August - September 2024

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance, funds and insolvency space for the months of August and September 2024.

Directions on cyber resilience and payment security controls for payment system operators

The Reserve Bank of India ("**RBI**"), *vide* circular dated July 30, 2024, issued the Master Directions on 'Cyber Resilience and Digital Payment Security Controls' for non-bank Payment System Operators ("**PSOs**"). They apply to all authorised non-bank PSOs and aim to improve the safety and security of the payment systems operated by PSOs by providing a framework for overall information security preparedness with an emphasis on cyber resilience. These directions cover areas including information security policies, cyber crisis management plans, risk assessment, network security, application security, vendor risk management, data security, incident response, and business continuity planning.

The existing instructions on security and risk mitigation measures for payments done using cards, prepaid payment instruments and mobile banking continue to be applicable as hitherto.

The directions will be implemented in the following phased manner:

1. for large non-bank PSOs: April 1, 2025;
2. for medium non-bank PSOs: April 1, 2026; and
3. for small non-bank PSOs: April 1, 2028.

Sovereign Green Bonds

Amendments to the Foreign Exchange Management (Debt Instruments) Regulations, 2019 permitting purchase of sovereign green bonds

By way of gazette notification dated August 7, 2024, the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024, has been notified amending the Foreign Exchange Management (Debt Instruments) Regulations, 2019. Pursuant to the amendment, persons resident outside India maintaining a securities account with a depository in International Financial Services Centres ("**IFSCs**") are permitted to purchase sovereign green bonds in IFSCs in India. The amount of consideration for purchase of sovereign green bonds issued by the Government must be paid out of inward remittance from abroad through banking channels or out of funds held in a foreign currency account maintained in accordance with the regulations issued by RBI and/or the International Financial Services Centres

Authority ("**IFSCA**"). The sale/maturity proceeds, net of taxes, as applicable, of instruments held by persons resident outside India may be remitted outside India.

Pursuant to the amendment, on August 29, 2024, RBI issued the scheme for trading and settlement of sovereign green bonds in IFSCs in India ("**Scheme**").

The details of the Scheme are as follows:

1. the Scheme will apply to investments in sovereign green bonds issued by the Government by eligible investors in IFSCs in India;
2. the following persons will be eligible to participate in the Scheme:
    a) persons resident outside India as defined in Section 2(w) of the Foreign Exchange Management Act, 1999, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in high-risk jurisdictions subject to a Call for Action as identified by the Financial Action Task Force ("**FATF**");
    b) an IFSCA Banking Unit ("**IBU**") of a foreign bank which does not have a branch or subsidiary licensed to undertake banking business in India; and
    c) persons resident outside India as treated under Foreign Exchange Management (IFSCs) Regulations, 2015, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in high-risk jurisdictions subject to a Call for Action as identified by FATF provided that such persons are not a branch, joint venture, subsidiary or trust of an entity incorporated in India. However, funds/schemes, including the ones setup by entities incorporated in India, regulated by IFSCA under the IFSCA (Fund Management) Regulations, 2022 are considered as eligible investors;
3. investors can participate in the primary auctions of securities undertaken by RBI and transact in the secondary market for securities in the IFSC, as per the terms and conditions defined in the Scheme;
4. eligible IBUs are not permitted to participate in the primary auctions under the Scheme. Eligible IBUs can undertake transaction in the secondary market as per the terms and conditions defined in the Scheme; and
5. the Scheme mandates adherence to strict 'know your customer' and 'anti-money laundering' standards, as well as comprehensive reporting and data management requirements to ensure transparency and regulatory compliance.

Further, IFSCA, *vide* circular September 24, 2024, detailed the investors eligible to participate in the Scheme and the process of participation through the primary and secondary market.

Frequency of reporting of credit information by credit institutions to credit information companies

RBI, *vide* notification dated August 8, 2024, has changed the frequency for updating and processing of credit information by Credit Information Companies (**"CICs**") and Credit Institutions (**"CIs**"). Accordingly:

1. CICs and CIs are now required to keep the credit information collected/maintained by them updated regularly on a fortnightly basis (i.e., as on 15th and last day of the respective month) or at such shorter intervals as mutually agreed upon between the CI and the CIC;
2. the fortnightly submission of credit information by CIs to CICs must be ensured within 7 (seven) calendar days of the relevant reporting fortnight;
3. CICs are required to ingest credit information data received from the CIs, as per their data acceptance rules, within 5 (five) calendar days of its receipt (*earlier this was 7 (seven) calendar days*); and
4. CICs are required to report non-compliant CIs to RBI at half yearly intervals (as on March 31 and September 30 each year).

