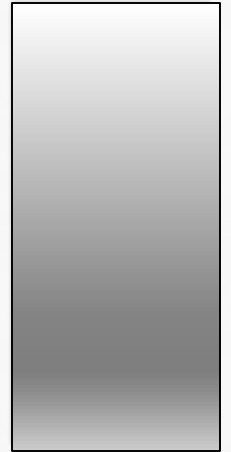


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR FEBRUARY,
2020



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. (E) (yet to be published in the official gazette) on commencement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020 (“Rules”) dated February 28, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Principal Rules**”) which shall come into force with effect from publication of the Notification in the official gazette.
 - The following amendments are incorporated in the said Principal Rules.
 - ✓ *In rule 6(1)(a) of the Principal Rules, for the words “three months”, the words “five months” shall be substituted.*

Accordingly, independent directors in a company, are required to register themselves with the databank within 5 (five) months from December 1, 2019 (as against erstwhile 3 (three) months).

- ✓ *In rule 6(1)(a) of the Principal Rules, following proviso shall be substituted viz. Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more listed public company, or unlisted public company having a paid-up share capital of rupees ten crore or more; or body corporate listed on a recognized stock exchange.*

Companies Act (Contd...)

The Notification now additionally exempts an individual who has served as a director or key managerial personnel in a 'body corporate listed on a recognized stock exchange', for a total period of not less than 10 (ten) years, from passing the online proficiency self-assessment test.

- ✓ In the second proviso to the aforesaid sub-rule, for the word “companies”, the word “companies or bodies corporate” is substituted.

This is insync with the amendment made in rule 6(1)(a) above where the term ‘companies’ has been replaced with ‘companies or bodies corporate’.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – order no. S.O. (E) (yet to be published in the official gazette) on the Companies (Auditor’s Report) Order, 2020 dated February 25, 2020 (“Order”).**
 - In order to significantly improve the quality of reporting by the auditors on the financial statements of the companies the MCA, after consultation with the National Financial Reporting Authority, has issued the Order in supersession of the Companies (Auditor’s Report) Order 2016, which shall be applicable to companies (as stated therein) for financial years commencing on or after the April 1, 2019.
 - The Order, inter-alia, now requires a statement in the auditor’s report on - whether the said company is maintaining proper records showing full particulars of intangible assets; whether the management physically verifies the property, plant and equipment; details of immovable property shown in the financial statements but not held in the name of the company etc.; whether any proceedings have been initiated or are pending against the company for holding any Benami property under the “Benami Transactions (Prohibition) Act, 1988 and rules made thereunder, if so, whether the Company has appropriately disclosed the details in its financial statements; whether during any point of time of the year, the company has been sanctioned working capital limits in excess of INR 5 crores in aggregate from banks or financial institutions on the basis of security of current assets; whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures etc.
 - **Link of the Order.**
http://www.mca.gov.in/Ministry/pdf/Orders_25022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 128(E) on commencement of the Companies (Incorporation) Amendment Rules, 2020 (“Rules”) dated February 18, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force with effect from February 23, 2020. The amendment aims to facilitate profession tax registration and opening of bank account for companies.
 - The following amendments are incorporated in the said Rules:
 - ✓ Rule 9 of the Principal Rules shall be substituted with the following:
 - *“9. Reservation of name or change of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects if any, with effect from the 23rd February, 2020.”;*
 - ✓ In the Principal Rules:

Companies Act (Contd...)

- *rule 10, 12, sub-rule (1) of rule 19, sub-rules (1), (2), (3), (4), (7) and (9) of rule 38, for the words, letters, figures and brackets,, “Form No INC-32 (SPICE), wherever they occur, the letters, brackets, words and figures “SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32)” shall be substituted with effect from the 23rd February, 2020;In the Principal Rules:*

Accordingly, the name application shall be now made by using web service INC-32 (SPICE+) instead of RUN the usage of RUN has been reserved for application for change of name. Also, the term - Form No INC-32 (SPICE+) has replaced the reference to Form No INC-32 (SPICE) in the Principal Rules.

- ✓ *In rule 38 of the Principal Rules, in the marginal heading, for the word, brackets and letters “Electronically (SPICE)”, the words, brackets and letters “Electronically Plus (SPICE+)” shall be substituted with effect from the 23rd February, 2020.*

Accordingly, in rule 38 of the Principal Rules the term - Electronically Plus (SPICEe+) has replaced the reference to ‘Electronically (SPICE).’

