Regulatory Digest

February 05, 2025

THE FINANCIAL SERVICES BULLETIN

This is the third edition of Nishith Desai Associates' quarterly financial services newsletter in collaboration with US-India Business Council.

U.S.-India Business Council

INTRODUCTION

2024 was a promising year for deal-making activity in the Indian financial services sector. While private equity investments overall increased to USD 15 billion, marking a 46.2% increase from the numbers in 2023, investment in the financial services sector surged as well, with 63 deals and a 105.5% increase in equity invested, totaling USD 1.32 billion.[1] The last quarter brought significant legislative and enforcement developments, yet investor sentiment remains optimistic, driven by strong confidence in the sector's robust regulatory framework. Venture capital investors are bullish on NBFC investments.[2]

Further to previous editions of our newsletters (available here and here), Nishith Desai Associates ("**NDA**") and the U.S.-India Business Council ("**USIBC**") are elated to present to you the third edition of our financial services quarterly roundup (for the months of October to December 2024). As always, through this publication, we aim to cull out key developments in the financial services industry that, in our view, "summarize the quarter". Our roundup has been meticulously curated to ensure that key developments relevant to our stakeholders are discussed briefly.

BANKING, FINANCIAL SERVICES AND CRYPTOCURRENCY

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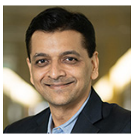
Viral Mehta (Mumbai-BKC)



Nishchal Joshipura (Mumbai-BKC)

1. Appointment of Mr. Sanjay Malhotra as Governor of the Reserve Bank of India ("RBI") *(December 2024)*

With effect from December 11, 2024, Mr. Sanjay Malhotra has assumed office as the 26th Governor of the Reserve Bank of India for a three-year team, replacing Mr. Shaktikanta Das.

He is the first RBI governor since Duvvuri Subbarao in 2008, who has transitioned directly from the Finance Ministry to this role.[3] Prior to his appointment, he was the Revenue Secretary.

2. Passage of the Banking Laws (Amendment) Act, 2024 ("BLAA") in India's Lok Sabha (House of the People) *(December 2024)*

The BLAA[4] was introduced as a bill in the Lok Sabha on August 9, 2024 and passed on December 3, 2024. It amends the following critical banking legislations in India: (i) RBI Act, 1934; (ii) Banking Regulation Act, 1949 ("**Banking Act**"); (iii) State Bank of India Act, 1955; (iv) Banking Companies (Acquisition and Transfer of

Research Papers

Fintech
January 28, 2025

Private Investments in India
January 27, 2025

Horizon Technologies
January 21, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?
February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals
January 15, 2025

Key changes to Model Concession Agreements in the Road Sector
January 03, 2025

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice
December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps
November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I
August 26, 2024

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What India's Transition to New Data Protection Law Means for Global Businesses
January 23, 2025

Undertakings) Act, 1970; and (v) Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

We have set out the top 3 highlights from the BLAA below:

- Amendment to the scope of the threshold of "beneficial interest" for determining directorships in banking companies: Under the Banking Act, a person could become a director in banking companies so long as they did not hold "substantial interest" in such banking company (with the threshold for "substantial interest" being holding of shares exceeding either INR 5,00,000 (approximately USD 5,784) or 10% of the paid-up capital of such bank).[5] Through the BLAA, this limit has now been enhanced to either INR 2,00,00,000 (approximately USD 231,361) or 10% of the paid-up capital of the relevant banking company. This will be instrumental in opening up the pool of people that may be eligible for directorships in such companies and will contribute to better corporate governance.[6]
- Depositors to have flexibility to provide more nominees: Currently, the Banking Regulation Act permits single or joint deposit holders to designate only a single nominee for receipt of the deposit holder's deposit in case of such depositor's demise.[7] The BLAA expands this provision, allowing for the appointment of up to four nominees. The nomination can be conducted either: (i) simultaneously; or (ii) successively. In the case of simultaneous nominations, the nomination will be effective in the specified proportion while successive nominations will involve a hierarchy in the nominees listed by a depositor.[8]
- Changes to the modalities for deciding the remuneration of auditors of public sector banks: Prior to enactment of the BLAA, the remuneration paid to auditors of banks was being fixed by the RBI in consultation with the Indian Central Government.[9] The BLAA has now empowered these public sector banks to decide the remuneration of their auditors, which increases independence of such banks.[10]

3. RBI initiated action against 4 non-banking financial companies ("NBFCs") for non-compliances with applicable laws *(October 2024)*

The RBI directed 4 prominent NBFCs to cease and desist from the sanction and disbursal of new loans, effective from October 21, 2024, owing to concerns over their excessive interest rates and non-compliance with established financial regulations.[11] These business restrictions arose due to several supervisory concerns observed during inspections conducted at these NBFCs by the regulator.