These instructions will be effective from January 1, 2025.

Housing Finance Companies

Review of regulatory framework for housing finance companies and harmonisation of non-banking finance companies

Following the transfer of regulatory authority of Housing Finance Companies ("**HFCs**") from National Housing Bank to RBI with effect from August 9, 2019, various regulations have been issued treating HFCs as a category of Non-Banking Finance Companies ("**NBFCs**"). RBI, *vide* circular dated August 12, 2024, has outlined the revised regulatory frameworks for HFCs and NBFCs in order to harmonise the regulations applicable to HFCs and NBFCs.

The revised regulatory frameworks have introduced changes affecting several key areas, which are as follows:

1. **Public deposit acceptance and associated requirements**: HFCs must adhere to the same rules as deposit-taking NBFCs regarding public deposits. This includes maintaining higher liquid assets, aligning safe custody practices with that applicable to NBFCs, ensuring full asset coverage for public deposits and adherence to prudential norms and minimum investment grade credit rating requirements as specified under these regulations. HFCs exceeding revised deposit limits must stop accepting or renewing deposits until they comply with the limits. They are required to notify the National Housing Bank if asset coverage falls short of the liability on account of public deposits.
2. **Restrictions on investments and risk management**: New regulations impose limits on investments in unquoted shares and enhance the risk management framework for HFCs, covering currency derivatives, interest rates futures, and credit default swaps. The updated framework also allows HFCs to issue co-branded credit cards.
3. **Branch operations and appointment of agents**: HFCs must now follow regulations pertaining to opening of branches and agent appointments for deposit collection, similar to those for NBFCs, aiming to standardise practices across sectors.

These revised regulations will be applicable from January 1, 2025.

Review of risk weights for HFCs

RBI, on August 12, 2024, notified certain modifications to the to the Master Direction – NBFC – HFC (Reserve Bank) Directions, 2021:

1. **Risk weighted assets for undisbursed amount of housing loans/other loans**: The risk weighted assets computed for undisbursed amount of housing loans/other loans as per step 1 and step 2 of paragraph 6.3.1 of the afore-said Maaster Direction (which deals with calculation of risk weights for off-balance sheet credit exposures), are now capped at the risk weighted asset computed on a notional basis for equivalent amount of disbursed loan.
2. **Risk weight for Commercial Real Estate – Residential Building**: The risk weight of fund- based and non-fund based exposures to 'commercial real estate-residential building', which are classified as standard, will be 75%. Further, for exposures under this category, which are not classified as standard, the risk weight will be as per the category 'Other Assets (Others)' (*which presently is at 100%*).

Directions regarding various aspects of functioning of NBFC - peer to peer lending platforms

RBI, *vide* circular dated August 16, 2024, has amended and modified the Directions for Peer-to-Peer ("**P2P**") Lending Platforms ("**Directions**") contained in the Master Direction – NBFC – P2P Lending Platform (Reserve Bank) Directions, 2017.

These Directions have been formulated after observing certain irregular practices in the industry that violated earlier regulations. The Directions focus on several critical aspects of P2P lending, including:

