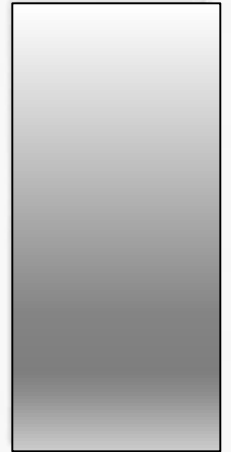


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR JANUARY, 2020



Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 59(E) on Limited Liability Partnership Act, 2008, dated January 30, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has directed that provisions of section 460 of the Companies Act, 2013, i.e. condonation of delay in certain cases shall apply to a limited liability partnership from the date of publication of the Notification in the official gazette i.e. January 30, 2020.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/NotificationLLP_31012020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. (E). (yet to be published in official gazette) on Companies (Accounts) Amendment Rules, 2020 (“Rules”), dated January 30, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Accounts) Rules, 2014 (“**Principal Rules**”) which shall come into force on the date of publication in the official gazette.
 - Rule 12 (1A) has been inserted in the Principal Rules, after rule 12(1), as under:
 - ✓ *“(1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).”*
 - Accordingly Form No. AOC-4-NBFC (Ind AS) (i.e. Form for filing financial statement and other documents with the Registrar) and Form No. AOC-4 CFS NBFC (Ind AS) (i.e. Form for filing consolidated financial statements and other documents with the Registrar) has been inserted in the Principal Rules.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules_31012020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – circular no. 2/2020 regarding relaxation of additional fees and extension of last date of filing of Form AOC-4 NBFC (Ind-AS) and Form AOC-4 CFS NBFC (Ind-AS), dated January 30, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has informed that 2(two) new forms viz. Form AOC-4 NBFC (Ind-AS) (i.e. Form for filing financial statement and other documents with the Registrar) and Form AOC-4 CFS NBFC (Ind-AS) (i.e. Form for filing consolidated financial statements and other documents with the Registrar) are likely to be deployed on January 31, 2020 and February 17, 2020 respectively and therefore it has extended the time limit for filing the said forms, upto March 31, 2020, without payment of additional fee and thereafter on payment of additional fee.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular_30012020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification GSR.....(E). (yet to be published in the official gazette) on Companies (Winding Up) Rules, 2020, dated January 24, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has introduced the Companies (Winding Up) Rules, 2020, (“**Rules**”) and the same shall come into force on April 01, 2020. These Rules are divided into the following parts:
 - ✓ part (I) – definitions;
 - ✓ part (II) – winding up by tribunal;
 - ✓ part (III) – winding up by tribunal (other than summary winding up);
 - ✓ part (IV) – costs etc., and
 - ✓ part (V) – summary process for liquidation and part; and
 - ✓ part (VI) – miscellaneous provisions, and shall apply to winding up under Companies Act, 2013 (“**Act**”).
 - The Notification provides for format of forms as provided under the Rules for various purposes.
 - The Notification, *inter-alia*, provides process related to filing petition for winding up, admission of petition, advertisement of petition, application for leave to withdraw petition, substitution for original petitioner alongwith the process and procedure as to how provisional liquidator or Company Liquidator (“**CL**”) will be appointed by the Tribunal, if it thinks fit, rules applicable to provisional liquidators, costs etc. to be paid to the provisional liquidator.

Companies Act (Contd...)

- Once the winding up order is passed, the signed and sealed winding up order shall be sent by the Registrar (who shall be the registrar of the NCLT or NCLAT and includes such other officer of the tribunal or bench thereof to whom the powers and functions of the registrar are assigned) to the CL, registrar of companies and the company. The said order shall *inter-alia* contain that it will be the duty of such of the persons as are liable to submit the completed and audited books of account of the company upto the date of the order, to advertise the said order in the manner as may be provided therein, attend on the CL at required time and place and give him all the information, and it will be the duty of every person who is in possession of any property, books or papers, cash or any other assets of the company, including the benefits derived therefrom, to surrender forthwith such property, books or papers, cash or other assets and the benefits so derived, as the case may be, to the CL. On winding up order being made, the CL is required to forthwith take into his custody or under his control all the properties and effects, actionable claims and the books and papers of the company, and it shall be the duty of all persons having custody of any of the properties, books and papers, cash or any other assets of the company, to deliver possession thereof to the CL
- The Notification also provides for leave of the tribunal to commence or continue any suit or other legal proceeding by or against the company, to be applied for in the prescribed form therein, upon notice to the CL and the parties to the suit or proceeding sought to be commenced or continued
- Reporting norms by the CL, Inspection of statement of affairs and the CL's report by every creditor or contributory, either by himself, or by his agent, and provision for consideration of report by tribunal is also provided for in the said Notification.

