Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – August 12th to August 17th

Quote for the week:

"Everyone wants to live on top of the mountain, but all the happiness and growth occurs while you're climbing it."

– Andy Rooney (American television writer)

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 Ministry of Corporate Affairs ("**MCA**"), Reserve bank of India (**"RBI"**), Insolvency and Bankruptcy Board of India ("**IBBI**") and SEBI Orders ("**Orders**").

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

- **MCA vide notification dated August 12, 2024, amended the Companies (Registration of Foreign Companies) Rules, 2014.**

- **RBI vide notification dated August 12, 2024 issued on Review of regulatory framework for HFCs and harmonisation of regulations applicable to HFCs and NBFCs.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of August 12th to August 17th.

Thank you, Swift team

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. MCA vide notification dated August 12, 2024, amended the Companies (Registration of Foreign Companies) Rules, 2014.

- The amended ruled may be called the Companies (Registration of Foreign Companies) Amendment Rules, 2024.
- The said notification shall come into force with effect from September 09, 2024.
- In the Companies (Registration of Foreign Companies) Rules, 2014 -
  - In rule 3, in sub-rule (3), for the word, "registrar", the words, "Registrar, Central Registration Centre" shall be substituted and now provision shall be read as follows:

    "A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the 'Registrar, Central Registration Centre' Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380 and the application shall also be supported with an attested copy of approval torn the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required."
  - In rule 8, in sub-rule (1), the following proviso shall be inserted:

    "Provided that the documents for registration by a foreign company referred to in sub-rule (3) of rule (3) shall be delivered in Form FC-1 to the Registrar, Central Registration Centre."

To read the notification form in detail, please click here

RESERVE BANK OF INDIA (RBI)

1. **RBI vide notification dated August 12, 2024 issued on Review of regulatory framework for HFCs and harmonisation of regulations applicable to HFCs and NBFCs.**

- As per circular dated October 22, 2020 it was advised that further harmonisation of regulations applicable to HFCs and NBFCs will be taken up in a phased manner over the next two years to ensure that the transition is achieved with least disruption.

- Since the transfer of regulation of HFCs from National Housing Bank ('**NHB**') to Reserve Bank with effect from August 09, 2019, various regulations have been issued treating HFCs as a category of NBFCs. To be consistent with this policy stance and as stated in para 4 of the aforementioned circular, an analysis of regulations applicable to HFCs and NBFCs was undertaken, with an objective of harmonising these regulations, duly considering specialised nature of the HFCs.

- Accordingly, based on review of the extant regulations applicable to HFCs it has been decided to issue revised regulations. Certain regulations applicable to NBFCs have also been reviewed and regulations.

- Further relevant Master Directions – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021, Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 and Master Direction – Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions, 2023 are being modified accordingly.

- The key points of the revised regulations for Housing Finance Companies (HFCs) accepting public deposits are

  Section I: Guidelines regarding Acceptance of Public Deposits

  - Liquid Assets: HFCs must increase their liquid asset maintenance from 13% to 15% of public deposits by July 2025, with a higher proportion in approved securities.

  - Safe Custody: HFCs will follow the same rules as NBFCs for the safe custody of liquid assets.

  - Asset Cover: HFCs must ensure full asset cover for public deposits and report any shortfall to the National Housing Bank ('**NHB**').

  - Deposit Regulations:

    Credit Rating: Must have at least a minimum investment grade rating; otherwise, no new or renewed deposits allowed.

    Deposit Ceiling: Reduced to 1.5 times of net owned funds; excess deposits can remain until maturity but no new deposits allowed until limits are met.

    Maturity: Deposits must be repayable within 12 to 60 months; existing longer-term deposits are grandfathered.

  - Branches and Agents: HFCs must comply with branch and agent regulations similar to those for NBFCs, including restrictions on activities outside their registered state.

- Investment in Unquoted Shares: HFCs must set internal limits for investments in unquoted shares and aggregate them for the overall capital market exposure, with specific exceptions for insurance company equity investments.

Section II: Other instructions

- Hedging and Credit Cards: HFCs can hedge operational risks and issue co-branded credit cards.
  Currency Derivatives: Futures: All HFCs can trade currency futures.
  Options: Non-deposit taking HFCs with assets of ₹1,000 crore+ can trade currency options.

- Interest Rate Futures: All HFCs can use interest rate futures for hedging.
  Non-deposit taking HFCs with assets of ₹1,000 crore+ can also trade as members.

- Credit Default Swaps ('**CDS**'): HFCs can use CDS only to hedge against credit risk on corporate bonds they hold. They cannot sell protection.

- Accounting Year: Financial statements must be finalized within three months of March 31. Extensions require NHB approval.

- Investments in AIFs: Investments through AIFs where the HFC has significant ownership or funding must be treated similarly to direct investments for calculating Net Owned Fund (NOF).

▪ The said notification shall be applicable to All Housing Finance Companies ('**HFCs**') All Non-Banking Finance Companies ('**NBFCs**').

To read the notification in detail, please click here.