1. **Credit risks and funds deployment**: NBFC-P2P lending platforms are not responsible for credit risks; lenders must bear any loss of principal or interest. These platforms must disclose that lenders assume all credit risks and must ensure funds are deployed strictly as per the Directions. No NBFC-P2P must cross-sell products except for certain loan specific insurance products.
2. **Pricing policies**: NBFC-P2P platforms must adopt clear and objective pricing, disclose fees at lending time, and ensure fees remain fixed regardless of borrower repayment ability. Platforms are also restricted from sourcing borrowers and lenders through affiliates or closed groups to ensure transparency.
3. **Lender's aggregate exposure cap**: A lender's total exposure to INR 50,00,000 (Indian Rupees fifty lakh) across all platforms provided that the amount lent by the lenders on P2P platforms is consistent with their net-worth. If a lender's exposure exceeds INR 10,00,000 (Indian Rupees ten lakh) across P2P platforms, they must provide a chartered accountant's certificate proving a minimum net worth of INR 50,00,000 (Indian Rupees fifty lakh).
4. **Fund transfer through escrow account**: Funds managed via escrow accounts on NBFC-P2P platforms must be transferred within one business day (T+1) of receipt, improving efficiency and ensuring faster access to funds for both lenders and borrowers.
5. **No guarantees**: NBFC-P2P platforms are barred from guaranteeing loan recovery or marketing P2P lending as an investment product with tenure linked assured minimum returns or liquidity options, following RBI inspections that uncovered rule violations and misleading practices.
6. **Disclosures**: NBFC-P2P platforms are required to publicly disclose in its website all losses borne by the lenders on principal or interest or both. NBFC-P2P platforms are also required to disclose to the lenders details about the borrower(s), including identity (with his/her consent), interest rates, and credit scores.

Discontinuation of submission of liberalised remittance scheme monthly return

RBI, *vide* circular dated September 6, 2024, discontinued the requirement for submission of Liberalised Remittance Scheme ("**LRS**") monthly return by AD Category-I banks. Accordingly, from the reporting month of September 2024, AD Category-I banks will not submit the LRS monthly return.

AD Category-I banks will henceforth be required to upload only transaction-wise information under the LRS daily return at the close of business of the next working day on the Centralised Information Management System (CIMS) portal. In case no data is to be furnished, AD Category-I banks will upload a 'NIL' report.

Central Government notifies key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019

The Department of Economic Affairs of the Ministry of Finance, *vide* notification dated August 16, 2024 ("**Notification**") issued the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024. The amendments follow from the union budget announcement to simplify rules and regulations governing Foreign Direct Investment ("**FDI**") and Overseas Direct Investment ("**ODI**"). The amendments introduced pursuant to the Notification signify a welcome and much-awaited initiative. They not only remove certain limitations that previously existed under the cross-border investment framework but also bring regulatory clarity to the rules governing FDI and ODI. Particularly, the amendments relating to cross-border share swaps are expected to provide an important push for non-cash strategic transactions undertaken by Indian companies.

For a detailed analysis, please refer to the JSA Prism of August 22, 2024.

International Financial Services Centres Authority

Enabling credit rating agencies to undertake additional activities relating to 'Environmental, Social and Governance' ratings and data products providers

IFSCA issued a circular on July 31, 2024, permitting Credit Rating Agencies ("**CRAs**") to provide services relating to Environmental, Social and Governance ("**ESG**") ratings and ESG data products, as follows:

1. **ESG ratings**: ESG ratings will include the broad spectrum of rating products relating to sustainable finance and include ESG scorings, ESG rankings, sector ESG ratings, and thematic scores.
2. **ESG data products**: ESG data products will include products and services relating to ESG-related information.

CRAs may provide ESG ratings and ESG data products services for any financial product or security or to an issuer (including a sovereign or a multilateral institution) or a financial institution in IFSC or any foreign jurisdiction. CRAs must adhere to the prescribed code of conduct relating to ESG ratings and ESG data products.

IFSCA notifies new listing regulations

By way of gazette notification dated August 20, 2024, the IFSCA (Listing) Regulations, 2024 ("**Listing Regulations**") has been notified. The Listing Regulations provide the regulatory framework for listing of specified securities, debt securities, depository receipts and other permitted financial products on the recognised stock exchanges in IFSCs in India.

The Listing Regulations will apply to:

1. an initial public offer of specified securities by an unlisted entity;
2. a follow-on public offer of specified securities by a listed entity;
3. an initial public offer of specified securities by a special purpose acquisition company;
4. a rights issue or a preferential issue or a qualified institutions placement of specified securities by a listed entity;
5. issuance and listing of depository receipts by an entity;
6. issue and listing of debt securities by an entity;
7. secondary listing of securities by an entity; and
8. listing of commercial paper or certificates of deposit or other financial products as permitted by IFSCA.

