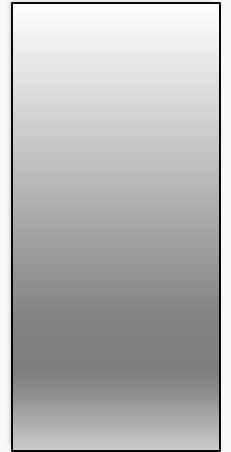


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR AUGUST, 2020



Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. _____ (E) (yet to be published in the official gazette) with respect to notification of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 (“Amendment Act”) dated August 28, 2020 (“Notification”).**
 - The Central Government has appointed August 28, 2020 as the date on which the provision of section 23(ii) of the Amendment Act shall come into force. The said section mandates every company to place a copy of the annual return on the website of the company, if they have one, and the web-link of such annual return to be disclosed in the Board's report.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_29082020.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. _____ (E) (yet to be published in the official gazette) on the Companies (Management and Administration) Amendment Rules, 2020 (“Amendment Rules”) dated August 28, 2020 (“Notification”).**
 - MCA *vide* the Notification has further amended the Companies (Management and Administration) Rules, 2014 which shall come into force from the date of publication in the official gazette.
 - The Notification is insync with the update given in the previous slide and states that the extract of annual return shall not be attached with the Board’s report in Form No. MGT 9, provided that the company discloses the web-link of such annual return in the Board’s report in accordance with section 92(3) of the Companies Act, 2013.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rule_29082020.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 526(E) on the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 (“Amendment Rules”) dated August 24, 2020 (“Notification”).**
 - MCA *vide* the Notification has further amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette i.e. August 24, 2020.
 - The amendment has inserted a new proviso to rule 2(1)(e) of the Principal Rules that provides relaxation to companies engaged in research and development (“**R&D**”) activity of a new vaccine, drugs or medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 and qualifies the expenditure spent on such R&D as CSR expenditure. However, such R&D activities should be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act, 2013 (“**Act**”). Further, details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board’s Report.
 - In rule 4(1) of the Principal Rules, the omission of words ‘excluding activities undertaken in pursuance of its normal course of business’, envisages that the company shall undertake CSR activities as stated in its CSR Policy as projects or programs or activities.

Companies Act (Contd...)

- In rule 6(1) of the Principal Rules, the complete omission of first proviso and omission of the word 'further' in the second proviso, is insync with the immediately preceding paragraph that reimposes that the CSR activities debar the activities undertaken in pursuance of normal course of business of a company and the board of directors of the company shall ensure that activities included by a company in its CSR Policy are related to the areas or subjects specified in Schedule VII of the Act.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/csr_26082020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 28/2020 on clarification on extension of annual general meeting (“AGM”) for the financial year ended as at March 31, 2020 dated August 17, 2020 (“Circular”).**
 - MCA *vide* the Circular has given a clarification regarding holding of an AGM for the financial year ended as at March 31, 2020 stating that the companies which are unable to hold their AGM through video conferencing (‘**VC**’) or other audio visual means (‘**OAVM**’) as per the relaxation provided vide general circular no. 20/2020 dated May 05, 2020 (‘**Circular-1**’) ought to file an application in e-form GNL-1 for seeking an extension with concerned Registrar of Companies (‘**RoC**’) on or before September 29, 2020.
 - The RoCs have been advised to consider all such applications liberally in view of the hardships that may be faced stakeholders and be granted extension as applied for period upto 3 (three) months.
 - The Circular clearly specifies that there will not be any automatic extension available to the companies for holding their AGMs.
 - **Link of Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.28_17082020.pdf
 - **Link of Circular-1.**
http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 27/2020 on clarification on dispatch of notice under section 62(2) of the Companies Act, 2013 (“Act”) by listed companies for rights issue opening upto December 31, 2020, dated August 03, 2020 (“Circular”).**
 - MCA *vide* its general circular no. 21/2020 dated May 11, 2020 had clarified that due to ongoing COVID-19 pandemic, the listed companies who are unable to dispatch letter of offer for rights issue to its shareholders through registered post, as required under section 62(2) of the Act, for the rights issue opening upto July 31, 2020 would not be viewed as violation under section 62(2) of the Act, if the said listed company complies with the directions mentioned in the Securities and Exchange Board of India (“SEBI”) circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020 which allows the listed entities to dispatch letter of offer for rights issue to its shareholders through electronic mode only.
 - On receipt of representations and considering the SEBI circular no. SEBI/HO/CFD/DIL1/CIR/P/2020/136 dated July 24, 2020, the MCA *vide* the Circular has extended the validity of the clarification provided in the immediately preceding paragraph, to be applicable for rights issue opening upto December 31, 2020.
 - **Link of Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.25_03082020.pdf

