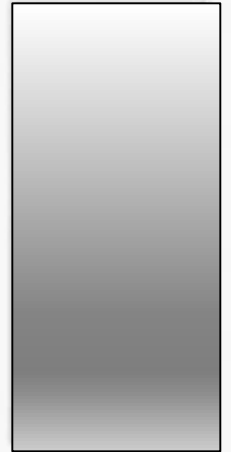


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES FOR NOVEMBER,
2019**



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 857 (E) on the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019 (“Amendment Rules”) dated November 18, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette, i.e. November 18, 2019.
 - This Amendment Rules has attempted to rationalize the thresholds in certain instances by removing the second condition in certain cases and changing the benchmark in another case as under:
 - ✓ In sub clause (i) and (ii) under Rule 15(3)(a), i.e. for sale, purchase or supply of any goods or material, directly or through appointment of agent and for selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent; respectively, a shareholders’ resolution is required to be passed if the amount involved in aforesaid cases is equal to or exceeds 10% of net worth of the company and the second condition of “or rupees 100 crores, whichever is lower” has been done away with.
 - ✓ In sub clause (iii) under Rule 15(3)(a) a resolution of the shareholders shall be required for leasing of property any kind if the amount is equal to or exceeds 10% of the turnover of the company. Earlier, the threshold for the aforesaid activity was linked as “amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower”.

Companies Act (Contd...)

✓ In sub clause (iv) under Rule 15(3)(a), i.e. for availing or rendering of any services, directly or through appointment of agent, a shareholders' resolution is required to be passed if the amount involved in aforesaid cases is equal to or exceeds 10% of turnover of the company and the second condition of "or rupees 50 crores, whichever is lower" has been done away with.

▪ **Link of the Notification**

http://www.mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – notification No. FEMA 5 (R)/(3)/2019-RB on Foreign Exchange Management (Deposit) (Third Amendment) Regulations, 2019, dated November 13, 2019 (“Notification”).**
 - The RBI, *vide* the Notification has amended Foreign Exchange Management (Deposit) Regulations, 2016 (“**Principal Regulations**”), which shall come into force from the date of its entry in the official gazette, i.e. w.e.f November 14, 2019.
 - Major highlights of the amendments made in Schedule 4 of Principal Regulations are as under:
 - ✓ Any person resident outside India, having a special interest in India, may open Special Non-Resident Rupee Account (“**SNRR account**”) with an authorised dealer for the purpose of putting through bona fide transactions in rupees. An inclusive list of INR transactions considered as business interest, are encapsulated in the Notification.
 - ✓ The SNRR account shall carry the nomenclature of the specific business for which it is in operation. Indian bank may, at its discretion, maintain separate SNRR Account for each category of transactions or a single SNRR Account for a person resident outside India engaged in multiple categories of transactions provided it is able to identify or segregate and account them category-wise.

Reserve Bank of India (Contd...)

- ✓ The tenure of the SNRR account shall be concurrent to the tenure of the contract or period of operation or the business of the account holder and in no case shall exceed 7(seven) years. However, the said restriction of 7 (seven) years shall not apply to SNRR accounts opened for the purposes stated in sub. paragraphs i. to v. of paragraph 1 of Schedule 4 of the Principal Regulations.
 - ✓ The amount due or payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO/NRE account of the nominee with an authorised dealer or authorised bank in India or by remittance through normal banking channels.
- **Link of the Notification.**
<https://rbidocs.rbi.org.in/rdocs/content/pdfs/5R3RD20112019F.pdf>

Securities Law

❑ Analysis on the FAQs on SEBI (Prohibition of Insider Trading) Regulations, 2015 (the “Regulations”).

- On November 4, 2015, the Securities and Exchange Board of India (“**SEBI**”) has rolled out FAQs to provide clarity on certain crucial aspects of the Regulations, inter-alia, as under:

- ✓ **Whether requirement of pre-clearance is applicable for exercise of employee stock options?**

SEBI has clarified that exercise of employee stock options (“**ESOPs**”) shall not be considered as “**trading**” except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares acquired post the exercise of ESOPs.

This means that no pre-clearance is required in case of exercise of ESOPs and it can be exercised even when the trading window is closed.

- The other FAQs can be accessed at the following link:

- **Link to the FAQs**

https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/nov-2019/faqs-on-sebi-pit-regulations_44861.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number IMD/FPI&C/CIR/P/2019/124 on ‘Operational Guidelines for Foreign Portfolio Investors (“FPIs”) & Designated Depository Participants (“DDPs”) under SEBI (Foreign Portfolio Investors), Regulations 2019 and for Eligible Foreign Investors’ (“EFIs”) dated November 05, 2019 (“Circular”).**
 - SEBI, *vide* the Circular, has issued operational guidelines (“**Operational Guidelines**”) for FPIs and DDPs to facilitate the implementation of SEBI (Foreign Portfolio Investors) Regulations, 2019 (**the “Regulations”**).
 - These Regulations have been notified and have come into force w.e.f September 23, 2019.
 - Major Highlights of the Operational Guidelines are as below;
 - ✓ All insurance entities and funds from FATF member countries have been classified as Category-I FPIs.
 - ✓ The unregulated funds or entity where the regulated investment manager is from non-FATF member country would be under Category-II.
 - ✓ The FPI can seek re-categorisation from Category II to I after providing requisite information, documents and applicable fees to the DDP.

Securities Law (Contd...)