Amendment to additional disclosures by Foreign Portfolio Investors

The Securities and Exchange Board of India ("**SEBI**"), *vide* circular dated August 1, 2024, has amended the master circular for Foreign Portfolio Investors ("**FPIs**"), Designated Depository Participants and Eligible Foreign Investors' dated May 30, 2024, that included *inter alia* certain additional disclosures for FPIs pertaining to persons having any ownership, economic interest, or control of an FPI. Pursuant to the amendment, university funds and university related endowments, registered or eligible to be registered as Category I FPI, are not required to make the additional disclosures as prescribed under the aforesaid master circular, subject to them fulfilling the following conditions:

1. Indian equity Assets Under Management ("**AUM**") being less than 25% of global AUM;
2. global AUM being more than INR 10,000 crore (Indian Rupees ten thousand crore) equivalent; and
3. appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

Alternative Investment Funds

Streamlining operational practices for Alternative Investment Funds

By way of gazette notification dated August 6, 2024, the SEBI (Alternative Investment Funds) ("**AIF**") (Fourth Amendment) Regulations, 2024 has been notified. Some of the key amendments carried out to the SEBI (AIF) Regulations, 2012 are as follows:

1. a Large Value Fund ("**LVF**") for accredited investors is permitted to extend its tenure up to 5 (five) years (*earlier this was 2 (two) years*) subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Further, the extension in tenure of any existing scheme of a LVF for accredited investors will be subject to such conditions specified by SEBI from time to time; and
2. Category I/Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the 'Harmonised Master List of Infrastructure' issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions specified by SEBI from time to time.

Further, *vide* circular dated August 19, 2024, SEBI has issued guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs for accredited investors.

Category I and Category II AIFs (subject to the prescribed conditions) are allowed to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies. They must maintain 30 (thirty) days cooling off period between 2 (two) periods of borrowing permitted as per the SEBI (AIF) Regulations, 2012, which must be calculated from the date of repayment of previous borrowing.

An LVF may extend its tenure up to 5 (five) years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and subject to the prescribed conditions, such as:

1. existing LVF schemes who have not disclosed definite period of extension in their tenure in the private placement memorandum or whose period of extension in tenure is beyond the permissible 5 (five) years, must align the period of extension in tenure with the requirement above, within 3 (three) months from the date of this circular, i.e., on or before November 18, 2024; and
2. while realigning the period of extension in tenure, LVF schemes must have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Modification in framework for valuation of investment portfolio of Alternative Investment Funds

SEBI, *vide* circular dated September 19, 2024, has issued modifications to the valuation framework for Alternative Investment Funds ("**AIFs**") contained in the Master Circular for AIFs dated May 7, 2024 (which consolidates various circulars issued by SEBI under the SEBI (Alternative Investment Funds) Regulations, 2012).

Some of the key amendments are as follows:

1. valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**"), must be carried out as per the norms prescribed under the MF Regulations;
2. change in valuation methodology/approach to comply with the provisions of the 'standardised approach to valuation of investment portfolio of AIFs' will not be construed as a 'Material Change'. Further, change in methodology/approach within the valuation guidelines/valuation norms prescribed for AIFs, will also not be construed as a 'Material Change'. However, upon such change, the valuation of the investment carried out based on valuation methodologies/approaches, both old and new, must be disclosed to the investors to ensure transparency;

3. the eligibility criteria for an independent valuer for a partnership entity or company has been included as follows: (a) such entity or company must be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India; and (b) the deputed/authorised person(s) of such 'Registered Valuer Entity', who undertake(s) the valuation of the investment portfolio of AIFs, must have a membership of ICAI, ICSI, ICMAI or a CFA Charter from the CFA Institute; and
4. the timeline for AIFs to report valuation based on audited data of investee companies as on March 31 to performance benchmarking agencies has been increased from 6 (six) to 7 (seven) months.

