



FINTECH NEWSLETTER: RECENT LEGAL DEVELOPMENTS AND MARKET UPDATES IN INDIA

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Authors: Namita Viswanath | Shreya Suri | Sarthak Doshi | Falaq Patel | Gursimar Setia

INTRODUCTION

The month of June 2024 has seen a flurry of regulatory activity aimed at fostering innovation, while ensuring robust governance and compliance frameworks. While not all developments may directly impact the 'tech' aspect of fintech, they have significant ramifications on regulated entities having a digital interface. For instance, the Reserve Bank of India ("**RBI**") has taken noteworthy steps, including liberalising norms for overseas portfolio investments and opening applications for self-regulatory organisations in the non-banking financial company ("**NBFC**") sector. In parallel, other regulatory bodies like the Securities and Exchange Board of India ("**SEBI**") has updated its guidelines on anti-money laundering measures, while Insurance Regulatory Development

Authority of India ("**IRDAI**") has streamlined governance norms for insurers. The International Financial Services Centre Authority ("**IFSCA**") has also been at the forefront, issuing clarifications on cross-border arrangements and proposing new regulations for payment systems in International Financial Services Centres ("**IFSC**").

These moves signal a progressive approach towards expanding the scope of fintech operations while maintaining regulatory oversight. In this edition, we explore the major fintech developments in the last month of the first financial quarter of 2024 and offer a snapshot of the key trends and achievements shaping India's financial technology landscape.



RECENT LEGAL & REGULATORY DEVELOPMENTS

New obstacles along the path for Finfluencers

A Financial Influencer (popularly known as a **"Finfluencer"**) is defined as an individual who uses social media to share information, recommendations, guidance or opinions on financial advice, news, or other related matters. Finfluencers have been on SEBI's radar over the last 12 (twelve) months in a pursuit to avoid market manipulation, safeguard investor interest, and seek accountability from regulated entities entering into partnerships with unregistered and unqualified Finfluencers. However, despite having imposed penalties, requiring mandatory registration, and pulling up regulated entities to review their arrangements, SEBI has had limited success in controlling the free access of financial information and advice on digital media and consequently, Finfluencer partnerships have continued to flourish.

While an August 2023 consultation paper issued by SEBI called for a complete disruption of the Finfluencer revenue model and suggested strong enforcement action on unregistered Finfluencers, the recent proposal from SEBI's 206th meeting on June 27, 2024,¹ has suggested a more pragmatic approach. The proposal prohibits regulated entities (like brokers and mutual funds) and their agents from associating, directly or indirectly, with such person who, directly or indirectly, provide advice or recommendations or make implicit or explicit claim of return or performance with respect to securities without due authorization from SEBI. Such association includes (i) any transaction involving money or money's worth, (ii) referral of a client, (iii) interaction of information technology systems or (iv) any other association of similar nature or character.

However, SEBI has stated that this restriction does not apply if the association is: (i) with persons who are exclusively engaged in investor education and do not directly or indirectly, provide advice/recommendation/claim of return or performance, and (ii) through a specified digital platform which has a mechanism in place to take preventive as well as curative action, to the satisfaction of SEBI, to ensure that such a platform is not used by any person for providing advice/ recommendation /claim of return or performance, unless permitted by SEBI.

The distinction made by SEBI between prohibited and permitted activities in its 206th Board Meeting is crucial as it enables educational.

RBI invites applications for recognition of Self-Regulatory Organisations ("SROs") for NBFCs

The RBI had issued the 'Omnibus Framework for recognition of Self-Regulatory Organisations (SRO) for Regulated Entities of the Reserve Bank' dated March 21, 2024 (**"RE SRO Framework"**), as covered in our February-March Edition of the Fintech Newsletter.²

The RBI has opened applications for recognition of SROs in the NBFC sector with an application deadline of September 30, 2024. The RBI has also prescribed additional qualification conditions for SROs for NBFCs, as specified below:³

- **Membership criteria:** The RBI envisages that SROs for NBFCs will mainly be for the categories of Investment and Credit Companies (NBFC-ICCs), Housing Finance Companies (HFCs) and Factors (NBFC-Factors).⁴ That said, the RBI has stated that an SRO may also have other NBFCs as its members.

A recognised SRO should have a 'good mix' of NBFC-ICCs, HFCs and NBFC-Factors as its members. Further, at least 10% (ten per cent) of the total number of NBFCs in the base layer as per Scale Based Regulatory Framework and categorised as NBFC-ICC and NBFC-Factor should be members. Failure to achieve such membership criteria, within 2 (two) years of the grant of recognition as an SRO, would render such SRO liable for revocation of recognition.

