Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Edition 26th 23-24

Week – November 06th to November 11th

<u>Quote for the week:</u>

“You pray for rain, you gotta deal with the mud too”

– *Denzel Washington (American actor and film producer)*

Introduction

We welcome you to our weekly newsletter!

The ‘Swift e-Bulletin’ - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. This week’s newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Ministry of Corporate Affairs (“MCA”), Securities and Exchange Board of India (“SEBI”), Reserve Bank of India (“RBI”) and International Financial Services Centres Authority (“IFSCA”)

The Regulatory authorities provided various updates/relaxations, some of which being:

- MCA vide Notification dated November 09, 2023 issued Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.

- RBI vide Notification dated November 07, 2023 issued Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week November 06^{th} to November 11^{th}.

Thank you,
Swift team

REGULATORY UPDATES

MCA

1. **MCA vide Notification dated November 09, 2023 issued Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023**

- MCA vide this Notification has issued the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 which shall come into force from the date of publication in Official Gazette

- Further Rule 3 of these rules provides the definitions some of the important definitions are as follows

  - “Control” shall include the right to appoint majority of the designated partners or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their contribution or management rights or LLP agreements or other agreements or in any other manner;

  - “majority stake” means

    a) holding more than one-half of the equity share capital in the body corporate; or

    b) holding more than one-half of the contribution in a partnership entity; or

    c) holding more than one-half of the voting rights in the body corporate; or

    d) having the right to receive or participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate including a partnership entity as the case may be;

  - “Reporting Limited Liability Partnership" means a limited liability partnership required to comply with the requirements of section 90 of the Companies Act, 2013 as modified by the notification.

  - “Significant Beneficial Owner" in relation to a reporting limited liability partnership, means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting limited liability partnership, namely: -

    a) holds indirectly or together with any direct holdings, not less than ten per cent of the contribution;

b) holds indirectly or together with any direct holdings. not less than ten percent of voting rights in respect of the management or policy decisions in such limited liability partnership;

c) has right to receive or participate in not less than ten per cent of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;

d) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct holdings alone

- "Ultimate Holding Company" is a holding company as defined under clause (46) of section 2 of the Companies Act, 2013, which is not a subsidiary of any other body corporate.

- Every reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in **Form No. LLP BEN-I** to the reporting limited liability partnership within ninety days from such commencement**.**

- Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. LLP BEN-1 to the reporting limited liability partnership, within thirty days of acquiring such significant beneficial ownership or any change therein.

- Upon the receipt of declaration mentioned above, the reporting limited liability partnership shall file a return in **Form No. LLP BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it and shall also maintain a register of significant beneficial owners in **Form No. LLP BEN-3**.

- A limited liability partnership shall give notice in **Form No. LLP BEN-4** seeking information in accordance with sub-section (5) of section 90 of Companies Act, 2013 as applied to the limited liability partnership by the notification.

- These rules shall not apply to the extent the contribution of the reporting limited liability partnership is held by:

  - the Central Government, State Government or any local authority;

  - a reporting limited liability partnership, or a body corporate, or an entity, controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government:

- an investment vehicle registered with and regulated by the Securities and Exchange Board of India. such as mutual funds, alternative investment funds (**“AIF”**), Real Estate Investment Trusts (**“REITs”**) and Infrastructure Investment Trust (**“InVITs”**)

- an investment vehicle regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

To read the Notification in detail and annexures, please click here.

SEBI

1. **SEBI vide Circular dated November 08, 2023 issued the Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors.**

- SEBI in Regulation 61A (2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**") specifies that any amount of interest/dividend/redemption amount remaining unclaimed for a period of 30 days from their respective due date, the listed entity shall within a period of 7 days from the expiry of 30 days deposit the amount in the Escrow Account.

- While the above mentioned Regulation laid down the treatment of the unclaimed amount, there was a need to have a standardized procedure in place for all the Listed Entities.

- The Annexure – A of the said Circular stipulates in detail the process to be followed by the Listed Entities to transfer the money to the Escrow Account.

