



April 2023

RESERVE BANK OF INDIA (RBI)

Outsourcing of Information Technology ("IT") services

The RBI, *vide* notification dated April 10, 2023, has issued Master Directions intending to regulate the outsourcing of information technology services by banks, non-banking financial companies ("NBFCs"), EXIM Bank, National Bank for Agriculture and Rural Development, National Bank for Financing Infrastructure and Development, National Housing Bank, Small Industries Development Bank of India Credit Information Companies and select financial institutions (such regulated entities, collectively, "RE"). Res typically outsources a substantial portion of their IT and IT enabled services to third party service providers. Such dependency on third parties exposes Res to significant risks as the autonomy of its IT systems could be compromised and thereby their operational integrity could be threatened. In order to mitigate such risks, the RBI has also ramped up its checks on the soundness of cyber security practices of various institutions in the ecosystem. The key provisions are as follows:

- Res must evaluate the need for outsourcing of IT services based on comprehensive assessment of attendant benefits, risks and availability of commensurate processes to manage those risks;
- Res must have a robust grievance redressal mechanism that must not be compromised in any manner on account of outsourcing;
- the board of the RE will be responsible, inter alia, for: (i) putting in place a framework for approval of IT outsourcing activities depending on risks and materiality; (ii) approving policies to evaluate the risks and materiality of all existing and prospective IT outsourcing arrangements; and (iii) setting up suitable administrative framework of senior management for the purpose of these Master Directions; and
- The broad aspects that need to be considered in the agreement between the RE and the service provider have been detailed in the Master Direction.

Please also see the [JSA Prism of April 24, 2023](#).

Acceptance of Green Deposits

With a view to fostering and developing a green finance ecosystem in the country, the RBI, *vide* notification dated April 11, 2023, has issued a framework for acceptance of green deposits by scheduled commercial banks, including small finance banks (excluding regional rural banks, local area banks and payments banks) and all deposit taking NBFCs registered with the RBI ("GD RE"). The framework will come into effect from June 1, 2023. The key provisions are as follows:

- GD REs must issue green deposits as cumulative/non-cumulative deposits, denominated in Indian Rupees only, and on maturity, the green deposits can be renewed or withdrawn at the option of the depositor;
- GD REs must put in place a comprehensive board-approved policy laying down all aspects in detail for the issuance and allocation of green deposits;
- GD REs must put in place a board-approved Financing Framework for effective allocation of green deposits;
- The allocation of funds raised through green deposits by GD REs during a financial year must be subject to an independent third-party verification/ assurance on an annual basis; and
- GD REs are required to upload a copy of the policy on 'green deposits', 'financing framework', opinion of the external reviewer and the third-party verification/assurance and impact assessment report on their websites.

Remittances to International Financial Services Centres ("IFSCs") under the Liberalised Remittance Scheme ("LRS")

The RBI, *vide* circular dated April 26, 2023, has done away with the condition that funds lying idle in the foreign currency account in IFSCs for a period up to 15 (fifteen) days from the date of its receipt must be repatriated to the domestic INR account of the investor in India. This brings remittances to IFSCs in line with foreign remittances (in other foreign jurisdictions) under the LRS, where funds can remain in the foreign currency account for upto 180 (one hundred eighty) days, and encourages investment in IFSCs.

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MEITY)

Regulation of online real money games and fact checking of fake news

On April 6, 2023, the MEITY notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ("**Amendment**"). While the Amendment primarily focuses on regulation of online real money games (including through self-regulatory bodies), it also contains provisions relating to fact checking of fake news. The key provisions are as follows:

- the definition of 'online game' is introduced to mean a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary;
- the definition of 'online gaming intermediary' is introduced to mean any intermediary that enables the users of its computer resource to access one or more online games;
- the MEITY may designate as many online gaming self-regulatory bodies as it may consider necessary for the purposes of verifying an online real money game as a permissible online real money game under these rules;
- an entity which fulfils the prescribed criteria may apply to the MEITY for designation as an online gaming self-regulatory body; and
- every online gaming self-regulatory body must publish and maintain on its website, mobile based application or both, at all times, an updated list of all its members, whether present or former, the dates of their acceptance as member, their corporate or business-related identity number and other details, and the details of suspension or revocation of membership of any member

For a detailed analysis, please refer to the [JSA Prism of April 13, 2023](#).

COMPETITION COMMISSION OF INDIA (CCI)

Parliament passes the Competition (Amendment) Bill, 2023

The Indian Parliament has passed the much-awaited Competition Amendment Bill, 2023 (“**Bill**”) on April 3, 2023. The Bill will now be placed before the President of India for her assent. The Bill was first introduced in the Lok Sabha on August 5, 2022 and was referred to the Parliamentary Standing Committee on Finance (“**PSC Committee**”), which issued its report on December 13, 2022. The Bill is largely based on the recommendations made by the Competition Law Review Committee, the PSC Committee as well as the extensive public consultations held with various stakeholders in 2019. The Bill proposes far-reaching amendments to the Indian competition law and aims to streamline legal provisions and integrate the learnings of the CCI over the past 14 (fourteen) years. It is designed to bring the law into sync with international best practices and changing economic reality, not least the growth of new technologies.

