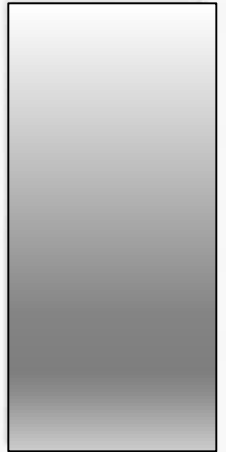


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR SEPTEMBER,
2020



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 35/2020 for extension of filing of forms under section 124 and section 125 of the Companies Act, 2013 (“Act”) read with Investor Education and Protection Fund (“IEPF”) Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“Rules”), dated September 29, 2020 (“Circular”).**
 - MCA *vide* the Circular, has granted extension of relaxation to file various IEPF e-forms as required under section 124 (Unpaid Dividend Account) and section 125 (Investor Education and Protection Fund) of the Act, read with Rules, viz. IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4 and IEPF-7 alongwith e-verification of claims filed in e-form IEPF-5, without additional fees, in line with the extension of companies fresh start scheme, 2020.
 - **Link of the Circular.**
http://iepf.gov.in/IEPF/pdf/General_Circular_35_2020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 34/2020 on extension of timeline for creation of deposit repayment reserve of 20% (twenty percent) and requirement to invest or deposit 15% (fifteen percent) of amount of debentures upto December 31, 2020, dated September 29, 2020 (“Circular”).**
 - MCA *vide* the Circular, has extended the timeline for creation of deposit repayment reserve of 20% (twenty percent) as required under section 73(2)(c) (Prohibition on acceptance of deposits from public) of Companies Act, 2013 upto December 31, 2020 as against prevailing timeline of April 30, 2020, for deposits maturing during F.Y. 2020-21.
 - The Circular also extends the timeline for compliance under rule 18 of Companies (Share Capital and Debentures) Rules, 2014, to invest or deposit at least 15% (fifteen percent) of amount of debentures maturing, in specified methods of investments or deposits before April 30, 2020.
 - The Circular comes as a continuation to circular no. 11/2020 and 24/2020 dated March 24, 2020 and June 19, 2020 respectively and the timeline has been further extended as above due to the unprecedented circumstances yet subsisting on account of the COVID-19 pandemic.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.34_29092020.pdf
 - **Link to circular no. 24/2020.**
http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

Companies Act (Contd...)

❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 33/2020 on extension of relaxation to allow companies to conduct their extra-ordinary general meetings (“EGMs”) through video conferencing (“VC”) or other audio-visual means (“OAVM”) or to transact business through postal ballot (“PB”), dated September 28, 2020 (“Circular”).**

- MCA *vide* the Circular, has granted extension of relaxation to companies to conduct their EGMs *via* VC or OAVM or to transact business through PB, in the manner as specified in the circular no. 14/2020 and 17/2020 dated April 08, 2020 and April 13, 2020, respectively, as a continuation to circular no. 22/2020 dated September 30, 2020. The timeline has been further extended as above due to the unprecedented circumstances yet subsisting on account of the COVID-19 pandemic.

▪ **Link of the Circular.**

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.33_28092020.pdf

Link to circular no. 14/2020.

http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

Link to circular no. 17/2020.

http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

Link to circular no. 22/2020.

http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Law and Justice - The Companies (Amendment) Act, 2020 (“CAA”) to further amend the Companies Act, 2013 (“Principal Act”), dated September 28, 2020.**
 - The Principal Act has been amended by the CAA and the brief highlights of the same are as under.
 - ✓ De-criminalization of offences under the Principal Act, by re-categorization of certain offences under the Principal Act to an in-house adjudication framework wherein penalty will be levied by an adjudication officer.
 - ✓ Empowerment of the Central Government to exclude, in consultation with the Securities and Exchange Board of India, certain class of companies from the definition of "listed company", mainly for listing of debt securities.
 - ✓ Introduction of provisions regarding payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases.
 - ✓ The requirement for constitution of corporate social responsibility committee (“**CSR Committee**”) has been done away with in cases where the companies have to spend less than INR 50,00,000 (Indian Rupees Fifty Lakhs only) and in such instances, the board of the companies shall perform the functions of the CSR Committee. The benefit of set-off has also been extended to those companies who have spent more than the required CSR amount in a particular financial year and the number of years until which such a set off is available shall be prescribed in the rules framed under the Principal Act.

