



July 2024

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

Forms to monitor liquidation/voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016

To alleviate the compliance burden for insolvency professionals, in relation to voluntary liquidation process of a corporate person and for enhancing the efficiency of liquidation/voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016 (“IBC”) and the regulations thereunder, the Insolvency and Bankruptcy Board of India, *vide* its circulars dated June 28, 2024, has introduced a set of forms on an electronic platform, designed to simplify reporting requirements for insolvency professionals handling liquidation/voluntary liquidations process under the IBC. The primary advantages of these forms include: (a) boosting the efficiency and effectiveness of the liquidation/voluntary liquidation process; (b) allowing liquidators to conveniently access and submit forms online, reducing delays and improving efficiency; and (c) decreasing the chances of errors and omissions, ensuring more accurate and reliable information.

Charges levied by market infrastructure institutions

The Securities and Exchange Board of India (“SEBI”), *vide* its circular dated July 1, 2024, has directed the Market Infrastructure Institutions (“MIIs”) to comply with the following additional principles while designing the processes for charges levied on their members (which are to be recovered from the end clients):

1. MII charges that are to be recovered from the end client should be “True to Label” i.e. if a 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 charge structure of the MII should be uniform and equal for all its members instead of slab-wise charge which is dependent on volume/activity of its members; and
3. 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.

In line with this circular, SEBI has directed the MIIs to redesign the existing charge structure and associated processes to comply with the provisions of the circular and take necessary steps to put in place the requisite infrastructure and systems for implementation of the circular. Further, SEBI has also directed the MIIs to communicate the status of implementation of the provisions of the said circular to SEBI.

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

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 for issue and listing of non-convertible securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper dated May 22, 2024. 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 that may encourage more non-institutional investors to participate in the corporate bond market which in turn may also enhance liquidity. These amendments include:

a new clause 1.3 is inserted 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:

1. the issuer must appoint at least 1 (one) merchant banker;
2. 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;
3. credit enhancements, such as guaranteed bonds, partially guaranteed bonds, standby letter of credit backed securities, will be permitted;
4. regarding the credit enhancements mentioned above, 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;
5. 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, provided at least 1 (one) merchant banker is appointed to carry out due diligence in respect of such issuances; and
6. clause 2.3 pertaining to trading of non-convertible securities is modified to state that all 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.

Release of foreign exchange for miscellaneous remittances

The Reserve Bank of India (“**RBI**”) circular dated July 3, 2024, addresses 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 and there will not be any limit on the amount being remitted on the basis of ‘online’ Form A2.

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.

Credit Rating Agencies

Revised timelines and disclosures by credit rating agencies

SEBI, *vide* circular dated July 4, 2024, has revised the timelines to be followed by Credit Rating Agencies (“**CRAs**”) as specified under master circular dated May 16, 2024. The revised timelines are as follows:

1. for communication of rating to the issuer – 1 (one) working day of the rating committee meeting;
2. for request for review/appeal of rating by the issuer – 3 (three) working days of the rating committee meeting; and
3. for dissemination of press release on CRA’s website and intimation of the same to stock exchange/ debenture trustee – 7 (seven) working days of the rating committee meeting.

Further, CRAs must maintain an archive of all disclosures on their website, for at least 10 (ten) years.

Amendment of the term ‘liquid asset’ under the SEBI (CRAs) Regulations, 1999

SEBI, *vide* notification dated July 8, 2024, has issued the SEBI (CRAs) (Amendment) Regulations, 2024 amending the term ‘liquid asset’ to include units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, and repo on corporate bonds. Pursuant to this, the term ‘liquid asset’ means a low risk asset such as 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 that may be easily converted into cash in a short period of time.

