Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 4th 22-23
Week – April 25th to April 29th

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

"Risk is the Secret to Success"

– Tony Robbins

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 Ministry of Corporate Affairs ("**MCA**"), Reserve Bank of India ("**RBI**"), Securities and Exchange Board of India ("**SEBI**"), International Financial Services Centres Authority ("**IFSCA**") and orders passed by the SEBI.

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

- RBI notifies Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs.
- IFSCA Vide Circular dated April 26, 2022 issued Guidance framework on Sustainable and Sustainability linked lending by financial institutions.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 25, 2022 to April 29, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA issues Companies (Registration of Charges) Rules 2014 pertaining the creation or modification of charges by banking Company.**

- The Ministry of Corporate Affairs vide notification dated April 27, 2022 have inserted the Rule 5 of Companies (Registration of Charges)2014 relating to creation of charges by the Banking Company.

- The amendment states that: -

"Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934."

To read the notification in detail, please click here.

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RBI

1. **RBI notifies Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs**

- RBI vide circular dated April 29, 2022 notified guidelines for compensation of KMP and Senior Management in NBFCs.

- RBI vide a circular DOR. CRE. REC. No. 60 / 03. 10 .001 /2021-22 October 22, 2021 introduced Scale Based Regulatory **("SBR")** framework for NBFCs.

- In terms of the said SBR framework, to address issues arising out of excessive risk taking caused by misaligned compensation packages, NBFCs are required to put in place a Board approved compensation policy.

- The policy shall at the minimum include,
  - constitution of a Remuneration Committee,
  - principles for fixed/ variable pay structures, and
  - clawback provisions.

- As decided in the circular relating to SBR, for providing broad guidance to NBFCs and their NRCs in formulating their compensation policy a detailed circular is issued by the Reserve Bank guiding the board and the NRC.

- Accordingly, these guidelines have now been framed and furnished, these guidelines majorly cover the following:
  - Role and constitution of Nomination and Remuneration Committee (NRC).
  - Principles for compensation.
  - Guaranteed bonus.
  - Malus / Clawback provisions for the event of subdued or negative financial performance of the company.

To read the Circular in detail, please click here.

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IFSCA

1. IFSCA vide notification dated April 25, 2022 notifies IFSCA (Fin Tech Incentive) Scheme 2022.

- IFSCA with an objective to promote the establishment of a world class FinTech Hub, comparable with those located in advanced International Financial Centers (IFCs) across jurisdictions, at International Financial Services Centre (IFSC) in India by providing financial support to FinTech activities in the form of specific grant(s) as specified in the scheme, based on their eligibility and fulfilment of terms and conditions as may be specified.

- This scheme shall be open to -
  - Domestic FinTechs seeking access to overseas markets;
  - Domestic FinTechs seeking listing on IFSCA recognised stock exchanges;
  - Foreign FinTechs seeking market access to IFSCs in India and work within the Authority's regulatory framework;
  - Foreign FinTechs seeking access to domestic market under Inter-Operable Regulatory Sandbox (IORS) framework;
  - Domestic FinTechs extending business to the IFSCs either by way of authorisation or registration or through the regulatory sandbox.

- This scheme broadly covers the following:
  - Types of Incentives for eligible applicants,
  - Eligibility conditions,
  - Execution of the Scheme.

To read the notification in detail, please click here.

2. IFSCA vide notification dated April 25, 2022 issued IFSCA (Fund Management) Regulations 2022.

- IFSCA vide these regulations intends to regulate the Fund Management Entity **("FME")** who intending to undertake the business of fund management in an IFSC.

- Any entity, intending to undertake the business of fund management under these regulations shall not commence operations in an IFSC unless it has obtained a certificate of registration from the Authority as a FME.

- Under these regulations FME are categorised as the following:

- Registered FME (Non-Retail),
- Registered FME (Retail),
- Authorised FME.

- These regulations are divided into 12 chapters and 6 schedules.

- These regulations shall come into force on the thirtieth day from the date of its publication in the Official Gazette.

To read the regulation in detail, please click here.

3. **IFSCA Vide Circular dated April 26, 2022 issued Guidance framework on Sustainable and Sustainability linked lending by financial institutions.**

- IFSCA directs the IBUs and FC/FUs operating in the IFSC, undertaking lending activities from IFSCs, to develop a comprehensive Board approved policy on green/social/sustainable/sustainability-linked lending by March 31, 2023.

- From the financial year, beginning April 01, 2023, the IBUs and FC/FUs undertaking lending as one of the permitted activities shall have at least five per cent of their gross loans and advances directed towards green/social/sustainable/sustainability-linked sectors/facilities.

- IFSCA has given a draft frame work to develop a comprehensive Board Policy this framework is divided into four broad areas:

  Part A: Guidance on green/social/sustainable lending2.
  Part B: Guidance on sustainability linked lending.
  Part C: Guidance on short term financing/working capital finance (green / social / sustainable).
  Part D: Reporting framework. (The reporting will begin from half year ending September 30, 2023)

To read the Circular in detail, please click here.

