January, 2026
ISSN: 2395-7727

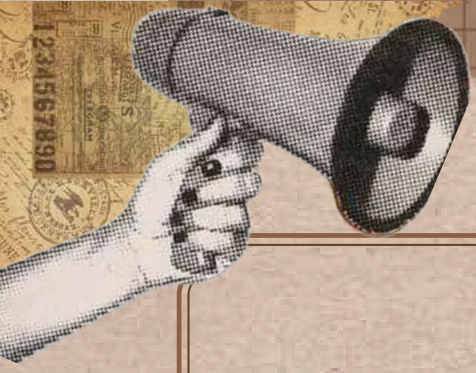
Centre for Banking and Insurance Laws

PRESENTS

NEWSLETTER

ON DEVELOPMENTS IN BANKING AND INSURANCE LAW

JANUARY EDITION



CONTENTS

INCLUSIVE DIGITAL ONBOARDING: LEGAL IMPLICATIONS OF THE 2025 KYC (2ND AMENDMENT) DIRECTIONS

By Himadri Adhikari

Introduction

The digitization of the Indian financial landscape has been celebrated as a triumph of scale and efficiency for a long time. However, for a significant segment of the population, the interface of digital banking has functioned as a gate rather than a bridge. The requirement for a perfectly symmetrical facial scan, the mandate to blink on command during a video call or the necessity of providing clear fingerprints have often proved to be unsolvable hurdles for persons with disabilities. The year 2025 marked a definitive legal correction to this technological bias. This article tries to explore how through a combination of proactive judicial intervention and decisive regulatory drafting, India has established a new "non-negotiable floor" for digital accessibility.

The Judicial Bedrock: Pragya Prasun and the Right to Digital Access

The transformation of the Know Your Customer ('KYC') framework began not in a boardroom, but in the courtroom.

On April 30, 2025, the Supreme Court of India delivered a landmark judgment in the case of Pragya Prasun & Ors. v. Union of India [2025 SCC OnLine SC 993]. This case, which was heard alongside Amar Jain v. Union of India, was brought by acid attack survivors and visually impaired advocates who found themselves effectively locked out of the banking system because they could not satisfy the "liveness" criteria of digital onboarding.

The Court held that in a contemporary society where essential services are mediated through digital platforms, the right to digital access is an intrinsic component of the fundamental right to life and personal liberty under Article 21 of the Constitution of India. The bench, consisting of Justice J.B. Pardiwala and Justice R. Mahadevan, observed that a digital system that assumes a "normative" body is inherently discriminatory. This judicial pronouncement breathed new life into the Rights of Persons with Disabilities Act, 2016 ('RPwD Act, 2016'), specifically Section 3 which mandates equality and non-discrimination, and Section 42

which requires the government to ensure that all content is available in accessible formats.

The 2025 Regulatory Shift

Following the Supreme Court's mandate, the Reserve Bank of India ('RBI') issued the Reserve Bank of India (KYC) (2nd Amendment) Directions, 2025 on August 14, 2025, via Circular No. RBI/2025-26/75 (DOR.AML.REC.24/14.01.001/2025-26). This amendment formally integrated the principles of "reasonable accommodation" into the Master Direction - Know Your Customer (KYC) Direction, 2016.

The amendment introduced three structural changes to the KYC process:

1. Mandatory Non-Rejection: It prohibited the arbitrary rejection of KYC applications from Persons with Disabilities ('PwDs').
2. Aadhaar Face Authentication: It officially recognized face authentication as a valid primary biometric, reducing reliance on fingerprints.
3. Non-Exclusionary Liveness: It mandated that technological hurdles like liveness checks must be designed to accommodate diverse physical abilities.

Breaking the Biometric Barrier: Passive Liveness and Alternatives

The most significant technical hurdle for PwDs has been the "active liveness check." This typically involves requiring a user to perform a specific action, such as blinking, nodding, or reading a random string of numbers. For an individual with total blindness or facial disfigurement, these prompts are often impossible to satisfy.

The 2025 Amendment to Paragraph 18(b)(i) of the Master Direction provides that the liveness check shall not result in the exclusion of persons with special needs. This has forced a shift in the industry toward "Passive Liveness Detection." Unlike active checks, passive liveness uses artificial intelligence to analyze skin texture, depth, and micro-movements to verify a "live" presence without requiring the user to perform any specific physical gesture. Where technology fails to accommodate, the law now mandates a human-in-the-loop alternative, such as a video-KYC assisted by a human agent who can manually verify the customer's identity.

