



# JSA Corporate InVision

July 2024

## SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

### Charges levied by market infrastructure institutions

SEBI, *vide* circular dated July 1, 2024, has clarified that the charge structure of the Market Infrastructure Institutions (“MII”), must be uniform and equal for all their members instead of the slab-wise charge which is dependent on the volume or activity of the members. It is mandatory for MIIs to comply with additional principles while designing the processes for charges levied on their members, such as:

1. MII charges to be recovered from the end client should be ‘True to Label’ i.e., if certain MII charge is levied on the end client by members (i.e. stock brokers, depository participants, clearing members), it should be ensured by MIIs that the same amount is received by them;
2. the new charge structure designed by MIIs must give due consideration to the existing per unit charges realised by MIIs so that the end clients are benefitted with the reduction of charges; and
3. MIIs are directed to redesign the existing charge structure and associated processes to comply with the circular and communicate the status of implementation to SEBI.

This circular will come into effect from October 1, 2024.

### Dispatch of consolidated account statements for all securities assets

SEBI, *vide* circular dated July 1, 2024, has modified the Master Circular on Depositories (“MCD”) dated October 6, 2023, to provide for email as the default mode of dispatch for Consolidated Account Statements (“CAS”). These modifications, which became effective from August 1, 2024, include:

1. CAS will be dispatched by email to all the investors whose email addresses are registered with the depositories and asset management companies/mutual funds-registrar and transfer agents. Investors who prefer physical copies can opt to receive them upon request. Quarterly SMS notifications will be sent to investors, confirming the email address used for CAS dispatch;
2. CAS will be sent to the investor through email on monthly basis for any transaction in any of the demat accounts of the investor or in any of their mutual fund folios; and
3. depositories participant will send at least 1 (one) annual statement of holding through email in respect of accounts with no transaction and nil balance even after the account has remained in such state for 1 (one) year.

## Restrictions on investments

SEBI, *vide* notification dated July 2, 2024, has issued the SEBI (Mutual Funds) (Amendment) Regulations, 2024 (“Amendment Regulations”), amending the SEBI (Mutual Funds) Regulations, 1996 (“Principal Regulations”). The Principal Regulations provide that no mutual fund scheme can make any investment in the listed securities of group companies of the sponsor which is in excess of 25% of the net assets. The Amendment Regulations have inserted an exception which provides that investments by equity-oriented exchange traded funds and index funds can be made, subject to conditions as may be specified by SEBI.

Further, SEBI, *vide* issued circular dated July 8, 2024, has streamlined the prudential norm for passively managed mutual fund schemes by providing conditions for investment in securities of group companies of the sponsor of mutual funds. Some of the conditions for such investments are as follows:

1. equity oriented exchange traded funds and index funds, based on widely tracked and non-bespoke indices, can make investments in accordance with the weightage of the constituents of the underlying index, subject to an overall cap of 35% of net asset value of the scheme, in the group companies of the sponsor;
2. widely tracked and non-bespoke indices will be those that are tracked by passive funds or act as primary benchmark for actively managed funds with collective Assets Under Management (“AUM”) of INR 20,000 crore (Indian Rupees twenty thousand crore) and above; and
3. the list of indices based on the prescribed criteria must be determined on half yearly basis as per the specified AUM threshold as on March 31 and September 30 respectively.

## Reduction in denomination of debt securities and non-convertible redeemable preference shares

SEBI, *vide* circular dated July 3, 2024, has amended chapter V (Denomination of issuance and trading of non-convertible securities) of the SEBI master circular dated May 22, 2024 for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper. It is applicable to all issues of debt securities and non-convertible redeemable preference shares on private placement basis that are proposed to be listed from July 3, 2024. These amendments are made to lower the ticket size of debt securities so as to encourage more non-institutional investors to participate in the corporate bond market which would enhance liquidity. These amendments include:

1. permitting issuers to issue debt securities or non-convertible redeemable preference shares on a private placement basis at a face value of INR 10,000 (Indian rupees ten thousand) subject to the certain conditions, such as:
  - a) the issuer must appoint at least 1 (one) merchant banker;
  - b) the debt security or non-convertible redeemable preference share must be interest/dividend bearing security paying coupon/dividend at regular intervals with a fixed maturity without any structured obligations;
  - c) credit enhancements, such as guaranteed bonds, partially guaranteed bonds, standby letter of credit backed securities, will be permitted;
  - d) credit rating agencies must verify the documentation related to the specified support considerations to ensure that the support is unconditional, legally enforceable and has a lower probability of default on a continuous basis till the time such instruments are outstanding; and
  - e) the issuer may raise funds through tranche placement memorandum or key information document at a face value at INR 10,000 (Indian Rupees ten thousand), for shelf placement memorandum or general information documents; and
2. trading lot of listed debt security issued on private placement basis and non-convertible redeemable preference share issued on private placement basis, which are traded on a stock exchange or over-the-counter, will always be equal to the face value.

