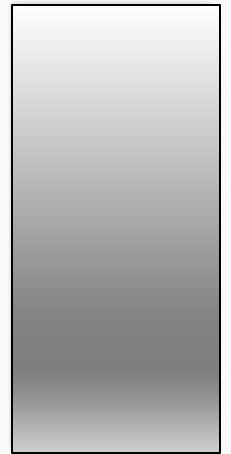


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR JULY, 2019



Companies Act

- **The Ministry of Law and Justice (Legislative Department) (“MoL&J”) – notification on the Companies (Amendment) Act, 2019 (“Amendment Act”) to further amend the Companies Act, 2013 (“Act”) dated July 31, 2019.**
 - The Hon’ble President of India – Mr. Ram Nath Kovind (“**President**”), under article 123 of the Constitution of India, accorded his assent on November 2, 2018, to the recommendation of the Union Cabinet for promulgation of the Companies (Amendment) Ordinance, 2018 (“**2018 Ordinance**”) to promote ease of doing business with better corporate compliance by making further amendments in the Act.
 - Further, the Companies (Amendment) Ordinance, 2019 (“**2019 Ordinance**”) was promulgated on January 12, 2019, which repealed and replaced the 2018 Ordinance. The 2019 Ordinance amended several provisions in Act relating to penalties, amongst others, which was made retrospectively applicable, i.e. effective from November 2, 2018.
 - The Ordinance has now been replaced by the Companies (Amendment Bill), 2019 (“**Bill**”), pursuant to the Bill being passed by both the houses of the Parliament and assent of the President received on July 31, 2019.
 - The MoL&J *vide* the Notification has published the Amendment Act to further amend the Act.

Companies Act (Contd...)

- The changes in the Bill assented to by the President *vis-à-vis* the 2019 Ordinance and comprehensive analysis of the amendments to the Act shall be rolled out separately.
- **Link of the comprehensive amendment wise compilation of 2019 Ordinance.**
<https://legaliteadvisors.files.wordpress.com/2019/02/companies-amendment-ordinance-2019-1.pdf>
- **Link of the Amendment Act.**
http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 08/2019 on filing of e-form BEN-2 under the Companies Act, 2013 dated July 29, 2019 (“Circular”).**
 - The MCA, *vide* the Circular has extended the last date for filing e-form BEN-2 (i.e. Return to be filed with the Registrar of Companies in respect of declaration by significant beneficial owners), till September 30, 2019 without payment of additional fee. An additional fee shall be payable in case of any further delay.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_29072019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. (E) (yet to be published in the gazette of India) on Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 dated July 25, 2019 (“Notification”).**
 - The Central Government, *vide* the Notification has further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 which shall come into force from the date of publication in the official gazette.
 - As per the Notification:
 - ✓ e-Form DIR-3 KYC is to be filed:
 - by an individual who holds DIN and is filing his KYC details for the first time; or
 - by the DIN holder who has already filed his KYC once in e-form DIR-3 KYC but wants to update his/her personal mobile number or the e-mail address.
 - ✓ Web service DIR-3 KYC-WEB is to be filed by the DIN holder who has submitted e-form DIR-3 KYC in the previous financial year and no update is required in his/her details.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/ThirdAmendRules_25072019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. (E) (yet to be published in the gazette of India) on the Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019 (“Amendment Rules”) dated July 25, 2019 (“Notification”).**
 - The Central Government, *vide* the Notification has amended the Companies (Registration Offices and Fees) Rules, 2014 (“**Principal Rules**”), which shall come into force from the date of publication in the official gazette.
 - The said Amendment Rules prescribes the fee payable for e-form DIR-3 KYC or DIR-3 KYC-WEB. No fee shall be payable till September 30 of every financial year, for e-form DIR-3 KYC or DIR-3 KYC-WEB for the immediate previous financial year.
 - Further the said Amendment Rules prescribes late fee of INR 5,000 (Indian Rupees Five Thousand only), for delayed filing (i.e. filings made post the due date of September 30, 2019).
 - The Notification prescribes a late fee of INR 5,000 (Indian Rupees Five Thousand only) for delayed filing if the **individual** failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB, for the immediate previous financial.
 - The requisite change to the annexure of the Principal Rules has been made to effectuate the aforesaid amendment.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/FourthAmedRules_25072019.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 2564(E) on establishment of special courts under the Companies Act, 2013 (“Act”) dated July 17, 2019 (“Notification”).**
 - The Central Government, with the concurrence of the Chief Justice of the High Court, Bombay, designated Court of District Judge-1 and Additional Sessions Judge, Pune, State of Maharashtra, as special court for the purposes of providing speedy trial of offences punishable with imprisonment of 2 (two) years or more under the Act.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Notification_22072019.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 466 (E) on the Companies (Significant Beneficial Owners) Second Amendment Rules, 2019 dated July 01, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Companies (Significant Beneficial Owners) Rules, 2018 which shall come into force from the date of publication in the official gazette i.e. July 01, 2019. Through the Notification, the MCA has rolled out Form No. BEN-2, which spells out the format in which companies will have to disclose their ‘significant beneficial owners’ to the Registrar of Companies.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf

Companies Act (Contd...)

- ❑ The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 2269(E) on commencement of section 81 of the Companies (Amendment) Act, 2017 (“Amendment Act”) dated July 01, 2019 (“Notification”).
 - The Central Government, *vide* the Notification has notified the following section of the Amendment Act and the same shall come into force as under:

Sr. No.	Notified provision of the Amendment Act	Provision of the Companies Act, 2013	Commencement Date
1.	Section 81	Section 406 of the Act - Power to Modify Act in its Application to Nidhis	August 15, 2019

- **Link of the Notification.**

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01072019.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 467 (E) on the Nidhi (Amendment) Rules, 2019, dated July 01, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has further amended the Nidhi Rules, 2014 (“**Principal Rules**”) which shall come into force from August 15, 2019.
 - The major highlights of the Notification are as under:
 - ✓ Rule 2 of the Principal Rules, which includes the list of companies to whom the Principal Rules are applicable shall include every company declared as nidhi or mutual benefit society under sub-section (1) of section 406 (Power to modify Act in its application to nidhis) of the Companies Act, 2013 (“**Act**”).
 - ✓ The Notification adds the following clause 3(da) after clause 3(d) in the Principal Rules, defining nidhi company:
 - “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.

Companies Act (Contd...)

- ✓ New rule, i.e. rule 3A has been inserted prescribing the procedure for the Central Government to notify a public company as a nidhi company, pursuant to any application made in form NDH-4 and also mandating companies to comply with filing of Form NDH-4 within time limits prescribed, failing which, such companies are disallowed from filing any notice of alteration of capital in e-Form SH-7 or return of allotment in e-Form PAS-3.
- ✓ In rule 4 of the Principal Rules, content which mandated a nidhi (public) company to be incorporated as a nidhi company to be identified as one has been deleted.
- ✓ The Notification ensures that every nidhi company shall, within 1 (one) year from the date of its incorporation has to ensure that it complies with the minimum requirements for every nidhi company prescribed in clause (a) to (d) of rule 5 (1) of the Principal Rules. Earlier the said requirement was within 1 (One) year of the commencement of the Principal Rules.
- ✓ The Notification also inserts a proviso to sub-rule (3) to rule 5 of Principal Rules, that, if a nidhi company is not complying with clauses (a) or (d) of sub-rule 5 (1) of the Principal Rules within 30 (thirty) days from the close of its first financial year, the Regional Director may extend the period upto 1 (one) year from the date of receipt of application for extension of time to comply with the said rule.

Companies Act (Contd...)

- ✓ Rule 5 (4) of the Principal Rules has been altered to the effect that if the failure to comply with rule 5 (1) of the Principal Rules extends beyond the second financial year, nidhi company shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in the aforesaid rules **and gets itself declared under sub-section (1) of section 406** of the Act.
- ✓ The Notification now mandates issuance of only fully paid up equity shares of the nominal value of not less than ten rupees each as amendment to rule 7(1) of the Principal Rules.
- ✓ The Notification also alters the application form for placing a deposit with nidhi company, to mandate the insertion of date of declaration or notification as nidhi company.
- ✓ The Notification provides that in case of non-payment of the deposit or part thereof as per the terms and conditions of such deposit, the depositor may approach **any bench of the National Company Law Tribunal** having jurisdiction over nidhi company, instead of Registrar of Companies as mentioned in rule 12 (2)(a) of the Principal Rules.
- ✓ Authority to appoint a special officer to take over the management of nidhi company who has violated the Principal Rules or has failed to function in terms of its memorandum and articles of association, has now been delegated to the Central Government from Regional Director.