While these restrictions were lifted in January 2025 as the NBFCs improved their compliance following a series of supervisory restrictions,[12] this action indicates the proactive approach of the regulator towards monitoring the activities of regulated entities that may operate to the detriment of borrowers.[13] This development sent shockwaves through the industry in light of the cease and desist order of the RBI, which may be particularly detrimental to the capital-intensive business model of NBFCs.

4. RBI's crackdown on board observers of financial investors in NBFCs *(December 2024)*

In December 2024, the RBI instructed various NBFCs, to remove from their boards, observers appointed by private equity and venture capital funds that are invested in the NBFC.[14] This instruction surprised financial investors, who currently have appointed board observers in NBFCs without board representation. While there is no official advisory / press release from the regulator on this point, it seems that the RBI is concerned about the distinction between directors and board observers (given that board observers, unlike directors, do not typically assume any liabilities under Indian law for the actions of the company).

The RBI instructed these NBFCs to consider the removed observers for directorial positions. The long-term impacts of this development, and whether it is intended to be a structural change in the sector remain to be seen. However, it is clear that financial investors may have to revisit their intended governance rights in portfolio NBFCs and factor these rights in while negotiating transaction documents for their investments into NBFCs.

5. RBI constitutes committee for streamlining the Framework for Responsible and Ethical Enablement of Artificial Intelligence ("FREE-AI") *(December 2024)*

On December 26, 2024, the RBI constituted an 8-member committee ("**Committee**") of experts to develop the FREE-AI framework in the financial sector and submit a report within six months from the date of its first meeting.

The Committee has been entrusted with studying the current and potential scalability for AI adoption in the financial services sector, along with conducting a review of the extant regulatory and supervisory approaches on AI with a global focus on the financial sector. The Committee is also intended to recommend a framework for governance aspects in respect of responsible and ethical adoption of AI models for the financial sector. The Committee will also have to identify potential risks associated with AI and recommend an evaluation, mitigation and monitoring framework for financial institutions, including banks, NBFCs, FinTechs and Payment System Operators (PSOs).[15]

NDA recently participated in the USIBC's discussion with RBI on the above and looks forward to providing constructive feedback and input to promote AI adoption in the financial services sector.

6. Release of draft bill on the Banning of Unregulated Lending Activities ("BULA") by the Ministry of Finance *(December 2024)*

On December 13, 2024, the Department of Financial Services, under the Ministry of Finance, released a draft bill to curb unregulated lending activities for stakeholder consultation.[16] It has been based on the RBI's previous working group report on digital lending.[17]

The BULA seeks to prohibit "unregulated lending activities" that are currently not regulated by any existing lending laws in India and will ban advertisements related to such activities.[18] To this end, the BULA seeks to create a centralized online database with a list of all regulated lenders – which may be used to map legitimate lenders.

Violations under BULA will be met with stringent penalties. Participating in unauthorized lending activities may result in imprisonment ranging from 2 to 7 years, along with fines between INR 2,00,000 (approximately USD 2,313) and

India 2025: The Emerging Powerhouse for Private Equity and M&A Deals
January 16, 2025

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FII8 event in Riyadh
October 31, 2024

INR 1,00,00,000 (approximately USD 115,680).[19] Additionally, using forceful recovery methods will lead to harsher punishments, including imprisonment of 3 to 10 years and fines starting at INR 5,00,000 (approximately USD 5,784) or up to double the loan amount.[20] Making false representations to encourage borrowing will attract penalties of 1 to 5 years of imprisonment and fines of up to INR 10,00,000 (approximately USD 11,568).[21]

BULA is currently open for public comments until February 13, 2025, and will be important to reduce unfair loan practices / terms granted to innocent borrowers by illegitimate / unregulated lenders.