- ✓ In rule 38A of the Principal Rules:
 - in the marginal heading, for the words, brackets and letters “and Employees’ Provident Fund Organisation (EPFO) Registration”, the words, brackets and letters, “Employees’ Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank

Companies Act (Contd...)

Account” shall be substituted

- *for the letters “AGILE”, the letters “AGILE-PRO”, shall be substituted;*
- *after clause (c), the following clauses shall be inserted, viz:- “(c) Profession Tax Registration with effect from the 23rd February, 2020 (d) Opening of Bank Account with effect from 23rd February, 2020.”.*

Accordingly, in Principal Rules, ‘Form No INC-35 (AGILE)’ will now be replaced with ‘Form No INC-32 (AGILE-PRO)’ in which PRO stands for ‘Professional Tax Registration and Opening of Bank Account’ which is now also part of this form.

- ✓ In the annexure to the Principal Rules, for forms “RUN, e-form No INC-32 (SPICE), and e-form No.INC-35 (AGILE)”, forms “RUN, e-form No INC-32 (SPICE+), e-form No.INC-35 (AGILE-PRO), and e-form No.INC-9” shall be substituted, more specifically set out in the Notification.

Accordingly Forms INC 32 (SPICEe+), INC 35 (AGILE-PRO), RUN, INC 9 has been updated.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/rule_22022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 127(E) on the Companies (Registration Offices and Fees) Amendment Rules, 2020 (“Rules”) dated February 18, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has notified the Rules as an amendment to the Companies (Registration Offices and Fees) Rules, 2014, pursuant to which e-form GNL-2 shall be substituted as enclosed in the Notification. The said Notification shall come into force on the date of their publication in the official gazette i.e. February 18, 2020.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/rule_19022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – circular no 04/2020 on filing of forms in the Registry (MCA-21) by the Insolvency Professional (Interim Resolution Professional (“IRP”) or Resolution Professional (“RP”) or Liquidator appointed under Insolvency Bankruptcy Code, 2016 dated February 17, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has enabled compliance with the provisions of the Companies Act, 2013 (“**Act**”) by the IRPs/ RPs/Liquidator, as the case may be.
 - The IRPs/ RPs/Liquidator have to first file the order of the National Company Law Tribunal order approving him/her in the said capacity of IRPs/ RPs/Liquidator in e-form INC-28 on the MCA-21 portal, in manner as prescribed in the Circular.
 - Once the said form is approved by the jurisdictional Registrar of Companies, the IRPs/ RPs/Liquidator shall, for all the subsequent filings with the MCA-21 portal, choose his designation as ‘Chief Executive Officer (CEO)’. The master data of the company, after approval of the said form, will clearly display that the said company is under corporate insolvency resolution process as defined under IBC, or liquidation, as the case may be and the name of the insolvency professional so appointed shall be displayed in the CEO column.
 - The IRPs/ RPs/Liquidator shall be responsible be able to file all documents/disclosures/returns for the purpose of all compliances under the Act.
 - The Circular also provides for signing of certain forms as the CEO.

Companies Act (Contd...)

- Unless the e-form INC-28 is approved no other forms shall be filed by IRPs/ RPs/Liquidator in his role of “designated CEO”.
- The Circular also provides for modalities wherein a new board is appointed in terms of order passed the tribunal or appellate tribunal more specifically set out therein.
- **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular_17022020.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 114(E) on Nidhi (Second Amendment) Rules, 2020 (“Rules”) dated February 14, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Nidhi Rules, 2014 (“**Principal Rules**”) which shall come into force with effect from publication in the official gazette i.e. February 14, 2020.
 - Rule 23A of the Nidhi Rules, 2014 has been amended to state that every company functioning on the lines of a Nidhi company or Mutual Benefit Society and every Nidhi incorporated under the Companies Act, shall also get itself declared as such in accordance with rule 3A within a period of 1 (one) year from the date of its incorporation or within a period of 9 (nine) months (as against the erstwhile 6 (six) months) from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/rule_14022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 111(E) on the Companies (Issue of Global Depository Receipts) Amendment Rules, 2020 (“Rules”) dated February 13, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has notified the Rules as an amendment to the Companies (Issue of Global Depository Receipts) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of their publication in the official gazette, i.e. February 13, 2020
 - Per the Notification, in rule 2 of the Principal Rules:
 - ✓ for the words, brackets and figures “Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993” at both the places where they occur, the words and figures “Depository Receipts Scheme, 2014” (“Scheme”) shall be substituted;
 - ✓ after sub-rule (1) and clause (a), clause (aa) shall be inserted:
 - *(aa) “overseas depository” or “overseas depository bank” shall mean foreign depository” as defined in the Scheme.*

Accordingly, the meaning of foreign depository receipts shall extend to ‘overseas depository’ or ‘overseas depository bank’.