## **Modification to enhanced supervision of stock brokers and depository participants**

SEBI, *vide* circular dated July 4, 2024, has modified the timelines for submission of annual audited accounts/net worth certificate by stock brokers and depository participants. The timelines for submission of annual audited accounts/net worth certificate by stock brokers/depository participants is revised to October 31 of the relevant year (*earlier this was September 30*).

## **Information to be filed by schemes of alternative investment funds**

SEBI, *vide* circular dated July 9, 2024, has issued a clarification regarding the information to be filed by schemes of Alternative Investment Funds (“AIFs”) availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs. The clarification states that:

1. any scheme of an AIF entering dissolution period must file an information memorandum along with a due diligence certificate with SEBI through a merchant banker in the manner specified by SEBI. The information memorandum must be submitted before the expiry of the liquidation period or additional liquidation period of the scheme, as the case may be;
2. schemes of AIFs that have expired or are expiring within 3 (three) months, on or before July 24, 2024, may be granted an additional/fresh liquidation period, on submitting information to SEBI in the prescribed format, subject to certain conditions; and
3. in specie distribution of investments of a scheme of an AIF must be carried out after obtaining approval of at least 75% of the investors by value of their investment in the scheme of the AIF.

## **Framework for unit-based employee benefit scheme introduced for real estate investment trusts and infrastructure investment trusts**

SEBI, *vide* notifications dated July 11, 2024, and July 12, 2024, has issued the SEBI (Infrastructure Investment Trusts) (“InvITs”) (Second Amendment) Regulations, 2024 and the SEBI (Real Estate Investment Trusts) (“REITs”) (Second Amendment) Regulations, 2024 respectively. The amendments aim to provide a structured approach to offering unit-based benefits, promoting employee participation and safeguarding the interests of all stakeholders involved in REITs/InvITs. Some of the key provisions are as follows:

1. the term ‘employee unit option scheme’ is inserted to mean a scheme under which the investment manager grants unit options to its employees through an employee benefit trust;
2. the term ‘liquid asset’ is inserted to mean cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds;
3. the manager/investment manager may, at its discretion, offer unit-based employee benefit scheme for its employees based on the units of the REIT/InvIT, subject to compliance with the provisions of chapter IVA/Chapter IVB of the respective principal regulations;
4. Chapter IVA/ Chapter IVB (*Framework for Unit Based Employee Benefit Scheme*) is inserted in the respective principal regulations; and
5. a new schedule is inserted in the respective principal regulations, pertaining to minimum provisions in trust deed, such as details of the trust, powers and duties of trustee, mode and manner of dissolution of the trust.

## **Registration of migrated venture capital funds**

SEBI, *vide* notification dated July 18, 2024, has issued the SEBI (AIF) (Third Amendment) Regulations, 2024. The key amendments are as follows:

1. a venture capital fund may seek registration as migrated venture capital funds in terms of Chapter III-D, within 12 (twelve) months from July 18, 2024;

2. SEBI may specify enhanced regulatory reporting and other measures for venture capital funds that do not seek registration as a migrated venture capital fund; and
3. a new chapter (Chapter III D), is inserted for migrated venture capital funds and schemes launched by such funds, providing:
  - a) the procedure for grant of certificate;
  - b) eligibility criteria;
  - c) prohibition on inviting subscription from the public;
  - d) issue of placement memorandum or subscription agreement; and
  - e) conditions for investment by migrated venture capital fund.

### **Prohibition of transaction through mule account**

SEBI, *vide* notification dated July 28, 2024, has issued the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2024, which amends the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. Transactions through mule accounts for indulging in manipulative, fraudulent and unfair trade practice are deemed to be considered as manipulative, fraudulent and unfair trade practice. The term 'mule account' is inserted to mean a trading account maintained with a stock broker or a dematerialised account or bank account linked with such trading account in the name(s) of a person, where the account is effectively controlled by another person, whether or not the consideration for transactions in the account are paid by such other person.

## **RESERVE BANK OF INDIA (RBI)**

### **Review of framework for domestic money transfer**

RBI, *vide* circular dated July 24, 2024, has issued certain revisions to the framework for domestic money transfer given the multiple digital options for funds transfer. Some of the key changes in the framework are as follows:

1. for the case pay-out service, the remitting bank must obtain and keep a record of the name and address of the beneficiary;
2. for the cash pay-in service:
  - a) remitting banks/business correspondents must register the remitter based on a verified cell phone number and a self-certified 'Officially Valid Document' as per the Master Direction – Know Your Customer Direction, 2016;
  - b) every transaction by a remitter must be validated by an additional factor of authentication; and
  - c) remitting banks and their business correspondents must conform to provisions of the Income Tax Act, 1961 for cash deposits.

