



October 2023

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

## Revised framework for fund raising by issuance of debt securities by Large Corporates (“L-Corps”)

Regulation 50B of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”) read with Chapter XII of the Master Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 10, 2021 on ‘Fund raising by issuance of debt securities by large corporates’, *inter alia*, mandates L-Corps to raise a minimum 25% of their incremental borrowings in a financial year (“**FY**”) through issuance of debt securities to be met over a contiguous block of 3 (three) years from FY 2022 onwards. The Securities and Exchange Board of India (“**SEBI**”), *vide* circular dated October 19, 2023, has issued a revised framework in relation to issuance of debt securities by L-Corps. The key provisions of the revised framework are as follows:

1. the framework will come into effect:
  - a) from April 1, 2024, for L-Corps following April-March as their FY, and
  - b) from January 1, 2024, for L-Corps which follow January-December as their FY;
2. the framework will be applicable for all listed entities (except for scheduled commercial banks), which as on last day of their FY (i.e., March 31 or December 31):
  - a) have their specified securities or debt securities or non-convertible redeemable preference shares listed on a recognised stock exchange(s),
  - b) have outstanding long-term borrowings of INR 1000,00,00,000 (Indian rupees one thousand crore) or above, and
  - c) have a credit rating of “AA”/“AA+”/AAA”, where the credit rating relates to the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in;
3. L-Corps will raise a minimum of 25% of their qualified borrowings<sup>1</sup> through debt securities in the financial years subsequent to the financial year in which they are identified as L-Corps;

<sup>1</sup> For the purposes of the framework, the expression “qualified borrowings” means incremental borrowing between two balance sheet dates having original maturity of more than one year but excludes the following: i. external commercial borrowings; ii. inter-corporate borrowings involving its holding company and/ or subsidiary and/ or associate companies; iii. Grants, deposits or any other funds received as per the

4. L-Corps must endeavor to comply with the requirement of raising 25% of their incremental borrowings done during FY 2022, FY 2023 and FY 2024 respectively by way of issuance of debt securities till March 31, 2024, failing which, such L-Corps must provide a one-time explanation in their Annual Report for FY 2024; and
5. from FY 2025 onwards, the requirement of mandatory qualified borrowing by an L-Corp in a FY must be met over a contiguous block of 3 (three) years.

## **The Reserve Bank of India (“RBI”) notifies Master Direction on Scale-Based Regulation of non-banking finance companies (“NBFCs”)**

On October 19, 2023, the RBI issued the ‘Master Direction – RBI (NBFC – Scale Based Regulation) Directions 2023’ (“**SBR Master Direction**”). The SBR Master Direction comes into immediate effect and replaces the erstwhile framework of NBFCs, viz. Master Direction – NBFC – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction – NBFC – Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (collectively, “**Previous Framework**”). The SBR Master Direction aims to harmonize the Previous Framework with the scale-based regulation of NBFCs, published by the RBI on October 22, 2021 (“**SBR Framework**”).

Under the SBR Master Direction, the earlier classification of NBFCs based on asset size (i.e., systemically important and non-systemically important NBFCs) is brought to an end, while the classification of NBFCs based on: (a) acceptance of public deposits (i.e., deposit-taking and non-deposit taking); and (b) specialisation (factoring business, housing finance, microfinance, account aggregation, etc.) continues to be in force. Further, as classified by the RBI under the SBR Framework, the SBR Master Direction also continues to classify NBFCs into 4 (four) layers, namely, the Base Layer, the Middle Layer, the Upper Layer and the Top Layer.

For a detailed analysis, please refer to the [JSA Prism of November 2023](#).