For a detailed analysis, please refer to the [JSA Prism of April 6, 2023](#).

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Excluding an investor from an investment of Alternative Investment Fund (“AIFs”)

The SEBI, *vide* circular dated April 10, 2023, has issued guidelines with respect to excusing or excluding an investor from an investment of an AIF. An AIF may excuse its investor from participating in a particular investment in the following circumstances:

- if the investor, based on the opinion of a legal professional/ legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation;
- if the investor, as part of contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention to the internal policy of the investor;
- if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF; and
- if the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity, to the extent of the contribution of the said fund/investment vehicle’s underlying investors who are to be excused or excluded from such investment opportunity.

Direct plan for schemes of AIFs and trail model for distribution commission

The SEBI, *vide* circular dated April 10, 2023, has issued clarifications regarding the direct plan for schemes of AIF and trail model for distribution commission in AIFs to bring transparency in expenses. For investors on-boarded in AIFs/ schemes of AIFs from May 1, 2023, onwards, it is specified that:

- schemes of AIFs will have an option of ‘Direct Plan’ for investors, which will not entail any distribution fee/ placement fee;
- AIFs must disclose distribution fee/ placement fee, to the investors of AIF/ scheme of AIF at the time of on-boarding;
- Category I AIFs and Category II AIFs may pay upto one-third of the total distribution fee/ placement fee to the distributors on upfront basis, and the remaining fee must be paid on equal trail basis over the tenure of the fund; and

- Category III AIFs must charge distribution fee/ placement fee to investors only on equal trail basis over the tenure of the fund and no upfront distribution fee/ placement fee can be charged, directly or indirectly. Any distribution fee/ placement fee paid will be only from the management fee received by the managers of such Category III AIFs.

Price discovery pursuant to an initial public offering or re-listing

The SEBI, *vide* circular dated April 11, 2023, has announced a new framework pertaining to the fixing of the price band for trading on the first day of trading pursuant to an initial public offering or re-listing (including re-listing on account of a scheme of arrangement, but excluding scripts for which derivative contracts are available) in a normal trading session.

This will address the ambiguity in discovered price / equilibrium price pursuant to call auction sessions being conducted separately on multiple stock exchanges. Several stock exchanges hold call auction sessions when a stock is about to trade for the first time pursuant to an initial public offering or re-listing. The discovered price / equilibrium price following such call auction sessions will vary for each stock exchange. If the gap between these discovered prices is wide, price bands on different stock exchanges could be widely off from one another, giving investors a false impression of the price band. SEBI held discussions with the stock exchanges and the Secondary Market Advisory Committee and accordingly presented this framework, aiming to streamline the price band discovery on the secondary market.

The key provisions are as follows:

- the call auction sessions would continue to be conducted separately on individual exchanges and orders would be matched by respective exchanges after computation of equilibrium price;
- if difference in the equilibrium price between exchanges in percentage terms is more than the applicable price band for the scrip, a Common Equilibrium Price (“**CEP**”) would be computed by the exchanges;
- the exchanges must set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP; and
- only unexecuted pending orders from call auction session within the aforesaid price band will be carried forward to the normal market segment.

The provisions of this circular will come into effect from June 10, 2023, and the stock exchanges have been directed to make necessary amendments to the relevant bye-laws, rules and regulations, disseminate the change in provisions on their websites and communicate the status of implementing the provisions of this circular in the monthly development report, to SEBI.

Contribution by eligible issuers of debt securities for repo transactions

The SEBI, *vide* circular dated April 13, 2023, has prescribed a framework for upfront collection of amounts as charges from “eligible issuers” of debt securities at the time of allotment of such securities. These charges are contribution towards building the settlement guarantee fund of the Limited Purpose Clearing Corporation (“**LPCC**”) for repo transactions in debt securities. The development of an active repo market in debt securities may benefit the issuers since the enhanced liquidity may positively impact the yield, thereby resulting in reduced costs of raising funds to the issuers in the primary market. In this regard, AMC Repo Clearing Limited has been granted recognition as LPCC by SEBI. The Reserve Bank of India also accorded necessary approvals to ARCL to function as a Clearing Corporation with a limited purpose and to offer central counter party services for repo transactions in debt securities.

