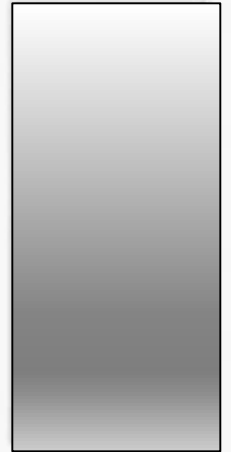


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR MARCH, 2020



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 13/2020 on modification of Limited Liability Partnership Settlement Scheme, 2020 - Modification, dated March 30, 2020 (“Modified Scheme”) (“Circular”).**
 - The MCA, *vide* the Circular, has modified the validity period of the Limited Liability Partnership Settlement Scheme, 2020 implemented *vide* general circular no. 06/2020 dated March 04, 2020 (“**Original Scheme**”). Accordingly, the Modified Scheme shall come into force *w.e.f.* **April 01, 2020 and shall remain in force upto September 30, 2020** (Original Scheme was launched from March 16, 2020 till June 13, 2020).
 - The Modified Scheme is applicable to **all defaulting limited liability partnership (“LLPs”)**, more specifically defined in the enclosed Circular, to file belated documents which are due for filing till August 31, 2020, without any additional fees.
 - Under the Modified Scheme, for late documents, the LLP shall pay **only the statutory filing fees** as prescribed by the LLP Act, 2008 and the rules framed thereunder, without any additional fee or penalty (Original Scheme was demanding statutory fees along with additional fees of INR 10 (Indian Rupees Ten only) per day, provided that the additional fee for such payment does not exceed INR 5000 (Indian Rupees Five Thousand only) per document).
 - The Modified Scheme has covered all **the belated forms/document** (as against only 4 (Four) forms prescribed under the Original Scheme).

Companies Act (Contd...)

- The defaulting LLPs will also be granted immunity for any prosecution against them by the respective registrar of companies (“**RoC**”). However, the Modified Scheme shall not be available to LLPs who have applied for striking off.).
- On conclusion of the Modified Scheme on September 30, 2020, the RoC shall take necessary action under the LLP Act, 2008 against the LLPs which have not availed this Scheme and are in default of in filing of documents as required under the provisions of LLP Act, 2008 in a timely manner.
- The other terms and conditions of Original Scheme stand unaltered.
- **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular13_30032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 12/2020 on companies fresh start scheme, 2020 (“CFSS 2020” or the “Scheme”), dated March 30, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has proposed to facilitate filing of various forms as required under the Companies Act, 2013 (“**Act**”) to file belated documents without any additional fees thereby condoning the delay in filing any documents, statements, returns etc. with MCA-21 registry, insofar as it relates to charging of additional fees, granting of immunity from prosecution or proceedings for imposing penalty on account of delay associated with certain filings. During the operation of the CFSS 2020, highlights whereof is given as under, only normal fees will be payable per respective provisions of the Act.
 - ✓ **Validity of the Scheme** – The Scheme shall come into force w.e.f. April 01, 2020 and shall remain in force upto September 30, 2020.
 - ✓ **Applicability of the Scheme** – The Scheme shall be applicable to all the ‘defaulting companies’, as defined in the enclosed Circular, where no appeal has been initiated against any penalty imposed by adjudicating authority as on April 01, 2020 and a period of 120 (One Hundred and Twenty) additional days shall be allowed to make appeal to the respective regional director if the last date of appeal falls between March 1, 2020 to May 31, 2020 (both days included).

Also, if any appeal is filed by the applicant against any prosecution launched or proceedings for imposing penalties initiated against such application, it shall withdraw such appeal before filing an application for issuance of immunity certificate under the Scheme, and submit proof of such withdrawal.

Companies Act (Contd...)

- ✓ **Fees** – No additional fees, only normal fees to be paid.
- ✓ **Non-applicability of the Scheme** – The Scheme shall not be applicable in the following cases:
 - Companies against which final notice of strike off has been initiated by designated authority.
 - Companies who have filed application for strike off.
 - Companies which have amalgamated under schemes of arrangements.
 - Companies who have filed application to obtain dormant company status under section 455.
 - Vanishing companies.
 - Where any increase of authorized capital involved (SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9).
- ✓ **Due Date** – The application for seeking immunity in respect of belated documents filed under the Scheme shall be made in e-form CFSS 2020 not later than 6 (Six) months from the date of closure of Scheme.
- ✓ **Scheme for inactive companies** – The defaulting companies can simultaneously apply as a dormant company under section 455 of the Act or apply for striking off of the name of the company.
- ✓ **Certificate** – The registrar of companies (“**RoC**”) shall issue immunity certificate based on the declaration made in Form CFSS-2020.

Companies Act (Contd...)

- ✓ **No immunity shall be provided in case of any:**
 - appeal pending or any management disputes pending in any court of law or tribunal.
 - court convicted or passed an order imposing penalty and such order is not appealed before this Scheme came into force.
 - ✓ Immunity from prosecution or proceedings for imposing penalty under the Act, shall be provided only for any delay associated with belated filing and not involving interests of any shareholder or any other person qua the company or its directors, key managerial personnel, who are protected by the such immunity.
 - ✓ After granting the immunity, the RoC shall withdraw the prosecution(s) pending before any court(s) and adjudication of penalties under section 454 of the Act.
 - ✓ Necessary action shall be taken against such companies who do not avail the Scheme and are in default of filing the requisite documents with RoC.
- **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – office memorandum on clarification on contribution to Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (“PM CARES Fund”) as eligible corporate social responsibility (“CSR”) activity under item no. (viii) of the schedule VII of Companies Act, 2013, dated March 28, 2020 (“OM”).**
 - The MCA, *vide* the OM, has clarified that any contribution made to PM CARES Fund, which is set up by the Government of India with the primary objective of dealing with any kind of emergency or distress situation such as that posed by coronavirus pandemic, shall qualify as CSR expenditure under schedule VII of Companies Act, 2013.
 - **Link of the OM.**
http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) on director identification number (“DIN”).**
 - With a view to encourage due compliance by DIN holders whose DINs are marked as ‘deactivated’ due to non-filing of DIR-3KYC/DIR-3 KYC-Web and those companies whose compliance status has been marked as ‘ACTIVE non-compliant’ due to non-filing of e-form Active Company Tagging Identities and Verification (ACTIVE) can file the aforesaid DIR-3KYC/DIR-3KYC-Web/ACTIVE forms as the case may be, between April 01, 2020 to September 30, 2020 without any filing fee of INR 5,000 (Indian Rupees Five Thousand only) and INR 10,000 (Indian Rupees Ten Thousand only) respectively.
 - **Link of the aforesaid news is available on the home page of MCA.**
<http://www.mca.gov.in/MinistryV2/>