Companies Act (Contd...)

- Per the Notification, in rule 5 of the Principal Rules:
 - ✓ for sub-rule (1), the following sub-rule shall be substituted, viz.:
 - *“(1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.”;*
 - *in sub-rule (3), the word “abroad” is omitted.*

The Rules have replaced the word ‘abroad’ with ‘concerned jurisdiction’. With this change the MCA has provided clarity and expanded on the term ‘abroad’.

- In rule 7 of the Principal Rules, a new proviso has been inserted which states that the proceeds of issue of depository receipts may be remitted in an International Financial Services Centre Banking Unit (IBU) banking unit and utilized in accordance with the instructions issued by the Reserve Bank of India from time to time.
- *In the Principal Rules, in rule 9 (1), the word “abroad” has been omitted.*

This is insync with the amendment made in rule 5 where the term ‘abroad’ has been replaced with ‘concerned jurisdiction’.

Companies Act (Contd...)

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/notices_13022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. (E) (yet to be published in official gazette) on commencement of certain provisions of section 230 (i.e. Power to Compromise or Make Arrangements with Creditors and Members) of the Companies Act, 2013 (“Act”) dated February 03, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has notified sub-section 11 of section 230 of the Act, which states that a 'takeover offer' can be included in a 'compromise' or an 'arrangement' under section 230 of the Act for unlisted companies, when made in prescribed manner. For takeover of listed companies, the companies are required to adhere to regulations framed by the Securities and Exchange Board of India.
 - Further, the Notification also notifies sub-section 12 of section 230 of the Act, which grants relief to an aggrieved party in the event of any grievances with respect to the takeover offer for companies other than listed companies, who may make an application to the National Company Law Tribunal.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Notification_04022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 79(E) on the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020 (“Rules”) dated February 03, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has notified the Rules as an amendment to Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“**Principal Rules**”), which shall come into force from the date of their publication in the official gazette, i.e. February 03, 2020.
 - The Notification *vide* insertion of sub-rule (5) after sub-rule (4) in rule 3 of the Principal Rules provides that, a member of the company to make an application for arrangement, for the purpose of takeover offer in terms of section 230(11) of the Companies Act, 2013 (“**Act**”), only when such member along with any other members hold not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company. Explanation I to the said sub-rule (5) clarifies the meaning of shares as equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights. Explanation II to the said sub-rule (5) clarifies that the said sub-rule (5) does not apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement. However, the Notification does not propose any shareholding threshold in order to file the application.
 - Insertion of sub-rule (6) thereunder specifies that an application of arrangement for takeover offer shall inter-alia contain (a) the report of a registered valuer, which shall mandatorily consider certain parameters as regards the valuation aspects of the target company.

Companies Act (Contd...)

It should consider the highest price paid by any person or group of persons for acquisition of the target company's shares during the last twelve months. It should also consider other relevant valuation parameters like return on net worth, and parameters customary for valuation of shares of such companies; and (b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

- The fees to be paid alongwith the application under section 230(1) of the Act, is INR 5,000 per the amendment to schedule of the Principal Rules.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules1_04022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 80 (E) on the National Company Law Tribunal (Amendment) Rules, 2020 (“Rules”) dated February 03, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has notified the Rules as an amendment to National Company Law Tribunal (“NCLT”) Rules, 2016 (“**Principal Rules**”), which shall come into force from the date of their publication in the official gazette, i.e. February 03, 2020.
 - After rule 80, the following rule 80(A) shall be inserted:
 - *80A – Application under section 230 - An application under sub-section 230(12) may be made in form NCLT-1 alongwith documents which are mentioned in Annexure B.*
 - Accordingly per rule 80A, an application in Form NCLT-1 shall be filed before the tribunal by an aggrieved party in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the tribunal may, on application, pass such order as it may deem fit.
 - The Notification also provides for a list of documents to be annexed for making an application to the tribunal for takeover of unlisted companies, more specifically provided therein.
 - The schedule of fees provided in the Principal Rules have also been modified to include fees payable for making an application to NCLT for takeover of unlisted companies viz. INR 5,000.

