

LEGAL BRIEFS: BI-WEEKLY LEGAL UPDATES

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Synergia Legal is bringing it to you a fortnightly compilation of digestible summaries of key legal developments and case laws impacting the business, commercial and economic landscape in India:

SECURITIES LAWS

- 1. The Securities and Exchange Board of India issued Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies (April 26, 2024):**

The SEBI issued a circular SEBI/HO/AFD/PoD1/CIR/2024/027 on Apr 26, 2024 in which it revised regulations governing Category I and II Alternative Investment Funds (AIFs), allowing them to encumber their equity holdings in investee companies to facilitate debt-raising endeavors. The amendment is aimed at fostering a conducive environment for borrowing by investee companies. Key provisions include permitting encumbrances solely for investee companies involved in government-listed infrastructure projects, compliance with SEBI-specified conditions, and explicit disclosure requirements for both existing and new schemes. Additionally, a consent mechanism for investors, usage restrictions on borrowed funds, compliance with foreign investment regulations, liability protection for investors, and a prohibition on providing guarantees for investee companies are outlined. SEBI, in collaboration with the Standard Setting Forum for AIFs, will establish implementation standards to ensure encumbrances are utilized exclusively for debt raising in the infrastructure sector. Managers are mandated to ensure compliance with these regulations, as the circular is immediately effective, issued under SEBI's authority to safeguard investor interests and regulate the securities market.

(The circular bearing number SEBI/HO/AFD/PoD1/CIR/2024/027 issued by the Securities and Exchange Board of India is accessible [here](#).)

- 2. The Securities and Exchange Board of India has introduced flexibility to Alternative Investment Funds (AIFs) and their investors to deal with unliquidated investments of their schemes (April 26, 2024):**

The SEBI has introduced amendments to the Alternative Investment Funds (AIF) Regulations notified on 26th April 2024, aimed at providing increased flexibility to AIFs and their investors in managing unliquidated investments. These amendments introduce provisions regarding the dissolution period following the expiry of the liquidation period, allowing AIFs

to distribute unliquidated investments in-specie to investors or enter into the dissolution period with the approval of at least 75% of investors. Key conditions include arranging bids for a minimum of 25% of unliquidated investments, disclosing relevant details to investors, and notifying SEBI prior to entering the dissolution period. If bids are successful, dissenting investors can exit the scheme, and if not, the AIF may still opt for the dissolution period with investor consent. During the dissolution period, the AIF cannot charge management fees, and if investments remain unliquidated, they must be distributed in-specie to investors. Additionally, there's a one-time flexibility for schemes whose liquidation period has expired to deal with unliquidated investments, subject to certain conditions. Compliance responsibilities lie with the AIF manager, trustee, and key personnel, and discontinuation of launching new liquidation schemes by AIFs has been specified. This circular, effective immediately, aims to safeguard investor interests and regulate the securities market, as per SEBI's mandate.

(The circular on 'Flexibility to Alternative Investment Funds and their investors to deal with unliquidated investments of their schemes' bearing number SEBI/HO/AFD/PoD1/2024/026 issued by the Securities and Exchange Board of India is accessible [here](#).)

3. The Securities and Exchange Board of India has relaxed requirement of intimation of changes in the terms of Private Placement Memorandum of Alternative Investment Funds through Merchant Banker (April 29, 2024):

The SEBI has relaxed the requirement for Alternative Investment Funds (AIFs) regarding the intimation of changes in the terms of their Private Placement Memorandum (PPM) on 29th April 2024. Previously, any alterations had to be submitted to SEBI through a merchant banker with a due diligence certificate. However, following market feedback, certain changes in the PPM terms may now be directly filed with SEBI, streamlining the process and reducing compliance costs for AIFs. Additionally, Large Value Funds for Accredited Investors (LVFs) are exempt from this requirement, allowing them to directly submit changes to SEBI along with an undertaking signed by the CEO and Compliance Officer of the AIF's Manager. This circular is effective immediately and is issued under the authority of the Securities and Exchange Board of India Act, 1992, to safeguard investor interests and regulate the securities market.