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/MRD2/DDAP/CIR/P/2020/153 on corrigendum to master circular for depositories dated October 25, 2019 (“Master Circular”) on preservation of records, dated August 18, 2020 (“Circular”).**
 - SEBI *vide* the Circular has addressed the inconsistency between Master Circular (no. MRD/DoP/DEP/Cir- 20/2009 dated December 9, 2009) and SEBI (Depositories and Participants) Regulations, 2018 (“D&P Regulations”) pertinent to preservation of records by depositories.
 - In order to align the provisions of the D&P Regulations with that of Master Circular, section 4.6 (i) of the Master Circular referring to ‘Preservation of Records’ shall be replaced with the following:
 - ✓ *“Depositories and Depository Participants are required to preserve the records and documents for a minimum period of 8 years”*
 - Accordingly, Paragraph 2 of the Master Circular, stands partially modified as under:

“In terms of Regulations 54 and 66 of the SEBI (Depositories and Participants) Regulations, 2018 (herein referred to as D&P Regulations, 2018) notified on October 03, 2018, Depositories and Depository Participants are required to preserve the records and documents for a minimum period of eight years”.

Securities Law (Contd...)

- **Link of the Circular**

https://www.sebi.gov.in/legal/circulars/aug-2020/corrigendum-to-master-circular-for-depositories-dated-october-25-2019-on-preservation-of-records_47344.html

Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/OIAE/IGRD/CIR/P/2020/152 on handling of SEBI Complaints Redress System (SCORES) complaints by stock exchanges and standard operating procedure for non-redressal of grievances by listed companies, dated August 13, 2020 (“Circular”).
 - SEBI *vide* the Circular has, in continuation of SEBI circular nos. SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated March 26, 2018 regarding redressal of investor grievances through SCORES platform and SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 (“**Circular-I**”) on non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”), laid down the procedure for handling complaints by the stock exchanges as well as standard operating procedure, for actions to be taken against listed companies for failure to redress investor grievances. The Circular shall be effective from September 1, 2020.
 - Handling of complaints by stock exchanges:
 - ✓ Stock exchanges (“**SE**”) will be the first recourse for certain categories of complaints against listed companies as provided in Annexure 2 of the Circular, link of which is appended below. The procedure and actions mentioned in Annexure 2 will be applicable for these categories of complaints only.

Securities Law (Contd...)

- ✓ Investors may either initially take up their grievances for redressal with the concerned listed company directly. A complainant may also use SCORES platform to submit grievances directly to the company for resolution, if the complainant has not approached the company earlier and companies shall resolve the complaint directly.
- ✓ In case the company fails to redress the complaint within 30 (thirty) days from the date of receipt of the complaint, such direct complaints shall be forwarded to Designated Stock Exchange (“DSE”) through SCORES.
- ✓ The complainant to furnish all details viz. period of cause of event, date of grievance taken up with the entity, address of the company corresponded earlier, etc. , at the time of lodging the complaint through SCORES platform, in case the complainant had approached the company earlier and such complaints shall be forwarded to the DSE.
- ✓ Upon receipt of the complaint through SCORES platform, the DSE shall take up the complaint with the company and the company is required to redress the complaint and submit an Action Taken Report (ATR) within 30 (thirty) days from the date of receipt of such complaint and in case such ATR is not submitted by the company within 30 (thirty) days or DSE is of the opinion that the complaint is not adequately redressed and the complaint remains pending beyond 30 (thirty) days, a reminder shall be issued by DSE to the listed company through SCORES, directing expeditious redressal of the grievance within another 30 (thirty) days.

Securities Law (Contd...)

