Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 45th 22-23
Week – February 25th to March 3rd

Quote for the week:

"Don't be trapped in someone else's dream"

- Kim Taehyung.

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 International Financial Services Centres Authority ("**IFSCA**"), Insolvency and Bankruptcy Board of India ("**IBBI**") and Orders/Judgements from Supreme Court.

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

- **IFSCA issued Clarifications in relation to Family Investment Funds ("FIF").**

- **IFSCA vide Press Release dated February 27, 2023 invited public comments on proposed IFSCA (Management Control, Administrative Control and Market Conduct of Insurance Business) Regulations, 2023.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of February 25^{th} to March 03^{rd} 2023.

Thank you,
Swift team

REGULATORY UPDATES

IFSCA

1. IFSCA issued Clarifications in relation to Family Investment Funds ("FIF").

- IFSCA vide circular dated March 01, 2023 issued clarification to remove certain difficulties and doubts with respect to Family Investment Funds which by their very nature represent the interests of a single family.

- Vide this circular IFSCA has issued the following clarifications:

  - IFSCA has given a clarification regarding "**substantial economic interest**" in definition of single family which shall mean at least 90% economic interest, as demonstrated by the Family Investment Funds ("**FIF**") in an appropriate manner to the satisfaction of the Authority which may, inter alia, include:

    - Percentage of shareholding in case of a company with share capital; or right to exercise control in case of a company without share capital;
    - Percentage share of profits in case of partnership firm and limited liability partnership;
    - Percentage of beneficial interest specified in trust deed in case of a determinate trust; or pro-rata share in the trust property in case of an indeterminate trust; or
    - Any other manner as may be demonstrated to the satisfaction of the authority.

  - Restriction is **imposed on seeking money from outside** the single family along with a relaxation that FIF may accept contributions from the aforementioned persons for the limited purpose of granting economic interest to them, which in no case shall exceed an aggregate of **twenty percent (20%)** of FIF's profits.

  - persons outside of single family also hold economic interest in the entity of a single family up to the permissible limit, such persons shall be informed of the risks of investment in the FIF and an exit may be offered to such persons who may not wish to continue in such entity.

  - Further along with the clarifications IFSCA has imposed a responsibility on the FIF to inform the persons outside of single family who hold economic interest in the entity of a single family up to the permissible limit of the risks of investment in the FIF and an **exit may be offered** to such persons who may not wish to continue in such entity.

- ➢ Before the FIF commences investment activities, all individuals of a single family who contribute to the FIF directly or indirectly, shall give an undertaking to the Principal Officer, to the effect that they understand the risks, costs and benefits of investing in the FIF and that the usual investor protection measures such as disclosures, regulatory inspection and supervision, etc., may not be available to the same extent to the FIF as they are to other schemes in IFSC.

To read the circular in detail, please click here.

2. IFSCA vide Press Release dated February 27, 2023 invited public comments on proposed IFSCA (Management Control, Administrative Control and Market Conduct of Insurance Business) Regulations, 2023.

- IFSCA has been established as a unified regulator to regulate the financial products, services and institutions in International Financial Services Centres (IFSCs) in India.

- IFSCA has already put in place the Regulations for the growth of the insurance and reinsurance sector in order to provide the best regulatory framework.

- With an initiative to further strengthen the framework, IFSCA is proposing to notify the comprehensive regulations by adopting international best practices related to Management Control, Administrative Controls and Market Conduct of insurances carried out by IFSC Insurance Officer or IFSC Insurance Intermediary Office.

- Following inter-alia includes the areas covered by the IFSCA (Management Control, Administrative Control and Market Conduct of insurance business) Regulations, 2023

  - ➢ Capital related issues and Management Control
  - ➢ Minimum limits for annuities and other benefits
  - ➢ Protection of Policyholders' Interest
  - ➢ Insurance Advertisements and disclosure.

- IFSCA on its website has displayed the consultation paper along with the draft regulations inviting comments/suggestions from general public and stakeholders on draft regulations on or before March 13, 2023.

To read the press release in detail, please click here.

3. IFSCA vide circular dated March 01, 2023 issued clarification in relation to Fund Management Entities and Schemes set up in IFSCs by Sovereign Wealth Funds

- IFSCA by making reference to the International Financial Services Centres Authority (Fund Management) Regulations, 2022 issued the said clarification.

- The said clarification came into light in order to remove certain difficulties faced by entities such as Sovereign Wealth Funds who desire to set up a Fund Management Entity and scheme in IFSC.
- Further the following clarifications were issued by the IFSCA :-
  - The ceiling of 10% investment from FME or its associates in case of Venture Capital Schemes and Restricted Schemes, shall not be applicable.
  - The restriction that certain schemes can only be close ended in case of Venture Capital Schemes, Category I and II Alternative Investment Funds , shall not be applicable.
  - A Restricted Scheme set up as an open-ended scheme by a FME of a sovereign wealth fund may comply with the provisions, as applicable to close ended scheme, with respect to investments in physical assets , and computation and disclosure of NAV.
  - Further, the cap on investments in securities of unlisted companies shall not apply to such open-ended schemes.

To read the circular in detail, please click here

4. IFSCA vide circular dated March 01, 2023 issued Net worth requirement for a Bullion Exchange and a Bullion Clearing Corporation.