INSURANCE

Key contacts:

Harshita Srivastava (Mumbai-BKC)

Parul Jain (Delhi)

1. Release of office memorandum ("Memorandum") proposing greater liberalization of the insurance sector by permitting foreign direct investment ("FDI") under the 100%automatic route *(November, 2024)*

The Ministry of Finance released the Memorandum on November 26, 2024 inviting comments to a previously released consultation paper proposing to raise the FDI limit in the insurance sector from 74% to 100% under the automatic route. Additionally, the Memorandum also proposes to: (i) allow insurance companies to engage in multiple classes of business; (ii) reduce the foreign re-insurer's net assets requirement from INR 5,000 crore (approximately USD 577 million) to INR 1,000 (approximately USD 115 million) crores; and (iii) specify lower entry capital for under-served / un-served segments on a special case basis.[22]

By permitting 100% FDI under the automatic route, the government seeks to attract new players with added financial muscle into this capital-intensive industry. This move may prove to be particularly crucial in light of the low insurance penetration and density in India as compared to the global average and contribute significantly to the goal of 'Insurance for all by 2047'.

2. Release of the Insurance Regulatory and Development Authority of India's ("IRDAI") "Annual Report 2023-24" ("Annual Report") *(December, 2024)*

The IRDAI's Annual Report was released on November 14, 2024, under Section 20 of the IRDAI Act, 1999. This report is split into four parts in the following manner: (i) Policies and Programmes (reviewing the industry and impact of insurance policies on the Indian market); (ii) Review of Working and Operations (assessing the current manner of regulation of intermediaries, professional institutes and advisory committees, ombudsman, etc.); (iii) Statutory and Developmental Functions of the Authority (assessing the regulatory framework); and (iv) Organisational Matters.

Some major highlights of this report include:

- India's insurance market is to remain one of the fastest-growing globally. However, the Indian insurance market experienced a slowdown due to rising inflation and change in tax norms for high-ticket policies in 2023-24.
- India's insurance penetration dipped from 4% in 2022-23 to 3.7% in 2023-24.
- Insurance density grew marginally from USD 92 in FY 2022-23 to USD 95 in FY 2023-24, which continues to remain far below the global average.[23]
- As of March 31, 2024, total paid-up capital of the life insurance sector stood at INR 37,073 crores (approximately USD 4.28 billion), reflecting a 6.05% increase compared to the previous year.

In all, the Annual Report is optimistic about growth in specific segments like health insurance, but notes that that rising wages and healthcare costs could keep health insurance pricing elevated even in 2024-24.

3. IRDAI hosts an industry consultation on the prevalent goods and services tax ("GST") rates applicable to the industry *(December, 2024)*

Since the 55th GST Council meeting held on December 21, 2024 (which postponed the decision on reducing GST on insurance premiums and decided to reconsider its position after seeking feedback from the IRDAI), IRDAI has been in consultation with the insurance industry to determine the best GST rate for passing tax benefits to the policyholders. This follows from the Finance Minister's previous remark in August 2024 that tax on medical insurances existed even prior to the enactment of the GST.[24]

The life and health insurance companies shall be providing suggestions through the Life Insurance Council and the General Insurance Council respectively. The Councils will gather industry recommendations and submit them to IRDAI, which will then present a consolidated view to the Ministry of Finance.[25]

The current GST rate on health insurance premiums is 18% but there is a push to reduce it to 12% with full Input Tax Credit ("**ITC**") benefits.[26] A higher tax rate on health insurance typically increases costs in the hands of the ultimate policyholder, and accordingly acts as a deterrent to seeking a higher or increased insurance cover. Thus, the discussions in this regard are likely to impact the overall working of the insurance industry in India.

4. IRDAI notifies the IRDAI (Regulatory Sandbox) Regulations, 2025 ("Regulatory Sandbox Regulations") *(January,*

2025)

The IRDAI has notified the Regulatory Sandbox Regulations on and from January 1, 2025 and has repealed the Insurance Regulatory and Development Authority of India (Regulatory Sandbox) Regulations, 2019.[27] A regulatory sandbox typically refers to a controlled environment created by a regulator to enable early stage businesses to test new products / offer new services with relaxations that foster their innovation. These sandboxes also benefit regulators, that are able to closely monitor and adapt the industry to changing technologies / offerings within these environments appropriately.

