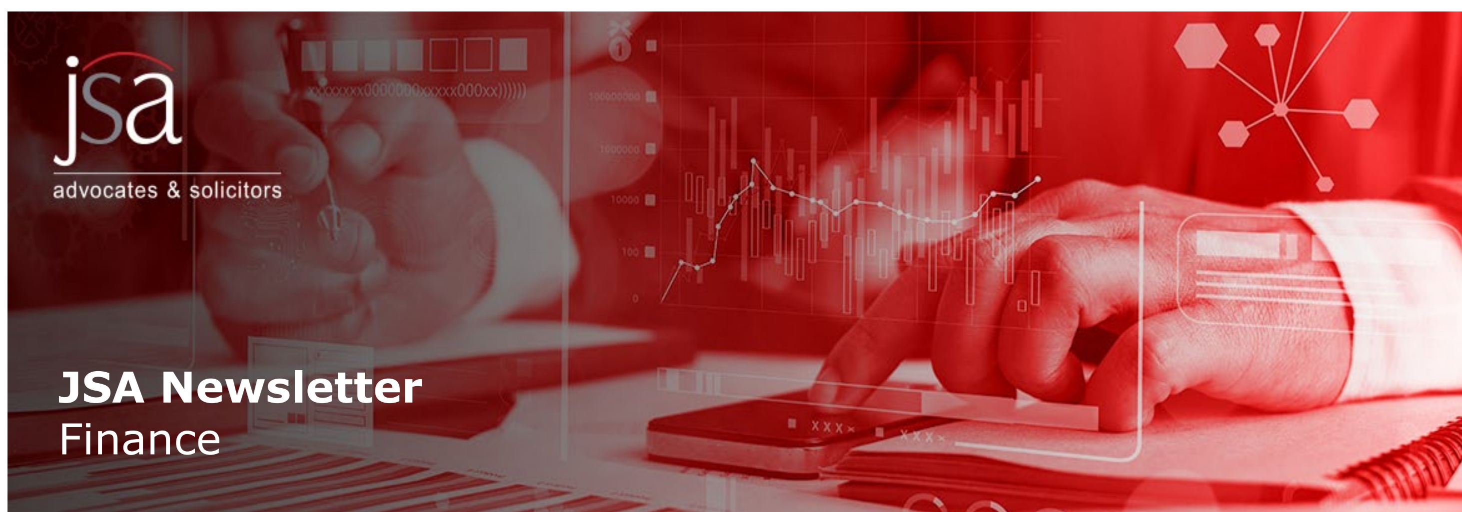

September 2023

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

Revisions to the format of abridged prospectus for non-convertible debt securities

The Securities and Exchange Board of India ("**SEBI**"), *vide* circular dated September 4, 2023, has published a new format of the abridged prospectus for public issue of non-convertible debt securities and/or non-convertible redeemable preference shares opening on or after October 1, 2023. The new format provides consistency in disclosure across documents and includes additional critical information.

Calculation of asset allocation limits in relation to investment by mutual fund schemes in units of Corporate Debt Market Development Fund ("CDMDF")

The SEBI had issued an earlier notification regarding the creation of the CDMDF *vide* circular[1] dated July 27, 2023, as a backstop facility for the purchase of investment grade corporate debt securities. The Association of the Mutual Funds in India requested SEBI to exclude investments by any mutual fund in the CDMDF while calculating asset allocation limits of such mutual fund schemes. Consequently, the SEBI has issued circular[2] dated September 6, 2023, to clarify that, for the calculation of asset allocation limits of mutual fund schemes, in accordance with Part IV (*Categorisation and Rationalisation of Mutual Fund Schemes*) of Chapter 2 (*Conversion and Consolidation Of Schemes, Launch of Additional Plan and Categorization and Rationalization of Mutual Fund Schemes*) of the Master Circular[3] for Mutual Funds dated May 19, 2023, the value of investment in units of the CDMDF will be excluded from the base of net assets of the relevant mutual fund scheme.