Companies Act (Contd...)

- ✓ In the Principal Rules, after rule 23, the following rules have been inserted, namely: -
 - **23A. Compliance with rule 3A by certain *Nidhis***:- Every company referred to in clause (b) of rule 2 (company functioning on the lines of a nidhi company or mutual benefit society but not registered as yet) and every nidhi company incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, 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 6 (six) months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:
 - The aforesaid rule also provides that in case a company does not comply with the requirements of this rule, it shall not be allowed to file e-Form SH-7 (Notice to Registrar of any alteration of share capital) and e-Form PAS-3 (Return of Allotment).
 - **23B. Companies declared as *Nidhis* under previous company law to file Form NDH-4**:- Every company referred in clause (a) of rule 2 every company which had been declared as a nidhi or mutual benefit society) shall file Form NDH-4 alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:
 - The aforesaid rule also provides that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within 6 (six) months of the commencement of Nidhi (Amendment) Rules, 2019:

Companies Act (Contd...)

- The aforesaid rule further provides that in case a company does not comply with the requirements of this rule, it shall not be allowed to file e-Form No. SH-7 (Notice to Registrar of any alteration of share capital) and e-Form PAS-3 (Return of Allotment).
- ✓ Draft format of Form NDH-4 is also shared in the Notification.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/NidhiRules_01072019.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular no. CIR/CFD/CMD1/80 /2019 on procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity, dated July 19, 2019 (“Circular”).**
 - SEBI, *vide* its circular no. CIR/CFD/CMD1/44/2019, dated March 29, 2019, issued the procedure and formats for audit report and limited review report for the listed entities in Annex 2 to the said circular.
 - However, post the issuance of the said circular, the Institute of Chartered Accountants of India (“ICAI”) informed SEBI that ICAI has revised the Standard on Auditing 700 (“SA 700”), based on which exhibits C2, B2, C4, B4, C5 and B5 of the said circular were previously issued. Pursuant to the revised SA 700, the aforementioned audit report formats are required to be aligned accordingly.
 - ICAI has also suggested certain modifications *wrt* the limited review report as was prescribed in the circular.
 - The Circular now replaces the exhibits C1, B1, C2, B2, C4, B4, C5 and B5 of Annex 2 of the erstwhile circular, with Exhibits C1, B1, C2, B2, C4, B4, C5 and B5 of Annex 1 in the Circular.

Securities Law (Contd...)

- The Circular shall be applicable *wrt* the financial results for the quarter ending September 30, 2019 and thereafter.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/jul-2019/procedure-and-formats-for-limited-review-audit-report-of-the-listed-entity-and-those-entities-whose-accounts-are-to-be-consolidated-with-the-listed-entity_43616.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/ISD/ISD/CIR/P/2019/82 on standardizing the reporting of violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015 (“Regulations”), dated July 19, 2019 (“Circular”).**
 - Per regulation 9(1) and 9(2) of the Regulations, the board of directors (“**Board**”) of every listed company and the Board or head(s) of the organisation of every intermediary and fiduciary are required to formulate a Code of Conduct (“**Code**”) for designated persons and their immediate relatives and monitor its compliance and promptly inform SEBI in case of any violations thereof.
 - Although SEBI is in receipt of the aforesaid violations, the references provided therein are incomplete or inadequate about the nature of violation, frequency of violations in the past, etc. Such information, however, is important to determine if any further action is required to be initiated against such designated persons or their relatives.
 - The listed entities shall ensure that appropriate actions are taken wherever violations of the respective Code are observed after recording the reasons in writing.
 - With an objective to standardize as to how the violations to the Code are dealt with, all listed entities, intermediaries and fiduciaries are now required to:
 - ✓ Report such violations in the standardized format (Annexure A to the Circular); and

Securities Law (Contd...)

- ✓ Maintain a database of the violation of the Code by designated persons and immediate relatives of designated persons that would entail initiation of appropriate action against them.
- The Circular is made effective, i.e. from July 19, 2019.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/jul-2019/standardizing-reporting-of-violations-related-to-code-of-conduct-under-sebi-prohibition-of-insider-trading-regulations-2015_43618.html

Securities Law (Contd...)