- **Net worth:** Applicants should have a minimum net worth of INR 2 crore (Indian Rupees Two Crore Only): (a) within 1 (one) year of recognition as an SRO by the RBI; or (b) before commencement of operations as an SRO.
- **Maximum number of SROs:** A maximum of 2 (two) SROs for the NBFC sector will be recognised, subject to fulfilment of the criteria.

RBI Amends Foreign Exchange Management (Overseas Investment) Directions, 2022 – Liberalises Investments in Overseas Funds

The RBI, through a circular dated June 07, 2024 (**"Amendment Circular"**), has amended and liberalised the norms surrounding overseas portfolio investment (**"OPI"**).⁵ According to the Foreign Exchange Management (Overseas Investment) Directions, 2022 dated August 22, 2022 (**"OI Directions"**), OPI could only

be made in the 'units' of an overseas investment fund which is 'duly regulated by the regulator for the financial sector in the host jurisdiction'.

Earlier, there were 2 (two) key issues with how this definition was worded:

- Investments in funds which were not directly regulated by the financial sector regulator of the host country were excluded from the scope of the definition, thereby prohibiting investments in funds which were regulated indirectly through their investment managers.

Singapore, for instance is an important jurisdiction where the fund manager is regulated and not the fund. With the addition of an explanation reproduced below, the RBI has now done away with this hurdle and brought much needed clarity to investors:

'Explanation: 'investment fund overseas, duly regulated' for the purpose of this para shall also include funds whose activities are regulated by financial sector regulator of host country or jurisdiction through a fund manager/'

- Previously, the OI Directions stated that OPI could only be made in units of funds. The usage of the word 'units' also caused some confusion as investment in any other instrument could be construed to not be OPI. This prevented offshore fund vehicles set up as body corporates from issuing shares, stocks, partnerships, or other interests from receiving OPI.

The RBI, through the Amendment Circular, has rectified this ambiguity by adding clarificatory language stating adding 'or any other instruments (by whatever name called)' next to the word 'units'.

IRDAI issues Master Circular on Operations and Allied Matters of Insurers

The Insurance Regulatory and Development Authority of India ("IRDAI") has issued a master circular to enhance and streamline the governance of insurers' operations ("IRDAI Master Circular") which repeals 11 (eleven) erstwhile circulars under an umbrella directive. The IRDAI Master Circular covers directions for various operational matters such as advertising, outsourcing of activities, usage of trade logo of promoting partners or related parties and group insurance policies.

Some key requirements under the IRDAI Master Circular have been discussed below:

- **Unit-linked/Index-linked products:** Detailed guidelines have been provided to insurers for advertising unit linked insurance products, index linked products and annuity products with variable annuity payout options. Perhaps most importantly, insurers are now prohibited from marketing unit-linked and/or index-linked products as 'investment products'.
- **Advertisements Don'ts:** Insurers have been prohibited from advertising (a) services not related to insurance; (b) comparison of rates/tariffs to erstwhile tariffs in case of general insurance products; and (c) exaggerating the benefits of the products.
- **Place of Business/IFSC:** The IRDAI Master Circular elaborates on the requirements to open a foreign branch office or an office in IFSC applicable to insurers.
- **Outsourcing of activities:** In line with the requirements under the erstwhile circulars, the IRDAI Master circular reiterates that insurers are prohibited from outsourcing core activities such as investment and related functions, fund management, compliance with KYC/AML obligations and decision making on matters such as product design, underwriting and claims, policyholders' grievances and similar matters. However, for KYC, insurers may outsource verification to third party service providers as prescribed under applicable laws.

SEBI issues Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) for Securities Market Intermediaries

SEBI has issued new and updated guidelines for obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 ("PMLA") read with the Prevention of Money Laundering Rules, 2005 ("PMLR") (the "Guidelines").

The PMLA and PMLR designate all intermediaries registered with SEBI under Section 12 of the Securities and Exchange Board of India Act, 1992 (such as stockbrokers, sub-brokers, portfolio managers and investment advisers) ("Intermediaries") as reporting

entities. Hence, the Guidelines are applicable to all Intermediaries and stock exchanges along with all branches of stock exchanges and Intermediaries situated abroad, especially in countries which do not apply or insufficiently apply the recommendations made by the Financial Action Task Force ("**FATF**").