Eligible CRAs for capital adequacy purposes under Basel III Capital Regulations

RBI, *vide* notification dated July 10, 2024, has permitted banks to use the ratings of CRA i.e. Brickwork Ratings India Private Limited (“**Permitted CRA**”) for risk weighting their claims for capital adequacy purposes, subject to the following:

1. in respect of fresh rating mandates, rating may be obtained from the Permitted CRA for bank loans not exceeding INR 250,00,00,000 (Indian Rupees two hundred fifty crore); and
2. in respect of existing ratings, the Permitted CRA may undertake rating surveillance irrespective of the rated amount, till the residual tenure of such loans.

Provided that in case of existing ratings assigned to working capital facilities exceeding INR 250,00,00,000 (Indian Rupees two hundred and fifty crore), the Permitted CRA must undertake rating surveillance only till the next renewal of such facility by the banks.

Credit Rating Agencies at the international financial services centres

SEBI, *vide* its circular dated July 19, 2024, has added the International Financial Services Centres Authority (“**IFSCA**”) to the list of financial sector regulators/authorities as provided under Annexure 19 of the Master circular for CRAs dated May 16, 2024, enabling CRAs registered with SEBI to undertake rating activities at International Financial Services Centres (“**IFSCs**”) and further clarified that any issues arising from the activities of CRAs under the guidelines of IFSCA will be dealt by IFSCA including but not limited to complaints, enforcement actions and furnishing of information to the third parties.

IFSCA, on July 25, 2024, has also issued a circular in this regard providing that credit rating agencies registered with SEBI are now permitted to undertake credit rating activities in the IFSC.

Valuation of assets of schemes at international financial services centres

IFSCA, on July 25, 2024, has issued a circular regarding the valuation of assets of schemes under IFSCA (Fund Management) Regulations, 2022 at IFSCs. A CRA which has obtained a certificate of registration from the IFSCA under the IFSCA (Capital Market Intermediaries) Regulations, 2021 may also undertake the valuation of assets of the schemes under IFSCA (Fund Management) Regulations, 2022.

Alternative Investment Funds

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 formats for which are provided in the circular). 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 is expiring on or before July 24, 2024, may be granted an additional/fresh liquidation period, on submitting information to SEBI in the prescribed format; 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.

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.

IFSCs

Remittances to IFSCs under the liberalised remittance scheme

RBI, *vide* circular dated July 10, 2024, has further liberalised remittances under the liberalised remittance scheme *via* IFSCs by allowing remittances for:

1. availing financial services/financial products as per the IFSCA Act, 2019 within IFSCs; and
2. all current/capital account transactions, in any other foreign jurisdiction (other than IFSCs) through a foreign currency account held in IFSCs.

Permission granted to IFSCs banking units to participate in the synthetic securitisation program of its parent bank

IFSCA, *vide* circular dated July 11, 2024, has permitted IFSC Banking Units (“IBUs”) to participate in the synthetic securitisation program of its parent bank subject to following conditions:

1. the home regulator of the IBU has adopted the Basel III framework and has not prohibited the banks under its jurisdiction from undertaking such transactions;
2. IBU must notify IFSCA before the exposures of the IBU are incorporated in the parent bank’s program for synthetic securitisation;
3. IBU must comply with provisions of the IFSCA Banking Handbook and the Prudential Directions; and
4. the IFSCA may require the IBU to submit a copy of the reports being submitted to its home regulator for such transactions to the extent such report pertains to the assets of the IBU included in the program on synthetic securitisation.

Permission granted to CRAs to undertake Environmental Social and Governance rating activities under the IFSCs

IFSCA, *vide* circular dated July 31, 2024, has permitted CRAs to undertake additional activities relating to Environmental Social and Governance (“ESG”) ratings and ESG data products, for any financial product or to an issuer including sovereign or multinational institution whether in IFSCA or any foreign jurisdiction while being subject to the prescribed code of conduct.

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 amendment aims 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.