- ✓ In the event of a breach of the sectoral cap or aggregate FPI limit or aggregate NRI limit, the foreign investors shall divest their excess holding within 5 (five) trading days from the date of settlement of the trades, by selling shares only to domestic investors.
- SEBI *vide* the Operational Guidelines enclosed herewith, specifies the following:
 - ✓ FPIs registration related activities.
 - ✓ Know your client documentation requirements for FPI.
 - ✓ Restrictions and investment conditions on FPIs
 - ✓ Issuance of Offshore Derivative Instruments by FPIs
 - ✓ Guidelines for participation or functioning of EFIs in International Financial Services Centre (IFSC).
- The existing circulars, FAQs, operating guidelines, other guidance issued by SEBI from time to time have been withdrawn with the issuance of the Operational Guidelines.
- **Link of the Operational Guidelines**
https://www.sebi.gov.in/sebi_data/commondocs/nov-2019/Operational%20Guidelines%20for%20FPIs,%20DDPs%20and%20EFIs%20revised_p.pdf
- **Link of the Circular**
https://www.sebi.gov.in/legal/circulars/nov-2019/operational-guidelines-for-fpis-and-ddps-under-sebi-foreign-portfolio-investors-regulations-2019-and-for-eligible-foreign-investors_44870.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/MIRSD/DOP/CIR/P/2019/136 on ‘Mapping of Unique Client Code with demat account of the clients’, dated November 15, 2019 (“Circular”).**
 - SEBI, *vide* its circular no. SEBI/HO/MIRSD/DOP/CIR/P/2018/153 dated December 17, 2018, had put in place Early Warning Mechanism, to detect the diversion of client’s securities by the stock broker at an early stage so as to take appropriate preventive measures.
 - This circular specified that Stock Exchanges / Clearing Corporations / Depositories, shall devise a mechanism to detect diversion of clients’ securities and to share information among themselves in respect of;
 - ✓ Diversion of pay-out of securities to non-client/other client accounts.
 - ✓ Mis-matches between gross (client-wise) securities pay-in and pay-out files of a stock brokers generated by the Clearing Corporation.
 - In order to facilitate ease of administration, it was considered necessary to map clients’ Unique Client Code (“**UCC**”) with their demat accounts.
 - Pursuant to discussion with Stock Exchanges and Depositories, a mechanism for mapping of UCC with demat accounts of the clients, as encapsulated in the Circular shall be implemented.

Securities Law (Contd...)

- Stock Exchanges and Depositories shall map the existing UCCs with the demat account of the clients latest by December 31, 2019.
- Stock Exchanges and Depositories are directed as under:
 - ✓ To bring the provisions of the Circular the notice of their members and participants, as the case may be and also disseminate the same on their websites.
 - ✓ To communicate to SEBI on the status of implementation of the provisions of the Circular in their monthly development report.
- **Link of the Circular**
https://www.sebi.gov.in/legal/circulars/nov-2019/mapping-of-unique-client-code-ucc-with-demat-account-of-the-clients_44983.html

Insolvency And Bankruptcy Code

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. IBBI/2019-20/GN/REG052 on Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) (Third Amendment) (“Amendment Regulations”) dated November 27, 2019 (“Notification”).**
 - The MCA, *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 on the date of their publication in the Official Gazette, i.e. on November 28, 2019.
 - In the Principal Regulations, regulation 26(1A) stands omitted and after regulation 25, the following regulation is inserted: -

“25A - Voting by Authorised Representative

The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of section 25A (3) or (3A), as the case may be.”

- The Amendment Regulations state that the resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor, by inter-alia, restructuring of the corporate debtor, by way of merger, amalgamation and demerger. The said insertion has been made by prescribing clause (ba) under regulation 37 of the Principal Regulations;

Insolvency And Bankruptcy Code (Contd...)

- In the Principal Regulations, in regulation 38, for sub-regulation (1), the following has been substituted, namely: -

“(1) The amount payable under a resolution plan –

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.”

The said insertion takes care of minority and dissenting stakeholders of a corporate debtor and is a significant change made under the Principal Regulations.

- In the Principal Regulations, after regulation 40A, a regulation 40B, has been inserted, pursuant to which the insolvency professional, interim resolution professional or resolution professional, as the case may be, shall file the forms, along with the enclosures thereto, on an electronic platform of the Insolvency and Bankruptcy Board (“**Board**”), as per the timelines stipulated against each form, as provided in the Notification, and they shall ensure that the forms and its enclosures filed under the said regulation 40B are accurate and complete. The filing of respective forms, as may be required under this regulation 40B after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of INR 500 (Indian Rupees Five Hundred only) per form for each calendar month of delay after 1st January, 2020;

Insolvency And Bankruptcy Code (Contd...)

- Per the said regulation, the insolvency professional or interim resolution professional or resolution professional, as the case may be, shall be liable to any action which the Board may take as deemed fit under the Insolvency and Bankruptcy Code, 2016 or any regulation made thereunder, including refusal to issue or renew authorisation for assignment, for-
 - ✓ failure to file a form along with requisite information and records;
 - ✓ inaccurate or incomplete information or records filed in or along with a form;
 - ✓ delay in filing the form.”.
- Further, the said regulation also prescribes for insertions and modifications to the forms as provided in the Principal Regulations, more specifically set out in the Notification.
- **Link of the Notification**
<https://ibbi.gov.in/uploads/legalframework/537884ae9b0b31a41355a0a07677769f.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. IBBI/2019-20/GN/REG051 on Insolvency and Bankruptcy (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“Regulations”) dated November 20, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has framed the Regulations which shall be effective from December 01, 2019, and shall apply to matters relating to bankruptcy proceedings of personal guarantors to corporate debtors.
 - The Regulations, inter-alia, include matters pertinent to:

I. Bankruptcy Trustee:

- ✓ An insolvency professional shall be eligible to be appointed as a bankruptcy trustee for a bankruptcy process if:
 - he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor and such independence of a person shall be established as under:
 - a) a person is not an associate of the guarantor;
 - b) a person is not a related party of the corporate debtor; and
 - c) a person has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor.

Insolvency And Bankruptcy Code (Contd...)

- he is not subject to any ongoing disciplinary proceeding or a restraint order of the Insolvency and Bankruptcy Board of India (“**Board**”) or of the insolvency professional agency of which he is a professional member; and
- the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the bankruptcy process.
- ✓ The Regulations require a bankruptcy trustee, who has been an auditor of the guarantor at any time during the preceding 3 years, to make a disclosure of year-wise remuneration received, for such audit, to the committee.
- ✓ An insolvency professional, other than who has filed an application under section 122 (Application by debtor for bankruptcy of an individual/firm) or 123 (Application by creditor for bankruptcy of an individual/firm) on behalf of a guarantor or a creditor, as the case may be, shall provide a written consent in Form A to the Adjudicating Authority before his appointment as bankruptcy trustee in a bankruptcy process.
- ✓ Fees to be paid to bankruptcy trustee; appointment of independent professionals as provided in the Regulations, as and when deemed necessary to appoint to them to assist him in discharge of his/her duties, obligations and functions for a reasonable remuneration;

Insolvency And Bankruptcy Code (Contd...)