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 11/2020 on special measures under the Companies Act, 2013 (“Act”) and Limited Liability Partnership Act, 2008 (“LLP Act”) in view of COVID-19 outbreak dated March 24, 2020 (“Circular”).**
 - The MCA, due to the outbreak of COVID-19, has, *vide* the Circular, granted the following relaxations to companies and limited liability partnerships (“LLPs”):
 - ✓ No additional fees shall be levied for late filing of any document, return, statement, required to be filed in the MCA-21 Registry during a moratorium period from April 01, 2020 to September 30, 2020, irrespective of its due date, by any company or LLP.
 - ✓ The mandatory requirement of holding meetings of the board of the companies within the intervals provided in section 173 of the Act i.e. 120 (One Hundred and Twenty) days stands extended by a period of 60 (Sixty) days till next 2 (Two) quarters i.e. till September 30, 2020. Accordingly, as a one-time relaxation the gap between 2 (Two) consecutive meetings of the board may extend to 180 (One Hundred and Eighty) days till the next 2 (Two) quarters.
 - ✓ The Companies Auditor's Report Order, 2020 will be applicable from financial year 2020-21 instead of financial year 2019-20.
 - ✓ As per schedule IV of the Act, independent directors (“IDs”) are required to hold at least 1 (One) meeting without the attendance of non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even a single meeting shall not be treated as violation.

Companies Act (Contd...)

- ✓ The due date for creating repayment reserve of not less than 20% (Twenty Percent) for the deposits maturing during financial year 2020-21 as required under the Act has been extended from April 30, 2020 till June 30, 2020.
 - ✓ The due date for investing or depositing at least 15% (Fifteen Percent) of amount of debentures maturing in specified methods of investments or deposits before April 30, 2020, under rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 has been extended till June 30, 2020.
 - ✓ For newly incorporated companies that are required to file a declaration under section 10A of the Act, for commencement of business within 180 (One Hundred and Eighty) days of incorporation under section. An additional period of 180 (One Hundred and Eighty) more days is allowed to comply with this requirement.
 - ✓ Any director who cannot comply with the requirement of section 149 of the Act (i.e. Company to have board of directors), which has the requirement of minimum residency in India for a period of at least 182 (One Hundred and Eighty Two) days by at least one director of every company, shall not be treated as a non-compliance for the financial year 2019-20.
- **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O.1219(E) on CARO 2020, dated March 24, 2020 (“Notification”).**
 - The MCA, had *vide* its order dated February 25, 2020, had announced that CARO 2020 will apply for the financial years commencing on or after the April 1, 2019. Considering recent outbreak of corona virus, the MCA, *vide* the Notification has deferred the applicability of CARO 2020 to financial years commencing on or after the April 1, 2020.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Notification_25032020.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 10/2020 on clarification on spending of corporate social responsibility (“CSR”) funds for COVID-19 dated March 23, 2020 (“Circular”).**
 - The MCA, *vide* the Circular has clarified that, spending of CSR funds for novel coronavirus disease (“**COVID-19**”) is a CSR activity and that the funds may be spent for various activities related to COVID-19 under item nos. (i) (eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the swach bharat kosh set-up by the central government for the promotion of sanitation and making available safe drinking water) and (xii) (disaster management, including relief, rehabilitation and reconstruction activities) of Schedule VII of the Companies Act, 2013.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R.(E) (yet to be published in official gazette) on the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 (“Rules”) dated March 19, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Meetings of Board and its Powers) Rules, 2014 (“**Principal Rules**”) which shall come into force with effect from the date of its publication in the official gazette.
 - The amendment has inserted a sub-rule (2) after sub-rule (1) to the rule 4 of the Principal Rules viz:

(2) For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June,2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3”
 - Accordingly given the current COVID-19 situation, the MCA has relaxed the requirements of holding board meetings with physical presence of directors as required under section 173 (2) of the Act read with rule 4 of the Principal Rules (i.e. For matters not to be dealt with in a meeting through video conferencing or other audio visual means viz. matters as provided hereunder:
 - the approval of the annual financial statements;
 - the approval of the board’s report;
 - the approval of the prospectus;

Companies Act (Contd...)

