Swift e-Bulletin

Week – January 22nd to January 27th

Quote for the week:

"A nation's culture resides in the hearts and the soul of its people."

– *Mahatma Gandhi (Father of the Nation)*.

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**"), Securities and Exchange Board of India ("**SEBI**"), Ministry of Finance ("**MOF**") and International Financial Services Authority ("**IFSCA**") and SEBI Order ("**ORDER**")

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

- **SEBI vide Circular dated January 23, 2024 has issued Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism.**

- **IFSCA vide Circular dated January 25, 2024 has issued Accredited Investors in IFSC.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of January 22nd to January 27th.

Thank you, Swift team

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. **MCA vide Circular dated January 24, 2024 issued Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024.**

- An eligible unlisted public company, which has no partly paid up shares may issue equity shares for the purposes of listing on a stock exchange in a permissible jurisdiction.

- The unlisted public company or its existing shareholders shall also comply with the requirements of the Scheme

- Listing of equity shares on permitted stock exchanges in permissible jurisdiction by an unlisted public company which also intends to get its equity shares listed with any recognised stock exchange shall also be in compliance with such conditions as may be specified by the Securities and Exchange Board of India.

- The unlisted public company shall file the prospectus in e-Form LEAP-1 specified in the Second Schedule along with the fees within a period of seven days after the same has been finalised and filed in the permitted exchange.

- The company After the listing of the equity shares of a company on any of the stock exchanges in a permissible jurisdiction shall comply with Indian Accounting Standards as specified in the Annexure to the Companies (Indian Accounting Standards) Rules, 2015 in preparation of their financial statements, in addition to any other accounting standard, which they may be required to comply for the preparation of the financial statements filed before the securities regulator concerned, or with the stock exchange concerned, as the case may be.

- The provisions of these rules shall be applicable to unlisted public companies and listed public companies, which issue their securities for the purpose of listing on permitted stock exchanges in permissible jurisdictions.

- Under the said rules International Financial Services Center of India shall be considered as the permissible jurisdictions and India International Exchange, NSE, International Exchange shall be considered as the permitted stock exchange.

- Certain companies shall not be eligible for issuing its equity shares for listing as below:-

  - has been registered under section 8 or declared as Nidhi under section 406 of the Act;

  - is a company limited by guarantee and also having share capital;

  - has any outstanding deposits accepted from the public as per Chapter V of the Act and rules made thereunder;

  - has a negative net worth;

  - has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor further the said clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default;

  - has made any application for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 is pending;

- has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

To read the Circular in detail, please click here.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide Circular dated January 23, 2024 has issued Framework for Offer for Sale (OFS) of Shares to Employees through Stock Exchange Mechanism.**

    - SEBI through Circular has specified the comprehensive framework on Offer for Sale ("**OFS**") of shares through stock exchange mechanism. Under the said framework, the relevant provisions regarding offering of shares to employees by the promoters of the company have been prescribed.

    - The existing procedure of OFS to employees of the eligible company is happening outside the stock exchange mechanism. Based on the feedback received from stakeholders, it is observed that the said procedure is time consuming, involves additional costs and multiple activities.

    - With the deliberate discussion among Secondary Market Advisory Committee of SEBI and stock exchange stock exchanges and clearing corporations, it has been decided that the promoter can also offer the shares to employees in OFS through the stock exchange Mechanism.

    - Further, the procedure for offering shares to the employees in OFS through stock exchanges.

    - The provisions of this circular shall come into effect from 30thdayof issuance of this circular.

    - This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 read with Regulation 51 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018to 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.

2. **SEBI vide Circular dated January 25, 2024 has issued Extension of timeline for verification of market rumours by listed entities.**

    - The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") inter-alia requires top 100 listed entities by market capitalization and thereafter the top 250 listed entities by market capitalization to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI. Further, SEBI vide Circular dated September 30, 2023, has made the said provision applicable to top 100 listed entities by market capitalization from February 1, 2024 and to top 250 listed entities by market capitalization from August 1, 2024.

- Futher SEBI Considering the fact that the industry standards are under finalization and certain amendments to LODR Regulations are required for implementation of the aforesaid provision, it has been decided to extend the timeline for effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to June 1, 2024 and for top 250 listed entities by market capitalization, to December 1, 2024.

To read the Circular in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA vide Circular dated January 25, 2024 has issued Accredited Investors in IFSC.**

- The IFSCA (Fund Management) Regulations, 2022 provide for certain flexibility with respect to investors who are considered to be better aware of and have wherewithal to withstand the risks emergent from their investments. Such investors have been termed as "**Accredited Investors**" and are referred to in clause (c) of sub-regulation (1) of regulation 2 of IFSCA (Fund Management) Regulations, 2022

- Comments from public and the views of the Fund Management Advisory Committee ("**FMAC**") of International Financial Services Centres Authority (IFSCA or Authority) were sought on the (a) proposed eligibility criteria for Accredited Investors in IFSC and (b) the modalities for accrediting the investors.

- Based on the review of comments received during the public consultation process, the recommendations of the FMAC and in exercise of the powers conferred under Sections 12 and 13 of the International Financial Services Centers Authority Act, 2019, read with clause (c) of sub-regulation (1) of regulation 2 of the IFSCA (Fund Management) Regulations, 2022, the IFSCA hereby specifies the eligibility criteria for Accredited Investors and the modalities related thereto as under:

  1. Eligibility Criteria:
  2. Responsibilities of Regulated Entities:
  3. Withdrawal of Consent:

To read the Circular in detail, please click here.