The Regulatory Sandbox Regulations creates a "principle-based" approach to the regime by institutionalizing the framework in a master circular that only addresses broader concepts such as registration, monitoring, review of proposals, etc. Further, most importantly, it allows in-principle approval for inter-regulatory sandbox proposals (involving multiple financial sectors). While the specific procedure for obtaining in-principle approval will be released in a master circular, this development increases inter-regulator ease of operations for entities that have operations regulated across sectors.

In terms of applications that may be accepted, as per the Regulatory Sandbox Regulations, the IRDAI may grant permission if it believes that the proposed innovation will be beneficial to the Indian insurance sector, is in the interest of the policyholders or would otherwise promote growth of the sector or ease of doing business.

FOREIGN PORTFOLIO INVESTMENT AND FOREIGN VENTURE CAPITAL INVESTMENT

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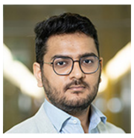

Prakhar Dua (Mumbai-BKC)

1. SEBI and RBI outline the procedure for reclassification of FPI to FDI (*November, 2024*)

The Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations and the Master Circular stipulate that the investment made by an FPI, along with its investor group, in an Indian company shall be less than 10% of the total paid-up equity capital of the company on a fully diluted basis. Further, the FPI (along with the investor group) investing in breach of the prescribed limit is required to either:

- divest the excess holding within 5 trading days from the date of settlement of the trade resulting in breach; *or*
- reclassify the entire holding as FDI.

SEBI released a circular on November 11, 2024, titled "*Procedure for reclassification of FPI investment to FDI*" (**"the Circular"**).[28] The same day, the RBI issued the "*Operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment (FDI)*" (**"Operational Framework"**).[29]

The Circular provided for compliance with extant FEMA (Non-Debt Instrument) Rules, 2019 (**"the NDI Rules**"), along with the circular(s) issued by RBI for the reclassification of FPI investment to FDI and laid down the process to be followed by the Designated Depository Participants ("**DDPs**") for the same.

RBI's Operational Framework detailed the approvals to be taken by the FPI for investment in equity instruments beyond the prescribed FPI limit and the reporting requirements. The key requirements include:

- obtaining Governmental approvals where mandatory, such as approval in respect of the Press Note No. 3 (of 2020), which restricts investments in India from land border sharing countries;
- concurrence of the Indian investee company for reclassification of investment to FDI for compliances outlined under the NDI Rules:

  Provided that where the necessary approvals and concurrences have not been obtained prior to reclassification, the investment beyond the prescribed limit of 10% of the total paid-up equity capital shall be required to be divested within 5 trading days from the breach;

- reporting of the entire investment held by such FPI for reclassification shall be done by the Indian investee company, FPI, and the authorized dealer bank, as applicable, in the manner prescribed;
- requesting the Custodian concerned for transferring the equity instruments of the investee company from its FPI demat account to its FDI demat account.

The investment shall continue to be treated as FDI even if it eventually falls below 10%. Both the Circular and the Operational Framework were notified with immediate effect.

2. SEBI simplifies registration for certain classes of FPIs *(November 2024)*

SEBI released a circular on November 12, 2024 titled "*Simplified registration for Foreign Portfolio Investors (FPIs)*",[30] introducing an abridged version of the Common Application Form (**"CAF"**) for the following applicants:

- fund(s) operated by investing / non-investing investment manager ("**IM**"), wherein such IM or any fund operated by IM, is already registered as FPI;

- sub-fund(s) of a master fund, wherein such master fund or any sub-fund of such master fund, is already registered as FPI;
- sub-fund(s) or separate class(es) of shares or equivalent structure(s) with segregated portfolio of a fund, wherein such fund or any of its sub-fund or separate class of shares or equivalent structure with segregated portfolio, is already registered as FPI; *or*,
- scheme(s) of insurance companies wherein the parent entity or any scheme of an insurance company is already registered as FPI.

As per the circular, the aforementioned applicants may be provided with an option to fill the entire CAF or fill an abridged version of the same, where only the field(s) unique to the applicant may be filled. The circular further elaborates the process to be followed for filing the remaining information in case the applicant chooses to fill the abridged CAF. These changes are to come into effect 3 months from the publication of the circular, i.e., from February 12, 2025.

