority should be mandatorily required to honour the contractual arrangements with the CD;
17. **Direct dissolution**: To dissolve the CD directly instead of liquidation if it believes that conducting the liquidation process may not be feasible or beneficial for the stakeholders;
18. **Protection against civil liabilities**: No proceedings may be commenced or continued by any government or authority regarding the claims before the commencement;
19. **Presumption on creditors choosing to relinquish security to the liquidation estate:** In instances where multiple secured creditors have a *pari passu* charge over an asset of the CD, some creditors may decide not to relinquish the security interest, while the remaining secured creditors may favour such relinquishment which may

[1] *State Tax Officer v. Rainbow Papers Ltd, 2022 SCC OnLine SC 1162.*

 

delay the process. Accordingly, it is proposed that *prima facie* a presumption be made that all assets owned by the CD will form part of the liquidation estate unless all secured creditors holding *pari passu* charge declare to realise their security interest outside the liquidation process.

## Report of Cross Border Insolvency Rules/Regulations Committee ("CBIRC") II on group insolvency ("CBIRC Report")

The CBIRC Report provides recommendations of the CBIRC for the design of a group insolvency framework under the IBC, and regarding the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency ("**MLEGI**") in India. The key recommendations are as follows:

1. Formulation of a group insolvency framework that is voluntary, flexible and enabling in nature which may be rolled out in phases, and in the first phase, only provisions governing domestic group insolvency may be ratified;
2. Introduce a broad and inclusive definition of 'group' (based on the criteria of control and significant ownership) so as to include a large number of corporate debtors within the ambit of the group insolvency framework;
3. Group insolvency framework to apply only to CDs in respect of whom a CIRP or liquidation process is ongoing;
4. A common AA and insolvency resolution professional/resolution professional/liquidator be considered for the CD and its related parties (i.e., CDs that belong to the same group); and
5. joint applications for initiation of CIRP against multiple CDs belonging to the same group be allowed.

The CBI Report also suggests initiation of group coordination proceedings ("**GCP**") for CDs belonging to the same group on an application being made to the AA by 2 (two) or more CoCs of CDs belonging to the same group. Salient features of the GCP are as follows:

1. The AA will initiate the GCP and appoint a group coordinator;
2. The GCP will run alongside the individual insolvency or liquidation proceedings of the individual CDs;
3. Participation of a CD in the GCP will be voluntary. There will be flexibility for the CoCs to opt in the GCP until 30 (thirty) days after its opening and any opt ins after such time may be permitted with the approval of the participating CoCs and liquidators;
4. The group coordinator will (a) constitute a group CoC consisting of representatives from all the participating CoCs; (b) conduct the GCP; (c) develop a group strategy (which will be approved by 66% of the participating CoCs); and (d) assist the resolution professionals, liquidators and the CoCs of various group CDs to enable effective coordination amongst them;
5. Once a group strategy is approved, it will need to be filed with the AA and the same will then be binding on all participating parties; and
6. costs of conducting GCP will form part of the insolvency resolution or liquidation process costs.

## RBI Guidelines on acquisition and holding of shares/ voting rights in banking companies

The Reserve Bank of India ("**RBI**") on January 16, 2023 has issued (a) RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023; and (b) the Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies dated January 16, 2023 (collective "**RBI Guidelines**"). The key provisions of the RBI Guidelines are as follows:

1. The RBI Guidelines are applicable to all banking companies including local area banks, small finance banks and payments banks operating in India.

 

2. Any person who intends to make an acquisition which is likely to result in major shareholding in a banking company has to obtain prior approval of the RBI as per the prescribed procedure. RBI will then undertake due diligence to assess the 'fit and proper' status of the applicant and then grant or deny permission (or grant permission for a lower percentage holding) to the applicant and may impose conditions on the applicant and the concerned banking company as deemed fit. If at any time the aggregate holding falls below 5% of the aggregate paid up share capital or voting rights of the banking company, a fresh approval from the RBI will be required if the person intends to increase its aggregate holding to 5% or more.
3. Persons from Financial Action Task Force non-compliant jurisdictions are not permitted to acquire major shareholding;
4. After issue and allotment of shares, a banking company must report the details; and
5. A banking company must establish a continuous monitoring mechanism to ascertain that a major shareholder has obtained prior approval of the RBI for the shareholding/voting rights, any violation with respect to the same must be immediately brought to the notice of the RBI.
6. **Limits to shareholding:** Permission of the RBI to acquire shares or voting rights in a banking company are subject to the following limits:

   (a) Non-promoter:

      (i) 10% of the paid-up share capital or voting rights of the banking company in case of natural persons, nonfinancial institutions, financial institutions directly or indirectly connected with Large Industrial Houses and financial institutions that are owned to the extent of 50 % or more or controlled by individuals (including the relatives and persons acting in concert); and

      (ii) 15% of the paid-up share capital or voting rights of the banking company in case of financial institutions (excluding those mentioned in para (i) above), supranational institutions, public sector undertaking and central/state government.