Companies Act (Contd...)

- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules3_04022020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 81(E) on the Nidhi (Amendment) Rules, 2020 (“Rules”) dated February 03, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Nidhi Rules, 2014 (“**Principal Rules**”), which shall come into force with effect from February 10, 2020.
 - In the said Rules, forms NDH-1, NDH-2 and NDH-3 has been substituted with the forms more specifically set out in the Notification, as provided therein.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

Securities Law

□ **The Securities and Exchange Board of India (“SEBI” or “Board”) – press release PR No.7/2020 on SEBI Board Meeting, dated February 17, 2020 (“PR”).**

▪ Major highlights of the discussions held at the SEBI Board Meeting are enumerated hereunder:

✓ **Regulatory Sandbox Framework.**

- In lieu of certain relaxations in the extant SEBI regulations and guidelines, SEBI proposed a framework for ‘Regulatory Sandbox’, which allows all entities registered with SEBI under section 12 of the Securities and Exchange Board of India Act 1992, to test new products, services in a live environment on a limited set of eligible customers, for a specified period of time.
- An entity can participate on its own or use the services of a fintech firm. The registered entity shall be treated as the principal applicant, even if it uses the services of a fintech firm, and shall be solely responsible for testing of the solution in the sandbox.
- This Regulatory Sandbox is intended to serve as a testing ground for new business models and technologies that benefit investors, Indian markets and the economy at large.
- The Board, at its meeting also deliberated the proposal of regulatory framework to facilitate and operationalize the Regulatory Sandbox framework by inserting a common chapter in respective regulations of SEBI for granting limited certificate of registration to the entity interested in applying for testing in the Regulatory Sandbox.

Securities Law (Contd...)

This concept of limited registration shall facilitate the entities to operate in a Regulatory Sandbox without being subjected to the entire set of regulatory requirements to carry out that activity.

✓ **SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations”)**.

SEBI had issued a consultation paper on review of regulatory framework for investment advisers in January 2020 seeking comments from the public on the clarifications/amendments to IA Regulations. The Board after considering the issues in all four consultation papers and public comments, approved the proposals on regulatory changes including amendments to IA Regulations as under:

- To prevent the conflict of interest that exists between ‘advising’ of investment products and ‘selling’ of investment products at client level, and to ensure clear segregation between these two activities.
- For the convenience of the investors, the investment advisers shall be allowed implementation services (execution) through direct schemes/ products in the securities market.
- For better transparency, an agreement shall be executed between investment adviser and the client incorporating the key terms and conditions regarding investment advisory services.
- For the convenience of the investors, the investment advisers shall be allowed implementation services (execution) through direct schemes/ products in the securities market.

Securities Law (Contd...)

- Bringing clarity in payment of fees and introduction of upper limit on the fees charged to investors.
 - The eligibility criteria for registration as an investment adviser has been enhanced, including but not limited to net worth, qualification and experience requirements while grandfathering existing individual investment advisers from complying with the enhanced qualification and experience as specified by the Board.
 - The nomenclature '**Independent Financial Adviser (IFA)**' or '**Wealth Adviser**' or any other similar name, shall not be used by person dealing in distribution of securities, unless registered with SEBI as investment adviser.
- ✓ **Amendments to SEBI (Infrastructure Investment Trusts) Regulations, 2014 and the SEBI (Real Estate Investment Trusts) Regulations, 2014.**
- The Board approved amendments to SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014, wherein provision has been made for fast track rights issue of units by REITs and InvITs under the aforesaid respective regulations. Bringing clarity in payment of fees and introduction of upper limit on the fees charged to investors.

Securities Law (Contd...)

- Further, the Board approved amendment to SEBI (Infrastructure Investment Trusts) Regulations, 2014, wherein an alternative to the requirement of 5 (five) years' experience in infrastructure sector for investment manager of an InvIT, the combined relevant experience of not less than 30 (thirty) years of the directors/partners/employees of the investment manager shall also be considered.