- the audit committee meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O.1060(E) on constitution of National Company Law Appellate Tribunal (“NCLAT”) bench at Chennai, dated March 13, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, which shall come into force *w.e.f.* March 18, 2020, has notified constitution of NCLAT bench at Chennai which shall hear the appeals against the orders of the Benches of the National Company Law Tribunal (NCLT) having jurisdiction of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep and Puducherry.
 - The NCLAT bench at New Delhi shall be known as the principal bench of the NCLAT which shall continue to hear appeals other than those in the jurisdiction of Chennai bench of the NCLAT.
 - **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/8d14969b9c61ee322ade1866297bbd5d.pdf>

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – Introduction of The Companies (Amendment) Bill, 2020 (“Amendment Bill”) in the Lok Sabha dated March 17, 2020.**
 - The Amendment Bill was introduced in the Lok Sabha on March 17, 2020 to further amend the Companies Act, 2013 (“Act”).
 - Following are the changes envisaged by the Amendment Bill:
 - ✓ **De-criminalization and relaxation of offences:** The Amendment Bill attempts to decriminalise certain offences under the Act in case of defaults which can be determined a more rational approach if they lack any element of fraud or do not involve larger public interest. The Amendment Bill also extends relaxation/removal of penalties under various sections which do not involve a significant non-compliance of the provisions of the Act. A tabular representation shall be separate published comparing the provisions of the Act and the proposed amendments, once the Amendment Bill becomes the amendment act.
 - ✓ **Producer Companies:** The Amendment Bill has added a new chapter, viz. XXIA under the Act to provide for regulation of producer companies and the provisions of the Companies Act, 1956 shall no longer be applicable to such companies.

Companies Act (Contd...)

- ✓ **Rectification of name of the company on Government's direction:** The Amendment bill has envisaged reduction of period under section 16(1)(a) of the Act to rectify the name of a company if the same is identical with or too nearly resembles to an existing trade mark. Accordingly, the period available to a company is not 3 (three) months instead of 6 (six) months. An amendment has also been envisaged to lift the penal provisions for not following the Government directions as aforesaid and section 16(3) has been altered to provide that the Government shall allot a new name for the company in case it is unable to change its name as aforesaid and the Registrar shall issue a new certificate of incorporation to such a company and the company can thereafter change its name as per its discretion whenever it wants.
- ✓ **Direct listing in foreign jurisdictions:** The Amendment Bill empowers the Central Government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions by way of an amendment in section 23 of the Act.
- ✓ **Direct listing in foreign jurisdictions and exclusion from definition of listed companies:** The Amendment Bill empowers the Central Government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions. The Amendment Bill also empowers the Central Government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".
- ✓ **Government's discretion to provide for lesser number of days for offer period for a rights issue:** The Amendment Bill envisages an amendment to section 62(1)(i) for prescribing a period lesser than 15 (Fifteen) days to be the minimum period of offer for a rights issue.

Companies Act (Contd...)

- ✓ **Government' s power exempt intimation of beneficial shareholding:** Under the Act, if a person holds beneficial interest of at least 10% (Ten) percent shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company and the company is required to note the declaration in a separate register. The Amendment Bill envisages introduction of sub-section (11) under section 89 of the Act, to empower the Central Government to exempt any class of persons from complying with the aforesaid requirements if considered necessary in public interest.

- ✓ **Insertion of Section 129A:** The Amendment Bill has envisaged to insert section 129A under the Act to empower the Central Government to require such class or classes of unlisted companies to:
 - prepare the financial results of the company on such periodical basis and in such form as may be prescribed;
 - obtain approval of the board of directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
 - file a copy with the Registrar within a period of 30 (thirty) days of completion of the relevant period with such fees as may be prescribed.

Companies Act (Contd...)

- ✓ **Corporate Social Responsibility (“CSR”):** Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute a CSR Committee and spend 2% (two) percent of their average net profits in the last 3 (three) financial years, towards its CSR policy. The Amendment Bill envisages to make certain amendment under section 135 of the Act, to exempt the companies with a CSR liability of up to INR 50,00,000 (Indian Rupees Fifty Lakhs only) a year from setting up CSR Committee. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years. This is a progressive step towards lowering the burden on the companies who have done gracious CSR expenditure in the preceding financial years and may want to set off the the excess when they face issues to meet their CSR responsibilities in a particular financial year.
- ✓ **Remuneration to non-executive directors:** The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Amendment Bill envisages to extend this provision to non-executive directors, including independent directors as well by amending section 197(3) of the Act and consequent amendment has been made in section 149(9) (remuneration to independent directors) of the Act, by adding a proviso thereunder.

Companies Act (Contd...)

- ✓ **Government's power exempt certain provisions to Foreign Companies:** The Amendment Bill envisages insertion of section 393A to empower Central Government to exempt, by way of a notification to be approved by both the House of Parliament, any class of:
 - foreign companies; and
 - companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India.
- ✓ **Benches of NCLAT:** The Amendment Bill envisages establishment of benches of the National Company Law Appellate Tribunal by insertion of section 418A of the Act. These shall ordinarily sit in New Delhi or such other place as may be notified.
- **Link of the Amendment Bill.**
http://www.mca.gov.in/Ministry/pdf/Amendment_18032020.pdf

Companies Act (Contd...)

□ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 169(E) on the Companies (Incorporation) Second Amendment Rules, 2020 (“Rules”) dated March 12, 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 the date of its publication in the official gazette i.e. March 12, 2020.
- The amendment aims to alter the e-form INC-28 (i.e. Notice of Order of the Court or any other competent authority) by inserting in serial no. 5 after sub-clause (a) (ii) therein, the following sub-clause, namely:

‘(iii) section of Insolvency and Bankruptcy Code, 2016 under which order is passed.’

Accordingly per the Notification the Company shall state the section of Insolvency and Bankruptcy Code, 2016 (“**Code**”) under which the order is passed, thereby updating the MCA records with the status of a company in respect of proceedings under the Code.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/rule_13032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R.170(E) on the Companies (Registration Offices and Fees) Second Amendment Rules, 2020 (“Rules”) dated March 12, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Registration Offices and Fees) Rules, 2014 (“**Principal Rules**”) which shall come into force with effect from the date of its publication in the official gazette i.e. March 12, 2020.
 - In annexure to the Principal Rules, in e-Form GNL – 2:
 - i. in serial number 3, after item number ‘Form 159 of the Companies (Court) Rules, 1959’, the following item shall be inserted, viz - ‘Filing under Insolvency and Bankruptcy Code, 2016’*
 - ii. after the first verification column, the following shall be inserted, viz – ‘Particulars of the person signing and submitting the form.*

Accordingly the form will now provide for filings under Insolvency and Bankruptcy Code, 2016 by Insolvency Professional (Interim Resolution Professional or Resolution Professional or Liquidator).

- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/rule1_13032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 09/2020 on relaxation of additional fees and extension of last date of filing of e-forms MGT-7 (i.e. Annual Return) and AoC-4 (i.e. Financial Statement) under the Companies Act, 2013 (“Act”) – for union territories of Jammu & Kashmir and of Ladakh (UT of J&K and UT of Ladakh), dated March 12, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has relaxed additional fees and extended last date of filing e-forms MGT-7 (i.e. Annual Return) and AoC-4, AoC-4 (CFS), AoC-4 XBRL (i.e. Financial Statement) as required under the Act, for the financial year ended March 31, 2019, upto June 30, 2020 for companies having jurisdiction in the UT of J&K and UT of Ladakh.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular_12032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. (yet to be published in official gazette) on exemption to banking companies under the Competition Act, 2002 (“Competition Act”), dated March 11, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, exempts a banking company from the application of the provisions of sections 5 (i.e. Combination) and 6 (i.e. Regulation of combinations) of the Competition Act, 2002 (“**Competition Act**”) in public interest for a period of 5 (five) years from the date of publication of Notification in the official gazette. Accordingly a banking company is exempted from the amalgamation of one or more enterprises by one or more persons or merger or amalgamation of enterprises as specified under section 5 and 6 of the Competition Act.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/BankingNotification_11032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 08/2020 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 (“IBC”) dated March 06, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has further clarified for statutory compliances in respect of companies under Corporate Insolvency Resolution Process (“**CIRP**”) as a supersession to its circular no. 04/2020 dated February 17, 2020.
 - The IRP/RP/Liquidator would first be required to file the order passed by National Company Law Tribunal (“**NCLT**”) approving him/her in the said capacity of IRPs/ RPs/Liquidator with the MCA in e-form INC-28 and affix his/her DSC as the ‘Chief Executive Officer’ (CEO) of the Company.
 - The status of the company as reflected on the MCA-21 portal shall be effected on the basis of formal change request form submitted by Insolvency and Bankruptcy Board of India to e-governance cell located at MCA headquarters.
 - The IRP/RP/Liquidator shall make all the filings, including filing of e-form AOC-4 (i.e. Financial Statement) and MGT-7 (i.e. Annual Return), in e-form GNL-2, on the MCA portal in the capacity of CEO and the same shall not affect his legal status as IRP/RP/Liquidator.
 - Further, IRP/RP/Liquidator of every company which was under CIRP prior to issuance of this Circular is also required to file e-form 28 with the registrar of companies before filing any document as required, through e-form GNL-2.

Companies Act (Contd...)

- **Link of the Circular.**

http://www.mca.gov.in/Ministry/pdf/Circular8_06032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 07/2020 on extension on the last date of filing of Form NFRA-2 dated March 05, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has further extended the time limit for filing Form NFRA-2 (i.e. Annual return to be filed by auditor with the National Financial Reporting Authority (“**NFRA**”), for the reporting period 2018-19, upto 150 (One Hundred and Fifty) days (as against the initial extension of 90 (Ninety) days from the date of deployment of the said form on the website of NFRA.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular_06032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 6/2020 on limited liability partnership (“LLP”) Settlement Scheme, 2020 (“Scheme”) dated March 04, 2020 (“Circular”).**
 - The MCA, *vide* the Circular, has introduced a Scheme for LLPs wherein onetime relaxation in additional fees is given to defaulting LLPs to make good their non-compliance by filing pending documents.
 - The details of the Scheme, as more specifically provided in the circular herein, are as follows. Words used herein shall be per the definition provided in the Scheme.
 - ✓ Scheme shall commence from March 16, 2020 and shall remain in force upto June 13, 2020.
 - ✓ Applicable to any defaulting LLPs which were due for filing till October 31, 2019.
 - ✓ Additional fee shall be INR 10 (Indian Rupees Ten only) per day for delay in addition to any fee that is payable for filing such document or return, provided that the additional fee shall not exceed INR 5,000 (Indian Rupees Five Thousand only) per document or return.
 - ✓ The defaulting LLP’s which have filed their pending documents till June 13, 2020 shall not be subjected to prosecution by RoC for such default.
 - ✓ Scheme shall be applicable only to e-Forms 3 (i.e. Information wrt LLP agreement and changes therein, if any), 4 (i.e. Notice of appointment, cessation, change in name/address/designation of partner or partner and consent to become a partner/designated partner), 8 (i.e. Statement of

Companies Act (Contd...)

accounts of LLP) and 11 (i.e. Annual return of LLP).

- ✓ The Scheme shall not apply LLP which has made an application in e-Form 24 to the Registrar of Companies, for striking off its name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009.
- ✓ **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 01/2020 on prosecutions filed or internal adjudication proceedings initiated against independent directors (“IDs”), non-promoters and non-key managerial personnel, non-executive directors (“NED”) dated March 02, 2020 (“Circular”).**
 - The MCA, *vide* the Circular emphasizes that unless the contrary is provided under the Companies Act, 2013 (“**Act**”) or filed by the companies under the Act, only a whole-time director (“**WTD**”) and key managerial personnel (“**KMP**”), who are associated with the day to day functioning of the company, would be liable for defaults committed by the company.
 - The Circular *inter alia* reiterates that section 149(12) of the Act being a non-obstinate clause, IDs and NEDs (non-promoter and non-KMP) will not be arrayed in any criminal or civil proceedings unless the criteria under the aforesaid section is met, which states that liability of such directors will only arise in respect of such acts which the company has commissioned or omitted through board process which had occurred through their knowledge or where they had not acted diligently. Accordingly unless sufficient evidence exists for the same, criminal or civil proceedings are not to be initiated against the IDs and the NEDs.
 - The Circular also states guidance may be sought from MCA through the Director General of Corporate Affairs, if need be, to certain liability of any person, any proceed only after receiving due sanction from the Ministry.
 - All the Registrars are required to follow a standard operating procedure, as prescribed by the MCA while initiating proceedings against ‘officers in default’.