- ✓ Maintenance, updation and completion of cash book, ledgers, registers and such other books, as may be required for the administration of the estate of the bankrupt, reports by bankruptcy trustee as under:
 - **a preliminary report:**
 - a) A preliminary report shall be submitted to the Adjudicating Authority and the committee within 90 days of the bankruptcy commencement date and a copy thereof shall be sent to the bankrupt at the time of aforesaid submission.
 - b) The preliminary report shall, inter-alia, include the following details- (i) a list of the assets and liabilities of the bankrupt as on the bankruptcy commencement date, the proposed plan of action in relation to administration of the estate, with specific timeline to carry out the estimated costs; (ii) details of the assets which are intended to be realised, including the value, manner of realization and expected amount of the assets and details of the excluded assets and other assets under sub-section (2) of section 155 (Estate of bankrupt).
 - c) The preliminary report shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it subject to such terms and conditions, as it may consider appropriate.

Insolvency And Bankruptcy Code (Contd...)

- d) At the time of the preparation of the preliminary report or any time thereafter, if it appears to the bankruptcy trustee that – (a) the realisable assets of the bankrupt are insufficient to cover the costs of bankruptcy process; and (b) the affairs of the bankrupt do not require further investigation, he may apply to the Adjudicating Authority for an early discharge order.
- o **progress reports:**
 - a) progress reports to be submitted with the Adjudicating Authority and to the committee within 15 days after the end of every quarter, unless the insolvency professional ceases to act as a bankruptcy trustee in which case, he shall file a progress report for the quarter up to the date of his so ceasing to act, within 15 days of such cessation and the said report to be simultaneously sent to the bankrupt.
 - b) The progress report shall include:
 - i. appointment, tenure of appointment and cessation of appointment of professionals;
 - ii. a statement indicating the progress in the bankruptcy process containing such particulars as prescribed in the Regulations regarding the progress of the process;

Insolvency And Bankruptcy Code (Contd...)

- iii. an asset sale report with the details of the assets realised as specified in the Regulations;
 - iv. details of fee and remuneration due to and received by the bankruptcy trustee along with a description of the activities carried out by him and to the professionals appointed by him and other expenses incurred by the bankruptcy trustee in relation to the bankruptcy process;
 - v. status of any material litigation by or against the bankrupt;
 - vi. filing of and developments in relation to disclaimer of onerous properties or leasehold interests under various provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”).
 - vii. accounts showing the receipts and payments made during the period of the report, as well as cumulative receipts and payments made since the bankruptcy commencement date; and
 - viii. The progress report for the 4th quarter of the financial year shall enclose audited accounts of the receipts and payments of the bankrupt for the financial year.
- c) The progress reports shall be confidential during the bankruptcy process, unless the Adjudicating Authority permits any person to access it on specified terms and conditions.

Insolvency And Bankruptcy Code (Contd...)

- **final report:**
 - a) The final report shall contain an account of the completion of the administration and distribution of the estate of the bankrupt, including:
 - i. manner of realisation of the assets of the bankrupt and manner of distribution of the dividends amongst the creditors;
 - ii. details regarding the discharge of the bankrupt;
 - iii. unclaimed and surplus dividend, if any; and
 - iv. details and reasons for excess in the bankruptcy process cost over the estimated cost provided in the preliminary report.
 - b) The bankruptcy trustee shall file the final report with the Adjudicating Authority along with the application under sub-section (1) of section 138.
- ✓ Co-operation that shall be extended to the bankruptcy trustee by, inter-alia, creditors, employees, partners of the bankrupt;
- ✓ Preservation of records by the bankruptcy trustee.

Insolvency And Bankruptcy Code (Contd...)

II. Claims

- ✓ **Future claims** – wherein a person may submit a claim, which is not due and payable on the bankruptcy commencement date, to the bankruptcy trustee and he shall be entitled to the principal amount and the interest that has accrued till the bankruptcy commencement date.
- ✓ **Negotiable instruments** – wherein a person seeks to prove a claim in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature for which the bankrupt is liable and a certified true copy of the same shall accompany the claim;
- ✓ **Periodical payments** – In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date.
- ✓ **Determination of quantum of claim** – Where the amount claimed by a claimant is not precise due to any reason, the bankruptcy trustee shall make the best estimate of the amount of the claim based on the information available with him.
- ✓ **Debt in foreign currency** – The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate, i.e. rate published by the Reserve Bank of India or derived from such reference rate.as on the bankruptcy commencement date.

Insolvency And Bankruptcy Code (Contd...)

II. Claims

- ✓ **Transfer of debt due to creditors** – Where a creditor assigns or transfers the debt to any person during the bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer, and the identity and details of the assignee or transferee and the bankruptcy trustee shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within 2 days of such change.

- ✓ **Committee of creditors** –
 - i. The bankruptcy trustee shall prepare a list of creditors, within the mentioned in section 132, i.e. 14 days from the bankruptcy commencement date containing the details specified in the Regulations in respect of each creditor and the establishment of the committee shall be reported to the Adjudicating Authority within 3 days from the meeting of the creditors;

 - ii. The bankruptcy trustee shall modify the list of creditors and the composition of the committee, if required, on the basis of the proof received and any modification to the committee, mentioned herein shall be filed with the Adjudicating Authority within 15 days from the last date for receipt of proofs of debt, under intimation to other creditors and any modification in the list of creditors shall not affect the validity of any decision taken in any meeting of the committee prior to such modification;

Insolvency And Bankruptcy Code (Contd...)

II. Meetings of Committee and Voting

- ✓ **Notice for meeting** – A meeting of the committee as and when considered necessary by the bankruptcy trustee may be convened and a meeting shall be convened on a request by creditors having not less than 33% percent of voting share; by service of the notice of seven days or such shorter notice of not less than 48 hours, on each participant at its registered address. The notice to have detailed agenda and all the requisite details regarding various modes of attendance by the participants and requisite details for such attendance.
- ✓ **Quorum and Conduct** – A meeting of the committee that could not be held due to want of quorum to be adjourned to the next day, same time and place, without necessity of minimum quorum requirement and the bankrupt shall attend a meeting which the bankruptcy trustee may, by notice, require him to attend and any adjournment thereof.
- ✓ **Voting share –**
 - i. The voting share of each creditor shall be in proportion to the debt owed to such creditor, unless otherwise prescribed in section 135 (Voting rights of creditors) of the Code.
 - ii. The voting share of a secured creditor shall be in proportion to unsecured part of the debt, if any, if it has opted to enforce its security interest.

