Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – January 29th to February 03rd

Quote for the week:

"If you want to shine like a sun, first burn like a sun."

– APJ Abdul Kalam (Aerospace Scientist)

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 International Financial Services Authority ("**IFSCA**").

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

- **MCA issued Notification dated February 03, 2024 on Establishment of Central Processing Centre.**
- **RBI vide notification dated January 31, 2024 notified streamlining of Internal Compliance monitoring function – leveraging use of technology.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of January 29th to January 03rd.

Thank you, Swift team

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. **MCA issued Notification dated February 03, 2024 on Establishment of Central Processing Centre.**

- The Central Government hereby vide the said circular establishes a Central Processing Centre at Indian Institute of Corporate Affairs.

- The Central Processing Centre is located at Plot No. 6,7,8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050 and shall have territorial jurisdiction all over India.

- The Central Processing Centre shall process and dispose off e-forms filed along with the fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014

- Further, The jurisdictional Registrar, other than Registrar of the Central Processing Centre, within whose jurisdiction the registered office of the company is situated shall continue to have jurisdiction over the companies whose e-forms are processed by the Registrar of the Central Processing Centre in respect of all other provisions of the Companies Act, 2013 and the rules made thereunder.

- The said Notification shall come into effect from February 6, 2024.

To read the Notification in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI vide Notification dated January 31, 2024 notified streamlining of Internal Compliance monitoring function – leveraging use of technology.**

- Recently, RBI evaluated the current system for internal monitoring of compliance with regulatory instructions and the extent to which technological solutions are being used to assist this role in a few selected Supervised Entities (“**SEs**”). It is evident that SEs have implemented different degrees of automation to assist this role, from workflow-based software solutions to the use of spreadsheets with macro capabilities.

- The evaluation revealed that there is still more to be done to automate the compliance monitoring process in SEs, with many components of this role requiring a great deal of manual interaction. Therefore, to improve the efficacy of this function, comprehensive, integrated, enterprise-wide, and workflow-based solutions and technologies must be used.

- Along with facilitating effective communication and collaboration between all stakeholders (by uniting business, compliance, and IT teams, Senior Management, etc. on a single platform), this solution/tool should also have procedures for identifying, evaluating, monitoring, and managing compliance requirements; reporting non-compliance issues, if any; requiring the recording of competent authority approval for deviations or delays in compliance submission; and providing Senior Management with a unified dashboard view of the Regulated Entity (“**RE**”)'s compliance position overall. The RE may choose the tools or mechanisms to use for compliance monitoring and the creation of the unified dashboard, depending on the scale and complexity of its operations.

To read the Notification in detail, please click here.

2. **RBI vide Notification dated January 31, 2024 notified guidelines on import of gold by Tariff Rate Quota (TRQ) holders under the India-UAE CEPA as notified by–The International Financial Services Centres Authority (IFSCA).**

- Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to A.P. (DIR Series) Circular No.04 dated May 25, 2022, in terms of which AD Category-I banks have been permitted to remit advance payment on behalf of Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) for eleven days for import of gold through India International Bullion Exchange IFSC Ltd (IIBX).

- Further, attention of AD Category-I banks is invited to Notification dated November 20, 2023 issued by DGFT, in terms of which, valid Tariff Rate Quota (TRQ) holders under the India-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement (CEPA) as notified by the IFSCA have been permitted to import gold under specific ITC(HS) codes through IIBX against the Tariff Rate Quota (TRQ).

- AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

- The directions contained in this Notification have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

To read the Notification in detail, please click here.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

1. **IBBI vide Circular dated February 01, 2024 has issued measures for rationalisation of the regulatory framework of Insolvency Professional Entities.**

- In September 2022, the insolvency professional entities ("**IPEs**"), which might be a company, limited liability partnership, or registered partnership business, were permitted to engage in the activities of an insolvency professional ("**IP**") in an effort to improve the efficiency of the insolvency resolution processes. It was intended to take advantage of their resources and expertise in the bankruptcy ecosystem due to their constitutional framework. To give the said reform enough time to be implemented, the current regulatory framework remained unaltered. IPEs were limited to offering IPs support services prior to this modification.

- Through this circular based on the feedback received from stakeholders and experiences encountered during implementation the clarification thereupon has been provided: -

- **Clarification in relation to disciplinary proceedings in case of an IP which is an IPE**

- It is hereby clarified that in case the assignment is undertaken by the IP, which is an IPE, the show-cause notice under regulation 11 of the IBBI (Inspection and Investigation) Regulations, 2017 shall be issued to:

  (a) its partner or director, as the case may be, who is an IP and was authorized to sign and act on behalf of it for the respective assignment; and/or
  (b) the IPE if in the opinion of the Board, there are either repeated instances of contravention against one or more partners or directors of the IPE or instance of systemic failure on the part of such IPE.