Companies Act (Contd...)

- **Link of the Circular.**

http://www.mca.gov.in/Ministry/pdf/Circular_03032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R.151(E) on further exemptions to Government companies under section 462 of the Companies Act, 2013 (“Act”) dated March 02, 2020 (“Notification”).**
 - The MCA, *vide* the Notification, has further made amendments to the notification of the Government of India, in the MCA notification no. G.S.R. 463(E) dated June 05, 2015 (“**Principal Notification**”), which shall come into force with effect from the date of its publication in the official gazette i.e. March 02, 2020.
 - The Notification has brought about the following amendments to the Principal Notification viz:
 - ✓ In chapter I (Preliminary) of the Act, the following explanation be inserted to section 2(45) (i.e. Government company):

‘For the purposes of this clause, the “paid-up share capital” shall be construed as “total voting power”, where shares with differential voting rights have been issued.’

Accordingly per the Notification, a company wherein not less than 51% (Fifty-one per cent) of the ‘total voting power’ (erstwhile ‘paid-up share capital’), in cases where the shares with differential voting rights have been issued by such a company, is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company, shall be reckoned to determine whether a company is a ‘Government company’.

Companies Act (Contd...)

- ✓ In chapter II (Incorporation of Company and Matters Incidental thereto) of the Act, in section 4(1)(a) (i.e. Memorandum) the words *'in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company'* shall be omitted.

Accordingly per the Notification, the name of the 'Government company', need not end with the word 'Limited'

- ✓ In chapter XII (Meetings of Board and its Powers), following amendments are made to first and second proviso to section 188(1) (i.e. Related Party Transactions):

'Shall not apply to - (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;

(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.'

Accordingly the amendment prescribed by the Notification implies that Government Companies are provided relaxation from obtaining the prior shareholders' approval as required under the first proviso to section 188(1) and consequently, from the restriction on the voting by the related parties for (a) contracts/ arrangements with other Government company/(ies) and (b) where the Government

Companies Act (Contd...)

company is not a listed company, contracts/ arrangements with related parties other Government companies as mentioned above, if prior approval of the Ministry or Department of the Central Government or State Government administrative in charge of the company is obtained.

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DCR1/CIR/P/2020/49 on relaxation from compliance with certain provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations”) due to the CoVID-19 pandemic dated March 27, 2020 (“Circular”).**
 - Market regulator SEBI, *vide* the Circular, has relaxed certain provisions of SAST Regulations due to the CoVID-19 pandemic, with immediate effect. According to the Circular, the due date of filing disclosures under the following regulations of the SAST Regulations, which require the shareholders to compile, collate, and disseminate information of their consolidated shareholding as on March 31, 2020, to the company and the stock exchanges within 7 (Seven) working days from the end of the financial year has been extended to June 01, 2020:
 - ✓ Regulations 30(1) & 30(2) (i.e. Continual disclosures); and
 - ✓ Regulations 31(4) (i.e. Disclosure of encumbered shares).
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sast-regulations-2011-due-to-the-covid-19-pandemic_46442.html

Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/DDHS/ON/P/2020/41 on relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) and certain SEBI Circulars due to the CoVID-19 virus pandemic – continuation dated March 23, 2020 (“Circular”).
- In continuation to SEBI’s circular no. SEBI/HO/CD/CMD1/CIR/P/2020/38 dated March 19, 2020, (“Circular-1”), SEBI *vide* the Circular, has clarified certain timelines for listed entities and granted relaxations to listed entities which have listed their non-convertible debentures (“NCDs”), non-convertible redeemable preference shares (“NCRPS”), municipal debt securities and commercial papers (“CPs”), with immediate effect:

Particulars	Available Audited financials	Date issuance for	Extended date for issuance	Period relaxation of
Cut-off date for issuance of NCDs/NCRPS/CPs	As on September 30, 2019	On or before March 31, 2020	On or before March 31, 2020	60 days

Securities Law (Contd...)

Sr. No.	Regulation and associated filing	Filing		Relaxation <i>w.r.t.</i> the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
1	Large Corporate-Initial Disclosure and Annual Disclosure (SEBI Circular HO/DDHS/C IR/P/2018/1 44 dated November 26, 2018)	Yearly	Initial Disclosure within 30 days from the beginning of Financial year	April 30, 2020	June 30, 2020	60 days
			Annual Disclosure - within 45 days from the end of Financial year	May 15, 2020	June 30, 2020	45 days

Securities Law (Contd...)

NCDs / NCRPs

2	Regulation 52 (1) and (2) relating to Financial Results	Half yearly/Y early	45 days from the end of the Half Year	May 15, 2020	June 30, 2020	45 days
			60 days from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	30 days
3	Common obligations prescribed under Chapter-III of LODR Regulations.	Timelines as prescribed in Circular-1 (as stated in the subsequent slides)				

Securities Law (Contd...)

CPs

4	Financial Results	Half yearly/ Yearly	45 days from the end of the Half Year 60 days from the end of Financial Year for Annual Financial Results	May 15, 2020 May 30, 2020	June 30, 2020 June 30, 2020	45 days 30 days
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Securities Law (Contd...)

	Regulation and associated filing	Filing		Relaxation <i>w.r.t.</i> the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
1	Investor Grievance Report as per Municipal Bond	Half yearly	within 30 working days from end of Half Year		June 30, 2020	45 days
2	Financial Results	Half yearly	60 days from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	30 days

Securities Law (Contd...)

