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

This issue takes the readers through an array of regulatory developments in the fintech space, such as the revision of the framework of Regulatory Sandbox (**Regulatory Sandbox**) by the Reserve Bank of India (**RBI**), which has been established to foster responsible innovation in financial services, promote efficiency and bring benefits to consumers. While the current framework ensures cost-efficient financial products with dynamic technology and regulatory compliance, the revised framework promotes a more streamlined process for the innovators to comply with the regulation.

Some of the other recent regulatory developments/ highlights in the Fintech space by the RBI are: (a) revised regulatory framework - Bharat Bill Payment Systems; (b) framework for recognising Self-Regulatory Organizations for Fintech Sector; (c) Launch of PRAVAAH, Retail Direct Mobile Application and Fintech Repository etc.

The Securities and Exchange Board of India (**SEBI**) released a comprehensive framework on Investor Protection Fund (**IPF**) for the stock exchanges, in May this year. In these guidelines, SEBI has provided the entire framework to set up the fund, purpose of the fund and regulatory compliance. It further revised the KYC framework of KRAs under Risk Management.

We also aim to discuss recent regulatory updates from the International Financial Services Centres Authority (**IFSCA**) and their impact on business.

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

Managing Partner
Cyril Amarchand Mangaldas

India's leading law firm

Message from Senior Advisor FIG, B. Sriram

I am delighted to introduce to you the seventh issue of the FIG Bulletin by our FIG practice. This issue of the FIG Bulletin deals with the latest updates in the fintech sector and the recent developments and updates by the RBI, SEBI and IFSCA. The RBI has revised the enabling framework for the Regulatory Sandbox. The issue also discusses SEBI updates such as the Know Your Customer Norms for Securities Market.

Further, the issue discusses amendments to dark pattern guidelines, which encompass the framework to ensure a safe and trustworthy online experience for financial consumers. It further discusses the scope of such dark patterns and provides a brief understanding of the prohibited practices.

Regards,

B. Sriram
Senior Advisor

Message from Senior Partner, Santosh Janakiram

I am elated to present the seventh issue of the FIG Bulletin, brought to you by our FIG practice.

This issue contains our perspective on recent developments in the fintech sector and interesting insights on the new SRO Framework for fintechs. In this issue, we have also dealt with the SEBI framework on Investor Protection Fund (**IPF**) for Stock Exchanges.

Further, this issue discusses the imminent changes brought by the amendments to dark pattern guidelines. In this issue, we have also dealt with the RBI's Guidance on Operational Risk Management.

Another fascinating development that we have tackled in this bulletin is the RBI Statement on Development and Regulatory Policies and Regulation of Payment Aggregators (**PAs**) - Amendments and point of sale.

We hope you enjoy reading this newsletter.

Regards,

Santosh Janakiram
Senior Partner

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The new Draft Directions for Regulations of Payment Aggregator

Introduction

The past four years have witnessed phenomenal growth in digital payments and credit spaces in India, along with proliferation of entities which have changed the way these services are provided to users. Given that these spheres of activity are crucial for the financial sector at large, it has become imperative for the RBI to keep up with the ever-evolving technological and regulatory landscape to foster growth along with safety and security.

The distillation of the authorisation process of the fintech players by the RBI is an important outcome. Of the 140-plus players (spread across, payments, foodtech, edtech, etc.) who applied for the authorization, as of May 28, 2024, about 29 (i.e., around 19% of the total applicants) received the RBI's nod. This relative low number is reflective of the concerns of the regulator, which keeps a close eye on the authorised entities. Yet another development relates to the changes in the key aspects of the functioning of the various players in the chain.

In this paper, we discuss the following key legal and market level changes mentioned in the draft:

i. Regulation of payment aggregators-physical point of sale (**Draft PA-P Regulation Circular**); and,

ii. Amendments to the existing directions on payment aggregators (**Draft PA Amendment Circular**), propose to bring in the payments' ecosystem.

Revised definition and categories of Payment Aggregator ("PA"):

The proposed new definition of PA:

i. Aims to widen the scope of PA/PG (Payment Aggregator / Payment gateway) Guidelines to specifically include both online Payment Aggregators (**PA-O**) and physical Point of Sale Payment Aggregators.

ii. Intends to expand the scope of merchants covered from just the e-commerce sites to three categories of merchants -small merchants (upto INR 5 lakh turnover), medium merchants (upto INR 5 lakh turnover), and e-commerce entities facilitating transactions over a digital or electronic network).

PA Categories:

In addition to the existing "online PAs" (under non-Delivery vs Payment (**DvP**) mode), the revised draft framework also includes offline PAs providing access modes encompassing face-to-face/ proximity payment, including but not limited to Quick Response (**QR**) code, Near-Field Communication (NFC), physical card-reader/PoS Terminal, etc., which are termed as "PA-physical Point-of-Sale" (**PA-P**).

Q: *As both DvP and non-DvP transactions are routed through the PA's escrow account, do PA-O operating under the DvP model need authorisation for their business activities?*

Payments to other Accounts:

While under the current framework, PAs settle funds to any other account per specific directions from the merchants, the revised draft framework may impact the flexibility of direct settlement to sellers/ vendors of the marketplace merchants.

This may also impact the process of loan repayment EMIs by the merchants directly from the escrow account to partner banks/NBFCs.

Additionally, PAs will have to ensure that marketplaces onboarded by them do not collect and settle funds for services not offered through their platform.

Q: *With such a requirement, some of the larger/ mid-sized e-commerce players may have to revamp their business models. Is such deletion of permissible debit limited to payments to third-party vendors only?*

Q: Whether restricting certain use cases such as proprietary app stores collecting and settling funds for services provided on apps available on such app stores are the only use cases restricting PAs to not collect and settle funds for services not offered by the marketplaces through their platform?

KYC:

While the current framework allowed PAs to undertake limited KYC for the merchants having a bank account, the revised draft framework mandates the PA to undertake: (a) the conduct of a full KYC, i.e., CDD while onboarding merchants; and (v) Contact Point Verification (**CPV**) for small and medium merchants.

Q. Since the Draft PA Amendment Circular mandates full KYC while onboarding merchants, will the exemption for undertaking limited KYC under PA/PG Guidelines (March 31, 2021 Circular) continue for the merchants having a bank account?

Q: Given that procedure to undertake CPV is not provided under PA Amendment Circular and KYC Master Directions, will it necessarily involve a physical visit to the relevant address?

Conclusion:

Both PA-P Regulation Circular and PA Amendment Circular are steps taken by the RBI for enhancing the regulatory landscape directly under its purview. Barring the above concerns raised in the industry, both draft Directions intend to enhance transparency, security and visibility of payments space across sectors by bringing the DvP transactions under the ambit of PA/PG Guidelines. The RBI had invited feedback/ comments from the stakeholders on the Draft PA-P Regulation Circular and Draft PA Amendment Circular on or before May 31, 2024.

Guidance note on operational risk and operational resilience[1]

Introduction

The RBI issued a Guidance Note on Operational Risk Management and Operational Resilience, dated April 30, 2024 (**Guidance Note**). An operational disruption can threaten the viability of Regulated Entities (**REs**), impact customers and other market participants, and ultimately have an impact on financial stability. The Guidance Note aims to significantly enhance the effectiveness of operational risk management practices for REs by fostering operational resilience. This framework empowers REs to navigate the increasingly complex, interconnected, and dynamic landscape of the financial system. The said Guidance Note updates the "Guidance Note on Management of Operational Risk", dated October 14, 2005.

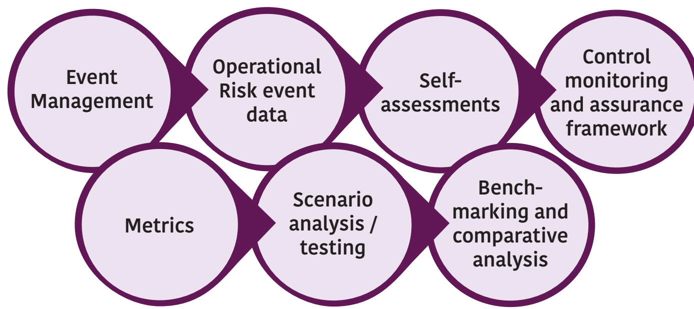
The RBI, through this Guidance Note, has adopted a principle-based and proportionate approach to ensure smooth implementation across REs of various sizes, nature, complexity, geographic location and risk profile. The Framework is structured on three broad pillars.

Pillar one

1. **Prepare and protect:** This pillar broadly includes Governance and Risk Culture. It mentions risk management and identification, monitoring and reporting as the responsibilities to be shouldered by the senior management and board of directors.
2. **Operation of Risk Management:** The Guidance Note lists three lines of defence for operation of risk management, as follows:
   - i. **Business Unit Management:** This line of defence is responsible for identifying and assessing the risks prevalent in the goods and services for which the entity is responsible. It is recommended that REs have a robust policy for implementation of this line of defence.
   - ii. **Organisational Operational Risk Management Function:** The second line of defence aims to add an additional layer of independence and review to the operational risk management function. They are also responsible for drafting and implementation of the operational risk management policy.
   - iii. **Audit Function:** The internal or external audit unit provides an added layer of assurance and works independently of the first two layers of defence. Their function would be to review all activities and legal entities of the RE.
3. **Governance and Risk Culture:** The Guidance Note stipulates that the Board of Directors should take lead in establishing a strong risk management culture and establish incentives to implement and facilitate periodic training programme. It further lays down broad responsibilities of the Board and Senior Management in this regard.
   - i. Approve and review the Organizational Risk Management Framework, and Operational Resilience Framework.
   - ii. Approve and review risk appetite and tolerance statement for Operational Risk. They should also approve and review the criteria for identification and classification of critical operations.
   - iii. Senior management should develop a clear, effective and robust governance structure, with well-defined, transparent and consistent lines of responsibility, for board approval.
   - iv. Senior Management should ensure comprehensive identification and assessment of Operational Risks inherent in all material products, activities, processes and systems. The RBI lays down extant list of tools that may be used for identifying and assessing Operational Risk.

[1] Reserve Bank of India - Notifications (rbi.org.in).

Examples of tools used for identifying and assessing operational Risk



4. **Operational Risk Report:** The Organizational Risk Report should include the following:

    i. Discussion and assessment of key and emerging risks.

    ii. Breaches of RE's risk appetite and tolerance statement.

    iii. Details of recent significant internal operational risk events and losses.

    iv. Identification of near misses and assessment of efficacy controls.

    v. Relevant external events and impact on RE.

Pillar two

5. **Build Resilience:** The overarching principle of this pillar is premised on the fact that risks are inevitable, and REs would be better of being prepared for such risks and have operations in place to mitigate its impact. To build resilience, the RE should ensure that existing risk management frameworks, business continuity plans and third-party dependency management are implemented consistently. The following are the key elements of this pillar:

    i. **Mapping of interconnections and interdependencies:** These should be mapped granularly to ensure that vulnerabilities are identified and to sufficiently establish that the RE can provide its critical operations even in case of a disruption.

    ii. **Third-party dependency management:** REs should perform risk assessment and due diligence before entering into an arrangement with third parties. They should also ensure that the third party has in place an equivalent level of operational resilience. REs should also develop an appropriate Business Continuity Plan to maintain operational resilience in the event of disruption or failure by third parties.

    iii. **Business Continuity Planning and Testing:** REs should have a robust plan in place for business continuity in case of unforeseen contingencies and disruption. They should be linked to the REs Organisational Risk Management Framework.

    iv. **Incident Management:** In line with an REs risk appetite and tolerance statement, an Incident Management System should be integrated to ensure the RE can perform its critical functions even if there is an incident causing disruptions. An incident should be classified based on its severity on a predetermined criterion.

    v. **Information and communication technology, including cyber security:** REs should implement a robust Information and Communication Technology risk management programme.

Pillar three

6. **Learn and Adapt:** REs public disclosure of Operational Risk Management information can foster transparency and better market practices. They should also disclose relevant operational risk exposure information to the concerned stakeholders. REs should also conduct "lessons learned exercises" and address the root causes of disruptions, if any.

Revised Framework for the Bharat Bill Payment System[2]

Introduction

The Reserve Bank of India (**RBI**) has implemented a revised framework for the Bharat Bill Payment System (**BBPS**), effective from April 2024 (**BBPS MD**). This framework aims to achieve three key objectives – streamlining bill payment processes, fostering broader participation from various entities, and enhancing customer protection measures. The framework applies to all relevant stakeholders within the BBPS ecosystem, including NPCI Bharat Bill Pay Limited (**NBBL**), a wholly-owned subsidiary of the National Payments Corporation of India, and all authorised Bharat Bill Payment Operating Units (**BBPOUs**).

1. **Key Features:**

   Streamlined Processes: The framework simplifies procedures for billers (entities receiving payments) to join the BBPS platform, making it easier for them to offer their services through this system.

   Enhanced Participation: It encourages a broader range of billers to participate in BBPS, including government departments, educational institutions and utility providers. This expands the platform's reach and customers' bill payment options.

   Authorisation: Any entity (not a biller) that wishes to operate a bill payment system, outside the scope of BBPS operated by the NBBL, will require authorisation as a 'payment system' under the Payment & Settlement Systems Act, 2007. Existing banks and non-bank PAs that already participate in BBPS do not require separate authorization; simple intimation to DPSS, RBI Central Office will suffice.

2. **Roles and Responsibilities:**

   BBPCU: Acts as the central hub, setting rules, technical standards and guaranteeing transaction settlements. They also ensure all transactions have a BBPS reference number and no funds flow through specific channels (**TSPs**). Additionally, they provide a framework for resolving customer disputes.

   BOU: Focuses on bringing billers (entities receiving payments) onto the BBPS platform. They ensure these billers comply with due diligence requirements, including those outlined under specific RBI guidelines. They may also perform additional due diligence for specific biller categories. Importantly, they are responsible for verifying the legitimacy of billers even if on boarded through aggregators.

   COU: Provides customer interface, either digitally or physically (including through agents). They ensure customers have access to all billers on BBPS and offer a system for raising disputes. Additionally, COUs are responsible for the activities of their partnered agent institutions.

3. **Escrow Account Operation:**

   BBPOUs acting as Payment Aggregators (**PAs**) will have to maintain a special escrow account exclusively for BBPS transactions. This account will function in a manner similar to an escrow account, mandated for PAs under the Payment Settlement Systems Act. Funds collected from customers, used for settling bills with BBPS billers, will flow through this account. The account will also allow credits and debits related to successful transactions, failed / disputed transactions, and charges / commissions associated with bill payments. Essentially, BBPS escrow account will now align itself with and operate under the same guidelines as a regular PA escrow account. This alignment will reduce settlement risk, allow BOUs and COUs to take advantage of infrastructural efficiency by integrating their BBPS settlement mechanisms with existing payment rails.

[2] Reserve Bank of India - Master Directions (rbi.org.in).

4. **Improved Customer Protection:**

   Grievance Redressal: The framework strengthens customer grievance redressal mechanisms, ensuring faster and more effective resolution of payment-related issues. It requires NBBL to put in place a dispute resolution framework for centralised end-to-end complaint management system, in compliance with the RBI's guidelines on Online Dispute Resolution (ODR) System for Digital Payments, dated August 06, 2020. Previously, BBPOUs were responsible for handling customer grievances. The BBPS MD now mandates NBBL to create a dispute resolution framework for centralised end-to-end complaint management. All BOUs and COUs are to be integrated to enable customers and billers to raise and resolve disputes in accordance with the dispute resolution framework of the NBBL.

5. **Data Security & Privacy:**

   Standards for data security and privacy are reinforced to protect customer information within the BBPS ecosystem.

6. **Transparency in Charges:**

   The framework promotes transparency in charges levied by BBPOUs for bill payment services. Customers can expect clearer information about associated fee.

Conclusion

The BBPS MD brings all regulated entities within the ambit of bill payments on the collection and settlement side. Entities that wish to operate a bill payment system parallel to BBPS will require separate authorisation. Agent institutions (non-authorised entities) can no longer participate in the payment handling or pooling of funds to avoid settlement risks; they can only provide customer interface or technology platforms for bill payments.

The intention of this segregation between non-regulated interface providers (TSPs, agent institutions) and regulated fund handling entities (banks and non-bank PAs) and the authorisation regime is to build customer confidence in the BBPS to ensure bill payments are being handled only by regulated entities.

Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors

Introduction

The Securities and Exchange Board of India (**SEBI**) *vide* its circular dated June 5, 2024, has relaxed the timelines for disclosure of certain material changes/ events and other obligations by Foreign Portfolio Investors (**FPIs**) (**Circular**)[3]. The Circular provides detailed timelines for intimation of material change and submission of supporting documents for different types of material changes by FPIs. This circular was issued following the Master Circular dated May 30, 2024[4], for FPIs, Designated Depository Participants (**DDPs**) and Eligible Foreign Investors (**FPI Master Circular**), specifying registration process of FPIs, KYC requirements for FPIs, issuance of derivative instrument by FPI, creation of restriction on FPIs and more.

Prior to this Circular, SEBI had also notified an amendment to the SEBI (Foreign Portfolio Investors) Regulations, 2019[5] (**FPI Regulations**), through the SEBI (Foreign Portfolio Investors Amendment) Regulations, 2024[6] (**FPI Amendment Regulations**), providing relaxed timelines for FPIs to furnish information of any material change to the DDP or/ and SEBI.

Background

According to FPI Regulations, an FPI is obliged to inform SEBI or/ and its DDP if (i) any information submitted is found to be false or misleading, or (ii) there is any material change in the information furnished, or (iii) any action is being taken by an overseas regulator against the FPI, resulting in proceedings, pending litigation or penalty, or (iv) there is any direct or indirect change in the structure or common ownership or control of the FPI investor group[7].