✓ **Amendments to SEBI (Mutual Funds) Regulations, 1996.**

- **Custodian for gold or gold related instruments.**

In order to reduce concentration of custodial services for gold or gold related instruments with bank-custodian, the Board approved the proposal to amend the SEBI (Mutual Funds) Regulations, 1996 providing for non-bank custodians in addition to bank-custodian to offer custodian services for gold or gold related instruments of gold ETFs.

- **Investment by the Sponsor or Asset Management Company (“AMC”) in Close Ended Schemes.**

In order to bring uniformity across schemes, the Board has decided that Sponsor or AMC shall invest in close ended schemes also.

Securities Law (Contd...)

- ✓ **Amendment to SEBI (Depositories and Participants) Regulations, 2018 to enable re-pledge of securities pledged in dematerialized form.**

The Board approved insertion of a suitable Explanation to Regulation 79 (Manner of creating pledge in Depository) under SEBI (Depositories and Participants) Regulations, 2018, that the word 'pledge' shall include re-pledge of securities for margin and / or settlement obligations of the client or such other purposes as specified by the Board from time to time.

- ✓ The SEBI Budget for the financial year 2020-21 was also considered and approved by the Board at the meeting.

- **Link of the PR.**

https://www.sebi.gov.in/media/press-releases/feb-2020/sebi-board-meeting_46013.html

Securities Law (Contd...)

- ❑ **The Securities and Exchange Board of India (“SEBI” or “Board”) – general order No. 1 of 2020 on SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2020 dated February 05, 2020 (“Order”).**
 - SEBI *vide* its Order aims to formalize the issuance of observations on draft offer documents filed with the Board, where an investigation, enquiry, adjudication, prosecution, disgorgement, recovery or other regulatory action is pending against the issuer or its promoters/directors/group companies (“Entities”).
 - Major highlights of the Order are enumerated hereunder:
 - ✓ **Treatment where there is a probable cause for investigation or enquiry or when an investigation or enquiry is in progress against the Entities.**
 - In such a case, the observations on the draft offer document filed by the issuer with the Board wherein the investigations are pending, shall be kept in abeyance for a period of 30 (thirty) days of the occurrence of such probable cause or filing of the draft offer document, whichever is later and the draft documents shall be kept in abeyance for a further period of 30 (thirty) days, if the Board is unable to conclude such investigation, examination or enquiry against the Entities due to the reasons beyond its control, or due to act of parties other than the Entities.

Securities Law (Contd...)

- Where the Board is unable to conclude such investigation, examination or enquiry against the Entities due to the conduct of the Entities, the observations on the draft offer document shall be kept in abeyance till the time such investigation, examination or enquiry is concluded.
- ✓ **Treatment where show cause notice (“SCN”) has been issued.**
 - For cases, where SCNs have been issued to the Entities in an adjudication proceeding, the Board may process the draft offer document and issue observations and advise the concerned Entities to make necessary disclosures and statements in respect of such proceedings and the possible adverse impact of an order on the entities, in the offer document.
 - The Board shall keep in abeyance the issuance of observations on the draft offer documents under section 11 (4) or section 11(B)1 (both referring to Functions of the Board) of the SEBI Act, 1992 for a period of:
 - ❖ 90 (ninety) days from the date of filing of the draft offer documents in case a SCN has been issued by SEBI;
 - ❖ additional 45 (forty five) days in case SEBI is unable to conclude the proceedings in 90 (ninety) days due to the reasons beyond its control or due to the conduct of the parties other than the Entities. If no order is passed within 45 (forty-five) days as stipulated above, SEBI may provide observations and advise the Entities to make necessary disclosures and statements in respect of such proceedings and the possible adverse impact of an order on the entities, in the offer document; and

Securities Law (Contd...)

- ❖ till the conclusion of the proceedings if the proceedings are not concluded in 90 (ninety) days due to the conduct of the Entities.
- ✓ **Treatment where recovery proceedings have been initiated or an order for disgorgement or monetary penalty has not been complied with or in case of non-compliance with any direction issued by the Board.**
 - Where the Board has initiated proceedings
 - ❖ for recovery against the Entities or
 - ❖ when an order for disgorgement or
 - ❖ for monetary penalty passed against the Entities is not complied with or in case of non-compliance with any direction issued by the Board, the observations on the draft offer document filed by the issuer with the Board shall be kept in abeyance till such proceedings are concluded or until the directions are complied with.
- ✓ **Reconsideration of proceedings pursuant to remand by the Securities Appellate Tribunal (“SAT”) or court.**
 - Where the proceedings have been sent back by the SAT or a court to SEBI, the same shall, in effect be treated as proceedings covered under this Order, and the Board may take appropriate action in respect of the draft offer document under the provisions of this general order, subject to any order passed by the SAT or a court, as the case may be, while remanding the matter.