Companies Act (Contd...)

- ✓ To incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956.
- ✓ To set up benches of the National Company Law Appellate Tribunal.
- ✓ To reduce timelines for applying for offer made under rights issues so as to expedite such issues under section 62 (further issue of share capital) of the Principal Act. Private companies were already granted the flexibility of having a shorter offer period subject to approval of 90% of the members of the companies.
- ✓ To extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117 of the Principal Act.
- ✓ To provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases.
- ✓ To provide for specified classes of unlisted companies to prepare and file their periodical financial results.
- ✓ To allow direct listing of securities by Indian companies in permissible foreign jurisdictions, specific provisions whereof shall be prescribed under the rules framed under the Principal Act.

Companies Act (Contd...)

- A section-wise comprehensive analysis shall be rolled out separately the impact of each amendment carried out by the CAA to the Principal Act.
- **Link of the CAA.**
http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 32/2020 on extension of scheme of relaxation for filing forms pertinent to creation and modification of charge under Companies Act, 2013 (“Act”), dated September 28, 2020 (“Circular”).**
 - MCA *vide* the Circular, has granted extension of scheme of relaxation to companies under the Act, for filing forms related to creation or modification of charges, provided 120 (one hundred and twenty) days are not expired as on March 01 2020, to file e-forms CHG-1 and/or CHG-9, as may be applicable, upto December 31, 2020.
 - The Circular is applicable to: a) e-form CHG-1 - reporting of creation or modification of any charge; and b) e-form CHG-9 - creation or modification of charge for debentures.
 - The timeline has been further extended as above due to the unprecedented circumstances yet subsisting on account of the COVID-19 pandemic.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.32_28092020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 31/2020 on extension of limited liability partnership (“LLP”) settlement scheme, 2020 (“Scheme”) upto December 31, 2020, dated September 28, 2020 (“Circular”).**
 - Due to disruption caused by ongoing pandemic, MCA, *vide* the Circular, has granted extension of applicability of Scheme, upto December 31, 2020, as was applicable to filings pending by LLP, conditions of which are more specifically set out in circular no. 13/2020, dated March 30, 2020, link of which is appended below.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.31_28092020.pdf
 - **Link of the Scheme.**
https://www.mca.gov.in/Ministry/pdf/Circular13_30032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 30/2020 on extension of companies fresh start scheme, 2020 (“Scheme”) upto December 31, 2020, dated September 28, 2020 (“Circular”).**
 - Due to disruption caused by ongoing pandemic, MCA, *vide* the Circular, has granted extension of applicability of Scheme, upto December 31, 2020, as was applicable to filings pending by companies, conditions of which are more specifically set out in circular no. 12/2020, dated March 30, 2020, link of which is appended below.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30_28092020.pdf
 - **Link of the Scheme.**
https://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 590(E) on Companies (Meetings of Board and its Powers) Third Amendment Rules, 2020 (“Rules”) as an amendment to Companies (Meetings of Board and its Powers) Rules, 2014 (“Principal Rules”), dated September 28, 2020 (“Notification”).**
 - MCA, *vide* the Notification, has granted extension of relaxation of conducting Board meetings through video conferencing or other audio-visual means upto December 31, 2020, to discuss matters pertinent to approval of the annual financial statements and Board’s report, approval of the prospectus, approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30_28092020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 589(E) on Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2020 (“Amendment Rules”) as an amendment to Companies (Appointment and Qualification of Directors) Rules, 2014 (“Principal Rules”), dated September 28, 2020 (“Notification”).**
 - Due to disruption caused by ongoing pandemic, MCA, *vide* the Notification, has granted extension for individuals who intend to register themselves online as an independent Director on the portal of Indian Institute of Corporate Affairs, within 13 (thirteen) months from the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (“**Fifth Amendment Rules**”), i.e. by December 31, 2020. Earlier, the individuals had a time to get themselves registered within 10 (ten) months from the date of commencement of the Fifth Amendment Rules and the date of commencement of the Fifth Amendment Rules is December 01, 2019.
 - The Amendment Rules shall come into force on the date of their publication in the Official Gazette, i.e. September 28, 2020.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/ThirdAmendmentRules_29092020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 29/2020 on the relaxation of additional fees and extension of filing of e-form CRA-4, dated September 10, 2020 (“Circular”).**
 - MCA *vide* the Circular, has granted extension for submission of cost audit report by cost auditor to the Board of Directors of a company from erstwhile 180 (one hundred and eighty) days, from the end of the financial year, i.e. September 30, 2020 to November 30, 2020 as provided under rule 6(5) of the Companies (Cost Record and Audit) Rules, 2014 (“**Rules**”). Accordingly, the time for filing of the cost audit report within 30 (thirty) days from the receipt of cost audit report by a company shall be complied with pursuant to provisions of rule 6(6) of the Rules. Effectively, companies would be able to file the cost audit report with the MCA by December 29, 2020 this year, instead of earlier requirement of having the same to be filed by October 29, 2020.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/circular_10092020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. (E) on the Companies (Acceptance of Deposits) Amendment Rules, 2020, dated September 07, 2020 (“Notification”).**
 - MCA *vide* the Notification, has amended the Companies (Acceptance of Deposits) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette.
 - Rule 2(1)(c)(xvii) of the Principal Rules has been amended to prescribe that an amount of INR 25,00,000 (Indian Rupees Twenty Five Lakhs only) or more received by a start-up company, by way of a convertible note, can now be converted into equity shares or repaid within a period not exceeding 10 (ten) years from the date of its issue, instead of the erstwhile period of 5 (five) years. The extension for conversion into equity shares or repayment of a convertible note comes as relief for start-ups already facing a liquidity crisis, owing to the ongoing pandemic.
 - The Notification also substitutes reference to the erstwhile notification number - G.S.R. 180 (E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, which referred to the definition of a start-up company, in the explanation I to rule (2)(1)(c)(xvii) by giving reference to notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade. This is done to capture the latest reference to the definition of a start-up company.