- ✓ On being adequately satisfied with the response of the company with respect to the complaint, the SE shall submit an ATR to SEBI.
- ✓ For any failure to redress investor grievances pending beyond 60 (sixty) days by listed companies, SE shall initiate appropriate action against the listed company as detailed below.
- **Action for failure to redress investor complaints:**
 - ✓ SEs shall levy a fine of INR 1,000 (Indian Rupees One Thousand only) per day per complaint on the listed entity for violation of regulation 13 (1) of the Listing Regulations (Grievance Redressal Mechanism) read with Circular-I. Fines shall also be levied on companies which are suspended from trading.
 - ✓ DSE shall issue a notice to the listed entity intimating them about the levy of fines while also directing them to submit ATRs on the pending complaints and payment of fines within 15 (fifteen) days from the date of such notice and in case the listed entity fails to redress the grievances and/or pay fine levied within 15 (fifteen) days from the date of such notice, the concerned DSE shall issue notices to the promoter(s) of such entities, to ensure submission of ATRs on the pending complaints and payment of fines by the listed entity within 10 (ten) days from the date of such notice.

Securities Law (Contd...)

- ✓ In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoters and promoter group in such entity as well as all other securities held in the demat account of the promoter and promoter group.
- ✓ The depository(ies) shall immediately freeze such demat accounts and also intimate the promoter(s) about the details of non-compliances resulting in freezing of their demat accounts.
- ✓ In case listed entity fails to pay the fine or resolve the complaint despite receipt of the notice as stated above, the DSE may initiate other action as deemed appropriate.
- ✓ While issuing the aforementioned notices, the DSE shall also send intimation to other recognized SE(s) where the shares of the non-compliant entity are listed.
- ✓ Once SE(s) has exhausted all options and if number of pending complaints exceed 20 (Twenty) or the value involved is more than INR 10,00,000 (Indian Rupees Ten Lakhs only), SE shall forward the complaints against such listed companies to SEBI for further action, if any.
- ✓ SE may deviate from the above actions, if found necessary, only after recording reasons in writing and intimate SEBI through SCORES about all actions taken against the listed company for non-resolution of the complaints and non-payment of fines.

Securities Law (Contd...)

- ✓ The time-line for handling complaints along with timelines on the actions to be taken by SEs for non-resolution of investor grievances is provided in annexure to the Circular, link of which is appended below.
- ✓ Fine shall be computed and levied on a monthly basis during the non-compliance period and the fine amount shall continue to accrue till the date of redressal of grievance /filing of ATR by the company or till the company is compulsorily delisted, whichever is earlier.
- **Action after redressal of investor grievance by the company:**
 - ✓ Company will be treated as compliant if it has redressed investor's complaint and has paid fines (if any) levied.
 - ✓ In case the promoters' shareholding is frozen by the SE, an intimation shall be given to depositories to unfreeze the promoter / promoter group holdings from the date of such compliance.
 - ✓ If the company has redressed the investor's complaint but has not paid the accrued fines, the SE shall stop levying further fines. However, the promoters' shareholdings shall remain frozen till the payment of accrued fines.

Securities Law (Contd...)

- ✓ If the company has not redressed the investor's complaint but has paid the accrued fines, the SE shall continue to levy the fines and may initiate action as deemed appropriate.
- ✓ The recognized SE shall take necessary steps to implement this circular. The recognized SE shall disclose on their website the action(s) taken against the listed entities for non-compliance(s) with grievances; amount of fine levied, details regarding the freezing of shares, compliance etc.
- ✓ The above provisions are without prejudice to the power of SEBI to take action under the securities laws.
- The recognized SE may keep in abeyance the action against any non-compliant entity or withdraw the action in specific cases where specific exemption from compliance with the requirements under the Listing Regulations/moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal orders etc.
- **Link of the Circular**
https://www.sebi.gov.in/legal/circulars/aug-2020/investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operating-procedure-for-non-redressal-of-grievances-by-listed-companies_47325.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/IMD/DF1/CIR/P/2020/148 on administration and supervision of investment advisers (“IA”), dated August 06, 2020 (“Circular”).**
 - SEBI *vide* the Circular seeks to administer and supervise investment advisers, owing to the growing number of investment advisers.
 - Further, per Regulation 14 of the SEBI (Investment Advisers) Regulations 2013 (hereinafter referred to as “**IA Regulations**”), SEBI can recognize any body/body corporate for the purpose of regulating IAs. It further provides that SEBI may, at the time of recognition of such body or body corporate, delegate administration and supervision of IAs to such body or body corporate on such terms and conditions as may be specified.
 - Furthermore, the second proviso to Regulation 38 (2) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 states, inter alia, that a recognized stock exchange may engage in activities, whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange, through a separate legal entity and subject to approval of the SEBI.
 - In view of the aforesaid, it is decided to recognize a wholly-owned subsidiary of the stock exchange (stock exchange subsidiary) to administer and supervise IAs registered with SEBI. Following are the requisites provided to be the stock exchange subsidiary:

Securities Law (Contd...)

(A)Criteria for grant of recognition: The recognition of stock exchange subsidiary shall be based on the eligibility of the parent entity, i.e. the stock exchange, for which the following eligibility criteria is laid down:

- ✓ Minimum 15 (fifteen) years of existence;
- ✓ The net worth of the stock exchanges should be minimum INR 200 crores;
- ✓ Stock exchanges should have nation-wide terminals;
- ✓ There should be an investor grievance redressal mechanism including arbitration;
- ✓ Investor service centres should be there in at least 20 cities.

(B)Setting up of requisite systems by stock exchanges for the purpose:

- ✓ The stock exchange shall either form a subsidiary or designate an existing subsidiary for the purpose of regulating IAs.
- ✓ The subsidiary shall include in its memorandum and articles of association and bye-laws, requisite provisions to fulfil the below mentioned responsibilities.
- ✓ The subsidiary shall put in place systems/process for grievance redressal, administrative action against IAs, governing IAs, maintaining data, sharing of information with SEBI etc.
- ✓ The subsidiary shall have the necessary infrastructure like adequate office space, equipment and manpower to effectively discharge the below mentioned activities. Infrastructure may be shared with other group entities where required.

Securities Law (Contd...)

(C) Responsibilities of subsidiary of a stock exchange: The subsidiary of a stock exchange shall have following responsibilities:

- ✓ Supervision of IAs both on-site and offsite.
 - ✓ Grievance redressal of clients and IAs.
 - ✓ Administrative action including issuing warning and referring to SEBI for enforcement action.
 - ✓ Obtaining periodical reports from and monitoring activities of IAs.
 - ✓ Submission of periodical reports to SEBI.
 - ✓ Maintenance of database of IAs.
- The stock exchanges, fulfilling the criteria stated at para (A) above, may submit the detailed proposal incorporating requisite systems stated at para 4 (B) and mechanism to discharge responsibilities, to SEBI within 30 (Thirty) days from the date of this Circular.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/aug-2020/administration-and-supervision-of-investment-advisers_47276.html

Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2020/25 on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2020 (“Regulations”), dated August 05, 2020 (“Notification”).
 - SEBI *vide* the Notification has amended regulation 42 (1)(i.e. record date or date of closure of transfer books) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Principal Regulations**”). The record date is the date fixed by a listed entity to determine the shareholders of the Company who are eligible to receive the benefits like dividend, bonus shares, rights issue etc.
 - Regulation 42(1) and clause (e), now stands amended as hereunder:
 - ✓ **42 (1):** *The listed entity shall intimate the record date for the following events to all the stock-exchange(s) where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity’s stock form part of an index on which derivatives are available:*
 - a) *declaration of dividend;*
 - b) *issue of right or bonus shares;*
 - c) *issue of shares for conversion of debentures or any other convertible security;*
 - d) *shares arising out of rights attached to debentures or any other*
 - e) *convertible security corporate actions like mergers, de-mergers, splits, etc;*
 - f) *such other purposes as may be specified by the stock exchange(s).*

Securities Law (Contd...)