- ❑ **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/78 modifying circular dated September 24, 2015 on ‘Format for compliance report on Corporate Governance to be submitted to Stock Exchange(s) by listed entities, dated July 16, 2019 (“Circular”).**
 - SEBI, *vide* the Circular, has modified the format for compliance report on corporate governance, that is required to be submitted on quarterly basis by listed entities, pursuant to regulation 27(2) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Listing Regulations**”).
 - A listed entity is required to submit a compliance report on corporate governance within 15 (fifteen) days from the close of each quarter, in the format as may be specified by SEBI from time to time.
 - The Circular modifies the SEBI circular no. CIR/CFD/CMD/5/2015 dated September 24, 2015, to the extent of the format for compliance report on Corporate Governance.
 - Per the Circular, the compliance report on corporate governance shall be submitted to the stock exchange as per the formats prescribed therein in Annex I, II and III, in the following manner:
 - ✓ Annex - I - on quarterly basis;
 - ✓ Annex - II - at the end of a financial year (for the whole of financial year);
 - ✓ Annex - III - within six months from end of a financial year, which may be submitted along with the second quarter's report.

Securities Law (Contd...)

- The Circular shall be effective from the quarter ended September 30, 2019.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/jul-2019/circular-on-modification-of-circular-dated-september-24-2015-on-format-for-compliance-report-on-corporate-governance-to-be-submitted-to-stock-exchange-s-by-listed-entities-_43582.html

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 on External Commercial Borrowings (“ECB”) Policy – Rationalisation of end-use provisions dated July 30, 2019 (“Circular”).**
 - The RBI, in the Circular, has referred to the contents of the paragraphs 2.1.(v) and 2.1.(viii) of Master Direction No.5 dated March 26, 2019, which, inter alia, prescribes that the ECB proceeds cannot be utilised for working capital purposes, general corporate purposes and repayment of rupee loans except when the ECB is availed from foreign equity holder for a minimum average maturity period of 5 (five) years.
 - The RBI has, further prohibited on-lending for the aforesaid activities out of ECB proceeds.
 - So as to boost the slowing economy, the RBI has now decided to liberalise the end use requirements of the ECB proceeds, in consultation with the Government and decided to let the eligible borrowers raise ECBs for the following purposes from recognised lenders, except foreign branches/ overseas subsidiaries of Indian banks, subject to paragraph 2.2 of the aforesaid direction:
 - ✓ ECBs with a minimum average maturity period of 10 (ten) years is permitted for working capital purposes and general corporate purposes. Borrowing by NBFCs for the above maturity for on-lending for the above purposes is also permitted.

Reserve Bank of India (Contd...)

- ✓ ECBs with a minimum average maturity period of 7 years can be availed by eligible borrowers for repayment of rupee loans availed domestically for capital expenditure as also by NBFCs for on-lending for the same purpose.
 - ✓ For repayment of rupee loans availed domestically for purposes other than capital expenditure and for on-lending by NBFCs for the same, the minimum average maturity period of the ECB is required to be 10 years.
 - ✓ It has been decided to permit eligible corporate borrowers to avail ECB for repayment of rupee loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as SMA-2 (where principal or interest payment is overdue between 61-90 days), or non-performing assets, under any one time settlement with lenders.
 - ✓ Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant ECB complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework.
- The prescribed minimum average maturity provision, as above, for the aforesaid end-uses will have to be strictly complied with under all circumstances.
 - The Circular further states that all other provisions of the ECB policy remain unchanged.
 - **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11636&Mode=0>

