



JSA Corporate InVision

December 2023

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Revised framework for computation of Net Distributable Cash Flow (“NDCF”) by Infrastructure Investment Trusts (“InvITs”)/ Real Estate Investment Trusts (“REITs”)

SEBI, *vide* circular dated December 6, 2023, has revised the framework for calculation of NDCF by InvITs/ REITs and their HoldCo/ SPVs to standardize the calculation of NDCF. The InvIT/ REIT along with its SPVs will also need to ensure that minimum 90% distribution of NDCF is met for a given financial year on a cumulative periodic basis as specified for mandatory distributions in the InvIT/ REIT regulations. Further, any restricted cash (disclosed as such) should not be considered for NDCF computation by the SPV, REITs or InvITs. The revised framework will be effective from April 1, 2024 and supersede the earlier framework dated July 6, 2023.

Dematerialisation of units issued by Alternative Investment Funds (“AIFs”)

SEBI circular dated December 11, 2023, specifies process and stipulates timelines to be followed for crediting the existing units or new units that are to be issued, in demat form, in cases where investors are yet to provide their demat account details to AIFs and also in cases where investors have provided their demat account details to AIFs. The circular inter alia provides that units already issued by schemes of AIFs to existing investors who have not provided their demat account details, are required to be credited to a separate demat account named “Aggregate Escrow Demat Account”. This account is permitted for the sole purpose of holding demat units of AIFs on behalf of investors. New units to be issued in demat form must be allotted to such investors and credited to the Aggregate Escrow Demat Account. As and when such investors provide their demat account details to the AIF, their units held in Aggregate Escrow Demat Account should be transferred to the respective investors’ demat accounts within 5 (five) working days. No transfer of units of AIFs from/within Aggregate Escrow Demat Account will be allowed, except as above.

For a detailed analysis, please refer to the [JSA Prism of January 5, 2023](#).

Principles of Financial Market Infrastructures (“PFMIs”)

SEBI, *vide* circular dated December 19, 2023, has issued further directions with respect to PFMIs. These principles apply to systematically important Financial Market Infrastructures (“FMI”) entities. The aim of the PFMIs is to enhance safety and efficiency in payment, clearing, settlement, and recording arrangements; reduce systemic risk; foster

transparency and financial stability; and promote protection of participants and investors. The PFMI issued earlier in April 2012 comprise of 24 (twenty-four) principles. FMIs are now required to carry out self-assessment on a periodic basis against the PFMI and disclose the same on their websites. For this purpose, the 24 (twenty-four) principles for FMIs have been classified as 'quantitative' and 'qualitative' and their applicability for respective FMIs has been prescribed. The circular has become effective from the quarter end of December 2023.

Zero Coupon Zero Principal Instruments

SEBI, *vide* notification dated December 21, 2023, has issued the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2023. The amendment provides that the procedure of public issuance of Zero Coupon Zero Principal Instruments by a Not-for-Profit Organization ("NPO") as well as the contents of the fund raising document will be as per the conditions specified by SEBI.

Framework on Social Stock Exchange ("SSE")

SEBI, *vide* circular dated December 28, 2023, has made amendments to facilitate the implementation of the SSE framework. The key provisions are as follows:

1. NPOs are required to, through the lead manager(s), file the draft fund-raising document with the SSE where it is registered, along with the fees as specified by the SSE and an application seeking in-principle approval for listing of its Zero Coupon Zero Principal Instruments on the SSE;
2. the draft fund-raising document and the final fund-raising document should contain all material disclosures which are true and adequate and other such disclosures as may be specified by SEBI to enable the applicants to take an informed decision;
3. Zero Coupon Zero Principal Instruments are required to be issued in dematerialized form only. The Zero Coupon Zero Principal Instruments will not be transferable from the original subscriber/ holder till the expiry of the tenure of the said instrument. Further, the minimum issue size is required to be INR 50,00,000 (Indian rupees fifty lakhs) and the minimum application size is required to be INR 10,000 (Indian rupees ten thousand); and
4. the minimum subscription required to be achieved will be 75% of the funds proposed to be raised through issuance of Zero Coupon Zero Principal Instruments, and in case the subscription is less than 75% of the issue size, the funds will have to be refunded.

Social Enterprise to submit annual impact report

SEBI, *vide* notification dated December 21, 2023, has issued the SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2023. It provides that the annual impact report that is required to be submitted by a social enterprise, which is either registered with or has raised funds through a SSE or a stock exchange, should be assessed by a Social Impact Assessment Firm employing Social Impact Assessors.

CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)

CCPA issues Guidelines for Prevention and Regulation of Dark Patterns, 2023

CCPA notified the Guidelines for Prevention and Regulation of Dark Patterns, 2023 ("Guidelines") on November 30, 2023. The Guidelines intend to prohibit the use of dark patterns in designing User Interface and User Experience that manipulate users. Further, the Guidelines urge entities to retain users and drive sales using ethical and consumer-centric approaches.

For a detailed analysis, please refer to the [JSA Prism of December 5, 2023](#).

