October 2022

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance space for the month of October 2022.

Review of provisions pertaining to primary issuances through electronic book provider (“EBP”) platform

The Securities and Exchange Board of India (“**SEBI**”) vide its circular dated October 10, 2022 has revised Chapter VI of the operational circular dated August 10, 2021 for issue and listing of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities and commercial paper (“**Operational Circular**”). The key amendments are as follows:

1. The threshold limit for applicability has been reduced to INR 50,00,00,000 (Indian Rupees fifty crore). Issue of debt securities and non-cumulative, non-convertible redeemable preference shares on private placement basis of issue size of INR 50,00,00,000 (Indian Rupees fifty crore) or more must be made on the EBP platform (this limit was earlier INR 100,00,00,000 (Indian Rupees one hundred crore)).
2. The book building process is modified to ensure allocation based on ‘best bids’ rather than bidder with the best technology for placing the fastest bid. If 2 (two) or more bids have the same coupon/ price/ spread and time, then allotment will be done on ‘pro-rata’ basis.
3. In order to enable issuers, assess the demand and receive assurance from certain prospective investors towards subscription, the concept of ‘anchor investor’ has been introduced. The issuer has the option to avail an ‘anchor portion’ within the base issue size.

Review of regulatory framework for asset reconstruction companies (“ARCs”)

The Reserve Bank of India (“**RBI**”) has amended the regulatory framework (“**Revised Framework**”) for ARCs on October 11, 2022. The Revised Framework has introduced certain important measures and has amended certain existing guidelines with an aim to increase the transparency and efficiency of these institutions. Some of the key measures introduced under the Revised Framework are:

1. From the current limit of 15% of total security receipts (“**SR**”), the minimum investment in SRs by ARCs has been reduced to: (a) 15% of the transferors’ investment in the SRs; or (b) 2.5% of the total SRs issued, whichever is higher.
2. Minimum net owned fund of ARCs has been increased to INR 300,00,00,000 (Indian Rupees three hundred crore) on an ongoing basis from the existing requirement of INR 100,00,00,000 (Indian Rupees one hundred crore).

3. ARCs having minimum net owned fund of INR 1000,00,00,000 (Indian Rupees one thousand crore) are allowed to act as the resolution applicant under the corporate insolvency resolution process initiated under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). ARCs are not allowed to retain a significant influence or control over the corporate debtor after 5 (five) years from the date of approval of the resolution plan under the provisions of IBC.
4. Buyback of assets from ARCs by defaulters and acquisition of assets by ARCs from sponsor banks were earlier allowed with certain conditions. Now these exemptions have been withdrawn.
5. As per the Revised Framework, the settlement of dues will have to be done only with the prior approval of an Independent Advisory Committee ("**IAC**"). It is important to note that the IAC was relevant for change or takeover of the management of the borrower. However, the IAC will now be an empowered and important function as settlement with the borrower would be possible only if all other steps of recovery have been exhausted.
6. ARCs are now permitted to deploy available surplus funds in short-term instruments such as money market mutual funds, certificates of deposit and corporate bonds/ commercial papers which have a short-term rating equivalent to the long-term rating of AA or above by an eligible credit rating agency subject to the prescribed conditions.
7. RBI has also introduced certain corporate governance measures. The corporate governance measures have been aligned with that of the commercial banks. This shows that the roles and responsibilities of the ARCs will be important in the overall economic sector and especially in the effort of resolving stressed assets.

For a detailed analysis, please refer to the JSA Prism of October 17, 2022.

Classification of multiple Non-Banking Financial Companies ("NBFCs") in a group

RBI has *vide* its notification dated October 11, 2022 amended the classification norms applicable to NBFCs. If the consolidated asset size of all NBFCs in a group is INR 1000,00,00,000 (Indian Rupees one thousand crore) and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the group will be classified as an NBFC in the "middle layer". Further, statutory auditors must certify the asset size (as on March 31) of all the NBFCs in the group every year, which must be furnished to the relevant RBI office under whose jurisdiction the NBFCs are registered. These guidelines have become effective from October 1, 2022.

Diversification of activities by Standalone Primary Dealers ("SPD") – Non-core activities

RBI has *vide* its notifications dated October 11, 2022 reviewed the permissible non-core activities that may be undertaken by SPDs. SPDs, as part of their non-core activities, were permitted to offer foreign exchange products, as allowed from time to time, to their Foreign Portfolio Investor clients. Now, RBI has allowed SPDs to offer all foreign exchange market making facilities to users, as currently permitted to category-I authorized dealers, subject to adherence to the prudential regulations and other guidelines issued by RBI separately in this regard.