Companies Act (Contd...)

- The Notification amends second proviso of rule 3(3) of the Principal Rules by allowing a start-up company to accept deposits from members for a period of 10 (ten) from the date of its incorporation. The said period has been increased from 5 (five) years and is aligned with the maximum period until which a company can be recognized as a start-up company.
- **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/Rule_08092020.pdf

Companies Act (Contd...)

- ❑ **Extension of annual general meeting (“AGM”) for the financial year 2019-20 *vide* circulars issued by various registrar of companies (“RoC”).**
 - Various RoCs, *vide* powers conferred upon them under third proviso to section 96(1) of the Companies Act, 2013 (“**Act**”), have issued orders extending the time limit for companies in their respective jurisdictions, to hold the AGM for financial year 2019-20, until December 31, 2020, i.e. by providing an extension of a period of 3 (three) months, without requiring the companies to make any application under the Act.
 - **Link of the list of RoC orders.**
<https://www.mca.gov.in/MinistryV2/extensionofagm.html>

Securities Law

- ❑ **The Securities and Exchange Board of India (“SEBI”) – press release no. 52/2020 dated September 29, 2020 (“PR”) on SEBI Board Meeting”).**
 - SEBI *vide* the PR, has at its meeting held on September 29, 2020 taken various decisions, which, *inter alia*, includes the following:
 - ✓ **Amendments to SEBI (Debenture Trustee) Regulations, 1993; SEBI (Issue and Listing of Debt Securities) Regulations, 2008; and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**
 - SEBI has decided and approved the proposal of strengthening the role of the debenture trustees (“**DT**”) so as to protect the interest of debenture holders. Accordingly, the DT(s) are empowered as under:
 - To exercise independent due diligence of the assets on which charge is being created.
 - To take required action by convening the meeting of debenture holders for enforcement of security, joining the inter-creditor agreement (under the framework specified by RBI), etc.
 - To carry out continuous monitoring of the asset cover including obtaining mandatory certificate from the statutory auditor on half yearly basis.

Securities Law (Contd...)

- Further, the issuer company shall create recovery expense fund at the time of issuance of debt securities that may be utilised by DT(s) in the event of default, for taking appropriate legal action to enforce the security.

