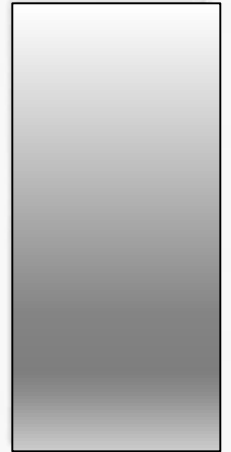


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR OCTOBER, 2020



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 36/2020 on special measures under the Companies Act, 2013 (“Act”) and Limited Liability Partnership Act, 2008 (“LLP Act”) in view of COVID-19 outbreak dated October 20, 2020 (“Circular”).**
 - MCA *vide* the Circular, has further relaxed the residency norms for Directors under section 149 of the Act (i.e. company to have Board of Directors) and under the LLP Act for the financial year 2020-2021 as well.
 - Accordingly, any Director who cannot comply with one of the requirements of section 149 of the Act (i.e. minimum residency in India for a period of atleast 182 (one hundred and eighty two days) days by at least 1 (one) Director of every company), shall not be treated as non-compliance for the financial year 2020-2021.
 - This relaxation is in furtherance to the relaxation provided by the MCA in its general circular no. 11/2020 dated March 24, 2020.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.36_20102020.pdf

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no G.S.R. ____ (E) on the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 (“Amendment Rules”) dated October 16, 2020 (“Notification”).**
 - MCA *vide* the Notification has further amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“**Principal Rules**”), which shall come into force from the date of publication in the official gazette.
 - In rule 14(1) of the Principal Rules, after third proviso, the following proviso shall be inserted, viz:

“Provided also that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.”
 - According to the Amendment Rules, in the event where a company offers or invites qualified institutional buyers (“**QIBs**”) to subscribe to its securities through private placement, it would be sufficient if the company passes a special resolution only once in a year for all the allotments to be made to the QIBs during the year. Earlier, the requirement was to obtain approval from the shareholders of the company by way of a special resolution for each of the offers or invitations.
 - **Link of the Notification.**
http://www.mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules_16102020.pdf

Securities Law

- The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2020/38 on Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2020, (“Amendment Regulations”) as an amendment to Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (“Principal Regulations”), dated October 29, 2020 (“Notification”).
 - SEBI, *vide* the Notification, has further amended the Principal Regulations, as provided hereunder. This Notification shall come into force immediately, i.e. from October 29, 2020.
 - ✓ In regulation 7A of the Principal Regulations, in sub-regulation (1), in clause (h), after sub-clause (iii), the following explanation shall be inserted, namely:

“Explanation. – *Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed.”;*

The Explanation throws more light on the term ‘timely information’ that has been used in the aforesaid regulation. Regulation 7A(1)(h)(iii) deals with the relevance of information for assistance to the SEBI in examining a case regarding violation of insider trading laws.

Securities Law (Contd...)

- ✓ In schedule D of the Principal Regulations, in the table, in the part III, clause 9, has been substituted to prescribe provision of detailed and specific submissions to SEBI. The said part III deals with submission of original information in case of examination by SEBI for violation of insider trading laws.
- **Link to the Notification.**
<http://egazette.nic.in/WriteReadData/2020/222818.pdf>

Securities Law (Contd...)

- ❑ The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/OIAE/IGRD/CIR/P/2020/208 on clarification on SEBI circular SEBI/HO/OIAE/IGRD/CIR/P/2020/152 dated August 13, 2020 on investor grievances redressal mechanism – handling of SCORES complaints by stock exchanges and standard operating procedure for non-redressal of grievances by listed companies (“Principal Circular”), dated October 22, 2020 (“Circular”).
 - SEBI *vide* the Circular, clarifies that in the following paras of the Principal Circular, the words “promoter and promoter group” and “promoter/promoter group” be read as “promoter(s)”.
 - ✓ *Para 16: In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoters ~~and promoter group~~ in such entity as well as all other securities held in the demat account of the promoter and promoter group.*
 - ✓ *Para 27: In case the promoters’ shareholding is frozen by the Exchange, an intimation shall be given to depositories to unfreeze the promoter ~~/ promoter group~~ holdings from the date of such compliance.*
 - ✓ *Para 32: The recognized stock exchanges are advised to bring the provisions of this Circular to the notice of listed entities and the listed entities shall in turn bring the same to the notice of their promoter/~~promoter group~~.*
 - ✓ *Point 2(c) of annexure I of the Principal Circular: Freezing of promoters shareholdings (i.e. entire shareholding of the promoter and promoter group in listed company as well as all other securities held in the demat account of the promoter ~~and promoter group~~) in demat account.*

Securities Law (Contd...)