- As per the IFSCA (Bullion Exchange) Regulations, 2020 the applicant seeking recognition as a Bullion Exchange or Bullion Clearing Corporation, as the case may be, shall have a net worth of USD 30 Million, to be maintained on a continuing basis.
- As per the IFSCA (Market Infrastructure Institutions) Regulations, 2021 requires an Market Infrastructure Institutions ("MII") to have a net worth of at least USD 3 million at all times.
- Considering the budding stage of the bullion ecosystem in IFSC, IFCA has granted a temporary exception to the Indian International Bullion Exchange which operates as Bullion Exchange and an Bullion Clearing Corporation in IFSC.
- Likewise, to expedite the establishment of bullion market infrastructure institutions in IFSC, IFSCA had directed that IIBX may maintain a net worth of USD 6 million (USD 3 million each for the exchange and clearing functions) at the initial stages.
- In order to ensure that the net worth of a Bullion Exchange and a Bullion Clearing Corporation is sufficient to accommodate the technological advancements in trading platforms and, the nature and expected growth of its business including the leveraged products it may offer, and to ensure that its net worth adequately captures the risks it faces, it has been decided to increase their net worth requirements in a gradual manner.

- The Bullion Exchange and the Bullion Clearing Corporation shall be required to maintain, at all times, a minimum net worth as specified below: -

Timelines	Bullion Exchange	Bullion Clearing Corporation	MII that is functioning both as Bullion Exchange and a Bullion Clearing Corporation
By June 20, 2023	USD 10 million	USD 10 million	USD 20 million
By March 31, 2024	USD 15 million	USD 15 million	USD 30 million
By December 31, 2024	USD 25 million	USD 25 million`	USD 50 million
By June 30, 2025	USD 30 million	USD 30 million	USD 60 million

- The Bullion Exchange and Bullion Clearing Corporation shall ensure that their net worth does not fall below the prescribed minimum net worth.

- A certificate signed by the Managing Director and Chief Executive Officer, is required be submitted to the IFSCA within 15 days of the end of each quarter. The first such submission shall be made applicable for the April - June 2023 quarter.

- A Bullion Exchange or a Bullion Clearing Corporation shall not distribute profits in any manner to its shareholders until it maintains the net worth specified by the IFSCA.

- In exceptional cases where the net worth of the Bullion Exchange and/or Bullion Clearing Corporation falls below the prescribed threshold, it shall forthwith inform the IFSCA inter alia mentioning the reason(s) behind the same and the measure(s) it intends to take in order to re-attain the prescribed net worth.

- A Bullion Clearing Corporation shall also establish and maintain a fund called Core Settlement Guarantee Fund to guarantee the settlement of trades executed on the Bullion Exchange and such contribution shall be considered as a part of its net worth.

To read the circular in detail, please click here.

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IBBI

1. **IBBI vide notification dated March 01, 2023 notified the Board for the specified purposes IBBI, New Delhi.**

- Under Section 10 (46) of the Income Tax Act, 1961 IBBI notifies the IBBI, New Delhi Board, a board established in respect to the income arising to the Board like

    - Grants-in-aid received from Central Government
    - Fees received under the code
    - Fines collected under the code
    - Interest income accrued on the above mentioned.

- The notification shall be effective subject to the compliance of the following conditions by the Insolvency and Bankruptcy Board of India, New Delhi

    - Non engagement in commercial activities.
    - The activities and the nature of the specified income shall remain unchanged throughout the Financial Year.
    - Income Tax return shall be filed in accordance with Section 139 (4C) (g).

- The notification shall be applicable for FY 2022-23 till FY 2026-27.

To read the notification in detail, please click here.

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JUDGEMENTS & ORDERS

SUPREME COURT

1. **Supreme Court referred to the facts of the case with a similar case of Rajkumar Nagpal and disposed of the appeal filed by Authum Investment and Infrastructure Limited.**

Authum Investment and Infrastructure Limited	Appellant(s)
R.K. Mohatta Family Trust and Others	Respondent(s)

Date of Judgement: March 03, 2023.

- Present appeal filed by Authum Investment and Infrastructure Limited was to challenge the order of the High Court of Judicature at Bombay, dated December 16, 2022 vide which the High Court dismissed the Interim Application filed by Reliance Home Finance Limited **("RHFL")**, seeking approval of the Resolution Plan pertaining to its dissolution, in light of the judgment of this Court in the case of Securities and Exchange Board of India v. Rajkumar Nagpal and Others.

- RHFL executed a number of Debenture Trust Deeds, of which nine were executed with the IDBI Trusteeship Services Limited for issuance of debentures on a private placement basis, having face value of Rs. 5 lakhs. These debentures were issued on 30th August 2018. It is pertinent to note that RHFL had, previously, taken upon itself substantial debt through loans from several banks and financial institutions.

- The said appeal arising out of application filed by RHFL and appeal arising out of the application by Authum Investment and Infrastructure Limited a non-banking financial corporation, which had originally proposed the RP for RHFL.

- The Supreme Court held that in a similar case of Rajkumar Nagpal, the facts of the present case are similar and that we find that a different voting mechanism proposed under the SEBI Circular will further delay the resolution process and potentially disrupt the efforts undertaken by the stakeholders, including the retail debenture holders. The Supreme Court held that in exercise of the powers under Article 142 of the Constitution of India, allow the RP preferred by AIIL qua the debenture holders, except the dissenting debenture holders and on same lines as in the case of Rajkumar Nagpal, we direct that the dissenting debenture holders should be provided an option to accept the terms of the RP. Alternatively, the dissenting debenture holders will have a right to stand outside the proposed RP framed under the lender's ICA and pursue other legal remedies to recover their entitled dues.

To read the notification 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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