The Guidelines set out several requirements including: (i) risk management to be undertaken by the registered intermediaries by adopting a risk based approach; (ii) procedure for client due diligence; (iii) obligations on the intermediaries to have systems in place for monitoring and reporting of suspicious transaction; (iv) appointment of a principal officer and a designated director by the intermediaries to ensure compliance with the Guidelines; and (v) procedure for reporting information to the Financial Intelligence Unit-India. These Guidelines will supersede all previous circulars issued by SEBI in this regard.

SEBI issues updated Master Circular for Portfolio Managers

SEBI has consolidated all changes made to the erstwhile Master Circular for Portfolio Managers dated March 20, 2023 until March 31, 2024 and issued an updated circular for Portfolio Managers dated June 07, 2024 ("**Updated PM Circular**"). Accordingly, guidelines or directions previously issued stand superseded by the Updated PM Circular, to the extent they relate to portfolio managers.

The IFSCA provides clarifications on Global Access.⁶

The IFSCA has issued a circular dated June 06, 2024 which provides clarifications on accessing of global markets. This comes after the circular dated November 25, 2021⁷ ("**2021 Circular**"), which permits broker dealers registered with IFSCA to access stock exchanges outside the IFSC through (i) cross border arrangements, or (ii) registration as a trading member of an exchange outside IFSC.

The IFSCA provided the following clarifications upon receipt of representation from various broker dealers:

- **Applicability:** The November 2021 Circular is applicable to all broker dealers accessing global markets directly through their own cross border arrangements or membership of international exchanges.

- **NOC:** Requirement to seek no-objection certificate ("**NOC**") from recognised stock exchanges in IFSC apply only if a broker dealer has its own arrangement for accessing global market. However, such obligation does not apply to stock brokers accessing global markets through India INX Global Access IFSC Limited ("**India INX GA**").
- **Fee:** Annual fees of USD 1000 is prescribed for (i) broker dealers accessing global markets directly and (ii) India INX GA and accordingly such fees must be paid on a pro rata basis within 15 (fifteen) days from the date of NOC granted by a stock exchange.
- **Late fee:** Broker dealers were, accordingly, required to pay any pending fees under this circular by June 30, 2024 or be subject to late fee as prescribed by the IFSCA.

IFSCA issues FAQs on International Financial Services Centres Authority (Anti-Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 ("**AML Guidelines**")⁸

The FAQs on AML issued on June 11, 2024, clarify that the AML Guidelines are applicable to every regulated entity which is licensed, recognised and registered by the IFSCA and also to the regulated entities authorised by it. Some of the key clarifications provided, inter alia, include:

- Appointment of Designated Director and Principal Officer: The FAQs clarify that the Designated Director ("**DD**") and Principal Officer ("**PO**") must be different individuals. A DD must be a person heading the reporting entity and a PO must be a person having seniority and authority within the regulated entity and distant from internal audit and business line functions thereof. The FAQs further clarify that the DD and PO of parent entity located in onshore India is not eligible to be appointed as DD and PO in IFSC.
- AML/CFT/KYC Policy: The FAQs provide that in case an existing AML/CFT/KYC policy under PMLA, of the regulated entities already includes key elements of the guidelines prescribed the IFSCA, then the same may be continued without need for a new policy.

Consultation paper on the proposed IFSCA (Payment and Settlement Systems) Regulations, 2024 ("Regulations")⁹

The IFSCA has issued a consultation paper on June 07, 2024 seeking comments from public on the proposed Regulations. Through these proposed Regulations, the IFSCA lays down the procedure for applying to set up a payment system in IFSC, specifies the factors for granting authorization, and outlines the process for seeking exemption from authorization.

The Regulations specify that the system provider would be required to comply, on an ongoing basis and to the extent applicable, with the Principles for Financial Market Infrastructure (PFMI) and, if designated as a systemically important payment system (SIPS) by the Authority, also comply with the requirements of Core principles for systemically important payment systems (CP-SIPS) issued by the Bank of International Settlements.

Permission to IFSC Banking Units ("IBUs") to Offer OTC Derivatives on Gold and Silver¹⁰

The IFSCA, vide a notification dated June 27, 2024, permitted the offering of over-the-counter (OTC)

derivatives on gold and silver by way of amendment to the OTC Derivatives Modules of the IFSCA Banking Handbook.

Pursuant to this amendment, the term derivative has been defined to include gold and silver and offshore derivative instruments and OTC derivatives are considered 'Qualified Financial Contracts' under the Bilateral Netting of Qualified Financial Contracts Act, 2020.