Companies Act (Contd...)

- The Rules contain detailed provisions pertinent to finalisation of list of contributories of the company and its settlement by the tribunal, application for rectification of list, meetings of creditors and contributories, report by the CL on the result of the meeting, manner of dealing with company's assets, manner of voting by creditors and proxies, registers and books of account to be maintained by the CL, banking account of the CL, investment of surplus funds by the CL, filing and audit of CL's account, and also covers cases wherein the company against which a winding up order has been passed has no assets.
- Part III of the Notification provides for winding up by tribunal (other than summary winding up) which, *inter-alia*, contains detailed provisions pertinent to:
 - ✓ Debts and claims against the company which *inter-alia* lays down provisions for notice for proving debts, mode of proof and verification thereof, workmen's dues, CLs' right to call any person in connection with investigation, appeal by creditor;
 - ✓ Attendance and appearance of creditors and contributories – which also covers representation of creditors and contributories before the tribunal;
 - ✓ Collection and distribution of assets encompassing powers of CL, CL to be in position of receiver and company's property to be surrendered on requisition to the CL;
 - ✓ Calls in winding up by the tribunal – calls by CL; CL to realise uncalled capital, order granting leave to make call and document making call, order for payment of call;
 - ✓ Examination under section 299 (Power to Summon Persons Suspected of Having Property of Company, etc.) and 300 (Power to Order Examination of Promoters, Directors, etc.);
 - ✓ Application against delinquent directors, promoters and officers of the company;

Companies Act (Contd...)

- ✓ Application for disclaimer to be filed in tribunal, vesting of disclaimed property etc.;
 - ✓ Compromise and abandonment of claims, application for sanction of compromise, sale by CL, dividends and returns of capital in winding up by tribunal;
 - ✓ Termination of winding up, dissolution of company, conclusion of winding up etc.;
 - ✓ Payment of unclaimed dividends and undistributed assets into the company liquidation dividend and undistributed assets account in a winding up.
-
- Part IV of the Notification, *inter-alia*, provides for costs pertinent to winding up process, fees in misfeasance proceedings, etc.
 - Part V encapsulates provisions pertinent to summary procedure for liquidation.
 - Part VI provides for miscellaneous provisions for every person who has been a director or officer of a company which is being wound up, shall be entitled, free of charge, at all reasonable times to inspect the file of proceedings of the liquidation.
 - **Conclusion -**
 - ✓ The Rules prescribe, *inter-alia*, for winding up small businesses without having a need to knock the doors of a tribunal, under a provision in the Companies Act and offers an alternative to the commonly used liquidation procedure under Insolvency and Bankruptcy Code, 2016. The Rules further define provisions of section 361 of the Companies Act which allowed such an option for liquidating small firms with assets up to INR 1,00,00,000 (Indian Rupees One Crore only). As per the Rules, those companies which have total outstanding deposit of up to INR 25,00,000 (Indian

Companies Act (Contd...)

Rupees Twenty Five Lakhs only), or those with outstanding loan including secured loan up to INR 50,00,000 (Indian Rupees Fifty Lakhs only), or entities having sales up to INR 50,00,00,000 (Indian Rupees Fifty Crores only), or those having paid up capital up to INR 1,00,00,000 (Indian Rupees One Crore only) are covered under this provision.

- The Rules empower the official liquidator appointed by the Central Government, to take charge of the assets and deal with the claims of the company. If the liquidator finds any fraud having been committed by shareholders, directors or other officials of the company, the Central Government may order a probe. The Rules prescribe that the Central Government will issue directions to the liquidator in case of companies opting for summary liquidation.
- The Rules give an insight on how official liquidators shall to go about in managing the resources of the company that goes into liquidation under various provisions of the law and the manner of selling assets.
- The Rules seek to, *inter-alia*, reduce the burden of the NCLT by enabling summary procedures for liquidation to be filed with the Central Government.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules_28012020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 13(E) on the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 (“Amendment Rules”) dated January 03, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (“**Principal Rules**”) which shall be effective for financial years commencing from April 01, 2020.
 - Rule 8A of the Principal Rules which deals with mandatory appointment of company secretaries in companies not covered under rule 8 has been amended to prescribe that every private company which has a paid-up share capital of INR 10 crores or more shall have a whole-time company secretary. Therefore, the said amendment alters the limits in respect of paid up capital, for mandatory appointment of full-time company secretary for companies from earlier INR 5 crores to INR 10 crores.
 - Rule 9 of the Principal Rules has been amended to make secretarial audit applicable to **every company** having outstanding loans or borrowings from banks or public financial institutions of INR 100 crores or more. The following explanation has also been inserted:
 - ✓ *For the purposes of this sub-rule, it is hereby clarified that the paid-up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.*

