



April 2023

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance as well as insolvency space for the month of April 2023.

## Outsourcing of Information Technology (“IT”) services

The Reserve Bank of India (“RBI”), *vide* notification dated April 10, 2023, has issued Master Directions 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 outsource 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 shall 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.

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

The Securities and Exchange Board of India (“**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.

## **Contribution by eligible issuers of debt securities for repo transactions**

The SEBI, *vide* circular dated April 13, 2023, has prescribed a framework for collection of 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. 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 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 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.

### **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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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**

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Banking & Finance Team  
of the Year

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Fintech Team of the Year

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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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10 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

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Dispute Resolution Law  
Firm of the Year 2022

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Equity Market Deal of the  
Year (Premium) 2022

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Energy Law Firm of the Year 2021



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**Work Report, 2022**

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