This amendment also prescribes additional conditions for markets offering OTC derivatives on gold and silver, such as:

- All OTC derivatives on gold and silver must be settled only on cash.
- IBUs offering OTC derivatives on gold and silver to clients must ensure that the contracts are used for hedging the price risk faced by the client.
- IBUs must ensure that price series or index that is referenced as a settlement price in an OTC derivative contract on gold and silver is a reliable indicator of transactions in the underlying physical market, publicly available and timely.



MARKET UPDATES

RBI's Statement on Developmental and Regulatory Policies Proposes Setting Up a Digital Payments Intelligence Platform

In its Statement on Developmental and Regulatory Policies dated June 07, 2024, the Reserve Bank of India (RBI) has proposed setting up a 'Digital Payments Intelligence Platform' to mitigate instances of fraud in digital payments. The proposed platform would be set up as a network-level intelligence platform and enable real time data sharing across payment systems.

With multiple payments systems available in India's flourishing payments ecosystem (UPI, card networks, NEFT and BBPS to name a few), the avenues for fraud have also increased with fraudsters tricking victims into giving away account credentials, authentication pins and passwords. A platform which would enable all these payments systems to talk to each other and share valuable information could go a long way in early detection and mitigation of frauds.

The RBI has set up a committee to examine various aspects of setting up a digital public infrastructure for Digital Payments Intelligence Platform and it is expected to give its recommendations in 2 (two) months.

Inclusion of Recurring Payments for FASTag, NCMC and UPI Lite

The RBI, in its Statement on Developmental and Regulatory Policies dated June 07, 2024, has proposed the addition of a new manner of e-mandate for FASTag, National Common Mobility Card (NCMC), etc., as well as balance top-ups for UPI lite wallet. Until now, e-mandates

for recurring transactions were limited to UPI, card and wallet transactions where recurring mandates could be set-up for periodic payments (think of subscriptions). The RBI has now proposed to include transactions which are recurring in nature but without any fixed periodicity such as FASTag and UPI wallet top-ups. This would mean that a transaction would be initiated and the balance would be replenished based on a standing instruction of the user to top-up the relevant balance in case it falls below a defined threshold.

To enable this facility, the RBI proposes to exempt these payments from the 24 (twenty-four) hour pre-debit notification required under the e-mandate framework for such payments.¹¹

RBI imposes monetary penalty on Central Bank of India

The RBI has imposed a monetary penalty of Rs. 1,45,50,000 (Indian Rupees One Crore Forty Five Lakh Fifty Thousand Only) on Central Bank of India for non-compliance with its directions on 'Loans and Advances – Statutory and Other Restrictions' and 'Customer Protection – Limiting Liability of Customers in Unauthorised Electronic Banking Transactions'.

The RBI has found the bank to be non-compliant of failing, in a few instances, to credit (shadow reversal) the amount involved in unauthorised electronic transaction to the customer's account within the prescribed timeline of 10 (ten) working days from the date of notification by the customer.¹² Further, the bank failed to resolve complaints and provide compensation to certain customers within 90 (ninety) days from the date of receipt of such complaints.



MAJOR FUNDING DEALS

Lenskart: Eyewear retailer Lenskart raised USD 200 million, boosting its valuation to USD 5 billion, through a secondary share sale to Singapore sovereign fund Temasek and the United States financial services major Fidelity.¹³

Fibe: Consumer lending start-up Fibe raised USD 90 million through its Series E round including secondary share sale by existing investors. Major participants in this round include TR Capital, Trifecta Capital and Amara Partners.¹⁴

LEO1: Edu-fintech company LEO1 (formerly known as Financepeer) has announced strategic investment for Indian cricket captain Rohit Sharma marking the cricketer's first ever investment in a fintech start-up. LEO1 aims to resolve long-pending cash flow issues in educational institutes while also providing innovative solutions for students across India. Over the last three years, the company has raised \$35 million (about INR 291

crore) through two investment rounds from, amongst others, QED Investors, Aavishkar Capital, and Ratna Fin Capital.¹⁵

Aye Finance: Affordable business loan provider Aye Finance which uses cluster-based credit assessment with AI algorithm to assess risk in the absence of traditional business documents has raised debt funding of INR 250 Crore (Indian Rupees Two Hundred and Fifty Crore Only) (around USD 30 Million) from Dutch entrepreneurial development bank FMO. The fresh capital will be used to disburse loans to underserved micro, small and medium enterprises across India.¹⁶

