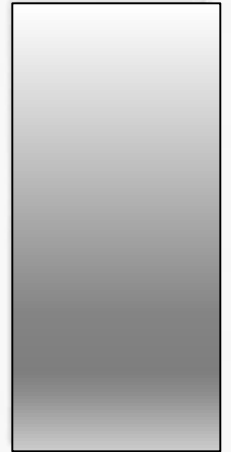


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR DECEMBER,
2019



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no 17/2019 on relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report for FY 2018-19 under the Companies Act, 2013 - reg dated December 31, 2019 (“Circular”).**
 - The MCA, in continuation of circular no. 12/2019 dated October 24, 2019 on the captioned subject, has further extended the last date of filing of CRA-4 (cost audit report) for all eligible companies for the financial year 2018-19, without payment of additional fee, till February 29, 2020. The said extension is given for the entire process of - (a) preparation of annexures to the cost audit report; (b) submission of the said report and (c) finally, filing of report with the Central Government.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/Circular17_30122019.pdf

Reserve Bank of India

- ❑ **The Reserve Bank of India (“RBI”) – notification No. RBI/2019-20/121 on Review of Master Directions - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017 (“Notification”).**
- The RBI has, *vide* the Notification has revisited the aforesaid master directions and made the following changes:
 - ✓ revised the upper cap in respect of the aggregate exposure of a lender to all borrowers at any point of time, across all P2P platforms. While the cap was INR 10 Lacs earlier, the same has been revised to INR 50 lacs now, provided that such investments of the lender on P2P platforms are consistent with the net-worth of the lender.
 - ✓ Introduced a new provision that the lender investing more than INR 10 Lacs across P2P platforms shall produce a certificate to P2P platforms from a practicing Chartered Accountant certifying minimum net-worth of INR 50 Lacs. Further, all the lenders shall submit declaration to P2P platforms that they have understood all the risks associated with lending transactions and that P2P platform does not assure return of principal/payment of interest.
 - ✓ Allowed the escrow accounts to be operated by bank promoted trustee for transfer of funds need to be maintained with any bank other than the bank which has promoted the trustee.
- **Link of the Notification.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11764&Mode=0>

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number CFD/DIL1/CIR/P/2019/0000000154 on filing of offer documents under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 dated December 11, 2019 (“Circular”).**
 - SEBI, *vide* the Circular, has made partial modifications to circular No. CIR/CFD/DIL/5/2012 dated May 3, 2012. Accordingly, the draft offer documents in respect of issues of size upto INR 750,00,00,000 (Indian Rupees Seven Hundred and Fifty crores) shall be filed with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company falls.
 - The Merchant Bankers shall accordingly file the draft offer documents/offer documents with the concerned office of the Board, based on the estimated issue size, as encapsulated in the enclosed Circular, bifurcated as under:
 - ✓ Estimated issue size greater than INR 750,00,00,000 (Indian Rupees Seven Hundred and Fifty crores).
 - ✓ Estimated issue size upto INR 750,00,00,000 (Indian Rupees Seven Hundred and Fifty crores).
 - The amendments made *vide* the Circular shall come into effect for all draft offer documents for issues which are filed with SEBI on or after the date of issuance of the Circular. i.e. December 11, 2019.

Securities Law (Contd...)

- **Link of the Circular.**

<https://www.sebi.gov.in/legal/circulars/dec-2019/filing-of-offer-documents-under-securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-45272.html>

Securities Law (Contd...)

- ❑ **The Securities and Exchange Board of India (“SEBI”) – circular number CIR/CFD/CMD1/162/2019 on Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc. dated December 24, 2019 (“Circular”).**
 - SEBI, *vide* the Circular, has specified that as per regulations 32(1), 32(2) and 32(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**‘SEBI LODR Regulations’**), a listed entity is, inter alia, required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc. indicating the following:
 - ✓ deviations, if any, in the use of proceeds of public issue, rights issue, preferential issue etc; and
 - ✓ the category wise variation between projected utilisation of funds and the actual utilisation of funds.
 - Such statement of deviation or variation is to be submitted till the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved
 - It has been reported to the the SEBI by the stock exchanges that there is a need to introduce a uniform format for the aforesaid reporting, owing to inconsistency in the reporting made by the companies, which will also aid monitoring by stock exchanges, of the end use of issue proceeds raised by listed entities through public issue, rights issue, preferential issue, QIP etc.

Securities Law (Contd...)

- **The salient features of the format are as under:**
 - ✓ **Applicability:** The format shall be applicable for funds raised by listed entities through public issue, rights issue, preferential issue, QIPs etc.
 - ✓ **Frequency of Disclosure:** The disclosure to the stock exchange(s) shall be made by listed entities on quarterly basis along with the declaration of financial results within 45 days of end of each quarter / 60 days from the end of the last quarter of the financial year until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.
 - ✓ **Role of the Audit Committee:** The statement of deviation report shall be placed before audit committee of the listed entity for review on quarterly basis and after such review, the comments of audit committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format. In cases where the listed entity is not required to have an audit committee under the provisions of SEBI LODR Regulations or Companies Act, 2013, the word 'Audit Committee' shall be replaced with 'Board of Directors'.
- The first such submission shall be made by the listed entities for the quarter ending December 31, 2019; subsequent submissions shall be quarterly as explained above.
- **Link of the Circular.** <https://www.sebi.gov.in/legal/circulars/dec-2019/format-on-statement-of-deviation-or-variation-for-proceeds-of-public-issue-rights-issue-preferential-issue-qualified-institutions-placement-qip-etc-45447.html>