   (b) For promoters - 26% of the paid-up share capital or voting rights of the banking company after the completion of 15 (fifteen) years from commencement of business of the banking company. During the period prior to the completion of 15 years, the promoters of banking companies may be permitted to hold a higher percentage of shareholding as part of the licensing conditions or as part of the shareholding dilution plan approved by the RBI.
7. **Lock-in:** (a) In case of a person having shareholding of 10% or more (after the permission of the BRI) of the paid-up equity share capital of the banking company but less than 40% of the paid-up equity share capital, the shares acquired will remain under lock-in for first 5 (five) years from the date of completion of acquisition; and (b) in case of any person (after the permission of the RBI) having a shareholding of 40% or more, only 40% of paid-up equity share capital will remain under lock-in for first 5 (five) years from the date of completion of acquisition. These locked-in shares cannot be encumbered under any circumstances.
8. **Ceiling on voting right:** No shareholder in a banking company can exercise voting rights on poll in excess of 26% of the total voting rights of all the shareholders of the banking company.

## Fully accessible route for investment by non-residents in government securities

The RBI in March 2020 introduced fully accessible route for investing by non-residents in government securities which enabled non-residents to invest in specified government securities without any restrictions. Now the RBI has extended the above benefit to all sovereign green bonds issued by the government in fiscal year 2022-23. This is in furtherance to the plan of the central government (as highlighted in the union budget of 2022-23) to issue sovereign green bonds to further develop the green infrastructure. The 2 (two) new auctions in sovereign green bonds have been planned for fiscal year 2022-23.

 

## Operational circular for credit rating agencies

The Securities and Exchange Board of India ("**SEBI**") has issued an Operational Circular on January 6, 2023, for credit rating agencies ("**Circular**") to enable the industry and other users to access all applicable circulars/directions at one place. This Circular is a compilation of the existing circulars as on December 31, 2022, with consequent changes. The provisions of this Circular will be applicable to all registered credit rating agents, all registered debenture trustees, issuers who have listed non-convertible securities, securitized debt instruments, security receipts, municipal debt securities or commercial paper recognized stock exchanges and all depositories registered with SEBI.

## Relaxations on the compliances, amendments and clarifications under the LODR Regulations

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") have been amended vide the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023 dated January 17, 2023, to provide:

1. Relaxation on the compliance requirement of corporate governance standards by Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvITs**"). Now, InvITs and REITs are not required to comply with the compliances mentioned under chapter IV of the LODR Regulations, and instead have to follow the governance norms specified under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trust) Regulations, 2014 respectively. These amendments are aimed at streamlining the corporate governance requirements of REITs and InvITs;
2. the definition of 'Senior Management' has been amended to include functional heads which includes which all members of the management one level below the chief executive officer or managing director or whole time director or manager, as well as the company Secretary and Chief Financial Officer to align the definition under LODR Regulations with the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 ("**ICDR Regulations**") (which has a wider definition).
3. clarified that shareholder approval is applicable for both appointment and re-appointment of a person of the Board of Directors or as a manager. In case of a public sector company, the approval of the shareholders can be taken at the next general meeting.
4. The details of material subsidiaries of a listed entity have to be reported in the annual report of the listed entity.