Companies Act (Contd...)

Therefore, apart from the listed companies and public companies having a paid-up share capital of INR 50 crores or more or having a turnover of INR 250 crores or more, the said amendment brings private companies indebted with INR 100 crores or more under ambit of secretarial audit.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – circular no. 1/2020 regarding relaxation of additional fees and extension of last date of filing of Form BEN-1 and BEN-2 dated January 01, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has further extended the time limit for filing e-form BEN-2 (Return to the Registrar in respect of declaration under section 90) upto March 31, 2020 (which was earlier December 31, 2019), without payment of additional fee and thereafter on payment of fee and additional fee as maybe applicable. For the aforesaid purpose, date of filing of form BEN-1 may be construed accordingly.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular1_01012020.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DIL2/CIR/P/2020/13 for streamlining the process of rights issue, dated January 22, 2020 (“Circular”).**
 - SEBI, *vide* the Circular, has streamlined the process of right issue, by amending SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”).
 - The major highlights of the Circular are enumerated as under:
 - ✓ The advance notice for record date to stock exchange(s) has been reduced from at least 7 (seven) working days to at least 3 (three) working days (excluding the date of intimation and the record date), for the purpose of rights issue.
 - ✓ Further, a newspaper advertisement confirming date of completion of dispatch and intimation of same to the stock exchanges for dissemination on their websites, is now required to be given at least 2 (two) days (as against the erstwhile 3 (three) days) before the date of opening of the issue.
 - ✓ Introduction of dematerialized Rights Entitlements (“**REs**”);
 - Issuer companies undertaking a rights issue are mandatorily required to credit the RE to shareholders in DEMAT form. The said information on process of credit of REs and renunciation thereof, shall be disclosed in the offer letter and the abridged letter of offer.

Securities Law (Contd...)

The REs with a separate ISIN (International Securities Identification Numbers) shall be credited to the DEMAT account of the shareholders before the date of opening of the issue, against the shares held by them as on the record date. Physical shareholders shall be required to provide their DEMAT account details to issuer company for credit of REs within 2 (two) working days prior to the issue closing date, such that credit of REs in their DEMAT account takes place at least 1 (one) day before the closing date.

- Additionally, SEBI has introduced a framework for renunciation of REs to those shareholders, who do not want to exercise their REs. It has also allowed trading of such RE on the stock exchanges or transfer through secondary market platform, confirming the existing T+2 rolling settlement equity market practice.
- ✓ Application for a rights issue shall be made only through ASBA facility, as a payment mode, which is investor friendly and enables faster completion of the post issue process.
- ✓ SEBI has clarified that a shareholder shall not be allowed to withdraw an application after closing date of the issue.
- ✓ Detailed procedure on rights issue process is encapsulated in Annexure I of the enclosed Circular.
- ✓ The Circular shall be applicable for all rights issues and fast track rights issue where letter of offer is filed with the stock exchanges on or after February 14, 2020.

Securities Law (Contd...)

- **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/jan-2020/streamlining-the-process-of-rights-issue_45753.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/CMD/CIR/P/2020/12 on non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) and the Standard Operating Procedure for suspension and revocation of trading of specified securities, dated January 22, 2020 (“Circular”).**
- In order to put in place a stricter mechanism to deal with non-compliances and further streamline the standard operating procedure (“**SOP**”) for suspension and revocation of trading of specified securities, market regulator SEBI, in supersession of circular number SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 3, 2018, *vide* the Circular, has directed the stock exchanges, in the interest of investors and the securities market, to undertake the following:
 - ✓ Take action in case of non-compliances with the Listing Regulations as specified in Annexure I of the enclosed Circular, and
 - ✓ Follow the SOP for suspension and revocation of suspension of trading of specified securities as specified in Annexure II of the enclosed Circular.