Administrative Accountability: The Requirement of a "Reasoned Order"

Perhaps the most potent legal safeguard in the new directions is the amendment to Paragraph 11. In the past, many PwDs were turned away by bank staff or automated systems with vague technical errors. The new Paragraph 11(c) now mandates that no application for onboarding shall be rejected without "application of mind."

Crucially, the directions require that if a bank decides to reject an application from a PwD, the specific reasons for such rejection must be officially recorded by an officer. This creates a "reasoned order" which is a fundamental requirement of administrative law in India. By documenting the rejection, the bank provides the customer with the legal basis required to file an appeal or approach the Banking Ombudsman under the RBI Integrated Ombudsman Scheme, 2021. This shift ensures that exclusion is no longer an invisible byproduct of technology, but a documented action that carries regulatory consequences.

Legal Liability and the Standard of Care

The 2025 KYC Amendments have significant implications for the liability of financial institutions. Regulated entities (REs) are now under a statutory duty to ensure their digital infrastructure is accessible. Failure to comply with these directions can invite penalties under Section 47A of the Banking Regulation Act, 1949.

Furthermore, the Supreme Court's categorization of digital access as a fundamental right means that banks both public and private, now operate under a higher "standard of care." A bank that fails to upgrade its digital liveness checks to be disability-inclusive could potentially be sued for damages under the RPwD Act, 2016 or through a writ petition for the violation of fundamental rights. The "design-for-all" philosophy is no longer a corporate social responsibility initiative; it is a legal necessity for risk management.

The Interface of Rights: Privacy vs. Accessibility

An emerging legal challenge in the implementation of these directions is the intersection with the Digital Personal Data Protection Act (DPDP), 2023. Inclusive onboarding often requires the collection of sensitive biometric data, such as facial scans or video recordings. Under the DPDP Act, banks must ensure that they obtain

specific, informed, and "unambiguous" consent from the customer.

For a visually impaired customer, providing such consent requires that the bank's digital platform be compatible with screen readers or offer audio-based consent prompts. The 2025 KYC Directions implicitly require that the consent mechanism itself be as accessible as the identification mechanism. If a customer cannot independently read the privacy policy or the consent form, the "informed" nature of that consent is legally questionable.

The Road Ahead: Design for All

The KYC (2nd Amendment) Directions, 2025, represent a landmark shift from technical efficiency to constitutional accountability. They acknowledge that in the 21st century, a bank account is more than a financial tool; it is a gateway to modern citizenship. By anchoring digital protocols in the principles of dignity and equality, the law has ensured that India's financial inclusion journey is truly universal.

The true test of these reforms will lie in their implementation. Banks must now conduct thorough accessibility audits of their mobile applications and websites, ensuring compliance with the Web Content Accessibility Guidelines ('WCAG') 2.1. They must also sensitize their front-end staff to understand that a technical mismatch is not a reason for rejection, but an opportunity to provide a reasonable accommodation.

In conclusion, the legal framework of 2025 has proved that while algorithms may govern the speed of banking, the Constitution must govern its reach. The marriage of technology and disability rights is not just a regulatory requirement; it is a prerequisite for a just and inclusive digital democracy.

OPENING THE DOORS: INDIA ALLOWS 100% FDI IN THE INSURANCE SECTOR

By Pratibha Jatav

Introduction

On December 16, 2025 the Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Bill, 2025 ('**Amendment Bill, 2025**') was passed by both Lok Sabha and on next day by Rajya Sabha. This Amendment Act marks a shift in the Indian insurance regulation framework as it allowed 100% foreign direct investment ('**FDI**') in insurance firms. This amendment is a change in policy and replaces the previous 74 % cap and is a shift in policy towards regulation-based supervision as opposed to ownership-based restrictions. In addition to greater foreign involvement, the Act brings with it specific structural and operational changes to promote capital inflow, flexibility of regulation and growth of the Indian insurance sector.

Background And Policy Context

India has been recording a stable growth in the insurance market, it is still facing low penetration rates especially in the health and life insurance. The previous expansion of FDI limits from 49% to 74% was made in 2021. Now, the Amendment Bill, 2025 addresses these restrictions by permitting full foreign ownership but increasing regulatory watchfulness via the Insurance Regulatory and Development Authority of India ('IRDAI').