✓ **Amendments to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.**

- SEBI has decided to grant exemption from the Reverse Book Building process (“**RBB**”) for delisting of listed subsidiary, where it becomes the wholly owned subsidiary of the listed parent pursuant to a scheme of arrangement.
- To be eligible to take this route, the listed holding company and the listed subsidiary should be in the same line of business. Both the companies should be compliant with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, specifically, the regulations (no. 11, 37 and 94) pertaining to processing of the schemes of arrangement.
- To protect the interests of investors in the listed subsidiary, it has been stipulated that the votes cast by public shareholders of the listed subsidiary in favour of the proposal will be atleast 2 (two) times the number of votes cast against it in terms of the present delisting regulations.

■ **Link of the PR.**

https://www.sebi.gov.in/media/press-releases/sep-2020/sebi-board-meeting_47739.html

Securities Law (Contd...)

- ❑ **The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2020/31 on SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2020 (“Amendment Regulations”), dated September 28, 2020 (“Notification”).**
- SEBI *vide* the Notification, has issued the Amendment Regulations to amend the certain provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**Principal Regulations**”) brief highlights whereof are hereunder.
- ✓ The applicability of the Principal Regulations has been revised and the Principal Regulations shall now be applicable to issues having size of INR 50,00,00,000 (Indian Rupees Fifty Crores only) or more. In cases of issue size being lower than the aforesaid threshold, the letter of offer is to be filed only with SEBI for information and dissemination on website. Such issuance need not be compliant of conditions provided in Chapter III of the Principal Regulations. And the draft offer letter need not be filed with SEBI for comments. The threshold has been revised from INR 10,00,00,000 (Indian Rupees Ten Crores only).
- ✓ The requirement of appointment of compliance officer has been now made mandatory under Chapter III Part IV, besides appointment of other intermediaries and the compliance officer shall be who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors’ grievance.
- ✓ Relaxations on content of disclosures is provided to the issuers under regulation 70(2), i.e. an issuer can follow the disclosures specified under Part B of Schedule VI of the Principal Regulations if:

Securities Law (Contd...)

- The issuer is in compliance with filing of periodic reports, statements and information under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 during last 1 (one) year immediately preceding the date of filing the letter of offer with the designated stock exchange in case of a fast track issue and otherwise, the date of filing the draft offer letter with the SEBI; and
- the issuer has investor grievance-handling mechanism which includes meeting of the stakeholders' relationship committee at frequent intervals, appropriate delegation of power by the board of directors of the issuer wrt the share transfer and explicitly laid down systems and procedures for timely and satisfactory redressal of investor grievances.
- ✓ References to Parts of the Schedule VI to the Principal Regulations have been changed to draw a correct inference to the disclosures to be adopted in the issuer as applicable in each circumstance. Accordingly, amendments have been carried out in regulation 71 of the Principal Regulations.
- ✓ Lead managers are no longer required to monitor and coordinate applications received by collecting bank branches and dispatch of security certificates.
- ✓ Eligibility conditions for fast track issuance relaxed wrt the disclosure of impact making introducing amendment to regulation 99 of the Principal Regulations. The amendments made now allow the issuers to come up with the fast track issue even if:

Securities Law (Contd...)

- show-cause notices have been issued or prosecution proceedings have been initiated by the Board and pending against the issuer or its promoters or whole-time directors as on the reference date; or
- even if there are audit qualifications on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the letter of offer.

provided that adequate disclosures regarding the aforesaid are made in the offer letter by the issuer.

- ✓ Part B-1 has been inserted in Schedule VI to the Principal Regulations which prescribes for more content than Part-B as far as the disclosures are concerned. The issuer as per its eligibility will be required to make disclosures as prescribed under Part-B or Part B-I. The amendments have generally eased out the disclosure requirements for the issuers.

- **Link of the Notification.**

https://www.sebi.gov.in/legal/regulations/sep-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2020_47712.html

Securities Law (Contd...)