Accordingly, SEBI vide this Circular has clarified that in case of failure on the part of the listed entity *w.r.t* provision of 'Action Take Report' and payment of fine, the entire shareholding of the promoters' only shall be frozen by the depositories. The shareholding of the promoters' group has been kept out of these consequences, thereby giving relaxation to the promoters' group.

- **Link to the Circular.**

https://www.sebi.gov.in/legal/circulars/oct-2020/clarification-on-sebi-circular-sebi-ho-oiae-igrd-cir-p-2020-152-dated-13-august-2020-on-investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operati-_47953.html

- **Link to the Principal Circular.**

https://www.sebi.gov.in/legal/circulars/aug-2020/investor-grievances-redressal-mechanism-handling-of-scores-complaints-by-stock-exchanges-and-standard-operating-procedure-for-non-redressal-of-grievances-by-listed-companies_47325.html

Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/ LAD-NRO/GN/2020/33 on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020, (“Amendment Regulations”) as an amendment to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Principal Regulations”), dated October 08, 2020 (“Notification”).
- SEBI, *vide* the Notification, has further amended the Principal Regulations, as provided hereunder. This Notification shall come into force immediately, i.e. October 08, 2020.
- ✓ Regulation 54(1) of the Principal Regulations, shall be substituted by the following, namely:

“(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.”

Impact - The amendment clarifies that now the asset cover required to be maintained by entities having non-convertible debt securities shall be either 100% (One Hundred percent) asset cover or asset cover as per the terms of offer document/ information memorandum and/or debenture trust deed which is sufficient to discharge the principal amount at all times for the non-convertible debt securities issued. Earlier, the latter option was not provided and the amendment makes it more flexible for the companies who can have enough float for securing their debt securities even though the same is not equivalent to 100%.

Securities Law (Contd...)

- ✓ Regulation 54(3) of the Principal Regulations shall be omitted.

The deletion implies that the requirement specified in regulation 54(1), i.e. of maintaining asset cover for issue of listed convertible debt securities, would be made applicable even in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators. Earlier, such companies were exempt from the requirement of having an asset cover.

- ✓ In regulation 56(1)(c) of the Principal Regulations, the following new sub-clause shall be inserted after the existing sub-clause (iii), namely:

“(iv) All covenants of the issue (including side letters, accelerated payment clause, etc.)”

Impact - The debt-listed entity is now required to forward the all covenants of the issue (including side letters, accelerated payment clause, etc.) to the debenture trustee promptly, alongwith other documents mentioned therein.

- ✓ In regulation 56(1), the existing clause (d) along with the proviso, shall be substituted with the following, namely, -

“(d) a half-yearly certificate regarding maintenance of hundred percent asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the half-yearly financial results:

Securities Law (Contd...)

Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee.”

Impact – The substitution is consequent to the changes prescribed in regulation 54(1) regarding maintenance of asset cover and also casts a responsibility on the auditor to include compliance by the listed entity of the covenants in connection with the listed non-convertible debentures; in the half yearly certificate.

Further, the half yearly certificate shall be now be applicable to listed entity is a bank or non-banking financial companies registered with Reserve Bank of India.

✓ In Schedule III-

- in Part A, under the Clause A, after the existing sub-clause 16, the following new sub-clause shall be inserted, namely,-

“17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities:

Securities Law (Contd...)

- (i) *The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available;*
- (ii) *Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.”*

Impact –The aforesaid insertion implies that without any application of the guidelines for materiality as specified in regulation 30(4) of the Principal Regulations, an entity is required to disclose the aforesaid to the stock exchanges, incase forensic audit is initiated in respect of the entity.

- **Link to the Notification.**

https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/DDHS/CIR/P/2020/198 on standardization of timeline for listing of securities issued on a private placement basis under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“SEBI ILDS”), SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“SEBI NCRPS”), SEBI (Public Offer and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (“SEBI SDI”) and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (“SEBI ILDM”), dated October 05, 2020 (“Circular”).**

 - In order to standardize the timelines for listing of debt securities under SEBI ILDS, non-convertible redeemable preference shares under SEBI NCRPS, securitized debt instruments under SEBI SDI, security receipts and municipal debt securities under SEBI ILDM, issued on a private placement basis, SEBI vide the Circular has specified the following timelines, shall come into force with effect from December 01, 2020:

Sr. No.	Details of Activities	Due date
1	Closure of issue	T day
2	Receipt of funds	To be completed by T+2 trading day
3	Allotment of securities	
4	Issuer to make listing application to Stock Exchange(s)	To be completed by T+4 trading day
5	Listing permission from Stock Exchange(s)	

Securities Law (Contd...)