Reserve Bank of India (Unhedged Foreign Currency Exposure ("UFCE")) Directions, 2022 ("Directions")

The Directions have been issued by RBI vide its notification date October 11, 2022. All the existing instructions on UFCE of entities that have borrowed from banks, have been consolidated in the Directions. These Directions will be effective from January 1, 2023.

In addition to consolidating all the instructions on the subject at one place, some of the key changes that have been incorporated in the Directions are:

1. The term 'entities' was earlier defined as those entities which have borrowed from banks including borrowing in INR and other currencies irrespective of the size of exposure / entity. The revised definition of "entity" means a counterparty to which a bank has exposure in any currency.

2. At present, banks' exposures to an entity arising from derivative transactions only is excluded from the purview of UFCE guidelines. This exemption has been expanded to include factoring transactions.

3. At present, banks have the option to follow an alternative method for exposures to 'smaller entities' which have UFCE; and are not in position to provide information on their UFCE to the bank. However, without obtaining information on UFCE from such entities, banks will not be in position to ascertain whether the entity has UFCE or not. To address this issue, the alternative method has been made applicable for exposure to 'smaller entities' which have "foreign currency exposure", instead of UFCE, and are not in position to provide information on their UFCE. Further, the definition of 'smaller entities' for this purpose has been revised.

Reduction in minimum face value/ trading lot for debt securities and non-convertible redeemable preference shares

SEBI has released a circular on October 28, 2022, reducing the minimum face value/ denomination for debt securities and non-convertible redeemable preference shares ("**Security(ies)**") being issued on a private placement basis ("**Circular**"). The key provisions of the Circular are:

1. The existing minimum face value of each Security issued on private placement basis is INR 10,00,000 (Indian Rupees ten lakh). As a corollary the minimum trading lot would be the same denomination.

2. Pursuant to feedback from market participants (including issuers), SEBI, concluded that such a high minimum ticket size was a deterrent to investors (especially retail investors), restricting access to such Securities and the growth of the debt market that has been the focus of the monetary policy over the past few cycles. A lower face value and trading lot would encourage participation from a wider spectrum of investors and result in a more liquid debt securities market.

3. SEBI, pursuant to the Circular, amended the Operational Circular, reducing the face value of the Securities issued on private placement basis to INR 1,00,000 (Indian Rupees one lakh).

4. The provisions of this Circular are applicable to all the Securities, on private placement basis, issued on or after January 1, 2023. However, in relation to shelf memoranda for existing private placements, valid on January 1, 2023, the issuer of the Securities may retain the option to continue with face value at INR 10,00,000 (Indian Rupees ten lakh) or modify the issuance of future Securities to a face value of INR 1,00,000 (Indian Rupees one lakh).

For a detailed analysis, please refer to the JSA Prism of October 31, 2022.

Review of provisions pertaining to International Securities Identification Number ("ISIN") for debt securities issued on private placement basis

SEBI has, vide its circular dated October 31, 2022, amended certain provisions of Chapter VIII of the Operational Circular which deals with specifications related to ISIN for debt securities. The key amendments are as follows:

1. With respect to private placement of debt securities, a maximum number of 14 (fourteen) (earlier this was 17 (seventeen)) ISINs maturing in any financial year will be allowed for an issuer of debt securities. Further, 6 (six) (earlier this was 12 (twelve)) ISINs will also be available for the issue of the capital gains tax debt securities by the authorized issuers on private placement basis.

2. Out of the 14 (fourteen) ISINs maturing in a financial year: (i) maximum of 9 (nine) ISINs maturing per financial year will be allowed for plain vanilla debt securities within which, the issuer can issue both secured and unsecured debt securities; and (ii) maximum of 5 (five) ISINs maturing per financial year will be allowed for structured debt securities and market linked debt securities.

3. Where an issuer issues only structured/ market linked debt securities, the maximum number of ISINs allowed to mature in a financial year will be 9 (nine) (earlier this was 12 (twelve)).

These provisions will be applicable to ISINs utilised to issue debt securities from April 1, 2023.

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.

This Newsletter has been prepared by:

Anish Mashruwala
Partner

Pratish Kumar
Partner

Sonali Singh
Associate

14 Practices and
23 Ranked Lawyers

15 Practices and
18 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year

Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices

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13 winning Deals in
IBLJ Deals of the Year

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6 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services
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Dispute Resolution Law
Firm of the Year 2022

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Year (Premium) 2022

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For more details, please contact km@jsalaw.com

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