Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Edition 31st 23-24

Week – January 01st to January 06th

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

“Life is like riding a bicycle. To keep your balance, you must keep moving.”

– ***Albert Einstein*** *(Theoretical physicist)*

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 Securities and Exchange Board of India (“**SEBI**”), Reserve Bank of India (“**RBI**”) and International Financial Services Authority (“**IFSCA**”).

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

- SEBI vide Notification dated January 03, 2024 issued Implementation of Section 35 of Unlawful Activities (Prevention) Act 1967.

- RBI vide Notification dated December 21, 2023 issued Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week January 01st to January 06th.

Thank you,
Swift team

REGULATORY UPDATES

SEBI

1. **SEBI vide Notification dated January 03, 2024 issued Implementation of Section 35 of Unlawful Activities (Prevention) Act 1967.**

- The procedures outlined in the Government of India's Order dated February 2, 2021 shall be strictly followed, and meticulous compliance shall be ensured, in accordance with Clauses 49 and 51 of the SEBI Master Circular titled "Guidelines on Anti-Money Laundering (**"AML"**) Standards and Combating the Financing of Terrorism (**"CFT"**) / Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under" dated February 03, 2023.

- Further, to this connection, please refer to the Gazette notification/s of the Ministry of Home Affairs in respect of 2 individuals/entities who have been declared as 'Terrorists/Terrorist Organization's and have been listed in the Schedule I/IV of the UAPA 1967, under Section 35of UAPA 1967.

- The Stock Exchanges, Depositories, KRAs, AMFI and Registered Intermediaries are advised to take note of the aforementioned Gazette Notifications for necessary compliance.

To read the Notification in detail, please click here.

2. **SEBI vide Circular dated January 05, 2024 have issued Framework for Short Selling**

- The Master Circular of SEBI on Stock Exchanges and Clearing Corporations dated October 16, 2023 contains the framework on "Short Selling and Securities Lending and Borrowing Scheme"

- SEBI vide the Circular dated January 05, 2023 has amended "Annexure 3" of the Master Circular on Stock Exchanges and Clearing Corporations. The amendment is issued by SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

- Selling a stock which the seller does not own at the time of trade shall be defined "Short selling".

- Under the amended framework all classes of investors, i.e. retail and institutional investors, shall be permitted to short sell.

- All investors would be required to mandatorily honor their obligation of delivering the securities at the time of settlement, further naked short selling shall not be permitted in the Indian securities market.

- All transactions would be grossed for institutional investors at the custodians' level and the institutions would be required to fulfil their obligations on a gross basis. The custodians, however, would continue to settle their deliveries on a net basis with the stock exchanges.

- Necessary uniform deterrent provisions shall be framed by the stock exchanges and appropriate actions against the brokers for failure to deliver securities at the time of settlement which shall act as a sufficient deterrent against failure to deliver.

- The securities traded in F&O segment shall be eligible for short selling. SEBI may review the list of stocks that are eligible for short selling transactions from time to time.

- The institutional investors shall disclose upfront at the time of placement of order whether the transaction is a short sale. However, retail investors would be permitted to make a similar disclosure by the end of the trading hours on the transaction day.

- The brokers shall be mandated to collect the details on scrip-wise short sell positions, collate the data and upload it to the stock exchanges before the commencement of trading on the following trading day.

- The stock exchanges shall then consolidate such information and disseminate the same on their websites for the information of the public on a weekly basis. The frequency of such disclosure may be reviewed from time to time with the approval of SEBI.

- The amendment is issued by SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

To read the Circular in detail, please click here.

RBI

1. **RBI vide Notification dated December 21, 2023 issued Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023.**

- Under the new regulations no person resident in India shall make or receive payment from a person resident outside India provided that RBI may, on an application made to it, permit a person resident in India to make or receive payment. Further, such receipt and payment, unless provided otherwise, be made through an Authorised Bank or Authorised Person.

- The receipt or payment for export to or import from Nepal to Bhutan for eligible goods and services shall be made in Indian Rupees provided that in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency, such receipts towards the amount of the export may be in foreign currency.

- The Receipt and payment from Nepal and Bhutan for transactions other than trade transactions shall be made in Indian Rupees provided that in case of overseas investment in Bhutan, payment may also be made in foreign currency.

- The receipt or payment for export to or import from Member countries of Asian Clearing Union, other than Nepal and Bhutan shall be made through ACU mechanism or as per the directions issued by the Reserve Bank to authorised dealer from time to time.

- In case where the goods are shipped to India from a member country of ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the receipt and payment for import of eligible goods and services shall be in a manner as may be provided in the extant Foreign Trade Policy framed by the Central Government.

