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a quarterly newsletter by cam financial institutions group

October 2022 – January 2023

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It gives me a great deal of pleasure to share with you the fourth issue of 'Financial Institutions Group ("**FIG**") Bulletin', a quarterly newsletter produced by our FIG practice.

There has been a drastic change in the Indian financial system, with a shift from physical finance to tech-based financing taking over the nation. The recent developments and updates in the third quarter of 2022 are reflective of a potential remarkable year ahead for the FinTech industry. The quarter has witnessed the Ministry of Electronics and Information Technology ("**MeitY**") publishing the draft Digital Personal Data Protection Bill ("**DP Bill**"). In comparison to its predecessors, the DP Bill is far more concise, covering all digital personal data without creating a distinction between sensitive and critical personal data. Unlike the current data protection regime, all digital personal data is now covered. Further, the DP Bill solely specifies monetary penalties instead of criminal ones.

The Reserve Bank of India ("**RBI**") has released the Standard Operating Procedure ("**SOP**") for inter-operable Regulatory Sandbox. The SOP's goal is to make the testing of innovative products, models, or features that fall under the purview of two or more financial sector regulators easier for innovators. Innovators have to approach a single established window, thus doing away with the requirement of having to communicate with various regulators. By streamlining the regulations and processes enforced by various authorities, this SOP also aims to encourage innovation in the FinTech industry as a whole.

We aim to discuss recent regulatory updates from the RBI and SEBI and their impact on business and the Indian market, which includes insights from Mr. Anand Sinha, former Deputy Governor of the RBI, and Mrs. Lily Vadera, former Executive Director of the RBI, now senior advisors with us, along with other key updates.

We hope you enjoy reading this newsletter. Please feel free to send your comments, feedback and suggestions to cam.publications@cyrilshroff.com.

Regards,

Cyril Shroff

Cyril Shroff

Managing Partner
Cyril Amarchand Mangaldas

India's leading law firm

MESSAGES FROM OUR FIG CO-HEADS

Message from FIG Co-Head, B. Sriram

It is with great pleasure that I introduce you to the fourth issue of the FIG Bulletin, by our FIG practice.

The latest developments of the third quarter of 2022 are reflective of a potential year ahead. The third quarter has witnessed the release of a concept note on 'Central Bank Digital Currency' ("**CBDC**") by the Reserve Bank of India (RBI). The RBI backs the CBDC, which, unlike private virtual currencies, is effectively paper money in digital form. This issue further takes the readers through an array of regulatory developments in the FinTech space. Some of the key highlights and developments from the regulators are: a) Inclusion of Goods and Service Tax Network ("**GSTN**") as a Financial Information Provider under Account Aggregator Framework, b) Self-Declaration for Know-Your-Customer ("**KYC**") - where the Reserve Bank of India ("**RBI**") has published directions on self-declaration by Customers when there are no changes in KYC information. In such cases, a self-declaration by the customer is sufficient to complete the re-KYC process.

We hope you find this newsletter to be an insightful and engaging read. Please share any feedback or comments about the newsletter with us on cam.publications@cyrilshroff.com.

Regards,

B. Sriram
Senior Advisor

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Message from FIG Co-Head, Santosh Janakiram

I am elated to present the fourth issue of the FIG Bulletin, by our FIG practice.

This issue contains perspective on recent developments in the FinTech sector and interesting insights on the Updates to the Master Direction – Standalone Primary Dealers (Reserve Bank) Directions, 2016 ("**SPD Directions**"). Under the Reserve Bank of India ("**RBI**") notification on 'Diversification of activities by SPDs – Review of permissible non-core activities', dated October 11, 2022, standalone primary dealers ("**SPD**") were permitted to provide all foreign exchange market-making facilities to users, as is currently allowed to Authorized Dealer Category-I, as long as they followed the prudential regulations and other guidelines issued separately in this regard.

Along with covering the budget updates for 2023-2024, we have also focused on the RBI, National Payments Corporation of India ("**NPCI**") and Securities and Exchange Board of India ("**SEBI**") updates on matters such as the SEBI regulatory framework for Online Bond Platform Providers ("**OBPPs**"), NPCI's circular on permitting accounts with International Mobile Numbers to On-Board/ Transact through Unified Payments Interface ("**UPI**") and RBI's circular on Classification of Middle Layer for Multiple Non-Financial Banking Companies ("**NBFCs**").

Another riveting development that we have tackled in this newsletter is RBI's releasing the 'Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices' ("**MDs**") issued on October 20, 2022.

We hope you enjoy reading this newsletter.

Regards,

Santosh Janakiram
Partner and Co-Head - FIG

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RBI Releases New Prior approval requirements for acquiring 'Major Shareholding' in Banks

Introduction

The Reserve Bank of India ("**RBI**") released Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies ("**Acquisition Guidelines**") and the RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023 ("**Shareholding Directions**"), on January 16, 2023. The Acquisition Guidelines and the Shareholding Directions will be collectively referred to as "**Acquisition Regulations**". The Acquisition Regulations have been issued with the intent of ensuring that the ultimate ownership and control of banking companies are well diversified, and the shareholders are 'fit and proper'.

The RBI has also repealed the previous directions in this regard, i.e., the circular on Prior approval for acquisition of shares or voting rights in private sector banks ("**Prior Approval Circular**"), dated November 19, 2015, and the Ownership in Private Sector Banks, dated May 12, 2016 ("**Erstwhile Regulations**").

We will briefly touch upon the applicability and key implications of the Acquisition Regulations, along with a comparative analysis of the key points of divergence from the Erstwhile Regulations.

Key Highlights

i. The Acquisition Regulations are applicable to all banking companies, as defined in the Banking Regulation Act, 1949, except foreign banks that are operating either through branches or the wholly owned subsidiary mode.

ii. The maximum shareholding threshold for 'regulated, well diversified and listed/ supranational institution/ public sector/ government undertakings' was at 40% under the Erstwhile Directions. The RBI has now lowered this threshold to 15%, which is on par with all other financial institutions that are not connected to large corporate houses or controlled by individuals.

iii. Similarly, the stipulation under the Erstwhile Directions that any shareholding greater than 40% would be considered by the RBI on a case-to-case basis, subject to deal specific considerations and macroeconomic factors, has now been reduced to 15%. These changes are in line with the accepted recommendations of the Internal Working Group reviewing Extant Ownership Guidelines and Corporate Structure for Indian Private Sector Banks.

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iv. The lock-in provisions relating to shareholding in a banking company were only applicable to promoters of banking companies. Under the Acquisition Regulations, if more than 10%, but less than 40% of the shareholding of a banking company is acquired by any person, such shareholding will remain locked-in at such percentage for a period of five years, irrespective of whether the shareholder is classified as a promoter. Further, if a person has been approved to hold more than 40%, only 40% of the shareholding will be subject to the five-year lock-in period condition.

v. The Acquisition Regulations prohibit persons from Non-Financial Action Task Force ("**FATF**") compliant jurisdictions from acquiring more than 5% shareholding in a banking company. It is interesting to note that the RBI did not have such an explicit criterion in the Erstwhile Regulations. Therefore, it would be safe to assume that the RBI may have considered it in its 'fit and proper' assessment of an acquirer.

Analysis of the Acquisition Regulations vis-a-vis the Erstwhile Regulations

The RBI has maintained status quo on the timing of prior approval requirement i.e., the definitive documentation for acquisition of shareholding in a banking company may be executed prior to applying for approval of such acquisition.

The Acquisition Regulations provide clarity on how indirect holding of shares in a banking company is required to be computed for determining the "aggregate holding" of any person. The Shareholding Directions provide a list of entities such as portfolio managers and their clients, proxy advisors, who are authorised to exercise voting rights on behalf of their principals, and Private Equity funds and their partners/ investment managers, which must be mandatorily considered to calculate the indirect shareholding.

The Erstwhile Regulations provided an automatic route for shareholders approved to hold 5% shares to increase their shareholding to up to 10%, if such person submitted certain information to, and received a "no objection" certificate from the relevant banking company. However In accordance with the Acquisition Guidelines, any increase in shareholding for which RBI approval has already been acquired, would result in a new RBI approval requirement.

Previously, shareholding of up to 5% in a banking company did have implications on such acquisition. However, the Shareholding Directions now allow the banking company, whose shares are being acquired, to make a reference to the RBI. Such reference may be made if the banking company has a reason to believe that the methods adopted in the acquisition of shares are with a view to circumvent regulatory requirements of prior RBI approval.

Fit and Proper Test

The RBI, with a view to ensure banking companies are continuously controlled by 'fit and proper' persons, increased monitoring, and compliance obligations on each banking company with respect to:

i. Its major shareholders who have completed the approved acquisition;

ii. Those applicants for whom comments have been provided by the concerned banking company to the RBI for approval to have major shareholding; and

iii. Those applicants who have been approved by the RBI to have major shareholding but are yet to complete the approved acquisition.

The 'fit and proper' assessment under the Erstwhile Regulations was subjective, and provided RBI with flexibility to make such assessments. While the indicative criteria for the 'fit and proper' assessment of shareholders of banking companies remains largely unchanged, the RBI has removed the criteria of 'public interest' and 'desirability of diversified ownership in banks' for acquisitions in excess of 10%. Such a change helps eliminate possible subjectivity in such assessments to be carried out by both the banking company itself, and the RBI. This would be particularly helpful with the ongoing divestments of banking companies in India. However, this may have an adverse effect on the timelines of such transactions.

Conclusion

The Acquisition Regulations have been issued at a time when the Government of India has been allowing privatisation of banking companies in the country. The stipulations under the Acquisition Regulations such as those of lock-in requirements, reduction of the maximum shareholding threshold from 40% to 15%, continuous monitoring of shareholders, etc., have been issued to ensure that banking companies are stable and are controlled by 'fit and proper' persons. Through the issuance of the Acquisition Regulations, the RBI aims to bring about stability and increase confidence in the Indian banking system.

Central Bank Digital Currency

Introduction

Even though cash is still the 'king', technological advances are compelling Central Banks to consider new central bank digital currencies ("**CBDCs**") that could supplement conventional currency. The addition of Section 22A to the Finance Bill, 2022, has outlined India's plans to launch a CBDC, signalling a significant shift in the country's stance on centralised fiat payment regimes.