- Regulation 61A (3) of the SEBI LODR Regulations also provides that any amount transferred to Escrow Account under Regulation 61A (2) and remaining unclaimed for a period of 7 years shall be transferred to

    - In case of a Listed Company: to 'Investor Education and Protection Fund' (IEPF) constituted under Section 125 of the Companies Act, 2013

    - In case of a Listed Entity not being a Company: to Investor Protection and Education Fund' (IPEF) constituted by SEBI

- SEBI has made necessary amendments to Regulation 4(1) and 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (IPEF Regulations) to define the manner of handling the unclaimed amounts lying, in particular, in the Escrow Accounts of the listed entities which are not companies, transfer of such amounts to the IPEF and claim thereof by the investors.

- Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilized for refund to the listed entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund.

- Hence, an application for claim of entitled amounts needs to be made by an investor to the listed entity which shall process the claim and then seek refund from the Board for the said amount in "**Form B**".

- The procedural framework to be followed by the Listed Entities not being a Company for transfer of such unclaimed amounts from Escrow Account to IEPF and investor claims has been specified in Annexure – B. The Listed Entity shall furnish **Form A** while transferring the amount to IEPF Account.

- SEBI mandates the Stock Exchanges, Issuers and the Depositories to comply with the conditions in this Circular, disseminate the information on their website and put the necessary infrastructure in the Circular along with communicating and creating awareness among investors.

- ***The Circular shall come into force from March 01, 2024***.

- Further, listed entities having unclaimed amounts in the Escrow Account for less than years, as on February 29, 2024, shall start computing interest, as per provisions of Annex-A, from March1, 2024.

- Similarly, the compliances of Annexure-B are to be followed by listed entities which are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as on February 29, 2024 while transferring the unclaimed amounts of the investors to IPEF.

To read the Circular in detail, please click here.

2. SEBI vide Circular dated November 08, 2023 issued Procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) & Real Estate Investment Trusts (REITs) and manner of claiming such amounts by unitholders.

- Regulation 18(16)(b) of SEBI (Real Estate Investment Trusts) Regulations, 2014 & SEBI (Infrastructure Investment Trusts) Regulation, 2014, mandates that not less than ninety percent of Net Distributable Cash Flows of the InvITs & REITs shall be distributed to the unitholders.

- The above-mentioned distribution by the InvITs & REITs, is required to be declared and made not less than once every six months in every financials year and shall be made not later than fifteen days from the date of such declaration. In certain cases it has been observed that the distribution amounts remained unclaimed or unpaid because of various reasons, including failure to update account details by the unitholders.

- SEBI, in order to deal with any amount remaining unclaimed or unpaid out of distributions inserted Regulation 18(6)(e) and Regulation 18(6)(f) of InvIT & REITs respectively, as below:-

- Any amount remaining unclaimed or unpaid out of the distributions declared by a InvIT & REITs in terms of sub-clause (c), shall be transferred to the “Investor Protection and Education Fund” constituted by the Board in terms of section 11 of the Act, in such manner as may be specified by the Board

- Further SEBI shall specify the manner to claim the unclaimed or unpaid amount of a person that has been transferred to the Investor Protection and Education Fund.

- Amendments have been made to Regulation 4(1) and 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 to define the manner of handing the unclaimed amounts lying with the InvITs & REITs and transfer of such amounts to the IPEF and claim thereof by the unitholders.

- The unclaimed amounts credited to the IPEF shall be utilised for refund to the entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund.

- The framework defining the procedure to be followed by an InvIT & REIT for transfer of unclaimed amounts, initially to an Escrow Account and subsequently to, the IPEF and claim thereof by a unitholder, in the Annexure provided with the said circulars.

- ***The provisions of the said Circulars shall come into effect from March 1, 2024***.

To read the Circular on InvITs, please click here.

To read the Circular on REITs, please click here.