- ❑ The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/CIR/CFD/DCR1/CIR/P/2020/181 on System-Driven Disclosures (“SDD”) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST”) dated September 23, 2020 (“Circular”).
 - In reference to previous SEBI circulars dated December 01, 2015 and December 21, 2016 pertaining to processes to be followed by depositories, exchanges and registrar & share transfer agents (“RTAs”) for implementation of SDD and circular dated September 09, 2020 under Regulation 7(2) SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) (“Circular-1”) wherein a detailed procedure for SDD implementation has been provided, as explained in the subsequent slide, SEBI has issued the said Circular to clarify on the captioned.
 - Circular-1 requires that the capturing of the PAN of the promoter(s) including member(s) of the promoter group, designated person(s) and director(s) (hereinafter collectively referred to as “Entities”) be done from the listed company itself, rather than through the RTAs as provided in the circular dated December 01, 2015.
 - In order to align the practices, it has been decided that the procedure of capturing the PAN of the promoters from listed companies as mentioned in para 2,3 & 4 of the Annexure A of Circular-1 and explained in the subsequent slide, shall also apply for SAST disclosures.

Securities Law (Contd...)

- The other requirements of SEBI circular dated December 01, 2015 on the subject shall remain in force.
- **Link of the Circular-1.**
https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures_47523.html
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/sep-2020/system-driven-disclosures-sdd-under-sebi-sast-regulations-2011_47632.html

Securities Law (Contd...)

- ❑ The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 on Guidelines for Investment Advisers dated September 23, 2020 (“Circular”).
 - SEBI after considering the inputs from public consultation, had reviewed the framework for regulation of Investment Advisers (“IA”) and notified SEBI (Investment Advisers) (Amendment) Regulations, 2020 (“**Amendment Regulations**”) to amend the SEBI (Investment Advisers) Regulations, 2013 (“**Principal Regulations**”) on July 03, 2020, slated to come into force on September 30, 2020.
 - In addition to the promulgation of the Amendment Regulations, SEBI has rolled out certain guidelines which the IA has to comply with as the Amendment Regulations have vested a lot of powers with the SEBI while amending the Principal Regulations and the said guidelines are in line with the same. The said guidelines are more procedural in nature, spelling out the nitty-gritty of certain provisions introduced by the Amendment Regulations.
 - Major highlights of the said guidelines are as under:
 - ✓ **Client Level Segregation of Advisory and Distribution Activities.**
 - To ensure client level segregation at IA’s group/family level, as per Regulation 22 (5) of the Principal Regulations, following compliance and monitoring process is required to be adopted:

Securities Law (Contd...)

- Existing clients who wish to take advisory services, will not be eligible for availing distribution services with the group/family of IA and vice versa.
- A new client will be eligible to avail either advisory or distribution services within the group/family of IA.
- The client shall have the discretion to continue holding assets prior to the applicability of this segregation.
- PAN of the client shall be a control record for identification and client level segregation.
- In case of an individual client, family of client shall be reckoned as a single client and PAN of all members in family of client would jointly and severally be the control record. However, the same is not applicable for non-individual clients.
- The dependent family members shall be those members whose assets on which investment advisory is sought/provided, originate from income of a single entity i.e. earning individual client in the family. The client shall provide an annual declaration or periodic updation as the case maybe in respect of such dependent family members.
- The immediately preceding 2 (two) points ensure that there is ambiguity as far as seeking of services from a non-individual client is concerned and the non-individual clients not using the family members to use both kind of services from the IA and its group/family, which is envisaged to be restricted by the Principal Regulations.
- IA shall, wherever available, advice direct plans (non-commission based) of products only.
- The IA shall maintain on record an annual certificate from an auditor (in case of individual IA) and its statutory auditor (in case of a non-individual IA) confirming compliance with the client level segregation requirements.

Securities Law (Contd...)

✓ Agreement between IA and the client.

- Regulation 19(1)(d) of the Principal Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions encapsulated in Annexure-A as enclosed in the Circular.
- IA can include additional terms and conditions in the agreement without diluting the provisions of the Principal Regulations and amendments thereto as well as circulars issued thereunder and no consideration shall be charged to the client until the client has signed the aforesaid agreement and has been provided copy of signed agreement.
- IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.

✓ Fees.

- Per the power vested in SEBI under regulation 15A of the Principal Regulations, SEBI has allowed the Investment Advisers shall charge fees from the clients in either of the two modes.