CBDC is a central bank-issued digital equivalent of currency notes. It will be simpler, faster, and less expensive, and will have all the transactional advantages of other digital currencies. As per the Reserve Bank of India ("**RBI**"), the Digital Rupee, 'e₹' is interchangeable with the current currency and will be accepted as a medium of exchange, legal tender, and a secure store of value.

Advantages Contemplated through CBDC's Implementation

The RBI's conception of the CBDC is progressive. As a sovereign currency, CBDC possesses distinctive benefits of confidence, safety, liquidity, settlement finality, and integrity. It is touted to reduce operational costs involved in physical cash management and foster financial inclusion and resilience. The assertion is that it is expected to protect consumers from the negative social and economic effects of private virtual currencies. Further, CBDC's offline capability might be useful in distant regions where power or a cell network are unavailable.

Whether CBDC's Implementation adds value to the Present Ecosystem

The RBI asserts that the CBDC will be a fundamental tool for cross-border remittances and that its use will deter the adoption of private cryptocurrencies.

Although the former assertion warrants merit in terms of the flexibility that would be available for cross-border trade and payment facilitation, very few countries, including major economies such as the United States, have actually implemented the same. In addition, there is no clarity on the proposed investments that would be needed in this area, as it is still in its nascent stages. CBDCs are being tested for integration into the Swift system to facilitate cross-border transactions. However, concerns about data protection and privacy still loom large with their adoption. Large gaps exist in regulations and legislations, and consequently, CBDCs may not be able to replace or aid a long-standing system, unless the lacunae are resolved.

On the second assertion of deterring the adoption of private cryptocurrencies, while both CBDCs and cryptocurrency are blockchain enabled, their utility differs greatly. Due to its anonymity and deregulation, cryptocurrencies attract large investments. On the other hand, CBDC is simply an alternate source of sovereign currency. CBDC's implementation may not necessarily hinder private cryptocurrency proliferation.

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Design Considerations for CBDC

The adoption of CBDC will require significant investment in setting up a payment system architecture that supports digital currency issuance. The models for CBDC's issuance and management may be direct or indirect. A direct (single tier) model is one in which the central bank manages all parts of the CBDC system, including issuance, account maintenance, and transaction verification. In the indirect (two-tier) model, the central bank issues CBDC to consumers indirectly via intermediaries. The intermediary, and not the central bank, would provide CBDC on demand.

The adopted model will thus alter the role of the Central Bank in managing CBDCs. Adopting a direct distribution strategy would require the RBI to significantly scale its technological capabilities for blockchain-based payment infrastructure. As stated previously, feasibility of investment is yet to be fairly considered. Having said that, the system's global acceptance is limited because blockchain remains slow and cannot yet support large-scale applications. The technology is expected to mature over the next three to five years and is likely to overcome its limitations. At a certain point, therefore, the existing digital infrastructure will be replaced, which will eliminate the dependence of new entrants on the resources and capabilities controlled by incumbent financial institutions.

Digital Rupee 'e ₹' Pilot

The RBI has geared its efforts towards a digital currency pilot in both Wholesale and Retail segments. Wholesale CBDC ("**CBDC-W**") is designed for the settlement of interbank transfers and other wholesale transactions. General purpose or retail CBDC ("**CBDC-R**") is primarily intended for retail transactions and is being issued in the same denominations as the current physical currency. Whether CBDC-R will be integrated into the current digital ecosystem or if a new system will be established after its viability is assessed is still a matter of consideration. As of now, CBDC-W pilots have only been placed for government

security trades. Although CBDC pilots are encouraging, their overall scope and utility must be determined.

Considerations of Data Protection & Privacy

As stated before, a centralised issuance system, in which the Central Bank is responsible for the issuing and processing of all network transactions, creates many data management infrastructure and privacy concerns. Further, logistical challenges seem inevitable given the reliance on a sole system.

Conclusion

CBDCs have great potential for facilitating cross-border transactions and act as an alternative to central bank-issued fiat currencies. Concerns about its initial utility, data protection, and privacy must be overcome for the government and the RBI to invest in it. Given India's relatively robust digital payment infrastructure that includes the unified payment interface (UPI) as well as significant improvements to Immediate Payment Service (IMPS), it would have been useful to elaborate on how this model of CBDC would represent a more efficient and quicker payment mode while avoiding existing risks. It is hoped that the Government and the RBI would devise solutions to these complex difficulties over the next few months and years.

The Digital Personal Data Protection Bill, 2022 – Implications on Financial Services

Background

The Digital Personal Data Protection Bill, 2022 ("**DP Bill**"), was issued for public comments/ feedback by the Ministry of Electronics and Information Technology ("**MeitY**") on November 18, 2022. The issuance of the DP Bill marks the fourth version of the data protection bill, which MeitY has introduced, with an aim to overhaul the existing data protection regime in India.

The DP Bill envisages a framework which ensures the protection of personal data by outlining the rights of Data Principals (*explained below*) and the role of, and restrictions imposed on, Data Fiduciaries (*explained below*) to ensure the protection of such rights. We will briefly discuss the key highlights of the DP Bill and the implications of the DP Bill on the financial services sector.

Key Highlights

i. The DP Bill does not bifurcate between sensitive personal data and personal data, unlike the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 ("**SPDI Rules**").

ii. The DP Bill is applicable to data processed through automated means, data processed by non-automated means and offline personal data (unless digitised) is outside the purview of the DP Bill.

iii. The DP Bill envisages a Data Protection Board, which will be the regulatory authority under the DP Bill.

iv. The DP Bill has retained, from its previous versions, the concept of: (a) Data Fiduciaries – persons determining the purpose and means of processing personal data; (b) Data Principal – the person to whom the personal data relates; (c) Consent Managers – a Data Protection Board registered manager, who will be appointed for enabling a Data Principal to give, manage, review or withdraw their consent; and (d) Significant Data Fiduciaries – The Central Government may notify any class of Data Principals as Significant Data Fiduciary basis assessment of factors such as volume and sensitivity of personal data processed, public order, security of India, etc.

v. The Data Fiduciary must send a confirmation to the Data Principal that it is processing/ has processed the Data Principal's personal data. Any processing activities undertaken by the Data Fiduciary, along with the summary of the personal data being processed/ has been processed, must be provided to the Data Principal as well.

Implications

1. **Consent requirements:** On or before requesting personal data from a Data Principal, the DP Bill stipulates that a Data Fiduciary gives an itemised notice to the Data Principal, elaborating on the personal data that will be collected, along with the purpose of processing such data. Data collected by entities in the financial services sector will qualify as personal data, meaning entities such as banks, NBFCs, FinTechs, payment system operators, etc., will be required to make changes to the policies around obtaining consent from a customer.

2. **Retrospective consent requirements:** Data Fiduciaries will be required to provide the abovementioned itemised list, even if a Data Principal (i.e. customer) has given their consent for processing their data before the commencement of the applicability of the DP Bill. Entities such as banks, NBFCs, payment system operators, credit information companies, financial data analytics companies, etc., have been collecting/ processing personal data of every customer and retrospective consent requirements may pose operational challenges.

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3. **Additional Personnel Requirement:** The DP Bill also stipulates the appointment of a Data Protection Officer ("**DPO**") by a Significant Data Fiduciary. The DPO will be responsible for responding to any communication made by the Data Principal for exercising their rights under the DP Bill. Data Fiduciaries, on the other hand, will be required to appoint any other person who will be answerable to the Data Principal.

   Banks and other financial services entities may be notified as Significant Data Fiduciaries, due to the large amounts of personal data in possession of banks/ other entities and sensitivity of such personal data. Thus, additional personnel will be required to be appointed by such banks/ other financial services entities.

4. **Withdrawal of Consent:** The DP Bill permits a Data Principal to withdraw their consent. Such withdrawal must be followed by the Data Fiduciary ceasing to process the Data Principal's data. If the Data Principal refuses to give her consent, any concluded contract made between the Data Principal and Data Fiduciary prior to such refusal shall not cease i.e. the contract cannot be made conditional to any consent between the Data Fiduciary and Data Principal. However, this is applicable only if the processing of the personal data is not required under the Bill or any other law.

5. **Security and Safeguards:** The DP Bill stipulates that Data Fiduciaries and data processors take reasonable security and safeguards to prevent the breach of personal data of Data Principals. Accordingly, the Data Fiduciaries and Data Processors must implement appropriate technical and organisational measures to ensure that the Bill is being adhered to. The RBI, SEBI, IRDAI and PFRDA already stipulate data security and safety standards for entities regulated by them. Clarity on security and safeguard measures may be required to ensure that such measures under the DP Bill are aligned with the regulations stipulated by financial sector regulators.

6. **Requirement of a contract for sharing, transmitting and transferring data:** While the DP Bill allows Data Fiduciaries to transfer, transmit and share data to other Data Fiduciaries and data processors, it also stipulates that this may be done only under a valid contract. This may be cumbersome for Data Fiduciaries as various additional resources will now have to be utilised to comply with this requirement.

   Further, India Stack, which was aimed at digitalisation of the Indian economy, envisages an open banking system, whereby financial institutions may rely on data collected by other financial institutions. The aforesaid stipulation may impact the proposed open banking system in India if all financial institutions are required to execute agreements among themselves for data sharing.

   It is also to be noted that the Finance Minister, during the Union Budget speech for financial year 2023-24, has proposed a central repository for financial and ancillary information, which would allow sharing of financial information (i.e. personal data). The framework to be promulgated for the same will require to be in consonance with the aforesaid stipulation of the DP Bill or a specific dispensation in this regard may be required.

7. **Transfer of personal data:** A Data Fiduciary may transfer personal data to countries and territories outside India, subject to certain terms and conditions. The Central Government will decide the countries and territories to which data can be transferred. It may be noted that the RBI does not allow payments data (which qualifies as personal data) to be stored on servers outside India unless the payment involves a cross-border element. More clarity may be required under the DP Bill, to ensure that the RBI regulations are aligned with the DP Bill.

Conclusion

The DP Bill seeks to impose certain obligations on Data Fiduciaries while dealing with customer data. Along with providing the provisions around consent, the Bill also lays down provisions regarding safeguards and security of data, sharing, transmission and transferring data, etc. Largely, the objective of the DP Bill appears to be to protect the rights of the Data Principles, while highlighting the necessity of a Data Principle's awareness of the data being shared and the parties with whom such data is being shared.