Insolvency And Bankruptcy Code (Contd...)

iii. The voting share of a secured creditor who has opted to relinquish its security interest shall be in proportion to the amount of debt relinquished.

✓ **Voting by the committee –**

i. The bankruptcy trustee shall take a vote of the creditors present in the meeting on any item listed for voting, after discussion on the same.

ii. At the conclusion of the meeting, the bankruptcy trustee shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting and circulate the same by electronic means to all participants of the meeting within 48 hours of the conclusion of the meeting, and seek a vote on the items listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means, where the voting shall be kept open for at least 24 hours from the circulation of the minutes.

iii. All decisions to require atleast 51% of voting share of the creditors who voted to sail through.

iv. At the end of the voting period, the bankruptcy trustee shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means and circulate a copy of the said record to all participants within 24 hours of the conclusion of the voting.

Insolvency And Bankruptcy Code (Contd...)

- ✓ **Voting by proxy** – A creditor, who is entitled to vote, shall be entitled to appoint an individual as a proxy, who shall not be an associate of the bankrupt, to attend and vote on behalf and Form B, duly completed, shall be delivered to the bankruptcy trustee at least twenty-four hours prior to the meeting of committee. (3) A proxy may vote by electronic means on behalf of the creditor.

IV. Realisation of Assets

✓ **Mode of sale –**

- i. The bankruptcy trustee shall ordinarily sell the assets of the bankrupt through an auction as specified in Part A of Schedule II as appended to the Regulations.
- ii. The bankruptcy trustee may sell the assets by private sale, in the manner specified in Part B of Schedule II as appended to the Regulations in case of perishability of the asset, apprehension of diminishing value of the asset due to delay in sale or in case if the selling price of the asset is higher than the reserve price of a failed auction.
- iii. Certain persons as specified in the Regulations shall not purchase or acquire any interest in the property of bankrupt, directly or indirectly, without permission of the Adjudicating Authority.
- iv. The bankruptcy trustee shall not proceed with a sale, if he has reason to believe that there is any collusion amongst any one or more persons as specified in the Regulations.

Insolvency And Bankruptcy Code (Contd...)

✓ **Acquisition, etc., of after acquired property by bankrupt.**

i. The Regulations specify that the bankrupt shall not dispose of any increase in income or acquisition or devolution of property without approval of the Adjudicating Authority and if the same is deal with in an unauthorized manner, the bankrupt shall help the Adjudicating Authority with the details of the buyer to trace him and all costs incurred in this behalf shall be part of the bankruptcy costs.

ii. **Disclaimer of onerous property.**

The Regulations deal with intimation by the bankruptcy trustee to several parties and the Adjudicating Authority regarding interest of the persons in the onerous property.

✓ **Valuation of assets -**

The bankruptcy trustee shall appoint a registered valuer to value the assets, which may or may not form part of the bankrupt's estate, when he is of the opinion that it is necessary or when a resolution to that effect has been passed by the committee. The bankruptcy trustee may appoint an additional registered valuer, for valuing the assets of the bankrupt if required in the circumstances of the case, who shall independently submit his estimate as per sub-regulation. In the event an additional registered valuer is appointed under sub-regulation (3), the average of the estimates received from both valuers will be considered to be the value of the assets.

Insolvency And Bankruptcy Code (Contd...)

✓ Realisation of security interest –

A secured creditor, who seeks to realise his security, shall intimate the bankruptcy trustee of the price at which he proposes to realise the secured asset and the bankruptcy trustee shall find a buyer who will willing to purchase the security at a price higher than the price intimated herein and such cost shall be added to the bankruptcy cost. Where a secured creditor realises his security and the amount realised is in excess of the debts due to the secured creditor, such creditor shall tender such excess to the bankruptcy trustee.

V. Proceeds of Bankruptcy Process and Distribution of Proceeds

- ✓ **Bank account for bankruptcy process** – The Regulations specify the opening and operation of the bank accounts and has set limits for various modes of operations.
- ✓ **Distribution of dividend to claimant of deceased creditor** – The Regulations specify that in case of an application by a claimant or heir of a deceased creditor for receiving dividend payable to such deceased creditor, the bankruptcy trustee shall satisfy himself as to the claimant's right and title to receive the dividend, and may call for evidence regarding such right or title and accordingly apply to the Adjudicating Authority for sanctioning the payment of such dividend or return to the claimant.

Insolvency And Bankruptcy Code (Contd...)

- ✓ **Distribution of dividend** – The bankruptcy trustee shall not commence distribution of dividend unless a preliminary report is filed with the Adjudicating Authority and the bankruptcy process cost shall be deducted before any dividend is distributed.
- ✓ **Return of amount** – A creditor shall forthwith return any amount received by him in distribution, which he was not entitled to at the time of distribution, or subsequently.
- ✓ **Unclaimed proceeds of bankruptcy or undistributed assets** –
 - i. After filing the final report, the bankruptcy trustee shall, within 3 days from the date of such filing, apply to the Adjudicating Authority for an order to credit to the insolvency and bankruptcy fund formed under the Code, any unclaimed dividends of bankruptcy process or undistributed asset or any other balance amount payable to the creditors, left with him and he shall be liable to pay interest at 12% p.a. in case of any delay.
 - ii. The bankruptcy trustee shall, when crediting the aforesaid amount furnish to the Board, a statement setting forth the following the particulars mentioned in the Regulations.
 - iii. The bankruptcy trustee shall be entitled to a receipt from the Board for any amount deposited by him and such receipt shall be proof of credit by him. The Regulations also specify instances where a person claiming to be entitled to any amount paid into the insolvency and bankruptcy fund may apply to the Board for an order for payment of the amount claimed.

Insolvency And Bankruptcy Code (Contd...)

- ✓ **Debt counselling-** Debt counselling in relation to bankruptcy process may be provided to a bankrupt by such person as may be recognised by the Board or the Central Government, as the case may be.