Securities Law (Contd...)

✓ **Issuance of observations when the issuer is restrained by a court from making a public issue or filing of offer document.**

- Where the issuer has been restrained by a court or tribunal from making an issue of securities or from issuing offer document to the public, the Board may examine the offer document and issue its observations on the draft offer documents with a qualification that said observations are subject to further orders of a court or tribunal.

✓ **Issuance of observations do not indicate exoneration.**

- The Order clarifies that issuance of observations on draft offer documents when an investigation or enquiry is pending or when any regulatory action is pending, does not indicate that the party has been exonerated in such proceedings or that action may not ultimately result from such proceedings.

- This Order shall come into force with immediate effect and shall supersede the SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006, as amended on March 31, 2008 by the General Order no. 1 of 2008.

▪ **Link of the Order.**

https://www.sebi.gov.in/legal/general-orders/feb-2020/sebi-issuing-observations-on-draft-offer-documents-pending-regulatory-actions-order-2020_45903.html

Insolvency And Bankruptcy Code

- **Insolvency and Bankruptcy Board of India (“IBBI”) – Guidelines for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (“Guidelines”) dated February 27, 2020.**
 - The Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (“**Regulations**”), provide for appointment of Insolvency Professionals (“**IPs**”) as administrators for the purposes specified therein and these Guidelines have been prepared in consultation with Securities and Exchange Board of India (“**SEBI**”) to facilitate appointment of IPs as administrators.
 - IBBI and SEBI have mutually agreed upon to use a panel of IPs for appointment as administrators for effective implementation of the Regulations.
 - For the aforesaid, IBBI shall prepare a panel of IPs keeping in view the requirements of SEBI and the Regulations and the SEBI shall appoint the IPs from the said panel as administrators. A panel shall be valid for 6 (six) months and a new panel will replace the earlier panel every 6 (six) months.
 - The major highlights of the Guidelines are enumerated hereunder and briefed in the enclosed Guidelines:

Insolvency And Bankruptcy Code (Contd...)

- The eligibility criteria for an IP to be included in the panel.
 - A zone wise list of the IPs to be included in the panel.
 - IBBI shall invite expression of interest from IPs in Form A to act as administrator by sending an email to the IPs at their registered email address.
 - IBBI shall include the IPs in the panel, who have expressed their interest, on the basis of three parameters, weightage of each such parameters, which is detailed in the enclosed Guidelines.
-
- These Guidelines shall come into effect for appointments as administrator with effect from April 01, 2020.

 - **Link of the Guidelines.**
<https://www.ibbi.gov.in/uploads/whatsnew/b170e0eac8657f5ee91d3557eaacd848.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG055 on Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2020 dated February 12, 2020 (“Amendment Regulations”) (“Notification”).**
 - The IBBI *vide* the Notification has further amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”), which shall come into force from the date of publication in the official gazette i.e. February 12, 2020.
 - Under this Notification, regulation 40B(4) of the Principal Regulations (Filing of Forms) is substituted as under: The Notification further provides for various amendments to the disclosure tables and provides for various forms, more specifically provided in the link hereunder.

“(4)The filing of a Form under this regulation after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st April, 2020.

This implies that the due date of submission for filing a form under the aforesaid regulation has been extended from the erstwhile due date i.e. January 01, 2020 to April 01, 2020. Further it is clarified that, the fee of INR 500 (Indian Rupees Five Hundred) per Form shall be chargeable for delayed filing, for each calendar month and the said penalty shall be applicable after April 01, 2020.

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- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/whatsnew/120f9315d9a1349bb5b4732f7b1ca3b6.pdf>

Deets / Disclaimer

❑ Deets.

Legalite Advisors LLP | LLPIN : AAJ 8514 | E-mail : la.mumbai@legalite.co.in | Corporate office, 503, 5th Floor, Shreeprasad House, Khar(West) 400050, Mumbai, Maharashtra, India | 📞: +91 9769022955/ +91 8454846257.

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Thank You



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