SEBI may allow Private Equity (PE) Funds to become Mutual Fund Sponsors

Overview

A 'sponsor' is the one who establishes a mutual fund and is responsible for all the steps involved in setting up a mutual fund, such as obtaining the necessary approvals, funding, incorporating and setting up the asset management company, establishing the mutual fund trust and trustee company, and so forth. Under the existing framework, in terms of the SEBI (Mutual Funds) Regulations, 1996, a very strict eligibility criteria has been provided for mutual fund sponsors, which was put in place to ensure that only sponsors with a reputation above reproach and having adequate financial wherewithal, qualify for setting up mutual funds.

However, it is perceived that such criteria may have led to the saturation of the mutual fund industry and a need has been felt to enable new players, including entities such as Private Equity Funds/ Pooled Investment Vehicles/ Pooled Investment Funds ("**PE**"), to act as sponsors. Such a move might facilitate fresh capital flow into the industry, foster innovation, encourage competition and provide ease of consolidation and exit for existing sponsors.

SEBI's Proposal

In view of the above, on January 13, 2023, SEBI issued a consultation paper, seeking comments/ views from the public on its proposal to review the regulatory framework for sponsor(s) of a mutual fund to explore the possibility of enabling a diverse set of entities, including PEs, to become mutual fund 'sponsors'.

SEBI's Working Group noted that PEs with significant capital can invest in technology, bring in strategic guidance and good talent to fuel growth and innovation and expand the presence of mutual funds, including driving inclusive growth. In the recent past, PEs have been indirectly holding stake in the sponsors of mutual funds and existing sponsors looking for an exit from a mutual fund business have not been able to find good offers from entities other than PEs.

SEBI's proposal comes after specific guidelines that the Insurance Regulatory and Development Authority ("**IRDAI**") has issued, allowing PEs and alternative investment funds to be promoters of insurance companies.

Eligibility Criteria

The Applicant PE (scheme/ fund) seeking to set up a mutual fund must itself be a body corporate or a body corporate set up by the PE and such applicant could be set up in India or abroad. In this regard, SEBI may also consider the capital market licence or registration obtained by the investment manager in its home country to be sufficient and no other registration/ licencing may be required.

The PE or its manager should have a minimum of five years of experience in the capacity of a fund/ investment manager and the experience of investing in the financial sector. It should also have managed committed and drawn-down capital of not less than INR 5,000 crore as on the date of applying to SEBI.

As a safeguarding measure, SEBI has mulled a lock-in period of five years for minimum sponsor stake for such PEs. Further safeguards are also being considered to regulate transactions between the mutual fund and its PE sponsor or by the mutual fund in investee companies where the PE sponsor already has investments.

Conclusion

Allowing PEs in the mutual fund industry will likely enable injection of fresh capital into the mutual fund industry and also bring in new competition for existing players. PEs can bring a more technological and Silicon Valley based investing approach to the mutual fund industry. This will ultimately lead to more value creation and investment opportunities for the investor.

Regulatory updates for Standalone Primary Dealers

Introduction

A Standalone Primary Dealer ("**SPD**") is a Non-Banking Financial Company ("**NBFC**") that acts as an intermediary between the government and the secondary market. SPDs must be registered with the Reserve Bank of India ("**RBI**") and are subject to strict regulatory oversight. The RBI only provides authorisation if SPDs meet the eligibility conditions as prescribed from time to time by the Internal Debt Management Department of the RBI. This *inter alia* includes having a strong balance sheet and a sound track record in the securities market. The RBI has only authorised a select group of primary dealership companies and scheduled commercial banks to act as SPDs.

Role of SPDs

SPDs play an important role in the monetary policy of the country, by assisting the RBI in managing the money supply and interest rates. They act as market maker in government securities and participate in the repo market. They also maintain liquidity in the government securities market by buying and selling government bonds on behalf of their own account or on behalf of their clients. Therefore, it is subject to a strict regulatory oversight.

It is important to note that SPDs are distinct from Full-Fledged Primary Dealers ("**FFPDs**"), which are banks that are authorised to deal in both primary and secondary markets for Government securities and participate in Open Market Operations ("**OMO**") conducted by the RBI.

Changing landscape for SPDs

SPDs are governed by the Master Direction, Standalone Primary Dealers (Reserve Bank) Directions, dated August 23, 2016, and updated from time to time ("**SPD Master Directions**"). In the last few months, there have been some notable developments related to SPDs on account of issuance of certain circulars by the RBI.

On October 11, 2022, the RBI issued a circular titled 'Diversification of activities by SPDs – Review of permissible non-core activities' ("**October 2022 Circular**"). Through this circular, the RBI has allowed SPDs to offer all foreign exchange market-making facilities to users, as currently offered by Category-I Authorised Dealers. The RBI has also notified that SPDs shall adhere to the relevant prudential regulations and other guidelines that will be issued separately.

Per Clause 3 of the October 2022 Circular, from January 01, 2023, all financial transactions involving the Rupee, undertaken globally by related entities of the SPD, shall be continuously reported to Clearing Corporation of India Limited ("**CCIL**") i.e. the Trade Repository. While this regulation will only impact companies having foreign related entities, it is still an onerous requirement as an SPD may have several subsidiaries and associate entities conducting activities unrelated to the SPD's activities, and still have to report all of their transactions.

In relation to the October 2022 Circular, the RBI also issued a Circular titled 'Diversification of activities by SPDs – Review of permissible non-core activities – Prudential regulations and other instructions' dated October 11, 2022 ("**SPD Prudential Regulations Circular**"). Per this Circular, SPDs shall maintain a market risk capital charge of 15% for net open positions (limits or actual, whichever is higher) arising out of forex business with a risk weight of 100%. It also prescribes that the capital charge for market risk for all permissible non-core activities, including foreign exchange activities, shall not be more than 20% of the Net Owned Fund ("**NOF**") of the SPD as per the last audited balance sheet.

Per sub-clause (i)(a) of para 12(5) of SPD Master Directions, SPDs are permitted to undertake investment/ trading in equity and equity derivatives market as a part of their non-core activity. Through the SPD Prudential Regulations Circular, the RBI has clarified that SPDs can take up trading and self-clearing membership with Securities and Exchange Board of India ("**SEBI**") approved stock exchanges/ clearing corporations for undertaking

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proprietary transactions in equity and equity derivatives market. It also instructs SPDs to comply with SEBI regulatory norms as well as the eligibility criteria and rules of stock exchanges and clearing corporations.

Conclusion

Demand for the available pool of resources in the economy has risen on the back of pick-up in bank credit, resulting in ongoing global spill-overs on the domestic financial system and markets. In such a situation, the role of SPDs in ensuring orderly conditions in the market has become even more critical. The RBI states that a wider market presence would improve the ability of SPDs in providing support to the primary issuance and secondary market activities in government securities. This would also mean that the RBI would work toward facilitating the same. Therefore, we expect that the RBI will continue to issue circulars/guidelines, etc. to further clarify and fortify the legal framework pertaining to SPDs in the coming years.

Standard Operating Procedure for Inter-operable Regulatory Sandbox – Industry Implications

Background

On October 12, 2022, the Reserve Bank of India ("**RBI**") released the Standard Operating Procedure ("**SoP**") for Inter-operable Regulatory Sandbox ("**IoRS**"). The IoRS was developed by the Inter-Regulatory Technical Group on FinTech ("**IRTG**"), that had been constituted under the aegis of the Financial Stability and Development Council – Sub Committee ("**FSDC – SC**"), and has representation from the RBI, SEBI, IRDAI, IFSCA and PFRDA, DEA and MeitY.

The IoRS has been developed as a response to the increase in the number of hybrid financial products, with the said products falling within the regulatory ambit of multiple sectoral regulators. The aim of the IoRS is to facilitate the testing of such innovative products through a common window instead of engaging with each relevant regulator individually.

The RBI's FinTech department, designated as the Coordination Group, is the nodal point for receiving all applications under the IoRS. All the applications are required to be made on an "on tap basis" and their categorisation and treatment within the IoRS are based on several factors that are enumerated in the SoP.

Our alert examines the key features and implications of the SoP.

Analysis

A. Dominant Feature

Once an entity submits its application, its product is governed by that sectoral regulator whose regulatory sandbox framework encompasses the "dominant feature" of the product. As per the SoP, the said sectoral regulator is referred to as the Principal Regulator ("**PR**") and the other sectoral regulators are referred to as Associate Regulators ("**AR**").

The SoP lays down two sets of factors that are to be considered while determining the dominant feature:

a. The type of enhancement to the existing product; and

b. The number of relaxations sought by the entity. This factor would carry a greater weightage (*entities can state the relaxations they seek in the Common Application Form during the application process*).

As the term "enhancement" has not been defined, it may lead to potential interpretational issues as some entities may showcase enhancement on multiple fronts and it would have to be decided on a case-to-case basis which enhancement must be considered to determine the dominant feature. Additionally, certain entities may factor in more relaxations than required for their product due to it being in the development stage.

B. Entities eligible to participate in the IoRS

The "Common Application Form", attached along with the SoP, lays down the minimum eligibility criteria of the respective sectoral regulators which an entity must fulfill. Based on the dominant feature of the product, the eligibility criteria of the relevant sectoral regulator would be applicable.

It is to be noted that one entry in the Common Application Form is a brief description of the "innovative product/ service/ technology". However, as the term "innovative" has not been defined, the regulators' stance on this will be keenly observed.

C. Application process and assessment

a. As per the procedure outlined in the SoP, the Coordination Group would undertake the

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preliminary scrutiny of the application submitted by the entity and thereafter forward it to the relevant PR and AR(s).

b. The PR would undertake a detailed scrutiny based on its own regulatory sandbox framework and by coordinating with the relevant AR(s) for the features of the product that fall within the regulatory ambit of such AR(s). The SoP is silent on any objective thresholds that must be satisfied by the applicant during such scrutiny. Although the Common Application Form lays down certain requirements such as expected use cases of the product and the existing gap in the financial ecosystem, which the product is trying to address, yet an indicative list of the criteria which the PR would use to assess the application has not been mentioned. The same may result in entities making repeated applications with minute changes to be a part of the IoRS.

c. Further, all applications from Indian FinTech entities seeking to operate globally and foreign entities seeking entry into India shall be referred to the IFSCA, which would be the PR for all such applications. The SoP does not provide any metric to determine which Indian FinTech entities would fall within this bracket. The SoP uses the terminology *"Indian FinTechs having global ambition"*, but does not specify what would constitute the same. This ambiguity may result in several entities, seeking to operate abroad, not specifying the same in their application in order to avoid scrutiny. The PR and the respective AR(s) would have to assess all applications, keeping in mind the potential impact that the products may have in order to make sure that no application has been allotted the wrong PR, which may potentially result in incorrect evaluation.