Key Amendments

1. Permitting 100% Foreign Direct Investment in Insurance Companies

The removal of the statutory limit on foreign investment is the most important change brought about by the Amendment Act that provides 100% foreign direct investment in Indian insurance companies. This allows foreign insurers to obtain complete ownership in Indian insurance companies without any dilution of capital and or obligatory Indian ownership. The reform aims at bringing in long-term foreign capital, improving the solvency of insurers and increasing the pace of insurance penetration by allowing foreign investors to fully own the company.

Simultaneously, regulatory control is maintained because at least one of the Chairman, the Managing Director, the

Chief Executive Officer must be an Indian resident, whereas restrictions on dividend repatriation and board structure have been removed to allow the company to operate with flexibility and easy investment.

2. Reduction in Net-Owned Fund Requirements for Foreign Reinsurers

The Amendment Act significantly brings down the net-owned fund ('NOF') requirement of foreign reinsurers with operations in India. The limit has been scaled down from 5,000 crore to 1,000 crore making it easy for the global reinsurance players to enter.

NOF comprise paid-up equity capital, free reserves, balance in the share premium account, and capital reserves gained due to excess on sale proceeds. The amendment reduces this requirement thereby promoting the involvement of international reinsurers, increasing the risk distribution capacity and the capacity of the domestic insurance market to take on large-scale and catastrophic risks.

3. Extension of Regulatory Flexibility to IFSCs in SEZs

The Insurance Act, 1938 empowered the Central Government with power to either exempt or amend and change some of the provisions of the Insurance Act to insurers with operations in Special Economic Zones ('SEZs'). This power is expanded to International Financial Services Centres ('IFSCs') that are set up in SEZs in the Amendment Bill, 2025. Notably, this regulatory flexibility is no longer confined to insurers only. The amendment explains that such exemptions and changes are also applicable to insurance intermediaries that carry out their services in SEZ and IFSCs in SEZs.

4. Enhanced Regulatory Powers of IRDAI

The Amendment Bill, 2025 enhances the supervisory role of IRDAI by granting it enhanced powers to regulate costs of management, commission arrangements, governance standards, and measures of protection to policyholders. This represents a deliberate transition to an outcome-based regulation so that the liberalised ownership norms do not undermine market stability and consumer interests.

5. Digitalisation, Data Sharing and Online Premium Payments

The increased use of digital insurance procedures is formally acknowledged by the reform framework. The Amendment Bill, 2025 gives statutory recognition to online payment of premium. Additionally, it introduces express statutory confidentiality framework

under which sharing the data with the third party can be done only in limited circumstances and mostly when the express consent is given. This streamlines regulatory protection, consent regulations, and confidentiality standards.

Conclusion

The Amendment Bill, 2025 has got ways of passage in both the Houses of Parliament, it will take effect only with the Presidential consent and making known the date of commencement by the Government of India. The increase in foreign investment limit to 100% will require similar parallel amendments to be made in the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. It will also require IRDAI to revise its regulations to realise the alterations regarding foreign ownership, reinsurance standards, digital operations, and regulation of intermediaries.

In conclusion, the reforms constitute a substantive and specific reorganization of the Indian insurance system. The amendment will enable further sector expansion and resonate with the vision of the Government of 'Insurance for All by 2047' by ensuring the opening of full access to foreign investment with regulatory reinforcement and institutional transparency.

LET THERE BE CASH: OMO AND USD/INR BUY/SELL AUCTIONS BY RBI

By Shreya Mathur

Introduction

The Reserve Bank of India ('RBI') on December 23, 2025 announced its intentions to conduct a second round of two sets of auctions to inject liquidity into the banking system. The first auction, set to take place in four tranches is the open market operations ('OMO') purchase auction of Government of India securities of an aggregate of ₹ 2,00,000 crore. The second is USD/INR Buy/Sell Swap auction of $10 billion for a tenor of three years.

This follows the first round of these auctions announced on 5th December, 2025 and conducted successfully between December 11-18, 2025. This article explores how RBI manages liquidity in the Indian banking system. It focuses on, the OMO auctions of government securities and the USD/INR Buy/Sell Swap auction, methods undertaken by the body to control the same.

Managing Liquidity

Liquidity refers to either money or assets, such as stocks, bonds etc., which may easily be converted into money.