▪ **Clarification on applicability of limit on number of Assignments to an IP which is an IPE**

  - As specified in First Schedule to IP Regulations imposes a restriction on the number of assignments that can be undertaken by an IP. This restriction has been envisaged for IPs who are individuals.

  - It has been clarified that clause 22 of Code of Conduct specified in First Schedule to IP Regulations does not apply to an IP which is an IPE.

▪ **Clarification on applicability of fee structure to an IP which is an IPE.**

  - Regulation 34B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) stipulates the minimum fixed fee structure and a performance-linked incentive fee for the IPs in a corporate insolvency resolution process ("**CIRP**"). This provision has been envisaged for IPs who are individuals.

  - It has been clarified that regulation 34 B of CIRP Regulations does not apply to an IP, which is an IPE.

To read the Circular in detail, please click here.

2. IBBI vide Circular dated February 1, 2024 have issued Measures for facilitating efficient conduct of the processes by the Insolvency Professionals.

▪ An Insolvency Professional under the Insolvency and Bankruptcy Code, 2016 plays different roles and performs various functions such as to appoint accountants, legal or other professionals to effectively discharge its functions.

▪ Section 208 of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations) mandates an IP to abide by the Code of Conduct. A detailed Code of Conduct is specified in the First Schedule to IP Regulations.

▪ In order to build confidence of the stakeholders in the insolvency profession and ensure its development, the Code of Conduct governs principles like integrity, independence, impartiality, remuneration and costs, etc.

- Further, based on the feedback received from stakeholders and experiences encountered during implementation of such code, IBBI has considered imperative to provide clarity on few areas to facilitate smooth and efficient conduct of the processes.

- The clarification issued by the IBBI is elaborated below

  - In order to facilitate smooth implementation of the resolution plan, it is hereby clarified that an IP may render professional service in relation to implementation of resolution plan approved by the Adjudicating Authority, provided details of such service are mentioned in the resolution plan approved by the Adjudicating Authority.

  - Further, It is hereby clarified that for the purposes of clause 25C of Code of Conduct specified in First Schedule to IP Regulations, the bill or invoice may be raised in the name of the IPE or the professional or the firm in which such professional is a partner.

- The said circular shall be applicable to all registered insolvency professional, all recognized Insolvency Professional Entities, all registered insolvency professional agencies.

To read the Circular in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. IFSCA vide the Circular dated January 29, 2024 have issued International Financial Services Centres Authority (Payment Services) Regulations, 2024.

- Under the International Financial Services Centres Authority (Payment Services) Regulations, 2024 any person seeking to commence or carrying on Payment Services in or from IFSC shall require a certificate of authorization.

- IFSCA vide the said regulation inter alia have issued the following regulations.

- Any person desirous of providing payments service under the said regulation shall submit an application to the Authority accompanied by a non-refundable application fee, for grant of authorization as a Payment Service Provider.

- An applicant making an application for authorization as a Payment Service Provider hall be required to be incorporated as a Company with its registered office in IFSC.

- A Regular Payment Service Provider shall have a minimum net worth of USD 100,000 (or equivalent in a Specified Foreign Currency) on the date of commencement of operations. A Regular Payment Service Provider shall achieve a minimum net worth of USD 200,000 (or equivalent in a Specified Foreign Currency) by the end of the third financial year (i.e., March 31) from the year of commencement of operations.

- A Significant Payment Service Provider shall achieve a minimum net worth of USD 250,000 (or equivalent in a Specified Foreign Currency) within ninety days of the date of being so designated by the Authority. A Significant Payment Service Provider shall achieve a minimum net worth of USD 500,000 (or equivalent in a Specified Foreign Currency) by the end of the third financial year (i.e., March 31) from the year of designation as a Significant Payment Service Provider.

- The Authority may also require a Payment Service Provider to undertake stress tests on their net worth to assess their ability to withstand adverse economic scenarios.

- An Applicant or a Payment Service Provider shall ensure that its directors, Key Managerial Personnel and persons exercising control over it (hereinafter collectively referred to as "**Relevant Persons**") satisfy the "fit and proper requirements" ("**FPR**"), specified in Schedule II of the said regulation

- After considering an application for authorisation, if the Authority is satisfied that the said application, prima facie, satisfies the conditions for granting authorisation, the Authority may issue an "in-principle approval" letter to the Applicant and shall require the Applicant to satisfy such conditions as may be specified by the Authority in the "in-principle approval" letter before grant of authorisation.

- The Payment Service Provider shall commence its operations within six months from the date of issuance of Certificate of Authorisation.

- The Payment Service Provider may submit an application for extension of time, if instructed to do so by way of a resolution passed by its board of directors, for commencing operations at least two months before the latest date.

Further, a Payment Service Provider shall put in place a risk-based framework to assess the criticality of services that they receive or plan to receive from a Third-party Service Provider. Such assessment shall be undertaken at the time of commencement of operations and at regular intervals thereafter to identify critical services.

To read the Circular in detail, please click here.

DISCLAIMER:

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

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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.

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