- Accordingly by virtue of this amendment a listed entity is required to make intimation of record date not only where it is listed on the stock exchange but also where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available. Further, the amendment also modifies one of the purposes (viz. regulation 42(1)(e) stated above for which such intimation would be required.
- The Notification shall come into force on the date of its publication in the official gazette i.e. August 05, 2020.
- **Link of the Notification.**
https://www.sebi.gov.in/legal/regulations/aug-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2020_47274.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/119 on grievance resolution between listed entities and proxy advisers, dated August 04, 2020 (“Circular”).**
 - Market regulator SEBI *vide* the Circular has advised the listed entities to approach SEBI to resolve grievances in case of any dispute with proxy advisers who advise shareholders on corporate governance issues and assist them with voting recommendation. SEBI shall accordingly examine the matter for non-compliance by proxy advisers with the provisions of the code of conduct under SEBI (Research Analyst) Regulations, 2014 and the procedural guidelines for proxy advisers issued *vide* SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 03, 2020, as explained in the subsequent slide.
 - The provisions of the Circular were initially applicable with effect from September 01, 2020 and the said timeline has now been extended to January 01, 2021 *vide* SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/157 dated August 27, 2020. (“**Circular-I**”)
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/aug-2020/grievance-resolution-between-listed-entities-and-proxy-advisers_47252.html
 - **Link of the Circular-I.**
https://www.sebi.gov.in/legal/circulars/aug-2020/-grievance-resolution-between-listed-entities-and-proxy-advisers-extension-of-timeline-for-implementation_47424.html

Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/IMD/DF1/CIR/P/2020/147 on procedural guidelines for proxy advisors, dated August 03, 2020 (“Circular”).
 - SEBI *vide* the Circular has introduced procedural guidelines for proxy advisors which shall be applicable to all the proxy advisors pursuant to regulation 24(2) (research analyst or research entity to abide by code of conduct) read with regulation 23(1) (application of chapter II, III, IV, V and VI of the SEBI (Research Analyst) Regulations, 2014) (“**Regulations**”) to apply mutatis mutandis to the proxy advisor).
 - Following are the guidelines proxy advisors are bound to follow, and they shall be applicable with effect from September 1, 2020:
 - ✓ Proxy advisors shall formulate the voting recommendation policies and disclose the same to its clients, from time to time and shall ensure to review the same at least once annually. The voting recommendation policies shall also disclose the circumstances when not to provide a voting recommendation.
 - ✓ Proxy advisors shall disclose the methodologies and processes followed in the development of their research and corresponding recommendations to its clients.

Securities Law (Contd...)

- ✓ Proxy advisors shall alert clients, within 24 (twenty) hours of receipt of information, about any factual errors or material revisions to the report.
- ✓ Proxy advisors shall have a stated process to communicate with its clients and the company.
- ✓ Proxy advisors shall share their report with its clients and the company at the same time and this sharing policy should be disclosed by proxy advisors on their website. Timeline to receive comments from company may be defined by proxy advisors and all comments/clarifications received from the company, within timeline, shall be included as an addendum to the report. Upon receipt of the recommendations from the company, on the report of the proxy advisors, the proxy advisors, may either revise the recommendation in the addendum report or issue an addendum to the report with its remarks, as considered appropriate.
- ✓ Proxy advisors shall clearly disclose in their recommendations the legal requirement vis-a-vis higher standard suggesting by them, if any, and the rationale behind the recommendation of higher standards.
- ✓ Proxy Advisors shall disclose conflict of interest on every specific document where they are giving their advice. Further, the disclosures should especially address possible areas of potential conflict and the safeguards that have been put in place to mitigate possible conflicts of interest.

Securities Law (Contd...)

- ✓ Proxy Advisors shall establish clear procedures to disclose, manage and/or mitigate any potential conflicts of interest resulting from other business activities including consulting services, if any, undertaken by them and disclose the same to client.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/aug-2020/procedural-guidelines-for-proxy-advisors_47250.html

Insolvency And Bankruptcy Code

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG064 on IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020 dated August 07, 2020 (“Amendment Regulations”) (“Notification”).**
 - The IBBI *vide* the Notification has further amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”), which shall come into force from August 07, 2020.
 - The Amendment Regulations, have brought about the following changes to the Principal Regulations:
 - ✓ After regulation 4A(2)(a), clause (aa) has been inserted, thereby inferring that under regulation 4A(2), the interim resolution professional (“**IRP**”) is required to identify 3 (three) insolvency professionals (“**IP**”) to represent the creditors in a class as specified in regulation 4A(1). The Amendment Regulations propose that such IPs shall have their registered address with the IBBI in the same state or union territory as the highest number of creditors as per address in the record of the corporate debtor. Therefore, the IRPs will be required to identify the IPs from the state or union territory which has the highest number of a class of creditors. However, if such state or union territory does not have adequate IPs, the IPs having addresses in the nearby states or union territories shall be considered.