Insolvency And Bankruptcy Code

- **The Ministry of Law and Justice – Insolvency and Bankruptcy (Amendment) Ordinance, 2019 to amend the Insolvency and Bankruptcy Code, 2016 (“Principal Act”), dated December 28, 2019 (“Ordinance”).**
 - The Hon’ble President of India – Mr. Ram Nath Kovind, under article 123 of the Constitution of India, gave his assent on December 28, 2019, to the promulgation of the Companies (Amendment) Ordinance, 2019 (“**Ordinance**”) for making further amendments to the Insolvency and Bankruptcy Code, 2016 (“**Code**”).
 - The Ordinance was brought about, since the Insolvency and Bankruptcy Code (Second) Amendment Bill, 2019, which was introduced in the Lok Sabha on December 12, 2019 could not be taken up for consideration.
 - Following are the salient features of the Ordinance:
 - ✓ **Uniform meaning of ‘date of commencement of insolvency’.**

The proviso to section 5(12) has been deleted which provided for an instance where the timing of commencement of insolvency was related to appointment of the interim resolution professional if the said interim resolution professional was appointed by an adjudicating authority for an operational creditor, financial creditor or a corporate applicant application. Now, all insolvency processes would commence on the date of admission of the insolvency application.

Insolvency And Bankruptcy Code (Contd...)

The term interim finance under section 5(15) has been given a wider inference by addition of the words '*and such other debt as may be notified*'. While the nature of such debt is yet to be notified, it clearly suggests that any last minute funding to save the corporate debtor from bankruptcy could be considered as interim finance so that the interim financier can enjoy priority in repayment.

✓ **Threshold for filing applications in respect of home buyers and financial creditors holding securities or deposit.**

The Ordinance has provided that an insolvency application in relation to a real estate project must be filed by a minimum of 100 (one hundred) allottees or not less than 10% (ten percent) of the total number of allottees, whichever is lesser, in case of insolvency applications by home buyers. Accordingly, the Ordinance has also similarly prescribed for threshold for insolvency applications to be filed by financial creditors holding securities or deposits. Therefore, if a trustee or agent files an insolvency application, it has to represent the instructions of such minimum number of financial creditors. The said changes are brought in to ensure that the power to file an application of insolvency is not misused by a single person, which stalls the operations of the corporate debtor.

✓ **Clarity on who can file an insolvency application.**

A much needed clarity has been provided by adding an explanation under section 11 regarding - who can file an insolvency application by specifying that the following corporate debtors may file an insolvency application in respect of another corporate debtor:

Insolvency And Bankruptcy Code (Contd...)

- a corporate debtor undergoing a corporate insolvency resolution process;
- a corporate debtor having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or
- a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application under this Chapter; or
- a corporate debtor in respect of whom a liquidation order has been made.

✓ **Additional relief measures to a Corporate Debtor during moratorium.**

Recognizing the need to maximize the value of assets of the corporate debtor and to prevent a halt in the operations of the corporate debtor during the moratorium, section 14 has been amended in a way that the following shall not take place during a moratorium and the resolution professional has been empowered to decide regarding the termination of critical supply of goods and services to the corporate debtor:

- suspension or termination of arrangements that involve conferment of rights by any government authority on the *grounds of insolvency*, so long as there is no default in the payment of current dues arising out of use of such benefits during the moratorium period; and
- termination of arrangements relating to supply of goods and services that the resolution professional considers critical to, inter alia, protect the value of the corporate debtor.

Insolvency And Bankruptcy Code (Contd...)

The resolution professional needs to carry out a meritorious analysis and the grounds thereof are said to be introduced in the regulations in times to come so that there is no unilateral discretion on the part of resolution professional.

✓ **Appointment of Interim Resolution Professional.**

The Ordinance prescribes change in the appointment date of the interim resolution professional and accordingly the appointment shall be construed to be made on the 'insolvency commencement date' instead of 'from 14 (fourteen) days of the insolvency commencement date.'

✓ **Exemption of certain financial creditors from being related parties.**

The Ordinance amends 2nd proviso to section 21 by stating that, in addition to the financial creditors who have been related to the corporate debtor by virtue of conversion or substitution of debt into equity shares or are holding instruments convertible into equity shares, prior to the insolvency commencement date, the financial creditors who have completed such aforesaid transactions as may be prescribed, shall also not be considered as related parties to the corporate debtors.

✓ **Continuance of management of operations by resolution professional after the expiration of insolvency process period.**

A very important clarification has been added under section 23 by substituting the existing proviso to provide that the resolution professional shall continue to manage the operations of the

Insolvency And Bankruptcy Code (Contd...)

corporate debtor even after the insolvency resolution process until an order approving the resolution application has been approved by the adjudicating authority. This saves the operations of the corporate debtor from unnecessary jeopardy during the transition period.

✓ Immunity from liability for prior offences.

Recognizing the need to ensure a successful resolution plan and protection of the incoming investor, the Ordinance introduces a new section, viz. section 32A in the Code. Following are the key provisions introduced:

- The liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the adjudicating authority, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-
 - a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Insolvency And Bankruptcy Code (Contd...)

- If a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:
- Every person who was a designated partner as per the Limited Liability Partnership Act, 2008 or an 'officer who is in default', as per the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased hereunder.
- No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the adjudicating authority, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the Code to a person, who was not –
 - a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant

Insolvency And Bankruptcy Code (Contd...)

statutory authority or court.

○ Section 32A also clarifies further as under:

- an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;
- nothing hereunder shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

▪ **Link of the Ordinance.**

<https://www.ibbi.gov.in/uploads/legalframework/d6b171ec9b9ea5c54f7423bc36f92977.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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