The RBI concerns itself with three main facets of liquidity i.e. financial liquidity, market liquidity and funding liquidity. Financial liquidity has been defined as a smooth flow of assets amongst various financial institutions representing different financial markets. Market liquidity refers to the ease with which as asset can be sold at short notice, at a low price with an acceptable impact to its price. Funding liquidity is the ability of institutions to meet their liabilities due as and when they arise.

Balancing these facets, the RBI maintains a systemic liquidity. It does so through a number of tools such as OMOs, marginal lending facilities, liquidity adjustment facilities, USD/INR Buy/Sell Swap auction etc.

Open Market Operations

OMO refers to the purchase or sale of government securities by the RBI to and from banks and other financial institutions. It is one of the liquidity management tools used by the central bank. Usually used to control the primary liquidity, this tool can be flexibly used and is easily reversible. It

allows for quick actions as opposed to monetary policies which kick into effect over time.

The recently announced auction entails the purchase of Government of India securities by the RBI in four tranches of ₹50,000 crore each, aggregating to ₹2,00,000 crore. The auctions are set to be held on December 29, 2025, January 05, 2026, January 12, 2026, and January 22, 2026.

The previous bout was conducted in two tranches. Its first auction saw a bid up to ₹1,11,615 crore from 416 offers out of which 84 bids amounting to the announced amount were purchased. The second auction got 679 bids amounting to ₹1,39,104 crore. Out of these, 290 bids amounting to ₹50,000 crore were selected.

USD/INR Buy/Sell Swap Auction

A USD/INR Buy/Sell Swap auction is a buy/sell foreign exchange swap by the RBI. Herein, the eligible banks sell US dollars to the RBI and agree to buy the same amount of US dollars at the end of the swap period. All participants are required to submit their bid with their proposed premium. The premium, whose amount is seen in paisa terms up to two decimal points is used to calculate the cut-off.

The second round of this auction is set to take place on January 13, 2026 and carries a tenor of 3 years. The previous auction was held on December 16, 2025, for $5 billion with a tenor of 36 months. The auction saw 222 bids amounting to $10.35 billion, out of which 118, amounting to $5.07 billion were accepted. The premium cut-off in this case was 765.00 paisa.

Understanding the Move

Financial liquidity remains an important factor in the balance of the system. Tighter financial liquidity has led to severe consequences manifesting in the form of financial crises as the lending and credit facilities fade out.

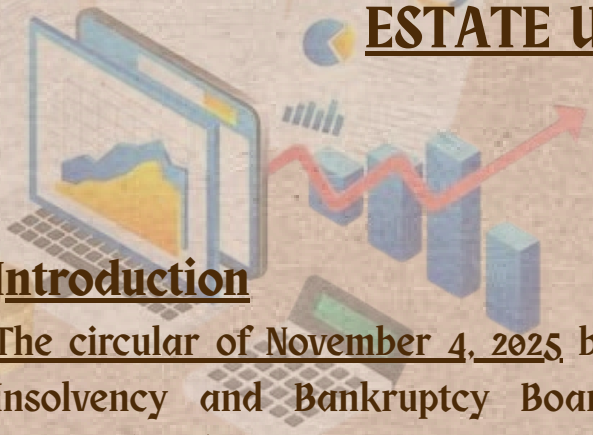
This move comes as a reaction to the growing liquidity deficit in the banking system. The systemic liquidity stands at a deficit of around ₹54,852 crore with the inflow of advance tax payments into government cash balances.

This injection of liquidity will allow banks to lower their interest rates and balance their credit facilities. In addition, by the temporary absorption of dollars, RBI can smoothen volatility in the foreign exchange market and slow down the rupee's move against the dollar.

Conclusion

The RBI has been using all tools in its arsenal as the systemic liquidity goes into deficit. The injection of liquidity comes as a welcome move as banks regain their lendable resources, allowing for lower interest rates and credit facilities to continue.

THE CHANGING CONTOURS OF THE RESTITUTION ESTATE UNDER IBC IN 2025



By Ananya Kreeti

Introduction

The circular of November 4, 2025 by the Insolvency and Bankruptcy Board of India ('IBBI') addresses an inherent doctrinal conflict that is the treatment of assets captured by the Enforcement Directorate ('ED') in circumstances where a corporate debtor has been placed in insolvency proceedings.