The FPI Master Circular[8] and FPI Regulations provided an inclusive definition of *'material change'*, which *inter alia* included any direct or indirect change in the structure, ownership, control[9] of the FPI investor group, or change in regulatory status, or restructuring, or change in category, sub-category, jurisdiction, name of FPI and Beneficial Ownership (**BO**), etc. However, the definition of material change was unclear as it failed to mention which particular change should be considered as major material change, for the FPI to inform the DDPs or/and SEBI about it.

Further, FPIs were obliged to inform about material changes to their DDP[10] as soon as possible, but not later than 7 (*seven*) *working days* (**Deadline**). If the FPI failes to provide an intimation to the DDP about the material for a period of more than 6 (*six*) months, the DDPs will be instructed to inform SEBI about such non-compliance, along with providing reasons for such delay.

However, there is no mention of whether the FPI needed to submit supporting documents at the time of intimation to the DDP. Thus, to clear all such ambiguities, the SEBI issued the Circular providing detailed guidelines on disclosure requirements for FPIs.

Key changes in the Circular and FPI Amendment Regulations

In is imperative to note that the Prevention of Money Laundering (Maintenance of Records) Rules, 2005[11] (**PML Rules**) is also applicable to FPIs registered with the SEBI. Here, FPIs are required to submit or update any information provided by a client within thirty (30) days[12],

[3] SEBI | Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors.
[4] SEBI | Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors.
[5] SEBI | Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [Last amended on June 03, 2024].
[6] SEBI | Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2024.
[7] Regulation 22 of SEBI (Foreign Portfolio Investors) Regulations, 2019 SEBI | Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [Last amended on December 19, 2019].
[8] Para 14 of Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated on May 30, 2024 SEBI | Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors
[9] According to Regulation 2(f) of SEBI (Foreign Portfolio Investors) Regulations, 2019 SEBI | Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [Last amended on December 19, 2019], "**Control**" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
[10] Para 14 of Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated on May 30, 2024 SEBI | Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors.
[11] FIU-India (fiuindia.gov.in).
[12] Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005 FIU-India (fiuindia.gov.in).

whereas the FPI Regulations provide for an obligation to make disclosures to DDPs within 7 (*seven*) working days.

To bring consistency and resolve the issues faced by market participants, SEBI issued this Circular to categorically define the term *'material change'* to avoid circumstantial hindrances. The Circular defines *'material change'* to mean:

1. **Type 'I' material changes[13]:** It includes critical material changes that an FPI should inform as soon as possible, within 7 (*seven*) working days of the occurrence of the change, along with supporting documents (if any), which should be submitted within 30 (*thirty*) days of such change. Such critical changes may (i) require an FPI to seek new registration; (ii) render an FPI ineligible for registration; (iii) impact any privileges (iv) impact any exemptions and (v) impose restrictions on the FPI to make fresh purchase of securities. Accordingly, an FPI is required to consider the following aspects as 'Type I' material change:

    a) Change in jurisdiction.
    b) Name change, during restructuring of business (merger, demerger, acquisition), change of ownership/ control.
    c) Acquisition/ merger/ demerger, resulting in cessation of existence of FPI.
    d) Restructuring of legal form/ sub-category. (e.g., Corporate to trust).
    e) Change in regulatory status of FPI. (e.g. regulated to unregulated fund).
    f) Change in compliance status of jurisdiction of FPI/ BO in terms of Regulations 4(d), 4(e) or 4(f) of the FPI Regulations, 2019.
    g) Reclassification of the FPI from Category I to Category II.
    h) Addition of FPI(s) to any existing/ new investor group.
    i) FPIs obtaining registration under Category I on support of an Investment Manager (**IM**), and if such IM is being removed or losing its Category I eligibility.
    j) Breach of threshold set out for Non-Resident Indians (**NRIs**), Resident Indians (**RIs**) and Overseas Citizen of India (**OCI**) regarding aggregate contributions.
    k) Any misleading or false information submitted to DDP or SEBI.
    l) Any penalty, pending litigation or proceeding by an overseas regulator.
    m) Changes impacting exemptions granted to FPIs in terms of SEBI Circular, dated August 24, 2023.[14]
    n) Breach of eligibility criteria under FPI Regulations, unless such FPI is exempted from such compliance.

2. **Type 'II' material changes[15]:** It includes any material changes other than Type 'I' and the FPI should inform of such material change, along with supporting documents (if any), as soon as possible and within 30 days of such change.

Additional Requirements

FPIs are required to seek fresh registration if it undergoes any Type I material change. In case of any delay in intimation of material change, by an FPI to its DDP, FPIs are required to provide a reason for such delay and the DDP is required to inform SEBI of all such cases of delay, as soon as possible, but not later than two (2) working days, along with the reason for delay .[16]

Conclusion

SEBI Circular and FPI Amendment Regulations address various concerns raised by market participants. It clarifies the exact requirements for an FPI to undertake material changes and the intimation process thereof. The requirement for FPIs pertaining to timely disclosures of material change is akin to the PML Rules, thus reducing hindrances faced by hedge fund investors having administrators' offices in different time zones.

[13] Para 3(a) and (b) of Disclosure of Material Changes and Other Obligations for Foreign Portfolio Investors issued on June 05, 2024 SEBI | Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors.

[14] Mandating additional disclosure by Foreign Portfolio Investors (FPIs) that fulfill certain objective criteria issued on August 24, 2023 SEBI | Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria.

[15] Para 3(c) of Disclosure of Material Changes and Other Obligations for Foreign Portfolio Investors issued on June 05, 2024 SEBI | Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors.

[16] Para 3(iii) of Disclosure of Material Changes and Other Obligations for Foreign Portfolio Investors issued on June 05, 2024 SEBI | Disclosures of Material Changes and Other Obligations for Foreign Portfolio Investors.

Amendment to Master Direction – Credit Card and Debit Card – Issuance and Conduct Direction, 2022

The Reserve Bank of India (**RBI**) on March 7, 2024, introduced the Amendment to the Master Direction – Credit Card and Debit Card – Issuance and Conduct Direction, 2022 (**Amendments**) for banks and non-banking financial companies issuing credit cards and all banks operating in India with debit cards. The RBI also rolled out a Frequently Asked Questions on March 7, 2024 (FAQs, together with the Amendments, as Directions), which provides more clarity on the dealings between the card-issuer and cardholder. The reasons for these Directions include monitoring of the end use of credit cards, keeping in check excessive charges such as those by penal interest, ensuring the security of customer data in a co-branded arrangement, etc. Following are the key takeaways:

Key Takeaways:

i. **Card limits:** Card-issuers can issue business credit cards to business entities/individuals for business expenses. Additionally, the business credit card may be issued as charge cards, corporate cards, or by linking an overdraft or cash credit facility provided for business purposes on same terms and conditions applicable to such credit facilities. The Amendments direct card-issuers to have an effective mechanism in place to monitor the end use of funds.

ii. **Interest, penalty, and other charges:** If a credit cardholder fails to clear the total amount due within the payment due date, card-issuers can revoke interest free credit period and levy interest from the date of transaction on the outstanding amount (adjusted for payments/ refunds/ reversed transactions as and when credited) and not on the total amount due. They can also levy late payment fee and other charges relating to delay in payment only on the outstanding amount (adjusted for payments/ refunds/ reversed transactions as and when credited) after the payment due date and not on the total amount due. The RBI's objective is to make the interest applicable more transparent and stop card-issuers from charging excessive interests by capitalizing on the unpaid taxes/ levies/ charges.

iii. **Billing Cycle:** Card-issuers need to provide the cardholder with the option of choosing any date as the starting or closing day of billing cycle at least once, without a maximum cap, instead of a one-time option in the erstwhile directions, which the cardholders can exercise through multiple channels such as the helpline, dedicated e-mail ID, interactive voice response, internet banking, mobile application, and any other modes.

iv. **Activation/deactivation/closure of cards:** Activation is any customer-initiated process indicating intent to use a credit card, such as PIN generation, modification of transaction control, interactive voice response, recorded call to the customer-care center, and SMS. If a cardholder calls the customer-care centre for reasons other than these, it does not tantamount to card usage. For what may be considered as "used" credit card, the RBI has provided that in addition to financial transactions, any process the cardholder initiates, such as statement generation, PIN change, transaction control modifications, etc., will be considered as a card being "used". De-activation/blocking of a credit card temporarily curtails a cardholder's ability to make any transaction in a credit card account while still maintaining the credit/account relationship with the card-issuer. Closure of a credit card is the termination of the account-based relationship between the cardholder and the card-issuer. The card-issuers have to ensure that they follow a standard operating procedure, as approved by their board, for instances where cardholders themselves decide to block/ deactivate/ suspend a debit or credit card, and immediately inform the cardholder along with reasons through electronic means (SMS, email, etc.) and other available modes.

v. **Data storage/security in co-branded card arrangement:** Currently, after the issuance of the card,

the co-branded partner is not involved in any of the processes or the controls relating to the co-branded card except for being the initial point of contact in case of grievances. For the convenience of the cardholder, the RBI has clarified that data related to card transactions may be drawn directly from the card-issuer's system in an encrypted form and be displayed on the co-branding partner's website. While facilitating easy access to card transactions for cardholders, the co-branding partner must have a robust security framework in place to ensure that only the customer can access the transaction related data, and be cautious that the co-branding partner can neither access nor store such data, irrespective of whether the co-branding partner acts in any other service-provider capacity (e.g., a business correspondent or a technology-service provider) for the card-issuer.

vi. **Unsolicited card:** A customer receiving an unsolicited credit card should refrain from activating it or providing consent for its activation through OTP mode. If the card issuer does not receive any consent for activation, it must close the credit card account without any cost to the customer. The customer, on the other hand, should destroy the card upon receiving information about the closure of the credit card account. In instances of the renewal of an existing card, card-issuers must provide cardholders the option of declining it before the new card is dispatched. A customer may additionally approach the RBI Ombudsman to file a complaint against the issuance of unsolicited card. Given the prohibition on issuing unsolicited credit cards and the escalation mechanism before the RBI Ombudsman, it may be a good practice for the card-issuers to not issue an unsolicited card.

vii. **Grievance Redressal:** Card-issuers should satisfactorily respond or aim to resolve any complaints of a customer facing any issue within 30 days of receiving the complaint. If the card-issuer does not respond within 30 days (instead of a month in the erstwhile directions), or partly responds, or does not respond satisfactorily or rejects the complaint, the customer can approach the RBI Ombudsman under the Integrated Ombudsman Scheme either through an online or offline mode.

Miscellaneous:

i. **Form Factors:** Card-issuers can issue other form factors in place of/ in addition to a plastic debit/ credit card such as wearables, after obtaining the customer's explicit consent. Card-issuers need not submit a detailed report to the RBI before the issuance of any form factor as was mandated prior to the Directions.

ii. **Outsourcing:** Card-issuers must ensure adherence to the Master Direction on "Outsourcing of Information Technology Services" and guidelines on "Managing Risks and Code of Conduct in Outsourcing of Financial Services", as amended periodically. Further, card issuers cannot share card data (including transaction data) of the cardholders with the outsourcing partners. They can do so only with the explicit consent from the cardholder if sharing such data is essential for the outsourcing partners to discharge the functions assigned to them. Card-issuers must ensure that the storage and the ownership of card data remains with them.

Conclusion

The Directions of the RBI is a step towards building a greater control for cardholders leading to an improved relationship with card-issuers. In addition to enhancing the operating norms, the Directions have placed a strong focus on limiting card-issuers' activities in the absence of an explicit request or approval from the cardholder. The Directions intend to make it simpler for customers to understand their own rights as well as the obligations of card-issuers when navigating the card space.

Compulsory Registration of Off-shore Virtual Digital Asset Service Providers with FIU-IND?

Introduction

The Financial Intelligence Unit, India (**FIU-Ind**) in 2023 issued show-cause notices to several offshore Virtual Digital Asset Service Providers (**VDASP**) for non-compliance with provisions of the Prevention of Money Laundering Act, 2002 (**PMLA**) and for non-registration with the FIU-Ind while catering to the Indian customers and operating in the Indian market.

These actions synchronize with the Indian Government's stance in the G20 Summit 2023, which stated the need for international co-ordination and co-operation in the governance and regulation of crypto assets, emphasizing the importance of international collaboration in cyber security to counter new dangers, particularly in light of terror financing via the crypto space. Further, the Indian Government placed strong emphasis on the need to engage with stakeholders, including VDASPs and the general public to build a regulated but a transparent crypto ecosystem.

Background

On March 7, 2023, the Central Government brought VDASPs within the PMLA regime as a 'reporting entity' and mandated them to register with FIU-Ind and comply with the provisions of the PMLA and Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (**PML Rules**), qua reporting obligations, record-keeping, etc.

Following the above statutory trend, FIU-Ind issued 'AML & CFT Guidelines for Reporting Entities providing services related to Virtual Digital Assets' dated March 10, 2023 (**Guidelines**) relating to the Know Your Customer (**KYC**)/ Combating the Financing of Terrorism (**CFT**) norms for VDASPs.

Coverage of Offshore VDASP

Whilst the above regulations and Guidelines in spirit are applicable to all VDASPs operating in India, despite their geographical location, the Ministry of Finance on December 4, 2023, published the names of only 28 VDASPS registered with FIU-Ind.

The FIU-Ind on December 28, 2023, issued a show-cause notices to offshore VDASP's reprimanding their non-compliance with PMLA and PML Rules, as well as non-registration with the FIU-Ind. In addition to the issuance of such show-cause notices, FIU-Ind also wrote to the Ministry of Electronics and Information Technology to block the websites/ Apps/ URLs of such offshore VDASPs.

Impact of FIU-Ind registration on offshore VDASPs

The off-shore VDASPs under the PMLA and PML Rules would be obligated to:

i. verify the identity of its Indian clients;

ii. designate a Principal Officer and Designated Director who may not necessarily reside in India, but would be preferred from a business standpoint to correspond/ liasion with FIU-Ind for PMLA compliances;

iii. maintain records for periodical reporting to the FIU-Ind; and

iv. flag suspicious transactions in order to curb money laundering and / or criminal activity.

Furthermore, as offshore VDASPs would be required to collect data, including but not limited to the personal or transactional data of its clients, offshore VDASPs would be obligated to store data related to payments in India. In light of the same, the offshore VDASPs may have to modify their modus operandi and tweak their systems and processes to be in compliance with Indian legal and regulatory requirements.

In addition to the above, an offshore VDASP operating in India may have to undertake certain additional filings with the Indian tax authorities and may also be required to

register themselves to undertake payment of both direct and indirect taxes in India. Indian laws also require a consumer grievance redressal mechanism which may have to be formulated in India.

Impact of blocking offshore VDASPS

Upon the Indian Government's introduction of the new crypto tax regime, retail and institutional investors were motivated to move from onshore to offshore VDASP platforms. However, the recent ban/ blocking of offshore VDASPs would result in loss of business to the offshore VDASPs as they will not be able to service the Indian market.

Furthermore, many Indian crypto exchanges had entered into arrangements with various offshore VDASP players to expand their commercial capacities and enhance their share of revenues. Such tie-ups may also suffer in case the said offshore VDASPs are blocked and banned from operating in the Indian territory.

With the crypto space largely being unregulated in India, FIU-Ind may become the de facto regulator/ supervisor of the space as it appears to register and regularize offshore VDASPs and prescribe contours within which such VDASPs will operate. At present over 100 applications of offshore VDASPs are awaiting evaluation by FIU-Ind. Nevertheless, the organization is taking several steps to accommodate the offshore VDASPs by granting them necessary relaxations in the registration requirements and processes, in view of their offshore presence and providing them all necessary technical support required for the registration process.

Conclusion

It is clear that the intent is not to block or stop business operations of offshore VDASPs but to provide a level playing field to both Indian and offshore players provided there is due compliance with Indian law and regulations by the players. Registration with FIU-Ind by the offshore VDASPS will not only provide comfort to the users but will also be useful in curbing the usage of crypto assets for money laundering and terror financing.

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Implication of Digital personal Data Protection Act for foreign banks in India

Introduction

The Digital Personal Data Protection Act, 2023 (**DPDP Act**) is India's foray into the global regulatory movement on personal data rights. In designing the DPDP Act, there has been a strong focus on simplicity, brevity, and standardisation. We note a marked effort to align with data regulation across the world, most significantly, the European Union's General Data Protection Regulation (**GDPR**). While principally similar, the Indian regime has peculiarities for which financial services entities will have to prepare themselves.

This paper highlights relevant considerations for foreign banks with Indian operations that are compliant internationally and under relevant regulations of the Reserve Bank of India but now will need to prepare for the DPDP Act.

Relevant Considerations under the DPDP Act:

1. **Territoriality:** The DPDP Act applies to processing of personal data within India as well as outside India if such processing is in connection with any activity that relates to the offering of goods or services in India to Data Principals. Foreign banks will have to be mindful that the DPDP Act has extra-territorial application and is equally applicable to Indians and foreign individuals, irrespective of location or residency status, as long as the processing of digital personal data is done in India or is in connection with offering goods or services in India.

2. **Representative Offices/Branch Operations:** Several foreign banks operate in India not only through Indian subsidiaries but also through branches/representative offices with no separate legal entity registered in India. Even where the Data Fiduciary is a foreign entity, so long as personal data is being processed in India or the processing is connected to any activity related to Indian banking product/service offerings, the DPDP Act will apply and consequent compliance obligations will flow from it.

3. **Consent:** The lawful basis for processing personal data hinges on free, specific, informed, unconditional, and unambiguous consent. In the absence of consent, personal data may be processed for certain narrowly defined legitimate uses such as personal data provided voluntarily for a specified purpose, for compliance with law, access to state subsidies, benefits and schemes, medical emergencies, and employment-related purposes. Consent for new and existing personal data is to be sought along with a notice that identifies: (i) the data being collected; (ii) the specified purposes for processing of such data; and (iii) the manner in which a Data Principal may exercise rights and raise complaints with the Data Protection Board. This will entail a data audit of legacy data sets that is personally identifiable and for which express or implied consent has been taken. Mechanisms will also have to be built in to allow Data Principals to give itemised consent for specified purposes that allows them to opt in and opt out as and when Data Principals so choose. The services of a Consent Manager may be employed in this regard.