Real Estate Investment Trusts and Infrastructure Investment Trusts

Board nomination rights to unitholders of Real Estate Investment Trusts and Infrastructure Investment Trusts

SEBI, *vide* circulars dated August 6, 2024, has amended the Master Circulars for Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvITs**") both dated May 15, 2024 ("**Master Circulars**"), in relation to the right to nominate a nominee director. The Master Circulars provided that eligible unitholder(s) are entitled to nominate 1 (one) unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate 1 (one) or more directors on the board of directors of the manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the manager or lender to the manager or the REIT/InvIT (or its holding company(ies) or special purpose vehicles), then such entity in its capacity as unitholder, is not entitled to nominate or participate in the nomination of a unitholder nominee director. Pursuant to the amendment, a proviso is inserted stating that the above restriction relating to the right to nominate a unitholder nominee director will not be applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)e) of the SEBI (Debenture Trustees) Regulations, 1993.

On August 22, 2024, SEBI further amended the Master Circulars to promote ease of doing business by amending provisions related to the review of statement of investor complaints and timeline for disclosure of statement of deviation(s). Some of the key amendments are as follows:

1. all complaints including SEBI Complaints Redress System (SCORES) complaints received by the InvITs/REITs must be disclosed on the website of the InvIT/REITs and are also filed with the recognised stock exchange(s). The statement must be placed, on a quarterly basis (*earlier, this was to be reviewed before submission to the stock exchange*), before the board of directors/governing body of the investment manager/manager and the trustee for review; and
2. the statement of deviation or variation in the use of proceeds must be submitted to the stock exchange(s) along with the submission of the financial results *(earlier such submission was to be made within 21 (twenty-one) days from the end of each quarter).*

SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, has notified the SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2024 amending the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**"). The amendments relate to the trading lot for trading units, timeline for making distributions, as well as voting thresholds.

Some of the key amendments are as follows:

1. with respect to listing of privately placed units, the trading lot for the purpose of trading of units on the designated stock exchange will be INR 25,00,000 (Indian Rupees twenty-five lakh) (*earlier this was* INR 1,00,00,000 (Indian Rupees one crore));

2. with respect to distributions to be made by the InvITs and the holding company and/or special purpose vehicle, such distributions (a) in case of publicly offered InvITs, must be declared not less than once every six months in every financial year; (b) in case of privately placed InvITs must be declared not less than once every financial year; and (c) must be made within 5 (five) working days from the 'record date' (*earlier this was 15 (fifteen) days from the date of the declaration)*;

3. with respect to any matter requiring approval of the unit holders, the voting threshold specified under the InvIT Regulations, must be calculated on the basis of unit holders present and voting (and the unit holders voting through the electronic voting facility and postal ballot will be counted for determination of unit holders present and voting);

4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI;

5. REITs are permitted to hold a meeting for unit holders after providing shorter notice (i.e., lesser than 21 (twenty one) days), so long as consent is obtained in writing or electronically:

   a) in case of an annual meeting, by not less than 95% of the unit holders entitled to vote thereat; and

   b) in case of any other meeting, by majority of the unitholders of the scheme in number entitled to vote thereat and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting; and

6. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

SEBI (Real Estate Investment Trusts) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, has notified the SEBI (Real Estate Investment Trusts) (Third Amendment) regulations, 2024 amending the SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REIT Regulations**"). The amendments relate to the timeline for making distributions as well as voting thresholds.

Some of the key amendments are as follows:

1. with respect to distributions made by the REITs and the holding company and/or special purpose vehicle, such distributions must be declared at least once every 6 (six) months in every financial year and must be made within 5 (five) working days from the 'record date' (*earlier this was 15 (fifteen) days from the date of the declaration;*);

2. with respect to distributions made by the scheme of small and medium REITs and special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this was 7 (seven) working days from the date of such declaration*);

3. with respect to any matter requiring approval of the unit holders, the voting threshold specified under the REIT Regulations must be calculated on the basis of unit holders present and voting (and the unit holders voting through the electronic voting facility and postal ballot will be counted for determination of unit holders present and voting); and

4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI;

5. REITs are permitted to hold a meeting for unit holders of each scheme after providing shorter notice (i.e., lesser than 21 (twenty one) clear days), so long as consent is obtained in writing or electronically:

a) in case of an annual meeting, by not less than 95% of the unit holders of the scheme entitled to vote thereat; and

b) in case of any other meeting, by majority of the unitholders of the scheme in number entitled to vote thereat and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting; and

6. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

Modalities for migration of Venture Capital Funds

SEBI, *vide* notification dated August 19, 2024, has issued modalities for migration of Venture Capital Funds ("**VCFs**") registered under the erstwhile SEBI (VCFs) Regulations, 1996 to the SEBI (AIFs) Regulations, 2012. To initiate the migration, VCFs must submit an application to SEBI, including the original certificate of registration and the prescribed information. The deadline for this application is July 19, 2025.