3. SEBI introduces additional disclosure requirements for certain subscribers of Offshore Derivative Instruments ("ODIs") and FPIs with segregated portfolios (*December 2024*)

On December 17, 2024, SEBI issued a circular titled "*Measures to addressregulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs*".[31]The circular aims to bring the additional disclosure requirements for ODI subscribers at par with those of FPIs by mandating certain objectively identified ODI subscribers to provide additional granular information of all entities holding any ownership, economic interest, or exercising control in the ODI subscriber, on a full look through basis, up to the level of all natural persons, without any threshold, in case of breach of certain thresholds.

The circular also lays down certain conditions for issuance of ODIs by FPIs, and separately stipulates that the criteria of breach of investment in an Indian corporate group shall be applicable to each segregated portfolio, in case of an FPI with segregated portfolios. The highlights of the new framework are as follows:

- All FPIs issuing ODIs must have a separate dedicated FPI registration for issuing ODIs, therefore mandating separate registrations for proprietary investments and ODI issuances;
- ODI issuing FPIs shall be prohibited from issuing ODIs with derivatives as the underlying asset;
- ODI issuing FPIs can no longer hedge their ODIs with derivative positions on stock exchanges in India, thereby requiring them to fully hedge their positions with the same scrip on a one-to-one basis;
- Two objective criteria, similar to the ones applicable to FPIs under the August 2023 circular, have been laid down for ODI subscribers under the granular disclosure requirements, pursuant to which they must either: (a) re-align their positions, or (b) provide additional granular details with respect to the ODI subscriber. The particulars of these requirements are as follows:
  - For ODI subscribers having more than 50% of their equity ODI positions in ODIs referenced to securities of a single Indian corporate group, the subscriber must either re-align their position within 10 trading days from the breach of the threshold, or make additional disclosures within 30 trading days from the expiry of the re-alignment timeline, failing which the ODI subscriber shall become ineligible to hold ODI positions through any ODI issuing FPI;
  - For ODI subscribers having equity positions worth more than INR 25,000 crore (approximately USD 3 billion) in the Indian markets, the subscriber must either re-align their positions within 90 calendar days from the date of breach of the threshold or make additional disclosures within 30 trading days from the expiry of the re-alignment timeline, failing which the ODI subscriber shall become ineligible to hold ODI positions through any ODI issuing FPI.

The ODI issuing FPIs shall redeem all ODI positions held by such ineligible ODI subscribers within 180 calendar days from the date of such ineligibility. The ODI issuing FPIs have also been mandated to submit the ODI subscribers' disclosures to depositories within 5 trading days from the date of the disclosure by ODI subscribers.

Notably, on January 10, 2025, SEBI released a "*Consultation Paper on proposal to increase the size criteria (set to guard against potential circumvention of Press Note 3 stipulations) in the additional disclosure framework*" which proposes to increase the size criterion from INR 25,000 crores (approximately USD 3 billion) to INR 50,000 crores (approximately USD 6 billion).[32]

CONCLUSION

The last quarter of 2024 marked significant milestones for India's financial services sector, demonstrating resilience and adaptability amidst evolving global and domestic challenges. From robust legislative developments such as the passage of the Banking Laws (Amendment) Bill, to progressive initiatives like the IRDAI's revamped Regulatory Sandbox Regulations, the sector has taken strides toward fostering innovation, ensuring compliance, and driving inclusive growth. Moreover, targeted measures by regulators like SEBI and RBI have reinforced governance standards while adapting to the complexities of foreign investments and emerging technologies.

As India continues to position itself as a hub for financial innovation and investment, these developments aid our mission to ease deal-making activity in the financial services sector.

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You can direct your queries or comments to the relevant member.

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[2]https://www.financialexpress.com/business/industry-vcs-betting-on-nbfcs-for-stable-investments-3713294/.

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[6]Section 3, BLAA 2024.

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[8]Section 45 ZA (1), Banking Act, 1949.

[9]Section 41, State Bank of India Act, 1955.

[10]Section 16, BLAA 2024.

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[12]*See, for example:* https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=59452 and https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=59475.

[13]*See our opinion piece on this topic:* https://www.financialexpress.com/opinion/checks-and-balances-on-rbis-powers/3678724/.

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[21]Section 12), BULA 2024.

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