4. **Data Retention and Erasure:** Unless retention is necessary under existing law (such as RBI requirements under the extant KYC guidelines for record retention), a Data Fiduciary must erase personal data if the Data Principal withdraws consent or if it can be reasonably assumed that the specified purpose either has been served or is no longer being served (such as if the Data Principal does not engage with the Data Fiduciary or exercise rights under the DPDP Act), whichever is earlier. The Data Fiduciary must also ensure its Data Processor(s) erase(s) any personal data made available for processing. The retention of personal data under the DPDP Act presents a challenge. While the focus is on prompt data erasure, in cases where customers take time to approach the Data Fiduciary for complex cross-border banking/payment services, it is unclear if Data Fiduciaries can seek consent to retain data for longer periods or contractually determine the period of data

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retention with the Data Principal. Further, the data erasure obligation also does not envisage processing that does not involve the Data Principal reaching out but the other way round, i.e., in situations where the Data Fiduciary contacts the Data Principal for various services such as forex transactions or cross-selling. It is expected that the rules to be framed under the DPDP Act (**DPDP Rules**) will specify timelines, but Banks may need to vocalise such concerns to appropriate authorities to ensure clarity and flexibility is provided in the DPDP Rules.

5. **Data Processors:** Data Fiduciaries are ultimately liable for the acts of Data Processors in respect of any personal data processing under the DPDP Act. Data Fiduciaries are required to monitor the types of processing, the technical and operational standards maintained, system resilience, and the periodic erasure of data by Data Processors. Foreign banks with outsourcing partners, agents, third-party service providers, and group-entities outside India that undertake any personal data processing will need to be identified since the DPDP Act compliances will apply to them. The DPDP Rules may also specify technical and organisational specifications for security measures that are to be observed by Data Processors. Even if situated outside India, compliances and existing agreements will need to be aligned. There is, however, an exemption for foreign group entities outsourcing foreign personal data processing activities to their Indian counterparts. Foreign banks undertaking such outsourcing through group entities will have to navigate this carefully because personal data of Data Principals outside India might fall within the net of the DPDP Act for certain types of India-specific processing.

6. **Cross-Border Data Transfer:** There is limited permission for cross-border transmission of personal data. The Central Government may, by notification, restrict transfer of personal data by a Data Fiduciary to certain countries or territories outside India. Foreign banks will have to clean up their cross-border data flows and outsourcing arrangements to ensure that Data Processors or their sub-agents do not transmit personal data through restricted countries, as notified. Countries that share a land border with India are likely to fall under the restricted list. Banks ought to have standby arrangements in place as and when the Central Government notifies these countries. Foreign bank subsidiaries, branches, and representative offices in India looking to share Indian customer data with their head office or other regional offices offshore would need to ensure data is not shared to any restricted jurisdictions, as notified by the Central Government. Existing laws prescribing a higher degree of protection or restriction on transfer of personal data will also be applicable. For instance, RBI guidelines on Storage of Payment System Data and clarifications thereto (**Data Localisation Guidelines**) require banks acting as payment system operators to store data pertaining to payment systems only in India. For the foreign leg of transactions, a copy of the data may also be stored in the foreign country, if required. There is no bar under the DPDP Act on processing of payments-related personal data outside India so long as consent is sought for processing, i.e., data transfer. Foreign banks may establish remote connections from Indian data centres to their offshore offices for remote transaction processing. However, as per the Data Localisation Guidelines, the data shall be stored only in India after the processing and deleted from the systems abroad and brought back to India not later than 1 (one) business day or 24 (twenty four) hours from payment processing, whichever is earlier. Foreign banks may establish a remote connection from the data centre located in India to their head office or other regional offices offshore for remote transaction processing, basis the Data Principal's consent, as described above.

7. **Notification of Personal Data Breaches:** Data Fiduciaries (the equivalent being a 'Data Controller' under the GDPR) need not inform Data Principals about personal data breaches under the GDPR but must do so under the DPDP Act. It is expected that the DPDP Rules may specify the format and level of detail required to be shared. Notification mechanisms will have to be aligned accordingly.

8. **Significant Data Fiduciary (SDF):** The Central Government classifies an SDF depending on the volume and sensitivity of the data, risk to rights of the Data Principal, and public interest considerations. Large

entities holding significant volumes of data sets or processing sensitive data are likely to be classified as SDFs, and foreign banks with Indian operations are likely to be covered with onerous compliance burdens. If so notified, SDFs would be subject to higher compliances, including (i) appointing a Data Protection Officer based in India and an independent data auditor and (ii) taking periodic Data Protection Impact Assessment, audits, and other measures that may be prescribed in the DPDP Rules.

9. **Personal Data of Children:** In case of a child or person with disability, verifiable consent of the parent or lawful guardian is required for data processing. Certain types of data processing are prohibited in relation to children such as tracking, behavioural monitoring of children, targeted advertising directed at children, or any processing that is likely to cause detriment to a child's wellbeing. Exceptions to these prohibitions for certain classes of Data Fiduciaries or such purposes may be prescribed. While GDPR standards provide a more self-regulated approach, foreign banks may take a cautious approach to banking products geared for children and stringent consent architecture for the purposes of verification. Even as the DPDP Rules are awaited, the DPDP Act empowers the Central Government to notify the age above which the prohibitions are exempt if certain Data Fiduciaries can demonstrate that the personal data of children is processed in a verifiably safe manner.

10. **Research & Analysis Exemption:** The provisions of the DPDP Act do not apply to processing necessary for research, archiving, or statistical purposes. Foreign banks often use analytics and research from group entities to streamline banking services offered by their Indian operators. If these analytics are used solely for internal uses and not to offer services such as cross-selling to Data Principals, these activities may continue. If used for taking decisions specific to a Data Principal, banks will have to rethink how they can access and use such data.

Conclusion

Despite its globalised approach, the DPDP Act is also very unique since mere alignment with global frameworks would not be adequate in the Indian context. Entities like foreign banks that operate in India have some degree of experience with the GDPR and its data minimisation grundnorm. However, the Indian regime is distinct and will require careful evaluation to assess gaps in privacy compliance and implementation.

Balancing Sectoral regulation and DPDP Act Compliance by NBFCs and Fintechs

Background

Indian regulators in recent times have shown a keen interest in monitoring the intersection between data, information technology, and cybersecurity with regulated entities—more so in relation to Non-Banking Financial Companies (**NBFCs**) and 'fintechs'. With the expected enforcement of the Digital Personal Data Protection Act, 2023 (**DPDP Act**), and the promulgation of its rules, it becomes imperative for NBFCs and fintechs to map their journey of compliance from legal and regulatory perspectives.

Key Highlights

1. **Fiduciary/Processor:** "Data Fiduciaries" are persons who determine the *purpose* and *means* of processing digital personal data; "Data Processors" process data on their behalf. Given that the compliance burden is on Data Fiduciaries under the DPDP Act, NBFCs and fintechs must analyse and determine their status as Data Fiduciary or Data Processor, based on the nature of each activity they undertake.

2. **New Consent Practices:** Notwithstanding consent for know-your-customer (KYC) data under the RBI KYC Master Directions, the existing approach to processing personal data by NBFCs has been to seek generic omnibus consent. Only in the case of digital lending under RBI's Guidelines on Digital Lending (**DL Guidelines**), explicit consent and disclosure of specific purposes for borrower data usage are mandated. Under the DPDP Act, explicit consent will be required for each use-case or purpose of processing. The notice requirement for consent acquisition applies not just to customers of the fintech/NBFC but also to employees, vendors, and visitors on the website.

3. **Outsourcing:** In the interest of cost efficiency and expertise, NBFCs often out source some of their functions to third parties. The RBI's directions on Financial Service Outsourcing and IT Outsourcing make NBFCs liable for the acts of their service providers (including sub-contractors) and must ensure the outsourced partners' systems are compliant. Similarly, under the DPDP Act, a Data Fiduciary is responsible for any personal data processing by its Data Processors, i.e., service providers. NBFCs must monitor their Data Processors for (a) system resilience, (b) seeking of consent for new personal data from existing customers, and (c) erasure of data from Data Processor systems if Data Principals withdraw consent. NBFCs ought to review and ensure existing outsourcing arrangements capture these requirements.

4. **Cross-border Data Transfers:** The DPDP Act does not restrict cross-border transfer of personal data outside the territory of India, except to some countries the Central Government may notify. Existing laws prescribing a higher degree of protection or restriction on transfer of personal data will apply over and above the DPDP Act. Accordingly, NBFCs/fintechs will have to comply with the data localisation and IT infrastructure requirements for payments-related data, digital lending-related data, and insurance data under the RBI's Payments Data Storage Circular, DL Guidelines, and IRDAI's Maintenance of Records Regulations respectively.

5. **Significant Data Fiduciaries (SDF):** Under the RBI's Scale-based Regulation for NBFCs, the logic is to progressively regulate financial service activities based on their complexity, thereby creating the different scales of NBFCs—top, upper, middle, and base layers. The DPDP Act also applies this logic for the enhanced compliance obligations of SDFs. However, in conjunction, the two regimes may cause conflicting compliance requirements. For instance, NBFC-Account Aggregators (**NBFC-AA**) are in the base layer, but because of the volume and sensitivity of the personal data they handle, NBFC-AAs may be notified as SDFs with additional audit and personnel compliances.

6. **Grievance Redressal:** While the DPDP Act mandates grievance redressal mechanisms by the Data Fiduciary (at the first instance) and escalation to the Data Protection Board (**Board**), the RBI also provides recourse to the Ombudsman under the RBI Integrated Ombudsman Scheme for violation of any of its directives. Where such grievance involves personal data, for instance, the leak of an individual's personal and financial details from an NBFC loan provider's systems, recourse may lie before the Board as well as the Ombudsman. The overlap in the respective jurisdictions of the grievance redressal authorities will need to be clarified.

7. **Data Mapping & Policy Review:** To enable Data Principals to exercise rights of access to personal data summaries, correct and erase data, and withdraw consent for processing, Data Fiduciaries must establish processes and review internal policies to track third-party access, maintain lists of IT partners with access to systems, segregate data based on sensitivity, formulate policies for products geared to processing children's personal data, and encrypt relevant data, if required.

Conclusion

NBFCs and fintechs will be required to align themselves with the obligations under the DPDP Act while balancing their obligations under sectoral regulations. Entities ought to focus on taking steps to understand their status and degree of liability under the DPDP Act, review outsourcing arrangements, and re-evaluate internal protocols to be adequately prepared for the enforcement of the DPDP Act and its rules in the coming months.

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Amendments to Guidelines for Prevention and Regulation of Dark Patterns 2023

What are Dark Patterns?

Dark patterns refer to deceptive user interface or user experience design elements that manipulate users into making choices they wouldn't otherwise make. These practices often exploit psychological biases to nudge users towards unintended actions, such as signing up for unwanted subscriptions or incurring hidden fees.

The RBI's guidelines establish a framework to protect consumers from dark patterns. Listed below are the key takeaways from the framework:

Definition: The guidelines clearly define dark patterns as deceptive design practices that subvert user autonomy through misleading advertisements or unfair trade practices.

Scope: The guidelines apply to all platforms offering financial services in India, including foreign platforms. This ensures broad consumer protection.

Prohibited Practices: The guidelines detail specific dark patterns that are prohibited, such as the following:

i. **Confirm Shaming:** This method uses emotional tactics to induce and pressurise individuals into unwanted actions.

ii. **False Urgency:** Refers to misleading a customer by falsely stating or implying a sense of urgency or scarcity to induce the said customer into making an immediate purchase or taking an immediate action.

iii. **Basket Sneaking:** This means including additional items without user consent at the time of checkout from a platform. This may include payments to charity/ donations. This does not include within its scope free samples or necessary fees.

iv. **Forced Action:** This includes forcing a user to buy an additional/ unrelated goods or service to buy the original product or service.

v. **Interface Interference:** The user interface is manipulated so that specific information is highlighted while other relevant information are obscured. A common example of this is the "x" button on a pop-up screen, which redirects customers to an advertisement.

vi. **Bait and Switch:** This refers to an advertising practice where a user is presented with a deceptively serving alternate outcome, based on the actions of the customer.

vii. **Drip Pricing:** Refers to the practice of manipulating prices at different stages. It may include prices not being revealed upfront or being revealed surreptitiously. It also includes revealing the price post confirmation of purchase or charging users when the product or service was initially disclosed as free.

viii. **Disguised Advertisement:** Refers to advertisements that are misleading and posed as other types of content.

ix. **Nagging:** This occurs when a user faces an overload of requests, information, options or interruptions.

Enforcement: The Central Consumer Protection Authority (CCPA) is responsible for enforcing these guidelines.

Looking Ahead: Promoting Fairness in the Digital Marketplace

The RBI's guidelines are a step towards a fairer digital marketplace. By holding businesses accountable for their design practices, these guidelines empower consumers and promote transparency. These guidelines should be specifically adhered to by digital financial service providers, since the guidelines expand the scope of its applicability to all platforms systematically offering goods or services in India.

As the regulatory landscape evolves, it will be interesting to see how the RBI and the CCPA address new and emerging dark patterns to ensure a safe and trustworthy online experience for financial consumers.

IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024

Introduction

Recently on June 6, 2024, the International Financial Services Centres Authority (**IFSCA**) issued the IFSCA (Bookkeeping, Accounting, Taxation, and Financial Crime Compliance Services) Regulations, 2024 (**BATF Regulations**)[17], which provide a comprehensive regulatory framework for providing book-keeping, accounting, taxation, and financial crime compliance services from the Gujarat International Finance Tec-City (**GIFT City**), International Financial Services Centre (**IFSC**). These regulations were notified following the recognition of these services as 'financial services' under Section 3 of the International Financial Services Centres Authority Act, 2019 (**IFSCA Act**)[18]. The BATF Regulations aim to align definitions with global standards and include financial crime compliance services to promote Anti-Money Laundering (**AML**) and Countering the Financing of Terrorism (**CFT**) measures, which may serve as a catalyst towards the development of a vibrant financial market ecosystem in GIFT IFSC. The BATF Regulations also aim to create opportunities for firms to offer these services to non-resident clients at GIFT IFSC in a seamless and efficient manner to boost potential client base.

Further, the regulations emphasise the importance of fit and proper requirements for key personnel involved in promoting these services and set criteria for setting up and operating within the GIFT IFSC. The BATF Regulations include provisions on minimum office space requirement, reporting norms and currency of operation in GIFT IFSC jurisdiction. Additionally, the BATF Regulations outline the process of registration, application, and grant of certificates for BATF Service Providers[19], ensuring compliance and safeguarding conditions.

Key takeaways from these new BATF Regulations are:

i. **Registration:** An Ancillary Service Provider[20] is required to provide BATF Services in GIFT IFSC without obtaining registration certificate from the IFSCA. Further, such service provider shall communicate to the IFSCA its willingness to operate under these regulations within a period of 60 days from the date of commencement[21].

ii. **Application for Registration:** An applicant desirous of providing all or any of the BATF Services should submit an application to the IFSCA, to obtain grant of certification of registration, along with a non-refundable application fee. The applicant can set up in GIFT IFSC either as a Company or Limited Liability Partnership (**LLP**) and the promoters of the applicant entity are required to be from a jurisdiction that has not been identified in the public statement of Financial Action Task Force (**FATF**) as "High Risk Jurisdiction – subject to call for action"[22].

iii. **Procedure for grant of certification of registration:** After considering the applications, the IFSCA may ask for an application to be re-sent within 30 days, if any deficiencies are raised while conducting due diligence.

17 International Financial Services Centres Authority (ifsca.gov.in).
18 International Financial Services Centres Authority (ifsca.gov.in).
19 "BATF Service Provider" shall mean the entity registered under these regulations to undertake all or any of the following:- (i) book-keeping services; (ii) accounting services; (iii) taxation services; (iv) financial crime compliance services.
20 "Ancillary Service Provider" means the service provider providing Book-Keeping, Accounting and/or Taxation services under Framework dated February 10, 2021, for enabling Ancillary services at International Financial Services Centres. International Financial Services Centres Authority (ifsca.gov.in).
21 Regulation 4 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).
22 Regulation 5 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

The certificate of registration, granted to a BATF Service Provider under this regulation, will be valid unless cancelled by the IFSCA or surrendered by such service provider[23].

iv. **Safeguarding Conditions:** The applicant should ensure that their business in GIFT IFSC is not set up either by (i) splitting its India business; or (ii) reconstructing its India business; or (iii) reorganising its India business. Further, the BATF Service Provider may offer BATF Services by way of transferring or receiving of existing contracts or work arrangement from their Group Entities[24] in India[25].

v. **Service Recipient:** The BATF Service Provider should ensure that the service recipient is a non-resident[26] and is not from a jurisdiction that has been identified by the FATF as a 'high risk jurisdiction'[27] in a public statement.

vi. **Appointment of Officers:** A BATF Service Provider must have a designate Principal Officer, responsible for its overall activities in GIFT IFSC, and a designate Compliance Officer, responsible for reporting to the Board of Directors or head of the organisation[28].

vii. **Currency of Operations:** A BATF Service Provider is required to carry out its operations and maintain its balance sheet in any Specified Foreign Currency[29], provided it uses the Indian Rupees (**INR**)[30] for administrative services and statutory expenses.

viii. **Reporting Requirements:** A BATF Service Provider is required to furnish information relating to its operation to the IFSCA, in a manner specified under the regulations, in US Dollar. Further, such service provider is required to submit a certificate issued by an independent third-party practicing professional, namely, a Chartered Accountant (**CA**), a Company Secretary (**CS**), a Cost and Management Accountant (**CMA**), certifying compliance with the requirements specified in these regulations within 90 days from the closure of each Financial Year (**FY**)[31].

ix. **Power to relax strict enforcement of the regulation:** The IFSCA, for reasons to be recorded in writing, may in the interest of development of the financial market in GIFT IFSC, may relax the strict enforcement of any of these regulatory requirements[32].