- **Link of the Notification**
<https://ibbi.gov.in/uploads/legalframework/40c64dd41380b7d710b874a8d1152fe6.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. IBBI/2019-20/GN/REG050 on Insolvency and Bankruptcy (Insolvency Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“Regulations”) dated November 20, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has framed the Regulations which shall be effective from December 01, 2019, and shall apply to matters relating to insolvency proceedings of personal guarantors to corporate debtors.
 - The Regulations, inter-alia, include matters pertinent to:

I. Eligibility of resolution professional:

- ✓ An insolvency professional shall be eligible, if:
 - a) he, the insolvency professional entity of which he is a partner or a director, and all the partners and directors of the said insolvency professional entity are independent of the guarantor;
 - b) he is not subject to any ongoing disciplinary proceeding or a restraint order of the Insolvency Bankruptcy Board of India (“**Board**”) or of the insolvency professional agency of which he is a professional member; and
 - c) the insolvency professional entity of which he is a partner or a director, or any other partner or director of such insolvency professional entity does not represent any party in the resolution process.

Insolvency And Bankruptcy Code (Contd...)

- d) Independence from guarantor has been prescribed in the Regulations.
- ✓ The Regulations also provide for filing of Form A as appended to the Notification, to the Adjudicating Authority before his appointment as resolution professional in a resolution process.
- ✓ The resolution professional shall preserve a physical as well as an electronic copy of the records relating to resolution process of the guarantor as per the record retention schedule, as may be communicated by the Board in consultation with insolvency professional agencies.
- ✓ Debt counselling in relation to resolution process may be provided to a guarantor by such person as may be recognised by the Board or the Central Government, as the case may be.

II. Registration of Claims

- ✓ **Submission and verification of claim –**
 - i. Form B as appended to the Notification has been prescribed for submission of claim by the creditor along with proof to the resolution professional. The said claim can be proved basis, inter-alia, the records available in an information utility, or any other documentary evidence which substantiates the existence of claim.
 - ii. The resolution professional may call for such other evidence or clarification and shall verify each claim as soon as it is received and prepare a list of creditors within 30 days from the date of public notice issued for invitation of claims.

Insolvency And Bankruptcy Code (Contd...)

- iii. the amounts of claims admitted and make best estimates where the claim amount is not precise, till the approval of a repayment plan by the creditors.
- iv. The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the resolution process commencement date.
- ✓ **Transfer of debt due to creditors** – Where a creditor assigns or transfers the debt to any person during the insolvency process period, both parties shall provide the resolution professional the terms of such assignment or transfer, and the identity and details of the assignee or transferee and the resolution professional shall notify each creditor and the Adjudicating Authority of any resultant change in the committee within 2 days of such change.
- ✓ **Statement of affairs** – The resolution professional shall prepare a statement of affairs of the guarantor which shall include the details of assets, income statement, income tax returns, debt, guarantees given and details of the financial statements for the business owned by the guarantor, or of the firm in which he is a partner, as the case may be, for the preceding 3 financial years, if applicable.

Insolvency And Bankruptcy Code (Contd...)

III. Meetings Of Creditors And Voting

✓ Meeting of creditors –

- **Notice for meeting** – 1st meeting of the committee shall be convened by the resolution professional. A meeting of the committee as and when considered necessary by the resolution professional may be convened and a meeting shall be convened on a request by creditors having not less than 33% percent of voting share; by service of the notice of seven days or such shorter notice of not less than 48 hours, on each participant at its registered address. The notice to have detailed agenda and all the requisite details regarding various modes of attendance by the participants and requisite details for such attendance.

- **Quorum and Conduct** –
 - i. A meeting of creditors shall be quorate if creditors representing at least thirty-three percent of voting share are present in person, by proxy or through video conferencing.
 - ii. A meeting of the committee that could not be held due to want of quorum to be adjourned to the next day, same time and place, without necessity of minimum quorum requirement.

Insolvency And Bankruptcy Code (Contd...)

- iii. The resolution professional shall preside over the meetings of the committee and shall follow the procedure regarding conducting the meeting as provided under the Regulations and ensure that quorum is present throughout the meeting. The resolution professional shall ensure that minutes are made in relation to each meeting of the creditors and are circulated to all participants by electronic means within 48 hours of the said meeting.
- ✓ **Voting share** – The voting share of each creditor shall be in proportion to the debt owed to such creditor.
- ✓ **Voting by the committee** –
 - i. The resolution professional shall take a vote of the creditors present in the meeting on any item listed for voting, after discussion on the same.
 - ii. At the conclusion of the meeting, the resolution professional shall prepare minutes of the meeting, including the names of creditors, who voted for, against or abstained from voting on the items put to vote in the meeting and circulate the same by electronic means to all participants of the meeting within 48 hours of the conclusion of the meeting, and seek a vote on the items listed for voting in the meeting from the creditors who were not present in the meeting or did not vote at the meeting, by electronic means, where the voting shall be kept open for at least 24 hours from the circulation of the minutes.
 - iii. All decisions to require atleast 51% of voting share of the creditors who voted to sail through.

Insolvency And Bankruptcy Code (Contd...)

- iv. At the end of the voting period, the resolution professional shall record the decision arrived at on the items along with the names of creditors who voted for, against or abstained from voting on the items, after considering the voting at the meeting and through the electronic means and circulate a copy of the said record to all participants within 24 hours of the conclusion of the voting.
- ✓ **Voting by proxy** – A creditor, who is entitled to vote, shall be entitled to appoint an individual as a proxy, who shall not be an associate of the guarantor, to attend and vote on behalf and Form C as appended to the Notification, duly completed, shall be delivered to the resolution professional at least 24 hours prior to the meeting of committee. (3) A proxy may vote by electronic means on behalf of the creditor.

IV. Repayment Plan

- ✓ **Contents of repayment plan** – The repayment plan shall provide the following:
 - i. the term of the repayment plan and its implementation schedule, including the amounts to be repaid, dates of repayment to creditors and the source of funds to pay the resolution process costs;
 - ii. a minimum budget for the duration of the repayment plan, to cover the reasonable expenses of the guarantor and members of his immediate family to the extent they are dependent on him, provided that at least 10% of the realisable income of the guarantor shall be utilised for repayment of debts;

Insolvency And Bankruptcy Code (Contd...)

- iii. financing required for implementation of the repayment plan;
- iv. if the guarantor has any business, the manner in which it is proposed to be conducted during the course of the repayment plan, and the role of the resolution professional;
- v. the manner in which funds held for the purposes of the repayment plan, invested or otherwise dealt with, pending repayment to creditors;
- vi. the functions which are to be undertaken by the resolution professional, including supervision and implementation of the repayment plan, variation of onerous terms of a contract or transaction involving the guarantor;
- vii. the details of excluded assets and excluded debts of the guarantor and the terms and conditions for the discharge of the guarantor.
- viii. The repayment plan also may provide for particulars regarding the transfer or sale of all or part of the assets of the guarantor; administration or disposal of any funds of the guarantor; satisfaction or modification of any security interest; reduction in the amount payable to creditors; curing or waiving of any breach of a debt due from the guarantor; modification in the terms of repayment of any debt due from the guarantor; part of the income of the guarantor to be used for the repayment of the debt; and the manner of calculating the income of the guarantor; and the manner in which funds held for the purpose of repayment to creditors, and not so repaid at the end of the repayment plan, are to be dealt with.