## **Regulations governing the Investor Protection and Education Fund (“IEPF”)**

SEBI, *vide* notification dated October 20, 2023, has issued the SEBI (IEPF) (Second Amendment) Regulations, 2023. The said regulations amend the SEBI (Investor Protection and Education Fund) Regulations, 2009 (“**IEPF Regulations**”) *inter alia* as follows:

1. the following amounts must be credited to the IEPF: (a) monies transferred in accordance with the regulation 61A (3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”); (b) monies transferred in accordance with regulation 18 (16) (f) of the SEBI (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”); (c) monies transferred in accordance with regulation 18 (6) (e) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“**InvIT Regulations**”); and
2. the amounts disgorged and credited to the IEPF in accordance with regulation 4 (1) (h) of the IEPF Regulations and the interest accrued thereon must, in cases where the SEBI deems fit to make restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws or for rewarding informants who provide original information to the SEBI to recover amounts directed to be disgorged, be utilised only for the purposes of such restitution or reward.

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*guidelines or directions of Government of India; iv. borrowings arising on account of interest capitalization; and v. borrowings for the purpose of schemes of arrangement involving mergers, acquisitions and takeovers. It is also clarified that the qualified borrowings for a FY will be determined as per the audited accounts for the year filed with the stock exchanges.*

## Permissible transactions for rupee account by persons resident outside India

The RBI, *vide* notification dated October 16, 2023, has issued the Foreign Exchange Management (Debt Instruments) (Second Amendment) Regulations, 2023 granting permission to persons resident outside India who maintain a rupee account, to purchase or sell dated government securities/ treasury bills, as per the prescribed terms. The amount of consideration for purchase of such instruments must be paid out of funds held in their rupee account and the sale/ maturity proceeds (net of taxes, as applicable) of instruments must be credited to the said rupee account.

## Review of Financial Information Provider (“FIP”) under Account Aggregator (“AA”) Framework

The RBI, *vide* circulars dated October 26, 2023, has decided:

1. to replace ‘Pension Fund’ with ‘Central Recordkeeping Agency’ as the financial information provider in the AA ecosystem; and
2. that regulated entities of the RBI joining the AA ecosystem as ‘Financial Information User’ must necessarily join as FIP also if they hold the specified financial information and fall under the definition of FIP.

Accordingly, the Master Directions – NBFC - Account Aggregator (Reserve Bank) Directions, 2016, have been modified.

## Appointment of whole-time directors by banks

On October 25, 2023, the RBI has directed the private sector banks and wholly owned subsidiaries of foreign banks (excluding payment banks and local area banks) to strengthen their senior management by having at least two whole-time directors, including the managing director and chief executive officer. Further, the banks that do not meet the minimum requirement as aforesaid will have to submit proposals for appointments within four months of the date of the circular.

## RBI’s new guidelines to govern payment aggregators in cross-border transactions

On October 31, 2023, the RBI has notified new guidelines (“**PA-CB Guidelines**”) to regulate entities that process online cross-border payments for import and export of goods and services. Until now, these entities were called online payment gateway service providers (“**OPGSP**”). Now, they will be regulated as ‘Payment Aggregators – Cross Border’ (“**PA-CB**”). PA-CB activities are classified into the following 3 categories: (a) export only PA-CB; (b) import only PA-CB; and (c) export and import PA-CB.

Most notably, PA-CBs will need RBI’s license to operate. Existing OPGSPs need to apply for the license by April 30, 2024. Interestingly, non-bank PA-CBs are also required to register with the Financial Intelligence Unit-India before registering with the RBI. The PA-CB Guidelines replace the draft Online Export Import Facilitators Directions issued in April 2022 which was abandoned by RBI post consultations with industry stakeholders.

For a detailed analysis, please refer to the [JSA Prism of November 2023](#).

## Exemptions from moratorium under Section 14(1) of the IBC

On October 3, 2023, the Ministry of Corporate Affairs (“**MCA**”) issued a notification exempting transactions, arrangements or agreements under the the Convention on International Interests in Mobile Equipment together with Protocol on Matters Specific to Aircraft Equipment (“**Cape Town Convention**”), relating to aircraft, aircraft engines, airframes and helicopters from moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

The Cape Town Convention is an international instrument that *inter alia* establishes a set of minimum guarantees reflecting the principles of asset-based financing and leasing agreements pertaining to mobile equipment, including “airframes, aircraft engines and helicopters”. India became a signatory to the Cape Town Convention in 2008. Notably, though India acceded to the Cape Town Convention in 2008, it has not yet ratified it.

## 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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