



April 2024

This Newsletter sets out some of the key legislative and regulatory updates in the banking and finance space for the month of April 2024.

Key Facts Statement (“KFS”) for loans and advances

The Reserve Bank of India (“RBI”) vide its circular dated April 15, 2024, has issued instructions on KFS for loans and advances aimed at harmonizing instructions related to KFS. The objective is to enhance transparency and mitigate information asymmetry concerning retail and micro, small and medium enterprises (“MSME”) term loan products offered by commercial banks, primary urban cooperative banks, state cooperative banks, central cooperative banks, and all non-banking financial companies (including housing finance companies) (“REs”). All new retail and MSME term loans sanctioned on or after October 1, 2024, including fresh loans to existing customers, must comply with *inter alia* the following instructions:

1. REs must provide a KFS (in a language understood by the borrower), in the prescribed standardized format, to all prospective borrowers to help them take an informed view before executing the loan contract. The contents of KFS are to be explained to the borrower and an acknowledgement that he/she has understood the same is to be obtained.
2. The KFS must be provided with a unique proposal number which will have a validity period of at least 3 (three) working days for loans having tenor of 7 (seven) days or more, and a validity period of 1 (one) working day for loans having tenor of less than 7 (seven) days.
3. The KFS must include a computation sheet of annual percentage rate (including all charges being levied by the RE) and the amortisation schedule of the loan over the loan tenor.
4. Charges recovered from the borrowers by the REs on behalf of third-party service providers on actual basis, such as insurance charges, legal charges, will also form part of the annual percentage rate and must be disclosed separately.
5. Any fees and charges, which are not mentioned in the KFS, cannot be charged by the REs to the borrower at any stage during the term of the loan, without the explicit consent of the borrower.

Credit card receivables are exempted from the provisions under this circular.

Fair Practices Code for Lenders – Charging of Interest

Taking cognisance of unfair practices adopted by lenders in charging of interest, RBI has, vide its circular dated April 29, 2024, directed regulated entities (including banks and non-banking financial companies) to review some of their lending practices.

Some of the unfair practices observed by RBI include the charging of interest from the date of sanction of loan or the date of execution of loan agreement instead of charging it from the date of actual disbursement of funds, charging interest for the entire month instead of charging interest only for the period for which the loan was outstanding, etc.

Considering the ongoing unfair practices, RBI has directed the lenders to review their practices regarding the mode of disbursement of loans, application of interest and other charges and take corrective action, including system-level changes to address the issues.

Alternative Investment Fund (“AIF”) regulations amended to ensure investor protection

The Securities and Exchange Board of India (“SEBI”), vide notification dated April 25, 2024, has issued the SEBI (AIFs) (Second Amendment) Regulations, 2024, amending the SEBI (AIFs) Regulations, 2012. The key provisions are as follows:

1. Category I AIFs and Category II AIFs can create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure issued by the Central Government, only for the purpose of borrowing by such investee company and subject to the prescribed conditions by SEBI;
2. AIFs, manager of the AIFs and key management personnel of the manager must exercise specific due diligence, with respect to their investors and investments, to prevent facilitation of circumvention of laws specified by SEBI;
3. The liquidation period for a scheme of an AIF that has expired or is expiring within 3 (three) months, can be granted an additional liquidation period, subject to certain conditions as specified by the SEBI;
4. AIFs cannot launch any new liquidation scheme after the notification of these amendments;
5. Provisions relating to the dissolution period are inserted. The term ‘dissolution period’ is defined to mean the period following the expiry of the liquidation period of the scheme for the purpose of liquidating the unliquidated investments of the scheme of the AIF. The scheme entering into a dissolution period has to file an information memorandum with SEBI through a merchant banker. The dissolution period of a scheme of an AIF must not be more than the original tenure of the scheme and must not be extended in any manner upon expiry of the dissolution period. The scheme of the AIF must not accept any fresh commitment from any investor and must not make any new investment during the dissolution period; and
6. The unliquidated investments of the AIF scheme that are not sold by the expiry of the dissolution period will be mandatorily distributed in-specie to the investors, as specified by the SEBI.

Changes in terms of Private Placement Memorandum (“PPM”) of AIFs

SEBI, vide circular dated April 29, 2024, has eased the requirement of intimation of changes in the terms of PPM of AIFs through merchant bankers. Pursuant to the SEBI Master Circular for AIFs dated July 31, 2023, intimation with respect to any change in the terms of PPM of AIF was required to be submitted to SEBI through a merchant banker along with a due diligence certificate from the merchant banker. Now, certain changes in the terms of PPM, such as, changes made in the write-up on market opportunity/ Indian economy/ industry outlook, track record of investment manager, risk factors, legal regulatory and tax consideration, do not need to be submitted through a merchant banker and can be filed directly with SEBI. Similarly, changes with respect to:

1. information such as contact details (address, phone number etc.) of AIF, sponsor, manager, trustee or custodian,
2. auditor, registrar and share transfer agents, legal advisor or tax advisor, size of the fund/scheme, information related to Affiliates, commitment period, key investment team, key management personnel (except if the changes are due to change in control of manager and sponsor), advisory boards, expenses, disclosures, and other factual and routine updates need not be filed through a merchant banker.