Framework for fraud risk management in non-banking financial companies

RBI, *vide* notification dated July 15, 2024, has issued the RBI (Fraud Risk Management in NBFCs) Directions, 2024, which aims to provide a framework for all Non-Banking Financial Companies (“NBFCs”) (including housing finance companies) in the upper layer, middle layer and in the base layer, with asset size of INR 500 crore (Indian Rupees five hundred crore) and above. These directions are issued with a view to providing a framework to NBFCs for prevention, early detection and timely reporting of incidents of fraud to law enforcement agencies, RBI and national housing bank. The key directions are:

1. there must be a board approved policy on fraud risk management delineating roles and responsibilities of board/board committees and senior management of the NBFC. Special committee of the board to be formed for monitoring and follow-up of cases of frauds;
2. NBFCs must identify appropriate early warning indicators for monitoring credit facilities/loan accounts and other financial transactions; and
3. all RBI regulated entities will not provide any credit assistance to an entity whose account has been declared fraud for a period of 5 (five) years from satisfaction of all dues.

Directions for treatment of wilful and large defaulters

RBI, *vide* notifications dated July 30, 2024, has issued the RBI (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024 (“**Wilful Defaulter Directions**”), and these directions will come into force after 90 (ninety) days from placing it on the website of RBI. The Wilful Defaulter Directions aim to provide for a non-discriminatory and transparent procedure for classifying a borrower as a ‘wilful defaulter’, and to disseminate credit information about wilful defaulters for cautioning the lenders. Some of the key provisions under the Wilful Defaulter Directions are as follows:

1. the provisions regarding wilful defaulters and large defaulters are applicable to all RBI regulated entities irrespective of whether they fall within the definition of ‘lender’ as provided in the Wilful Defaulter Directions or not;
2. the Wilful Defaulter Directions provide for a mechanism for identification and classification of defaulters: (i) wilful defaulters: where the total outstanding is above INR 25,00,000 (Indian Rupees twenty-five lakh) ; and (ii) large defaulters: where the outstanding is above INR 1,00,00,000 (Indian Rupees one crore), or as notified by the RBI;
3. wilful defaulters are to be classified based on their track-record and not on the basis of isolated transactions/incidents;
4. an elaborate 2 (two) stage procedure for classification of a wilful defaulter has been provided under the Wilful Defaulter Directions. This 2 (two) stage procedure includes: (i) identification of the default and the wilful defaulter by the ‘identification committee’. In this regard the duties of the identification committee have also been provided under the Wilful Defaulter Directions; and (ii) identification committee thereafter applies before the ‘review committee’, who will entertain written applications by the associates of the willful defaulter, prior to reaching a decision, in interest of natural justice;
5. the Wilful Defaulter Directions provide for specific measures to be taken against wilful defaulters, including, initiation of criminal proceedings, publication of photographs, and bar on providing any additional credit facility to the wilful defaulter and to any entity such willful defaulter is associated with; and

6. the Wilful Defaulter Directions provide for removal of names of wilful defaulters and large defaulters through credit information companies pursuant to voluntary settlement or involuntary resolution of the debt wherever the outstanding amount gets below the required threshold.

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.

This Newsletter has been prepared by:





Anish Mashruwala
Partner



Shrijita Bhattacharya
Of Counsel



Deboshree Mukherjee
Senior Associate

		
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	<p>IFLR1000 APAC Rankings 2023</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p>	<p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
<p>18 Practices and 25 Ranked Lawyers</p>	<p>Restructuring & Insolvency Team of the Year</p>	 <p>14 Practices and 38 Ranked Lawyers</p>
		
<p>Employer of Choice 2024</p> <p>-----</p> <p>Energy and Resources Law Firm of the Year 2024</p> <p>-----</p> <p>Litigation Law Firm of the Year 2024</p> <p>-----</p> <p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p>	<p>7 Ranked Practices, 16 Ranked Lawyers</p> <p>-----</p> <p>Elite – Band 1 - Corporate/ M&A Practice</p> <p>-----</p> <p>3 Band 1 Practices</p> <p>-----</p> <p>4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>  <p>7 Practices and 3 Ranked Lawyers</p>

For more details, please contact km@jsalaw.com

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