(The circular titled 'Relaxation in requirement of intimation of changes in the terms of Private Placement Memorandum of Alternative Investment Fund through Merchant Banker' bearing number SEBI/HO/AFD/PoD/CIR/2024/028 issued by the Securities and Exchange Board of India is accessible [here](#).)

4. The Securities and Exchange Board of India has taken steps to facilitate ease of doing business - Fund manager for Mutual fund schemes investing in commodities and overseas securities (April 30, 2024):

The SEBI has taken steps to facilitate ease of doing business for mutual funds on April 30, 2024 by reviewing the regulatory framework and implementing recommendations from a working group. As a result, certain modifications have been made regarding the appointment of fund managers for Mutual Fund schemes investing in commodities and overseas securities. For commodity-based funds such as Gold ETFs and Silver ETFs, the appointment of a dedicated fund manager is now optional, provided that the appointed individual possesses sufficient expertise in managing investments in the commodities market, with responsibility for compliance and reporting resting with the AMC's Board. Similarly, for Mutual Fund schemes investing in overseas securities, the appointment of a dedicated fund manager is optional, contingent upon the manager's expertise in managing such investments, with compliance and reporting responsibilities also falling under the purview of the AMC's Board. This circular is issued under SEBI's authority to protect investor interests and regulate the securities market.

(The circular titled 'Ease of doing business- Fund manager for Mutual fund schemes investing in commodities and overseas securities' bearing number SEBI/HO/IMD/IMD-PoD-2/P/CIR/2024/30 issued by the Securities and Exchange Board of India is accessible [here](#).)

5. The Securities and Exchange Board of India has issued a circular titled 'Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures' (May 02, 2024):

The SEBI issued circulars SEBI/HO/AFD/PoD1/CIR/2024/027 on May 02, 2024 to streamline the digital onboarding process for clients and enhance transparency through disclosures for Portfolio Managers. Following recommendations from a working group and public consultation, several decisions have been reached. Firstly, in partial modification of Regulation 22(1) of SEBI (Portfolio Managers) Regulations, 2020, clients now have the option to sign annexures on fees and charges electronically during digital onboarding, effective October 01, 2024. Additionally, Portfolio Managers are required to provide a fee calculation tool to clients, incorporating the high watermark principle, and offer additional fee illustrations in the PMS-client agreement for new clients from October 01, 2024. Moreover, a "Most Important Terms and Conditions (MITC)" document must be provided to clients, with compliance for new clients mandated from the same date and for existing clients by January 01, 2025. Portfolio Managers must ensure adherence to specified fees and charges, and this circular will be effective from October 01, 2024, with standard procedures and formats to be issued by July 31, 2024. This circular is issued under SEBI's authority to protect investor interests and regulate the securities market.

(The circular titled 'Portfolio Managers - Facilitating ease in digital on-boarding process for clients and enhancing transparency through disclosures' bearing number SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/35 issued by the Securities and Exchange Board of India is accessible [here](#).)

6. The Securities and Exchange Board of India has issued a circular facilitating collective oversight of distributors for Portfolio Management Services (PMS) through APMI (May 02, 2024):

The SEBI has issued a circular (SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32) on May 02, 2024, addressing Portfolio Managers and the Association of Portfolio Managers in India (APMI) regarding collective oversight of distributors for Portfolio Management Services (PMS). Regulation 23(11) of SEBI (Portfolio Managers) Regulations, 2020, mandates that portfolio managers ensure distributors comply with regulations and circulars, including the Code of Conduct. To simplify compliances, a working group was formed to review the regulatory framework, leading to the decision that any entity distributing PMS must obtain registration with APMI. Portfolio Managers are tasked with ensuring distributor registration with APMI, aligning with criteria set by APMI. Effective from January 01, 2025, this circular is issued to protect investor interests and regulate the securities market, in accordance with SEBI's authority under Section 11(1) of the Securities and Exchange Board of India Act, 1992, and Regulation 43 of SEBI (Portfolio Managers) Regulations, 2020. APMI is expected to issue distributor registration criteria by July 01, 2024.