Insolvency And Bankruptcy Code (Contd...)

- ✓ **Purchase of assets by certain persons:** Certain persons as prescribed in the Regulations are not allowed to purchase or acquire any interest in the property of guarantor, directly or indirectly, without permission of the Adjudicating Authority and the Adjudication Authority may set aside purchase or acquisition made contrary to the provisions of the Regulations.
- ✓ **Filing with the Adjudicating Authority:** The resolution professional shall file the repayment plan, as approved by the creditors, along with the report mentioned in sections 106 (Report of resolution professional on repayment plan) or 112 (Report of meeting of creditors on repayment plan), as the case may be, with the Adjudicating Authority on or before completion of 120 days from the resolution process commencement date and copies of the documents filed with the Adjudicating Authority shall be provided to the guarantor and the creditors, within 3 days from the date of such filing by the resolution professional.
- ✓ **Breach of repayment plan by the guarantor.**
 - i. Within 3 days of knowledge of resolution professional of failure of the implementation plan, a notice shall be issued to the guarantor identifying the failure and requiring him, within 15 days of receipt of the notice, to address such failure if it can be addressed, or provide an explanation for the failure.
 - ii. If the guarantor, within the aforesaid period addresses the failure in implementation of the repayment plan, or provides a satisfactory explanation for such failure, the resolution professional shall report the failure to creditors within 7 days of the date of failure addressed or explanation provided for such failure.

Insolvency And Bankruptcy Code (Contd...)

- iii. In cases not covered above, the resolution professional may apply to the Adjudicating Authority for directions, if he is of the opinion that the failure will affect the implementation of the repayment plan.
- ✓ **Application for discharge order** - For purpose of discharge order, the resolution professional shall file an application along with copies of the notice and report under section 117 (completion of repayment plan) to the Adjudicating Authority under section 119 (Discharge order) and on consideration of the notice and the report as aforesaid, the Adjudicating Authority may pass the discharge order.
- ✓ **Non-cooperation by guarantor:** In the event of non-cooperation of the guarantor at any time during the resolution process period or during the implementation of the repayment plan, the resolution professional shall prepare a statement to this effect and file the same with the Adjudicating Authority for appropriate directions.
- **Link of the Notification**
<https://www.ibbi.gov.in/uploads/legalframework/8573c02ee31bba941201aff84b95ae4.pdf>

Insolvency And Bankruptcy Code (Contd...)

- The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 4139(E) on insolvency resolution and liquidation proceedings of certain categories of financial service providers dated November 18, 2019 (“Notification”).
- The MCA, *vide* the Notification, has notified the following category of financial service provider against whom insolvency resolution and liquidation proceedings can be undertaken, pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“**Rules**”) and the applicable regulations:

Sr. no.	Category of Financial Service Provider (rule 2 of the Rules)	Appropriate Regulator [clause (a) of sub-rule (1) of rule 3 of the Rules]	Dealing with third-party assets (rule 10 of the Rules)
1.	Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet.	Reserve Bank of India	To be notified separately

- **Link of the Notification**

<https://ibbi.gov.in/uploads/legalframework/7bcd2585a9f75b9074febe216de5a3c1.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 412(E) on notification of certain provisions of the Insolvency and Code, 2016 (“Code”) dated November 15, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has notified certain provisions of the Code with respect to personal guarantors to corporate debtors, which shall be effective from December 01, 2019.
 - Following are the provisions notified:
 - ✓ clause (e) of section 2;
 - ✓ section 78 (except with regard to fresh start process) and section 79;
 - ✓ sections 94 to 187 (both inclusive);
 - ✓ clause (g) to clause (i) of sub-section (2) of section 239;
 - ✓ clause (m) to clause (zc) of sub-section (2) of section 239;
 - ✓ clause (zn) to clause (zs) of sub-section (2) of section 240; and
 - ✓ section 249.
 - **Link of the Notification**
<https://www.ibbi.gov.in/uploads/legalframework/1fb8c2b785f35a5126c58a2e567be921.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 854(E). on Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“Rules”) dated November 15, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has framed the Rules which shall be effective from December 01, 2019.
 - Until now, the Insolvency and Bankruptcy Code, 2016 ("**Code**") had only covered insolvency resolution and liquidation of corporate debtors. The provisions of the Code relating to insolvency resolution and bankruptcy of personal guarantors to corporate debtors had not been made operative. Considering the need to provide an efficacious remedy to the creditors who in most number of cases avail guarantee for securing their loan, the Central Government has recently notified various provisions of the Code relating to insolvency and bankruptcy of personal guarantors and also notified the Rules to provide for comprehensive procedure for applying to the Adjudicating Authority for insolvency of the personal guarantor, to the corporate debtor.
 - Under the Rules, a 'guarantor' is defined as "*a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part*". The Code specifies that to initiate insolvency resolution in respect of individuals, such as personal guarantors to a corporate debtor, the amount of default should be at least INR 1,000.

Insolvency And Bankruptcy Code (Contd...)

- Under Section 79(1) of the Code, the Debt Recovery Tribunal has been named as the Adjudicating Authority for insolvency resolution and bankruptcy of individuals and firm. However, Section 60 of the Code provides that in the event there is any insolvency resolution/liquidation proceedings against a corporate debtor pending before a National Company Law Tribunal (“NCLT”), the insolvency resolution/bankruptcy proceedings against a personal guarantor of such corporate debtor must also be filed before the same NCLT. Further, if there are any pending insolvency resolution or liquidation proceedings against a personal guarantor before any court or tribunal, the same are to be transferred to the relevant NCLT.
- The Rules have also specified the limits to certain assets being held by an admitted insolvency personal guarantor that shall be excluded from the assets –
 - ✓ the value of unencumbered personal ornaments under clause (c) of the said sub-section shall not exceed INR 1,00,000 (Indian Rupees One Lakh only);
 - ✓ the value of unencumbered single dwelling unit owned by the debtor under clause (e) of the said sub-section shall not exceed –
 - in the case of dwelling unit in an urban area, INR 20,00,000 (Indian Rupees Twenty Lakhs only);
 - in the case of dwelling unit in rural area, INR 10,00,000 (Indian Rupees Ten Lakhs only), where rural area shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005.