Conditions for migration includes:

1. schemes whose liquidation period has not expired can migrate provided they continue with either the same tenure upon migration (if such schemes has a definite tenure as disclosed under the private placement memorandum) or such period as may be determined prior to the application for migration with the approval of 75 % of investors by value of their investment in the schemes (if the definite tenure of the scheme was not disclosed under the private placement memorandum of such schemes);
2. VCFs having at least 1 (one) scheme which has not been wound up post expiry of its liquidation period can migrate only if they do not have any unresolved investor complaints with regard to non-receipt of funds/securities and get an additional year to liquidate; and
3. VCFs that do not opt for migration and whose liquidation period has not expired will be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under SEBI (AIFs) Regulations, 2012.

Review of eligibility criteria for entry/exit of stocks in derivatives segment

To ensure that only high quality stocks with sufficient market depth are allowed to trade in derivatives segment and considering the growth witnessed in market parameters since the last review conducted in 2018, SEBI, *vide* circular dated August 30, 2024, revised the eligibility criteria for entry/exit of stocks in derivatives segment. Key changes include raising the Median Quarter Sigma Order Size (over the previous six months, on a rolling basis) from INR 25,00,000 (Indian Rupee twenty-five lakh) to INR 75,00,000 (Indian Rupees seventy-five lakh) and increasing the Market Wide Position Limit (over the previous six months, on a rolling basis) from INR 500,00,00,000 (Indian Rupees five hundred crore) to INR 1,500,00,00,000 (Indian Rupees one thousand five hundred crores). Additionally, stocks must meet higher average daily delivery values benchmarks. Stocks failing to meet these criteria for 3 (three) consecutive months will be removed from the derivatives segment, with a 1 (one) year re-inclusion ban.

Foreign Venture Capital Investors

Amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000 and operational guidelines for Foreign Venture Capital Investors

SEBI, *vide* notification dated September 4, 2024, has notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 amending the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("**FVCI Regulations**"). The amendments will come into effect from January 1, 2025.

Some of the key amendments are as follows:

1. the term 'certificate' has been amended to mean a certificate of registration granted to a foreign venture capital investor ("**FVCI**") by the designated depository participant ("**DDP**") on behalf of SEBI under the FVCI Regulations (*earlier this certificate was* issued by SEBI);
2. provisions pertaining to application for grant of a certificate as an FVCI, have been amended. Among others, no person can buy, sell or otherwise deal in securities as a FVCI unless it has obtained a certificate granted by a DDP on behalf of SEBI;
3. the eligibility criteria of the applicant for grant of certificate of registration as a FVCI has been amended. Among other conditions, (a) the applicant must be an entity incorporated or established outside India or in IFSC; (b) the applicant must be a resident of a country whose securities market regulator is a signatory to the IOSCO's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to a bilateral Memorandum of Understanding with SEBI; and (c) the applicant or its beneficial owners (identified as per the Prevention of Money Laundering (Maintenance of Records) Rules, 2005) should not be persons mentioned in any sanctions list notified by the UN security council and residents of a country identified in the public statement of the FATF as a jurisdiction having a strategic anti-money laundering/combating of financing of terrorism deficiencies to which counter measures apply or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies; and
4. FVCI certificates of registration are permanent unless suspended or cancelled by SEBI or surrendered by the FCVI. However, renewal fees must be paid for every block of 5 (five) years.

SEBI, *vide* circular dated September 26, 2024, has also issued operational guidelines for FVCIs and DDPs pursuant to the amendments. The operational guidelines will come into effect from January 1, 2025

Some of the key guidelines are as follows:

1. existing FVCIs must engage a DDP to avail its services for conducting due diligence with respect to continuance of registration as an FVCI, by March 31,2025. Any FVCI failing to do so, will not be permitted to make any further investments and will liquidate:

   a) investments in listed securities, by March 31, 2026; and

   b) other investments, by March 31, 2027;

   and remittance of the proceeds of such sale will be subject to compliance with applicable 'know your customer' requirements and requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006;
2. post liquidation of investments within the said time-period as above, the FVCI must apply for surrender of its registration within 30 (thirty) days;
3. every DDP will submit monthly reports on the applications received from FVCI applicants to SEBI in the prescribed format; and
4. DDP engaged by an existing FVCI must carry out registration related due diligence and assess compliance of the FVCI with the eligibility criteria within 6 (six) months from the date of engagement.