## Amendments to InvITs and REITs Regulations

On February 14, 2023, the SEBI amended the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and the SEBI (Real Estate Investment Trusts) Regulations, 2014. The amendments deal primarily with obligations of the investment manager/ manager of InvITs and REITs. The key amendments are as follows:

1. the investment manager/ manager of the InvIT/ REIT must appoint an individual or a firm as the auditor, who will hold office from the date of conclusion of the annual meeting in which the auditor has been appointed till the date of conclusion of the sixth annual meeting of the unitholders. The investment manager/ manager cannot appoint or re-appoint as the auditor (i) in case of an individual, for more than one term of 5 (five) consecutive years; and (ii) in case of an audit firm, for more than 2 (two) terms of 5 (five) consecutive years;
2. the auditors have to undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT/REIT;
3. amounts remaining unclaimed or unpaid out of distributions declared by InvITs/REITs must be transferred to the Investor Protection and Education Fund constituted by the SEBI;

4. leverage calculation has been amended to clarify that (i) overnight mutual funds, characterized by investments in overnight securities and having maturity of one day, will be considered cash and cash equivalents; and (ii) the amount of cash and cash equivalent will be excluded from the value of the REIT/ InvIT assets;
5. certain provisions of the LODR Regulations have been made applicable to InvITs and REITs, such as constituting an audit committee, nomination and renumeration committee, risk management committee and stakeholders relationship committee, obligations with reference to employees including senior management and obligations with respect to independent directors;
6. further, SEBI has prescribed additional compliances by the investment manager/ manager. These additional compliances include placing minimum information before the board of the directors of the investment manager/ manager, the requirement of a woman independent director on the board of the investment manager/ manager, establishing a vigil and submission of compliance reports.

## Amendment to the definition of senior management and key managerial personnel under the ICDR Regulations

The ICDR Regulations have been amended vide SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2023 dated January 13, 2023, to amend the definitions of (a) 'Senior Management' to include functional heads which includes all members of the management one level below the chief executive officer or managing director or whole time director or manager, as well as the company secretary and chief financial officer; and (b) 'key managerial personnel' to have the same meaning as to the term in sub-section (51) of section 2 of the Companies Act, 2013. Further, in several provisions of the ICDR Regulations where there was requirement of disclosing information in relation to the (a) directors of a company, additional requirement is now placed to disclose information in relation to the key managerial personnel of a company; and (b) key managerial personnel of a company, additional requirement is now placed to disclose information in relation to the 'Senior Management' of a company.

## Participation of Alternative Investment Funds ("AIFs") in Credit Default Swaps ("CDS")

The SEBI on January 9, 2023 notified the SEBI (AIFs) (Amendment) Regulations, 2023, and subsequently vide circular dated January 12, 2023, prescribed the terms and conditions to allow participation of AIFs in CDS. The key conditions for purchase and sale of CDS by AIFs are as follows:

1. Category I AIFs and Category II AIFs may buy CDS on underlying investment in debt securities, only for the purpose of hedging;
2. Category III AIFs may buy CDS for the purpose of hedging or otherwise, within permissible leverage as specified in SEBI circular dated July 29, 2013 on Operational, Prudential and Reporting Norms for AIFs ("**AIF Circular**");
3. Category III AIFs may sell CDS, subject to the condition that effective leverage undertaken is within the permissible limits as specified in AIF Circular;
4. Category II AIFs and Category III AIFs may sell CDS, by earmarking unencumbered Government bonds/ Treasury bills equal to the amount of the said CDS exposure;
5. Category I AIFs and Category II AIFs cannot borrow funds directly or indirectly and engage in leverage except for meeting temporary funding requirements for not more than 30 (thirty) days, not more than 4 (four) occasions in a year and not more than 10 %of the investable funds. Further such AIFs which transact in CDS will have to maintain a 30 (thirty) day cooling off period between the 2 (two) periods of borrowing or engaging in leverage.
6. Total exposure to an investee company, including exposure through CDS, will be within the applicable limit of concentration norm as specified in SEBI (AIFs) Regulations, 2012; and

7. Any unhedged position, which will result in gross unhedged positions across all CDS transactions exceeding 25 % of investable funds of the scheme of an AIF, will be taken only after intimating all unit holders of the scheme.

## Transaction in corporate bonds by Alternative Investment Funds ("AIFs") through Request for Quote ("RFQ") platform

The SEBI, *vide* circular dated February 1, 2023, has stipulated that AIFs must undertake at least 10% of their total secondary market trades in corporate bonds by value in a month by placing/seeking quotes on the RFQ platform. All transactions in corporate bonds wherein AIF(s) is on both sides of the trade will be executed through RFQ platform in 'one-to-one' mode. However, any transaction entered by an AIF in corporate bonds in 'one-to-many' mode which gets executed with another AIF, will be counted in 'one-to-many' mode and not in 'one-to-one' mode. The provisions of this circular will come into force with effect from April 1, 2023.