Insolvency And Bankruptcy Code (Contd...)

- In case the guarantor wants to initiate insolvency process for itself, an application by the guarantor under section 94(1) (Application by debtor to initiate insolvency resolution process) of the Code shall be submitted in form A as appended to the Notification, along with an application fee of INR 2,000 (Indian Rupees Two Thousand only), and the same shall be served forthwith to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.
- In case a creditor of the corporate debtor wants to initiate insolvency process against the guarantor of the corporate debtor, a demand notice by the creditor under section 95(4)(b) (Application by creditor to initiate insolvency resolution process) of the Code shall be served on the guarantor demanding payment of the amount of default in Form B as appended to the Notification. If the payment is not made, upon serving the demand notice, the application under section 95(1) of the Code shall be submitted in form C as appended to the Notification, a copy of which shall be served forthwith to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor. In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.
- The applicant shall provide a copy of the application filed under section 94(1) or section 95(1) of the Code, as the case may be, if not provided earlier, to the resolution professional within 3 (three) days of his appointment under section 97(5) of the Code, and to the Insolvency and Bankruptcy Board of India for its record.

Insolvency And Bankruptcy Code (Contd...)

- Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications made by the guarantor and the creditor shall be filed and dealt with by the Adjudicating Authority in accordance with —
 - ✓ rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013; or
 - ✓ rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.
- The Adjudicating Authority may permit withdrawal of the application as submitted by creditor or guarantor, as the case may be, in form D as appended to the Notification –
 - ✓ before its admission, on a request made by the applicant;
 - ✓ after its admission, on the request made by the applicant, if ninety per cent. of the creditors agree to such withdrawal.
- **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/8e0ab9331455200b402d91257113805c.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 855(E). on Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“Rules”) dated November 15, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has framed the Rules which shall be effective from December 01, 2019
 - Until now, the Insolvency and Bankruptcy Code, 2016 ("**Code**") had only covered insolvency resolution and liquidation of corporate debtors. The provisions of the Code relating to insolvency resolution and bankruptcy of personal guarantors to corporate debtors had not been made operative. Considering the need to provide an efficacious remedy to the creditors who in most number of cases avail guarantee for securing their loan, the Central Government has recently notified various provisions of the Code relating to insolvency and bankruptcy of personal guarantors and also notified the Rules to provide for comprehensive procedure for applying to the Adjudicating Authority for bankruptcy of the personal guarantor to the corporate debtor.
 - Under the Rules, a 'guarantor' is defined as "*a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part*". The Code specifies that to initiate insolvency resolution in respect of individuals, such as personal guarantors to a corporate debtor, the amount of default should be at least INR 1,000.

Insolvency And Bankruptcy Code (Contd...)

- Under Section 79(1) of the Code, the Debt Recovery Tribunal has been named as the Adjudicating Authority for insolvency resolution and bankruptcy of individuals and firm. However, Section 60 of the Code provides that in the event there is any insolvency resolution/liquidation proceedings against a corporate debtor pending before a National Company Law Tribunal (“NCLT”), the insolvency resolution/bankruptcy proceedings against a personal guarantor of such corporate debtor must also be filed before the same NCLT. Further, if there are any pending insolvency resolution or liquidation proceedings against a personal guarantor before any court or tribunal, the same are to be transferred to the relevant NCLT.
- The Rules have also specified the limits to certain assets being held by an admitted insolvency personal guarantor that shall be excluded from the assets –
 - ✓ the value of unencumbered personal ornaments under clause (c) of the said sub-section shall not exceed INR 1,00,000 (Indian Rupees One Lakh only);
 - ✓ the value of unencumbered single dwelling unit owned by the debtor under clause (e) of the said sub-section shall not exceed –
 - in the case of dwelling unit in an urban area, INR 20,00,000 (Indian Rupees Twenty Lakhs only);
 - in the case of dwelling unit in rural area, INR 10,00,000 (Indian Rupees Ten Lakhs only), where rural area shall have the same meaning as assigned to it in clause (o) of section 2 of the National Rural Employment Guarantee Act, 2005 (42 of 2005).

Insolvency And Bankruptcy Code (Contd...)

- In case the guarantor wants to initiate bankruptcy process for itself, an application by guarantor under section 122(1) of the Code shall be submitted in form A as appended to the Notification, along with an application fee of INR 2,000 (Indian Rupees Two Thousand only), and the same shall be served forthwith to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.
- In case a creditor of the corporate debtor wants to initiate bankruptcy process against the guarantor of the corporate debtor, an application under section 123(1) of the Code shall be submitted in form B as appended to the Notification, along with an application fee of INR 2000 (Indian Rupees Two Thousand only), a copy of which shall be served forthwith to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor. In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.
- Upon receipt of the aforesaid application, the Adjudicating Authority shall issue, or may direct the bankruptcy trustee to issue a public notice inviting claims from all creditors of the bankrupt, under section 130(1)(b) of the Code, in form C as appended to the Notification.
- The Adjudicating Authority shall issue, or may direct the bankruptcy trustee to issue notices to the creditors, under section 130(1)(a) of the Code, in form D of as appended to the Notification.
- The statement of financial position referred to in section 129(2) of the Code, shall be submitted by the bankrupt, in form E of the Notification.

Insolvency And Bankruptcy Code (Contd...)

- A creditor shall submit a claim with proof to the bankruptcy trustee on or before the last date mentioned in the public notice, in form F as appended to the Notification, through electronic means or by registered post or speed post or courier.
- Notice of final dividend out of the proceeds of the bankrupt's (personal guarantor's) assets under section 176(1)(a) shall contain the following:
 - ✓ the date on which the dividend is proposed to be distributed;
 - ✓ the list of creditors and the amount of dividend for each creditor, who shall be entitled to a dividend;
 - ✓ request for any details required from the creditors for the distribution of dividend, and the last date for receipt of such information;
 - ✓ the last date by which the creditors must establish their claim against the estate with the bankruptcy trustee; and
 - ✓ a statement confirming that no further dividends shall be declared.
- The notice under section 176(1)(b) of the Code shall provide the reasons for not declaring dividend.
- The notice of dividend under section 176(1) of the Code, shall be sent 30 days prior to the date specified for the distribution of dividend.