Special rights to unitholders and role of sponsor in Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs")

SEBI (Real Estate Investment Trusts) Regulations, 2014 ("**REIT Regulations**") and SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations**") were notified on September 26, 2014. The underlying principle of various provisions in both the REIT Regulations and the InvIT Regulations is that the units of REIT and InvIT are equal in all respects and hence all unitholders should have equal rights and no special rights should exist with any unitholder based on the units held in REIT/InvIT. It was noted by SEBI that certain REITs/InvITs have provided the right to nominate directors on the board of Manager/Investment manager to unitholders holding certain percentage of units of REIT/InvIT. Such rights provided to the unit holders above certain percentage of units were not envisaged in the REIT Regulations and InvIT Regulations and appears to be unequal. In this context, it has been represented before SEBI that the special rights are required by institutional investors to protect their investments in the REIT/InvIT. It

[1] SEBI/HO/IMD/PoD2/P/CIR/2023/129
[2] SEBI/HO/IMD/PoD2/P/CIR/2023/152
[3] SEBI/HO/IMD/IMD-PoD-1/P/CIR/2023/74

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was further argued that these rights are in the nature of protective rights typically sought by minority unitholders to protect their investment and would not impact the day-to-day functioning, business or operations of the REIT/InvIT. It has also been represented that such investors do not seek to control the manager/investment manager or REIT/InvIT in any manner. Taking the above into consideration, SEBI issued the following notifications amending the REIT and InvIT Regulations to provide regulatory framework for the special rights in REITs and InvITs:

1. SEBI (REIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:
    a) new definitions, such as, "group entities of the Manager", "Self-Sponsored Manager", have been added;
    b) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the Manager;
    c) Schedule IX inserted which specifies the stewardship code. Unitholders with substantial holdings are now obligated to act in the best interests of the REIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary;
    d) the sponsor(s) and sponsor group(s) collectively must hold a specified percentage of units for varying periods, ensuring a sustained commitment to the REIT's success; and
    e) transition from a Manager to a Self-Sponsored Manager is allowed.
2. SEBI (InvIT) (Second Amendment) Regulations, 2023 dated August 16, 2023. The key amendments are as follows:
    a) new definitions, such as, "group entities of the Investment Manager", "Self-Sponsored Investment Manager", "sponsor group", have been added;
    b) "Self-Sponsored Investment Manager" is now recognized, referring to an Investment Manager with dual responsibilities as the Investment Manager and sponsor;
    c) unitholders holding at least 10% of the total outstanding units can nominate a director on the board of directors of the Investment Manager;
    d) units held to fulfil the minimum unitholding requirements will be locked in and cannot be encumbered;
    e) Schedule VIII inserted which specifies the stewardship code. This code is applicable to unitholders holding a minimum of 10% of the outstanding units and are obligated to act in the best interests of the InvIT and its unitholders, formulate stewardship policies, manage conflicts of interest, and periodically monitor and intervene when necessary; and
    f) transition from a Manager to a Self-Sponsored Investment Manager is allowed.

Board nomination rights to unitholders of REITs/ InvITs

The SEBI, *vide* 2 (two) circulars[4], both dated September 11, 2023, has prescribed the framework to be followed for the exercise of rights by unitholders to nominate directors to the board of directors of the manager of the REIT/ InvIT ("**Board**"). Under Regulation 4(2)(h) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and Regulation 4(2)(g) of the SEBI (Real Estate Investment Trusts) Regulations, 2014, unitholders holding not less than 10% of the total outstanding units of the REIT/ InvIT, either individually or collectively, are entitled to nominate 1 (one) director on the Board. Accordingly, a framework to exercise such right to nominate a director to the Board has been set out in the aforementioned circulars. Some of the key provisions of the framework are as follows:

1. eligible unitholders will have the right, but not the obligation, to nominate any person for appointment as unitholder nominee director;
2. the Board must formulate and adopt a policy in relation to the qualification and criteria for appointment and evaluation parameters of individuals nominated by a unitholder as a director;
3. the trust deed and investment management agreement shall stand amended or be deemed to incorporate provisions to provide such rights of nomination;

[4] SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 and SEBI/HO/DDHS-PoD-2/P/CIR/2023/154

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4. the manager must send a written intimation to all unitholders within 10 (ten) days from the end of each financial year requesting unitholders to inform the manager if any eligible unitholders wish to exercise the right to nominate a nominee director; and
5. eligible unitholders will be determined based on the unitholding pattern of the REIT/InvIT as on March 31st of the relevant financial year.

Framework for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares

The SEBI, *vide* notification dated August 23, 2023 ("**Notification**"), has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") and introduced a specific framework for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares.

Prior to the Notification, neither SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") nor the LODR Regulations had any specific provisions dealing with the voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares. In the absence of any specific provisions, Regulation 59 of the LODR Regulations which deals with restructuring of non-convertible debt securities was used by certain issuers for delisting non-convertible debt securities.