RBI

1. **RBI vide Notification dated November 07, 2023 issued Reserve Bank of India (Information Technology Governance, Risk, Controls and Assurance Practices) Directions, 2023.**

- Under paragraph IV (8) of the e- statement on developmental and regulatory policies released with the bi-monthly monetary policy statement 2021-22 on February 10, 2022, wherein it was announced by the RBI that draft guidelines, updating and consolidating the instructions relating to Information Technology (**"IT")** Governance and Controls, Business Continuity Management and Information Systems Audit, will be issued.

- Subsequently draft master direction on the aforementioned subject was published in October 2022 seeking public comments and based on feedback received, this master direction has been notified by the RBI.

- This master direction of the RBI includes VII chapters which inter-alia includes the following:

  - Chapter I – Preliminary.

    a) These Directions incorporate, consolidate and update the guidelines, instructions and circulars on IT Governance, Risk, Controls, Assurance Practices and Business Continuity/ Disaster Recovery Management and shall come into effect from April 01, 2024

    b) These directions shall be applicable to all banking companies, all Non-Banking Financial Companies, all Credit Information Companies, EXIM Bank, National Bank for Agriculture and Rural Development, National Bank for Financing Infrastructure and Development, National Housing Bank and Small Industries Development Bank of India.

    c) These directions shall not be applicable to Local Area Banks and NBFC-Core Investment Companies

  - Chapter II - IT Governance

  - Chapter III - IT Infrastructure & Services Management

  - Chapter IV - IT and Information Security Risk Management

  - Chapter V - Business Continuity and Disaster Recovery Management

  - Chapter VI - Information Systems (IS) Audit

- Chapter VII – Repeal and Other Provisions

- The provisions of these Directions shall be in addition to, and not in derogation of the provisions of any other laws, rules, regulations or directions, for the time being in force.

- For the purpose of giving effect to the provisions of these Directions or in order to remove any difficulties in the application or interpretation of the provisions of these directions, the RBI may, if it considers necessary, issue necessary clarifications in respect of any matter covered herein and the interpretation of any provision of these directions given by the RBI shall be final and binding.

To read the Notification in detail, please click here.

3. **RBI vide Notification dated November 08, 2023 issued 'Fully Accessible Route' ("FAR") for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds.**

- The RBI in past had issued Press release on 'issuance calendar for marketable dated securities for October 2023-March 2024' dated September 26, 2023, which notified the issuance calendar for Sovereign Green Bonds for the fiscal year 2023-24 wherein specified categories of central government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

- Further the government securities that are eligible for investment under the FAR (**"specified securities"**) was notified by RBI vide Circulars FMRD.FMSD.No.25/14.01.006/2019- 20 dated March 30, 2020,circular no. FMRD.FMID.No.04/14.01.006/2022-23 dated July 07, 2022 and circular no. FMRD.FMID.No.07/14.01.006/2022-23 dated January 23, 2023.

- RBI has now decided through this Circular to designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR.

- These Directions shall be applicable with immediate effect.

To read the Notification in detail, please click here.

4. **RBI vide Notification dated October 31, 2023 issued Circular on Regulation of Payment Aggregator – Cross Broder (PA – Cross Broder)**

- RBI keeping in view the developments that have taken place in the area of cross- border payment, it has been decided to bring all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator – Cross Broder (PA – CB).

- RBI under the said Circular have defined PAs – CB are entities that facilitate cross – border payment transactions for import and export of permissible goods and services in online mode.

- RBI vide the said Circular inter-alia have issued the following regulations, as below:

  - Under the said regulation AD Category – I Banks do not require separate approval from the RBI for undertaking PA – CB activity.

  - Non – Banks which provide PA – CB services as on date of this circular, shall apply to the RBI for authorization by April 30, 2024, they shall be allowed to continue such services till they receive communication from the RBI regarding the decision on their application.