	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
3	Accounts maintained by Issuers under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.	Quarterly	45 days from end of quarter	May 15, 2020	June 30, 2020	45 days

- **Link of the Circular.**

<https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-certain-sebi-circulars-due-to-the-covid-19-virus-pandemic-cont-46395.html>

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/CMD1/CIR/P/2020/38 on relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) due to the CoVID -19 virus pandemic dated March 19, 2020 (“Circular”).**
 - In wake of fast-spreading CoVID-19 virus pandemic, market regulator SEBI, *vide* the Circular, has granted the following relaxations from compliance stipulations specified under LODR Regulations to the listed entities with immediate effect:

[Contd on next slide]

Securities Law (Contd...)

Sr. no.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
1	Regulation 7(3) relating to compliance certificate on share transfer facility	Half yearly	One month of the end of each half of the financial year	April 30, 2020	May 31, 2020	1 month
2	Regulation 13(3) relating to Statement of Investor complaints	Quarterly	21 days from the end of each quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)

Securities Law (Contd...)

Sr. no.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
3	Regulation 24A read with circular No CIR/CFD/C MD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance report	Yearly	60 days from the end of the financial year	May 30, 2020	June 30, 2020	1 month

Securities Law (Contd...)

Sr. no.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
4	Regulation 27(2) relating to Corporate Governanc e report	Quarterly	15 days from the end of the quarter	April 15, 2020	May 15, 2020	1 month
5	Regulation 31 relating to Sharehold ing Pattern	Quarterly	21 days from the end of the quarter	April 21, 2020	May 15, 2020	3 weeks (appx.)

Securities Law (Contd...)

Sr. no.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter /financial year ending March 31, 2020		
		Frequency	Due within	Due Date	Extended date	Period of relaxation
6	Regulation 33 relating to Financial Results	Quarterly/ Annual	45 days from the end of the quarter for quarterly results	May 15, 2020	June 30, 2020	45 days
			60 days from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	1 month

Securities Law (Contd...)

Regulatory provision	Relaxation
Regulation 17(2): The board of directors shall meet at least 4 times a year, with a maximum time gap of 120 days between any 2 meetings.	The board of directors and audit committee of the listed entity are exempted from observing the maximum stipulated time gap between 2 meetings for the meetings held or proposed to be held between the period December 1, 2019 and June 30, 2020. However the board of directors / audit committee shall ensure that they meet atleast 4 times a year, as stipulated under regulations 17(2) and 18(2)(a) of the LODR Regulations.
Regulation 18(2)(a): The audit committee shall meet at least 4 times in a year and not more than 120 days shall elapse between 2 meetings	

- **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-virus-pandemic_46360.html

Insolvency And Bankruptcy Code

□ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG059 (yet to be published in official gazette) on Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 dated March 29, 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 March 29, 2020.
- Under this Notification, regulation 40C (Special provision relating to time-line) has been inserted after regulation 40B of the Principal Regulations (Filing of Forms) as under to address the difficulties faced during implementation of activities under the Principal Regulations in respect of resolution process, due to the COVID19 outbreak:

“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/whatsnew/be2e7697e91a349bc55033b58d249cef.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG057 (yet to be published in official gazette) on Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020 dated March 28, 2020 (“Amendment Regulations”) (“Notification”).**
 - The IBBI *vide* the Notification has further amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“Principal Regulations”), which shall come into force from March 28, 2020.
 - In regulation 7(2)(ca) of the Principal Regulations, the following has been inserted to relax the timeline for payment of fees for the insolvency professional and accordingly the second schedule of the Principal Regulations has been amended:

“Provided that for the financial year 2019-2020, an insolvency professional shall pay the fee under this clause on or before the 30th June, 2020.”
 - In regulation 13(2)(b) and 13(2)(c) the following has been inserted to provide for period of intimation of 30 (thirty) days, on cessation and appointment of a person as director or partner of insolvency professional entity, subsequent to the commencement of the Amendment Regulations and such period of intimation shall be valid until December 31, 2020.

Insolvency And Bankruptcy Code (Contd...)

Regulation 13(2)(b) - *“Provided that when an individual cease to be its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020 and ending on the 31st December 2020, the insolvency professional entity shall inform the Board, within thirty days of such cessation;”*

Regulation 13(2)(c) - *“Provided that when an individual joins as its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020 and ending on the 31st December 2020, the insolvency professional entity shall inform the Board, within thirty days of such joining;”*

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/whatsnew/025d1834c78712f658c66b0023601e54.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG056 (yet to be published in official gazette) on Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2020 dated March 25, 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 March 25, 2020.
 - Under this Notification, for sub-regulation (4) of regulation 40(B) of the Principal Regulations, the following sub-regulation has been substituted to revise the fees for delay in filing post October 01, 2020 as under:

“(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 October, 2020.

Example: A Form is required to be filed by 30th October, 2020. It shall be filed along with a fee as under:

Insolvency And Bankruptcy Code (Contd...)

If filed on	Fee (in Indian Rupees)
29th October, 2020	0
30th October, 2020	0
31st October, 2020	500
Any day in November, 2020	1000
Any day in December, 2020	1500

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/whatsnew/fc8f25298ecc7d7ed6ec922f8d8aca70.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. S.O. 1205(E) on change in limit for minimum default in the Insolvency and Bankruptcy Code, 2016 (“IBC”) dated March 25, 2020 (“Notification”).**
 - The IBBI *vide* the Notification has prescribed a minimum default amount of INR 100,00,000 (Indian Rupees One Crore only) under section 4 of the IBC, for the purpose of initiating insolvency and liquidation proceedings against the corporate debtors. This comes in wake of rationalizing the initiation of insolvency proceedings against errant corporate debtors who have a sizeable default amount and also avoiding misuse remedies provided under the IBC.
 - **Link of the Notification.**
<https://www.ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>

Insolvency And Bankruptcy Code (Contd...)

□ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. S.O. 1145(E) on notification of a debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I, for the purposes of section 15(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”), dated March 25, 2020 (“Notification”).**

- The IBBI *vide* the Notification has notified debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I as “interim finance” under section 5(15) of the IBC and explained the expression “Special Window for Affordable and Middle-Income Housing Investment Fund I” as under:

“the fund sponsored by the Central Government for providing priority debt financing for stalled housing projects, as an alternate investment fund and registered with the Securities and Exchange Board of India, established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992, to provide financing for the completion of stalled housing projects that are in the affordable and middle-income housing sector.”

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/legalframework/0186fe5ab891e0dc62071c239b4479fc.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Central tax notification no. G.S.R. 194(E). 11/2020 on special status under Central Goods and Services Tax Act, 2017 (“CGST Act”) to corporate debtors against whom insolvency resolution process has been initiated under the Insolvency and Bankruptcy Code, 2016 (“IBC”); dated March 21, 2020 (“Notification”).**
 - The Central Government *vide* the Notification has prescribed that a corporate debtor undergoing the corporate insolvency resolution process, management of whose affairs are being undertaken by interim resolution professionals (“**IRP**”) or resolution professionals (“**RP**”), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned in the enclosed Notification as under:
 - **Registration** – The IRP/RP has to register afresh as a special class of person in each of the States or Union territories where the corporate debtor was registered earlier, within 30 (Thirty) days of the appointment of the IRP/RP. However, in cases where the IRP/RP has been appointed prior to the date of this Notification, he shall take registration within 30 (Thirty) days from the commencement of this notification, with effect from date of his appointment as IRP/RP.
 - **Return** - The Notification further prescribes that, the IRP/RP shall, after obtaining registration file the first return under section 40 of the CGST Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

Insolvency And Bankruptcy Code (Contd...)

- **Input tax credit** – The IRP/RP, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the provisions of the CGST Act and rules made thereunder.

Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 (Thirty) days from the date of this Notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the provisions of the CGST Act and rules made thereunder. Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this Notification shall be available for refund to the erstwhile registration.

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/legalframework/0f84334cf9f344c41c711ab48c66949a.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **The Ministry of Law and Justice – Insolvency and Bankruptcy (Amendment) Act, 2020 to amend the Insolvency and Bankruptcy Code, 2016 (“Principal Act”), dated March 13, 2020 (“Amendment Act”)**
 - The Hon’ble President of India – Mr. Ram Nath Kovind, gave his assent on March 13, 2020, to the promulgation of the Amendment Act for making further amendments in the Principal Act, subsequent to the passing of the Amendment Act by both the Houses of Parliament.
 - The Amendment Act shall deemed to have commenced on 28th day of December, 2019.
 - Following are the salient features of the Amendment Act:
 - ✓ The Amendment Act has resulted into deletion of proviso in clause (12) of section 5 (insolvency commencement date) of the Principal Act, thereby clarifying that the initiation of corporate insolvency process shall be the date of admission of application filed by either financial creditor, operation creditor or corporate applicant and no other date shall be construed for this purpose.
 - ✓ The Amendment Act has resulted into modification of (15) of section 5, thereby giving the Central Government power to include such schemes under the definition of interim finance as deemed fit from time to time.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Act has added 2 provisos under sub-section (1) of section 7 of the Principal Act (Initiation of corporate insolvency resolution process by financial creditor) to prescribe minimum thresholds for filing an application for initiating corporate insolvency resolution by certain class of creditors specified under clauses (a) and (b) of sub-section (6A) (financial debt) of section 21 (committee of creditors), viz. security or deposit holders or any other class or creditors other than the above class of creditors and an application for such class of creditors shall be jointly by not less than 100 of such creditors in the same class or not less than 10% of the total number of such creditors in the same class, whichever is less.
- ✓ Further, financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less.
- ✓ The provisos inserted aforesaid provide for modification of the application by aforesaid class of creditors within 30 days of the commencement of the Amendment Act, if the application filed by them before the Amendment Act has not yet been admitted yet and in absence of such compliance, it shall be deemed to have been withdrawn.
- ✓ The Amendment Act has amended section 11 of the Principal Act by adding an Explanation II after Explanation I therein, which clarifies that a corporate debtor as specified under section 11 of the Principal Act can initiate corporate insolvency resolution process against another corporate debtor.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Act provides further relaxation to the corporate debtors placed under moratorium as per section 14 of the Principal Act by inserting an Explanation under section 14(1) of the Principal Act, which specifies as under:

“it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.”

- ✓ The Amendment Act also inserts sub-section (2A) of section 14 of the Principal Act, thereby empowering the interim resolution professional or resolution professional, as the case may be, to consider the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern and in such a case to resist termination, suspension or interruption during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- ✓ The Amendment Act provides for a much needed clarity on continuation of role of the resolution professional after the completion of statutory period of the corporate insolvency resolution process and substitutes the proviso in sub-section (1) of section 23 of the Principal Act (Resolution professional to conduct corporate insolvency resolution process) as under:

Insolvency And Bankruptcy Code (Contd...)

"Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority."