However the stock exchanges have been vested with powers to deviate from the above, if found necessary, only after recording reasons in writing.

Accordingly stock exchanges will have powers to slap penalties up to maximum of INR 50,000 (Indian Rupees Fifty Thousand only) for certain violations as against the extant maximum of INR 10,000 (Indian Rupees Ten Thousand only).

Securities Law (Contd...)

- For effective enforcement of the Listing Regulations, the depositories, on receipt of intimation from the concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter(s) in such non-compliant listed entity as well as all other securities held in the DEMAT account of the promoter(s). In circumstances, where a non-compliant entity is listed on more than 1 (one) recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under the Circular in consultation with each other.
- The website of recognised stock exchanges shall disclose the action(s) taken against the listed entities for non-compliance(s); including the details of the respective requirement, amount of fine levied, details regarding the freezing of shares of promoters, the period of suspension etc.
- This Circular shall come into force on or after March 31, 2020, until then the SOP circular dated May 03, 2018 would be applicable till the time current SOP circular dated January 22, 2020 comes into force.
- **Link of the Circular.**
<https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html>

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – notification number SEBI/LAD-NRO/GN/2020-02 on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2020, dated January 10, 2020 (“Notification”).**
 - SEBI, *vide* the Notification, has further amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Principal Regulations**”), which shall come into force from the date of publication in the official gazette i.e. January 10, 2020.
 - Per the said Notification, market regulator SEBI, has extended the deadline by 2 (two) years to April 1, 2022, for the implementation of its directive to split the roles of Chairman and Managing Director or the Chief Executive Officer for top 500 listed companies by market capitalisation. Accordingly, the said companies have to ensure that the Chairman shall be a non-executive director and not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” under the Companies Act, 2013.
 - **Link of the Notification.**
https://www.sebi.gov.in/legal/regulations/jan-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2020_45649.html

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – notification no. RBI/2019-20/138 on amendment to Master Direction on KYC dated January 20, 2020 (“Notification”).**
 - The Government had amended the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (“**PML Rules**”), *vide* Gazette Notification G.S.R. 582(E) dated August 19, 2019 and Gazette Notification G.S.R. 840(E) dated November 13, 2019.
 - The RBI, *vide* the Notification, has decided to permit video-based customer identification process (V-CIP), as a consent based alternate method of establishing the customer’s identity, for customer onboarding, with a view to leveraging the digital channels for customer identification process by regulated entities. The regulated entities have been defined under Section 3(xiii) of the Master Direction on KYC dated February 25, 2016 (“**Master Directions**”).
 - The Notification has carried out the following changes to the Master Directions and has updated the same, which shall come in to force *w.e.f* January 20, 2020.
- ✓ **Changes due to amendments to the PML Rules**
 - “**Digital KYC**” has been defined in Section 3 to mean capturing live photo of the customer and officially valid document or the proof of possession of Aadhaar, where offline verification cannot be carried out, along with the latitude and longitude of the location where such live photo is being taken by an authorised officer of the regulated entity as per the provisions contained in the Prevention of Money-Laundering Act, 2002 (“**PML Act**”) and the steps to carry out the Digital KYC process have also been stipulated in the Master Directions.

Reserve Bank of India (Contd...)

- **“Equivalent e-document”** has been defined in Section 3 of the Master Directions as an electronic equivalent of a document, issued by the issuing authority of such document with its valid digital signature including documents issued to the digital locker account of the customer as per Rule 9 of the Information Technology (Preservation and Retention of Information by Intermediaries Providing Digital Locker Facilities) Rules, 2016.
- Section 16 of the Master Directions has been amended as under:
 - **customer, for the purpose of Customer Due Diligence process (CDD), shall submit:**
 - i. the Aadhaar number where he is desirous of receiving any benefit or subsidy under any scheme notified under section 7 of the Aadhaar (Targeted Delivery of Financial and Other subsidies, Benefits and Services) Act, 2016; or he decides to submit his Aadhaar number voluntarily to a banking company or any regulated entity notified under first proviso to sub-section (1) of section 11A of the PML Act, i.e. to say, a non-banking entity as notified by the Central Government; or
 - ii. the proof of possession of Aadhaar number where offline verification can be carried out; or
 - iii. the proof of possession of Aadhaar number where offline verification cannot be carried out; or
 - iv. any Officially Valid Document (OVD) or the equivalent e-document thereof containing the details of his identity and address;
 - v. the Permanent Account Number or the equivalent e-document thereof or Form No. 60 as defined in Income-Tax Rules, 1962; and

Reserve Bank of India (Contd...)