Insolvency And Bankruptcy Code

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG047 on Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (“Amendment Regulations”), dated July 25, 2019 (“Notification”).**
 - The IBBI, *vide* the Notification has amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - The Amendment Regulations have come in to effect from the date of publication in the official gazette, i.e. July 25, 2019;
 - Following are the salient features of the Amendment Regulations:
 - ✓ **The following processes are prescribed by the Amendment Regulations:**
 - for sale of the corporate debtor as going concern;
 - for sale of the business of corporate debtor as going concern under liquidation; and
 - for closure of the liquidation process without dissolution of the corporate debtor, where a corporate debtor is sold as a going concern.
 - ✓ The Amendment Regulations require completion of the liquidation process within 1 (One) year of its commencement, notwithstanding the pendency of applications for avoidance transactions and a model timeline for each activity in the liquidation process is also prescribed by the therein.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Regulations also specify a maximum timeline of 90 (Ninety) days from the order of liquidation for completion of any restructuring activities, viz. compromise or arrangement, if any, proposed by the stakeholders under Section 230 of the Companies Act, 2013 (Compromise or arrangement). However, the time taken on compromise or arrangement, not exceeding 90 (Ninety) days, shall not be included in the liquidation period.
- ✓ These aforesaid timelines ensure that the liquidation process is concluded at the earliest.
- ✓ The Amendment Regulations require the financial creditors, who are financial institutions, to contribute towards the liquidation cost, in proportion to the financial debts owed to them by the corporate debtor, where the corporate debtor does not have adequate liquid resources to complete liquidation. An illustration to this effect has been prescribed in the Amendment Regulations.
- ✓ The need for such contribution shall arise in case the committee of creditors (“CoC”) did not approve a plan for such contribution during corporate insolvency resolution process. However, such contribution along with interest at bank rate thereon shall form part of liquidation cost, which is paid in priority.
- ✓ The Amendment Regulations provide that a stakeholder may submit its claim or update its claim submitted during the corporate insolvency resolution process, as on the liquidation commencement date. Along with the submission of claim, a secured creditor shall inform the liquidator of its decision to relinquish its security interest to liquidation estate or to realise its security interest.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Regulations provide for the constitution of a stakeholders' consultation committee (“**SCC**”) having representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder/partners to advise the liquidator on matters relating to the sale. However, the advice of the SCC is not binding on the liquidator. The constitution of the SCC has been prescribed in the Amendment Regulations which suggests the number of representatives permitted to be inducted in the SCC in accordance with the percentage of debt owed to each class of creditor.
- ✓ The Amendment Regulations require that while approving a resolution plan or deciding to liquidate the corporate debtor, the CoC may:
 - approve a plan providing for contribution for meeting the liquidation costs,
 - recommend sale of the corporate debtor or sale of business of the corporate debtor as a going concern, and
 - fix, in consultation with the resolution professional, the fee payable to the liquidator, if an order for liquidation is passed by the National Company Law Tribunal.
- ✓ **Link of the Notification.**
https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/Liquidation%20Regulations%2025072019%20final%20English_2019-07-25%2020:13:32.pdf

Insolvency And Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG046 on The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019 (“Amendment Regulations”), dated July 25, 2019 (“Notification”).**
 - The IBBI, *vide* the Notification has amended the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (“**Principal Regulations**”).
 - The Amendment Regulations have come in to effect from the date of publication in the official gazette, i.e. July 25, 2019.
 - Following are the salient features of the Amendment Regulations:
 - ✓ Every information utility holding certificate of registration shall pay an annual fee of INR 50 Lakhs (Indian Rupees Fifty Lakhs only) to the IBBI, within 15 (fifteen) days from the date of commencement of the financial year. Earlier the said fees was to be payable within 15 (fifteen) days from the end of every year from the date of grant or renewal of the certificate of registration, as applicable
 - ✓ The Amendment Regulations have clarified that no annual fee shall be payable in the financial year in which an information utility is granted registration or renewal, as the case may be, provided that the IBBI may, levy simple interest at the rate of 12% (twelve percent) per annum in case of any delay in payment of fee by an information utility until the said fees is paid.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Regulations have introduced regulation 21 in the Principal Regulations to prescribe the process for authentication and verification of information of default
- **Link of the Notification.**
https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/IU%20Regulations%205072019_2019-07-25%2020:14:16.pdf

Insolvency And Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2019-20/GN/REG048 on The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019 (“Amendment Regulations”), dated July 25, 2019 (“Notification”).**
 - The IBBI, *vide* the Notification has amended The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”).
 - The Amendment Regulations have come in to effect from the date of publication in the official gazette, i.e. July 25, 2019.
 - Following are the salient features of the Amendment Regulations:
 - ✓ Regulation 30A of the Principal Regulations has been amended to bring in more clarity on the procedure of withdrawal of an insolvency application and the same has been prescribed stage-wise as under, which was not specified earlier as the Principal Regulations only envisaged that the insolvency application can be withdrawn by making an application to the interim resolution professional (“**RP**”) or the resolution professional before issue of invitation for expression of interest under regulation 36A of the Principal Regulations (Invitation for expression of interest).

Insolvency And Bankruptcy Code (Contd...)