Conclusion

The SoP does have the effect of streamlining the application procedure for innovative and hybrid financial products, by providing a platform to entities that seek to develop products that may need clearances from multiple sectoral regulators. However, with the rapid growth of complicated hybrid financial products/ services, the manner in which discretion is exercised, by the Coordination Group, while determining the dominant feature of the product will be instrumental in determining the success of the IoRS framework. Further clarity will also be required from the sectoral regulators to understand the criteria used for assessment of the applications. Modifying the eligibility criterion (*as opposed to having a fixed one*), depending on the nature of applications submitted by entities, will be a welcome step. The move would foster innovation in the FinTech sector and allow regulators to oversee such developments.

NPCI Circular: Crediting/ Debiting Non-Resident (NR) accounts in UPI and IMPS domestic transactions

Unified Payment Interface ("**UPI**") has become an acceptable form of payment in many countries. This is evident from the fact that as per publicly available sources, in December 2022 alone, UPI has facilitated a massive 782 crore domestic transactions, aggregating INR 12.8 lakh-crore. This is despite the fact that in India, the transactions were primarily between domestic residents. Even though the National Payment Corporation of India ("**NPCI**") has now permitted transfer of funds between Non-Resident External ("**NRE**") accounts and other permissible accounts per extant FEMA regulations and the Reserve Bank of India ("**RBI**")'s directions, it has not garnered much interest.

One of the key reasons is that Non-Residents ("**NRIs**") were unable to connect to the UPI as it is a mobile-SIM binding interface, *that is*, the UPI is only available for Indian mobile-SIM card holders. Therefore, while the UPI has grown into a seamless payment system for the residents, the same cannot be said for the NRI users who are locked out of the ecosystem.

To address this issue, the NPCI conveyed the industry demands to the RBI to allow NRE/ Non-Resident Ordinary ("**NRO**") accounts to access UPI through their international numbers and received the RBI's nod to execute the same. Accordingly, the NPCI on January 10, 2023, issued a circular to its members participating in the UPI, directing them to enable the NRIs to access UPI through their international SIMs and transfer monies to permissible accounts, irrespective of whether they are in India or abroad ("**Circular**"). The directives of this Circular will have to be complied with by April 30, 2023.

The Circular provides that the NRE/ NRO accounts with international mobile numbers would be allowed to get on-boarded/ transact in UPI, provided:

- The member banks ensure that such accounts are in adherence with FEMA regulations and the RBI's guidelines/ instructions.
- The remitter/ beneficiary banks undertake all necessary Anti-Money Laundering/ Combating of Financing of Terrorism checks and compliance validation/ account level validations as per the extant RBI's guidelines/ instructions.

The NPCI wants this direction to be rolled out in a phased manner and transactions have only been enabled for mobile numbers having the country code of 10 countries listed in the Circular (i.e. Singapore, Australia, Canada, Hong Kong, Oman, Qatar, USA, Saudi Arabia, United Arab Emirates and United Kingdom). The existing UPI guideline checks, including, *inter alia*, cooling period and risk rules shall also have to be complied with.

This is being viewed as another giant leap in the direction of extending convenience, reliability and security of Digital India to non-residents as well. However, it remains to be seen how the NPCI and member banks will navigate through the security and network issues, given the sheer volume these transactions are going to bring to the current ecosystem.

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Law Enforcement Action: A Growing Concern for the Technology/ Financial Services Industry

Introduction

1. FinTech entities have revolutionised the technology/ financial services sector by developing products that have made disbursal of loans, payments, etc., more accessible and only a click away. Therefore, regulatory oversight has become a requirement, more so because of the involvement of public money, cyber security, and protection of consumer interests. Regulatory entities such as the Reserve Bank of India ("**RBI**") and Security and Exchange Board of India ("**SEBI**"), as well as law enforcement agencies ("**LE**") such as Enforcement Directorate ("**ED**"), state police, National Investigation Agency ("**NIA**"), etc., have started to take a closer look at products, businesses, transactions, etc., of FinTech companies and the financial services industry at large.

2. This article aims to provide an overview of the major developments in this regard between October 2022 to January 2023, and then extrapolate precautionary measures that entities engaged in this sector can undertake to prevent being affected adversely.

ED's continuing crackdown against predatory Lending Applications

3. In continuation with the crackdown against 'Chinese Loan Apps'; recently the ED exposed a Rs. 300 crore fraud by 15 fake lending apps that offered customers short-term loans at an exorbitant interest and, used illegal means of recovery.

4. It is noteworthy that in 2022, the Union Home Ministry had taken note of this menace and had sought strict action by LEs against such lending apps. Moreover, premises of some of the prominent Payment Aggregators ("**PA**") and Payment Gateways ("**PG**") were raided for allegedly facilitating suspicious transactions and failing to report them.

5. In light of the ED's continuing stringent approach, FinTech players and their partners should strengthen the mechanism of combating and reporting suspicious transactions. This would also assist Regulators or LEs in its investigation/ action.

6. For the NBFCs, it would be crucial to:

   i. ensure that the partner FinTech entities have the necessary licences for conducting regulated business activity, and

   ii. ensure proper due diligence and prevent illegal recovery practices.

7. PAs and PGs have to be more pro-active in preventing and reporting suspicious transactions to the concerned agencies in time.

RBI's strict approach regarding compliance for PA licence

8. The life of an in-principle PA licence awardee is proving to be tricky. Even after non-banking entities obtain an in-principle PA licence from the RBI, the regulator has asked a few such PA licence applicants to stop on-boarding new merchants or reapply for the licence on grounds such as:

   a) incomplete compliance with the provisions of the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways ("**Guidelines**"),

   b) failure to submit system audit report and other necessary information as required by the RBI, and

   c) failure to transition from nodal accounts to maintaining escrow accounts.

9. In light of the RBI's approach, the applicants should comply with the Guidelines at the earliest after obtaining in-principle nod. It would be beneficial to collaborate with the RBI proactively and provide all necessary information, reports and records to the RBI as and when demanded. Necessary systematic upgrades should be done to ensure migration from nodal

accounts to escrow accounts as required by the Guidelines. In this regard, maintaining a compliance checklist would be useful.

Audit of around 9,500 NBFCs by RBI to check for level of compliance

10. The RBI is expected to audit ~9,500 NBFCs, using external auditors, to scrutinise their business operations and the veracity of information provided by them, including their registered office address. This comes in the backdrop of the existing trend of NBFCs licences being cancelled by the RBI.

11. In light of this potential audit, NBFCs should ensure that they comply with the extant regulations and guidelines on outsourcing and Fair Practices Code and are only operating the authorised lines of business. Moreover, given the ED's active crackdown on predatory lending apps recently, NBFCs must ensure that they prevent digital players from piggybacking on their dormant NBFC licences.

12. Lastly, the RBI has been trying to reduce systemic risks by raising the regulatory bar for large NBFCs due to the high degree of inter-connectedness between NBFCs, banks and the rest of the financial system. In October 2021, the RBI introduced a scale-based regulatory structure called 'Scale Based Regulation (SBR): A Revised Regulatory Framework for NBFCs'. This *inter alia* mandates (a) granular disclosures on loan exposures by NBFCs and (b) a 90-day period for NPA recognition.

RBI issues show cause notice against alleged violation of Prepaid Payment Instruments ("PPI") regulations

13. The RBI has also been known to issue show cause notices ("**SCN**") under Section 7 of the Payment and Settlement Act, 2007 ("**PSSA**"), to certain players in the PPI marketplace on account of alleged violation of the RBI's Master Directions on PPIs, dated August 27, 2021 ("**PPI Master Directions**"). Such SCNs are issued on the grounds of:

    i. Conducting verification of client's documents using authorised agents, which was in violation of the RBI's Master Direction-KYC Direction ("**KYC MD**").

    ii. Inconsistency in customer data reported to the RBI.

    For these alleged contraventions, as per Section 30 of the PSSA, the RBI could impose a penalty up to Rs. 5 lakh or twice the amount.

14. In light of such action, FinTech entities should be in complete compliance with the PPI Master Directions, KYC MD and other extant regulations and guidelines applicable to FinTech entities offering PPI services. Furthermore, such entities must ensure that the records being reported to the RBI are accurate and consumable.

Investigation by Regulators and LEs into cross-border transactions

15. The increase in cross-border transactions has led to heightened scrutiny by Regulators and LEs alike. Although, usually the RBI investigates such transactions, other entities have also been investigating them under the Prevention of Money Laundering Act, 2000, the Central Goods and Services Tax Act, 2017, etc. These investigations not only involve the parties to the transactions, but also AD-Category 1 Banks and other stakeholders.

16. It may happen that the investigating agencies may not have the requisite subject matter and procedural knowledge and hence the entities being investigated should take steps to disclose all necessary information and present it in a comprehensive and consumable manner.

Conclusion

The regulator has been increasingly involved in scrutinising the extent of compliance by FinTech entities over the past few months. While such involvement may be viewed as a business hurdle, it may also benefit the overall health of the financial services industry in India and provide FinTech entities with a rare opportunity to re-align their businesses according to the regulatory requirements. In this regard, in order to build a sustainable business model, given the trends in the recent past, FinTech entities must avoid placing exit barriers on users and instead focus on promoting financial inclusion. Moreover, FinTech entities must also avoid adopting a business model that is not amenable to audit.

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Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

Background

Pursuant to the Reserve Bank of India's ("**RBI**") concerns regarding the extensive leveraging of information technology (IT) resources by financial institutions to improve efficiency of their business processes in the 'State on Developmental and Regulatory Policies', dated February 10, 2022, the RBI released the '**Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**' ("**MDs**") on October 20, 2022. The MDs have consolidated and updated the extant instructions pertaining to IT governance, risk, controls, assurance practices and business continuity/ disaster recovery management. Once effective (*six months from the date of their publication on the RBI website*), it will be applicable to scheduled commercial banks (excluding regional rural banks), small finance banks, payments banks, NBFCs in top, upper and middle layers, All India Financial Institutions and credit information companies ("**REs**").