Structural Issue

This is not just a technical issue but a structural one. Seized assets have historically occupied an ambiguous legal status. Although they technically fall under the corporate debtor, they do not become accessible to the insolvency professional who handles the resolution process. Also, they cannot be included by prospective bidders in financial models. The intrinsic value of the company i.e. its potential to be rescued is significantly reduced. This gives a perverse result: a company whose value is truly that of a going-concern company can still not be viable in insolvency, critical assets lie beyond the reach of the resolution framework.

The Framework Established

The November 4 circular sets into place a procedural framework that allows the use of insolvency practitioners to apply to the courts to restore seized assets to the resolution estate, which is defined as the collection of corporate assets that can be distributed to creditors and reorganized into a business form. It is a deliberately limited mechanism. Courts have to be convinced that restitution has a real purpose of restructuring and not just to undermine the deterrent effect of the anti-money laundering statute. This avenue is there, but this is a significant break with past practice.

Illustrative Economics

Given a typical situation. An insolvent manufacturing firm has physical assets worth 500 crores plant, property and equipment. In the investigations of money laundering, assets to the tune of 150 crores have been attached by the ED. In the old structure, the business would have been priced by the potential acquirers at 350 crores, which would proportionately lower the recovery of creditors and probably make the

business non-viable as a going concern. In a reformed framework, conditional restitution builds the asset base, and improves the likelihood and amount of creditor recovery and retains employment.

Judicial Validation and Equilibrium

This approach has been signalled by the Supreme Court as jurisprudentially acceptable. In the V Hotels judgement, it allowed restoration of seized asset to the successful resolution applicant with strict security conditions and under ongoing monitoring by the ED. More importantly, the court maintained its authority to re-attach in case of the finding of actual money laundering nexus cases. The result of this decision (alongside complementary developments in jurisprudence) is an expansion of the means of asset recovery that can be used by insolvency professionals.

New rulings have approved the use of flexible monetization arrangements around encumbered assets on which secured creditors have agreed to a substitute with a previous presumption in favour of public auction arrangements. The new rulings give flexibility along with the restitution pathway which gives various possible paths to maximizing asset value within the resolution process.

Continuing Institutional Safeguards

The institutional safeguards still confront the wider resolution estate. Restitution is an option but only if a substantial application and evidence are presented to the court. Also, the security deposits must be of material value. The court carries out an intensive investigation into the good faith of the applicant. ED exercises and resumes its investigative powers. Such institutions render bankruptcy non-effective for the purpose of disguising illegal assets.

Operational Imperatives

The revamped system calls for the new operational specifications to be in place. The insolvency professionals must carry out prior asset mapping along with the independent identification of the confiscated assets. The restitution application should be done in a very short time and backed with complete documentation. The information memoranda should include all the details about the seized assets so that the bidders are able to make rational decisions about the likelihood of restitution.

Conclusion

The doctrinal circular dated November 4 together clarify the relationship between the doctrines of insolvency and the jurisdiction of money laundering. The resolution estate does not represent a new set of values extracted from insolvency but rather a compromise between the values of rescue and of eradicating financial crime through negotiation. This revaluation will influence corporate restructuring techniques more drastically during the year 2025 and subsequent years.

THE INDUSIND BANK CASE: BANKING GOVERNANCE UNDER REGULATORY SCRUTINY

By Priyadarshani Sahoo

Introduction

The IndusInd Bank episode, a major accounting and insider-trading controversy, has put bank governance squarely in the regulatory spotlight. In late 2024, the bank uncovered ₹1,577 crore of hidden losses in its derivatives portfolio and by early 2025, disclosed nearly ₹2,000 crore of one-off losses. This was preceded by internal whistleblowing: former CFO Gobind Jain alerted senior management to "serious issues" and urged external audits when he discovered misreported derivative and microfinance trades dating back to 2015.

The bank reported the matter as a fraud to the Reserve Bank of India ('RBI'), and external agencies (including the Serious Fraud Investigation Office) launched probes. New IndusInd leadership is now invoking RBI-backed accountability measures including clawing back pay from former executives highlighting how India's banking regulators are enforcing stricter governance norms.

Regulatory Framework and RBI Expectations

In recent years the RBI has tightened corporate-governance rules for banks. A landmark 2019 circular on key-manager compensation mandates that banks include "clawback" clauses in senior executives' contracts to recover bonuses in case of misconduct or regulatory breaches. Specifically, RBI guidelines require that at least 50% of a top banker's pay be variable and subject to deferral, with formal malus/clawback arrangements on the deferred portion if wrongdoing emerges.