Reporting by foreign venture capital investors

SEBI, *vide* circular dated September 13, 2024, has revised the format for the quarterly report on venture capital activity to be submitted by an FVCI. From quarter ending March 31, 2025, FVCIs will have to submit quarterly reports in the revised format on the SEBI intermediary portal (SI Portal). The report must be submitted within 15 (fifteen) calendar days from the end of each quarter. FVCIs must submit the quarterly report irrespective of whether any investment has been made or not during such quarter.

Participation of mutual funds in credit default swaps

SEBI, *vide* circular dated September 20, 2024, has decided to allow greater flexibility to mutual funds to both buy and sell Credit Default Swaps ("**CDS**") with adequate risk management. Such flexibility to participate in CDS will serve as an additional investment product for mutual funds and also aid in increasing liquidity in the corporate bond market. The following key changes have been introduced:

1. **Buying CDS**: Mutual fund schemes may buy CDS only for the purpose of hedging their credit risk on debt securities they hold in various schemes. The exposure of CDS should not exceed the respective debt security exposure and such exposure may not be added to the gross exposure of the scheme. If the protected debt security is sold, the corresponding CDS position must be closed within 15 (fifteen) days. Schemes must by CDS only from sellers that have instruments with lowest long-term rating of investment grade and above. Schemes may buy CDS for investment-grade and existing below investment grade debt securities in the portfolio, if any.
2. **Selling CDS**: Mutual fund schemes can now sell CDS only as part of the synthetic debt securities, i.e., covered with cash, government securities, or T-bills. Overnight and liquid schemes cannot sell CDS contracts. Requirements to ensure cover have been prescribed and the value of the cover kept must be reviewed daily.
3. **Limits and exposure**: The exposure from CDS (notional amount of both, CDS bought and sold) must not exceed 10% of a scheme's AUM and must comply with overall derivative limits set out in the scheme information document.
4. **Valuation and accounting**: The Association of Mutual Funds in India will issue guidelines in consultation with SEBI for the valuation and accounting of CDS transactions based on a waterfall approach (that may consist of level I – actual traded levels and level II – corporate bond credit spreads).

Parameters for performance evaluation of Market Infrastructure Institutions

SEBI, *vide* circular dated September 24, 2024, has provided the parameters for performance evaluation of Market Infrastructure Institutions (i.e., every recognised stock exchange, recognised clearing corporation and depository) ("**MIIs**") by independent external agencies.

The minimum criteria for the independent external evaluation of performance of MIIs and their weightages are: (a) resilience in technology and processes of MIIs, in delivery of its core functions (40%); (b) investor education and protection (17%); (c) efficient discharge of regulatory role by MII (15%); (d) compliance with regulatory norms (10%); (e) evaluation of governance practices (8%); (f) adequacy of resources (5%); and (g) fair access and treatment to all stakeholders and information disclosure (5%).

SEBI also introduced a rating framework to ensure consistency and transparency in assessments across MIIs. Additionally, SEBI has introduced certain principles for appointment of Independent External Agencies ("**IEA**"), timelines for external evaluation and performance evaluation metrics. Independent externals evaluations must be conducted at at least once in3 (three) years. In selecting an IEA, MIIs must adhere to certain principles, such as obtaining a no objection certificate from SEBI, appointment on such terms and conditions, including fees and timelines, as approved by the governing board of the MII and ensuring there is no conflict of interest in the appointment of the IEA.

The circular has come into force from October 23, 2024.

Usage of unified payments interface by individual investors in public issue of securities through intermediaries

SEBI, *vide* circular dated September 24, 2024, has prescribed that for all individual investors applying in public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments through intermediaries (viz. syndicate members, registered stock brokers, registrar to an issue and transfer agent and depository participants), where the application amount is up to INR 5,00,000 (Indian Rupees five lakh), must only use unified payments interface for the purpose of blocking of funds. Further, individual investors will continue to have the choice of availing other modes (viz. through self-certified syndicate banks and stock exchange platform) for making an application in the public issue.