- before constitution of committee of creditors (“CoC”);
 - after constitution of CoC but before issue of invitation for expression of interest; and
 - after issue of invitation for expression of interest.
- ✓ Regulation 39B, 39C and 39D have been inserted in the Principal Regulations which provide that while approving a resolution plan or deciding to liquidate the corporate debtor, the CoC may:
- approve a plan providing for contribution for meeting the liquidation costs;
 - recommend sale of the corporate debtor or sale of business of the corporate debtor as a going concern; and
 - fix, in consultation with the RP, the fee payable to the liquidator, if an order for liquidation is passed by the Adjudicating Authority.
- **Link of the Notification.**
[https://ibbi.gov.in/uploads/legalframework/IBBI_\(Insolvency_Resolution_Process_for_Corporate_Persons\)_Regulations,_2016_updated_25.07.2019.pdf](https://ibbi.gov.in/uploads/legalframework/IBBI_(Insolvency_Resolution_Process_for_Corporate_Persons)_Regulations,_2016_updated_25.07.2019.pdf)

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 – Bill no. XXVI of 2019 (“Amendment Bill”).**
 - The Lok Sabha on August 1, 2019 and the Rajya Sabha on July 29, 2019, have respectively passed the Amendment Bill to amend the Insolvency and Bankruptcy Code, 2016 (“**Code**”).
 - Following are the highlights of the changes proposed by the Amendment Bill to the Code:
 - ✓ The Bill is an outcome of a need to plug certain loopholes over distribution of assets amongst the class of creditors and also emanates from the recent landmark rulings, including but not limited to the famous Essar Steel ruling by the NCLAT over distribution of assets.
 - ✓ The Amendment Bill explains the intent of the resolution plan by prescribing that it may include a provision for corporate restructuring activities, viz. merger, demerger and amalgamation.
 - ✓ The Amendment Bill has provided an ultimate deadline of 330 (three hundred thirty) days within which a resolution process shall be completed. The said amendment does not affect the present timeline of maximum 270 days (two hundred seventy) (including 90 (ninety) days of optional extension by committee of creditors), but gives an additional buffer of 60 (sixty) days in those cases wherein legal proceedings have been initiated under the resolution process.
 - ✓ All pending resolution processes which have not been completed within 330 (three hundred thirty) days, shall be completed within 90 (ninety) days of the provisions of the Amendment Bill are given effect to in the Code.

Insolvency And Bankruptcy Code (Contd...)

- ✓ One of the most prolific amendments sought in the Amendment Bill emanates from the Essar Steel case regarding distribution of assets and following are the amendments sought to the Code in this regard:
 - An operational creditor shall be paid a minimum value which shall be higher of liquidation value to be apportioned to them and resolution value to be apportioned to them and to be paid under the resolution plan;
 - A dissenting financial creditor shall be paid a minimum value which shall be liquidation value to be apportioned to them and which shall be fair and equitable to such creditor.
 - the committee of creditors, while approving the resolution plan, shall have regard to the manner of distribution proposed which may take into account the order of priority amongst creditors as laid down in section 53(1) (Distribution of assets) including the priority and value of the security interest of a secured creditor;
 - On and from the commencement of the Amendment Bill as the amendment act, 2019, the provisions as amended, shall apply to such corporate insolvency resolution processes where:
 - where resolution plan has not been approved/rejected by the adjudicating authority;
 - where appeal has been preferred under the Code;
 - where a legal proceeding has been initiated in any court against the decision of the adjudicating authority in respect of the resolution plan.

Insolvency And Bankruptcy Code (Contd...)

- ✓ The Amendment Bill prescribes that the voting in respect of home-buyers shall be on class basis, where decision of more than 50% (fifty percent) of the voting members of the class will bind other members of the class.
 - ✓ The Amendment Bill provides a huge relief to the incoming investor by clarifying that the Central and State Governments shall be bound by the resolution plan that is approved in respect of a corporate debtor. This amendment was necessitated after there were perennial concerns over waiver of statutory dues under, almost, each resolution plan that was put for approval of the National Company Law Tribunals.
 - ✓ The Amendment Bill provides for liquidation of a corporate debtor anytime after the constitution of the committee of creditors and approval for liquidation can be given even before preparation of information memorandum. This solidifies the intent that the fate of a corporate debtor shall always be in the hands of the committee of creditors who shall not necessarily wait for adopting a resolution plan before deciding about the liquidation of the corporate debtor.
- **Link of the Amendment Bill.**
<https://ibbi.gov.in/uploads/whatsnew/bill>

Deets / Disclaimer

❑ Deets.

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Thank You



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