Objective: The focus of the MDs is to ensure that the IT, Information Security (IS) and IT Risk Management framework of REs is robust and aligned with the business/ strategic objectives of the REs, and there is no business disruption due to any untoward IT/ IS incident. Such framework entails a delineation of the roles and responsibilities of the Board and senior management and also of the various committees (IT Strategic Committee, IT Steering Committee, Information Security Committee) and positions (CEO, Head of IT Operations, CISO) as set out in the MDs. The framework shall enable adequate oversight mechanism to identify IT/ IS risks, ensure accountability and mitigate such risks.

Framework: To operationalise the IT/ IS / IT risk management framework set out in the MDs, the REs are mandated to formulate Board approved policies, covering the framework vis-à-vis IT, IS, Information Systems, Business Continuity and Cyber Security. The REs are further required to constitute IT Strategy Committee and IT Steering Committee to assist the Board with the implementation of the IT strategy, planning and implementation. While the CEO of an RE has been made responsible for the overall execution of IT strategy, the Head of IT Operations will be entrusted with the implementation of the IT policy and IT strategy, thereby ensuring that IT governance is given utmost priority.

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Operationalisation: As far as the IT operations are concerned, the MDs require the REs to have a robust IT service management framework, with a service level management process to manage the IT operations. The purpose is to ensure that the IT systems run without glitches and there is no outdated/ unsupported hardware or software. Appropriate safeguards will need to be adopted when involving a third party (which is not considered as outsourcing), such as using such third party's systems/ software. The REs will also have to keep track of the capacity constraint on its IT systems by carrying out an annual assessment of capacity, thereby ensuring that these can support business functions. A standard enterprise architecture planning methodology/ framework shall be followed while adopting a new technology or revamping the existing ones, which shall be in line with the risk appetite and business/ IT strategy of the RE. Any major IT project that may significantly affect the RE's risk profile or strategy shall be reported to the IT Strategy Committee and such projects shall be undertaken after carrying out appropriate strategic and cost/ reward analysis. Further, prior to introducing any new IT application, formal product approval shall be taken while following quality assurance processes. REs are required to put in place a change management procedure for handling any changes in technology and processes, as well as procedures to ascertain the effectiveness of integration and interoperability of complex IT processes. The REs are also obligated to have a data migration policy and comply with the extant guidelines in case of any outsourcing. Any IT application capable of accessing or affecting critical information shall have appropriate audit trails to enable a smooth conduct of audit and serve as forensic evidence when required.

IT Risk & IS Framework: The MDs stipulate that the risk management policy of an RE shall include IT-related risks. Further, the IT Risk Management framework shall include identification of IT assets of the RE and segregating them based on security risks, identification and fortification of the security of the most critical assets, putting in place IS management function, internal controls and processes to mitigate identified risks and define the roles and responsibilities of stakeholders involved in risk management. The IS Committee, which shall work under the supervision of the Risk Management Committee of the RE, has been entrusted with the responsibility of managing IS.

The IS management requires *inter alia* implementation of necessary systems, procedures, and controls, including adoption of privacy related safeguards, to ensure secure storage, transmission or processing of data, and risk assessment of each information asset. The incident response and recovery management policy of the RE shall be equipped to ensure timely response to any IT/ IS incident to mitigate risks and achieve timely recovery. REs are required to review their security infrastructure and security policies at least annually.

Business Continuity Plan & Disaster Recovery Management: An RE is required to follow the best practices in relation to its business continuity plan, which includes undertaking a business impact analysis of the likelihood of an adverse event and its impact on the RE's information assets and associated business operations. Disaster recovery drills for critical systems shall be done at least on a half-yearly basis and for other systems on an annual basis.

Information Systems Audit: Lastly, the audit committee/ local management committee (in case of foreign banks) has been made responsible for exercising oversight of information systems audit of the RE. This audit shall be in conformity with the information systems audit policy of the RE. For conducting this audit, there shall be a separate information systems audit function within the internal audit function and even in cases where the RE employs external resources, the overall responsibility would always lie with the internal audit function.

Conclusion

Considering the astronomical growth in leveraging IT assets for its business operations, an RE may expose itself to significant risks if its IT, IS and IT Risk Management framework is not robust enough. As the extant rules/ regulations governing the aforementioned framework are scattered and not uniform across different types of financial institutions, consolidating the existing regulatory framework and making it applicable to the entire gamut of major financial institutions is a welcome step.

FIG Bulletin - RBI Regulatory Updates – Notifications

1. Central Bank Digital Currency ("CBDC")[1] dated October 07, 2022

Central Bank Digital Currency can be for two purposes — retail and wholesale. Both the Central Bank and private sectors can facilitate access and use of CBDC. A direct CBDC system, wherein only the Central Bank is involved, would imply that the Central Bank would be responsible for managing all aspects of the CBDC system, including issuance, account-keeping, transaction verification, etc. However, in a Two-Tier Model, the central bank and other service providers would have their own roles.

CBDCs can be both interest bearing and non-interest bearing. While interest bearing CBDCs may be attractive to investors, it may lead to disruptions in the financial system due to loss of deposits by banks, thus impeding their credit creation capacity in the economy. If a CBDC is non-interest bearing, on the other hand, there would not be sufficient incentive for the public to switch from holding bank deposits to CBDC.

A token based CBDC system would mean issuance of a digital token and representing a claim on the Central Bank, similar to a banknote that could be transferred electronically from person to person.

An account-based system would entail maintenance of records of balances and transactions of all holders of the CBDC, which would indicate the ownership of monetary balances. In such a system, the identity of the account holder will have to be verified to ensure rapid and secure transactions.

Any viable CBDC should ensure: (i) anonymity (that currency transactions will be carried out without revealing the identities of the transacting parties), (ii) universality (that currency can be used for any transaction) and (iii) finality (that there is unconditional settlement of the transaction by the payment).

The first pilot in the Digital Rupee-Wholesale segment (e₹-W) commenced on November 1, 2022, in nine banks. This pilot is for settlement of secondary market transactions in government securities. The first pilot for retail Digital Rupee (e₹-R) was launched on December 01, 2022, in eight banks. This digital currency will be in the form of a digital token that would represent legal tender.

CAM Thought: Unified Payments System ("**UPI**") involves the participation of banks and financial institutions, and it is not a currency — unlike the CBDC. It is merely a platform for making payment transactions. CBDC involves the usage of blockchain technology, which not only allows for ease in traceability, but also provides more security than UPI. Digital payments made using CBDC will remove the scope for inter-bank settlement, ensuring that any digital payments made by the parties is the final transaction.

2. Multiple Non-Financial Banking Companies ("NBFCs") in a Group: Classification of the Middle Layer dated October 11, 2022[2]

Per Reserve Bank of India's ("**RBI**") notification, dated October 11, 2022, titled 'Multiple NBFCs in a Group: Classification of the Middle Layer', a 'NBFC – Middle Layer' would be determined by totalling the assets of all NBFCs in a group[3] to determine the threshold of the Middle-layer for their classification.

Furthermore, should the consolidated asset size of the group be Rs. 1,000 crore and above, then each

[1] CONCEPTNOTEACB531172E0B4DFC9A6E506C2C24FFB6.PDF (rbi.org.in), dated October 7, 2022.

[2] NOTI129CEAD60B20A804890B68E2C53FE0C0B5E.PDF (rbi.org.in).

[3] "Companies in the Group", shall mean an arrangement involving two or more entities related to each other through any of the following relationships : Subsidiary – parent, Joint venture, Associate, Promoter-promotee (as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997) for listed companies, a related party, Common brand name, and investment in equity shares of 20% and above.

Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the Group shall be classified as an NBFC in the Middle Layer.

Additionally, statutory auditors are required to certify the asset size of all NBFCs in a group each year. The certificate shall then be furnished to the Department of Supervision of the Reserve Bank under whose jurisdiction the NBFCs are registered.

CAM Thought: The Notification can be seen in a bi-fold manner. It is a positive step for NBFCs as it clarifies that group companies cannot be seen on a standalone basis, while explaining how to determine the baseline for middle layer within the same, this ensures that ambiguity surrounding the classification structure within Group NBFCs is cleared. However, the clarification fails to bring out the correct mechanism for calculating the threshold in a situation wherein there are multiple NBFCs in a group.

3. Draft Master Direction - Information Technology Governance, Risk, Controls and Assurance Practices[4], dated October 20, 2022 ("Draft Master Directions")

As announced in the Statement on Developmental and Regulatory Policies – February 2022, the Reserve bank of India ("**RBI**") has released draft Master Direction – Information Technology Governance, Risk, Controls and Assurance Practices ("**Draft Master Directions**"). These directions shall be called the Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2022, and shall incorporate consolidated and updated guidelines/ instructions/ circulars on IT Governance, Risk, Controls, Assurance Practices and Business Continuity/ Disaster Recovery Management. The Draft Master Directions were released on the RBI's website on October 20, 2022, and comments on the same had to be submitted by November 2020, 2022.

The Draft Master Directions shall apply to the following Regulated Entities ("**REs**") unless explicitly exempted: (a) Scheduled Commercial Banks (excluding Regional Rural Banks); (b) Small Finance Banks; (c) Payments Banks; (d) All Non-Banking Financial Companies (NBFCs) in Top, Upper and Middle Layers as per Scale Based Regulation (SBR); (e) All India Financial Institutions (NHB, NABARD, EXIM Bank, SIDBI and NaBFID); and (f) Credit Information Companies.

The Draft Master Directions are applicable to the material Outsourcing IT Services arrangements entered into by the said Res, and seek to establish an IT strategy committee for effective IT strategic planning, assessing, and managing IT risks. Prohibiting REs from using outdated and unsupported hardware or software, the Master Directions further seek to establish a service management framework, risk management framework and a service level management process to support and manage IT systems and assess risks.

The Draft Master Directions also provide for nature and structure of the outsourcing agreements. Furthermore, an obligation has been created on the REs for grievance redressal of customers through a robust mechanism. Additionally, service providers of such REs should develop a mechanism for testing BCP and DRM.