4. **IFSC issues a circular on enabling market access to investors through Authorized persons registered with IFSCA.**

- IFSCA vide circular No. F. No. 68/IFSCA dated October 14, 2020 had permitted Broker Dealers Registered with IFSCA of the stock exchanges to provide market access to investors through Authorized Persons based in foreign jurisdictions.

- IFSCA have received several representations from market participants on permitting IFSCA registered Broker Dealers to appoint Authorized Persons in India with a view to expand the depth and reach of capital markets in IFSC and to enable access to resident Indian investors through Liberalized Remittance Scheme (LRS) route, for exchange traded securities in IFSC it was decided to permit IFSCA registered Broker Dealers to provide market access to investors through Authorized Persons based in India.

- The Stock Exchanges and Broker dealers shall have the operational flexibility to prescribe requirements/guidelines, in addition to those stated in this framework, as they deem fit, in the interest of investors and the market. However, no relaxations shall be granted by them in the framework specified by the Authority.

To read the Circular in detail, please click here.

5. IFSC issues circular stating the framework for FinTech Entity in the International Financial Services Centres (IFSCs).

- IFSC in order to develop and regulate the financial products, financial services and financial institutions in the International Financial Services Centres **("IFSC")** and to encourage promotion of financial technologies ('FinTech') across the spectrum of banking, insurance, securities, and fund management in IFSC has issued a detailed "Framework for FinTech Entity in the IFSCs".

- The framework is aimed at giving boost to the establishment of a world class FinTech Hub at GIFT IFSC comparable with other International Financial Centers (IFCs) and the framework proposes to cover below

  - Financial technology (FinTech)solutions resulting in new business models, applications, process or products in areas/activities linked to financial services regulated by IFSCA and
  - Advanced/innovative technological solutions which aid and assist activities in relation to financial products, financial services and financial institutions (TechFin).

- The framework also provides for a dedicated Regulatory "Sandbox" for FinTech products or solutions namely IFSCA FinTech Regulatory Sandbox and empowers IFSCA to grant Limited Use Authorization within FinTech Regulatory Sandbox to the eligible financial technology entities in IFSC. This would enable them to apply and avail Grants under the IFSCA FinTech Incentive Scheme 2022.

- The framework also incorporates for Inter Operable Regulatory Sandbox (IoRS)mechanism to facilitate the testing of innovative hybrid financial products / services falling within the regulatory ambit of more than one financial sector regulators. IFSCA shall also facilitate Indian FinTech's seeking access to foreign markets and foreign FinTech's seeking entry into India.

- The GIFT- IFSC shall offer unique advantage of separate financial jurisdiction within India which is treated like an offshore jurisdiction from FEMA angle with no restriction on currency convertibility.

To read the Circular in detail, please click here.

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SEBI

1. **SEBI issues the guidelines for the regulation of Infrastructure Investment Trusts (INVITs) and Real Estate Investment Trusts (REITs)**

- SEBI vide circular dated April 26, 2022 introduced the master circular for the regulation of Infrastructure Investment Trusts (INVITS) and Real Estate and Investment Trusts (REITs).

- In order to enable the industry and other users to have access to all the applicable circulars at one place, Master Circular for regulatory compliance of Infrastructure Investment Trusts and Real Estate Investment Trusts (REITs) have been introduced which covers all relevant circulars issued by SEBI up to March 31, 2022 and which are operational as on date.

To read the master circular for REIT in detail, please click here

To read the master circular for INVIT in detail, please click here

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JUDGEMENTS AND ORDERS

SEBI Order

1. **In the matter of Investigations in Coromandal Fertilizers Ltd. The penalty of INR. 5,00,000/- imposed on Noticee was disposed of.**

- Securities and Exchange Board of India **("SEBI")** initiated adjudication proceedings against Mr. K Venkatraman **("Noticee")** for alleged violation of the Regulation 4(1), 4(2), (a), (b), (g), and (n) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as 'PFUTP Regulations') in the aforesaid matter.

- In this regard, SEBI passed an order imposing penalty of INR. 5,00,000/- (INR Five Lakh only) on Noticee without serving the Show Cause Notice **("SCN").** The AO Order was appealed before the Hon'ble Securities Appellate Tribunal **("SAT")** by the Noticee. The appeal was allowed, the matter was remitted to the AO to issue SCN and to proceed further in accordance of law.

- The allegation was made in SCN basis the investigation initiated by NSE and BSE during the investigation period from October 15, 2003 to December 15, 2003. During investigation, it was observed that Noticee had executed 66.67% of reversal trades which resulted in violation of provisions of PFUTP Regulations, 2003.

- Noticee in his submissions mentioned that his KYC details were used by someone else to enter fraudulent transactions and also contended that he doesn't have any nexus with any broker or securities market at all.

- In view of above allegations and submissions made and since the violations alleged against the Noticee was not established, the SCN issued to Noticee was disposed of by AO.

To read the order in detail, please click here.

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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.

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