2. **RBI vide notification dated August 12, 2024 issued on Review of Risk Weights for Housing Finance Companies ("HFCs").**

▪ In Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 dated February 17, 2021 following modifications have been made:

  (i) Risk weighted assets for undisbursed amount of housing loans/other loans –

  In order to address a potential anomaly in computation of risk weighted assets for undisbursed amount of housing loans/other loans vis-à-vis that for an equivalent disbursed amount of similar exposures, it has been decided that the risk weighted assets computed for undisbursed amount of housing loans/other loans as per step 1 and step 2 of paragraph 6.3.1 of the Master Direction, shall be capped at the risk weighted asset computed on a notional basis for equivalent amount of disbursed loan.

  (ii) Risk weight for Commercial Real Estate – Residential Building –

  With reference to Sr. No. 3(d)(i)(a) under paragraph 6.2, the risk weight of fund- based and non-fund based exposures to 'Commercial Real Estate-Residential Building', which are classified as standard, shall be 75 per cent. For exposures under this category, which are not classified as standard, the risk weight shall be as per the category 'Other Assets.

- The said notification shall be applicable from the date of issue of notification i.e August 12, 2024

- The said notification shall be applicable to Housing Finance Companies.

To read the notification in detail, please click here.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

1. **IBBI vide circular dated August 12, 2024 issued regarding Generation of Valuation Report Identification Number for valuation conducted by Register Valuer under Insolvency and Bankruptcy Code, 2016.**

   - Under Companies (Registered Valuers and Valuation) Rules, 2017 ('**The Rules'**) Insolvency and Bankruptcy Board of India ('**IBBI/ Authority'**) has been designated as an Authority for registration, monitoring and development of valuers registered under the Rules read with section 247 of the Companies Act, 2013. At present, any valuation under the provisions of Insolvency and Bankruptcy Code (The Code) shall be done only by a Registered Valuer **("RV")**/ Register Valuers Entity ('**RVE**').

   - It has been decided by IBBI to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the Code, to ensure authenticity and to have a unique reference number of the valuation reports.

   - The RV/RVE shall access the online module developed by IBBI with the login credentials already provided by the IBBI. Before the submission of valuation report, the respective RV/RVEs shall generate a unique VRIN for each valuation report. The RV/RVE shall mention the VRIN on the front page of the valuation report.

   - A facility is also being provided on the IBBI website to allow stakeholders to verify the authenticity of the report by using VRIN.

   - The circular shall be applicable to all the cases where the date of valuation report is on or after the date of this circular. The IPs shall not accept any valuation reports without VRIN in all such cases.

   - The said circular shall be applicable to All Registered Valuers, All Registered Insolvency Professionals, All Registered Insolvency Professional Agencies, All Recognised Insolvency Professional Entities, and All Registered Valuers Organisations.

   To read the circular in detail, please click here.

SEBI ORDERS

ADJUDICATION ORDER IN THE MATTER OF SURESH RATHI SECURITIES PRIVATE LIMITED.

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted thematic inspection with respect to 'Common mobile number and email id linked to multiple UCC' and to check compliance with the provisions of SEBI Act, 1992 ("hereinafter referred to as "**SEBI Act, 1992**"), in the matter of Suresh Rathi Securities Private Limited (hereinafter referred to as "**Noticee**"). The Noticee is a SEBI-registered Stockbroker, having SEBI registration number INZ000165734. Noticee is a trading member of BSE and NSE.

SEBI initiated the Adjudication proceedings, and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the alleged violation of SEBI (Stock-Brokers) Regulations, 1992 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 15HB of the SEBI Act for the aforesaid alleged violations.

During the inspection, the following violations were alleged against the Noticee:

- Non-dispatch of a copy of complete client registration documents to the client within 7 days of upload of UCC;
- Aadhar verification was not done properly;
- MTF approval is by default signed for all the clients;
- Blank Authority letter in favor of an Authorized Representative is by default signed;
- Running account authorization has not been obtained correctly from clients who has opted for running account settlement (i.e. opting for Monthly Running account settlement is not captured in the KYC document);
- Default in verification to check whether Margin requirement was in proportion to the income proof/ declared by client;
- No proper mechanism to monitor and report suspicious transactions where trading of customer was not commensurate with the income.

After considering all the facts and the circumstances of the case, and the material available on record, the AO was of the view that no quantifiable figures were available to assess the disproportionate gain or unfair advantage made as result of such non-compliance by the Noticee. However, the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and Circulars/directions issued thereunder etc., which it failed to do. Hence, AO imposed penalty of INR 3,00,000/- on the Noticee for violation of said regulations.

To read the order in detail, please click here.

DISCLAIMER:

The contents of this newsletter should not be construed as a 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 affiliate entity of Nishith Desai Associates ("NDA"), a preeminent India centric law firm. We are a premier and boutique firm specialized in meeting with the global standard corporate governance aspirations of our clients operating in India.

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.

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

Website:
https://swiftindiallp.com/

Contact:
swift@nishithdesai.com

Core Team:
Ms. Hetal Pandya - hetal.pandya@nishithdesai.com
Mr. Maulin Salvi – maulin.salvi@nishithdesai.com
Mr. Santosh Gangavati – santosh.gangavati@nishithdesai.com
Mr. Chandrashekar K – chandrashekar.k@nishithdesai.com

Principal Advisor:
Mr. Janak C. Pandya – janak.pandya@nishithdesai.com