## Definition of 'change in control' amended for intermediaries

On January 17, 2023, the SEBI notified the SEBI (Change in Control in Intermediaries) (Amendment) Regulations, 2023, pursuant to which amendments were made to the definition of 'change in control' of several SEBI intermediaries including AIFs, debenture trustees, credit rating agencies, merchant bankers, stock brokers, registrars to an issue and share transfer agent, custodian and depositories and participants.

Accordingly, regulations issued by SEBI in relation to the above-mentioned intermediaries have been amended to revise the definitions of 'change in control' . While the erstwhile definitions of 'change of control' differentiated only between (a) entities which have their shares listed on stock exchanges; and (b) other entities, the new definition of 'change of control' differentiates between (i) entities which have their shares listed on stock exchanges; (ii) entities which have not listed their shares on stock exchanges; and (iii) entities other than body corporates. Also, the new definition is now aligned to the definition under the Companies Act, 2013.

The new definition of 'change in control' is as follows:

1. in case of a body corporate, the term 'change in control' will be construed: (a) if its shares are listed on any recognised stock exchange, with reference to the definition of control in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; and (b) if its shares are not listed on any recognised stock exchange, with reference to the definition of control as provided under Section 2(27) of the Companies Act, 2013.
2. in a case other than that of a body corporate, it will be construed as any change in its legal formation or ownership or change in controlling interest.

## Central government amends the Securities Contracts (Regulation) Rules, 1957

On January 2, 2023, the MCA notified the Securities Contracts (Regulation) Amendment Rules, 2022, pursuant to which certain provisions of the Securities Contracts (Regulation) Rules, 1957 stand amended.

The definition of "Government Company" is amended to mean "a company as defined in Section 2(45) of the Companies Act, 2013." Instead of "a company in which not less than 51% of the share capital is held by the Central Government, State Government or partly by Central Government and partly by State Government." Therefore, it also recognises a company which is a subsidiary company of a Government Company as 'Government Company'. This is to align the definitions "government company" under the Companies Act, 2013 and Securities Contracts (Regulation) Rules, 1957 ("**SCRR**").

Further, in Rule 19A of the SCRR which deals with continuous listing requirements and obligation on the listed entity to maintain public shareholding of at least 25 %, a new sub-rule (6) has been substituted. Earlier Rule 19A stated that

 

the Central Government in the public interest, had the power to exempt any public sector company from any/ all provisions of Rule 19A. The new Rule 19A states that the Central Government, in the public interest, can exempt any listed company in which the Central Government/ State Government / public sector company, individually or in combination, holds direct or indirect, majority of shares/ voting rights/ control of listed entity from any/ all provisions of Rule 19A. Further, a new explanation to the Rule 19A clarifies that the exemption by the Central Government will continue to be valid for the period specified therein, irrespective of any change in control of such listed entity subsequent to issuance of such exemption. This appears to be an amendment to facilitate the disinvestment programme of the Government of India.

## Amendment to regulations on issue and listing of non-convertible securities

The SEBI, *vide* circular dated February 2, 2023 ("**SEBI Amendment**"), has amended the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). The key amendments are as follows:

1. the definition of Green Debt Security ("**GDS**") has been widened to include the debt securities issued for:(a) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, reduction and recycling, and energy or emission efficient waste to energy) and sectors specified under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change; (b) circular economy adapted products, production technologies and processes and/or eco efficient products; (c) blue bonds; (d) yellow bonds, and (e) transition bonds;
2. the issuer must send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s) at least 21 (twenty-one) days before the date from which such right is exercisable. Further, the requirement to make an advertisement in an English national daily and regional daily indicating the details of such right of the eligible debenture holders by the issuer at the place of its registered office address is done away with;
3. the trust deed must contain a provision, mandating the issuer to appoint the person nominated by the debenture trustee(s), as a director on its board of directors at the earliest but not later than 1 (one) month from the date of receipt of nomination from the debenture trustee(s); and
4. a public issue of debt securities or, non-convertible redeemable preference shares must be kept open for a minimum of 3 (three) working days and a maximum of 10 (ten) working days.

For a detailed analysis, please refer to the JSA Prism of February 10, 2023.

