



October 2024

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

Cross border guarantees

The Reserve Bank of India (“**RBI**”) has identified instances where guarantees have been issued by persons residing outside India in favour of persons residing in India, which are not permitted under the Foreign Exchange Management Act, 1999 (“**FEMA**”) and its related regulations. Consequently, RBI, *vide* circular dated October 4, 2024, has issued directions to Authorised Dealer Category-I banks to ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with FEMA and the extant regulations.

Specific due diligence - Alternative Investment Funds

The Securities and Exchange Board of India (“**SEBI**”), *vide* notification dated October 8, 2024, has outlined specific due diligence requirements for Alternative Investment Funds (“**AIFs**”), their managers, and key management personnel with respect to investors and investments of the AIF. Some of the key points are as follows:

1. carrying out due diligence for investments from countries sharing land borders with India, in line with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. For every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by the prescribed investors, necessary due diligence as per the implementation standards formulated by the Standard Setting Forum for AIFs must be carried out prior to the investment;
2. carrying out due diligence prior to Qualified Institutional Buyers (“**QIBs**”) (under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018) availing benefits designed for QIBs and Qualified Buyers (“**QBs**”) (under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) availing benefits designed for QBs, for every scheme of AIFs having an investor or investors belonging to the same group, who contribute(s) 50% or more to the corpus of the scheme. AIFs must ensure that investors who are not eligible for QIB or QB status do not avail of the benefits through the AIF;
3. if an investor of the scheme is an AIF or a fund set up outside India or in International Financial Services Centres (“**IFSCs**”) in India, then the criteria check for investor(s) will be regulated by RBI; and
4. reporting of any existing investments that fail the due diligence checks or confirm compliance by April 7, 2025.

Asset Reconstruction Companies required to submit information to Credit Information Companies

RBI, *vide* circular dated October 10, 2024, has updated applicable guidelines with a view to maintain a track of borrowers' credit history after transfer of loans by banks and non-banking financial companies to Asset Reconstruction Companies ("**ARCs**"). Some of the key features of the guidelines are as follows:

1. ARCs must become members of all Credit Information Companies ("**CICs**") and submit the requisite data to CICs as per the uniform credit reporting format prescribed by RBI;
2. ARCs need to adopt best practices for managing CIC-related activities and have a Standard Operating Procedure ("**SOP**") in place for handling credit information. The SOP should cover essential procedures such as ensuring that all relevant customer and loan information is submitted to CICs, regularly updating records, and reporting repayments without delays;
3. ARCs are required to centralise the issuance of no-objection certificates to avoid issues related to non-updation of repayment data; and
4. ARCs must ensure compliance with these guidelines latest by January 1, 2025.

Market Infrastructure Institutions

SOP for payment of financial disincentives by Market Infrastructure Institutions

SEBI, *vide* circular dated October 14, 2024, has issued a corrigendum clarifying references to its September 20, 2024, circular regarding the payment of financial disincentives by Market Infrastructure Institutions ("**MIIs**") as a result of technical glitch. The amendments did not explicitly give reference to relevant sections of the Master Circular for commodity derivatives segment dated August 4, 2023 ("**Master Circular**"). Accordingly, SEBI has made references to the relevant sections of the Master Circular which are to be read with the relevant sections of the circular dated September 20, 2024. Further, the following is inserted in the Master Circular:

1. SEBI, on identification of a technical glitch resulting into financial disincentive to the MIIs, or upon receipt of the information of any such instance, must provide an opportunity to the concerned MIIs to make their submissions;
2. MIIs must carry out internal examination pertaining to occurrence of technical glitches to ascertain individual accountability and take appropriate action including suitable recording and reckoning in the performance appraisal of those individuals; and
3. SEBI would retain the right to initiate enforcement action against the individuals at the MII, if there is sufficient ground to do so.