The key provisions under the framework for upfront collection of amounts as charges from eligible issuers at the time of allotment of debt securities are as follows:

- The eligible issuers will be notified by the LPCC basis their risk management policy.
- An amount of 0.5 basis points of the issuance value of debt securities per annum must be collected by the stock exchanges and placed in an escrow account prior to the allotment of the debt securities. This amount is applicable on a public issue or private placement of debt securities under the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021.

- Stock exchanges will transfer these amounts to the bank account of the LPCC within one (1) working day of the receipt of the amount and inform the details of the same to the LPCC.
- The details pertaining to the amounts so collected will also be disclosed by the stock exchanges on their relevant websites.
- These charges will be collected basis Actual/Actual and the LPCC will provide an illustration of the calculation of amounts which is to be contributed by the eligible issuers.

The provisions of this circular will come into force for offer documents filed on or after May 1, 2023, by eligible issuers as specified by the LPCC.

Modifications in the requirement of filing of offer documents by mutual funds

The SEBI, *vide* circular dated April 21, 2023, has modified the requirement of filing of offer documents by mutual funds. With effect from May 1, 2023, asset management companies must file all final offer documents (final Scheme Information Document and final Key Information Memorandum) at least 2 (two) working days prior to the launch of the scheme in digital form only. The requirement of making any physical filing has been done away with. Further, all new fund offers must remain open for subscription for a minimum period of 3 (three) working days.

Advertisement code for Investment Advisers (IAs) and Research Analysts (RAs)

The SEBI, *vide* circular dated April 5, 2023, has barred IAs and RAs from using extensive technical or legal terminology or promising guarantee of assured return to investors in their communications. SEBI directed IAs and RAs to comply with the new advertisement code, which will apply to advertisements made in all forms of communications, such as pamphlets, circulars, brochures, notices, research reports or any other literature, document, information or material published, or designed for use in any publication or displays, in any electronic, wired or wireless communication issued by or on behalf of IA/RA which may influence investment decisions of any investor or prospective investor. The advertisement must contain, the following information/disclosures:

- name of the IA/RA as registered with SEBI, registered office address, SEBI Registration No., logo/brand name/trade name of IA/RA, and CIN of the IA/RA, if applicable;
- in case any specific security/securities are displayed in the advertisement as examples, disclaimer that '*The securities quoted are for illustration only and are not recommendatory*' should be mentioned; and advertisements and communications/correspondences with clients must include appropriate disclaimers; and
- standard warning in legible fonts (minimum 10 font size) must be present which states "*Investment in securities market is subject to market risks. Read all the related documents carefully before investing.*". No addition or deletion of words will be made to/from the standard warning.
- For audio-visual media-based advertisements, the standard warning in visual media based advertisement and accompanying voice over reiteration will be audible in a clear and understandable manner. For example, in standard warning both the visual and the voice over reiteration containing 20 words running for at least 10 seconds may be considered as clear and understandable.
- Whenever such an advertisement is being issued in a language other than English, it will be ensured that the standard warning is accurately translated in the language of the advertisement.
- In case the mode of advertisement is SMS/message/pop-up, social media etc. and the details such as full name, logo/brand name, full registered office address, SEBI registration number, membership number of a SEBI recognized supervisory body and standard disclaimer are not mentioned, then official website hyperlink needs to be provided in such SMS/message/pop-up, etc. and the website must contain all such details.

Prohibitions in the advertisement:

The advertisement will not contain:

- anything which is prohibited for publication under the law and any misleading or deceptive testimonials;

- statements which are false, misleading, biased, or deceptive, based on assumptions or projections; statements which, directly or by implication or by omission, may mislead the investor and extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may distract the investors;
- superlative terms such as “Best”, “No. 1”, Top Adviser/Research Analyst, “Leading”, “One of the best amongst market leaders”, etc. so as to provide any endorsement of quality or standing of the IA/RA. However, factual details of awards received by the IA/RA from independent organizations may be included;
- reference to past performance of the IA/RA; and
- reference to any report, analysis, or service as free, unless it actually is free and without condition or obligation, the SEBI Logo and any statement designed to exploit the lack of experience or knowledge of the investors.

Further, prior approval for the advertisement/material must be obtained from SEBI recognized supervisory body (i.e. BSE Administration and Supervision Limited (BASL) in case of IAs) before issue and in case of suspension of any IA/RA by SEBI and/or by SEBI recognized supervisory body, the IA/RA so suspended will not issue any advertisement either singly or jointly with any other IA/RA, during the period of suspension. The IA/RA must not engage in games, leagues, schemes, competitions etc. which may involve distribution of prize monies, medals, gifts, etc. The copy of such advertisement will be retained by IA/RA for a period of five years in terms of Regulation 19(2) of the SEBI (Investment Advisers) Regulations, 2013 and Regulation 25 (2) of SEBI (Research Analysts) Regulations, 2014, respectively.