(The circular titled 'Facilitating collective oversight of distributors for Portfolio Management Services (PMS) through APMI' bearing number SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32 issued by the Securities and Exchange Board of India is accessible [here](#).)

7. The Securities and Exchange Board of India has issued framework for administration and supervision of Research Analysts and Investment Advisers (May 02, 2024):

The SEBI has issued a circular (SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/32) has introduced a framework for the administration and supervision of Research Analysts (RAs) and Investment Advisers (IAs) on 2nd May 2024 allowing recognized Stock Exchanges to oversee these intermediaries, referred to as Research Analysts Administration and Supervision Board (RAASB) and Investment Advisers Administration and Supervision Board (IAASB) respectively. This framework requires applicants seeking registration as RAs and IAs to be enlisted with RAASB and IAASB respectively. Effective from July 25, 2024, the previous framework for IA supervision stands rescinded, and any actions taken under it are deemed applicable under the amended IA Regulations. RAASB and IAASB, initially operating under the same stock exchange, will be recognized based on specified criteria. This circular is issued under SEBI's authority to protect investor interests and regulate the securities market, in accordance with Section 11(1) of the Securities and Exchange Board of India Act, 1992, and regulation 14 of RA Regulations and IA Regulations.

(The circular titled 'Framework for administration and supervision of Research Analysts and Investment Advisers' bearing number SEBI/HO/MIRSD/MIRSD-SEC-3/P/CIR/2024/34 issued by the Securities and Exchange Board of India is accessible [here](#).)

8. The Securities and Exchange Board of India has issued circular regarding Periodic Reporting format for Investment Advisers (May 07, 2024):

The SEBI has issued a circular SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2024/38 which mandates investment advisers (IAs) to provide reports as per Regulation 15(12) of the Investment Advisers Regulations, 2013. To streamline this process, SEBI has established the Investment Advisers Administration and Supervisory Body (IAASB), which currently collects reports from IAs on an ad-hoc basis. In response to this, a standardized periodic reporting format has been developed through consultations with the Industry Standards Forum (ISF) for IAs. This format, requires IAs to submit reports biannually, ending on September 30 and March 31 of each financial year. The IAASB is tasked with organizing the submission process, issuing a circular to IAs within thirty days of this directive. IAs must adhere to the timelines specified: submitting the first report for the period ending March 31, 2024, within fifteen days of the circular, and subsequent reports within seven working days of the period's end. Effective immediately, this directive is issued under SEBI's authority to safeguard investor interests and regulate the securities market, as outlined in the Securities and Exchange Board of India Act, 1992.

(The circular titled 'Periodic reporting format for Investment Advisers' bearing number SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2024/38 issued by the Securities and Exchange Board of India is accessible [here](#).)

9. The Securities and Exchange Board of India notified the commencement of certain provisions of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023 (May 10, 2024):

The SEBI issued a gazette notification notifying that the amendments in sub-regulation (III) of regulation 3 of the Securities and Exchange Board of India (Alternative Investment Fund) (Second Amendment) Regulations, 2023 shall come into force as on May 10, 2024.

(The commencement notification for certain provisions of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2023 bearing number SEBI/LAD/NRO/GN/2024/175 issued by the Securities and Exchange Board of India is accessible [here](#).)