Monitoring shareholding of MIIs

SEBI, *vide* circular dated October 14, 2024, has introduced a framework to monitor the shareholding of MIIs. The framework includes the following measures:

1. each MII must appoint a Designated Depository ("**Depository**") to monitor compliance with shareholding limits. The Depository must be independent of the MII;
2. the prescribed framework for monitoring and ensuring compliance with shareholding norms currently applicable to listed stock exchanges and listed depositories will be applicable to all MIIs (i.e. both listed and unlisted);
3. stock exchanges must ensure that trading members, their associates, and agents do not collectively own more than 49% of an MII's equity. Any acquisitions that increase total ownership to 45% require prior approval;

4. stock exchanges must own at least 51% of clearing corporations. No exchange can own more than 15% of a single clearing corporation;
5. MIIs must ensure that shareholders with 2% or more of their equity shares or voting rights meet the fit and proper criteria. MIIs must report non-compliance to SEBI quarterly;
6. if a shareholding or fit and proper criteria breach occurs, SEBI will take action. This may include freezing voting rights, corporate benefits, and transferring dividends to the investor protection fund or settlement guarantee fund; and
7. listed MIIs can divest excess shareholding through a special window provided by the stock exchange. Unlisted MIIs must follow SEBI's directions on a case-by-case basis.

The provisions of the circular come into force 90 (ninety) days from its date of issuance.

Liquidity window facility for debt securities

SEBI, *vide* circular dated October 16, 2024, has introduced a new Liquidity Window Facility ("**Facility**") under Regulation 15 of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). It allows investors to sell listed debt securities back to issuers. Issuers will have the option to offer put options to investors that can be exercised on specific dates or intervals, allowing investors to redeem debt securities before their maturity date. Some of the key features of the Facility are as follows:

1. the Facility can be provided only for prospective issuances of debt securities (held in demat form) through public issue process or on a private placement basis (proposed to be listed);
2. issuers of debt securities may offer the Facility at the time of issuance;
3. the Issuer must provide the Facility only after the expiry of 1 (one) year from the date of the issuance of the debt securities;
4. the issuer must specify the eligibility of investors who can avail the Facility;
5. issuers must set an aggregate limit for the exercise of the put option, which cannot be less than 10% of the total issue size of the debt securities. A sub-limit may also be imposed for each liquidity window session, ensuring that redemptions are managed in an orderly manner;
6. the liquidity window must be kept open for 3 (three) working days; and
7. debt securities will be valued on 'T-1' day where T is the first day of the liquidity window, with payments made to investors within 1 (one) working day of the window closing. The settlement process will be completed within 4 (four) working days.

RBI (Access Criteria for NDS-OM) Directions, 2024

RBI, *vide* circular dated October 18, 2024, has issued the RBI (Access Criteria for NDS-OM) Directions, 2024 ("**Directions**") revising the access criteria for the Negotiated Dealing System-Order Matching ("**NDS-OM**") platform. Direct access to NDS-OM has been extended to a broader set of regulated entities such as banks, standalone primary dealers, non-banking financial companies including housing finance companies, provident funds, pension fund and insurance companies. Further, the process for seeking direct access to NDS-OM under the Directions or through the procedure stipulated under the Master Directions on Access Criteria for Payment Systems dated January 17, 2017, has been streamlined. Entities can now either gain direct access, allowing them to execute transactions on the NDS-OM platform, or opt for indirect access by partnering with an entity that holds direct access. Entities seeking direct access to NDS-OM must meet specific criteria laid out by RBI. The prerequisites include maintaining a subsidiary general ledger account with RBI, holding a current account with either RBI or a designated settlement bank, and being a member of the Clearing Corporation of India Limited's securities settlement segment.

Common application form for registration of Foreign Portfolio Investors - modified

SEBI, *vide* notification dated October 22, 2024, has modified the annexure to the common application form to the Master Circular for Foreign Portfolio Investors (“**FPIs**”), Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024. An option is added in relation to the entitlement in FPIs in case of applicants based in IFSCs in India. Further, it prescribes the information, documents and declaration required to be submitted by an FPI based in IFSC that have/intends to have up to 100% non-resident Indian/overseas citizens of India/resident Indians participation.