CAM Thought: The Draft Master Directions need to be read with the Draft Master Direction on Outsourcing of Information Technology (IT) Services, 2022 ("**Master Direction on Outsourcing[5]**"), which lays down that for outsourcing of IT services, REs are to be guided by the instructions provided in the Master Direction on Outsourcing. For outsourcing non-material IT, REs have been given the liberty to follow the Master Direction

[4] Reserve Bank of India - Press Releases (rbi.org.in), dated October 20, 2022.
[5] PR413IT702A389CA8B346DF931CC63AED95EEFF.PDF (rbi.org.in), dated June 23, 2022.

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on Outsourcing, after considering the risks that may be involved. The Draft Master Directions only provide instructions needed to be followed by third parties for activities that are not considered to be "outsourcing" of IT services arrangement (for example, purchase of hardware, software) or not considered as "material" outsourcing of IT services.

4. Inclusion of Goods and Service Tax Network (GSTN) as a Financial Information Provider under the Account Aggregator Framework, dated November 23, 2022[6]

With a view to facilitate cash flow-based lending to Micro, Small and Medium Enterprises, it was decided by the RBI to include Goods and Services Tax Network (GSTN) as a Financial Information Provider (FIP), which also includes banks, banking company, non-banking financial company, asset management company, depository, depository participant, insurance company, insurance repository, pension fund or any such other entity as may be identified by the RBI from time to time; under the Account Aggregator ("**AA**") framework.

The Department of Revenue shall be the regulator of GSTN for this specific purpose and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, will be the Financial Information.

CAM Thought: The inclusion of the Department of Revenue in the financial regulator list, along with the RBI, SEBI, IRDAI and PFRDA, broadens the scope of financial information that can be sought under the AA Framework. The AA licence is one of the sought after licences by FinTech entities as it allows them to perform the function of retrieving or collecting financial information, pertaining to customers, and consolidating, organising and presenting such information to customers or any other financial information user as may be specified by the RBI.

5. Guidelines on Volume Cap for Third Party App Providers ("TPAPs") in Unified Payments Interface ("UPI")[7], dated December 02, 2022

Third Party App Providers ("**TPAPs**") now have an extended two year period, i.e. till December 31, 2024, to comply with the volume cap imposed by the National Payment Corporation of India ("**NPCI**"). The current volume cap for TPAPs is 30% of the overall volume of transactions processed in UPI during the preceding three months.

It is imperative for other existing and new players (both Banks and Non-Banks) to scale-up their consumer outreach for the growth of UPI and achieve overall market equilibrium.

In the current Indian market, the UPI app quantum for key UPI players in the October-December 2022 months are laid down in the table below:

Sr. No.	Month	Entity	Market %
1.	December 2022	PhonePe	46.27%
		Google Pay	34.16%
		PayTM	14.74%
2.	November 2022	PhonePe	46.12%
		Google Pay	34.28%
		PayTM	14.58%
3.	October 2022	PhonePe	46.57%
		Google Pay	33.67%
		PayTM	14.96%

CAM Thought: The widely used TPAPs in India are PayTM, Gpay and PhonePe. Statistics reveal that Google Pay and PayTM exceed the imposed 30% volume cap. It is imperative that these TPAPs adhere to the provided volume cap, while also maintaining profit to ensure a competitive Indian market.

[6] Reserve Bank of India - Notifications (rbi.org.in).
[7] UPI-OC-159-Guidelines-on-volume-cap-for-Third-Party-App-Providers-(TPAPs)-in-UPI.pdf (npci.org.in), dated 2 December 2022.

6. Data Format for Furnishing of Credit Information to Credit Information Companies and other Regulatory Measures dated December 13, 2022[8]

For Credit Information Companies (“**CIC**”), a standardised Credit Information Report (“**CIR**”) was recommended to ensure that credit information is uniformly reported. Herein, it is mentioned that cases admitted with the National Company Law Tribunal (NCLT)/ National Company Law Appellate Tribunal (NCLAT) under the Insolvency and Bankruptcy Code, 2016, are also required to be reported under the suit-filed cases in reporting to the CICs, as per the format prescribed within the Master Direction titled “Data Format for Furnishing of Credit Information to Credit Information Companies and other Regulatory Measures”.

CAM Thought: The Notification confirms and continues to regulate the standardised CIR format, paving the way for a uniform standard of verification across different CICs. In assuring courts and applicants that the information provided by the CICs is standardised: (i) the reliability of the furnished data increases, and (ii) therein occurs standardisation of accountability. A standardised CIR shall also reduce the time and effort taken by the NCLT/ NCLAT while parsing through the data provided to them.

7. Self-Declaration for Know-Your-Customer (“KYC”)[9], dated January 05, 2023

The Reserve Bank of India (“**RBI**”), as part of periodic updation of KYC, published certain instructions via press release dated January 5, 2023. The Press Release provides instructions related to self-declaration by Customers in case there is no change in KYC information. In such a scenario, a self-declaration by the customer is sufficient to complete the re-KYC process. This self-declaration can be done through various non-face-to-face channels, such as registered email-id, registered mobile number, ATMs, etc., without the need for a visit to a bank branch. Further, if there is only an address change, customers can furnish revised/ updated address through any of these channels and the bank would undertake verification of the declared address within two months.

Additionally, a fresh KYC process/ documentation may be required in certain cases, including where the KYC documents available in bank records do not conform with the present list of Officially Valid Documents (viz., passport, driving license, etc.) or where the validity of the KYC documents submitted earlier may have expired. In such cases, banks must provide an acknowledgement of the receipt of the KYC documents/ self-declaration submitted by the customer. Fresh KYC process can be undertaken by visiting a bank branch, or remotely through a Video-based Customer Identification Process (“**V-CIP**”).

CAM Thought: Allowing self-declaration by customers and V-CIP for KYC has paved the way for providing ease to both customers and banks.

8. Accounts with International Mobile Numbers Permitted to On-Board/ Transact in Unified Payments Interface (“UPI”), dated January 10, 2023[10]

Addressing all members participating in UPI, the National Payment Corporation of India (“**NPCI**”) has released a circular dated January 10, 2023, to meet customer demand with respect to permitting accounts having international numbers to be allowed to transact in UPI.

Accordingly, Non-Resident accounts, like Non-Residential External (“**NRE**”)/ Non-Resident Ordinary (“**NRO**”), having international mobile numbers, shall be allowed to get on-boarded/ transact in UPI, provided that the following are adhered with:

[8] Reserve Bank of India - Notifications (rbi.org.in).
[9] https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR1500KYC297EF03AD4F74BCA874A414D26235ECC.PDF, dated January 5, 2023.
[10] UPI-OC-161-Extension-to-UPI-Circular-No-60-Crediting-Debiting-Non-Resident-accounts-in-UPI.pdf (npci.org.in), dated 10 January 2023.

- Member banks must ensure that such types of accounts are established as per the directions available in the extant Foreign Exchange Management Act, 1999 ("**FEMA**"), and various RBI regulations.
- Responsibilities with respect to compliances and checks as laid down for Anti-Money Laundering/ Combating of Financing of Terrorism are undertaken by the remitted/ beneficiary banks.

The circular further states that transactions from mobile numbers having the country code of the following shall be enabled:

- Singapore (+65)
- Australia (+61)
- Canada (+1)
- Hong Kong (+852)
- Oman (+968)
- Qatar (+974)
- USA (+1)
- Saudi Arabia (+966)
- UAE (+971)
- United Kingdom (+44)

All consequent onboarding/ transaction level checks as per the extant UPI guidelines will be applicable for such accounts.

CAM Thought: The circular allows the transfer of funds between NRE accounts, which may also include within its scope funds received for business/ profession. No exceptions have been carved out for such funds yet.

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Key SEBI Regulatory Updates

1. SEBI provides regulatory framework for Online Bond Platform Providers ("OBPPs")

SEBI has observed via paragraph 1 of the circular that there has been an increase in the number of Online Bond Platforms ("**OBPs**"), offering debt securities to non-institutional investors. It further observed that most of such OBPs were either FinTech companies or backed by stockbrokers/ SEBI registered intermediaries, and there has been an increase in the number of registered users using such OBPs. Therefore, SEBI *vide* a Circular dated November 14, 2022, introduced a regulatory framework for Online Bond Platform Providers ("**OBPPs**"), with an aim to regulate and streamline the OBP operations, and facilitate investor participation.

Among other requirements, entities acting as OBPPs, are required to register as stock-brokers in the debt segment of the stock exchange(s). SEBI's OBPP framework envisages all listed debt securities' orders placed on OBP to be mandatorily routed through the Request for Quote platform (RFQ) of recognised stock exchange(s) and settled through the respective clearing corporations. The products, services, or securities that the entities are now permitted to offer are listed debt securities and debt securities proposed to be listed through a public offering. The entities will have to adhere to the operating framework, roles and obligations, and KYC requirements for onboarding investors and sellers. The entities would be required to disclose on their platform any and all potential conflicts of interest arising from transactions or dealing with related parties. The OBPP would be required to promptly inform the stock exchanges of any circumstances leading to disruption or market abuse.

CAM Thought: SEBI's OBPP framework opens the gate for previously unregulated online bond platforms to now do so in a kosher way and further develop the ecosystem of online bond trading platforms.

2. SEBI seeks the inclusion of mutual funds within the ambit of insider trading regulations

The SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), were amended *vide* the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022 (Amendment Regulations), omitting the previous exception given to units of a mutual fund from the preview of the PIT Regulations. The Amendment Regulations propose to introduce a new Chapter-II A to the PIT Regulations with a view to regulate communication in relation to and trading by insiders in the units of mutual funds. Among other things, the newly inserted Regulation 5D to the PIT Regulations stipulates that no insider shall trade in the units of a scheme of a mutual fund, when in possession of unpublished price sensitive information, which may have a material impact on the net asset value of a scheme or may have a material impact on the interest of the unit holders of the scheme. SEBI has also specified a list of people who will be considered insiders and be covered under the PIT Regulations. As per the Amendment Regulation, an insider will be a person inter alia falling under the following categories: (a) An official or an employee of a fund accountant providing services to a mutual fund, who has access to unpublished price sensitive information, (b) Board of Directors and key management personnel of sponsor of the mutual fund, (c) Directors or employees of a registrar and share transfer agents, custodians or valuation agencies of the mutual fund who have access to Unpublished Price Sensitive Information, (d) A banker of the mutual fund or asset management company, etc. The Amendment Regulations are currently not in force and shall come into force on such date as may be notified by SEBI in the Official Gazette.