Conclusion

Overall, the BATF Regulations provide a unique opportunity to ancillary service providers in GIFT IFSC to offer book-keeping, accounting, taxation, and financial crime compliance services to non-resident clients in an efficient and seamless manner. Furthermore, this initiative is expected to play a prominent role in promoting BATF services and may contribute towards talent acquisition or/ and creation in the GIFT IFSC zone.

[23] Regulation 6 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[24] 'Group Entities' includes an arrangement involving two or more entities related to each other through any of the following relationships: (i) parent- subsidiary (as per Ind-AS 110/AS 21); (ii) joint venture (as per Ind-AS 28/AS 27); (iii) associate (as per Ind-AS 28/AS 23); (iv) common brand name; (v) investment in equity shares/capital contribution of 20 per cent and above; or (vi) part of a network.

[25] Regulation 8 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[26] "Non-Resident" means a person resident outside India under the Foreign Exchange Management Act, 1999 and shall also include units in International Financial Service Centre.

[27] Regulation 10 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[28] Regulation 11 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[29] "Specified Foreign Currency" means currencies specified in the First Schedule of the International Financial Services Centres Authority (Banking) Regulations, 2020 or any other regulation issued by the Authority International Financial Services Centres Authority (ifsca.gov.in).

[30] Regulation 13 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[31] Regulation 14 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

[32] Regulation 15 of International Financial Services Centres Authority (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024 International Financial Services Centres Authority (ifsca.gov.in).

Revision of Enabling Framework for RBI Regulatory Sandbox

Introduction

The Reserve Bank of India (**RBI**) had set up an inter-regulatory Working Group (**WG**) in July 2016 to report on aspects of development in the rapidly evolving fintech space. One of the key recommendations of the WG was to introduce an appropriate framework for a Regulatory Sandbox (**RS**) to test upcoming fintech products and technologies within a well-defined control space where financial sector regulators could provide support/ guidance to new technologies, encourage innovation, while mitigating risks and creating new opportunities for consumers. The RBI introduced the updated Enabling Framework for Regulatory Sandbox[33] (**Regulatory Sandbox**) on February 28, 2024, to accelerate participation and innovation in emerging fintech.

This process benefits regulators, financial institutions and market participants by providing all parties an opportunity to explore and learn about emerging technologies in a controlled environment and adjust them to be regulatorily compliant, before approving the release of such technologies into the financial ecosystem.

Participation

Fintech companies – including start-ups, banks and financial institutions – aiming to partner with or providing support to financial services and businesses can apply to participate in the RS. The RS aims to focus on areas where there is absence of governing regulations, a need to temporarily ease regulations to enable (proposed) innovation, and where the proposed innovation shows promise of easing/ effecting delivery of financial services in a significant way. An indicative list of innovative technologies, which could be considered for testing, are available in the framework.

Limited number of participants will be accepted at a time in the RS across multiple "cohorts", which will be theme-based groupings based on technologies that would assist a particular area (financial inclusion, payments and lending, digital know your customer, etc.,). The cohorts may run for varying time periods, but should ordinarily be completed within nine months. However, to ensure continuous innovation in elapsed cohort areas, the RS may also accept 'On Tap' applications for closed cohorts. The details of the themes for 'On Tap' applications are displayed on the RBI website. All the terms and conditions for participation in 'On Tap' facility will be the same as those applicable under the RS.

To encourage participation, the RS may relax certain legal requirements to participate on a case-to-case basis, such as liquidity requirements, management experience and composition requirements for Board of Directors. However, certain criteria such as customer privacy, data protection and data localisation have to be strictly adhered to.

Criteria for Applicants

There are certain criteria that all applicants must adhere to while applying for testing in the RS. Any entity whose application is rejected under the RS, will be eligible to apply again with the same or similar product only after a period of six months.

Entities are required to demonstrate their product in a regulator supervised, pre-defined, controlled environment, with limited number and types of consumers, which they will bear liability and responsibility towards at all points before, during and after the RS process. Entities must adequately notify consumers of the risks associated with their product or service and take adequate insurance to satisfy claims that may arise to ensure that consumer interest is safeguarded, extending to a period of three months after the RS process is completed.

[33] Reserve Bank of India - Press Releases (rbi.org.in)

Entities must be incorporated and registered in India or banks licened to operate in India or Limited Liability Partnership (**LLP**) or Partnership firm registered in India. The entity must have a minimum net worth of INR 10 lakh as per its latest audited balance sheet, and the conduct and credit history of its promoters, directors and partners must satisfy the 'fit and proper' criteria of the RS.

There is also a negative list of products/ services/ technology that may not be accepted for testing in the RS, which include credit information, crypto currency, chain marketing services and coin offerings. Entities must ensure that their proposed financial service is not similar to one that is already being offered in the Indian market, unless the applicants can show that either a different technology is being gainfully applied or the same technology is being applied in a more efficient and effective manner.

Entities must demonstrate models in compliance with the existing regulations/ laws on consumer data protection and privacy, with adequate safeguards built into their IT systems to ensure protection against unauthorised access, alteration or disclosure of records and data. IT infrastructure and managerial resources must be robust and the IT systems used for end-to-end sandbox processing must provide end-to-end integrity of information processing.

Conclusion

RS participants must display an existing gap in the financial ecosystem and demonstrate how their fintech solution could rectify such problem and benefit consumers. By highlighting regulatory barriers that

prevent deployment of upcoming technologies at scale, participants can aid regulators in updating or creating regulations that allow compliant deployment of technologies that benefit the financial ecosystem as a whole.

Participants should report their results and findings to the regulator on a scheduled basis, and demonstrate strategies for transition, exit, scalability, proof of concept and risk mitigation. The regulator may terminate the RS process at any time and bear no liability for the experiments of the participant. Upon approval, the participant will become fully liable for their product and are responsible for complying with all regulatory requirements in real market environments.

The revised framework thus enables regulators to remain informed of cutting-edge market practices, while guiding participants in the initial stages of use of such technologies and products, to create efficient, compliant and reliable outcomes for consumers.

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Framework for Recognising Self-Regulatory Organisation(s) for FinTech Sector

A Self-Regulatory Organization (**SRO**) is a non-governmental organization, which has the power under its respective regulations, to create and enforce stand-alone industry specific professional regulations and guidelines. The general aim of an SRO is to promote best practices and an ethical code of conduct within their respective industry. They often provide guidance, training, and educational resources to help members understand and comply with complex regulatory requirements.

The RBI's Framework for Self-Regulatory Organisation(s) in the FinTech Sector dated 30 May 2024 (**SRO Framework**) represents a pioneering approach to enhancing regulatory oversight, industry standards and provides a streamlined process for membership of fintech entities (**Applicant**) under the SRO Framework. This comprehensive Framework aims to empower SROs with the authority to establish and enforce industry norms, ensure adherence to best practices and ethical standards. By providing clear guidelines and a structured framework, the RBI facilitates the effective functioning of SROs, enabling them to address industry-specific challenges and foster a culture of self-regulation. The SRO Framework not only promotes greater accountability and transparency but also encourages innovation and growth within the financial sector.

1. Key Roles and Responsibilities of the Fintech SROs:

a) Standard Setting: SROs will develop and enforce a code of conduct for member fintech entities. This code will address areas such as data privacy, fair lending practices, operational risk management, and customer grievance redressal mechanisms;

b) Market Oversight and Surveillance: SROs will establish mechanisms to monitor the activities of their members. This may involve collecting data on member activities, identifying potential risks, and conducting on-site inspections. The SRO framework emphasizes the importance of robust data privacy and security measures during surveillance activities;

c) Developmental: SROs will be responsible for promoting a culture of compliance, by facilitating exchange of expertise and experience, as well as organising training programs for the benefit of its members. It will further build a framework to facilitate research and development in the Fintech sector for its members in order to promote responsible innovation. Lastly, the SRO will extend guidance and support, particularly to smaller entities within the sector, and publicly share best practices aligned with statutory and regulatory policies;

d) Grievance Redressal and Dispute Resolution: SROs will be empowered to resolve disputes between member fintech entities or between members and their customers. This can help reduce the burden on courts and provide faster resolution for aggrieved parties; and

e) Advocacy and Industry Representation: SROs can act as a collective voice for the fintech industry, engaging with the RBI and other stakeholders on regulatory matters. They can also play a role in educating the public about gintech products and services.

2. Key Eligibility Requirements for SROs:

Applicants applying under the SRO framework should meet the following criteria:

a) Should be representative of a broad spectrum of the fintech sector through membership of fintech companies, domiciled in India or overseas;

b) They should maintain a minimum net worth of Rs 2 crore within a year of recognition;

c) The SRO should have a diverse board with no single entity holding more than 10% stake to avoid dominance;

d) To ensure transparency and clarity regarding the organisation's purpose and activities, the Memorandum of Association ("MoA") should explicitly state the operation as an SRO as its primary objective;

e) SROs should not have any shareholding greater than 10%;

f) Implement robust surveillance mechanisms to monitor fintech activities and identify potential risks;

g) Establish a system to handle and address instances of user harm reported within the fintech sector; and

h) Ensure confidentiality of data collected during surveillance and restrict data collection to essential information.

3. Recognition Process and Oversight by RBI:

The framework outlines a process for fintech industry bodies to apply for recognition as SROs. The RBI will assess the applicant's governance structure, financial soundness, and ability to fulfil the responsibilities outlined in the framework. Furthermore, the RBI will retain oversight authority over SROs and have the power to revoke recognition in case of non-compliance or ineffective functioning.

4. Benefits of SROs:

a) Reduced Regulatory Burden: by taking on some regulatory responsibilities, SROs can potentially streamline the regulatory process for fintech companies. This could lead to faster product launches and reduced compliance costs;

b) Enhanced Consumer Protection: SROs can play a crucial role in protecting consumers by enforcing ethical standards and providing a mechanism for dispute resolution;

c) Innovation-Friendly Environment: by promoting responsible practices, SROs can build trust in the fintech sector and create a more conducive environment for innovation; and

d) Improved Industry Collaboration: SROs can foster collaboration among fintech players, facilitating knowledge sharing and joint efforts to address industry-wide challenges.

5. Current Status and Future Implications:

As of July 24, 2024, the framework is notified and now in effect, but no SROs have been recognized yet. Existing industry bodies are expected to compete for SRO status. The success of this initiative will depend on the effectiveness of SROs in fulfilling their mandated roles and working collaboratively with the RBI to achieve a balanced regulatory approach for the fintech sector.

6. Governance Standards

The SRO framework emphasizes on good governance practices. Among other things, it requires the SRO to be professionally managed and have a suitable provision in the Articles of Association/ bye-laws to ensure this. This should also stipulate the manner of functioning of the Board of Directors/ Governing Body. Further, the SRO Framework requires the Directors of the SRO to fulfil the 'Fit and Proper' criteria, as framed by the Board of the SRO on an ongoing basis.

7. Responsibilities of the SRO towards the Regulator

The SRO acts as an RBI ally, enabling better compliance with regulatory guidelines, development of the sector and protection of stakeholder interest. Among other responsibilities, the SRO shall keep the RBI informed of developments and violations in the sector. It shall also be responsible for undertaking RBI-assigned work and shall also submit an Annual Report to the regulator.

8. Additional Considerations:

a) The framework acknowledges the dynamic nature of the fintech landscape and encourages SROs to be adaptable and evolve their practices over time;

b) The framework emphasizes the importance of data privacy and security. SROs will need to implement robust safeguards to protect sensitive consumer data collected during surveillance activities; and

c) The framework leaves room for flexibility in how SROs fulfil their responsibilities. This allows SROs to develop tailored approaches that suit their specific membership base and areas of focus.

This framework marks a significant step towards self-regulation in the Indian fintech sector. The coming months will be crucial in observing how SROs are established, how they function, and ultimately, how they contribute to the growth and responsible development of fintech in India.

RBI Regulatory Updates

1. **Draft guidelines on 'Prudential Framework for Income Recognition, Asset Classification and Provisioning pertaining to Advances, dated May 03, 2024**

   The draft guidelines on 'Prudential Framework for Income Recognition, Asset Classification and Provisioning pertaining to Advances' aim to establish a consistent approach for banks and other Financial Institutions (Fis), dealing with loans, particularly those related to ongoing projects (project finance).

   Phases of Projects:

   For application of prudential guidelines contained in these Directions, Projects shall be broadly divided into three phases namely:

   i. **Design phase:** This is the first phase, which starts with the conception of the project and includes, inter-alia, designing, planning, obtaining all applicable clearances/ approvals till its financial closure.

   ii. **Construction phase:** This is the second phase, which begins after the financial closure and ends on the day before the DCCO.

   iii. **Operational phase:** This is the last phase, which starts with the commencement of commercial operation of the project.

   Key aspects under consideration:

   Applicability: These guidelines apply to Scheduled Commercial Banks (SCBs), Non-Banking Financial Companies (NBFCs), Primary (Urban) Cooperative Banks, and All India Financial Institutions (AIFIs).

   Income Recognition: Income recognition for performing accounts will follow existing regulations. For non-performing accounts (loans in default), income recognition will be based on separate instructions.

   Asset Classification: The guidelines will likely establish categories for classifying project loans, based on their repayment status and risk profile. This will determine the appropriate accounting treatment and provisioning requirements.

   Provisioning: The guidelines will likely mandate specific minimum provisions to be held against project loans at various stages of the project lifecycle, especially during the construction phase where risks are typically higher. Provisioning levels might vary depending on loan performance and project progress.

   Pre-requisites for Project Finance: The guidelines might emphasise the importance of fulfilling certain essential requirements before finalising project loans. These could include securing necessary clearances (environmental, legal, etc.) and ensuring land availability for the project.

   Minimum Individual Exposure of Lenders in Consortiums: For project finance involving multiple lenders (consortiums), the guidelines might set a minimum exposure level for each participating lender. This ensures a certain level of commitment from each lender and helps spread the risks.

Conclusion

The draft framework which has been notified on July 1 2024 and now effective vide, Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, aim to promote a more standardised and risk-aware approach for FIs when dealing with project financing. This helps ensure the financial health of institutions and promote responsible lending practices.

2. **Draft Master Direction – Reserve Bank of India (Electronic Trading Platforms) Directions, 2024**

   The Reserve Bank of India (RBI) introduced the Master Direction – Reserve Bank of India (Electronic Trading Platforms) Directions, 2024, to regulate entities operating Electronic Trading Platforms (ETPs) in India. Here's a breakdown of the key points:

Applicability:

This direction applies to entities operating ETPs where transactions involving pre-defined eligible instruments are carried out.

RBI Approval and Eligibility:

i. Prior RBI approval is mandatory for operating an ETP.

ii. Organisations applying for authorisation as ETP operators must meet specific eligibility criteria under three categories:

- **General:** The organisation must be an India-incorporated company with a minimum net worth and experience managing financial market trading infrastructure.
- **Financial:** The organisation must demonstrate financial soundness, with a minimum net worth of Rs 5 crore (Rupees five crore only).
- **Technological:** The organisation's technological infrastructure must meet the RBI's security and operational standards, which includes maintaining robust technology infrastructure with a high degree of reliability, availability, scalability and security in respect of its systems, data and network, appropriate to support its operations and manage associated risks.

Data Security and Reporting:

iii. ETP operators are required to comply with data access regulations and maintain confidentiality and security of all ETP data.

iv. ETP data must be preserved for a minimum of ten years.

v. ETP operators must submit regular reports to the RBI on platform operations, regulatory compliance (like Legal Entity Identifier – LEI), transaction data and event notifications.

Existing ETPs:

Existing ETPs have a specific timeframe (typically three months after the Direction is issued) to apply for RBI authorisation and comply with the new regulations.

ETP Closure:

The directions outline the process for ETP operators to cease operations, requiring prior RBI consent.

Offshore ETPs:

Operators of offshore ETPs desirous of providing residents with access to their platform for transactions with non-residents in eligible derivative instruments involving rupee or rupee interest rate, as permitted by the RBI under the Foreign Exchange Management Act, 1999 shall apply for registration with the RBI by submitting an application in the prescribed format given in Annex – 4 of the Master Direction to the Chief General Manager, Financial Markets Regulation Department, RBI, 9th Floor, Central Office Building, Shaheed Bhagat Singh Marg, Mumbai – 400001.

Overall, the Master Direction aims to establish a framework for regulating ETPs in India, while ensuring smooth functioning and security of ETPs and promoting transparency and fair-trading practices on ETPs.

3. Restraining Usage of Unauthorised Payment Systems by Card Networks[34]

The RBI noticed that a Card Network had an arrangement with businesses to make card payments through certain intermediaries, with these payments being redirected to entities that do not accept card payments.

Through this arrangement, corporates make payments via the card network to an intermediary for commercial payments and the same is remitted via electronic transfer to the recipient that otherwise does not accept card payments.

[34] Reserve Bank of India - Press Releases (rbi.org.in).

It was observed that such an arrangement would qualify as a payment system and as per the provisions of the Payment and Settlement Systems (**PSS**) Act, 2007, would require authorisation for operating as one.

The RBI also raised concerns regarding the arrangement as large amounts of funds were pooled into an account, which was not a designated account under PSS Act. Further, the said transactions did not comply with the originator and beneficiary information requirements as stipulated under the Master Directions on KYC issued by the RBI.

The RBI pointed out that only one card network had operationalised this arrangement and restrictions were imposed on it for this specific arrangement. However, the RBI has kept the name of the card network anonymous.