The IndusInd board's decision to recover former CEO and deputy CEO pay under these provisions directly mirrors this policy. More broadly, the RBI's 2021 governance directions for banks impose stringent board standards: independent board chairs, robust audit and risk committees of mostly non-executive directors, limits on director tenures, and "fit and proper" norms for appointments. (The RBI's ongoing "Master Direction on Governance" will consolidate these requirements.)

Collectively, these regulations elevate executive accountability and risk oversight as core governance principles, moving India's banks toward global best practices.

Board Action and Accountability Measures

IndusInd's board has explicitly cited these RBI norms in responding to the lapse. Sources report that the board obtained legal advice "on fixing staff accountability" under the bank's code of conduct and RBI guidelines. The bank has labeled the episode as "accounting misstatements, failure of internal controls and compliance," effectively framing it as senior-management misconduct. Consistent with the RBI's guidance, the bank's employment contracts for executives include clawback clauses, which it is now activating to reclaim fixed and variable pay paid to the ex-CEO and deputy CEO over 2023-25. Reuters notes that RBI regulations have allowed such clawback mechanisms since 2019, though they have been rarely used until now. The board's move to invoke these provisions signals a new enforcement posture.

Following RBI directives, independent audits and forensic reviews (by PwC and Grant Thornton) have been carried out. As one report notes, "Following RBI directions, PwC reviewed derivative transactions ... while Grant Thornton conducted a forensic audit covering FY16-FY24," identifying dozens of individuals linked to the lapses. The RBI has similarly questioned the bank's hedging practices for compliance and engaged with law-enforcement agencies. Crucially, IndusInd itself filed formal reports with the RBI and regulators, triggering external probes: the Economic Offences Wing and markets regulator SEBI have questioned former executives on insider-trading allegations tied to the timing of loss disclosures. All of this underscores how RBI's risk-governance expectations extend beyond internal controls to public accountability: banks must report major fraud and cooperate with investigations.

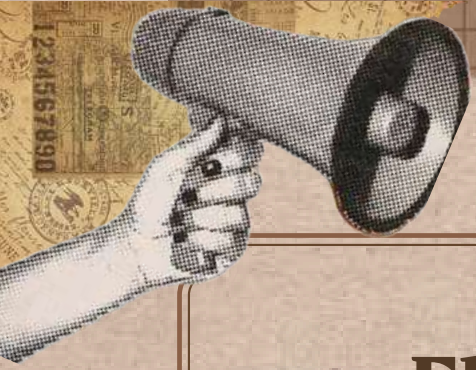
Implications for Indian Banking Governance

The IndusInd case highlights broader implications for board oversight and governance standards. First, it reinforces RBI's insistence that bank boards actively monitor risk reporting and compliance. Under RBI rules, audit and risk committees of the board must rigorously review financial statements, asset quality and internal controls. The failures at IndusInd allegedly unknown to auditors until late in 2024 suggest

lapses in those reviews. Going forward, boards will likely intensify scrutiny of treasury and microfinance portfolios to avoid hidden losses. Second, executive compensation policies have real teeth. The public clawback illustrates that deferral and recovery clauses are not mere formalities but enforceable penalties under RBI supervision. Finally, this episode may deter similar governance failures elsewhere: the RBI will expect other banks to follow suit in tightening controls and promptly reporting irregularities.

Conclusion

The IndusInd Bank saga from the whistleblower's alerts to the board's claw back action illustrates the RBI's more muscular regulatory stance on bank governance. By enforcing recent guidelines on board structure, risk oversight and executive compensation, regulators are making clear that corporate lapses will trigger tangible penalties for executives. Indian banks will need to ensure that internal controls and board supervision are robust enough to meet these expectations. In this way, the IndusInd case serves as a cautionary tale and a test of India's evolving framework for banking governance and accountability.



EDITORIAL BOARD

EDITOR-IN-CHIEF

Himadri Adhikari

ASSISTANT EDITORS

Rahul Agarwal

Shreya Mathur

Ananya Kreeti

Sriyya Jain

DESIGN TEAM

Ananya Kreeti

Khyati Mahto

Rimjhim Bansal

CONTACT US AT:

cbil@nluo.ac.in