LXME: Fintech start for enabling women to be financially independent has raised seed funding of USD 1.2 Million led by Kalaari Capital. LXME will invest the fresh funds in brand building and user acquisition to expand its community of over 4,00,000 (four lakh) women.¹⁷



1. Please refer: https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jun-2024/1719497494180.pdf#page=1&zoom=page-width,-15,842
2. Please refer: <https://induslaw.com/publications/pdf/alerts-2024/fintech-newsletter-unveiling%20india-latest-legal-shifts-and-market-waves.pdf>
3. The RE SRO Framework specified that additional sector-specific conditions would be prescribed at the time when an SRO for a given sector is intended to be set up.
4. For definitions of the relevant NBFCs, please refer: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/106MDNBFCs1910202343073E3EF57A4916AA5042911CD8D562.PDF>
5. Please see Rule 2(s) of the Foreign Exchange Management (Overseas Investment) Rules, 2022.
6. Please refer: <https://ifsc.gov.in/Viewer?Path=Document%2FLegal%2Fglobal-access-clarification-0606202406062024055127.pdf&Title=Global%20Access-Clarification&Date=06%2F06%2F2024>
7. Please refer: <https://ifsc.gov.in/Viewer?Path=Document%2FLegal%2Fglobal-access-to-broker-dealers25112021064756.pdf&Title=Global%20Access%20to%20Broker%20Dealers&Date=25%2F11%2F2021>
8. Please refer: <https://ifsc.gov.in/Viewer?Path=Document%2FLegal%2Fags-on-ifsc-aml-cft-kyc-guidelines-2022-1006202411062024094900.pdf&Title=Frequently%20Asked%20Questions%20%28FAQs%29%20on%20International%20Financial%20Services%20Centres%20Authority%20%28Anti%20Money%20Laundering%2C%20Counter-Terrorist%20Financing%20And%20Know%20Your%20Customer%29%20Guidelines%2C%202022&Date=11%2F06%2F2024>
9. Please refer: <https://ifsc.gov.in/Viewer?Path=Document%2FReportandPublication%2Fifsc-payment-and-settlement-systems-regulations-2024-public-consultation07062024032448.pdf&Title=Consultation%20paper%20on%20the%20IFSCA%20%28Payment%20and%20Settlement%20Systems%29%20Regulations%2C%202024&Date=07%2F06%2F2024>
10. Please refer: <https://ifsc.gov.in/Viewer?Path=Document%2FLegal%2Fotde-module27062024022351.pdf&Title=Permission%20to%20offer%20OTC%20derivatives%20on%20Gold%20and%20Silver%3A%20Amendment%20to%20OTDE%20Module%20%28Module%20no.%2013%29%20of%20IFSCA%20Banking%20Handbook%20COB%20Directions%20v6.0&Date=27%2F06%2F2024>
11. Please refer: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11668&Mode=0>
12. The RBI Circular on Customer Protection – Limiting Liability of Customers in Unauthorised Electronic Banking Transactions dated July 06, 2017, (available at: [link](#)) prescribes that a bank shall credit the amount involved in the unauthorised electronic transaction to the customer's account within 10 (ten) working days from the date of notification by the customer in cases where a customer would be entitled to zero or limited liability for the fraud. Further, banks are required to resolve customer complaints within 90 (ninety) days of receipt of the complaint.
13. Please refer: <https://entrackr.com/2024/06/lenskart-raises-200-mn-in-secondary-round/>
14. Please refer: <https://www.financialexpress.com/market/fibe-eyeing-aum-boost-with-90-million-fundraise-3525396/>
15. Please refer: <https://business.outlookindia.com/corporate/rohit-sharma-makes-an-investment-in-edu-fintech-pioneer-leo1>
16. Please refer: https://startupnews.fyi/2024/06/18/aye-finance-secures-inr-250-cr-debt-to-fuel-msme-lending/#google_vignette
17. Please refer: <https://www.cnbctv18.com/business/startup/women-focused-fintech-startup-lxme-seed-funding-kalaari-capital-19433456.htm>

OUR OFFICES

BENGALURU

101, 1st Floor, "Embassy Classic" # 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD

204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI

#11, Venkatraman Street, T Nagar,
Chennai - 600017 India
T: +91 44 4354 6600
F: +91 44 4354 6600
E: chennai@induslaw.com

DELHI & NCR

2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

9th Floor, Block-B
DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

MUMBAI

1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor
A Wing, Mittal Court
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com

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