4. **Proposal for Card Users to Choose their Preferred Choice of Network**

The RBI notification on credit card issuance arrangements with card networks applies to credit cards issued on March 6, 2024, and beyond, as the effective date for customer choice provision was October 1, 2023. Here's a breakdown:

The RBI has proposed a change to give customers more power when it comes to their debit, credit and prepaid cards. Here's a breakdown of the key points:

i. **Customer Choice:** Customers will be able to select their preferred network from multiple options offered by the card issuer. This applies to new cards being issued and for existing cards, the option may be provided at the time of next renewal.

ii. **Flexibility:** Customers can choose their network when they apply for the card or even switch later. This is not applicable to credit card issuers, with the number of active cards issued by them being 10 lakh or less.

iii. **Open Competition:** The RBI has restricted card issuers from entering into agreements with networks that prevent them from offering other networks. This is intended to promote competition between card networks.

iv. **Implementation Timeline:** The proposal is currently in draft form. If implemented, it is expected to be effective from October 1, 2024.

5. **RBI Statement on Development and Regulatory Policies**

The Reserve Bank of India's (**RBI**) statement on February 8, 2024, unveils a roadmap for progress in the financial sector. The potential impact of the key announcements are:

i. **Financial Markets:**

a) **Reviewing the Electronic Trading Platform (ETP) Framework:** The existing ETP framework, established in 2018, is undergoing scrutiny. Recently, there has been an increased integration of onshore forex market with offshore markets, enhancement in technology and greater product diversity. This review signifies the RBI's commitment to a robust and adaptable financial market infrastructure, with stringent regulations to curb manipulative practices and ensure market integrity. Improved regulations could attract more participants, fostering competition and innovation.

b) **Hedging of Gold Price Risk in Over the Counter (OTC) Market in the International Financial Services Centre (IFSC):** At present, resident entities are allowed to hedge their exposures to gold price risk efficiently, to access recognised exchanges in the International Financial Services Centre (**IFSC**). The RBI now plans to allow them to hedge the price of gold in the over the counter (**OTC**) segment, as well, in the IFSC. This will provide resident entities more flexibility and easier access to derivative products in hedging their exposure to gold prices. Related instructions will be issued separately.

ii. **Regulations:**

a) **Key Fact Statement (KFS) for Retail and MSME Loans & Advances:** The RBI has announced several measures in the recent past to foster greater transparency and disclosure by regulated

entities (**REs**) in pricing of loans and other charges levied on customers. One such measure is requiring lenders to provide their borrowers a KFS, containing key information regarding a loan agreement, including all-in-cost of the loan, in simple and easy to understand terms. Currently, KFS is specifically mandated for loans by scheduled commercial banks to individual borrowers, digital lending by REs, and microfinance loans. Now, all REs have been mandated to provide KFS to borrowers for all retail and MSME loans. Providing critical information about the terms of the loan agreement, including all-inclusive interest cost, shall greatly benefit borrowers in making informed decisions.

b) **Principle-Based Framework:** Instead of prescribing specific methods (like SMS OTPs), the RBI might establish core principles for secure authentication. This allows for flexibility in adopting new and potentially more secure methods like biometric authentication or tokenisation.

Framework for Authentication of Digital Payments: To enhance security and cater to evolving technology, the RBI proposes a new framework for digital payment authentication.

This shift towards a principle-based framework could be a game-changer. It paves the way for innovative and user-friendly authentication methods, potentially reducing reliance on less secure methods like SMS OTPs. However, concerns around the readiness of infrastructure and potential compatibility issues with existing systems need to be addressed.

iii. Payment Systems and Fintech:

Central Bank Digital Currency (**CBDC**) Pilot Enhancements: The ongoing CBDC pilot programme is set to receive a significant upgrade with the introduction of:

a) **Programmability:** This feature allows for embedding specific instructions within the digital rupee. For example, the government could programme the CBDC to ensure welfare benefits are used for their intended purposes. This enhances transparency and targeted delivery of funds.

b) **Offline Functionality:** Currently, the CBDC pilot requires internet connectivity. Offline functionality would allow transactions even in areas with limited or no internet access, promoting financial inclusion.

Programmability opens the doors for a wide range of use cases, beyond traditional payments. It could revolutionise how social programmes are managed and potentially even streamline targeted subsidies. Additionally, offline functionality would be a boon for the rural population and bridge the digital divide. However, concerns around security implications of offline transactions and potential integrational challenges with existing infrastructure need to be carefully considered.

Overall Analysis:

The RBI's statement points to a forward-looking approach, embracing technological advancements while prioritising financial stability and consumer protection. The focus on secure authentication and exploring CBDC functionalities demonstrates the RBI's commitment to fostering a robust and inclusive digital payment ecosystem.

Limitations:

The statement lacks details on implementation timelines for these proposed measures. The financial sector thrives on predictability, and delays in rolling out new regulations could hinder the pace of development. The potential impact on smaller players in the financial sector, especially those with limited resources to adapt to new regulations and technologies, is not addressed. The RBI might need to consider providing support or implementing a phased approach to ensure a level-playing field. By proactively shaping the regulatory landscape, the RBI is well-positioned to steer the Indian financial sector towards a future characterised by innovation, accessibility and security.

New Initiatives:[35]

Introduction

On May 28, 2024, the Reserve Bank of India (**RBI**) unveiled three initiatives, aimed at enhancing regulatory processes, facilitating retail investment, and gaining deeper insights into the Indian fintech sector. Let's dissect each initiative and analyse its potential:

i. **PRAVAAH (Platform for Regulatory Application, Validation and Authorisation):**

- **Function:** PRAVAAH acts as a centralised online portal for streamlining the application process for regulatory approvals, licences, and authorisations from the RBI.
- Impact:
    - **Increased Efficiency:** PRAVAAH promises a more efficient and user-friendly experience for individuals and entities seeking regulatory approvals from the RBI. This could potentially expedite the authorisation process and reduce administrative burdens.
    - **Transparency and Standardisation:** The centralised platform could enhance transparency by providing a clear pathway for navigating the regulatory approval process. Additionally, it could promote standardisation in application procedures.

ii. **RBI Retail Direct Mobile Application:**

- **Function:** This mobile application complements the existing RBI Retail Direct portal, launched in November 2021. It allows retail investors to buy and sell government securities (G-Secs) directly from the RBI through their smartphones.
- Impact:
    - **Improved Accessibility:** The mobile app makes investing in G-Secs more accessible for retail investors, particularly those comfortable with using mobile banking and investment platforms. This could potentially broaden the investor base for government securities.
    - **Enhanced Convenience:** Investors can now manage their G-Sec investments anytime, anywhere, through the mobile app, simplifying the overall investment experience.

iii. **FinTech Repository:**

- **Function:** This repository serves as a comprehensive database, containing information on both regulated and unregulated FinTech firms operating in India.
- Impact:
    - **Deeper Regulatory Understanding:** The FinTech repository equips the RBI with valuable data to gain a deeper understanding of the evolving FinTech landscape. This data can be used to formulate informed regulatory policies that foster innovation, while mitigating potential risks.
    - **Industry Insights:** The repository can also be a valuable resource for industry participants, providing insights into the fintech ecosystem and facilitating collaboration opportunities.

These initiatives collectively represent the RBI's commitment to fostering a more dynamic and inclusive

[35] Reserve Bank of India - Press Releases (rbi.org.in).

financial sector. PRAVAAH streamlines regulatory processes, the Retail Direct Mobile App empowers retail investors, and the FinTech Repository aids in informed policymaking.

Limitations:

- **Effectiveness of PRAVAAH:** The success of PRAVAAH hinges on its user-friendliness and efficiency in processing applications. A cumbersome user interface or slow processing time could hinder its effectiveness.
- **Data Accuracy in FinTech Repository:** The accuracy and comprehensiveness of data within the FinTech Repository are crucial for its usefulness. Ensuring regular updates and robust data collection mechanisms will be essential.

Conclusion

Overall, the launch of these initiatives signifies the RBI's proactive approach towards regulating, facilitating and understanding India's evolving financial landscape.

SEBI Regulatory Updates

1. **SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024**

   The Securities and Exchange Board of India (SEBI) issued the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024, on May 17, 2024, thereby amending the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

   These amendments have introduced changes related to exclusion of the effect on the price of a target company's equity shares and listed equity shares offered as consideration due to material price movement and confirmation of reported events or information. This exclusion aligns with the framework specified under sub-regulation (11) of regulation 30 of the listing regulations for determining offer price and the price of such equity shares under the regulations.

2. **SEBI's review of validation of KYC records by KRAs under Risk Management Framework[36]**

   The Securities and Exchange Board of India (**SEBI**) has issued a circular dated May 14, 2024, addressing key updates to the Know Your Client (**KYC**) validation process under the Risk Management Framework. The circular modifies provisions outlined in the previous circular, dated October 12, 2023, aiming to streamline the KYC validation process for intermediaries and facilitate smoother transactions for clients.

   The following clauses of the master circular stand modified:

   i. **Para 96:** As part of the risk management framework, KRAs shall verify the following attributes of records of all clients within two days of receipt of KYC records:
      a) Permanent Account Number (**PAN**)
      b) Name
      c) Address

   ii. **Para 100:** The records of those clients in respect of which all attributes mentioned in para 96/ 97 above are verified by KRAs, with official databases (such as Income Tax Department database – PAN, Aadhaar XML/ Digi locker/ M- Aadhaar) and PAN-Aadhaar linkage has also been verified as referred to in Rule 114 AAA of the Income Tax Rules, 1962, shall be considered as Validated Records.

   Analysis: The SEBI has suggested these changes to maintain the validity of client records and to ensure seamless operations within the securities market.

3. **Norms for sharing real time price data with third parties**

   Introduction

   SEBI, *via* a circular 'Norms for sharing of real time price data to third parties', dated May 24, 2024, has introduced new rules to regulate the dissemination of real-time share price information with third parties, including online platforms, to prevent misuse and ensure regulatory compliance. SEBI observed that certain online gaming platforms, apps, websites, etc., (hereafter referred to as **platforms**), are providing virtual trading services or fantasy games that are based on real time share price (price data) movement of listed companies.

   The Rules are as follows:

   i. Stock exchanges, clearing corporations and depositories [collectively referred as Market Infrastructure Institutions (**MIIs**)] and registered market intermediaries will have to ensure that no real time price data is shared with any third party, including various platforms, except when sharing of such information is required for orderly functioning of the securities market or for fulfilling regulatory requirements.

[36] SEBI Review of validation of KYC records by KRAs under Risk Management Framework .

ii. MIIs or market intermediaries will now have to enter into appropriate agreements with entities with whom they intend to share real time price data. The said agreement will provide for activities for which the real time price data would be used by the entity. It would also have to contain a justification on why such real time price data is required by the entity for orderly functioning of the securities market.

iii. Market price data will be shared for investor education and awareness activities with no monetary incentive.

iv. MIIs are liable to perform appropriate due-diligence and take efforts to avoid any negligence with real time price data.

v. Further, to ensure proper operation of the securities market, organisations planning to share real-time pricing data must sign written agreements that specify the purposes for which the data would be utilised. The boards of the MIIs or intermediaries are required to examine the list of entities and activities once a year.

4. SEBI KYC Norms for Securities Market

Introduction

Know Your Client (**KYC**) and Client Due Diligence (**CDD**) policies are the foundation of an effective Anti-Money Laundering process. It requires every SEBI registered intermediary to obtain and verify Proof of Identity (**PoI**) and Proof of Address (**PoA**) from the client.

SEBI Master Circular on KYC norms for the securities market, dated October 12, 2023 (**Master Circular**), lays down the complete framework for KYC norms for securities market. These are:

i. **Entities allowed to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as sub-KUA[37]:** Department of Revenue – Ministry of Finance has further updated entities that are permitted to use Aadhaar authentication services of UIDAI under Section 11A of the Prevention of Money Laundering Act, 2002.

ii. **Review of validation of KYC records by KRAs under the Risk Management Framework[38]:** The Master Circular provides for a detailed framework of Risk Management for KRAs, wherein the attributes for verification by KRAs have been mentioned. SEBI, to further achieve ease of transaction for various stakeholders, has revised and simplified the framework. In the amended state, it doesn't require the PAN to link with Aadhaar. Further, in terms of validated records, PAN-Aadhaar linkage has been added.

iii. **Uploading KYC information by KYC Registration Agencies (KRAs) to Central KYC Records Registry (CKYCRR)[39]:** The KYC record of a client is uploaded on the KRA system by the intermediaries performing client due diligence, as per the provisions of SEBI KRA Regulations, 2011.

iv. Additionally, intermediaries upload the KYC information on CKYCRR in terms of the SEBI master circular. SEBI, to further achieve ease of transaction for various stakeholders, has revised and simplified the framework. In its amended form, registered intermediaries shall continue to upload/ download/ modify the KYC information, basis the KRA Regulations and not PML regulations.

v. Further, KRAs shall upload the verified/ validated KYC information on the CKYCRR system within seven days of receiving it from intermediaries or any other timeline as notified under PML Rules. The KRAs shall integrate their systems with CKYCRR and commence the uploading of KYC records on CKYCRR from August 01, 2024. Lastly, KRAs shall be liable for ensuring that existing KYC records of legal and individual entities are uploaded on CKYCRR within a period of six months.

[37] SEBI | Entities allowed to use e-KYC Aadhaar Authentication services of UIDAI in Securities Market as sub-KUA.
[38] SEBI | Review of validation of KYC records by KRAs under Risk Management Framework.
[39] SEBI | Uploading of KYC information by KYC Registration Agencies (KRAs) to Central KYC Records Registry (CKYCRR).

5. **Guidelines for Investor Protection Fund (IPF)**

In May 2024, SEBI issued comprehensive guidelines for Investor Protection Fund (**IPF**), applicable to stock exchanges with a commodity derivatives segment.

i. **Constitution and Management of IP:** Each exchange must set up a separate IPF trust managed by five trustees, including three public interest directors, a representative from SEBI-recognised investor associations, and a stock exchange official with a maximum tenure of five years. The IPF is financially independent from the exchange itself. The stock exchanges shall further provide secretariat for the IPF Trust.

ii. **Contribution to the IPF:** To build an IPF corpus, a minimum annual contribution of 1% of the exchange's turnover fees or 10 lakh rupees (whichever is higher) will be required, along with interest earned on IPF investments, penalties levied by the exchange, and any additional contributions mandated by SEBI. These funds will be used to compensate investors in specific situations, such as defaults by trading members or exchange closure due to financial irregularities.

iii. **Manner of inviting claims from Investors and their eligibility:** The stock exchange shall publish a notice inviting legitimate claimants to file claims against a defaulter trading member within a prescribed time period, called as the ("**Specified Period**").

Claims filed within the designated specified period will be considered first, claims arising within three years after the specified period can be considered if the defaulter's funds are insufficient and the investor had a valid reason for not filing earlier. Further, claims received after three years from the expiry date of the specified period, shall be dealt with as a civil dispute. It is imperative to note that only claims by investors shall be eligible for compensation from IPF, and under no circumstances shall claims of a trading member or an associate of the trading member of the stock exchange be entertained.

iv. **Determination and Disbursement and Deployment of Claims:** Stock exchanges assess investor claims against defaulting trading members. If approved, the IPF Trust disburses compensation. If claims exceed IPF limits or are partially approved, investors can pursue the remaining balance through external legal channels. IPF further invests cautiously in safe options like government bonds and bank deposits, following legal guidelines. Investments are diversified to minimise risk, with limited exposure to any single issuer.

v. **Utilisation of IPF and Interest or Income earned IPF:** The IPF amount shall be utilised to meet legitimate investment claims of clients of defaulting trading members. The interest or income earned on IPF shall be utilised for investor education and awareness and other research activities.

vi. **Review of IPF Corpus:** Stock exchanges shall conduct half-yearly review within one month from the end of March and September every year to ascertain adequacy of the IPF corpus.

vii. **Disclosures:** To ensure transparency, SEBI mandates stock exchanges to disclose IPF's monthly balance and usage details, update the IPF corpus on their website, clearly outline the claim processing policy with compensation limits, and provide FAQs for investor education. Any changes to the claim processing policy require advanced notice to investors and won't apply retroactively.

6. **Investments in Dematerialised form and Appointment of Custodian[40]**

Introduction

SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**), have been amended and notified on January 05, 2024, with respect to AIFs holding their

[40] SEBI | Guidelines for AIFs with respect to holding their investments in dematerialised form and appointment of custodian.

investments in dematerialised form and for appointment of custodian.

1. **Holding investments of AIFs in dematerialised form:**

   Effective October 1, 2024, all new investments made by Alternative Investment Funds (**AIFs**) must be held in dematerialised form of electronic format. All existing investments are exempted unless specifically required by the investee company or controlled by the AIF.

   The aforesaid requirement of holding investments in dematerialised form, however, shall not be applicable to schemes of an AIF whose tenure (not including permissible extension of tenure) ends on or before January 31, 2025, and schemes of an AIF that is in extended tenure as on date of this circular, as mentioned above.

2. **Appointment of custodian for AIFs**

   Per Regulation 20(11) of AIF Regulations, SEBI mandates that all AIFs appoint a SEBI-registered custodian to securely hold their investments. This requirement applies to new AIF schemes before their first investment and existing Category I & II AIFs, with corpus of less than Rs 500 crore (having existing investments) by January 31, 2025. AIFs can appoint a custodian associated with their sponsor or manager, but only if it meets specific SEBI conditions. Existing AIFs with such custodians must also ensure compliance with these conditions by January 31, 2025. These regulations aim to strengthen the security and oversight of AIF investments.

3. **Reporting of investments of AIFs by custodian**

   Regulation 20(11) of AIF Regulations, further provides that the custodian must report or disclose such information regarding investments of the AIF.

   To facilitate this, a pilot Standard Setting Forum for AIFs (**SFA**) will collaborate with SEBI to define implementation standards for reporting AIFs' investment data held under custody. These standards will specify the format and methods for data reporting – from the AIF manager to the custodian, subsequently, from the custodian to SEBI. Both the AIF manager and custodian must adopt and adhere to these reporting standards once finalised by the SFA, in consultation with SEBI.