This circular will be applicable for public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securities debt instruments opening on or after November 1, 2024.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024

The Insolvency and Bankruptcy Board of India ("**IBBI**"), *vide* notification dated September 24, 2024, notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024, to further amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**IBBI IRP Regulations"**).

Some of the key amendments are as follows:

1. the choice of an insolvency professional to act as an authorised representative by a financial creditor (in a class) in the Form CA will not be considered, if the Form CA is received after the time stipulated in the public announcement; and
2. till the application to the adjudicating authority for appointment of the authorised representative for a class of creditors is under consideration before the adjudicating authority, the insolvency professional will act as an interim representative for such class of creditors and will be entitled to attend the meetings of the committee of creditors and will have such rights and duties as that of an authorised representative.

JSA Updates

Corporate insolvency resolution process can be initiated separately and simultaneously against a corporate debtor and a corporate guarantor for the same debt and same default

In the case of ***BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. and Anr.*** [1], the Hon'ble Supreme Court of India held that simultaneous insolvency proceedings against a borrower and a corporate guarantor can be initiated for the same debt and default; and that assets of a subsidiary do not form part of the Corporate Insolvency Resolution Process ("**CIRP**") of its holding company.

For a detailed analysis, please refer to the JSA Prism of August 3, 2024.

[1] Civil Appeal No.4565 of 2021

Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 cannot be numbered or is maintainable against a partnership firm or its partners

On March 6, 2024, the Hon'ble High Court of Karnataka ("**Karnataka HC**"), in the case of ***M/S Manyata Realty vs. The Registrar and Ors***[2], held that the National Company Law Tribunal ("**NCLT**") does not have jurisdiction to entertain a petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") against a partnership firm or its partners. The Karnataka HC declared the filing of the petition as *non-est* and illegal.

For a detailed analysis, please refer to the JSA Prism of August 14, 2024.

Clean slate theory cannot be used to extinguish known claims when the promoter of a micro, small and medium enterprise is a successful resolution applicant under IBC

The Madras High Court ("**Madras HC**") in its recent judgement ***National Sewing Thread Co. Ltd vs. Superintending Engineer TANGEDCO and Anr.***[3], has held that the Clean Slate Theory ("**CST**") does not extinguish undisclosed claims under the resolution plan of the erstwhile promoters or management ("**Promoter Group**"). The Madras HC has further held that in relation to such claims, the Promoter Group is jointly and severally liable. This judgement of the Madras HC is significant since it: carves out an exception for the CST, especially when the Promoter Group of micro, small and medium enterprises are the successful resolution applicant; protects the creditors who did not submit claims during the CIRP for want of knowledge and whose claims were deliberately excluded by the Promoter Group in the resolution plan; and fastens personal liability on the Promoter Group for suppression of claims.

For a detailed analysis, please refer to the JSA Prism of August 20, 2024.

NCLT, Hyderabad (upholding the interests of creditors) permits distribution of surplus funds generated by the corporate debtor during its ongoing CIRP, to its creditors

On August 5, 2024, the NCLT, Hyderabad Bench[4] in the CIRP of KSK Mahanadi Power Company Limited ("**Corporate Debtor**"), has allowed an application filed by the committee of creditors seeking distribution of surplus funds generated by the Corporate Debtor to its creditors, in accordance with Section 53 of IBC[5].

For a detailed analysis, please refer to the JSA Prism of August 20, 2024.

[2] Writ Petition No. 26977 of 2023
[3] W.P. No. 29845 of 2022
[4] In the matter of *M/s. KSK Mahanadi Power Company Limited; Power Finance Corporation Limited, on behalf of the committee of creditors, vs. Mr. Sumit Binani*, Resolution Professional. IA No.1365 of 2024 in CP (IB) No.492/07/HDB/2019
[5] Section 53 of IBC - Distribution of Assets which, *inter alia*, provides for mechanism for distribution of proceeds from the sale of liquidation assets in order of priority specified in Section 53 (1) (a) – (h).

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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