Swift e-Bulletin

Week – April 01st to April 06th

Quote for the week:

"Attitude is a little thing that makes a big difference."

–Winston Churchill *(Former Prime Minister of the United Kingdom)*

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 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 International Financial Services Authority ("**IFSCA**") and Reserve Bank of India ("**RBI**")

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

- **RBI issued Circular on investments in Alternative Investment Funds (AIFs).**
- **IFSCA vide Circular dated April 01, 2024 amended the IFSCA (Vault Manager) Circular, 2021 dated August 25, 2021.**

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

Thank you, Swift team

Reserve Bank of India (RBI)

1. RBI issued Circular on investments in Alternative Investment Funds (AIFs)

- RBI with a view to ensure uniformity in implementation among the Regulated Entities ("**RE**"), and to address the concerns flagged in various representations received from stakeholders, it is advised as under: -

  - Downstream investments as mentioned under Circular on Investments in AIFs dated December 19, 2023, shall exclude investments in equity shares of the debtor company of the RE, but shall include all other investments, including investments in hybrid instruments.

  - Provisioning in terms of the said Circular shall be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme.

  - Paragraph 3 of the Circular shall be applicable in cases where the AIF does not have any downstream investment in a debtor company of the RE. If the RE has investment in subordinated units of an AIF scheme, which also has downstream exposure to the debtor company, then the RE shall be required to comply with paragraph 2 of the Circular.

  - Further with reference to paragraph 3 of the Circular proposed deduction from capital shall take place equally from both Tier-1 and Tier-2 capital and reference to investment in subordinated units of AIF Scheme includes all forms of subordinated exposures, including investment in the nature of sponsor units.

- Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of the Circular.

- The circular shall be applicable to all commercial banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks), All Primary (Urban) Co-operative Banks/State Co-operative Banks/ Central Co-operative Banks, All All-India Financial Institutions, All Non-Banking Financial Companies (including Housing Finance Companies)

To read the Circular in detail, please click here.

2. RBI vide Notification dated April 01, 2024 notified Master Circular - Guarantees, Co-Acceptances & Letters of Credit – Urban Co-operative Banks ("UCBs").

- RBI through this Master Circular issued guidelines to UCBs on following topics which are as follows: -

  - Guarantees

    Various Guidelines for issuance of Guarantees relating to Maturity, Volume, Secured Guarantees, Unsecured Guarantees, guarantees in respect of Commodities covered under Selective Credit Controls, Safeguarding in Issuance of Guarantee.

Due to various complaints regarding non-payment or delay in payment of bank Guarantees, Delay in Obtaining Certified Copies of Judgments, Correspondence with Government Departments there are Guidelines and instruction been laid down.

- Co-acceptance of Bills

  Due to various irregularities in Co-acceptance of bills banks should keep in view the following safeguards which is stated in Circular.

- Letters of Credit ("LCs")

  Further RBI has issued guidelines for grant of LCs facility, LCs for commodities covered under selective credit controls, safeguards in opening of LCs and payment under LCs - immediate settlement of claims.

  Other common guidelines regarding credit exposure norms and statutory / other restrictions on non-fund-based limits specifying exposure ceilings and other restrictions.

▪ Banks are exposed to various risks in every financial transaction including commitments in the form of Guarantees, Co-acceptances, LCs etc. The managements of UCBs have to base their business decisions on sound risk management systems with the ultimate objective of protecting the interest of depositors and stakeholders. It is, therefore, important that UCBs adopt effective Asset-Liability Management (ALM) systems to address the issues related to liquidity, interest rate and currency risks. Banks should invariably follow the ALM guidelines issued by Reserve Bank in this regard.

To read the Notification in detail, please click here.

3. RBI vide Notification dated April 01, 2024 notified Master Circular on Board of Directors - UCBs.

▪ RBI through Master Circular regarding issued guidelines for constitution of Board of Directors of UCBs by specifying have at least two professional Directors. Banks should also have a suitable provision in their byelaws to ensure this and other requirement which needs to follow as stated in Master Circular.

▪ Further specified roles of Board of Directors and various other inter alia by the following guidelines:

▪ In order to ensure and enhance the effectiveness of internal audit/inspection as a management tool, an apex Audit Committee should be set up at the Board level for overseeing and providing directions to the internal audit/inspection machinery and other executives of the bank.

▪ Further Audit Committee of the Board (ACB) should review the implementation of the guidelines issued by the RBI and submit a note thereon to the Board at quarterly intervals. The major duties/responsibilities of the ACB which are stated in the Master Circular.

- The primary responsibility of risk management lies with the Board. In order to focus the required level of attention on various aspects of risk management, UCBs having asset size of ₹5000 crore or above (as on March 31 of the previous year) are advised to set up a Risk Management Committee (of the Board). The Board shall decide the membership, scope of work and frequency of meeting of the Risk Management Committee.

- Payment of fees and allowances to directors – All expenses on the conduct of Board meetings may be shown against item 3 of P&L Account i.e., "Directors and Local Committee Members – Fees and Allowance". Such expenses would include amounts actually paid to the directors and Local Committee members as also amounts spent on their behalf for attending such meetings.

To read the Notification in detail, please click here.

4. RBI vide Notification dated April 01, 2024 notified Master Circular on SHG-Bank Linkage Programme.

- RBI has, from time to time, issued a number of guidelines/instructions to banks on SHG-Bank Linkage Programme.

- In order to enable banks to have instructions at one place, the Master Circular incorporating the existing guidelines/ instructions on the subject has been updated and enclosed.