International Financial Services Centres

Amendments to the International Financial Services Centre Authority (MII) Regulations, 2021

The International Financial Services Centre Authority (“**IFSCA**”), on October 29, 2024, has introduced the IFSCA (MII) (Amendment) Regulations, 2024, amending the IFSCA (MII) Regulations, 2021. These amendments came into force on November 1, 2024. Some of the key amendments include a redefined ‘clearing corporation’ to encompass entities involved in the settlement of securities and specified financial products, along with a broadened definition of ‘key management personnel’, individuals at various levels of responsibility, from managing directors and heads of core functions to key decision-makers, as outlined in the Companies Act, 2013. The other key amendments are as follows:

1. a new code of conduct is included for recognised MIIs with strict compliance oversight and the possibility of removal for misconduct;
2. a nomination and remuneration committee will oversee key managerial personnel compensation; and
3. a recognised clearing corporation will develop a framework for orderly winding down of its critical operations and services covering both voluntary and involuntary winding down.

Single window information technology system

Pursuant to the announcement of the ‘Implementation of a single window IT-enabled system for application processing of entities desirous of setting up operations in GIFT International Finance Services Centre (“**IFSC**”) to improve the Ease of Doing Business’, in the Union Budget for FY 2023-24, the IFSCA has developed a Single Window Information Technology System (“**SWIT System**”). The details of the SWIT System were announced *vide* circular dated September 30, 2024. The SWIT System *inter alia* contains a common application form, created by merging several existing forms including business-specific annexure forms. With the launch of SWIT System, applicants can now apply for license/registration from IFSCA, under the relevant IFSCA regulations and frameworks, through the SWIT System in addition to the Special Economic Zones (“**SEZ**”) Act, 2005. Some of the other key features of the SWIT System are as under:

1. can be used for approvals from SEZ authorities and registration from goods and services tax network;
2. issuance of no objection certificate/requisite approval from appropriate regulators i.e. RBI, SEBI and Insurance Regulatory and Development Authority of India;
3. integrated payment gateway; and
4. integrated digital signature certificate module.

IFSCA has directed that from October 1, 2024, all the applicants, except the prescribed exceptions, must submit/file their applications exclusively through SWIT System.

Operations of foreign currency accounts of Indian resident individuals under the liberalised remittance scheme by IFSC Banking Units

IFSCA, *vide* circular dated October 10, 2024, has issued directions to IFSC Banking Units (“**IBUs**”) for operations of Foreign Currency Accounts (“**FCA**”) of Indian Resident Individuals (“**RI**s”) opened under the Liberalised Remittance Scheme (“**LRS**”). IBUs must:

1. permit RIs to open FCA for receiving remittances: (a) under the LRS from onshore India; and (b) from locations other than onshore India;
2. ensure that all the remittances into the FCA from onshore India under the LRS are routed through an Authorised Person (“**AP**”);
3. obtain a copy of the return submitted by RI to AP (as prescribed by RBI) before opening of the FCA and at the time of any inward remittance to the FCA from onshore India thereafter;
4. obtain a declaration from the RI that such remittance represents funds duly remitted earlier under the LRS or income earned on the investments made from funds duly remitted earlier under the LRS;
5. ensure that received/realised/unspent/unused foreign exchange from onshore India or from locations other than onshore India in FCA, unless reinvested within a period of 180 (one hundred and eighty) days from the date of such receipt/realisation/purchase/acquisition or date of return to India is repatriated through an AP to the account of the RI in designated AD Bank; and
6. permit remittance of funds received in FCA for undertaking all permitted current or capital account transactions, in any foreign jurisdiction (other than IFSCs).

IFSCA (Payment and Settlement Systems) Regulations, 2024

IFSCA, *vide* notification dated October 14, 2024, has issued the IFSCA (Payment and Settlement Systems) Regulations, 2024. These regulations lay down the process of authorisation and operations of payment systems in IFSCs. Some of the key provisions are as follows:

1. every system provider must comply with the Principles for Financial Market Infrastructure issued by the Committee on Payments and Market Infrastructures and International Organisation of Securities Commissions, and such other norms as may be specified by IFSCA;
2. every system provider must submit to IFSCA such returns, documents and other information in the specified form as may be required by IFSCA from time to time;
3. every system provider must furnish to IFSCA, within 3 (three) months from the date on which its annual accounts are closed, a copy of its audited balance sheet as on the last date of the relevant year along with a copy of the profit and loss account and also a copy of the auditor’s report;
4. guidance on seeking exemptions from authorisations, relaxing enforcement, and handling procedural matters; and
5. upon commencement of the new regulations, the RBI Payment and Settlement Systems Regulations, 2008 will no longer apply in IFSCs, but any actions taken under the RBI regulations will remain valid.

