Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
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Week – May 16th to May 20th

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

"If you are not embarrassed by the first version of your product, you've launched too late."

– Reid Hoffman

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 Service Centers Authority ("IFSCA"), Ministry of Corporate Affairs ("MCA"), Reserve bank of India ("RBI"), Securities and Exchange Board of India ("SEBI") and orders passed by the NCLAT, SEBI, High Court and Supreme Court.

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

- **SEBI issues circular on operational guidelines for specifying formats and documents for the transmission of securities.**
- **MCA notifies the Companies (Incorporation) Second Amendment Rules, 2022.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 16, 2022 to May 20, 2022.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

MCA

1. **MCA has notified the Companies (Incorporation) Second Amendment Rules, 2022.**

- MCA vide Notification dated May 20th, 2022 notifies the revised format for Form INC-9 for given declaration by all subscribers and first directors at the time of incorporation of the company.

- The format for the said form has been detailed out in the said Notification.

- The said amendments to the rules will be applicable from **01st June, 2022**.

To read the Notification in detail, please click here.

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SEBI

1. **SEBI issues Circular on operational guidelines for specifying formats and documents for the transmission of securities.**

- SEBI vide Circular dated May 18th, 2022 has provided the procedure and standardization of formats of documents for transmission of securities.

- SEBI has reviewed the process being followed by the Registrars to an Issue and Share Transfer Agents ("RTAs") and the Depositories/ Issuer companies for effecting transmission of securities.

- To make the transmission process more efficient and investor friendly, the procedure for transmission of securities has been further simplified vide SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 ("LODR Amendment Regulations") Gazette Notification no. SEBI/LAD-NRO/GN/2022/80 dated April 25th, 2022.

- Under the amended LODR regulations, SEBI has made the transmission process more efficient by making below changes in the regulations:

  - SEBI allowed '**Legal Heirship Certificate or equivalent certificate**' as one of the acceptable documents for transmission.
  - SEBI provided clarification regarding **Acceptability of Will** as one of the valid documents for transmission of securities.

- The Circular specifies the formats of various documents which are required to be furnished for the processing of transmission of securities.

  These formats annexed to this Circular indexed below:

  - **Annexure A:** Documents required for transmission of securities.
  - **Annexure B:** Operational Guidelines for processing investor's service request for the purpose of transmission of securities.
  - **Annexure C:** Format of the form to be filed by nominee/claimant(s)/legal heir(s) while requesting transmission of securities.

- **Annexure D:** Format of affidavit to be given by all Legal Heirs or Legal Heirs named in Succession Certificate/ Probate of Will/ Will/ Letter of Administration/ Legal Heirship Certificate/Court Decree.
- **Annexure E:** Format of Bond of Indemnity to be furnished jointly by all Legal Heir(s) including the Claimant(s).
- **Annexure F:** Format of NOC from other Legal Heir(s) for transmission of securities in favour of the Claimant(s)/legal heir(a).
- **Annexure G:** Format of the Letter of Confirmation to be issued by RTAs/ Issuer Companies

To read the Circular in detail, please click here.

2. **SEBI vide Press Release dated May 19th, 2022 withdraws Permanent Recognition granted to Indian Commodity Exchange Ltd.**

- SEBI vide this Notification withdraws the recognition granted to the Indian Commodity Exchange Limited by issuing Notification on May 18th, 2022.

- SEBI notifies this withdrawal pursuant to the order passed by the Executive Director for non-compliance with net-worth requirement.

- Consequent to the withdrawal, ICEX was directed to (a) transfer the money available in the Investor Protection Fund and Investor Services Fund of ICEX to SEBI Investor Protection and Education Fund; (b)set aside sufficient funds to provide for settlement of any claims; (c) pay the dues outstanding to SEBI; and (d)pay SEBI registration fees as per SEBI (Stock Brokers) Regulations, 1992 by its trading members. The Order further directed ICEX to refrain from using the expression ‘stock exchange’ or any variant in its name or in its subsidiary company’s name.

To read the Press Release in detail, please click here.

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RBI

1. **RBI issues clarification on new definition of Micro, Small and Medium Enterprises –**

- RBI vide Circulars dated FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21, July2, 2020 FIDD.MSME & FS.BC.No.4/06.02.31/2020-21 dated August 21, 2020 and FIDD.MSME & NFS.BC.No.16/06.02.31/2021-22 dated February 18, 2022, has issued revised criteria for classification of Micro, Small and Medium Enterprises.

- Government of India, vide Gazette Notification S.O. 2134(E) dated May 06, 2022, has notified amendments in sub paragraph (3) paragraph (7) of the notification of Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119 (E), dated June 26, 2020, published in the Gazette of India.

- In view of the above amendment, it is clarified that:

  - the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAM) of the MSMEs obtained till June 30, 2020 shall remain valid till June 30, 2022 for classification as MSMEs; and
  - the validity of documents obtained in terms of O.M. No.12(4)/ 2017-SME dated March 8, 2017 (RBI Circular FIDD.MSME & NFS.BC.No.10/06.02.31/2017-18 dated July 13, 2017), for classification of MSMEs upto June 30, 2020, has been extended upto June 30, 2022.

To read the clarification in detail, please click here.

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IFSCA

1. **IFSCA issues fee structure under the IFSCA (Fund Management) Regulations, 2022.**

- IFSCA vide its circular dated May 20th, 2022 issues the fee structure for Fund Management participants.