2. **IFSCA vide Circular dated January 22, 2024 issued avoiding rerouting of transactions to IBUs that have been wrongly credited in the parent AD bank's Nostro account – Reporting in R- Return.**

- The Reserve Bank of India has advised AD banks and their IBUs are directed to adhere to the below mentioned reporting procedures so as to ensure flow of remittance from overseas bank to IBUs without delay and to avoid the need of rerouting funds that have been wrongly credit to the Nostro account of the Parent bank.

- The AD Banks shall in the following manner report in the R-Return:-

  - AD banks on receipt of such remittances, can be advised to report such transactions as purchases from overseas Banks / correspondents (in QE file under P0093 purpose code)

  - The corresponding outward transaction of AD bank to IBU can be reported as reversal of wrong entries (under S1502 purpose code in BOP file)

  - However, to identify the transactions between DTA and IFSC, AD banks have been instructed to report all transactions with IBUs under country code 'FC' (and NOT 'IN')

- The IBU shall in the following manner report in the R-Return:-

  - IBU would receive the remittance from AD bank instead of the bank of the non-resident remitter (an overseas bank). Depending upon the beneficiary in IBU, being resident or non-resident, the reporting would be in different files (BOP or QE)

  - If the beneficiary at IBU is a resident account, this will become a non-resident (overseas counterparty) to resident (IBU/or IBU's resident account) and hence is classified as BOP transaction. Hence the inward remittance transactions (routed through the parent AD bank) shall be reported in BOP file under appropriate economic purpose code as per the extant guidelines of RBI)

  - If the beneficiary at IBU is a non-resident account, this will become a non-resident (overseas counterparty) to non-resident (non-resident client of IBU) non-BOP transaction. Hence the said inward remittances (from parent AD bank) shall be reported as purchase from other ADs in India under P0092 in QE file.

- IBUs have been requested to bring the content of this circular to the notice of their AD Banks.

To read the Circular in detail, please click here.

MINISTRY OF FINANCE (MOF)

1. **The Ministry of Finance vide notification dated January 24, 2024 issued the Foreign Exchange Management (Non debt Instruments) Amendment Rules, 2024.**

- A permissible holder under the said rule may purchase or sell equity shares of a public India company which is listed or to be listed on an International Exchange under Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme as specified in Schedule XI

- A public Indian company may issue equity shares or offer equity shares of existing shareholders, subject to the following conditions and provided that the prior Government approval, wherever applicable.

  - such issue or offer of equity shares of existing shareholders shall be permitted and such shares shall be listed on any of the specified International Exchange.

  - such issue or offer of equity shares of existing shareholders shall be subject to prohibited activities, and sectoral caps prescribed in Schedule I to these rules

  - such equity shares to be issued by the public Indian company or offered by its existing shareholders on an International Exchange shall be in dematerialised form and rank pari passu with equity shares listed on a recognised stock exchange in India.

- Permissible holder under the said rule shall means a holder of equity shares of the Company which are listed on International Exchange, including its beneficial owner provided that such a holder who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.

- A permissible holder may purchase or sell equity shares of an Indian company listed on an international exchange subject to limit specified for foreign portfolio investment under these rules

- the eligible entities under the said rule shall be a public Indian company may issue equity shares on International Exchange or the existing shareholders may offer equity shares in such exchange.

- The public Indian companies having their equity shares listed on International Exchange shall ensure that the voting rights on such equity shares shall be exercised directly by the permissible holder or through their custodian pursuant to voting instruction only from such permissible holder.

- Further, Where equity shares are issued by a listed company or offered by the existing shareholders of equity shares listed on Recognised Stock Exchange in India, the same shall be issued at a price, not less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws.

To read the Circular in detail, please click here.

JUDGEMENTS/ORDER

SEBI ORDER

1. **Adjudication order in the matter of Grand Foundry Limited.**

- The Securities Exchange Board of India ("SEBI") has examined the Draft Letter of Offer (hereinafter referred as "DLOF") in the matter of Open Offer made under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred as "SAST Regulations") by Madhu Garg ("Acquirer") to the public shareholders of Grand Foundry Limited ("Target Company") submitted by Hem Securities Ltd. ("Merchant Banker").

- Based on the submissions made by the Merchant Banker vide email dated November 15, 2022, the following non-compliances under SAST Regulations by Minal Kiran Jangla (hereinafter referred as Noticee) was observed:

  - Non-compliance with Regulation 29(1) of the SAST Regulations during the period of inspection wherein there was a change in shareholding exceed 5% of the total share capital of the Company and the disclosures were required to be made within two working days from the date of acquisition of shares;

  - Non-compliance with Regulation 10(6) of the SAST Regulations wherein there was acquisition of shares by Noticee upon conversion of unsecured loan pursuant to BIFR Order which led to the shareholding of Noticee along with Person Acting in Concert exceeding 25% of the voting rights in target company which requires disclosure under Regulation 10(6).

- 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.

- In view of the facts and circumstances of the case and the judgements referred, the AO observed that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by Noticee. However, the compliances with extant applicable provisions of SAST Regulation as cited, in the matter, was obligatory and SEBI is duty-bound to enforce compliance of these regulations.

- After considering the facts and the observations of the case, the AO imposed penalty of INR 4,00,000/- on the Noticee for violation of various provisions of said regulations.

To read the Order in detail, please click here.

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+91 22 6669 5000

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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.

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