   The finalised standards will be published on the websites of relevant industry associations (IVCA, PE VC CFO Association, Trustee Association of India), within 60 days of issuance of this circular.

Conclusion

Overall, these changes aim to bring about a more robust and streamlined framework for AIF operations, fostering investor confidence and regulatory compliance.

7. **Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians**[41]

   Subsequent to a review, SEBI has decided that the following reports shall be submitted on the SEBI Intermediary Portal by DDPs and Custodians:

   i. **Annual**

      a) Annual audit reports on internal controls of DDPs;

      b) Annual review report of systems, procedures and controls of the custodian by an expert;

      c) Audited Annual Report along with Net Worth certificate.

   ii. **Half yearly**

      a) AI/ML report.

   iii. **Quarterly**

      a) Custodian quarterly report;

      b) FPI General Information to assess eligibility under Regulation 4 of FPI Regulations, 2019;

[41] SEBI | Streamlining of Regulatory Reporting by Designated Depository Participants (DDPs) and Custodians.

c) NRI/ OCI/ RI requirements under Clause (1)(ii) of Part A of Master Circular for FPIs and DDPs, dated December 19, 2022;

d) FPIs non-compliant with legal entity identifier requirements under circular, dated July 27, 2023;

e) FPIs who have not submitted granular BO details under circular dated August 24, 2023;

f) Details of FPIs granted exemption under circular dated August 24, 2023.

4. **Monthly**

i. Change in material information where there is a delay of 6 months as provided under Clause 14(iii) of Part A of the Master Circular for FPIs and DDPs ;

ii. Report of short sales by FPIs under Clause 4 of Chapter IV of the Master Circular for Custodians.

8. **SEBI's framework on Unaffected Price for Transactions upon Confirmation of Market Rumours**

Introduction

On May 21, 2024, SEBI released a framework titled 'Consideration of unaffected price for transaction upon confirmation of Market Rumour' (**Framework**) through a circular. (**Circular**). The Circular with the annexed framework is issued to enhance market integrity and ensure fair valuation.

Market rumours pertaining to a company's business often leads to stock price volatility, causing discrepancies between the stock's market price and its true value. Hence, to address the issue, SEBI issued the Circular, annexing the Framework.

Summary of the Circular:

i. **Calculation of Adjusted Volume Weighted Average Price (VWAP):** The Framework provides for calculation of adjusted volume weighted average price (**VWAP**) for considering unaffected price. The variation in daily WAP from the day of the material price movement, until the end of the next trading day, after rumour confirmation, is attributed to the rumour and its confirmation (**WAP** variation").

The Framework states that WAP shall be calculated from the day of the material price movement, which shall exclude WAP variation from the daily WAP in the look-back period. The adjusted daily WAP from the day of material price movement till the end of the next trading day after confirmation of the rumour shall be same as the daily WAP on the trading day preceding the day of material price movement.

ii. **Price Variation and Band Limits:** The Framework states that if rumour confirmation leads to a price variation, hitting the price band limit on the next trading day, the price variation on subsequent trading days will be included for adjustment until the price no longer hits the band limit.

iii. **Applicability of Unaffected Price:** The Framework states that unaffected price applies only if the listed company confirms the rumour related to the transaction within 24 hours of the material price movement.

iv. **Validity Period of Unaffected Price:** The Framework states that unaffected price is valid for either 60 or 180 days, depending on the stage of the transaction, starting from the confirmation date of the market rumour until the 'relevant date' (such as public announcement or board approval), as defined by existing regulations. The specific stages and applicability periods are outlined in the Industry Standards of Regulation 30(11) of the LODR Regulations.

Analysis

SEBI's new framework for calculating unaffected price is an important step towards enhancing market transparency and protecting investor interest. By systematically excluding the influence of rumours on stock prices, this regulation aims to ensure fair and accurate price discovery in the Indian securities market. It aims to reduce speculative trading and stabilise prices, ensuring fairness to shareholders. However, the complex procedure for calculating daily WAP and VWAP could be challenging. Additionally, it does not provide protection to retail

investors; instead, focuses on institutional buyers by protecting their negotiated transaction prices from speculative spikes.

9. **Easing of Regulations for Mutual Fund Managers**[42]

Introduction

SEBI notification issued on April 30, 2024, aims to simplify regulations for Asset Management Companies (**AMCs**) managing mutual fund schemes that invest in commodities and overseas securities. SEBI constituted working groups reviewed the extant regulatory frameworks and proposed measures to streamline operations of mutual funds. The focus was on enhancing flexibility and reducing compliance burdens.

Prior to this notification, AMCs had to appoint separate fund managers for mutual fund schemes investing in commodities, overseas securities, or both. SEBI now allows AMCs the option to appoint a single fund manager to oversee these investment areas.

Impact:

i. **Reduced Costs:** AMCs can potentially reduce operational costs associated with hiring and managing dedicated fund managers for separate categories. These savings could translate to lower expense ratios for investors in the mutual fund schemes.

ii. **Flexibility and Efficiency:** AMCs gain more flexibility in resource allocation by leveraging the expertise of a single fund manager who can manage a broader investment portfolio. This could potentially enhance overall portfolio management efficiency.

Exemptions and Considerations:

i. **Dedicated Fund Manager Option Still Available:** While a single fund manager is permissible, SEBI doesn't mandate it. AMCs can choose to appoint separate fund managers if they deem it necessary.

ii. **Expertise and Compliance:** SEBI emphasises that the appointed fund manager, whether he manages a single or multiple categories, must possess adequate expertise and experience in handling specific asset classes (commodities and/ or overseas securities).

iii. **Board Oversight:** The AMC board is tasked with ensuring that the appointed fund manager has the requisite skillset to implement robust compliance mechanisms to monitor adherence to regulations.

This SEBI notification represents a positive step towards streamlining regulations and reducing administrative burdens on AMCs. The potential benefits include:

i. **Cost Reduction for AMCs:** Lower operational costs could lead to lower expense ratios for investors.

ii. **Increased Efficiency:** AMCs might gain better resource allocation flexibility.

iii. **Improved Investor Returns:** Potentially lower expense ratios could translate to improved returns for investors.

However, certain aspects require careful consideration:

i. **Manager Expertise:** Ensuring the appointed fund manager possesses the necessary skills and experience across diverse asset classes is crucial for protecting investor interests.

ii. **Compliance and Oversight:** Robust internal controls and monitoring by the AMC board are essential to mitigate potential risks associated with managing a broader portfolio.

Conclusion

Overall, SEBI's move strikes a balance between easing regulations and maintaining investor protection. The success of this approach hinges on responsible implementation and adherence to stipulated norms regarding fund manager qualifications and oversight by AMCs.

[42] SEBI | Ease of doing business- Fund manager for Mutual fund schemes investing in commodities and overseas securities.

10. **Digital On-boarding and Disclosures for Portfolio Management Services**[43]

In May 2024, SEBI issued a circular to simplify the digital on-boarding process for clients seeking Portfolio Management Services (**PMS**) and enhance transparency through improved disclosures. Let's dissect the key changes and analyse their potential impact:

Simplified Digital On-boarding:

i. **Elimination of Handwritten Acknowledgements:** Previously, clients had to provide handwritten confirmation of their understanding of fee structures. SEBI now allows for electronic or typed acknowledgements during the digital on-boarding process.

ii. **Focus on Fee Transparency:** Portfolio managers are mandated to provide clients with a fee calculation tool. This tool should clearly illustrate various fee options and calculate fees over multiple years, incorporating high watermark principle (where applicable).

iii. **Enhanced Client Agreement:** The PMS client agreement will now include detailed disclosures regarding fees and charges, making fee structures more transparent and easier for clients to understand.

Impact:

i. **Faster On-boarding:** Eliminating handwritten acknowledgements streamlines the digital on-boarding process, potentially reducing processing time and improving client experience.

ii. **Empowered Investors:** The fee calculation tool empowers clients to make informed decisions by providing clear and comprehensive information about potential costs associated with PMS services.

iii. **Greater Transparency:** Detailed fee disclosures in the client agreement enhance transparency and promote a fair client-portfolio manager relationship.

Analysis:

SEBI's move signifies a positive step towards:

i. **Increased Efficiency:** Faster on-boarding translates to quicker access to investment opportunities for clients.

ii. **Investor Protection:** Improved fee transparency empowers investors to compare and choose PMS services that best suit their financial goals and risk tolerance.

iii. **Standardisation:** Clear and consistent fee disclosures across PMS providers facilitate easier comparison for clients.

However, a few aspects warrant further consideration:

i. **Client Understanding:** While the fee calculation tool simplifies fee structure comprehension, ensuring clients fully grasp the implications of different fee options remains crucial. Portfolio managers are responsible for educating clients about fees and answering any questions they might have.

ii. **Digital Divide:** While digital on-boarding is convenient, some potential clients might lack access to technology or the necessary digital literacy. Portfolio managers may need to consider alternative on-boarding methods for such clients.

Conclusion

Overall, SEBI's regulations strike a balance between streamlining processes and protecting investors. The onus falls on portfolio managers to leverage the new digital on-boarding system effectively and prioritise client education regarding fee structures.

[43] SEBI | Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures.

11. **Investor Charter for Depositories and Depository Participants**[44]

Introduction

To facilitate investor awareness about various activities such as transmission of securities, settlement instruction, etc., SEBI in November 2021 had formulated the Investor Charter for Depositories and Depository Participants (**DPs**) (**SEBI Investor Charter**).

In view of the recent developments in the securities market, including introduction of Online Dispute Resolution (**ODR**) platform and SCORES 2.0, SEBI modified the SEBI Investor Charter, *inter-alia*, detailing the services provided to Investors, Rights of Investors, various activities of Depository through DPs with timelines, Dos and DON'T's for Investors, Responsibilities of Investors, Code of Conduct for Depositories and DPs and Grievance Redressal Mechanism. In this regard, Depositories are advised to publish the SEBI Investor Charter on their websites.

Here's a summary of its key aspects:

1. **Vision of the SEBI Investor Charter:** To make the securities market more transparent, efficient and investor friendly.
2. **Mission:**
   i) To provide investors with clear and accurate information about the services offered by the depositories and Dps.
   ii) To provide the highest standards of investor education, investor awareness and timely services to enhance Investor Protection.
3. **Brief on services provided by Depositories and DPs:** A Depository is an organisation that holds securities of investors in electronic form. Depositories provide services to various market participants – Exchanges, Clearing Corporations, DPs, etc. The Depository carries out its activities through its agents, i.e., the DPs.
4. **Description of services provided by Depository through DPs and Timelines:** A table explaining the services provided by a Depository through a DP has been included in the circular. For example:
   i. Dematerialisation of Securities – 7 days;
   ii. Rematerialisation of Securities – 7 days;
   iii. Mutual Fund Conversion – 5 days; etc.
5. **Special Services by Depositories:** The circular highlights the special services provided by Depositories, such as pledge, hypothecation, internet-based services, etc., in addition to their core services, which are:
   i. **Value Added Services:**
      a) Basic Services Demat Account (BSDA);
      b) Transaction cum Dematerialisation;
      c) Linkages with Clearing System; and
      d) Distribution of cash and non-cash corporate benefits (Bonus Rights, IPOs, etc.).
   ii. **Consolidated Account Statement**
   iii. **Digitalisation of Services provided by Depositories:**
      a) E-account opening;
      b) Online instructions for execution;
      c) E-DIS/ Demat Gateway;
      d) E-CAS facility;
      e) Miscellaneous services.
6. **Grievance Redressal Mechanism:** The SEBI Investor Charter introduces Online Dispute Resolution (ODR) and SCORES 2.0 (a web-based centralised grievance redressal mechanism) for improved grievance redressal. The circular provides details with respect to the grievance redressal mechanism, providing

[44] SEBI Investor | Investor Charter.

investors with multiple channels to lodge complaints; and explaining the steps involved in the ODR process, from initial complaint submission to arbitration.

7. **Dos and Don'ts for Investors:** The SEBI Investor Charter includes a comprehensive list of dos and don'ts for investors to safeguard their interests, which include:

    i. Dealing with a SEBI-registered DP for opening a demat account;

    ii. Reading all documents carefully before signing them;

    iii. Always making payments to registered intermediaries using bank channels. No payment should be made in name of employee of intermediary;

    iv. Not sharing the password of your online trading and demat account with anyone;

    v. Not sharing the One Time Password (OTP) received from banks, brokers, etc. These are meant to be used by you only.

8. **Rights of Investors: The SEBI Investor Charter includes a detailed explanation of the rights of investors, such as:**

    i. Receiving a copy of KYC, copy of account opening documents;

    ii. Receiving account statements periodically;

    ii. The ability to freeze or defreeze accounts;

    iv. The right to vote on resolutions;

    v. Right to indemnification for any loss caused due to the negligence of the Depository or DP; etc.

9. **Responsibilities of Investors: The SEBI Investor Charter includes a detailed explanation of the responsibilities of investors, which include:**

    i. Deal with the DP for opening the demat account;

    ii. Provide complete documents for account opening and KYC;

    iii. Regularly verify balances and demat statements and reconcile with trades/ transactions;

    iv. Appoint nominees to facilitate heirs in obtaining securities in their demat account, etc.

10. **Code of Conduct for Depositories: The SEBI Investor Charter includes a detailed explanation on the code of conduct for Depositories, where the Depository shall:**

    i. Adopt appropriate due diligence measures;

    ii. Take effective measures to ensure implementation of proper risk management framework and good governance practices;

    iii. Take appropriate measures towards investor protection and education of investors;

    iv. Treat its applicants/members in a fair and transparent manner; etc.

11. **Code of Conduct for Participants: The SEBI Investor Charter includes a detailed explanation on the code of conduct for depositories, where the participant shall:**

    i. Maintain high standards of integrity in all its dealings with clients and other intermediaries, in the conduct of its business;

    ii. Be prompt and diligent in opening a beneficial owner account, dispatching of the dematerialisation request form, rematerialisation request form and execution of debt instruction slip;

    iii. Endeavour to resolve all complaints against it;

    iv. Not make any untrue statements or supress any material facts in any document, reports, papers or information furnished to SEBI;

    v. Ensure good corporate policies and corporate governance are in place; etc.

Analysis

Overall, the SEBI Investor Charter for Depositories and Depository Participants seeks to empower investors by

ensuring transparency, accountability, and protection of their interests, within the framework of the Indian securities market.

12. **Framework for administration and supervision of Research Analysts and Investment Advisors**[45]

Introduction

SEBI, *via* Circular for Framework for Administration and Supervision of Research Analysts (**RAs**) and Investment Advisers (**Ias**), dated May 02, 2024, has introduced a framework for administration and supervision of RAs and IAs. This circular effectively rescinds the existing framework or administration and supervision of IAs as specified in the (**SEBI circular**), dated June 18, 2021, which was incorporated under the head "Administration and Supervision of Investment Advisers" of Master Circular for Investment Advisers, dated June 15, 2023.

Pursuant to the circular, stock exchanges can be recognised as supervisory bodies for Research Analyst Administration and Supervisory Body (**RAASB**) and Investment Adviser Administration and Supervisory Body (**IAASB**).

These bodies will handle the day-to-day administration and oversight of RAs and IAs, respectively. However, the core functions relating to registration, enforcement action and disciplinary or penal action shall remain with SEBI, which shall also continue to register IAs and RAs as per the mandate given under the Securities and Exchange Board of India Act, 1992," SEBI said in a circular dated May 2.

Criteria for grant of recognition as RAASB and IAASB:

For recognition as RAASB and IAASB,

i. an entity must have minimum 15 years of existence as a recognised stock exchange;

ii. the stock exchange must have a minimum net worth of Rs. 200 crore;

iii. shall have nation-wide terminals;

iv. shall setup an investor grievance redressal mechanism, including an Online Dispute Resolution Mechanism; and

v. the stock exchange shall have Investor Service Centres (ISCs) in at least 20 cities.

Setting up of requisite system

The stock exchange recognised as RAASB/ IAASB shall maintain necessary infrastructure to effectively discharge responsibilities, shall include in its Memorandum of Association, Articles of Association and bye-laws requisite provisions to fulfil specified roles and responsibilities, shall put in place a system/ processes to maintain its database and shall constitute an internal committee for periodic reviews.

Responsibilities of SEBI and RAASB/ IAASB

While the SEBI will be performing its core functions, RAASBs and IAASBs will undertake, initial scrutiny of registration applications to ensure completeness of submission of information/ documents, along with recommendations on the applications to SEBI.

Proposed RAASBs and IAASBs will also be responsible for approval of advertisements of RAs/IAs as per SEBI issued Advertisement Code, maintenance of database of RAs/IAs and issuance of circulars, instructions or standard operating procedures, etc., to RAs/IAs for implementation of provisions of SEBI regulations or circulars.

SEBI Monitoring

RAASBs/IAASBs will monitor the activities of RAs/IAs by obtaining Annual Compliance Audit Report and other periodic/ad-hoc reports, covering general details of RAs/IAs, details of customer complaints, details of clients, etc.

13. **SEBI (LODR) Amendment Regulation**[46]

Introduction

The SEBI, pursuant to the Board Meeting held on March 15, 2024, approved amendment to the SEBI (Listing

[45] SEBI | Framework for administration and supervision of Research Analysts and Investment Advisers.
[46] SEBI | Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024.

Obligations and Disclosure Requirements) Regulations, 2015. The key amendments introduced are:

Applicability basis market capitalisation (Sub-regulation 2 of Regulation 3)

Applicability of the provisions to a listed entity, basis market capitalisation shall be determined basis a list prepared by every recognised stock exchange at the end of the calendar year, i.e., December 31. The list would contain all entities that have listed their specified securities and are ranked on the basis of their average market capitalisation from July 1 to December 31 of that calendar year.