Insolvency And Bankruptcy Code (Contd...)

- ✓ **Substitution of 16A(9) of the Principal Regulations:** The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee. The creditors shall have a time window of at least 12 (twelve) hours to submit their preliminary views, and the said window opens at least 24 (twenty-four) hours after the authorised representative seeks preliminary views. However, such preliminary views shall not be considered as voting instructions by the creditors.

Impact: Accordingly, the Amendment Regulations have introduced the requirement of seeking preliminary views of the creditors in a class which was earlier not envisaged. This would help the authorized representative to participate in the committee meeting in a more efficient manner as he would have clear views of the creditors whom he is representing. Also, the said views are only directory in nature and are not to be inferred as voting instructions of the creditors. The creditors get a 12 (twelve) hour window to submit the preliminary views.

- ✓ Per amended regulation 39(3) (Approval of Resolution Plan), there shall be now simultaneous voting on all resolution plans received.
- ✓ It is further provided vide insertion of regulation of 39(3A) in the Principal Regulations that, where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes i.e. 66 (sixty-six percent) votes.

Insolvency And Bankruptcy Code (Contd...)

- ✓ It is also provided vide insertion of regulation of 39(3B) in the Principal Regulations Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved. Where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting. Where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/691983ad021bf2a65a708f57d17595b8.pdf>

Insolvency And Bankruptcy Code (Contd...)

□ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG.063 on IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2020 dated August 05, 2020 (“Amendment Regulations”) (“Notification”).**

- The IBBI *vide* the Notification has further amended the IBBI (Voluntary Liquidation Process) Regulations, 2017 (“**Principal Regulations**”), which shall come into force from August 05, 2020.
- The Amendment Regulations substitutes regulation 5 of the Principal Regulations (Appointment of Liquidator) and states that the corporate person can replace a liquidator, wherever required, by appointing another insolvency professional as liquidator, by a resolution passed under section 59(3)(c) (Voluntary liquidation of corporate persons) of the Insolvency and Bankruptcy Code, 2016 i.e. a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily or regulation 3(1)(c) of the Principal Regulations i.e. a resolution passed by a special majority of the partners or contributories, as the case may be.
- The Amendment Regulations also mandates the insolvency professional so appointed as a liquidator, to report the said appointment to the IBBI within three (3) days of his/her appointment as liquidator.

▪ **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/41dae71b62c3fa756602c8fec7848b58.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG062 on IBBI (Liquidation Process) (Third Amendment) Regulations, 2020 dated August 05, 2020 (“Amendment Regulations”) (“Notification”).**
 - The IBBI *vide* the Notification has further amended the IBBI (Liquidation Process) Regulations, 2016 (“**Principal Regulations**”), which shall come into force from August 05, 2020.
 - Pursuant to the Notification, the following amendments have been made in the Principal Regulations by the Amendment Regulations:
 - ✓ In regulation 4(2)(b) (Liquidator’s fee), after the table, the following clarification has been inserted, namely:-

Clarification: For the purposes of clause (b), it is hereby clarified that where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.”

Insolvency And Bankruptcy Code (Contd...)

- ✓ In regulation 47 (model time-line for liquidation process), serial no. 4 of the table has been amended to give effect to submission of claims and intimation of decision on relinquishment of security interest pursuant to section 38(1) (consolidation of claims), regulation 17 (claims by operational creditors), 18(claims by financial creditors), 19 (claims by workmen and employees), 20 (claims by other stakeholders) and 21A (presumption of security interest) be taken up with 30 (thirty) days from the date of liquidation commencement date, unlike previous disregard to regulation 19, stated under the Principal Regulations.
- ✓ in serial number 18, in column 4, for the word “disclosure”, the word “disclaimer” has been substituted.
- ✓ **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/99821042db3990a40cd7082f06019911.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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