- Depositories will be able to activate the ISINs of debt securities issued on private placement basis only after the stock exchange(s) have accorded approval for listing of such securities.
- Per the Circular, in order to facilitate re-issuances of new debt securities in an existing ISIN, depositories need to allot such new debt securities under a new temporary ISIN which shall be kept frozen. Upon receipt of listing approval from stock exchange(s) for such new debt securities, the debt securities credited in the new temporary ISIN shall be debited and the same shall be credited in the pre-existing ISIN of the existing debt securities, before they become available for trading.
- Stock exchange(s) are also advised to inform the listing approval details to the depositories whenever listing permission is given to debt securities issued on private placement basis.
- In case of delay in listing of securities issued on privately placement basis beyond the timelines specified as above, the issuer shall:
 - pay penal interest of 1% (one percent) p.a. over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing);
 - be permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from stock exchanges.

Securities Law (Contd...)

- Clause 4(a) (ii) of the SEBI circular no. SEBI/HO/MIRSD/DOS3/CIR/P/2019/68 dated May 27, 2019 which provides for payment of penal interest by the company of atleast @ 1% (one percent) p.a. over the coupon rate from the expiry of 30 (thirty) days from the deemed date of allotment till the listing of such debt securities to the investor, in case there is delay in listing of the debt securities beyond 20 (twenty) days from the deemed date of allotment, now stands deleted.
- **Link to the Circular.**
https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis_47790.html

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/MIRSD/DOP/CIR/P/2020/191 on relaxation in timelines for compliance with regulatory requirements, dated October 01, 2020 (“Circular”).**
 - SEBI *vide* the Circular, has further provided for relaxation in timelines for compliance with regulatory requirements. SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants, *vide* various circulars. However, due to the ongoing Covid-19 pandemic SEBI has further extended the timelines for compliance with the regulatory requirements by the trading members / clearing members, mentioned in the SEBI circulars, as under:

[Continued on next slide]

Securities Law (Contd...)

Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020. ("Circular – I")	S. No. for which timeline is extended	Extended timeline / Period of exclusion
Maintaining call recordings of orders / instructions received from clients.	XI	December 31, 2020
Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020. ("Circular – II")	S. No. for which timeline is extended	Extended timeline / Period of exclusion
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	III	Period of exclusion shall be from March 23, 2020 till December 31, 2020.

Securities Law (Contd...)

Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/141 dated July 29, 2020. (“Circular – III”)	S. No. for which timeline is extended	Extended timeline / Period of exclusion
Cyber Security & Cyber Resilience Audit for the year ended March 31, 2020.	-	December 31, 2020

- **Link to the Circular.**

https://www.sebi.gov.in/legal/circulars/oct-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_47778.html

- **Link to the Circular I.**

https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements-by-trading-members-clearing-members_46523.html

- **Link to the Circular II.**

https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-time-period-for-certain-activities-carried-out-by-depository-participants-rtas-issuers-kras-stock-brokers_46524.html

Securities Law (Contd...)

- **Link to the Circular III.**

https://www.sebi.gov.in/legal/circulars/jul-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_47185.html



Insolvency And Bankruptcy Code

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – circular no. IBBI/LAD/35/2020 on serving of copy of the application to the IBBI, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“Rules”), dated October 29, 2020 (“Circular”).**
 - The Rules require an applicant to provide a copy of the application with IBBI, for initiating corporate insolvency resolution process against a corporate debtor, before filing the same with the adjudicating authority.
 - For the convenience of applicants, IBBI has now provided a facility on its website at <https://www.ibbi.gov.in/intimation-applications/iaaa> for serving a copy of such application online with IBBI, in the format as provided in annexure A, alongwith step wise guide thereto, in annexure B, as provided in the Circular, link of which is appended hereunder. On submission of the application online, the applicant shall get an acknowledgement for the same.
 - **Link of the Circular.**
<https://www.ibbi.gov.in/uploads/legalframework/5d5792eab74d44db2a58e184abd65ab7.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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