Based on this list, the relevant provisions would become applicable to a listed entity for the first time after a period of three months from December 31 (i.e., April 1) or from the beginning of the immediate next financial year, whichever is later. However, this is provided that the said listed entity puts in place systems and processes for compliance with clause (f) of sub-regulation (2) of Regulation 34, within a period of three months from December 31 or from the beginning of the immediate next financial year, whichever is later. Further, they shall be required to disclose the Business Responsibility and Sustainability Report Core in the Annual Report prepared for the financial year, in which, systems and processes were required to be put in place, in accordance with this proviso.

New sub-regulation introduced to Regulation 3

Provisions of these regulations, which become applicable to a listed entity, basis the market capitalisation criteria, shall continue to apply to such entity unless its ranking changes in the list prepared under sub-regulation (2) of Regulation 3 and such change results in the listed entity remaining outside the applicable threshold for a period of three consecutive years.

Vacancies in respect of certain Key Managerial Personnel

A new proviso has been added to sub regulation (1) of regulation 26A as follows:

"Provided that where the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up such vacancies, then the vacancies shall be filled up by the listed entity at the earliest and in any case not later than six months from the date of vacancy";

A new proviso has been added to sub regulation (2) of regulation 26A

"Provided that where the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up such vacancy, then the vacancy shall be filled up by the listed entity at the earliest and in any case not later than six months from the date of vacancy".

Prior Intimations

A new proviso has been introduced as sub-regulation 1(d) of Regulation 29

"Provided further that intimation for determination of issue price in a qualified institutions placement is not required if such placement is done in accordance with the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018."

Disclosure of events or information

A new proviso has been added to sub-regulation 11, which states that when a listed entity confirms within 24 hours from the trigger of a material price movement, any reported event or information based on which the price of equity shares has been effected, then the effect on the price of the equity shares due to the material price movement may be excluded for calculation of the price for that transaction as per the framework.

A new sub-regulation has also been inserted to provide that the Key Managerial Personnel shall provide adequate, accurate and timely response to queries raised or explanations sought by the listed entity.

IFSCA Regulatory Updates

A. Regulatory Updates: Rules And Regulations, Circulars, Notification And FAQS

Banking Sector

1. **Improving processing timelines of cross-border payments – Advisory**

   The International Financial Services Centres Authority (**IFSCA**) has issued a circular dated January 8, 2024, advising all banking units to improve cross-border payment processing timelines. The circular recommends upgrading messaging solutions, using SWIFT GPI for transaction status visibility, and using MT 910 for crediting accounts. It also encourages IBUs to conduct a study on their existing cross-border transaction processing methods and share findings with the Authority.

2. **Avoiding rerouting of transactions to IBUs that have been wrongly credited in the parent AD bank's Nostro account – Reporting in R-Return**

   Through circular dated January 22, 2024, the RBI has instructed AD banks and IFSC Banking Units (**BUs**) to adhere to specific reporting procedures to ensure smooth remittance flow from overseas banks to IBUs. These procedures include reporting purchases, reversing outward transactions and reporting transactions under different file types.

3. **As per IFSCA (Payment Services) Regulations, 2024, the form and manner of seeking authorisation as a Payment Service Provider have been specified**

   In exercise of powers under Regulation 4(1) of the IFSCA (Payment Services) Regulations, 2024, the IFSCA has specified the form and manner of applying to IFSCA for authorisation as a Payment Service Provider, through a circular dated February 6, 2024.

4. **IFSCA amends banking handbook**

   Based on the feedback received from the International Financial Services Centres (Banking Units) and to give effect to the amendments to various laws, the IFSCA has carried out certain further amendments/ additions to the contents of the Banking Handbook, through a circular dated April 5, 2024 (**Banking Handbook Circular**). Accordingly, the IFSCA has issued the following: (i) IFSCA Banking Handbook GEN Directions v5.0. (**GEN Directions**); (ii) IFSCA Banking Handbook COB Directions v6.0 (**COB Directions**); (iii) IFSCA Banking Handbook PRU Directions v5.0. (**PRU Directions**).

   The GEN Directions lay down governance arrangements of IBU, activities undertaken by IBU and the management structures, policies, procedures and controls of the banking company (of which the IBU is a branch) outside the IFSC, every function exercised by or on behalf of an IBU outside the IFSC, if such function pertains to carrying out of an activity in or from the IFSC. The directions lay down the governance, supervision, core principals, etc.

   The COB Directions specify permitted and barred activities that IBUs may undertake. Additionally, *vide* a circular dated June 14, 2024, the IFSCA has amended Paragraph 2.I and paragraph 4.v of module 11 (Accepting Deposits) of the COB Directions. The definition of current account has been replaced with *"a type of demand deposit that may or may not earn interest, allows unlimited withdrawals, and includes accounts that are neither savings nor term deposits"* and it has also been clarified that IBUs are now free to determine the interest rate on current account, manner of calculating the interest rate and periodicity of credit of such interest rate and other related matters. The PRU Directions are applicable to IBUs established and operating in IFSCA as branches, of parent bank regulated by their respective home regulators. The directions under these PRU modules are aimed at establishing minimum non-quantitative prudential requirements like policies, governing board responsibilities, systems,

governance and controls to be made applicable on IBUs in IFSC, in addition to those applicable on them as branch of the banking company under the respective home regulations.

5. **Internet banking services to clients of IBUs**

   As per circular dated April 22, 2024, the IFSCA has mandated all IBUs to offer internet banking services, including information services and interactive information exchange. IBUs must ensure secure and user-friendly platforms, comply with risk management policies and submit an implementation plan to the IFSCA within 45 days from the date of issuance of the circular, i.e., by June 6, 2024. IBUs are required to fully implement this circular within six months from the date of issue.

Insurance Sector

6. **FAQs on IFSC Insurance Intermediary Offices (IIIOs)**

   The FAQs issued on January 10, 2024, provide clarification on the registration process, eligibility criteria, scope, renewal of license, accounting, mergers, etc., concerning IIIOs.

7. **FAQs on IFSC Insurance Office (IIO)**

   The FAQs released on May 30, 2024, provide clarification on the setting up of an IIO in terms of registration, eligibility, mode of setting up, capital requirements, margin requirements, appointing of officers, and granting of authority. The FAQs address various regulations that affect IIOs and serve as a master FAQ for IIOs.

Capital Market

8. **Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024**

   Sub-regulation (F)(1) of Regulation 5 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015, has been amended through notification dated April 30, 2024. It states that subject to compliance with the conditions regarding raising of External Commercial Borrowings or raising resources through American Depository Receipts/ Global Depository Receipts/ through direct listing of equity shares of companies incorporated in India on International Exchanges, the funds so raised (pending their utilisation or repatriation to India) will be held in foreign currency accounts with a bank outside India.

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

   Regulation 3.1 and sub-regulation (8) of Regulation 4 of Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, have been amended through notification dated April 30, 2024. Schedule IX, pertaining to purchase or subscription of equity shares of companies incorporated in India on International Exchanges Scheme by Permissible Holder, was inserted and Form LEC (FII) was also amended.

10. **The Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024**

    The Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024, were issued *vide* a notification dated January 24, 2024, by the Central Government to regulate the listing of equity shares in permissible jurisdictions, including on stock exchanges in GIFT IFSC. They apply to both unlisted and listed public companies, as long as they comply with regulations from the SEBI or the IFSCA. Certain companies are not eligible for listing, such as those limited by guarantee, with outstanding deposits, negative net worth, or those that are defaulting on annual returns or financial statements.

11. **Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024**

    Vide a notification dated January 24, 2024, an amendment to Foreign Exchange Management

(Non-debt Instruments) Rules, 2019, has been notified. This allows Indian listed companies to list their shares on permissible international stock exchanges in the IFSC. Further, a permissible holder can purchase an Indian company, which is listed or is to be listed on an International Exchange.

12. **FAQs issued by the Central Government of India on Direct Listing Scheme**

The FAQs issued on January 24, 2024, provide a basic overview of the Direct Listing Scheme. It deals with the framework, eligibility, requirement for filing prospectus, benefits, special incentives to permissible holders, including listing in GIFT-IFSC.

13. **Tax exemption notified for non-residents' investments in offerings by IFSC**

The Centre has announced an income tax exemption for non-residents investing in financial products offered by capital market intermediaries in GIFT-IFSC. The exemption is conditional on non-residents receiving income from such investments in a bank account maintained with an IBU in the IFSC. The move aims to make IFSC a lucrative investment destination.

14. **Government mandates approval for GIFT IFSC listings with investors from bordering nations**

The Indian government's approval is required for local companies with shareholders from neighbouring countries like China to list on exchanges registered in GIFT IFSC. The rule states that the beneficial owner of a company is a citizen of a country with a land border with India or an entity incorporated in such country. The rules apply to listing on the India International Exchange and the NSE International Exchange at IFSC.

15. **Monitoring of investments from countries sharing land border with India**

To monitor investments from countries sharing land border with India, a mechanism is provided to ensure compliance by permissible holders. The proviso to clause 2 of Schedule XI of Foreign Exchange Management (Non-debt Instruments) Rules, 2019, allows permissible holders, who are citizens of a country that share land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner are from such countries, to hold equity shares of such public Indian company only with the approval of the Central Government. This was done through a circular dated February 9, 2024.

16. **Circular amending the IFSCA (Vault Manager) Circular, 2015**

The IFSCA (Vault Manager) Circular dated April 1, 2024, was issued as part of Annexure II of the Consolidated Operating Guidelines, and it substituted 'Application for grant of certificate of registration' and 'Surrender of certificate of registration' and further inserted a clause stating that "no additional security deposit shall be required in case of registration of additional vault(s) under the existing registration of the registered Vault Manager".

17. **Remote Trading Participants on Stock Exchanges in IFSC**

To increase the number of participants and increase liquidity in the secondary market, the IFSCA, through a circular dated April 3, 2024, has permitted foreign entities, not having a physical presence in IFSC, to trade directly on the stock exchanges in GIFT IFSC, on a proprietary basis, without a broker-dealer, subject to fulfilment of certain conditions as laid down in the circular.

18. **RBI permits resident entities to hedge their exposures to price risk of gold using OTC derivatives in the IFSC**

Resident entities will have an added flexibility to hedge their exposures to price risk of gold, using over-the-counter(OTC) derivatives in addition to the derivatives on the exchanges in the IFSC, subject to the stipulations set out in the Master Direction Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022.

19. Global-access clarification

By a circular dated November 25, 2021, broker dealers registered with the IFSCA were permitted to access stock exchanges outside the IFSC through a cross-border arrangement with an entity providing access to exchange outside IFSC or registering itself as a trading member of an exchange outside IFSC , provided that the brokers are dealing on a proprietary account and has no client dealing. For the same, a no-objection certificate has to be sought from the stock exchange in IFSC. Also, a circular dated May 17, 2023, was issued to levy an annual fee of USD 1,000 (One Thousand USD) on broker dealers and subsidiaries of the exchanges providing global access. There was some ambiguity regarding the applicability of these circulars. It has now been clarified through a circular dated June 6, 2024, that the first circular is applicable to all broker dealers directly accessing the global market. Thus, the requirement to seek a no-objection certificate will not apply if accessing global markets through the India INX Global Access IFSC Ltd, but an annual fee will apply to all types of broker dealers accessing the global market.

Funds

20. FAQs on Registration of a Fund Management Entity (FME) and Authorisation of a Scheme or Fund under IFSCA (Fund Management) Regulations, 2022

The FAQs issued on January 17, 2024, address the procedure for registering FME, authorising a scheme or fund and Accounting Standard for FMEs under the IFSCA. It gives clarity on the requirement of documents such as net worth certificate, financial statement, shareholding capital structure, and essentials for placement memorandum.

21. Accredited Investors in IFSC

The IFSCA (Fund Management) Regulations, 2022 (**FME Regulations**), offer flexibility to investors who are better aware of and can withstand risks from their investments. Such investors are called 'Accredited Investors' and are referred to in clause (c) of sub-regulation (1) of regulation 2 of FME Regulations. By a circular dated January 25, 2024, the IFSCA has specified an eligibility criteria and modalities related to accredited investors, based on the previously carried out public consultation and views of Fund Management Advisory Committee (**FMAC**) on the eligibility.

22. Maintenance of net worth by Fund Management Entity

The Circular issued on February 16, 2024, instructs FME in IFSCs to maintain the specified net worth at all times (the net worth is specified in second schedule of FME Regulations or may be specified by IFSCA from time to time). If the net worth is below this threshold, FMEs cannot launch new schemes, onboard new clients, or undertake new business activities until the net worth is restored.

23. Clarifications in relation to Fund Management Entities and Schemes set up in IFSCs by Sovereign Wealth Funds

It has been clarified through a circular dated March 11, 2024, that the Sovereign Wealth Fund setting up FMEs, where the fund is the ultimate contributor and beneficiary, will not have to appoint independent custodian for open-ended Restricted Schemes and all other schemes with AUM above USD 70 million. The office space requirement has also been relaxed.

24. Facilitating investments by NRIs and OCIs into Indian securities through Schemes/ Funds in an IFSC

The IFSCA released a circular dated May 2, 2024, which provides for alternative routes for Non-Resident Indians (**NRIs**) and Overseas Citizens of India (**OCI**) to participate in Indian securities through the IFSC based Foreign Portfolio Investments (**FPI**). These routes include contributing up to 100% in the corpus of the IFSC based FPI, where such FPI are required to submit copies of PAN of all NRI/ OCI and Resident Indian (**RI**) constituents and their economic

interest to Designated Depository Participants (**DDP**). The other alternative is for FMEs to invest in securities through the FPI route by setting up retail schemes, restricted schemes or exchange traded funds in an IFSC. SEBI shall decide the eligibility of FME, which shall also be subject to such other specifications as provided in the circular.

Finance Companies

1. **Inclusion of 'Finance Company' and 'Finance Unit' as 'Credit Institution' under clause (f) of Section 2 of Credit Information Companies (Regulation) Act, 2005**

   The IFSCA has issued a circular dated January 5, 2024, specifying that 'Finance Company' and 'Finance Unit', as set up in GIFT IFSC and licenced by the IFSCA, can undertake specified permissible activities as 'credit institutions' under clause (f) of Section 2 of the Credit Information Companies (Regulation) Act, 2005.

2. **IFSCA (Payment Services) Regulations, 2024**

   The IFSCA (Payment Services) Regulations, 2024, provides a regulatory framework to allow financial institutions in the IFSC to provide as well as receive a wide range of financial services that facilitate money transfer between individuals, businesses and other entities. Entities providing the following payment services are required to seek authorisation from the IFSCA: a) Account issuance service (including e-money account issuance service) b) E-money issuance service c) Escrow service d) Cross-border money transfer service e) Merchant acquisition. It further permits Indian fintech entities looking to offer their products globally to develop IFSC as their base from which to expand their offerings to jurisdictions across the world.

3. **IFSCA (Payment Services) (Amendment) Regulations, 2024**

   The notification dated April 15, 2024, amends regulation 2 of the International Financial Services Centres Authority (Payment Services) Regulations, 2024, substituting the definition of escrow service as follows: *"the service provided by a payment service provider, under an agreement, whereby money is held by such payment service provider in an escrow account with an IFSC Banking Unit or an IFSC Banking Company for and on behalf of one or more parties that are in the process of completing a transaction."* Thus, now the money can be held for more than two parties also as previously it was limited to "on behalf of two parties in the transaction".

4. **FAQs on IFSC (Payment Services) Regulations, 2024**

   The FAQs released on February 28, 2024, provide clarity on aspects of payment services and payment systems, authorisation mechanism, rational for including or excluding certain services from the regulation, process and documentation of being registered as a PSP, merchant acquisition services, currencies and cryptocurrencies and AML compliances, etc.

5. **Permissible activities for ship leasing that can be undertaken by a lessor**

   Under the Framework for Ship Leasing, a lessor, which has obtained a Certificate of Registration (**CoR**) under Regulation 3 of the IFSCA (Finance Company) Regulations, 2021, is allowed to undertake permissible activities specified in sub-clause E and sub-clause H of clause 3 of the framework. As per a circular dated April 2, 2024, now a lessor may undertake activities specified in paragraph (ii) of sub-clause E of clause 3 of the Framework, only if the lessor has absolute or lease hold right over the ship/ ocean vessel.

6. **Additional requirements for carrying out permissible activities by Finance Company as a Lessor under 'Framework for Ship Leasing'**

   As per circular dated May 8, 2024, it was clarified that applicants who obtained CoR under Regulation 3 of the IFSCA (Finance Company) Regulations, 2021, cannot undertake transactions that involve transfer of ownership and/ or leasehold right of a ship or

ocean vessel from a person resident in India to entity set up in the IFSC, solely for providing services to a person resident in India.

7. **FAQs on Registration of a Finance Company/ Finance Unit**

   The IFSCA has released FAQs, dated June 11, 2024, on registration of a finance company or finance unit in the IFSC. The FAQs deal with the process of registration, permissible activities, owned funds of finance company or finance unit, prudential and corporate governance requirements, application forms, information on management, business plan, group structure and post registration compliances.

Bullion

1. **RBI allows Indian bank branches in GIFT-IFSC to trade on international bullion exchange**

   The RBI has granted Indian banks in GIFT IFSC the right to act as a Trading Member or Trading and Clearing Member of the International Bullion Exchange IFSC Ltd (IIBX), *vide* a notification dated February 9, 2024. These banks are authorised to import gold or silver, and act as Special Category Clients (SCCs) on IIBX. However, they are allowed to only execute buy trades on behalf of their clients. All client trades will be against a 10% advance pay-in of funds.

2. **RBI allows TRQ holders to make advance payment for gold import via GIFT-IFSC**

   Vide a Notification dated January 31, 2024, the RBI has allowed authorised jewellers with a tariff rate quote (**TRQ**) to remit payment for eleven days in advance for gold import through the India International Bullion Exchange IFSC (**IIBX**). This follows the government's decision to allow jewellers with valid licences to import a specified quantity of gold at concessional customs duty from the UAE under the free trade agreement.