FINTECH / BANKING

10. The Reserve Bank of India has notified guidelines on voluntary transition of Small Finance Banks to Universal Banks (April 26, 2024):

The Reserve Bank of India has outlined guidelines for Small Finance Banks (SFBs) interested in voluntarily transitioning into Universal Banks on April 26, 2024. As per Paragraph 14 of the December 5, 2019 guidelines, SFBs wishing to convert must meet minimum capital requirements, demonstrate a satisfactory performance record as an SFB for at least five years, and undergo RBI's due diligence. Effective immediately, these instructions apply to all SFBs. To qualify, an SFB must have a scheduled status, listed shares, a net worth of at least ₹1,000 crore, meet Capital to Risk (Weighted) Assets Ratio (CRAR) requirements, show net profit in the last two fiscal years, and maintain Gross Non-Performing Assets (GNPA) and Net Non-Performing Assets (NNPA) below 3% and 1% respectively. Shareholding conditions include no mandatory identified promoter, no addition or change in promoters during transition, and no new lock-in requirements for existing promoters. SFBs with diversified loan portfolios are preferred. Applications for transition will be assessed under existing licensing guidelines, and successful transitioned banks will adhere to Universal Bank norms, including the Non-Operative Financial Holding Company (NOFHC) structure if applicable. Eligible SFBs can submit their applications and requisite documents to the RBI's Department of Regulation in Mumbai.

(The notification bearing number DOR.LIC.REC.20/16.13.218/2024-25 issued by the Reserve Bank of India is accessible [here](#).)

11. The Reserve Bank of India has introduced the Draft Master Direction – Reserve Bank of India (Electronic Trading Platforms) Directions (April 29, 2024):

The Reserve Bank of India has released a Draft Master Direction titled Reserve Bank of India (Electronic Trading Platforms) Directions on April 29, 2024 in accordance with the announcement made in the Statement on Developmental and Regulatory Policies as part of the Bi-monthly Monetary Policy Statement for 2023-24 issued on February 8, 2024. The draft is now available on the RBI website for review and feedback. Comments and feedback are welcomed from Electronic Trading Platform operators, banks, market participants, and other interested parties until May 31, 2024.

(The press release bearing number 2024-2025/211 issued by the Reserve Bank of India is accessible [here](#).)

12. The Reserve Bank of India has issued guidelines Fair Practices Code for Lenders – Charging of Interest (April 29, 2024):

The Reserve Bank of India has issued guidelines on Fair Practices Code for Lenders regarding the charging of interest to various Regulated Entities (REs) on April 29, 2024. These guidelines aim to ensure fairness and transparency in interest charging practices while allowing flexibility in loan pricing policies. However, during onsite examinations of REs up to March 31, 2023, the RBI identified instances of unfair practices in interest charging. These practices include charging interest from the date of loan sanction instead of disbursement, charging

interest for the entire month regardless of the actual loan period, and collecting advance installments while charging interest on the full loan amount. Such practices are deemed inconsistent with fairness and transparency. The RBI has directed all REs to review their loan disbursement methods, interest application, and other charges, and take corrective action immediately, including system-level changes, to address these issues.

(The notification bearing number RBI/2024-25/30 issued by the Reserve Bank of India is accessible [here](#).)

13. The Reserve Bank of India has released Guidance Note on Operational Risk Management and Operational Resilience (April 30, 2024):

The Reserve Bank of India has released a new "Guidance Note on Operational Risk Management and Operational Resilience on April 30, 2024. This Guidance Note is designed to align the RBI's regulatory guidance with the Basel Committee on Banking Supervision (BCBS) Principles, specifically the revisions to the Principles for the Sound Management of Operational Risk and the Principles for Operational Resilience, both issued in March 2021. It adopts global best practices, including those on operational resilience. The systems, procedures, and tools outlined in the Guidance Note are indicative and should be interpreted alongside relevant instructions issued by the RBI over time; in cases of inconsistency, the RBI's instructions take precedence. Additionally, the previous "Guidance Note on Management of Operational Risk" dated October 14, 2005, has been repealed with the issuance of this new Guidance Note.

(The press release bearing number 2024-2025/220 issued by the Reserve Bank of India is accessible [here](#).)