Further, large value funds for accredited investors are exempted from the requirement of intimating any changes in the terms of PPM through a merchant banker. They can directly file any changes in the terms of PPM with SEBI, along with a duly signed and stamped undertaking by chief executive officer of the manager of the AIF (or such other person with equivalent role/ position) and compliance officer of the manager of the AIF, in a pre-specified format.

Opening, holding and maintaining a Foreign Currency Account outside India

RBI has notified amendments to the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 vide the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Amendment) Regulations, 2024. Pursuant to this amendment, funds raised through direct listing of equity shares of companies incorporated in India on international exchanges, which are either pending their utilisation or repatriation to India, can be held in foreign currency accounts with a bank outside India, subject to compliance with the conditions regarding raising of funds and resources.

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024

On April 19, 2024, RBI notified amendments to the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, *vide* the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024. The amendment sets forth the mode of payment, remittance of sale proceeds and reporting norms in relation to investments in Indian public companies listed on International Exchanges. The said amendment bridges the gap in the antecedent Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 which had enabled eligible holders to invest in the equity shares of a public Indian company that is or is to be listed on an International Exchange.

For a detailed analysis, please refer to the [JSA Prism of May 3, 2024](#).

Unauthorised foreign exchange transactions

RBI, *vide* circular dated April 24, 2024, has advised the AD Category-I banks to be more vigilant and exercise greater caution to prevent the misuse of banking channels in facilitating unauthorised forex trading. As and when AD Category-I banks come across an account being used to facilitate unauthorised forex trading, they must report the same to the Directorate of Enforcement, Government of India, for further action.

Limits for investment in debt and sale of credit default swaps by Foreign Portfolio Investors ("FPIs")

RBI, *vide* its circular dated April 26, 2024, has set out the investment limits for the financial year 2024-25, which are *inter alia* as follows:

1. The limits for FPI investment in Government Securities ("**G-Secs**"), State Government Securities ("**SGSs**") and corporate bonds will remain unchanged at 6%, 2%, and 15%, respectively, of the outstanding stocks of securities for 2024-25.

2. All investments by eligible investors in the 'specified securities' must be reckoned under the fully accessible route.
3. The allocation of incremental changes in the G-Secs limit (in absolute terms) over the 2 (two) sub-categories – 'General' and 'Long-term' – is retained at 50:50 for 2024-25.
4. The entire increase in limits for SGSs (in absolute terms) has been added to the 'General' sub-category of SGSs.
5. The aggregate limit of the notional amount of credit default swaps sold by FPIs is 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of INR 2,54,500 crore is set out for 2024-25.

Voluntary Transition of Small Finance Banks ("SFBs") to Universal Banks ("UBs")

RBI, *vide* its circular dated April 26, 2024, has set out the updated eligibility criteria for an SFB to transition into a UB. The eligibility criteria for an SFB to transition into a UB will, *inter alia*, be:

1. Scheduled status with a satisfactory track record of performance for a minimum period of five years.
2. Shares of the bank should have been listed on a recognised stock exchange.
3. Having a minimum net worth of INR 1,000 crore as at the end of the previous quarter (audited).
4. Meeting the prescribed capital to risk weighted assets ratio (CRAR) requirements for SFBs.
5. Having a net profit in the last two financial years.
6. Having gross non-performing asset (NPA) and net NPA of less than or equal to 3 percent and 1 percent, respectively in the last two financial years.

The eligible SFB must furnish a detailed rationale for such transition. The application for transition from SFB to UB will be assessed in accordance with the Guidelines for 'on tap' Licensing of Universal Banks in the Private Sector dated August 1, 2016, and Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023. Further, on transition the bank will be subjected to all the norms including Non-Operative Financial Holding Company (NOFHC) structure as per the said guidelines.

Guidance Note on Operational Risk Management and Operational Resilience ("Guidance Note")

RBI, *vide* its notification dated April 30, 2024, published the Guidance Note on Operational Risk Management and Operational Resilience ("**Guidance Note**"). The Guidance Note aims to help regulated entities to:

1. Promote and further improve the effectiveness of operational risk management.
2. Enhance operational resilience given the interconnections and interdependencies within the financial system that result from the complex and dynamic environment in which the regulated entities operate.

The Guidance Note has been based on the Basel Committee on Banking Supervision principles documents issued in March 2021, viz., (a) 'Revisions to the Principles for the Sound Management of Operational Risk' and (b) 'Principles for Operational Resilience' as well as the some of the international best practices. The Guidance Note is applicable to all commercial banks, all cooperative banks, all-India financial institutions and non-banking financial companies (including housing finance companies). The updated guidance note repealed the existing 'Guidance Note on Management of Operational Risk dated October 14, 2005' which was only applicable to scheduled commercial banks.

Guidance Note has included separate principles for mapping of internal and external interconnections and interdependencies, incident management, information and communication technology, and disclosures. It has further introduced separate principles on "lessons learned exercise" and continuous feedback mechanism.

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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<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023 ----- Banking & Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
		
<p>Innovative Technologies Law Firm of the Year 2023 ----- 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 ----- Employer of Choice 2021</p>	<p>7 Ranked Practices, 16 Ranked Lawyers ----- Elite – Band 1 - Corporate/ M&A Practice ----- 3 Band 1 Practices ----- 4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022</p>  <p>7 Practices and 2 Ranked Lawyers</p>

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