RESERVE BANK OF INDIA (RBI)

Restrictions on investments in AIFs by Regulated Entities ("REs")

RBI, *vide* circular dated December 19, 2023, issued instructions ("Instructions") for regulating investments in AIFs by banks and financial institutions. The key provisions are as follows:

1. REs are prohibited from making investments in any scheme of AIFs which has 'downstream investments' either directly or indirectly 'in a debtor company of the RE'. Debtor company of the RE, for this purpose, means any company to which the RE currently has or previously had a loan or investment exposure anytime during the preceding 12 (twelve) months;
2. if an AIF scheme, in which the relevant RE is already an investor, makes a 'downstream investment' in any such debtor company, then the RE must liquidate its investment in the scheme within 30 (thirty) days from the date of such downstream investment by the AIF. If investment by the REs into such schemes has already been done as on the date of the Instructions, then the 30 (thirty) days period for divestment will be counted from the date of the Instructions. In case the REs are not able to liquidate their investments within the time limit prescribed under the Instructions, then they are required to make 100% provisions on such investments; and
3. investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model', i.e., where one class of investors bear more loss pro rata than their holding in the AIF vis-à-vis other classes of investors / unit holders, since the later have priority with respect to distribution over former, will be subject to full deduction from RE's capital funds. These priority distribution models are currently pending consideration by SEBI. While the RBI has not prohibited REs from subscribing to these subordinated units, it has prescribed a significant economic disincentive against such investments.

For a detailed analysis, please refer to the [JSA Prism of December 21, 2023](#).

Increase in the transaction limits for e-mandates

RBI, *vide* circular dated December 12, 2023, has outlined crucial updates regarding the processing of e-mandates for recurring transactions. It has been decided to increase the limit for e-mandates from INR 15,000 (Indian rupees fifteen thousand) to INR 1,00,000 (Indian rupees one lakh) per transaction for the following categories: (a) subscription to mutual funds, (b) payment of insurance premiums, and (c) credit card bill payments. Additionally, the limit prescribed for additional factor of authentication (AFA) while processing e-mandates / standing instructions on cards, prepaid payment instruments and Unified Payments Interface (UPI) for subsequent recurring transactions has been relaxed from INR 15,000 (Indian rupees fifteen thousand) to INR 1,00,000 (Indian rupees one lakh). The circular has come into effect immediately.

Manner of receipt and payment in foreign exchange

RBI, *vide* circular dated December 21, 2023, has issued the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023, in supersession of Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. The key requirements are as follows:

1. receipt and payment in case of exports/imports are required to be made as follows: (a) Nepal and Bhutan – In Indian rupees, except in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency, where such receipts towards the amount of the export may be in foreign currency; (b) members of ACU (except Nepal and Bhutan) – through ACU mechanism or as per the directions issued by the RBI to authorised dealer from time to time; and (c) other Countries – In Indian rupees or any foreign currency; and

2. receipt and payment in case of other transactions are required to be made as follows: (a) Nepal and Bhutan - In Indian Rupees provided that in case of overseas investment in Bhutan, payment may also be made in foreign currency; and (b) other Countries – In Indian rupees or any foreign currency.

Minimum Holding Period (“MHP”) exemption for transfer of receivables by banks

RBI, *vide* circular dated December 28, 2023, has clarified that the transfer of receivables (loans) by eligible transferors will be exempt from the MHP requirement, i.e., minimum period for which a transferor is required to hold the loan exposures before the same is transferred to transferee(s) in order to develop secondary market operations of receivables acquired as part of ‘factoring business’. This will be subject to fulfilment of the following conditions:

1. the residual maturity of such receivables, at the time of transfer, should not exceed 90 (ninety) days, and
2. the transferee should conduct a proper credit appraisal of the drawee of the bill, before acquiring such receivables.

MINISTRY OF COMMERCE AND INDUSTRY (MCI)

Jan Vishwas (Amendment of Provisions) Act, 2023

MCI, *vide* notification dated December 7, 2023, announced that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 with respect to the Industries (Development and Regulation) Act, 1951, have come into effect from December 12, 2023.

JSA Updates

Unstamped or insufficiently stamped arbitration agreements are not rendered void or void ab initio

A 7 (seven) judge bench of the Hon’ble Supreme Court of India (“**Supreme Court**”) has observed in the case *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, that non-stamping of the arbitration agreement does not make the agreement void or unenforceable but makes it inadmissible in evidence. However, the same is a curable defect as per the Indian Stamp Act, 1899 (“**Stamp Act**”). An earlier constitution bench decision of the Supreme Court in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* and a 2 (two) judge bench decision of the Supreme Court in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.* that had held that an unstamped agreement is not a “contract” and by virtue of Section 2(g) of the Indian Contract Act, 1872 it is also “void”, was overruled by the Supreme Court in this case. The Supreme Court therefore held that arbitration clauses in unstamped or inadequately stamped agreements are enforceable.

For a detailed analysis, please refer to the [JSA Prism of December 27, 2023](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair 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.

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<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p> <p>-----</p> <p>Employer of Choice 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

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