Insolvency And Bankruptcy Code (Contd...)

- On the appointment of the bankruptcy trustee a copy of the application filed by personal guarantor or creditor, as the case may be, if not provided earlier, shall be provided to such bankruptcy trustee by the Adjudicating Authority within 3 days of the appointment.
- The restriction on the bankrupt under section 141(1)(d) of the Code shall be applicable for any financial or commercial transaction of INR 1,00,000 (Indian Rupees One Lakh only) and above.
- Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications made by the guarantor or the creditor, as the case may be, shall be filed and dealt with by the Adjudicating Authority in accordance with —
 - ✓ rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013; or
 - ✓ rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.

Insolvency And Bankruptcy Code (Contd...)

- The application and accompanying documents shall be filed in electronic form, as and when such facility is made available by the Adjudicating Authority and until then the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.
- **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/17662452f16d75fe4c221f39e303033f.pdf>

Insolvency And Bankruptcy Code (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 852(E) on Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“Rules”) dated November 15, 2019 (“Notification”).**
 - The MCA, *vide* the Notification, has framed the Rules which shall come into force on the date of their publication in the Official Gazette.
 - The Insolvency and Bankruptcy Code, 2016 ("**Code**"), had originally, left the financial service providers ("**FSPs**") outside the ambit thereof. The Code, inter-alia, includes non-banking financial companies, micro finance institutions etc. within the ambit of the FSPs.;
 - Through the Rules, the Central Government has now, exercised its power to bring the FSPs within the ambit of the Code.
 - The Rules provide for provisions relating to insolvency and liquidation proceedings of such FSPs or categories of FSPs, as may be notified by the Central Government from time to time.
 - The Rules state that all the provisions relating to corporate insolvency resolution process for corporate debtor, under the Code, shall *mutatis mutandis* apply to FSP and that instead of “insolvency professional”, “interim resolution professional”, “resolution professional” or “liquidator”, wherever applicable under the proceedings, shall mean “administrator” ("**Administrator**").

Insolvency And Bankruptcy Code (Contd...)

- An Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceeding of a FSP
- A corporate insolvency resolution process shall be initiated against a FSP only by an application by the appropriate financial sectoral regulator ("**Regulator**"), as may be notified by the Central Government under section 227 of the Code (Power of Central Government to notify financial sector providers etc.), for a category of FSPs, and the said application be dealt with in the same manner as an application by a financial creditor under section 7 of the Code, except that on admission of the application, the adjudicating authority shall appoint the individual proposed by the Regulator, as Administrator.
- An Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceeding of a FSP.

Insolvency And Bankruptcy Code (Contd...)

- Interim moratorium, which shall have the effect of the provisions of sections 14(1), (2) and (3) of the Code (Moratorium), shall commence on and from the date of filing of the application until its admission or rejection and the license or registration which authorises the FSP to engage in the business of providing financial services (“**License**”) shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process. This would ensure that the FSPs do not die an instant death and can pursue their main objects with the same force under the license/registration of the Regulator, as they did earlier.
- The Regulator may, where deemed necessary, constitute an advisory committee (“**Committee**”), which shall consist of 3 (three) or more members, within 45 days of the insolvency commencement date, to advise the Administrator in the operations of the FSP during the corporate insolvency resolution process. The Administrator shall chair the meetings of the Committee.
- The resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the FSP. Once the resolution plan has been approved by the committee of creditors, the Administrator shall seek ‘no objection’ of the Regulator to the effect that it has no objection to the persons, who would be in control or management of the FSP after approval of the resolution plan under section 31 (Approval of resolution plan) of the Code. The said no objection shall be subject to the provisions of section 29A of the Code (Persons not eligible to be resolution applicant).

Insolvency And Bankruptcy Code (Contd...)

- Until the rules of procedure for conduct of proceedings under the Code are notified, the application made under these Rules shall be filed before the adjudicating authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under the provisions of the Companies Act, 2013 in form 1 and be accompanied by a fee of INR 25,000 (Indian Rupees Twenty-Five Thousand), a written consent and declaration from the proposed Administrator and other documents and records as specified in form therein.
- The application and accompanying documents shall be filed in electronic form, as and when such facility is made available by the adjudicating authority and until then the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the adjudicating authority.
- The applicant shall dispatch forthwith, a copy of the application filed with the adjudicating authority, by registered post or speed post to the registered office of the FSP. The adjudicating authority may permit withdrawal of an application before its admission on a request made by the applicant.

Insolvency And Bankruptcy Code (Contd...)

- The provisions of the Code relating to the liquidation process of the corporate debtor shall, mutatis mutandis apply, to the liquidation process of a FSP subject to the following modifications:
 - ✓ the License shall not be suspended or cancelled during the liquidation process, unless an opportunity of being heard has been provided to the liquidator.
 - ✓ the adjudicating authority shall provide the Regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP under section 33 and 54 of the Code respectively.

- The provisions of the Code relating to voluntary liquidation process of the corporate debtor shall, mutatis mutandis apply, to the voluntary liquidation process of a FSP subject to the following modifications:
 - ✓ the FSP shall obtain prior permission of the Regulator for initiating voluntary liquidation proceedings under section 59 of the Code.
 - ✓ the affidavit referred to in section 59(3)(a) of the Code shall include a declaration that the permission as stated in the aforesaid clause has been obtained;
 - ✓ the adjudicating authority shall provide the appropriate Regulator an opportunity of being heard before passing an order for dissolution of the FSP under section 59 of the Code.

Insolvency And Bankruptcy Code (Contd...)

- The Rules clarify that the provisions of interim moratorium under these rules and section 14 of the Code shall not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties and that the Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties only for the purpose of dealing with them in the manner, as may be notified by the Central Government under section 227 of the Code.
- Amidst the mounting tensions relating to the NBFC crisis and increase in the number of defaults under financial transactions, the urgency to get the FSPs under the aegis of the Code is pretty much visible. However, the same would be closely monitored, given the larger public interests in most of the case FSP cases and the selection of a FSP for getting restructured under the Code will be very significant.
- **Link of the Notification:**
<https://ibbi.gov.in/uploads/legalframework/cb1d53c7fe47f8f22ab36a40f441db2c.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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