14. The Reserve Bank of India has notified the Master Direction - Risk Management and Inter-Bank Dealings: Amendments (May 03, 2024):

The amendments to the Master Direction – Risk Management and Inter-Bank Dealings, as detailed in a recent circular, primarily address the inclusion of Standalone Primary Dealers (SPDs) within its provisions, following their authorization under Section 10(1) of the Foreign Exchange Management Act (FEMA), 1999. These amendments, outlined in Annex I, ensure SPDs' compliance with applicable directives from the Reserve Bank of India. Furthermore, updates regarding the reporting of Over-The-Counter (OTC) foreign exchange derivative contracts and foreign currency interest rate derivative contracts to the Trade Repository of Clearing Corporation of India Ltd. have been incorporated into Part E of the Master Direction. These amendments, detailed in Annex II, encompass adjustments in reporting protocols concerning format, mode, and timelines. Effective immediately, these directions supersede any previous circulars listed in Appendix III of the Master Direction, applicable to Authorized Persons, defined here as Authorized Dealer Category-I banks and SPDs authorized as Authorized Dealer Category-III under FEMA, 1999. Issued under pertinent sections of the

Reserve Bank of India Act, 1934, and the Foreign Exchange Management Act, 1999, these directives do not prejudice permissions or approvals mandated under other laws.

Annex I outlines amendments and additions to the Master Direction, including revised definitions of "Authorized Persons" to encompass Authorized Dealer Category-I banks, Standalone Primary Dealers authorized as Authorized Dealer Category-III, Recognised Stock Exchanges, and Recognised Clearing Corporations involved in exchange-traded currency derivatives. Modifications are made to clarify that references to "Authorized Dealers" now include both Category-I banks and Standalone Primary Dealers, with specific instructions applicable to each. Additionally, operational guidelines for participation in the exchange-traded currency derivatives market are updated, along with reporting requirements for loans, overdrafts, and overseas foreign currency borrowing by Standalone Primary Dealers. Limits on Net Overnight Open Position (NOOPL) and Aggregate Gap Limits (AGL) are specified, with instructions for communication to the Reserve Bank via the Centralized Information Management System (CIMS) or email to ensure compliance.

Annex II of the directive details amendments and additions to reporting procedures and requirements. These revisions include the substitution of existing directives regarding the submission of daily statements, exposure details, option transactions, and outstanding foreign currency borrowings. Reporting timelines and formats have been updated, with a shift towards the use of the Centralized Information Management System (CIMS) for streamlined communication. Additionally, new guidelines have been introduced for reporting to the Trade Repository (TR) of Clearing Corporation of India Ltd. (CCIL), encompassing various types of derivative contracts and specifying reporting timelines based on contract types and counterparties. Notably, the directive emphasizes the responsibility of Authorized Dealers in ensuring the accuracy of reported transactions and the reconciliation of balances between their books and the TR.

(The notification bearing number RBI/2024-25/32 issued by the Reserve Bank of India is accessible [here](#).)

15. The Reserve Bank of India issued a list of Frequently Asked Questions in relation to the Guidelines on Default Loss Guarantee in Digital Lending (April 26, 2024):

The Reserve Bank of India a list of frequently asked questions in relation to Guidelines on Default Loss Guarantee in Digital Lending which were issued vide Circular DOR.CRE>REC>21/21.01.001/2023-24 dated June 08, 2023.

(The Frequently Asked Questions under the Guidelines on Default Loss Guarantee in Digital Lending issued by the Reserve Bank of India is accessible [here](#).)

OTHERS

16. The Insolvency and Bankruptcy Board of India issued a discussion paper on “Strengthening the process of issuance of record of default by Information Utility” (May 10, 2024):

The Insolvency and Bankruptcy Board of India issued a discussion paper on “Strengthening the process of issuance of record of default by Information Utility”. The discussion paper recognizes that the success of the insolvency proceeding critically depends on availability of complete, correct and up-to-date information about the debtor. To address the unavailability of information pertaining to default by the debtor to every stakeholder in equal measure, the Insolvency and Bankruptcy Code, 2016 envisages Information Utility as repositories of financial information about debtors.

(The discussion paper on “Strengthening the process of issuance of record of default by Information Utility” dated May 10, 2024 issued by the IBBI is accessible [here](#).)

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