## Compliance by the first-time issuers of debt securities under the NCS Regulations

With reference to the aforementioned SEBI Amendment, the newly added regulation 23(6) read along with regulation 2(1)(r) of the NCS Regulations mandates the issuer that is a company, which is issuing non-convertible securities, to ensure that its articles of association ("**AoA**") is amended to include provisions with respect to the requirement for the board of directors to appoint the person nominated by the debenture trustee in terms of clause (e) of regulation 15(1) of the SEBI (Debenture Trustee) Regulations, 1993, as a nominee director on its board of directors. The said regulation also provides a time period up to September 30, 2023, for existing debt listed issuers to amend their AoA.

Further to the SEBI Amendment, the SEBI, *vide* circular dated February 9, 2023, has issued a clarification in respect of compliance by first time issuers of debentures with this amendment. In its clarification, SEBI advised the stock exchanges to obtain an undertaking from first-time issuers who are in the process of listing non-convertible debentures ("**NCDs**") for the first time either by way of private placement or public issue, that they will ensure that their AoA are amended within a period of 6 (six) months from the date of the listing of the NCDs. This undertaking may be obtained by the stock exchanges at the time of granting the in-principle approval.

 

## Issuance and listing of GDS

The SEBI, *vide* circular dated February 3, 2023, has issued guidelines to address the concerns of investors regarding greenwashing with regards to GDS. 'Greenwashing', as it is generally understood is making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation. In an issuance of GDS, an issuer must ensure the following to avoid occurrence of greenwashing:

1. while raising funds for transition towards a greener pathway, it must continuously check whether the path undertaken towards more sustainable form of operations is resulting in reduction of the adverse environmental impact and contributing towards sustainable economy;
2. it must not utilize funds raised through green bonds for purposes that would not fall under the definition of GDS under the NCS Regulations. However, if it does, the issuer must disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities;
3. it will not use misleading labels, hide trade-offs or cherry pick data from research to highlight green practices while obscuring others that are unfavourable in this behalf;
4. it will maintain the highest standards associated with issue of GDS while adhering to the rating assigned to it;
5. it will quantify the negative externalities associated with utilization of the funds raised through GDS; and
6. it will not make untrue claims giving false impression of certification by a third-party entity.

Considering the increasing interest in sustainable finance in India, the SEBI, *vide* circular dated February 6, 2023, has revised the regulatory framework for GDS under the operational circular dated August 10, 2021, as amended for issue and listing of non-convertible securities. The provisions of this circular will come into force for all issues of GDS launched on or after April 1, 2023. An issuer desirous of issuing GDS must make the following key/ initial disclosures in the offer document for public issues/ private placements: (a) details of taxonomies, green standards or certifications (both Indian and global), and the alignment of projects with said taxonomies, and related criteria; (b) details of the alignment with the India's 'Intended Nationally Determined Contributions' when the proceeds are raised though issuance of transition bonds; (c) details of an indicative estimate of distribution of proceeds raised though issuance of GDS between financing and refinancing of project(s)/ asset(s); (d) details of the intended types of temporary placement of the unallocated and unutilised net proceeds; and (e) details related to the perceived social and environmental risks and proposed mitigation plan associated with the GDS financed/ refinanced project(s) Additionally, the issuer is required to (a) appoint independent third-party reviewer/ certifier for reviewing/ certifying the processes on a 'comply or explain' basis for two years; (b) report on the environmental impact of the projects financed by GDS, on a project-by-project basis; (c) disclose major elements of Business Responsibility and Sustainability Reporting in the annual report; and (d) disclose details of the deployment of the mitigation plan for the perceived social and environmental risks in the annual report.

## Clarifications on issue and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under the NCS Regulations

The SEBI, *vide* circular dated February 8, 2023, has clarified that only securities which have the following characteristics, will necessarily be required to comply with the provisions for issuance and listing as specified under Chapter V of the NCS Regulations:

1. the issuer is permitted by the RBI to issue such instruments;
2. the instruments form part of non-equity regulatory capital;

3. the instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature; and
4. the instruments contain a discretion with the issuer/ RBI for events including but not restricted to all or any of the below events: (a) conversion into equity; (b) write off of interest/ principal; (c) skipping/ delaying payment of interest/principal; (d) making an early recall; and (e) changing any terms of issue of the instrument.

## 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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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**

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Banking & Finance Team
of the Year

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Fintech Team of the Year

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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

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Dispute Resolution Law
Firm of the Year 2022

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Equity Market Deal of the
Year (Premium) 2022

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Energy Law Firm of the Year 2021

**Ranked #1**
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