May 2023

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

Amendment to Special Economic Zones Rules, 2006 ("SEZ Rules")

The SEZ Rules have been amended through the Special Economic Zones (Second Amendment) Rules, 2023, as published in a gazette notification dated May 1, 2023. By way of the amendment, a new Rule 53A (*Exemption*) has been introduced in the SEZ Rules. The said Rule 53A of the SEZ Rules exempts units providing financial services in an International Financial Service Centre from the requirements outlined in Rule 53 of the SEZ Rules. Rule 53 (*Net Foreign Exchange Earnings*) of the SEZ Rules stipulates that all units set up in an International Financial Service Centre should achieve positive net foreign exchange within a period of 5 (five) years from the commencement of production.

Introduction of legal entity identifier ("LEI") for issuers of listed non-convertible securities, securitized debt instruments and security receipts

The Securities and Exchange Board of India ("**SEBI**") has issued a circular dated May 3, 2023 ("**LEI Circular**") which mandates that issuers with outstanding listed non-convertible securities, securitized debt instruments or security receipts (collectively referred to as "**Listed Securities**") as of August 31, 2023, should obtain (as applicable) and report the LEI code to the centralized database of corporate bonds (for non-convertible securities) and / or depositories (for securitized debt instruments or security receipts), on or before September 1, 2023. Issuers who are proposing to issue the Listed Securities, on or after September 1, 2023, must report their LEI code in the database of corporate bonds and / or depositories (as applicable), at the time of allotment of ISIN. The SEBI has also mandated the depositories to map the LEI code to existing ISINs by September 30, 2023, and for all future issuances, map the LEI code with ISIN at the time of its activation.

Additional disclosure requirements for the issuers of transition bonds

The SEBI has outlined additional requirements for the issuers of transition bonds[1] by way of a circular on 'Additional Requirements for the Issuers of Transition Bonds' dated May 4, 2023. The key requirements are as follows:

[1] Pursuant to the SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2023, SEBI has revised the definition of 'green debt security' (as provided in the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021). Transition bonds is one of the subcategories of the revised definition of 'green debt security' (sub section (xii) of the definition) which comprises of 'funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions (INDCs)'. INDCs refer to the climate targets determined by India under the Paris Agreement.

1) **Disclosures in the offer document**

   a) A denotation of '**GB-T**' should be used, and it should be mentioned on (i) the cover page of the offer document, and (ii) the field marked as 'type of instrument' in the term sheet,

   b) A 'Transition Plan' must be included, providing details of (i) interim targets and timelines, (ii) project implementation strategy, (iii) technology used for project implementation, and (iv) a mechanism for overseeing fund utilisation and plan implementation.

2) **Disclosures in the centralized database for corporate bonds**

   The issuer should file the denotation, i.e., GB-T, in Sub Point 6 (*Others (Please specify)*) of Point 10 (*Type of Instrument*) of Annex-XIV-A to Chapter XIV (*Centralized Database for corporate bonds/ debentures*) of the Operational Circular[2]. The depositories should update the aforesaid denotation as a prefix in the 'instrument details' field in the database.

3) **Disclosures to the stock exchanges**

   Issuers must annually report any revisions to the Transition Plan, accompanied by an explanatory statement.

4) **Disclosures in the annual report**

   The annual report should include the Transition Plan along with a brief on the progress of implementation.

The SEBI has directed stock exchanges to monitor the ongoing disclosures by issuers as mentioned in paragraphs 3 and 4 above. These provisions have been appended as new Chapter IX-B of the operational circular.

Transition from LIBOR and MIFOR

The Reserve Bank of India ("**RBI**") has *vide* its notification on 'LIBOR Transition' dated May 12, 2023, advised all banks and financial institutions to refrain from entering into new transactions with interest benchmarks as US$ London Interbank Offered Rate ("**LIBOR**") or the Mumbai Interbank Forward Outright Rate ("**MIFOR**"). The RBI has also advised that fallbacks should be inserted in all remaining legacy financial contracts that have reference to US$ LIBOR or MIFOR, at the earliest, and well before the end of June 2023. Synthetic LIBOR rates are not to be used as a substitute for fallbacks in legacy contracts. All banks and financial institutions are also required to develop the necessary system and processes to fully transition away from LIBOR by July 1, 2023.

Clarification on Guidelines on Factoring and Forfaiting of Receivables

The International Financial Services Centres Authority ("**IFSCA**") has provided a clarification regarding the '*Guidelines on Factoring and Forfaiting of Receivables*' issued on August 17, 2021, through a circular on '*Guidelines on Factoring and Forfaiting of Receivables - Clarification*' dated May 22, 2023. The circular clarifies that the due date for recognizing non-performing assets under Clause 24.1 (*Recognition of Non-Performing Assets (NPA)*) of the aforesaid guidelines, will be considered as 90 (ninety) days from the specified due date for payment of the acquired receivables under factoring.

[2] 'Operational Circular' refers to the 'Operational Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper' dated August 10, 2021, issued by the SEBI.

Infrastructure Investment Trusts ("InvITs") and Real Estate Investment Trusts ("REITs")

On May 16, 2023, the SEBI issued a consultation paper to invite comments from the public and market participants on the matter of, *inter alia*, providing special rights to unitholders of REITs and InvITs and the role of sponsor in REITs and InvITs. Based on the feedback and representations, the SEBI has proposed the following:

1) any unitholder holding a minimum of 10% of units of a REIT/InvIT, will be entitled to nomination rights, i.e., for every 10% of units of a REIT/InvIT held, the unitholder will be entitled to nominate 1 (one) director on the board of the Manager/Investment manager of the REIT/InvIT;
2) constitution of unitholders council with nominees of unitholders of REIT/InvIT holding certain percentage of units ("**Unitholders Council**");
3) extending the applicability of the Stewardship Code to entities having representation on the board/Unitholders Council;
4) provision of self-sponsored REITs/InvITs.

For a detailed analysis, please refer to the JSA Prism of May 24, 2023.

Further, on May 22, 2023, the SEBI has issued 2 (two) circulars on '*Dematerialization of securities of Hold Cos and SPVs held by Infrastructure Investment Trusts (InvITs)*' and '*Dematerialization of securities of Hold Cos and SPVs held by Real Estate Investment Trusts (REITs)*'. Under the aforementioned circulars, InvITs and REITs are now required to hold the securities of holding companies and special purpose vehicles (as defined in the relevant regulations) solely in dematerialized form. The SEBI has directed the managers of the InvITs and REITs to ensure compliance with this requirement and to dematerialise any existing securities held in physical form by InvITs and REITs, of holding companies and special purpose vehicles, on or before June 30, 2023.

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

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 9 Ranked Practices

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11 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

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