  - All non-bank PA – CBs as per – requisite for seeking authorization from the RBI shall register themselves with the Financial Intelligence Unit – India (FIU – IND)

  - Non – banks providing PA - CB services as on the date of this circular, is required to have a minimum networth of INR 15 Crore at the time of submitting application to the RBI for authorisation and a minimum networth of INR 25 Crore by March 31, 2026.

  - New non-bank PA – CBs is required to have a minimum networth of INR 15 crore at the time of submitting applications to the RBI for authorisation and shall attain a minimum networth of INR 25 crore by end of the third financial year of grant of authorisation.

  - Import only PA-CB shall maintain an Import Collection Account (ICA) with an AD Category-I scheduled commercial bank.

  - Payments for imports can be carried out using any payment instrument provided by authorized payment systems in India, except small PPIs.

  - Export only PA-CB shall maintain Export Collection Account (ECA) – denominated in Indian Rupees (INR) and / or foreign currency (i.e. non-INR) – with an AD Category-I scheduled commercial bank. An ECA for each non-INR currency shall be maintained separately.

  - Settlement in Non-INR currencies shall be permitted only for those merchants which have been directly onboarded by the PA-CB.

  - In respect of import and export transactions processed by PA-CBs, the maximum value per unit of goods / services sold / purchased shall be ₹25,00,00.

  - For PA-CB transactions, AD banks maintaining ICA / ECA shall ensure that all requirements under FEMA, including for reporting and reconciliation of entries in EDPMS / IDPMS, are adhered to.

  - The said circular shall be applicable to All Payment System Providers and Payment System Participants.

To read the Circular in detail, please click here

IFSCA

1. **IFSCA vide Circular dated November 03, 2023 amended the Reporting Norms for Fund Management Entities under IFSCA (Fund Management) Regulations, 2022.**

- IFSCA specified the reporting norms for Fund Management Entities (FMEs) vide Circular dated May 31, 2023.

- The above mentioned Circular has been partially modified wherein FMEs are advised to provide information in the prescribed formats on a quarterly basis.

- Subsequently, all the mention wherein the reporting to be made on a Half Yearly Basis as mentioned in the initial Circular shall pursuant to this Circular shall be on a Quarterly Basis.

To read the Circular in detail, please click here.

JUDGEMENTS/ ORDERS

SEBI ORDER

1. **Adjudication order in the matter of inspection of Inventure Merchant Banker Services Private Limited.**

- SEBI had conducted inspection of documents and other records of Inventure Merchant Banker Services Private Limited (hereinafter referred as "**Noticee**") registered with SEBI as a Merchant Banker ("**MB**") having Registration No. INM000012003 to verify the possible violation(s) of the provisions of the SEBI (Merchant Bankers) Regulations, 1992 ("**MB Regulations**"), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and provisions of SEBI circulars by the Noticee.

- During the inspection, the following violations were observed:
  - Failure to ensure proper due diligence regarding estimation of Working Capital requirement in SME – IPO.
  - Failure to submit half-yearly report within the stipulated time.
  - Failure to update track record on the website and false submission on the same.

- SEBI initiated the Adjudication proceedings and the Adjudicating Officer ("**AO**") was appointed to inquire into and adjudge for the aforesaid alleged violations by the Noticee. Accordingly, a show cause notice was issued to the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under section 15EB of the SEBI Act for the aforesaid alleged violations.

- After conducting the inspection of Documents, the AO is of the opinion that the role of MB is crucial to the development of the securities market, especially for the company's involved/interested in raising capital from market for whom the MB is responsible for due diligence and proper disclosures in the offer document relied upon by the investors. So, it is of utmost importance that every MB abides by the relevant regulations, provisions of SEBI/Exchange circulars and various guidelines issued by SEBI/Exchanges. The non-compliances on the part of MB as mentioned in the facts of the case clearly shows that it has failed in its fiduciary duties owned to its clients.

- After considering the facts and the observations of the case, the AO imposed penalty of INR 7,00,000 on the Noticee for violation of various provisions of SEBI Circular and MB Regulations.

To read the Order in detail, please click here.

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

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