- IFSCA has given out the registration fees for the applicants that aim to get registered as the Fund Management Entity and it has also given out the details of fees for various activities undertaken as per the aforesaid regulations and the annual fees.

- The scheme filing fees will be waived off for the registered FMEs that are filing the ESG Scheme with the stipulated authority if the disclosures have been provided.

- Although the waiver of fee shall be applicable to only the first 10 ESG schemes registered with the Authority and each FME shall be permitted to avail the waiver only once.

To read the Circular in detail, please click here.

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JUDGEMENTS AND ORDERS

SEBI Order

1. **In the matter of M/s Link Intime India Pvt. Ltd ("Noticee"). The allegation made on Noticee for violation of Clauses 3 and 25 of the Code of Conduct read with Regulation 13 of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 and Clause D(1) of Schedule VI read with Regulation 39(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") was disposed of.**

- Securities and Exchange Board of India ("**SEBI**") carried out an inspection of the Noticee at its Vadodara branch on September 27, 2017, October 6, 2017 and October 27, 2017("**Inspection period**") basis complaint received against the Noticee alleging misappropriation of shares of long deceased persons namely Shri Vasant Dinanath Rao and Smt Laxmi Vasant Rao("**Clients**").

- SEBI served Show Cause Notice ("**SCN**") on Noticee for aforesaid violation and appointed Adjudicating Officer to inquire into the allegations made against the Noticee. With regards to this, noticee was given opportunity for being heard. Accordingly, noticee placed its submission from the year of being appointed as RTA to Alembic Limited ("AL") and its involvement in several corporate actions that took place with respect to AL and Alembic Pharmaceuticals Limited ("APL") ("Alembic Group") between 2006 to 2013. Further, Noticee also submitted that necessary due diligence was carried on at various instance as per law.

- AO considered all allegations, submissions and hearing made by Noticee and stated that Noticee has at various stages exercised reasonable due diligence and hence in view of the same, the allegations made in the SCN do not stand established.

- Considering the facts and circumstances of the case in detail, AO passed an Order that the Show Cause Notice ("SCN") issued against the Noticee is disposed of.

To read the Order in detail, please click here.

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HIGH COURT

1. Dr. Reddys Laboratories Limited files review petition with Controller General of Patents Designs and Trademarks

Dr. Reddys Laboratories Limited	Petitioner
Controller General of Patents Designs and Trademarks	Respondent

Review application was filed on behalf of the officers of the Controller General of Patents Designs and Trademarks (CGPDTM) seeking review of the order by which Rs.1 lakh was imposed as costs on each of the officers for lapses in communicating incorrect facts to the Court.

Deputy Registrar, CGPDTM, Mumbai and two officers, have joined the various hearings. Affidavits have also been filed by some of these officials, explaining the reasons why the Court was not informed that more than 7000 oppositions were filed and taken on record, beyond the period of limitation. While reading the affidavits, the impression that the Court gets is that there has been a clear lack of communication between the various officers in the CGPDTM and conflicting notices were issued in respect of acceptance of oppositions. It is also submitted by the officers that they were not in the CGPDTM in the capacity of hearing officers and were therefore unaware of any oppositions being accepted beyond the limitation period.

The order passed by the Delhi High Court was in a batch of matters, wherein the oppositions to trademark applications had been rejected on the ground that they were filed beyond the four months' limitation period, which was contrary to the extension of limitation orders passed by the Supreme Court from time to time during the pandemic. The reasons for the said order have been clearly elaborated in the order itself. It is clear that in case the Appellant files an opposition pursuant to the order the said opposition proceeding shall be decided in accordance with law on its own merits.

The present order shall be communicated to the Secretary, UPSC by the Registry, to enable the UPSC to take steps immediately for recruitment of further Hearing Officers.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Mihan India Limited files an appeal challenging the judgement of the Nagpur Bench of the Bombay High Court.**

Mihan India Limited	Appellant
GMR Airports Limited	Respondent(S)

The High Court sets aside the impugned communication of annulling the bidding process and directed to take further necessary steps as per prayer made in the Writ Petition.

The Special Leave Petition was treated as the lead petition amongst other appeals, wherein the order under challenge in all the appeals was the same and the facts in the said appeals are common, hence the Special Leave Petition was treated as the lead petition.

the facts relevant for the purpose of the appeals are that the Nagpur International Airport was being run by the Airport Authority of India (**AAI**). On the initiative of Government of Maharashtra to develop a multi-modal international passenger and cargo hub airport at Nagpur, for brevity sake referred as '**MIHAN**', in coordination with Government of India, Ministry of Civil Aviation, **AAI** and Indian Air Force through Ministry of Defence has prepared the report for MIHAN project.

Memorandum of Understanding (**MoU**) for the purpose of establishing a Joint Venture Company ('**JVC**') and transferring the Airport to the said JVC to develop it into MIHAN, was entered with Government of India through Ministry of Civil Aviation and AAI on one side; and Government of Maharashtra and Maharashtra Airport Development Company ('**MADC**') on the other side.

As per the said MoU, MADC shall have 51% of the equity and AAI 49% equity of the JVC. Pursuant to the MoU, the AAI and MADC entered into a Joint Venture Agreement for the purpose of incorporating a JVC, which is known as MIL. As per the terms and conditions of the MoU and the JVA, MIL took over the Airport from AAI.

To read the Judgement 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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