The Notification seeks to address that concern and provides for a specific framework in relation to voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares and specifically provides for exclusion of Regulation 59 of LODR Regulations for voluntary delisting of non-convertible debt securities/ non-convertible redeemable preference shares under the new chapter. A new Chapter VIA has been added to the LODR Regulations which deals with the voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares from any or all the stock exchanges where they are listed. The broad framework contemplated by the Notification (along with timelines) is as under:

Sr. No.	Nature of event	Timeline (in working days) latest by
1.	Approval of proposal for delisting of non-convertible securities by board of directors of the listed entity	X
2.	Application for seeking in-principle approval from the stock exchange	X+15
3.	Grant of in-principle approval by the stock exchange	(X+15) + 15
4.	Disclosure of the prescribed information on the website of the listed entity as well as to the stock exchanges	[(X+15)+15] + 2
5.	Notice of delisting to be sent to holders of non-convertible debt securities	[(X+15)+15] +3
6.	Receipt of approval from all holders of non-convertible debt securities/ no-objection letter from the Debenture Trustee	{[(X+15)+15] +3} +15
7.	Final application to the stock exchange for delisting	({[(X+15)+15] +3} +15) + 5

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Sr. No.	Nature of event	Timeline (in working days) latest by
8.	Disposal of final application by the stock exchange	({[(X+15)+15] +3} +15) +5) + 15
9.	Intimation to the stock exchange in the event of failure of delisting proposal	1 day from the date of event of failure

The above framework is not applicable in the following cases :

1. a listed entity that has outstanding listed non-convertible debt securities or non-convertible redeemable preference shares issued by way of a public issue; or
2. a listed entity has more than 200 (two hundred) security holders (other than qualified institutional buyers); or
3. non-convertible debt securities or non-convertible redeemable preference shares have been delisted by the stock exchanges as a consequence of any penalty or action initiated against the listed entity or on any grounds as specified under Rule 21 of the Securities Contracts (Regulation) Rules, 1957; or
4. non-convertible debt securities or non-convertible redeemable preference shares have been delisted by the stock exchanges pursuant to redemption of such securities or shares; or
5. non-convertible debt securities or non-convertible redeemable preference shares have been delisted pursuant to a resolution plan as per Section 31 of the of the Insolvency and Bankruptcy Code, 2016.

Listing of subsequent issuances of non-convertible debt securities

The SEBI *vide* notification dated September 19, 2023, has issued the SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023, to amend the LODR Regulations. This amendment has introduced Regulation 62A which provides for the listing of subsequent issuances of non-convertible debt by listed entities. Some of the key provisions are as follows:

1. a listed entity, whose non-convertible debt securities are listed must list all non-convertible debt securities, proposed to be issued on or after January 1, 2024;
2. a listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023, are outstanding on the said date, may list such securities, on the stock exchange(s);
3. a listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, must list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within 3 (three) months from the date of the listing of the non-convertible debt securities proposed to be listed; and
4. a listed entity is not required to list the following securities:
   a) bonds issued under section 54EC of the Income Tax Act, 1961;
   b) non-convertible debt securities issued pursuant to an agreement between the listed entity of such securities and multilateral institutions, provided these securities are locked in, held till maturity by the investors and are unencumbered; and
   c) non-convertible debt securities issued pursuant to an order of any court or tribunal or regulatory requirement as stipulated by a financial sector regulator, provided these securities are locked in, held till maturity by the investors and are unencumbered.

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Provisions relating to enhanced transparency in ownership of Foreign Portfolio Investors ("FPIs")

SEBI, *vide* notification dated August 10, 2023 ("**August 10 Notification**"), has amended the SEBI (FPI) Regulations, 2019 ("**FPI Regulations**"), to enhance transparency in ownership of FPIs.