Securities Law (Contd...)

A. Assets under Advice (AUA) mode.

- IA shall not charge fees more than 2.5% of assets per annum per client under this mode and shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.
- Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA. Thus, this rationalizes the AUA computation and avoids overstating of the AUA.

B. Fixed fee mode.

- The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

C. General conditions under both modes.

- In case “family of client” is reckoned as a single client, the fee as referred above shall be charged per “family of client”.
- IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 (twelve) months of on boarding/last change of mode.
- IA can charge advance fee for 2 (two) quarters only.

Securities Law (Contd...)

- However, in case of premature termination of services, fees shall be refunded to the client for the unexpired period, with a right available to the IA to retain a maximum breakage fee of not greater than one quarter fee.
- IA shall ensure compliance of this provision latest by 1st April, 2021.
- Overall, the quantum of fees and the other criterion around it appears to be highly client centric and this will ensure that the IA is not unduly benefitted, especially looking at the vulnerability at large of the retail clients who seek advice from the IAs from the IAs.
- ✓ **Qualification and certification requirement.**
 - Regulation 7 of the Principal Regulations specifies the minimum qualification and certification requirements for IAs. Further, in terms of second proviso of regulation 7(1), existing individual IAs above 50 (fifty) years of age (as on September 30, 2020) shall not be required to comply with the qualification and experience requirements specified under Regulation 7(1)(a) and 7(1)(b) of the Principal Regulations. However, such IAs shall hold the “National Institute of Securities Market” accredited certifications and comply with other conditions as specified under Regulation 7(2) of the Principal Regulations at all times.
- ✓ **Registration as Non Individual Investment Advisor.**
 - If IA is having 150 clients or more as on September 30, 2020, it shall make an application for registration as non-individual IA latest by April 01, 2021.

Securities Law (Contd...)

- Further such IA shall not on-board fresh clients till grant of registration as non-individual. However, IA can provide services to its existing clients till the time it does not get registration as non-individual IA.
- Individual IA having more than 150 clients as on September 30, 2020 shall report their number of clients to SEBI through sebiria@sebi.gov.in by October 15, 2020 in the following format:

Name of IA	Registration No.	No. of clients as on September 30, 2020	Registered office address

✓ **Maintenance of record.**

- In addition to the records mentioned in Regulation 19 of the Principal Regulations, IA shall now maintain records of all interactions with the client (including prospective client) such as physical record written & signed by client, telephone recording, email from registered email id, record of SMS messages or any other legally verifiable record.
- Such records shall be maintained for a period of at least 5 (five) years, unless directed by SEBI in case of any dispute.
- Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.

Securities Law (Contd...)

- IA shall ensure compliance of this provision latest by 1st January, 2021.

✓ Audit.

- Compliance audit shall be completed within 6 (six) months from the end of each financial year i.e. before 30th September and adverse findings, if any shall be intimated to SEBI within 1 (one) month of the audit report but not later than October 31st of each year for the previous financial year starting with the financial year ending March 31, 2021.

✓ Risk profiling and suitability for non-individual clients.

- Regulation 16 and 17 of the Principal Regulations mandates risk profiling and suitability for all categories of clients.
- In order to further enhance the risk profiling and encompass suitable factors in case of non-individual clients, IA shall use the investment policy as approved by board/management team of such non-individual clients for risk profiling and suitability analysis.
- The discretion to share the investment policy/relevant excerpts of the policy shall lie with the non-individual client. However, IA shall have discretion not to on board non-individual clients if they are unable to do risk profiling of the non-individual client in the absence of investment policy.

Securities Law (Contd...)

- IA shall ensure compliance of this provision latest by 1st January, 2021.

✓ **Display of details on website and in other communication channels.**

- In order to protect the interest of investors and bring more transparency in the functioning of IAs, IAs shall display the following information prominently on its website, mobile app, printed or electronic materials, know your client forms, client agreements and other correspondences with the clients:

- Complete name of IA as registered with SEBI,
- Type of registration, i.e. individual, non-individual,
- Registration number, validity of registration,
- Complete address with telephone numbers,
- Contact details of the principal officer-contact no, email id etc.,
- Corresponding SEBI regional/local office address.