- The SHGs, registered or unregistered, which are engaged in promoting savings habit among their members are eligible to open savings bank accounts with banks. These SHGs need not necessarily have already availed of credit facilities from banks before opening savings bank accounts. The instructions on simplified Customer Due Diligence (CDD) applicable to SHGs as prescribed in Chapter VI of the Master Direction - Know Your Customer (KYC) Direction, 2016 (as updated from time to time) shall be adhered to.

- Lending to SHGs

  - Bank lending to SHGs should be included in branch credit plan, block credit plan, district credit plan and state credit plan of each bank.As per operational guidelines issued by NABARD, SHGs may be sanctioned savings linked loans by banks (varying from a saving to loan ratio of 1:1 to 1:4).

- Interest rates

  - The banks would have the discretion to decide on the interest rates applicable to loans given to Self Help Groups/member beneficiaries, subject to regulatory guidelines on interest rate on advances contained in Master Direction - Reserve Bank of India (Interest Rate on Advances) Directions, 2016.

- Separate Segment under priority sector –

- Loans to SHGs are allowed to be classified under Priority Sector Lending (PSL) under the respective categories viz Agriculture, MSME, Social Infrastructure and others, subject to extant guidelines of Master Directions – Priority Sector Lending (PSL) – Targets and Classification.

- And various guidelines regarding presence of defaulter in SHG Lending, Capacity Building and Training and Monitoring, Review of SHG Lending are stated in circular.

To read the Notification in detail, please click here.

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INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA vide Circular dated April 01, 2024 amended the IFSCA (Vault Manager) Circular, 2021 dated August 25, 2021.**

    - The IFSCA (Vault Manager) Circular, 2021 issued as part of Annexure II of the consolidated operating guidelines dated August 25, 2021, have specified the applicable fees for Vault Managers.

    - The partial modification to the Circular dated August 25,2021 are as follows: -

        - Under Chapter I clause 1(4) A registered Vault Manager may make an application in such form and manner as may be specified by the authority for registration of additional vault(s) under its existing registration.

        - Under Chapter II clause 4(1) provided that no additional security deposit shall be required in case of registration of additional vault(s) under the existing registration of the registered Vault Manager.

        - Under Chapter III clause 11(6) the security deposit furnished by the Vault Manager with the bullion depository shall continue to be retained until such time as the Vault Manager surrenders the certificates of registration for all its vaults registered with the Authority.

    - The said Circular shall be applicable to all vault managers in IFSCA

    To read the Circular in detail, please click here.

2. **IFSCA vide Circular dated April 02, 2024 provided clarification in relation to the permissible activities specified under the "Framework for Ship Leasing"**

    - The International Financial Services Centres Authority (Finance Company) Regulations, 2021 and the 'Framework for Ship Leasing' ('SL Framework') date August 16, 2022 have be amended from time to time.

    - According to the SL framework, a lessor which has obtained a Certificate of Registration may undertake the permissible activities specified in sub-clause E and H of clause 3 of the SL Framework.

    - In reference to the above it is clarified that a lessor may undertake the permissible activities specified under the clause 3 (H) (E) of the SL Framework, only if such lessor has absolute or lease hold right over the ship/ocean vessel.

    - The said Circular shall be applicable to all finance company/finance unit in the IFSCA.

To read the Circular in detail, please click here.

3. **IFSCA issued circular on Remote Trading Participants on Stock Exchanges in the IFSC dated April 03, 2024.**

- IFSCA is in receipt of representations from the market participants including stock exchanges, requesting direct participation by foreign institutions on the Stock Exchanges. However, it was suggested that this enabler is likely to increase the number of participants and make the secondary market more vibrant and liquid.

- Accordingly, IFSCA has decided permit foreign entities, not having a physical presence in IFSC, to trade directly on the Stock Exchanges, on a proprietary basis, without a Broker-Dealer. Such an entity shall be referred to as a Remote Trading Participant (RTP)

- The criteria for an entity to be onboarded as RTP by the Stock Exchange only after the following conditions are satisfied:

  - The entity is a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (IOSCO-MMoU) or a signatory to the bilateral Memorandum of Understanding (MoU) with IFSCA;

  - The entity is currently a member of the Stock Exchanges as mentioned under the said circular or such other Stock Exchanges as may be specified by IFSCA, for at least a period of one year;

  - The entity is a body corporate;

  - The entity is not a resident of a country identified in the public statement of the FATF as (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address deficiencies;

  - The entity shall be permitted to trade only on a proprietary basis and shall not be permitted to onboard clients;

  - The entity shall be permitted to transact only in cash-settled derivative products on the Stock Exchanges;

  - The entity shall be required to enter into an agreement with an IFSCA registered Clearing Member for clearing and settlement of its transactions executed on the Stock Exchanges.

- Further an entity incorporated in India will not qualify to be onboarded by the Stock Exchanges as a RTP.

- The RTP shall be onboarded by the Stock Exchange in accordance with the IFSCA (Anti Money Laundering, Counter Terrorist-Financing and Know Your Customer) Guidelines, 2022.

- The recognized Stock Exchanges in IFSC shall be responsible for specifying the terms and conditions for onboarding a RTP.

To read the Circular in detail, please click here.

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

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About Swift

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Our team comprises of professionals with a prolific corporate, legal and secretarial compliance background. We aim to provide pragmatic and business-oriented solutions in governance and compliance matters, through a unique holistic approach that blends our expertise and decades of experience in compliance and regulatory areas.

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