August 10 Notification seeks to address the concerns in relation to:

1. Certain FPIs hold concentrated portion of their equity portfolio in a single investee company/ corporate group. Such concentrated investments raise the possibility that promoters of such investee companies/ corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements like disclosures required under the SEBI (Substantial Acquisition of Shares and Takeovers Regulations), 2011 or maintaining the prescribed minimum public shareholding in the listed company.
2. Entities with large Indian equity portfolios potentially disrupting the orderly functioning of Indian securities markets by utilizing the FPI route to circumvent Press Note 3 dated April 17, 2020 (Press Note 3 dated April 17, 2020, is not applicable to FPI investments).
3. Non identification of natural persons as Beneficial Owners ("**BO**") of several FPIs. While the thresholds for identification of BOs of FPIs are specified in Prevention of Money Laundering (Maintenance of records) Rules, 2005 ("**PMLR**"), it is often observed that no natural person is identified as the BO of several FPIs based on economic interest or ownership interest, since each investor entity in the FPI may be below the threshold prescribed in the PMLR. However, there is a possibility that the same natural person may hold a significant aggregate economic interest in the FPI via various investment entities, each of which are individually below the threshold for identification as a BO as prescribed in PMLR.

To allay the above concerns, August 10 Notification has added certain additional obligations in the Regulation 22 of FPI Regulations. The additional obligations provide for provision of such information or documents in relation to the persons with any ownership, economic interest or control, as specified by SEBI, by certain objectively identified FPIs. While August 10 Notification laws down the substantial law, the procedural law including the criteria of FPIs and the documents has been detailed *vide* circular dated August 24, 2023 ("**Circular**"), which will come into effect from November 1, 2023. The Circular provides that granular details of all entities holding any ownership, economic interest, or exercising control in the FPI must be provided by FPIs that fulfil any of the following criteria:

1. FPIs holding more than 50% of their Indian equity Assets Under Management ("**AUM**") in a single Indian corporate group;
2. FPIs that individually, or along with their investor group hold more than INR 25,000 crore (Indian Rupees twenty five thousand crore) of equity AUM in the Indian markets.

The following FPIs are not required to make the disclosures:

1. government and government related investors registered as FPIs under Regulation 5 (a) (i) of the FPI Regulations;
2. public retail funds as defined under Regulation 22(4) of the FPI Regulations;
3. exchange traded funds (with less than 50% exposure to India and India-related equity securities) and entities listed on specified exchanges of the permissible jurisdictions as may be notified by the SEBI; and
4. pooled investment vehicles registered with/ regulated by a Government/ regulatory authority in their home jurisdiction/ country of incorporation/ establishment/ formation.

Reduction in validity period of approval granted by SEBI to Alternative Investment Funds ("AIFs") and Venture Capital Funds ("VCFs") for overseas investment

The SEBI, *vide* circular dated August 4, 2023, has reduced the time limit for making overseas investments by AIFs/VCFs from 6 (six) months to 4 (four) months from the date of prior SEBI approval. In case the applicant AIF/VCF does not utilize the investible fund limits allocated to them within the prescribed time, then SEBI may allocate such unutilized limit to other applicant AIFs/VCFs. The reason for the change is to ensure that the allocated limit is utilised efficiently and, if unutilised, the same is again available to the AIF industry in a shorter time span.

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Amendment to the Corporate Insolvency Resolution Process ("CIRP")

The Insolvency and Bankruptcy Board of India ("**IBBI**"), *vide* notification dated September 18, 2023, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 ("**Amending Regulations**") amending the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**Principal Regulations**"). Some of the key provisions of the Amending Regulations are set out below:

1. while filing an application under Section 7 (claims by operational creditors) or Section 9 (claims by workmen and employees) of the Principal Regulations, the financial creditor or the operational creditor, must also submit along with evidence, the chronology of debt and default including the date when the debt became due, the date of default, dates of part payments, if any, the date of last acknowledgment of debt, and the limitation applicable;
2. the interim resolution professional or resolution professional, must take custody and control from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor of: (i) the records of information relating to the assets, finances and operations of the corporate debtor; and (ii) the assets recorded in the balance sheet of the corporate debtor or in any other records;
3. while appointing the authorised representative for any class of creditors, the financial creditors in the class, representing not less than 10% voting share, may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional;
4. increase in the timelines to file claims to the adjudicating authority up to the date of issue of request for resolution plans;
5. committee members may propose an audit of the corporate debtor and include the cost of such audit in the CIRP cost;
6. substitution of Form G (*Invitation for expression of interest*) to provide more information to prospective resolution applicants;
7. changes in Form H (*Compliance certificate*) to include minutes of the meeting of the committee of creditors in which resolution plan is approved to enable the adjudicating authority to understand the rationale of the decision of the committee of creditors; and
8. for assignment of debt by a creditor to another person, the details of such assignment are required to be provided to the resolution professional within 7 (seven) days.