- ✓ The Amendment Act, by way of insertion of section 32A in the Principal Act, also provides much needed immunity to the corporate debtor from contracting liabilities after the approval of the resolution plan by the National Company Law Tribunal (“**NCLT**”) for an offence committed prior to the commencement of the corporate insolvency resolution process and provides that the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not:
 - a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

However, if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to aforesaid requirements.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Act has further clarified, through section 32A that the aforesaid immunity has not been extended to a designated partner as defined in the Limited Liability Partnership Act, 2008, or an officer who is in default, as defined in the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor.
- ✓ The Amendment Act also clarifies, through section 32A that no action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the NCLT, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the liquidation provisions of the IBC to a person, who was not:
 - a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or court.
- ✓ The Amendment Act has explained the following terms as inserted in the aforesaid paragraphs as

Insolvency And Bankruptcy Code (Contd...)

under:

- an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;
 - there shall be no bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under the IBC and fulfils the requirements specified in this section, against whom such an action may be taken under applicable laws.
-
- ✓ The Amendment Act has modified all references which referred to any other date for commencement of insolvency proceedings under the IBC and has clarified that the only date applicable to commencement of insolvency proceedings under the IBC is the date of admission of application by the NCLT.
 - ✓ The Amendment Act has resulted into repeal of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 (“**Ordinance**”). However, notwithstanding such repeal, anything done or any action taken under the IBC, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the IBC, as amended by this Amendment Act.
-
- **Link of the Notification.**
<https://www.ibbi.gov.in/uploads/legalframework/d36301a7973451881e00492419012542.pdf>

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – Notification No. RBI/2019-20/186 on COVID-19 – Regulatory Package dated March 27, 2020 (“Notification”).**
 - RBI vide the Notification has, further to the [Statement of Development and Regulatory Policies released on March 27, 2020](#) wherein, *inter alia*, certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses, issued detailed instructions as under:
 - ✓ **Rescheduling of Payments – Term Loans and Working Capital Facilities**
 - For all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India financial institutions, and NBFCs (including housing finance companies) (“**Lending Institutions**”) are permitted to grant a moratorium of 3 (Three) months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans has also been allowed to be extended for 3 (Three) months after the moratorium period. However, ***interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.***
 - In respect of working capital facilities sanctioned in the form of cash credit/overdraft (“**CC/OD**”), Lending Institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 (“**Deferment**”). The accumulated accrued interest shall be recovered immediately after the completion of this period.

Reserve Bank of India (Contd...)

✓ Easing of Working Capital Financing

- In respect of working capital facilities sanctioned in the form of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, Lending Institutions may recalculate the 'drawing power' by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the Lending Institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

✓ Classification as Special Mention Account ("SMA") and Non-Performing Asset ("NPA")

- Since the moratorium/Deferment/recalculation of the 'drawing power' is being provided specifically to enable the borrowers to tide over economic fallout from COVID-19, the same will not be treated as concession or change in terms and conditions of loan agreements due to financial difficulty of the borrower under paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 ("**Prudential Framework**"). Consequently, such a measure, by itself, shall not result in asset classification downgrade.

Reserve Bank of India (Contd...)

- The asset classification of term loans which are granted relief as per paragraph 2 shall be determined on the basis of revised due dates and the revised repayment schedule. Similarly, working capital facilities where relief is provided as aforesaid, the SMA and the out of order status shall be evaluated considering the application of accumulated interest immediately after the completion of the Deferment period as well as the revised terms, as permitted hereinabove.
- The rescheduling of payments, including interest, will not qualify as a default for the purposes of supervisory reporting and reporting to Credit Information Companies (“CICs”) by the lending institutions. CICs shall ensure that the actions taken by Lending Institutions pursuant to the above announcements do not adversely impact the credit history of the beneficiaries.

✓ Other Conditions

- Lending institutions shall frame board approved policies for providing the above-mentioned reliefs to all eligible borrowers, *interalia*, including the objective criteria for considering reliefs under paragraph 4 above and disclosed in public domain.
- Wherever the exposure of a lending institution to a borrower is INR 5,00,00,000 (Indian Rupees Five Crores only) or above as on March 1, 2020, the bank shall develop an MIS on the reliefs provided to its borrowers which shall, *interalia*, include borrower-wise and credit-facility wise information regarding the nature and amount of relief granted.

▪ Link of the Notification.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11835&Mode=0>

Reserve Bank of India (Contd...)

- ❑ **The Reserve Bank of India (“RBI”) – Notification No. FEMA 14(R)/(2)/2020-RB on Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020 dated March 04, 2020 (“Notification”).**
 - RBI *vide* the Notification has made amendments to the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 (“**Principal Regulations**”) which shall come into effect from the date of publication in the official gazette i.e. March 06, 2020.
 - The Notification has brought an amendment to Regulation 3 which specifies the ‘Manner of receipt of foreign exchange’, as under:
 - ✓ Sub-regulation 1(A) has been substituted which provides manner of receipt from Members of Asian Clearing Union (ACU), which includes Bangladesh, Myanmar, Pakistan, Sri Lanka, Republic of Maldives, Nepal, Bhutan and Islamic Republic of Iran.
 - ✓ Sub-regulation (1)(A)(i)(a) which deals with receipt from Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives has been substituted, namely:

Receipt for export of eligible goods and services by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar account and / or ACU Euro Account and / or ACU Japanese Yen account of the authorized dealer maintained with the correspondent bank in that member country.

Reserve Bank of India (Contd...)

- The Notification has similarly brought an amendment to Regulation 5 which specifies the 'Manner of payment in foreign exchange', as under:
 - ✓ Sub-regulation 1(A) has been substituted which provides manner of payment to Members of Asian Clearing Union (ACU), which includes Bangladesh, Myanmar, Pakistan, Sri Lanka, Republic of Maldives, Nepal, Bhutan and Islamic Republic of Iran.
 - ✓ Sub-regulation (1)(A)(i)(a) which deals with Payment for import of eligible goods and services by credit to Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives has been substituted, namely:

Payment for import of eligible goods and services by credit to ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account of the authorized dealer maintained with the correspondent bank in that member country.

- **Link of the Notification.**

<https://rbidocs.rbi.org.in/rdocs/content/pdfs/Gazette06032020.pdf>

Deets / Disclaimer

❑ Deets.

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❑ Disclaimer.

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Thank You



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