- vi. such other documents including in respect of the nature of business and financial status of the client, or the equivalent e-documents thereof as may be required by the regulated entity.

➤ **Provided that where the customer has submitted:**

- i. Aadhaar number as above in clause (i) clause (i) (CDD Process), to a bank or to a regulated entity notified under first proviso to sub-section (1) of section 11A of the PML Act, such bank or regulated entity shall carry out authentication of the customer's Aadhaar number using e-KYC authentication facility provided by the Unique Identification Authority of India.
- ii. proof of possession of Aadhaar under clause (i) of the preceding paragraph (CDD Process) where offline verification can be carried out, the regulated entity shall carry out offline verification. an equivalent e-document of any OVD, the regulated entity shall verify the digital signature as per the provisions of the Information Technology Act, 2000 (21 of 2000) and any rules issues thereunder and take a live photo as specified under Annex I of the Master Direction.
- iii. proof of possession of Aadhaar number where offline verification cannot be carried out under clause (i) of the preceding paragraph (CDD Process) or any OVD under clause (iv) of the preceding paragraph (CDD Process), the regulated entity shall carry out verification through digital KYC as specified under Annex I of the Master Direction.
Provided, for a period not beyond such date as may be notified by the Government for a class of regulated entities, instead of carrying out digital KYC, the regulated entity pertaining to such class may obtain a certified copy of the proof of possession of

Reserve Bank of India (Contd...)

Aadhaar number or the OVD and a recent photograph where an equivalent e-document is not submitted.

- Equivalent e-document has also been permitted for accounts of non-individual customer.
- Where a customer has provided his Aadhaar number under paragraph clause (i) of the preceding paragraph (CDD Process) for identification and wants to provide a current address, different from the address as per the identity information available in the Central Identities Data Repository, he may give a self-declaration to that effect to the regulated entity.
- ✓ **Changes due to introduction of Video based Customer Identification Process (V-CIP):**
 - Definition of V-CIP has been inserted in Section 3 of the Master Directions.
 - The process of V-CIP has been specified in Section 18 of the Master Directions in terms of which, regulated entities may undertake live V-CIP, to be carried out by an official of the regulated entity, for establishment of an account based relationship with an individual customer, after obtaining his informed consent and shall adhere to the following stipulations:
 - The official of the regulated entity performing the V-CIP shall record video as well as capture photograph of the customer present for identification and obtain the identification information as below:

Reserve Bank of India (Contd...)

- i. Banks: can use either OTP based Aadhaar e-KYC authentication or offline verification of Aadhaar for identification. Further, services of business correspondents may be used by banks for aiding the V-CIP.
 - ii. Regulated entities other than banks: can only carry out offline verification of Aadhaar for identification.
-
- Regulated entity shall capture a clear image of PAN card to be displayed by the customer during the process, except in cases where e-PAN is provided by the customer. The PAN details shall be verified from the database of the issuing authority.
 - Live location of the customer (Geotagging) shall be captured to ensure that customer is physically present in India.
 - The official of the regulated entity shall ensure that photograph of the customer in the Aadhaar/PAN details matches with the customer undertaking the V-CIP and the identification details in Aadhaar/PAN shall match with the details provided by the customer.
 - The official of the regulated entity shall ensure that the sequence and/or type of questions during video interactions are varied in order to establish that the interactions are real-time and not pre-recorded.
 - In case of offline verification of Aadhaar using XML file or Aadhaar secure qr code, it shall be ensured that the XML file or QR code generation date is not older than 3 (three) days

Reserve Bank of India (Contd...)

from the date of carrying out V-CIP.

