



December 2023

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

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

Securities and Exchange Board of India (“SEBI”) circular dated December 11, 2023, specifies the process and stipulates the 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 the “**Aggregate Escrow Demat Account**”. This account will be opened 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](#).

Restrictions on investments in AIFs by Regulated Entities (“REs”)

The Reserve Bank of India (“RBI”), vide circular dated December 19, 2023 (“**Investments in AIFs Circular**”), issued 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 that 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 Investments in AIFs Circular, then the 30 (thirty) days period for divestment will be counted from the date of the Investments in AIFs Circular. In case the REs are not able to liquidate their investments within the time limit prescribed under the Investments in AIFs Circular, 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 loss more than pro rata to their holding in the AIF vis-à-vis other classes of investors

/ unit holders, since the later have priority with respect to distribution over the former, will be subject to full deduction from the RE's capital funds. These priority distribution models are currently pending consideration by the SEBI. While the RBI has not prohibited REs from subscribing to these subordinated units, however, the RBI has prescribed a significant economic disincentive against such investments.

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

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 ("**Receipt and Payment Regulations 2023**"), for the purpose of rationalizing the process of payments and receipts involving Indian residents and non-residents. The Receipt and Payment Regulations 2023, have superseded the RBI notification dated May 2, 2016, titled the 'Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. The key provisions are as follows:

1. no person resident in India must make or receive payment from a person resident outside India, provided that the RBI may, on an application made to it, permit a person resident in India to make or receive payment under the Foreign Exchange Management Act, 1999;
2. the receipt and payment between a person resident in India and a person resident outside India must, unless provided otherwise, be made through an authorised bank or authorised person and in the prescribed manner; and
3. the Receipt and Payment Regulations 2023 prescribe the currency in which receipt and payments are to be made with respect to trade transactions, transactions other than trade transactions and current account transactions.

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) acquired as a part of 'factoring business' as defined under the Factoring Regulation Act, 2011, 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), 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.

Extension of timeline for implementing the new guidelines on penal charges in loan accounts

The RBI had, *vide* circular dated August 18, 2023, titled 'Fair Lending Practice – Penal Charges in Loan Accounts' ("**RBI August 18 Circular**"), issued various guidelines to the regulated entities to ensure reasonableness and transparency in disclosure of penal interest in loan accounts.

As per the RBI August 18 Circular, the instructions stated therein would come into effect on January 1, 2024. Regulated entities were required to carry out appropriate revisions in their policy framework and ensure implementation of the instructions in respect of all the fresh loans availed/ renewed from the effective date. In the case of existing loans, the switchover to the new penal charges regime would need to be done on next review or renewal date of the loans or six months from the effective date of the RBI August 18 Circular, whichever was earlier.

The RBI has, *vide* circular dated December 29, 2023, titled 'Fair Lending Practice – Penal Charges in Loan Accounts: Extension of Timeline for Implementation of Instructions', extended the timeline for implementation of the instructions by 3 (three) months to April 1, 2024, for all fresh loans availed. In the case of existing loans, the switchover to the new penal charges regime will need to be done on the next review/ renewal date of the loan falling on or after April 1, 2024, but not later than June 30, 2024.

The RBI has also issued a set of frequently asked questions on its website to provide clarifications in relation to the implementation of the instructions.

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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<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 ----- Banking & Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Innovative Technologies Law Firm of the Year 2023 ----- 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 ----- 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 ----- Top 10 Best Law Firms for Women in 2022</p>	

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