■ **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/sep-2020/guidelines-for-investment-advisers_47640.html

Securities Law (Contd...)

- ❑ The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/ISD/ISD/CIR/P/2020/168 on automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 - System driven disclosures, dated September 09, 2020 (“Circular”).
 - In reference to previous notifications/circulars viz.:
 - ✓ Gazette Notification No. SEBI/LAD-NRO/GN/2020/23 dated July 17, 2020, wherein SEBI had further amended SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”) and;
 - ✓ Circular no. CIR/CFD/DCR/17/2015 dated December 01, 2015, CFD/DCR/CIR/2016/139 dated December 21, 2016 and SEBI/HO/CFD/DCR1/CIR/P/2018/85 dated May 28, 2018, wrt implementation of the system driven disclosures in phases, under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and PIT Regulations *vide* circular no. CIR/CFD/DCR/17/2015 dated December 01, 2015, FD/DCR/CIR/2016/139 dated December 21, 2016 and SEBI/HO/CFD/DCR1/CIR/ P/2018/85 dated May 28, 2018.
 - SEBI *vide* the Circular has now decided to implement the system driven disclosures (“**SSD**”) for:
 - ✓ member(s) of promoter group; and
 - ✓ designated person(s) in addition to the promoter(s) and director(s) of company (the aforesaid class of persons being hereinafter collectively referred to as “**Entities**”) under Regulation 7(2) of PIT Regulations.

Securities Law (Contd...)

- At the outset, the SDD shall pertain to trading in equity shares and equity derivative instruments i.e. futures and options of the listed company (wherever applicable) by the Entities.
- The procedure for implementation of the SDD is encapsulated in Annexure-A of the Circular.
- The major highlights regarding steps to be taken for implementation of SSD are specified hereunder:
 - ✓ Listed company shall provide the information including PAN number of the Entities as per PIT Regulations to the designated depository in the format and manner prescribed by the depositories. For PAN exempt entities, the investor's demat account number(s) shall be specified by the listed company. The information shall be provided within 10 (ten) days from the date of this Circular.
 - ✓ The designated depository shall share the information received from the listed company with other depository.
 - ✓ In case of any change/update in entity's details, the listed entity shall update the same with designated depository on the same day (event date) and then designated depository will intimate the other depository on the day of receipt from the listed entity.
 - ✓ The depositories shall provide the following data pertaining to the tagged demat account(s) separately to the stock exchanges on daily basis:

Securities Law (Contd...)

- Details of transactions for pledge/revocation/invocation of shares and other encumbrances such as non-disposal undertaking etc. of the entities.
- Details of off market transactions of the entities.
- Details of transmission of shares of the entities.
- Details of corporate actions such as ESOPs, Bonus, Rights, etc. of the entities.
- Additionally, details of market transfers in case of PAN exempt entities.
- ✓ On consolidation of the transactions, if the disclosure is triggered under regulation 7(2) of PIT Regulations, the stock exchanges shall disseminate the same on their websites. The transaction(s) carried out on T day shall be disseminated on T+2 day basis.
- The new norms prescribed under this Circular are as under:
 - ✓ The disclosures pertaining to PIT Regulations are disseminated on the websites of respective stock exchanges with effect from October 01, 2020.
 - ✓ Entities shall continue to independently comply with the disclosure obligations under PIT Regulations.
 - ✓ Regulations as applicable to them till March 31, 2021.

Securities Law (Contd...)

- ✓ As currently done, the disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchange.
- This Circular supersedes the earlier circulars dated December 01, 2015, December 21, 2016 and May 28, 2018 with respect to implementation of SDD under PIT Regulations.
- **Link of Circular.**
https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures_47523.html