- All accounts opened through V-CIP shall be made operational only after being subject to concurrent audit, to ensure the integrity of process.
- Regulated entity shall ensure that the process is a seamless, real-time, secured, end-to-end encrypted audio visual interaction with the customer and the quality of the communication is adequate to allow identification of the customer beyond doubt. Regulated entity shall carry out the liveness check in order to guard against spoofing and such other fraudulent manipulations.
- To ensure security, robustness and end to end encryption, the regulated entities shall carry out software and security audit and validation of the V-CIP application before rolling it out. The audio visual interaction shall be triggered from the domain of the regulated entity itself, and not from third party service provider, if any. The V-CIP process shall be operated by officials specifically trained for this purpose. The activity log along with the credentials of the official performing the V-CIP shall be preserved.
- Regulated entities shall ensure that the video recording is stored in a safe and secure manner and bears the date and time stamp.
- Regulated entities are encouraged to take assistance of the latest available technology, including artificial intelligence and face matching technologies, to ensure the integrity of the process as well as the information furnished by the customer.

Reserve Bank of India (Contd...)

However, the responsibility of customer identification shall rest with the regulated entity.

- Regulated entity shall ensure to redact or blackout the Aadhaar number in terms of Section 16 of the Master Directions.
- Business correspondents can facilitate the process only at the customer end and as already stated in paragraph number (2) of this V-CIP and the official at the other end of V-CIP interaction should necessarily be a bank official. Banks shall maintain the details of the business correspondents assisting the customer, where services of business correspondents are utilized. The ultimate responsibility for customer due diligence will be with the bank.

- **Link of the Notification.**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11783&Mode=0>

Insolvency And Bankruptcy Code

- **Insolvency And Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG054 - on Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2020 (“Regulations”) dated January 15, 2020 (“Notification”).**
- The IBBI, *vide* the Notification, has framed the Regulations to further amend the IBBI (Voluntary Liquidation Process) Regulations, 2017 (“**Principal Regulations**”), major highlights whereof are given below, which shall come into force on the date of their publication in the official gazette i.e. January 15, 2020.
 - ✓ In the Principal Regulations, after regulation 2(1)(b), the following clause is inserted, viz:
 - “(ca) “**Corporate Voluntary Liquidation Account**” means the Corporate Voluntary Liquidation Account operated and maintained by the Board under regulation 39 (of the Principal Regulations)” (“**CVLA**”).

The Regulations provides that the IBBI shall operate and maintain an account to be called the CVLA in the public accounts of India.

- ✓ The Notification substitutes regulation 39 of the Principal Regulations which deals with ‘unclaimed proceeds of voluntary liquidation or undistributed assets’ as under:
 - The Regulations provides that the IBBI shall operate and maintain an account to be called the CVLA in the public accounts of India. It further provides that until the CVLA is operated as part

Insolvency And Bankruptcy Code (Contd...)

of the public accounts of India, the IBBI shall open a separate bank account with a scheduled bank for deposit of the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a voluntary liquidation process along with any income earned thereon till the date of deposit in the CVLA before the liquidator submits his final report prior to the dissolution to the Adjudicating Authority. Further, if such amounts are held by the liquidator after the commencement of these Regulations, the liquidator shall deposit the same within 15 (fifteen) days of the date of such commencement, along with any income earned thereon till the date of deposit and he shall be entitled to a receipt from IBBI for any amount deposited into the CVLA under the Regulations.

- The Regulations further provides for stakeholders, who claim to be entitled to any amount deposited into the CVLA, may apply to IBBI for an order for withdrawal of the amount in form as provided in the Regulations. Further if any other person other than the stakeholder claims to be entitled to any amount deposited into the CVLA, he is required to submit evidence to satisfy IBBI that he is so entitled.
- Per the Notification, IBBI will be required to nominate an officer of the level of Executive Director of IBBI as the custodian of the CVLA and shall maintain corporate debtor-wise ledger of the amount deposited into and the amount withdrawn from the CVLA. Proper maintenance of the CLA along with getting the same audited shall also be the responsibility of IBBI.
- The audit report along with the statement of accounts of the CVLA shall be placed before the Governing Board and shall be forwarded to the Central Government.

Insolvency And Bankruptcy Code (Contd...)

- The Notification also provides that any amount deposited into the CVLA which remains unclaimed or undistributed for a period of 15 (fifteen) years from the date of order of dissolution of the corporate debtor and any amount of income or interest received or earned in the CVLA shall be transferred to the Consolidated Fund of India.
 - The Notification further provides for various amendments to the disclosure tables and provides for various forms, more specifically provided in the link hereunder.
- **Link of the Notification.**
<https://www.ibbi.gov.in/uploads/legalframwork/04ddc0bd1b6813e608bbe60e9d920464.pdf>

Insolvency And Bankruptcy Code (Contd...)