These compliances are part of SEBI’s new advertisement code to further strengthen the conduct of IAs and RAs, while issuing any advertisement and the new advertisement code will come into effect from May 1, 2023.

Usage of brand name/trade name by IAs and RAs

As a background, SEBI observed that a few IAs and RAs had been using the brand name/trade name/logo more prominently in their advertisements, websites, publications, correspondences with clients and various documents while marketing their services, rather than their name as registered with SEBI. Pertinent to note that the brand name/trade name/logo may or may not be related to the name of IA/RA as registered with SEBI, and hence may mislead and create confusion in the minds of the investors. Pursuant to which, SEBI, *vide* circular dated April 6, 2023, has issued clarification regarding usage of brand name by IA and RA. SEBI has directed that the IAs and RAs may use the brand name/trade name/logo, in order to ensure the transparency in such a usage of brand name/trade name/logo, while mandatorily ensuring that:

- information such as name of the IA/RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers will be prominently displayed on portal/web site, if any, notice board, display boards, advertisements, publications, know your client forms and client agreements;
- the name of grievance redressal cell will be displayed prominently in statements or reports of any other form of correspondence with the client;
- disclaimer that “*Registration granted by SEBI, membership of BASL (in case of IAs) and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors*” will be mentioned on portal/web site, or any other form of correspondence with the client; and
- SEBI logo must not be used by IAs/RAs.

MINISTRY OF CORPORATE AFFAIRS (MCA)

Changes in forms relating to removal of names of companies

The MCA, *vide* circular dated April 17, 2023, provides that an application for removal of name of a company must be made to the registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with fee of INR 10,000 (Indian rupees ten thousand). Form No. STK-2, Form No. STK-6 (Public Notice) and Form No. STK-7 (Notice of Striking Off and Dissolution), are substituted.

JSA Updates

Supreme Court holds that an application for withdrawal of corporate insolvency resolution process under IBC can be allowed even prior to the constitution of the committee of creditors

A two-judge bench of the Supreme Court of India (“**Supreme Court**”) in its recent judgment has inter alia held that an application for withdrawal of the corporate insolvency resolution process under Section 12A of the Insolvency and Bankruptcy Code, 2016 can be allowed by the adjudicating authority even before the constitution of the committee of creditors in terms of Regulation 30A of the IBBI Regulation (Insolvency Resolution Process for Corporate Persons), 2018.

For a detailed analysis, please refer to the [JSA Prism of April 5, 2023](#).

Breach of contract by a party does not give rise to a criminal case for cheating

A two-judge bench of the Hon’ble Supreme Court held that a breach of contract will not rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Supreme Court also held that criminal courts are not meant to be used for settling scores or pressurizing parties to settle civil disputes.

For a detailed analysis, please refer to the [JSA Prism of April 3, 2023](#)

Complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by consumer commissions established under the Consumer Protection Act, 1986

A two-judge bench of the Supreme Court in its recent judgment has held that complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by the consumer commissions under the Consumer Protection Act, 1986.

For a detailed analysis, please refer to the [JSA Prism of April 3, 2023](#)

Arbitrator’s order rejecting an application for impleadment of a non-signatory party does not constitute an ‘interim award’

A Division Bench of the Delhi High Court held that the arbitrator’s order rejecting an application for impleadment of a non-signatory party in the arbitration proceedings does not constitute an ‘interim award’ under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and can therefore not be challenged under Section 34 of the Arbitration Act.

For a detailed analysis, please refer to the [JSA Prism of April 12, 2023](#)

Supreme Court holds that the definition of “consumer” under the Consumer Protection Act, 1986 includes a commercial entity consuming goods or services for non-business purposes

The Supreme Court has in its recent decision held that the definition of “consumer” under Section 2 (1)(d) of the Consumer Protection Act, 1986 (“**CP Act**”) includes a commercial entity provided that the goods purchased, or services availed are not linked to any profit generating activity. The Supreme Court further clarified the scope of the restrictive term “for any commercial purpose” appearing in Section 2 (1)(d) of the CP Act.

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

Bombay High Court upholds the validity of an arbitral award passed in a consolidated arbitral proceeding

The Bombay High Court *inter alia* held that an arbitral award passed in a consolidated arbitral proceeding concerning disputes arising out of different contracts cannot be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 on grounds of being opposed to the fundamental policy of India. It was also held that an arbitral award passed

in such consolidated arbitral proceedings cannot be set aside on grounds that the arbitrator lacked jurisdiction to consolidate disputes arising out of different contracts and / or for lack of prior consent of the parties for such consolidation of disputes.

For a detailed analysis, please refer to the [JSA Prism of April 24, 2023](#)

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affair We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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17 Practices and
24 Ranked Lawyers



16 Practices and
11 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

13 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021



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