



February 2025

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance, and insolvency space for the month of January 2025.

### **Simplifying fund transfers for non-residents with business interests in India**

The Reserve Bank of India ("RBI"), *vide* notification dated January 14, 2025, has issued the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025, amending the Foreign Exchange Management (Deposit) Regulations, 2016 ("**FEMA Deposit Regulations**"). Some of the key provisions are:

1. the transfer of funds, for all *bona fide* transactions, between repatriable Rupee accounts maintained in accordance the FEMA Deposit Regulations is permitted; and
2. amendments made to Special Non-Resident Rupee Accounts ("**SNRR**") accounts:
  - a) a person resident outside India, with business interests in India, can open SNRR accounts with an authorised dealers in India or their overseas branches for the purpose of putting through permissible current and capital account transactions with a person resident in India in accordance with the rules and regulations framed under the Foreign Exchange Management Act, 1999 ("**FEMA**"), and for putting through any transaction with a person resident outside India;
  - b) units in International Financial Services Centres ("**IFSCs**") can open SNRR accounts with an authorised dealer in India (outside IFSC) for their business-related transactions outside IFSC; and
  - c) the tenure of the SNRR account must be concurrent to the tenure of the contract/period of operation/the business of the account holder.

### **Flexibility provided to exporters in managing their foreign currency account**

RBI, *vide* notification dated January 14, 2025, has issued the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025, amending the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015. A person resident in India, being an exporter, is now allowed to open, hold and maintain a foreign currency account with a bank outside India, for realisation of full export value and advance remittance received by the exporter towards export of goods or services. Further, the funds in this account can be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds after adjusting for forward commitments, provided that the realisation and repatriation requirements under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 are met.

## Steps to encourage cross border transactions in Indian Rupees

For the purposes of promoting cross border transactions in INR and local / national currencies, the RBI has, *vide* press release dated January 16, 2025, notified the following changes to the FEMA Regulations on Deposits, Foreign Currency Accounts by a person resident in India and Mode of Payment and Reporting of Non-Debt Instruments:

1. overseas branches of authorised dealer banks will be able to open Indian Rupee (“**INR**”) accounts for a person resident outside India for settlement of all permissible current account and capital account transactions with a person resident in India;
2. persons resident outside India will be able to settle bona fide transactions with other persons resident outside India using the balances in their repatriable INR accounts such as SNRR account and special rupee vostro account;
3. persons resident outside India will be able to use their balances held in repatriable INR accounts for foreign investment, including foreign direct investment, in non-debt instruments; and
4. Indian exporters will be able to open accounts in any foreign currency overseas for settlement of trade transactions, including receiving export proceeds and using these proceeds to pay for imports.

## Guidelines on settlement of dues of borrowers by Asset Reconstruction Companies

RBI *vide* circular January 20, 2025, has prescribed guidelines on settlement of dues payable by the borrowers of Asset Reconstruction Companies (“**ARCs**”). The Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024 dated April 24, 2024, stands amended accordingly. Some of the key provisions are as follows:

1. all the ARCs are mandated to frame a board-approved policy for settlement of dues which are payable by the borrowers. The board-approved policy must, *inter alia*, cover aspects such as cut-off date for one-time settlement eligibility, permissible sacrifice for various categories of exposures while arriving at the settlement amount, methodology for arriving at the realisable value of the security;
2. settlement with the borrowers should be done only after all possible ways to recover the dues have been examined and settlement is considered as the best option available;
3. the net present value of the settlement amount should generally not be less than the realisable value of securities. However, if there is a significant variation between the valuation of the securities recorded at the time of acquisition of financial assets and realisable value of the securities at the time of entering into a settlement, reason thereof must be duly recorded;
4. the settlement amount should preferably be paid in lump sum. However, if borrowers cannot pay the entire amount agreed upon in one instalment, the settlement proposal should be in line with and supported by an acceptable business plan (where applicable), projected earnings and cash flows of the borrower;
5. settlement of accounts pertaining to a borrower having aggregate value of more than INR 1,00,00,000 (Indian Rupees one crore) in terms of outstanding principal in the books of transferor/s at the time of acquisition by the ARC must be done as per board-approved policy, subject to the following conditions:
  - a) settlement of dues must be done only after the settlement proposal has been reviewed by an Independent Advisory Committee (“**IAC**”), consisting of professionals with technical, finance, and legal backgrounds. The IAC after assessing the borrower's financial position, recovery timeline, and projected earnings and cashflows and other relevant aspects must give its recommendations to the ARC regarding settlement of dues with the borrower; and
  - b) the board of directors, including at least 2 (two) independent directors or a committee of the board meeting the prescribed criteria, considers the IAC's recommendations and other options available for recovery of dues

before deciding whether the settlement of dues is the best option available under existing circumstances. This decision, along with the reasoning behind it, must be formally recorded;

6. for settlement of accounts pertaining to a borrower having aggregate value of INR 1,00,00,000 (Indian Rupees one crore) or below in terms of principal outstanding in the books of the transferor at the time of acquisition by the ARC, ARCs must follow the criteria prescribed by the authority set in their board-approved policy subject to the following:
  - a) any official who was part of the acquisition (as an individual or part of a committee) of the concerned financial asset must not be part of processing/approving the proposal for settlement of the same financial asset, in any capacity; and
  - b) a quarterly report on such resolution of accounts/ settlements will be submitted to the board/committee of the board meeting the prescribed criteria. The board is required to establish a reporting format that covers, at minimum, (i) the trend in accounts and amounts subjected to compromise settlement (quarter on quarter and year on year basis), (ii) out of (i) above, separate breakdown of accounts classified as fraud or wilful default declared by banks and NBFCs, (iii) amount-wise, acquisition authority-wise, and business segment/asset class wise grouping of such accounts, and the extent and timelines of recovery in such accounts;
7. settlement of dues payable by the borrowers classified as frauds/wilful defaulters the guidelines as set out in para 6 above will be applicable, regardless of the amount involved, and ARCs can proceed with such settlements without affecting ongoing criminal proceedings against such borrowers; and
8. ARCs pursuing recovery proceedings under a judicial forum must obtain a consent decree from the relevant judicial authorities before any settlement with the borrower is made.