Clarification on liquidators' fee calculation

IBBI, *vide* circular dated September 28, 2023[5], has issued clarifications regarding the interpretation and computation of the liquidators' fee under Regulation 4 (*Appointment and remuneration of liquidator*) of the IBBI (Liquidation Process) Regulations, 2016. While earlier, Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016, provided that the liquidator will be entitled to a fee *as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation*, the new regulations have clarified that:

1. the 'amount realised' will mean the amount realised from assets other than liquid assets such as cash and bank balance including term deposits, mutual fund investments, quoted shares available on start of the process after exploring compromise and arrangement, if any, and 'amount distributed to stakeholders' will mean distributions made to the stakeholders, after deducting CIRP and liquidation cost;
2. all components of liquidation costs, except the liquidator's fee, should be considered as part of 'other liquidation costs'; and
3. exclusions for fee calculation should only apply if explicitly authorised by the National Company Law Tribunal, National Company Law Appellate Tribunal, or other courts of law.

[5] IBBI/LIQ/61/2023

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Operation of pre-sanctioned credit lines at banks through Unified Payments Interface ("UPI")

The Reserve Bank of India ("**RBI**"), *vide* directive dated September 4, 2023, has authorised scheduled commercial banks to link pre-sanctioned credit lines with UPI. The scope of UPI has been expanded to include credit lines as a funding account. Under this facility, payments through a pre-sanctioned credit line issued by a scheduled commercial bank to individuals are enabled for transactions using the UPI system. Banks can develop their own board-approved policies regarding the terms and conditions for the use of credit lines. Such policies can cover various aspects, including the credit limit, period of credit and rate of interest, for credit lines issued to fund UPI payments.

Release of property documents on closure of loan account

The RBI, *vide* circular[6] dated September 13, 2023, has issued further directions to promote responsible lending conduct amongst Regulated Entities ("**REs**"). REs must comply with the directions for the release of all documents pertaining to movable / immovable property ("**Documents**") due on or after December 1, 2023, upon receiving full repayment of the loan and closure of the loan account. Some of the key provisions of the directions are set out below:

1. REs must release all the original Documents and remove charges registered with any registry within a period of 30 (thirty) days after full repayment/ settlement of the loan account;
2. the borrower must be given the option to collect the original Documents either from the banking outlet/ branch servicing the loan account, or any other office of the RE where the Documents are available, as per her / his preference;
3. where there is a delay in releasing of original Documents or failure to file the charge satisfaction form with relevant registry beyond 30 (thirty) days after full repayment/ settlement of loan, the RE must communicate to the borrower reasons for such delay. Where the delay is attributable to the RE, the RE must compensate the borrower at the rate of INR 5,000 (Indian Rupees five thousand) for each day of delay;
4. upon loss/damage to original Documents, either in part or in full, the REs must assist the borrower in obtaining duplicate/certified copies of the Documents and must bear the associated costs, in addition to paying compensation as indicated above; and
5. to address the contingent event of demise of the sole borrower or joint borrowers, REs must have a well laid out procedure for the return of original Documents to the legal heirs.

Secured assets possessed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI Act, 2002")

RBI, *vide* circular[7] dated September 25, 2023, has directed REs acting as secured creditors under the terms of the SARFAESI Act, 2002, to display information in respect of the borrowers whose secured assets have been taken into possession by such REs. The REs must upload the information on the respective websites in the prescribed format by March 25, 2024, and thereafter update such information on a monthly basis.

Fund Management Entities ("FMEs") to seek authorisation for filing schemes

The International Financial Services Centres Authority (Fund Management) Regulations, 2022 ("**Fund Management Regulations, 2022**"), issued pursuant to the International Financial Services Centres Authority Act, 2019, were issued to regulate the landscape for investment funds and fund managers operating in an International Financial Services Centre ("**IFSC**"). *Vide* circular[8], dated September 15, 2023, the International Financial Services Centres Authority ("**IFSCA**") has issued directions setting out the procedure to obtain authorisations for schemes filed under Chapters III, IV, and V of the Fund Management Regulations, 2022, i.e., schemes relating to:

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[6] RBI/2023-24/60DoR.MCS.REC.38/01.01.001/2023-24
[7] RBI/2023-24/63 DoR.FIN.REC.41/20.16.003/2023-24
[8] IFSCA-AIF/47/2023-Capital Markets

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1. fund management such as the venture capital schemes, restricted schemes (non-retail schemes) and retail schemes;
2. exchange traded funds; and
3. environmental, social and governance.

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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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17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
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Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

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