Further, the guidelines on card-to-card transfer are excluded from the purview of this framework. This framework will come into effect from November 1, 2024.

### **Release of foreign exchange for miscellaneous remittances**

RBI circular dated July 3, 2024, addresses the changes in the release of foreign exchange for miscellaneous remittances by authorised dealers in foreign exchange. The circular rescinds previous guidelines that permitted the release of foreign exchange for current account transactions up to USD 25,000 (US Dollars twenty-five thousand) or its equivalent based on a simple letter without requiring Form A2 or other documentation. Instead, authorised dealers are now required to obtain Form A2 in either physical or digital format for all cross-border remittances, irrespective of the transaction amount.

This change aims to streamline regulatory compliance and operational procedures. Authorised dealers must ensure compliance with the Foreign Exchange Management Act, 1999 (“**FEMA**”), specifically Section 10(5) of FEMA, to verify that transactions adhere to FEMA provisions.

## JAN VISHWAS ACT

### Jan Vishwas (Amendment of Provisions) Act, 2023

1. The Ministry of Commerce and Industry (“**MOCI**”), *vide* notification dated July 29, 2024, states that the entries in the Jan Vishwas (Amendment of Provisions) Act, 2023 (“**JVA**”) with respect to the Patents Act, 1970, the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999, have come into force with effect from August 1, 2024.
2. MOCI, *vide* notification dated July 30, 2024, states that the entries in the JVA with respect to the Copyright Act, 1957, have come into force with effect from August 1, 2024.
3. The Ministry of Finance, *vide* notification dated August 1, 2024, states that the entries in the JVA with respect to the Public Debt Act, 1944, have come into force with effect from August 1, 2024.

## MINISTRY OF LAW AND JUSTICE

### Stringent measures against cybercrimes in India’s new criminal justice system

On July 1, 2024, India’s criminal justice system underwent a significant transformation with the introduction of 3 (three) new laws namely the (a) Bharatiya Nyaya Sanhita, 2023 (“**BNS**”) replacing the Indian Penal Code, 1860; (b) the Bharatiya Nagarik Suraksha Sanhita, 2023, replacing the Code of Criminal Procedure, 1973; and (c) the Bharatiya Sakshya Adhinyam, 2023, replacing the Indian Evidence Act, 1872 (collectively referred to as the “**New Criminal Laws**” or “**Legislations**”). These Legislations are intended to operate prospectively, meaning any crime committed until midnight of June 30, 2024, will continue to be governed and prosecuted under the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 (collectively referred to as the “**Old Criminal Laws**”). Consequently, the Old Criminal Laws will remain relevant for several years until all pending investigations, inquiries, trials, appeals, and related proceedings are concluded.

With the Old Criminal Laws dating as far back as 1860, the Legislations mark a watershed moment in India’s criminal justice system. The New Criminal Laws have introduced provisions aimed at adapting to the complexities of the digital age and deterring crimes that have flourished in the age of the internet. These Legislations also acknowledged the growing digital landscape and incorporated measures to better tackle the increasing rates of cybercrimes in India. While cybercrime is still not defined in the BNS, it is considered a catch-all phrase for offences involving technology such as hacking, phishing, and cyber-stalking.

For a detailed analysis, please refer to the [JSA Prism of July 15, 2024](#).

## JSA UPDATES

### National Company Law Tribunal refuses to recall order sanctioning scheme of arrangement stating that Section 230(12) cannot be invoked in a case of demerger

In the recent decision of *Shri Shreans Daga vs. IBM India Private Limited*, the Hon’ble National Company Law Tribunal (“**NCLT**”), Bengaluru refused to recall an order by which it had sanctioned a scheme of arrangement between IBM India Private Limited (“**Demerged Company**”) and Kyndryl Solutions Private Limited. The NCLT held that the

application for recall was liable to be dismissed at the threshold, as it had been filed under Section 230(12) of the Companies Act, 2013, which applies only in cases of takeovers and not in cases of demergers. On merits, the NCLT held that the applicants failed to prove their status as creditors of the Demerged Company entitling them to raise objections to the scheme of arrangement.

For a detailed analysis, please refer to the [JSA Prism of July 4, 2024](#).

## 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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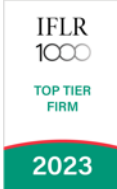






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