## **Private placement of non-convertible debentures with maturity period of more than one year by Housing Finance Companies**

RBI, *vide* circular dated January 29, 2025, has modified the Master Direction – Non-Banking Financial Company – House Finance Company (Reserve Bank) Directions, 2021 ("**Master Direction – HFC**") with respect to raising money through private placement of Non-convertible Debentures ("**NCDs**") (with a maturity of more than 1 (one) year). In case of such issuances, the guidelines for raising money through private placement of NCDs (with maturity of more than 1 (one) year) which are applicable to non-banking finance companies ("**NBFCs**") as contained under Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023 will *mutatis mutandis* apply to Housing Finance Companies ("**HFCs**"). Accordingly, the existing guidelines under Chapter XI of the Master Direction –HFC stand repealed. The revised guidelines are applicable to all fresh private placements of NCDs (with maturity more than 1 (one) year) by HFCs from January 29, 2025.

## **Format of due diligence certificate to be given by the debenture trustees**

Pursuant to the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (as amended from time to time), the Securities and Exchange Board of India ("**SEBI**"), *vide* circular dated January 28, 2025 ("**SEBI Circular**"), has outlined the due diligence certificate format for Debenture Trustees ("**DTs**") in case of unsecured debt securities as follows:

1. at the time of filing the draft offer document with the stock exchanges, the issuer must submit to the stock exchange, a due diligence certificate obtained from the DT as per the format specified in Annex-A of the SEBI Circular; and
2. at the time of filing of the listing application, the issuer must submit to the stock exchange, a due diligence certificate obtained from the DT as per the format specified in Annex-B of the SEBI Circular.

## Mandatory use of eBKray auction platform for liquidation processes

To streamline the liquidation process and improve transparency in the liquidation process, the Insolvency and Bankruptcy Board of India ("IBBI"), *vide* circular dated January 10, 2025, has directed all insolvency professionals handling liquidation processes to exclusively use the eBKray auction platform for conducting auctions for sale of assets during the liquidation process with effect from April 1, 2025. It has further directed that listing of unsold assets in all ongoing liquidation cases must be completed by March 31, 2025.

## IBBI amends liquidation process regulations

IBBI, *vide* notification dated January 28, 2025, has notified the IBBI (Liquidation Process) (Amendment) Regulations, 2025 amending the IBBI (Liquidation Process) Regulations, 2016. Some of the key amendments are as follows:

1. in addition to cases where the corporate debtor is sold as a going concern, the liquidator must submit an application along with the final report and the compliance certificate in Form H to the adjudicating authority for closure of the liquidation process of the corporate debtor even in cases where a compromise or arrangement has been sanctioned under Section 230 of the Companies Act, 2013;
2. IBBI must maintain and operate an account to be called the corporate liquidation account with a scheduled bank (*earlier it had to be maintained with Public Accounts of India*);
3. a new Regulation 47B dealing with filing of forms by the liquidator has been inserted; and
4. within 3 (three) days of declaring the highest bidder upon close of an auction (in case of sale of an asset to be sold through auction), the liquidator must conduct due diligence and verify the eligibility of the highest bidder.

## IBBI amends the voluntary liquidation process regulations

IBBI, *vide* notification dated January 28, 2025, has notified the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2025, which amends the IBBI (Voluntary Liquidation Process) Regulations, 2017 ("**Voluntary Liquidation Process Regulations**"). Some of the key amendments to the Voluntary Liquidation Process Regulations are as follows:

1. IBBI must maintain and operate an account to be called the corporate voluntary liquidation account with a scheduled bank (*earlier it had to be maintained with Public Accounts of India*);
2. a new Regulation 41A dealing with filing of forms by the liquidator has been inserted; and
3. Table B (*Details of stakeholders entitled to unclaimed dividends or undistributed proceeds*) of Form G (*Deposit of Unclaimed Dividends and/or Undistributed Proceeds*) is substituted.

## IBBI amends provision relating to grievance and complaint filing time period

IBBI, *vide* notification dated January 28, 2025, has notified the IBBI (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2025 which amends the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. In relation to filing of a grievance or a complaint under Regulation 3 of the said regulations, it was earlier provided that a grievance or a complaint can be filed after the prescribed period of 45 (forty-five) days, if there are sufficient reasons justifying the delay, but such period must not exceed 30 (thirty) days. It has now been clarified that this period of 30 (thirty) days is from the date of closure of all proceedings related to the process under the Insolvency and Bankruptcy Code, 2016 before the adjudicating authority, the appellate authority, the High Court, or the Supreme Court, as the case may be.

## Finance Practice

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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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18 Practices and  
41 Ranked Lawyers



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16 Ranked Lawyers



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50 Ranked Lawyers



14 Practices and  
12 Ranked Lawyers



20 Practices and  
22 Ranked Lawyers



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