Insolvency And Bankruptcy Code

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 3265(E) on Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 dated September 25, 2020 (“Notification”).**
 - The MCA *vide* the Notification has extended the period of suspension relating to initiation of insolvency proceedings against the corporate debtor for defaults arising after March 25, 2020 by 3 (three) months due to the COVID-19 pandemic.
 - In respect of the aforesaid, the financial creditors, operational creditors and corporate applicants are barred to initiate any fresh proceedings against the corporate debtors from September 25, 2020 i.e. until December 25, 2020.
 - **Link of the Notification.**
<https://www.ibbi.gov.in/uploads/legalframwork/2987e1e33d62d2e1781c700ee16baa36.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. G.S.R 583(E) on Insolvency and Bankruptcy (Application to Adjudicating Authority) (Amendment) Rules, 2020 (“Amendment Rules”) dated September 24, 2020 (“Notification”).**
- The IBBI *vide* the Notification has further amended the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**Principal Rules**”), which shall come into force from the date of publication in the official gazette, i.e. September 24, 2020.
- The major highlights of the Notification are as under:
 - ✓ In rule 4 of the Principal Rules, sub-rule (3) has been substituted which states that the financial creditor shall serve a copy of the application to the registered office of the corporate debtor and to IBBI, by registered post or speed post or by hand or by electronic means, before filing with the National Company Law Tribunal (“**NCLT**”).
 - ✓ In rule 7 of the Principal Rules, sub-rule (2) has been substituted which states that the corporate applicant shall serve a copy of the application to IBBI by registered post or speed post or by hand or by electronic means, before filing with NCLT.
 - ✓ The changes made to rule 4,6 and 7 as above now obligates the financial creditor, operational creditor and the corporate applicant to serve the application to the corporate debtor and the IBBI, before filing the same with the NCLT. Earlier, the said requirement simultaneous and only restricted to service upon the corporate debtor, i.e. the application was required to be served forthwith with the corporate debtor, once filed with the NCLT. This gives the corporate debtor an

Insolvency And Bankruptcy Code (Contd...)

opportunity to appraise the matter better and get adequate time to prepare a defence.

- ✓ Certain changes and substitutions as detailed in the Notification enclosed herewith, have been made to forms appended to the Principal Rules viz.
 - Form 1 (Application by financial creditor(s) to initiate corporate insolvency resolution process).
 - Form 2 (Written communication by proposed interim resolution professional).
 - Form 5 (Application by operational creditor(s) to initiate corporate insolvency resolution process).
 - Form 6 (Application by corporate applicant to initiate corporate insolvency resolution process).
- ✓ After Form 5, new Form 5A has been inserted as appended to the Notification enclosed herewith. The said form provides a format under section 9(3)(c) of the Insolvency and Bankruptcy Code, 2016, which specifies that a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor.
- **Link of the Notification.**
<https://www.ibbi.gov.in/uploads/legalframework/27e336abe5b5328297a2ba5b35b39fac.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **The Ministry of Law and Justice - Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 to further amend the Insolvency and Bankruptcy Code, 2016 (“Principal Act”), dated September 23, 2020 (“Amendment Act”).**
 - In the wake of situation of COVID-19 prevalent in India, the Insolvency and Bankruptcy (Amendment) Ordinance, 2020 (“**Ordinance**”) was promulgated on June 5, 2020, to shield corporate persons who may default in discharge of their debt obligation, albeit helplessly.
 - The Ordinance has now been replaced by the Amendment Act, which is deemed to have come into force from June 5, 2020 and thus the Ordinance stands repealed.
 - Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the Act.
 - The major highlights of the amendments in the Principal Act that were originally effectuated by the Ordinance and which are restored by the Amendment Act are as under:
 - ✓ Section 10A has been inserted in the Principal Act, which provides that no application for initiation of corporate insolvency resolution process (“**CIRP**”) of a corporate debtor shall be filed, for any default arising on or after March 25, 2020, for 6 (six) months or such further period, not exceeding 1 (one) year from such date as may be notified in this behalf under section 7 (Initiation of corporate insolvency resolution process by financial creditor), 8 (Insolvency resolution by operational creditor) and 10 (Initiation of corporate insolvency resolution process by corporate applicant) of the Principal Act.

Insolvency And Bankruptcy Code (Contd...)

- ✓ In section 66 of the Principal Act, after sub-section (2), new sub-section (3) is inserted which bars resolution professionals from initiating applications *wrt* fraudulent trading or wrongful trading against Directors of companies where the CIRP is suspended pursuant to section 10A as aforesaid.
- **Link of the Amendment Act.**
<https://www.ibbi.gov.in/uploads/legalframwork/c1d0cde66b213275d9cf357b59bab77b.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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