Listing of commercial paper and certificates of deposit

IFSCA notified the IFSCA (Listing) Regulations, 2024 (“**Listing Regulations**”) which came into force on August 29, 2024, providing the regulatory framework for listing of securities and other permitted financial products on the recognised stock exchanges in the IFSC. Subsequently, *vide* circular dated October 17, 2024, IFSCA has provided the regulatory requirements for facilitating issuers to list commercial paper and certificates of deposit in an efficient and transparent manner ensuring that adequate material information is made available to the investors for making

informed decisions. The circular, *inter alia*, specifies the conditions for issuance of commercial paper and certificates of deposit, eligible issuers, eligible investors, listing process, disclosures in the offer document, investor protection measures and continuous disclosures.

Clarifications in relation to investment restrictions on retail schemes set up in IFSCs

IFSCA, *vide* circular dated October 29, 2024, has clarified that in case of investment by retail schemes in unlisted securities issued by an investment fund which is open-ended in nature, regulated by the concerned regulatory authority in its home jurisdiction and permitted for offering to retail investors in its home jurisdiction, the following ceilings/limits will not apply:

1. the ceiling of 15% investment of the total Asset Under Management (“**AUM**”) of the scheme in unlisted securities in the case of an open-ended scheme;
2. the minimum investment amount of USD 10,000 (US Dollars ten thousand) for close-ended schemes investing more than 15% of AUM in unlisted securities;
3. the ceiling of 50% investment of AUM in unlisted securities in case of a close-ended scheme; and
4. the ceiling of 25% investments of AUM in the associates.

Further, in case of a retail scheme which is in the nature of a fund-of-funds scheme, the Fund Management Entity (“**FME**”) must disclose in the offer document the details of the underlying scheme(s) wherein the investments are intended to be made and the nature of association, if any, that the FME has with the manager of the underlying scheme(s).

Framework for environmental, social and governance ratings and data products providers in the IFSC

IFSCA issued a circular dated October 30, 2024, outlining the framework for entities wishing to operate as Environmental, Social and Governance (“**ESG**”) Ratings and Data Products Providers (“**ERDPP**”) within the IFSC. Under the new framework, such entities must obtain registration with IFSCA. Such entities must be present in the IFSC by establishing a branch or forming a company or limited liability partnership or body corporate or any other form as permitted by IFSCA. Existing credit rating agencies already registered with IFSCA are permitted to offer ESG ratings without undergoing a separate registration process. Entities must maintain a minimum net worth of at least USD 25,000 (US Dollars twenty-five thousand), appoint a principal officer and compliance and adhere to a code of conduct focusing on governance, transparency and conflict management. Additionally, ERDPPs are mandated to publish their rating methodologies and undertake an annual audit to uphold service quality and credibility.

Centralised electronic listing and auction platform for the sale of assets under liquidation process

The Insolvency and Bankruptcy Board of India, *vide* circular dated October 29, 2024, has collaborated with the Indian Banks’ Association (“**IBA**”) to facilitate the auction of assets through the eBKray platform. eBKray is owned and managed by PSB Alliance Private Limited (a consortium of 12 (twelve) public sector banks) (“**PSB Alliance**”). PSB Alliance has developed a module within the platform which offers detailed information on corporate debtor assets, including photographs, videos and geographical coordinates. By enhancing transparency and efficiency through advanced technology, eBKray aims to increase bidder participation, streamline operations, and maximise returns for creditors while improving outcomes for bidders. It will be a single listing platform to host all assets being sold in liquidation cases.

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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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