CAM Thought: Although the regulator appears sincere in its desire to address the problem of persons trading in mutual fund units with non-public information, adding mutual funds to the PIT Regulations' purview

only adds another compliance barrier, given that SEBI already has the authority to address such circumstances under the scope of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

3. SEBI plans to firewall investor money from their brokers

SEBI on January 17, 2023, issued a Consultation Paper on *"Blocking of Funds for Trading in Secondary Market"* to solicit comments and inputs from stakeholders and the public. The Consultation Paper proposes that the RBI approved Unified Payments Interface (UPI) mandate service of a single block and multiple debits, can be integrated with the secondary markets to provide a block mechanism (similar to pledge like mechanism in securities). Clients will be able to block funds in their bank accounts for trading in secondary market, instead of transferring them upfront to the trading member. This would provide enhanced protection of cash collateral. Under the proposed model, funds shall remain in the account of the client, but will be blocked in favour of the clearing corporations ("**CC**") till the expiry date of the block mandate or till the block is released by the CC, whichever is earlier. CC can directly debit funds from the client account, limited to the amount specified in the block.

CAM Thought: This move mitigates the risk of misutilisation of client funds by stock brokers by eliminating the need to transfer funds to stock brokers. However, if the proposed framework is implemented, it will set the stage for FinTechs to revolutionise access to the securities market by way of execution only services.

4. SEBI to introduce framework to facilitate Execution Only Platforms for direct plans of Mutual Fund schemes

Several entities, including investment advisers (IAs) and stockbrokers, offer execution services like the purchase and redemption of direct plans of mutual fund schemes through the digital mode. However, there is currently no regulatory framework in place to facilitate the provision of such "execution only services" in direct plans of mutual fund schemes, independent of the regulatory requirements applicable to IAs and stockbrokers. Accordingly, SEBI in its Board Meeting held on December 20, 2022, has approved a proposed mechanism for Execution Only Platforms (EOPs), whereby a company wishing to offer execution-only services in mutual fund direct plans may be granted registration under one of the two categories: Category 1 EOP as an agent of asset management companies registered Association of Mutual Funds in India (AMFI), or category 2 EOP as an agent of investors registered as stock brokers. SEBI would issue circulars to notify the public of the specific framework and its implementation procedures, the nature of the services that the EOPs may provide, the requirements for cyber security, the cost of services, and grievance redressal processes, among others.

CAM Thought: This move would make it easier for investors to participate in mutual funds through EOPs, and it would also make it easier for the platforms to conduct business by mandating only the regulatory compliances that are necessary for EOP activity.

5. NSE to set up Social Stock Exchange (SSE) as a separate segment

On December 19, 2022, the Securities and Exchange Board of India (SEBI) granted the National Stock Exchange of India (NSE) in-principle approval to establish a Social Stock Exchange (SSE) as a separate segment of the NSE. The Union Finance Minister has proposed the establishment of a SSE under the regulatory purview of SEBI for the listing of social enterprises and voluntary organisations working to realise a social welfare objective, in order to raise capital as equity, debt, or as units similar to mutual funds (MF). The government has announced a new type of security under the Securities Contracts (Regulation) Act, 1956, called the "Zero Coupon Zero Principal (ZCZP)" through a gazette notification. Subject to meeting the requirements for eligibility,

Not for Profits (NPOs) may issue the new instrument ZCZP openly or privately after registering with the SSE division of NSE.

CAM Thought: SSEs have already been formed in countries such as Singapore, Brazil, Portugal, South Africa, the UK, and Canada. The idea gained popularity during the pandemic, especially in India, where the need for social capital for businesses and non-profit organisations became critical. The social enterprises that are advancing the Sustainable Development Goals would greatly benefit from this platform.

6. Securities Appellate Tribunal (SAT) re-affirms the '*clean slate theory*' in respect of penalties imposed by SEBI

The '*clean slate theory*' as enshrined in Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and also affirmed by judicial pronouncements of the Supreme Court, was reaffirmed by the Hon'ble SAT in its decision dated December 20, 2022, in M/s. Tata Steel Limited v. SEBI. The Ld. Adjudicating Officer ("**AO**"), vide an order dated February 14, 2022, had levied a penalty of Rs. 2 lakh in the matter of Bhushan Steel Limited for certain disclosure related violations under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The Hon'ble SAT set aside the impugned order passed by SEBI on the grounds that a company's new management, which is appointed through a corporate insolvency resolution procedure under the IBC, cannot be held accountable for the decisions made by the previous management.

CAM Thought: The clean slate theory serves the public interest by ensuring that the company survives, and regulatory actions do not linger to haunt the company's new management. The Code's principle is being put into practice by this SAT judgement, and it's possible that other tribunals and agencies will follow likewise.

FIG Bulletin - IFSC Regulatory Updates

1. International Financial Services Centres Authority (Finance Company) Regulations, 2021

The International Financial Services Centres Authority ("**IFSCA**") through the IFSCA (Finance Company) (Amendment) Regulations, 2022, amended the IFSCA (Finance Company) Regulations, 2021 ("**Finance Company Regulations**"), providing much awaited clarity on the operations of non-banking financial institutions in and from the International Financial Services Centre ("**IFSC**") space. The recent amendment to the Finance Company Regulations clarified that entities which hold a registration for undertaking a permitted activity under the Finance Company Regulations will have to obtain a separate registration when venturing into other permitted activities[11]. Further, factoring and forfaiting of receivables is added as a permitted core activity, benefitting the entities undertaking trade finance from IFSC at Gujarat International Finance Tec-City ("**GIFT City**") in India. While the amendment removed financial lease transactions for aircraft, ship and equipment leasing as a permitted core activity, it added operating lease of products, including aircraft lease, ship lease or any other equipment as may be specified by the IFSCA as a permitted non-core activity.

CAM Thought: The Finance Company Regulations are a step forward toward development of financial network in IFSC by allowing non-banking financial institutions to provide various core and non-core activities, broadening the horizon of permissible services provided in IFSC.

2. Renewal of recognition to India International Bullion Exchange IFSC Limited

With the establishment of a bullion exchange in IFSC, GIFT City, a platform was provided for the introduction of such accumulated gold and bullion into the market, making gold/ bullion a mainstream asset class. Regulation of the bullion market through such bullion exchange would facilitate efficient price discovery, ensure quality assurance, and encourage global participation. India International Bullion Exchange IFSC Limited ("**IIBX**") will help facilitate efficient price discovery and ensure standardisation, quality assurance and sourcing integrity.

IFSCA on December 06, 2022, in the interest of the trade, bullion market and also in the public interest renewed the recognition of IIBX as Bullion Exchange and Bullion Clearing Corporation for 1 (one) year from December 09, 2022, to December 08, 2023. The notification renewed the recognition of bullion spot delivery contract and bullion depository receipt.

CAM Thought: It is the step in the right direction for India to gain its place in the global bullion market and serve the global value chain with integrity and quality. IIBX also re-enforces the commitment of the government of India towards enabling India to be able to influence global bullion prices as a principal consumer and become a global price setter. The renewal of the recognition of the same will facilitate the above purpose.

3. Guidelines for the implementation of the IFSCA (FinTech Incentive) Scheme, 2022 ("Guidelines")

On February 02, 2022, the IFSCA notified the IFSCA (FinTech Incentive) Scheme, 2022 ("**FinTech Scheme**"), with an objective to promote the establishment of a world class FinTech Hub, IFSC, and GIFT City. Further, considering the increasing importance of FinTech entities in providing innovative solutions to promote safety, inclusiveness, efficiency, choice, and competition in the financial service market, IFSCA has introduced a framework for authorisation of FinTechs, *vide* a Circular dated April 27, 2022[12]. In light of the above, the IFSCA has now notified the guidelines for

[11] Regulation 5 of Finance Company Regulations.

[12] IFSCA Framework for FinTech Entity in the International Financial Services Centres (IFSCs) dated April 27, 2022.

implementation of the IFSCA (FinTech Incentive) Scheme, 2022. It lays down the eligibility requirement and the application process for FinTech entities to avail the grant offered under the Scheme. The FinTech entity is entitled to receive a grant towards reimbursement of eligible expenses under the FinTech Scheme.

CAM Thought: The FinTech Scheme aims to provide financial support, along with regulatory relaxation, which acts as an initial capital inflow for various FinTech start-ups, in line with the goal of establishing FinTech Hubs, providing opportunities to start-ups to access international markets. The Guidelines provide more clarity on the application process and the actual realisation of funds.

4. IFSC (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 ("AML/ CFT/ KYC Guidelines")

The IFSCA on October 28, 2022, published the AML/ CFT/ KYC Guidelines with the aim of enabling regulated entities to adopt risk-based approach to identify and assess the money laundering and terrorist financing risks that the said entities are exposed to. It further aims to use the said risks identified for customer risk assessment. Additionally, the IFSCA through a notification[13] revoked the applicability of guidelines/ circulars implemented by domestic financial services regulator on the issues covered under the AML/ CFT/ KYC Guidelines and made the same enforceable for all IFSC Banking Units ("**IBUs**").

The compliance obligations under AML/ CFT/ KYC Guidelines require a regulated entity to make sure that they do not have any accounts in the name of individuals or persons appearing in the lists of individuals & entities suspected of having terrorist links, which are approved and periodically updated by the United Nations Security Council.

The AML/ CFT/ KYC Guidelines are applicable to all licensed, recognised, or registered regulated entities by IFSCA and to authorised Regulated Entities to a specific extent. Additionally, they also apply to financial group of the regulated entity to a specific extent.

CAM Thought: The adoption of the AML/ CFT/ KYC Guidelines would aid Regulated Entities in assessing its vulnerability to the risks of being used for money laundering and terrorist funding purposes and adopting preventive measures to mitigate such risks.

5. Inter-operable Regulatory Sandbox ("IoRS") – Standard Operating Procedure ("SOP")

The Inter-Regulatory Technical Group on FinTech has been constituted under the aegis of Sub-Committee of the Financial Stability and Development Council for inter-regulatory co-ordination among financial sector regulators on FinTech-related issues, including IoRS. The members of the Group are representatives from financial sector regulators, viz., SEBI, IRDAI, IFSCA and PFRDA, DEA and MeitY. One of the mandates of the Group was to suggest models on IoRS mechanism for hybrid products/ services falling within the remit of more than one regulator to facilitate framing SOP for the same.