- In case of countries other than member countries of ACU, the receipt or payment for export to or import for eligible goods and services shall be made in Indian rupees or in any foreign currency in a manner as may be provided in the extant Foreign Trade Policy framed by the Central Government.

- In case of transactions other than trade transactions with other countries shall be in Indian or any foreign currency.

- Payment and receipt in India for any current account transaction, other than a trade transaction, between any person resident in India and a person resident outside India, who is on a visit to India, may be made only in Indian Rupees. Further, such transaction may also be made by debit/ credit to a bank account maintained in terms of the rules, regulations or directions issued under the Foreign Exchange Management Act.

To read the Notification in detail, please click here.

2. **RBI issued Master Direction dated December 28, 2023 on Lending to Micro, Small & Medium Enterprises (MSME) Sector.**

- RBI vide with Master Direction issued an Updation and number of instructions / guidelines to banks relating to lending to the Micro, Small and Medium Enterprises Sector.

- The following are further important updates:

  - All the above enterprises are required to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'("**URC**"). For PSL purposes banks shall be guided by the classification recorded in the Udyam Registration Certificate ("**URC**").

  - The certificate issued on Udyam Assist Portal ("**UAP**") to Informal Micro Enterprises ("**IMEs**") shall be treated at par with Udyam Registration Certificate for the purpose of availing Priority Sector Lending benefits. IMEs with an Udyam Assist Certificate shall be treated as micro enterprises for the purpose of PSL classification.

  - Banks are eligible to issue credit card under Master Direction - Credit Card and Debit card-Issuance and Conduct Directions, dated April 21, 2022 may issue General Credit Cards to individuals/entities sanctioned working capital facilities for non-farm entrepreneurial activities which are eligible for classification under the priority sector guidelines General Credit Card ("**GCC**") as per terms and condition approved by board approved policies of bank laid down by RBI.

To read the Master Direction in detail, please click here.

3. **RBI issued Master Direction on Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year.**

- Pursuant to Statement on Development and Regulatory Polices under Second Bi-monthly Monetary Policy Statement for 2019-20 issued regarding Comprehensive Review of Money Market; draft Directions on Call, Notice and Term Money, Certificate of Deposit and the Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year markets were released for market feedback.

- The Directions on Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year have been reviewed based on market feedback and subsequently Master Direction - Reserve Bank of India (Commercial Paper and Non-Convertible Debentures of original or initial maturity upto one year) Directions, 2024 have been issued.

- The Master Directions inter-alia detail on the below:

  - Definitions under the Master Directions.
  - Conditions for eligibility of issuers.

- Guidelines for Primary issuance, End-use, Rating requirement, Primary Market.
- Roles and Responsibilities of Issuing and Paying Agents, Credit Rating Agency and Debenture Trustee.
- Obligation to provide information sought by Reserve Bank of India.

- Annexure-I of the Master Directions details out the Minimum disclosure in the offer document by issuers of Commercial Paper and Non-Convertible Debentures.

- Annexure-II of the Master Directions provides a format for reporting of details of outstanding Commercial Papers and Non-Convertible Debentures held in the offer document.

- Annexure-III of the Master Directions provides a format for Quarterly Reporting to be done by the Debenture Trustee.

To read the Master Direction in detail, please click here.

IFSCA

1. IFSCA vide Circular dated January 05, 2024 included “Financial Company” and “Financial Unit” as Credit Institution under Credit Information Companies (Regulation) Act, 2005.

- IFSCA received numerous representations from the stakeholders seeking inclusion of Finance Company as defined under Regulation 2(1)(e) and Finance Unit as defined under Regulation 2(1)(f) of the IFSCA (Finance Company) Regulations, 2021 [FC Regulations] under “**Credit Institution**” defined under Section 2(f) of Credit Information Companies (Regulation) Act, 2005 [CIC Act].

- Upon due consideration of the representations IFSCA specified inclusion of Finance Company and Finance Unit undertaking the following under the ambit of Credit Institution:

  (i) Lending in the form of loans, commitments and guarantees, credit enhancement, securitisation, financial lease, and sale and purchase of portfolios, as specified in sub-clause (a) of clause (ii) of sub-regulation (1) of Regulation 5 of the FC Regulations;
  (ii) Factoring and forfaiting of receivables, as specified in sub-clause (b) of clause (ii) of sub-regulation (1) of Regulation 5 of the FC Regulations;
  (iii) All or any of the activities mentioned in sub-clause (i) and (ii) above, if carried out by a Finance Company/Finance Unit as a Global/Regional Corporate Treasury Centre, and
  (iv) All or any of the activities mentioned in sub-clause (i) and (ii) above, without a customer interface, as specified in sub-clause (m) of clause (iii) of sub regulation (1) of Regulation 5 of the FC Regulations

To read the Circular in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

Call us to explore a topic or let us answer your questions

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.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com