3. **Import of gold and silver by Indian Banks through India International Bullion Exchange IFSC Limited (IIBX)**

   The RBI has authorised Indian banks, through a circular dated April 19, 2024, to import gold/ silver directly through the IIBX as Special Category Clients. The banks must use an IFSC Banking Unit for clearing transactions. Compliance with the IFSCA, relevant RBI, DGFT and other regulatory requirements are mandatory.

4. **'Qualified Suppliers' for supply of bullion on India International Bullion Exchange IFSC Limited (IIBX)**

   The circular dated May 1, 2024, has provided that eligible overseas entities can be qualified suppliers on the IIBX as a client of bullion trading member or as a qualified supplier (special category clients). To widen the pool of suppliers, the eligible units set up in IFSC are also permitted to be qualified supplier (**QS-IFSC**). For the same, entity registered with the IFSCA as a bullion market intermediary can apply and if other entities apply, they have to request a no-objection certificate from the IFSCA. The QS-IFSC may also bring bullion in any of India International Depository IFSC Ltd. (**IIDIL**) empanelled vault, which are operated by the IFSCA registered vault manager.

5. **Import of UAEGD Gold through IIBX by valid India-UAE TRQ holders**

   Previously, the IFSCA had released operating guidelines that facilitated the participation of valid holders of India-UAE Tariff Rate Quota (**India-UAE TRQ**) license on IIBX for import of UAE Good Delivery Gold under the UAE-Comprehensive Economic Partnership Agreement (**CEPA**). Upon being notified as a valid India-UAE CEPA TRQ, the licensee can undertake import till the validity of the license. It has now been clarified through a circular dated May 4, 2024, that the IFSCA's notification of an entity as a valid India-UAE CEPA TRQ shall remain valid for the subsequent financial year, subject to the condition

that the holder is allotted TRQ license/ authorization for that financial year and has been allotted continually since it was originally notified as valid holder.

Ancillary Services

1. **Notification of book-keeping, accounting, taxation and financial crime compliance services as financial service under the IFSCA Act, 2019**

   The Central Government, through a notification dated January 18, 2024, has notified the provision of book-keeping, accounting, taxation, and financial crime compliance services as financial services. These services will be offered by units in an IFSC to non-residents whose businesses are not set up in India. The services will not involve transferring or receiving existing contracts or work arrangements from their group entities in India.

2. **IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulation, 2024**

   On June 6, 2024, the IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulation, 2024 (BATF Regulation), was notified. The BATF Regulation puts in place a regulatory framework related to development, registration and operations of book-keeping, taxation and financial crime compliance services that have been allowed to be provided as financial services to non-residents. There are provisions to facilitate transitions of existing units providing similar services to the BATF Regulation. With the inclusion of financial crime compliance service, the AML/ CFT regime is expected to foster and allow better compliance.

Anti Money Laundering (AML)/ Counter Terrorism Financing (CTF)

1. **Financial crime compliance among services to be provided by International Financial Services Centre at GIFT City**

   The Minster of Finance, India, has announced that it will include financial crime services, including compliance with Anti-Money Laundering (AML)/ Countering the Financing of Terrorism (CFT) measures and Financial Action Task Force (FAFT) recommendations, under the ambit of the IFSCA at GIFT IFSC. The move aims to attract talent in these areas and nurture them for the future. These services will be offered by units in the IFSC to non-residents and existing units in GIFT IFSC, and would be regulated by the IFSCA. Registration on FIU-IND FINNET 2.0 portal for compliance with the International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022, is mandatory.

   In furtherance of compliance with the Prevention of Money Laundering Act, 2002 (**PMLA**) and the Prevention of Money laundering (Maintenance of Records) Rules, 2005 (**PML, Rules**), and the International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 (**Guidelines**), all regulated entities are required to register on FIU-IND FINNET 2.0 portal, as per the Circular dated March 14, 2024. Non-registration will be construed as contravention with the provisions of the respective IFSCA regulations/ circulars/ guidelines/ directions or instructions. For different lines of business, all will have to be registered in FINNET 2.0 portal.

2. **FAQs on IFSCA (Anti Money Laundering, Counter Terrorist Financing and Know Your Customer) Guidelines, 2022**

   The IFSCA released FAQs on June 11, 2024, on the Guidelines. The FAQs address queries pertaining to applicability of the said Guidelines, appointment of designated director and principal officer, policy formulation, FIU-IND registration, customer due diligence, clarifications for fund management entity and alternate investment funds, reporting of suspicious transactions and counter terrorist financing.

SEZ/ IFSCA

1. **Section 31 notification on modified application of provisions of Special Economic Zone Act, 2005, to financial products, financial services or financial institutions, as the case may be, in an International Financial Services Centre**

   Through a notification dated March 4, 2024, Section 31 of the IFSCA Act, 2019, Section 12(6), Section 13(2)(f), Section 15(1), (2) and (9) of the Special Economic Zone Act, 2005, and Rule 17(1) of Special Economic Zone Rules, 2006, have been modified for their application to financial products, financial services or financial institutions, in the IFSC. As a result, now a consolidated form FA will have to be filled, which is in line with the single window clearance in the pipeline for GIFT IFSC.

C. Working Committee Report And Consultation Paper

1. **Consultation paper on IFSCA (Board for Regulation and Supervision of Payment and Settlement Systems) Regulation, 2024**

   The Consultation Paper has been released to seek public review of the proposed IFSCA (Board for regulation and Supervision of Payment and Settlement Systems) Regulation, 2024. As per the Payment Settlement Systems Act, 2007, the IFSCA is the authority for payment system in the IFSC. The IFSCA can delegate functions by constituting a committee known as Board for Regulation and Supervision of Payment and Settlement Systems (**BPSS**) and make regulations for BPSS. Thus, the draft regulations have been formulised and the paper seeks comments on it.

2. **Seeking suggestions for review of IFSCA (Issuance and Listing of Securities) Regulations, 2021**

   The IFSCA (Issuance and Listing of Securities) Regulations, 2021 (**ILS Regulations**), provide a regulatory framework for listing Indian and foreign companies, SMEs, Special Purpose Acquisition Companies, Debt Securities and Depository Receipts. In July 2023, the Indian government allowed direct listing of unlisted and listed Indian companies on the stock exchanges in IFSC. A Working Group was formed to review regulations, and recommendations for amendments. The government also notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024, and the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024, providing the framework for direct listing of equity shares by public Indian companies on International Exchanges at GIFT IFSC. Thus, in light of these developments, suggestions have been sought for ILS Regulations.

3. **Consultation paper on proposed IFSCA (Listing) Regulations, 2024**

   A Consultation Paper has been released to seek comments on the draft IFSCA (Listing) Regulations, 2024. The regulation provides for a regulatory framework for issuing and listing various financial products, specified securities, debt securities and other financial products on recognised stock exchanges in the IFSC and raising capital through these stock exchanges. These regulations have been drafted basis the global standards specified by the International Organization of Securities Commissions and benchmarking with practices followed in other jurisdictions. The regulation seeks to replace the IFSCA (Issuance and Listing of Securities) Regulations, 2021.

4. **Report of the Working Group for the Development of Non-Resident Individual (both Indian as well as Foreign) Business and Ease of Registration**

   On May 15, 2024, the IFSCA published a Working Group Report to identify areas where relaxations can be provided to non-residents under various sectors. The suggestions are made after a benchmarking exercise with DIFC, Luxembourg, New York, London and Singapore. The report also highlights the importance of non-residents' investments and the products offered in other jurisdictions that can be introduced in GIFT IFSC. Further, there are suggestions to ease the onboarding for non-residents in terms of customer identification, authentication and execution of documents. The report aims to provide a roadmap for the development of non-residents and their businesses in GIFT IFSC.

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Market Updates

1. **KuCoin registered as the first offshore Virtual Digital Asset Service Provider in India**

   KuCoin became the first global cryptocurrency exchange platform to register with the Financial Intelligence Unit – India (FIU-IND). The Firm represented KuCoin before the FIU-IND and MEITY, resulting in unblocking of KuCoin's platform in India and becoming the first offshore digital assets/ cryptocurrency platform to become a FIU-registered VDASP in the country.

2. **IPO of Capital Small Finance Bank Limited**

   The initial public offering comprises of 1,11,76,713 shares of Rs. 10 face value (**Equity Shares**) of Capital Small Finance Bank Limited (**Bank**) for cash at Rs. 468 per share, including a share premium of Rs. 458 a piece (**Offer Price**), aggregating to Rs. 5,230.70 million (**The Offer**).

   Of this, the offer for sale component comprised of 15,61,329 shares, aggregating Rs. 730.70 million (the **Offer for Sale**), comprising 8,36,728 shares aggregating Rs. 391.59 million by Oman India Joint Investment Fund II (**OIJIF II**), 1,51,153 shares totalling Rs. 70.74 million by Amicus Capital Private Equity I LLP (**ACPE**), 17,544 shares at Rs. 8.21 million by Amicus Capital Partners India Fund I (ACPIF, together with ACPE, "Amicus", and with ACPE, and OIJIF II, the **Investor Selling Shareholders**), and 5,55,904 shares aggregating Rs. 260.16 million by certain persons listed in this prospectus (the **Other Selling Shareholders**, as defined below) (the Investor Selling Shareholders and the Other Selling Shareholders, collectively, the "Selling Shareholders", and such equity shares offered by the selling shareholders, the "Offered Shares").

3. **Google India Digital Services Private Limited (GIDS) receives final authorisation to operate as payment aggregator**

   Pursuant to the RBI Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020 (as amended and clarified, **PA Guidelines**), GIDS submitted an application for obtaining authorisation to operate as a PA on April 13, 2022. On December 19, 2023, the RBI granted the final PA authorisation to GIDS.

4. **Joint Venture between Jio Financial Services and BlackRock for undertaking wealth business**

   Jio Financial Services Limited, BlackRock Inc. and BlackRock Advisors Singapore Pte. Ltd agreed to form a 50:50 joint venture for the purpose of undertaking wealth business, including incorporation of a wealth management company and subsequent incorporation of a brokerage company in India. The firm acted as legal counsel for Jio Financial Services Limited.

5. **Absorption of Credit Suisse AG's Indian Entities pursuant to global merger**

   The transaction was an overseas merger which resulted in establishment of a bank branch in India by the surviving entity i.e. UBS AG. This was an extraordinary situation of a global merger in a tight timeline requiring co-ordinated approvals from the relevant regulators i.e. RBI, MCA, SEBI and NSDL.

   The firm assisted UBS AG and Credit Suisse AG, from an Indian regulatory perspective, with respect to RBI and SEBI licenses held by Credit Suisse bank branch (i.e. Credit Suisse AG, Mumbai branch) and subsidiary (i.e. Credit Suisse Finance (India) Private Limited) in India, and absorption of the operations of Credit Suisse AG, Mumbai branch pursuant to the overseas merger of Credit Suisse AG (**CS AG**) into UBS AG. The transaction involved the absorption of regulated entities in India i.e. the CS AG Mumbai Branch which was undertaking business as a bank branch and as a depository participant in India and Credit Suisse Finance (India) Private Limited which is an NBFC registered with the RBI and therefore involved obtaining requisite approvals/ licenses from the RBI, SEBI, and NSDL.

6. **Acquisition of Camden Town Technologies (ZestMoney) by DMI Finance Private Limited (DMI)**

   The firm advised DMI on its acquisition of ZestMoney, through an asset sale. The Firm conducted legal due diligence and advised on all legal/regulatory aspects concerning the proposed acquisition, including transaction structure, data and intellectual properly related considerations. This is the largest distressed acquisition in the Indian Fintech space.

7. **Acquisition of Bori Power Middle East and Bori Power India by Legrand Acquirers**

   The firm advised Legrand France S.A. on the acquisition of Borri Power Middle East FZCO and it's Indian subsidiary Borri Power India Private Limited. The firm assisted in this transaction and advised on, and finalised, the documentation and all Indian legal/ regulatory aspects concerning the transaction, including tax, company secretarial, etc.

8. **Acquisition of 65% of Ace Insurance Brokers Private Limited by Blackstone**

   This transaction was the first control transaction in the insurance broking space for any private equity fund. In addition to conducting due diligence on the company and drafting, negotiating and finalizing multiple transaction documents, the firm also provided inputs from a regulatory perspective.

9. **Series D fundraising by Kreditbee**

   The existing investors of Finnov Private Limited - New Quest Capital (NewQuest Asia Fund IV (Singapore) Pte. Ltd), Motilal Private Equity (India Business Excellence Fund IV), Premji Invest (PI Opportunities Fund II), Advent, Mirae Asset Late Stage Opportunities Fund and MUFG Bank Ltd. participated in the Series D funding round. The firm represented New Quest Capital, Motilal Private Equity and Premji Invest in this funding round.

10. **CAM advised Navi Finserv Limited in issuance of secured, rated, listed redeemable non-convertible debentures**

    Navi Finserv Limited has issued secured, rated, listed redeemable non-convertible debentures for an amount aggregating Rs. 600 crores (base issue size of Rs. 300 crore and green shoe option of up Rs. 300 crore) under the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021, as amended.

11. Mubadala's investment in Avanse Financial Services Limited

Avanse Financial Services Limited a company backed by Warburg where International Finance Corporation is an existing shareholder, raised approximately INR 1100 crores, by way of issuance of equity shares to Alpha Investment Company LLC and Avendus Future Leaders Fund. The firm acted as legal advisors to International Finance Corporation and was involved in reviewing and negotiating the amended and restated shareholders agreement and subscription related documentation for this round.

12. Multiples and Advent invest into Svatantra Microfin Private Limited

The firm acted as legal counsel for Multiples Alternate Asset Management Private Limited, where Multiples along with Advent International has executed definitive agreements for a combined investment of approximately INR 1,930 crores into Svatantra Microfin Private Limited a non-banking financial company - microfinance institution led by Ananya Birla. This deal marks the largest investment by private equity investors in the microfinance sector in India.

13. Yubi has entered into strategic partnership with Europe's MODIFI

Indian fintech unicorn Yubi has joined forces with European B2B financial technology leader MODIFI to enter the realm of international trade financing. This strategic partnership aims to revolutionize trade for Indian businesses by providing them with unprecedented access to capital. By combining their expertise, Yubi and MODIFI will offer Indian exporters and importers secure, collateral-free financing for international transactions. Essentially, this partnership is set to reshape the landscape of international trade for India, fostering economic growth and empowering businesses to thrive in a globalized economy.

14. Veefin and FinnUp team to fuel SME Lending solutions in India

Veefin Solutions, a prominent player in the Indian fintech landscape, has expanded its customer base by onboarding FinnUp, a multi-lender platform. FinnUp specializes in connecting small and medium-sized enterprises (SMEs) and corporations with a diverse range of lenders through a single, unified platform. Veefin's expertise lies in loan origination systems (LOS) and supply chain finance (SCF) solutions. By integrating its robust underwriting capabilities with FinnUp's platform, Veefin will streamline the borrowing process for SMEs and corporates. This strategic partnership will empower FinnUp to expand its network of lenders for supply chain finance, providing more financing options to businesses and strengthening its position as a leading multi-lender platform in India.

15. Mahindra Finance partnered with Lendingkart to join forces to provide loans to small and medium-sized businesses

Mahindra & Mahindra Financial Services (MMFSL) has teamed up with fintech company Lendingkart to provide financial support to small and medium-sized businesses (SMEs) across India. This partnership marks MMFSL’s entry into the co-lending space, specifically targeting the SME sector. Under the agreement, MMFSL will contribute majority of the loan amount, while Lendingkart will handle the loan application process, credit assessment, disbursement, and collection using its advanced technology platform. This collaboration aims to expand MMFSL’s product offerings and enhance financial accessibility for SMEs, while Lendingkart leverages its expertise in digital lending to reach a wider customer base.

16. Flipkart Pay merged all its payment services

To improve customer satisfaction and streamline the shopping process, Flipkart has combined all its financial services into a single, convenient platform called 'Flipkart Pay'. This centralized hub offers a wide range of financial tools, including payment options, digital wallets, credit facilities, insurance plans, and utility bill payments, all accessible within the Flipkart app. By integrating these services, Flipkart aims to enhance user experience, encourage more frequent app usage, and solidify its position as a one-stop-shop for both shopping and financial needs.

17. **Bengaluru-based fintech startup Slice has successfully raised $30 million in debt financing from Neo Asset Management**

    This debt round is a strategic move for Slice as it aims to bolster its financial position and support its ongoing operations. The funds will be utilized to meet working capital requirements and for general corporate purposes. It's important to note that this is part of a larger financial strategy for Slice. The company is in the process of merging with North East Small Finance Bank, a move that would grant it a banking license and expand its financial services offerings.

18. **Kogta Financial Secures $148 Million Investment**

    Kogta Financial, a prominent non-banking financial company (NBFC) specializing in secured vehicle and MSME financing, has successfully raised a substantial $148 million in a Series E funding round led by the Ontario Teachers' Pension Plan. This significant investment marks a major milestone for Kogta as it seeks to expand its operations and strengthen its market position. The infusion of capital will be primarily utilized to fuel Kogta's growth trajectory by broadening its product offerings and expanding its geographical footprint. Additionally, the funding will facilitate partial exits for existing investors, Morgan Stanley and Creador.

19. **Lendingkart Secures Rs 100 Crore Debt Funding from Stride Ventures**

    Lendingkart, a prominent digital lending platform catering to small and medium enterprises (SMEs), has successfully secured a substantial debt funding of Rs 100 crore ($12 million) from Stride Ventures. This marks the second significant debt round for the Ahmedabad-based company within a year. The fresh capital infusion will be utilized to bolster Lendingkart's lending operations, expand its loan portfolio, and strengthen its technological infrastructure. This strategic move is expected to further solidify the company's position as a leading player in the SME lending space.

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