□ **Insolvency And Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG053 - on Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020 (“Regulations”) dated January 06, 2020 (“Notification”).**

▪ The IBBI, *vide* the Notification, has framed the Regulations to further amend the IBBI (Liquidation Process) Regulations, 2016 (“**Principal Regulations**”), major highlights whereof are given below, which shall come into force on the date of their publication in the official gazette i.e. January 06, 2020.

✓ In the Principal Regulations, after regulation 2(1)(c), the following clause is inserted, viz:

○ “(ca) “**Corporate Liquidation Account**” means the Corporate Liquidation Account operated and maintained by the Board under regulation 46 (of the Principal Regulations)” (“**CLA**”).

The Regulations provides that the IBBI shall operate and maintain an account to be called the CLA in the public accounts of India.

✓ In the Principal Regulations, in regulation 2B, in sub-regulation (1), the following proviso shall be inserted, viz:

○ “*Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.*”.

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The Regulations, through the said proviso, seeks to prevent back-door entry to ineligible persons under the Code, to be a part of any compromise or arrangement under section 230 of the Companies Act, 2013.

- ✓ In the Principal Regulations, in regulation 21A (Presumption of security interest), for sub-regulation (2), the sub-regulations which stand substituted per the Notification, states that:
 - a secured creditor, who proceeds to realise its security interest, shall contribute its share of the insolvency resolution process cost, liquidation process cost and workmen's dues, within 90 (ninety) days of the liquidation commencement date.
 - It shall also pay excess of realised value of the asset, which is subject to security interest, over the amount of its claims admitted, within 180 (one hundred and eighty) days of the liquidation commencement date. Where the secured creditor fails to pay such amounts to the Liquidator within 90 (ninety) days or 180 (one hundred and eighty) days, as the case may be, the asset shall become part of liquidation estate.
 - In case, the amount payable under the aforesaid sub-regulation is not certain by the date, the secured creditor shall pay the amount, as estimated by the liquidator and any difference between the amount payable and the amount paid shall be made good by the creditor or the liquidator as the case by, once the amount payable under the aforesaid sub-regulation is ascertainable.

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- ✓ In the Principal Regulations, after regulation 37(7), the following sub-regulation shall be inserted, viz:
 - *“(8) A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.”*

Thus, a secured creditor cannot sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.

- ✓ The Notification substitutes regulation 46 of the Principal Regulations which deals with ‘unclaimed proceeds of liquidation or undistributed assets as under:
 - The Regulations provides that the IBBI shall operate and maintain an account to be called the CLA in the public accounts of India. It further provides that until the CLA is operated as part of the public accounts of India, the IBBI shall open a separate bank account with a scheduled bank for deposit of the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon till the date of deposit in the CLA before the liquidator submits his final report prior to the dissolution to the Adjudicating Authority. Further, if such amounts are held by the liquidator after the commencement of these Regulations, the liquidator shall deposit the same within 15 (fifteen) days of the date of such commencement, along with any income earned thereon till the date of deposit and he shall be

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entitled to a receipt from IBBI for any amount deposited into the CLA under the Regulations.

- The Regulation further provides for stakeholders, who claim to be entitled to any amount deposited into the CLA, may apply to IBBI for an order for withdrawal of the amount in form as provided in the Regulations. Further if any other person other than the stakeholder claims to be entitled to any amount deposited into the CLA, he is required to submit evidence to satisfy IBBI that he is so entitled.
- Per the Notification, IBBI will be required to nominate an officer of the level of Executive Director of IBBI as the custodian of the CLA and shall maintain corporate debtor-wise ledger of the amount deposited into and the amount withdrawn from the CLA. Proper maintenance of the CLA along with getting the same audited shall also be the responsibility of IBBI.
- The audit report along with the statement of accounts of the CLA shall be placed before the Governing Board and shall be forwarded to the Central Government.
- The Notification further provides that any amount deposited into the CLA which remains unclaimed or undistributed for a period of 15 (fifteen) years from the date of order of dissolution of the corporate debtor and any amount of income or interest received or earned in the CLA shall be transferred to the Consolidated Fund of India.

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- The Notification further provides for various amendments to the disclosure tables and provides for various forms, more specifically provided in the link hereunder.
- **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/6eda1d32cfc69cf3fbf91feff9116078.pdf>

Deets / Disclaimer

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Thank You



There is no wealth like knowledge and no poverty like ignorance - Buddha