To obviate the need of innovators, to engage with different regulators regarding their hybrid product, a common window has been made available. Financial products/ service providers whose business models/ activities/ features fall within the remit of more than one financial sector regulator, shall be considered for the testing under IoRS.

CAM Thought: Regulatory Sandbox aids in assessing opportunities and risks associated with financial products/ services and adoption of the SOP would be a step towards achieving the goal of developing a FinTech Hub, complementing the objectives of the IFSCA FinTech Incentive Scheme, 2022[14].

[13] IFSCA Notification No. 110/IFSCA/Banking Regulation/2022-23/4 dated November 03, 2022.
[14] IFSCA Circular on Guidelines for implementation of the IFSCA (FinTech Incentive) Scheme, 2022 dated 12 September 2022.

6. **Operations of subsidiaries and branches of Indian banks and All India Financial Institutions ("AIFIs") in foreign jurisdictions and in International Financial Services Centers ("IFSCs") - Compliance with statutory/ regulatory norms ("Directions")**

Based on instructions issued for Indian Banks and All India Financial Institutions ("**AIFIs**"), when handling financial products that are placed in subsidiaries outside India, there existed a lacuna for a framework that allowed for these institutions to carry out functions that are otherwise not permissible within the Indian domestic market, to carry out such activities in foreign jurisdictions and also in the International Financial Services Centre ("**IFSC**"), such as the Gujarat International Finance Tech-City ("**GIFT City**") in India. Primarily, these Directions include all banks regulated by the Reserve Bank of India ("**RBI**"), excluding co-operative banks, Regional Rural Banks, and Local Area Banks and AIFI.

This Direction allows foreign subsidiaries of Indian Banks and AIFIs to deal in financial products, including those structured financial products not permitted by the RBI, subject to certain conditions. Additionally, subsidiaries of Indian Banks and AIFIs operating in the IFSC would be able to do the same, with some conditions.

Parent companies of the subsidiaries dealing with financial products in foreign jurisdiction or IFCSs would have to ensure these conditions:

1. dealing in such products is done with prior approval from their Board and, if required, the appropriate authority in the concerned jurisdictions;
2. they have adequate knowledge, understanding, and risk management capability for handling such products;
3. they act as market makers for products only if they have the ability to price/ value such products and the pricing of such products is demonstrable at all times;
4. their exposure and mark-to-market ("**MTM**") on these products are appropriately captured and reported in the returns furnished to the RBI. They shall provide information about dealing in such financial products as may be specified by the RBI in a manner and format and within the time frame as prescribed by the RBI;
5. they do not deal in products linked to Indian Rupee unless specifically permitted by the RBI;
6. they do not accept structured deposits from any Indian resident; and
7. they adhere to suitable and appropriate policies as mandated by the Reserve Bank and the host regulators, as applicable.

In addition to these conditions, prudential norms such as capital adequacy, exposure norms (including Large Exposure Framework[15]), periodical valuation, and all other applicable norms shall also be applicable to these subsidiaries in foreign jurisdictions of the IFSC, especially since all of them will be subject to Indian laws. Whereas, the parent bank shall adhere to more stringent among the host and home regulations in respect of prudential norms.

In cases where the RBI does not specifically provide prudential treatment of any financial product, the parent bank/ AIFI will be required to seek specific guidance from the RBI in relation to the same.

CAM Thought: This Direction is a step in the right direction as it brings about much awaited changes. It allows foreign subsidiaries of Indian entities to tap into markets that the domestic regime prohibits. This freedom from the RBI ensures that Indian banks and AIFIs have greater autonomy and are able to compete with global banks.

[15] RBI Notification on Large Exposures Framework for Non-Banking Financial Company - Upper Layer (NBFC-UL) dated April 19, 2022.

Budget Highlights - FSRP

Digital Public Infrastructure For Agriculture

Agriculture-related digital public infrastructure will be developed as a freely available, freely usable, and interoperable public benefit. Through pertinent information services for crop planning and health, greater access to farm inputs, loans, and insurance, assistance for crop estimation, market intelligence, and support for expansion of the agri-tech industry and start-ups, this would enable inclusive, farmer-centric solutions.

Ease Of Doing Business

For enhancing ease of doing business, the Government has reduced more than 39,000 compliances; and more than 3,400 legal provisions have been decriminalised. For facilitating trust-based governance, the Government has introduced the Jan Vishwas Bill to amend 42 Central Acts, including the Information Technology Act, 2000, and the Payment and Settlement Systems Act, 2007, to amend various provisions on penalties imposed, compliances to be followed, etc.

Centre Of Excellence For Artificial Intelligence

Three centres of excellence for artificial intelligence will be established in top educational institutions. Leading business players will collaborate to perform multidisciplinary research, create cutting-edge apps, and find scalable solutions to issues in the fields of sustainable cities, health, and agriculture. As a result, an efficient AI ecosystem will be stimulated, and skilled workers will be developed.

National Data Governance Policy

A National Data Governance Policy will be released to encourage research and innovation by startups and academic institutions. This will make anonymised data accessible.

Simplification Of Know Your Customer (KYC) Process

The KYC procedure will be made simpler by using a "risk-based" strategy rather than a "one size fits all" one. The financial sector regulators will also be pushed to develop a KYC system that is entirely compatible with Digital India's requirements.

One Stop Solution For Identity And Address Updating

The DigiLocker service and Aadhaar as the foundational identity will be established to provide a one-stop solution for reconciling and updating the identity and address of individuals, maintained by multiple governmental agencies, regulators, and regulated entities.

Common Business Identifier

The Permanent Account Number (PAN), which is essential for business establishments, will serve as the universal reference for all digital systems of the designated government entities. This will ensure ease of doing business, and it will be facilitated through a legal mandate.

Unified Filing Process

A "Unified Filing Process" system will be set up to eliminate the requirement of separate filing of the same information to multiple governmental agencies. This involves sharing of information or returns submitted in streamlined formats on a single portal and will be done at the option of the filer.

FinTech Services

India's digital public infrastructure, which includes Aadhaar, PM Jan Dhan Yojana, Video KYC, India Stack, and UPI, has made FinTech services in India more accessible. The range of documents that are accessible

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to persons in DigiLocker will be increased to facilitate more innovative FinTech services.

Entity Digilocker

An Entity DigiLocker will be set up for use by MSMEs, large business and charitable trusts. This will be done to securely store and exchange documents with various authorities, regulators, banks, and other business entities whenever necessary.

National Financial Information Registry

The central repository for financial and ancillary information will be established as a national financial information registry. This will encourage financial inclusion, efficient credit flow, and financial stability. This credit public infrastructure will be governed by a new legislative framework to be framed in collaboration with the RBI.

Financial Sector Regulations

Financial sector regulators will be requested to conduct a thorough assessment of the current legislation to streamline, make compliance easier, and lower the cost of compliance. They will consider suggestions from the public and regulated entities. There will also be established timeframes for deciding applications under certain regulations.

Data Embassy

The Government pointed out that they will make it easier for nations searching for digital continuity solutions to set up Data Embassies in GIFT IFSC.

Improving Governance And Investor Protection In Banking Sector

The Government has proposed certain amendments to the Banking Regulation Act, the Banking Companies Act and the Reserve Bank of India Act for improving bank governance and enhancing investor protection.

Digital Payments

The Government has announced its endeavour to continue providing fiscal support to digital fiscal infrastructure for 2023-24, in response to the wide acceptance of digital payments in the country. In 2022, digital payments showed an increase of 76% in transactions and 91% in value.

Key Announcements From Budget 2023 In Relation To Gift IFSC:

a. Delegating powers under the SEZ Act to IFSCA.

b. Setting up single window clearance system for registration and approval required by IFSC entities from IFSCA, SEBI, RBI, IRDAI, GSTN and SEZ authorities.

c. Permitting acquisition financing by IFSC Banking Units of foreign banks.

d. Amending the IFSCA Act in relation to arbitration, ancillary services, and help avoid dual regulations.

e. Setting up a subsidiary of EXIM Bank in GIFT IFSC for trade refinancing.

f. Offshore derivative instruments will be considered as valid contracts.

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Market Updates

1. Sale of IDFC's asset management business to a consortium of Bandhan Group, GIC and ChrysCapital

Consortium of Bandhan Group, GIC and ChrysCapital acquired IDFC's asset management business for ₹ 4,500 crores. The closing process involved application to Securities and Exchange Board of India, Reserve Bank of India and Competition Commission of India. The firm also assisted on the process of offer for sale of Gandhar Oil Refinery (India) Limited, and the cashing out of existing vested ESOPs of IDFC AMC.

2. Advent international acquired 10% in YES Bank

Cyril Amarchand advised private equity firm Advent International on its agreement to invest upto approximately USD 1.1 billion for acquisition of upto 10% stake in YES BANK Limited, being one of the largest private funds raised by a private sector bank.

3. Kotak Mahindra Bank acquired Sonata Finance (MFI)

Cyril Amarchand advised Kotak Mahindra Bank Limited on its share purchase agreements with the current shareholders of Sonata Finance Private Limited to acquire 2,64,53,256 equity shares of Sonata. The shares of Sonata held by one of the selling shareholders Creation were subject to an encumbrance due to an injunction order passed by the Madras High Court, pursuant to a dispute between Creation and SIDBI (which is incidentally another selling shareholder).

4. USD 1.2 bn financing of Renew Surya Roshni's 400 MW 'Round-the-Clock' renewable energy project

Financing of the first-of-its-kind 400 MW round-the-clock renewable energy project being developed by Renew Surya Roshni Private Limited in the states of Rajasthan, Maharashtra and Karnataka was led by Coöperatieve Rabobank U.A., (Hong Kong Branch) for an approximate amount of USD 1.2 billion in the form of (a) external commercial borrowings from a consortium of 12 international lenders, and (b) INR and foreign currency denominated letter of credit facilities provided by 4 Indian branches of foreign lenders.

5. Series D fundraising by Kreditbee

The existing investors of Kreditbee (Finnovation Tech Solutions Private and Krazybee Services Private Limited), Premji Investor (PI Opportunities Fund-I), New Quest Capital (NewQuest Asia Fund IV (Singapore) Pte. Ltd), Motilal Private Equity (India Business Excellence Fund IV) and Mirae Asset Late Stage Opportunities Fund, participated in the Series D funding round along with new investors Advent International and MUFG Bank. With the Series D fundraise, Kreditbee has achieved post-money valuation of INR 5433 crore.

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