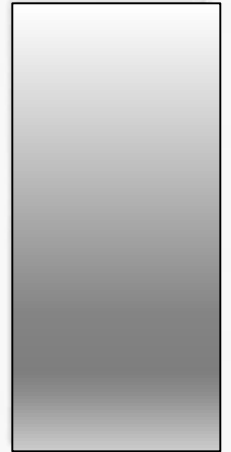


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR NOVEMBER,
2020



Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 37/2020 on extension of limited liability partnership (“LLP”) settlement scheme, 2020 (“Scheme”), dated November 09, 2020 (“Circular”).**
 - In view of the on-going pandemic, MCA, *vide* the Circular, to provide greater relaxation, has extended the date of applicability of the Scheme to defaulting LLPs (*as defined therein*), from August 31, 2020 to November 30, 2020.
 - All other requirements provided in the circulars no. 13/2020 and 31/2020 dated March 30, 2020 and September 28, 2020, respectively, regarding regulation of the Scheme, shall remain unchanged.
 - **Link of the Circular.**
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2020-21/69 A.P. (DIR Series) Circular No. 07 on Establishment of Branch Office (“BO”) / Liaison Office (“LO”) / Project Office (“PO”) or any other place of business in India by foreign law firms dated November 23, 2020 (“Circular”).**
 - The RBI *vide* the Circular has stated that no fresh permissions/renewal of permission will be granted by the RBI/AD Category-I banks to any foreign law firm for the opening of a liaison office in India until the policy is reviewed based on, among others, final disposal of the matter by the Hon’ble Supreme Court.
 - The Supreme Court had held as under on the subject matter that:
 - ✓ advocates enrolled under the Advocates Act, 1961, alone are entitled to practise law in India and not foreign law firms/companies or foreign lawyers.
 - ✓ foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practising the legal profession.
 - Accordingly, AD Category – I banks have been directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practising the legal profession. Further, they shall bring to the notice of the RBI in case any such violation of the provisions of the Advocates Act, 1961 comes to their notice.

Reserve Bank of India (Contd...)

- All other provisions of the BO/LO/PO policy shall remain unchanged.
- In order to reflect these changes, the Master Direction No. 10 dated January 1, 2016 which *interalia* prescribes establishment of BO/(LO)/(PO) or any other place of business in India by foreign entities, is being updated simultaneously.
- **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11997&Mode=0>

Reserve Bank of India (Contd...)

- The Reserve Bank of India (“RBI”) – circular no. RBI/2020-21/67 A.P. (DIR Series) Circular No. 06 on Compounding of Contraventions under Foreign Exchange Management Act, 1999 (“FEMA”) dated November 17, 2020 (“Circular”).
- The RBI *vide* the Circular has aligned [Master Direction on “Compounding of Contraventions under FEMA, 1999”](#), dated January 01, 2016 which *interalia*, prescribes instructions for compounding of contraventions under FEMA, with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“**NDI Rules**”).
- To enhance customer service and operational convenience, the compounding powers stand delegated to the Regional Offices/Sub-Offices of the RBI to compound certain contraventions of Notifications FEMA 20/2000-RB dated May 3, 2000 and FEMA 20(R)/2017-RB dated November 07, 2017.
- In view of the supersession of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (“**TISPRO**”) and issuance of NDI Rules and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (‘**MPR Regulations**’) i.e. [Notification No. FEMA.395/2019-RB](#), both notified on October 17, 2019, the RBI *vide* the Circular, has substituted the reference of the erstwhile TISPRO regulations with the NDI Rules and MPR Regulations.
- Accordingly, for efficient and effective administration of the compounding mechanism, the power to compound under TISPRO stands delegated to the Regional Offices/Sub Offices of the RBI and is aligned with corresponding provisions under NDI Rules and MPR Regulations as under:

Reserve Bank of India (Contd...)

Compounding of contraventions under NDI Rules

Rule No.	Deals with	Corresponding regulation under TISPRO	Brief Description of Contravention
Rule 2(k) read with Rule 5	Permission for making investment by a person resident outside India.	Regulation 5	Issue of ineligible instruments.
Rule 21	Pricing guidelines.	Paragraph 5 of Schedule I	Violation of pricing guidelines for issue of shares.
Paragraph 3 (b) of Schedule I (Issue of shares without approval of RBI or Government, wherever required)	Sectoral Caps.	Paragraph 2 or 3 of Schedule I	Issue of shares without approval of RBI or Government respectively, wherever required.
Rule 4 (Receiving investment in India from non-resident or taking on record transfer of shares by Investee Company)	Restriction on receiving investment.	Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company.

Reserve Bank of India (Contd...)

Rule No.	Deals with	Corresponding regulation under TISPRO	Brief Description of Contravention
Rule 9(4)	Transfer by way of gift to person resident outside India by person resident in India of equity instruments or units of an Indian company on a non- repatriation basis with the prior approval of the Reserve Bank.	Regulation 10(5)	Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the Reserve Bank of India.
Rule 13(3)	Transfer by way of gift to person resident outside India by non-resident Indian or overseas citizen of India of equity instruments or units of an Indian company on a non- repatriation basis with the prior approval of the Reserve Bank.		

Reserve Bank of India (Contd...)

Compounding of contraventions under MPR Regulations

Rule No.	Deals with	Corresponding regulation under TISPRO	Brief Description of Contravention
Regulation 3.1(I)(A)	Inward remittance from abroad through banking channels.	Regulation 13.1(1)	Delay in reporting inward remittance received for issue of shares.
Regulation 4(1)	Form Foreign Currency-Gross Provisional Return (FC-GPR).	Regulation 13.1(2)	Delay in filing form FC (GPR) after issue of shares.
Regulation 4(2)	Annual Return on Foreign Liabilities and Assets (FLA).	Regulation 13.1(3)	Delay in filing the Annual Return on Foreign Liabilities and Assets ("FLA").
Regulation 4(3)	Form Foreign Currency-Transfer of Shares (FC-TRS).	Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident or from Non-resident to Resident.

Reserve Bank of India (Contd...)

Compounding of contraventions under MPR Regulations

Rule No.	Deals with	Corresponding regulation under TISPRO	Brief Description of Contravention
Regulation 4(6)	Form LLP (I)	Regulations 13.1(7) and 13.1(8)	Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by Limited Liability Partnerships (LLPs)/ delay in reporting disinvestment / transfer of capital contribution or profit share between a resident and a non-resident (or vice-versa) in case of LLPs.
Regulation 4(7)	Form LLP (II)		
Regulation 4(11)	Downstream Investment	Regulation 13.1(11)	Delay in reporting the downstream investment made by an Indian entity or an investment vehicle in another Indian entity (which is considered as indirect foreign investment for the investee Indian entity in terms of these regulations), to Secretariat for Industrial Assistance, the Department for Promotion of Industry & Internal Trade.

Reserve Bank of India (Contd...)

- **Major highlights of the Circular are as under:**
 - ✓ **Technical contraventions to be compounded with minimal compounding amount:**
 - Referring to para 3.5 of [A.P. \(DIR Series\) Circular No. 56 dated June 28, 2010](#) and para 2 of [A.P. \(DIR Series\) Circular No.11 dated July 31, 2012](#) which *interalia* prescribes the classification of a contravention under FEMA by the RBI as 'technical' or 'material' or 'sensitive/serious in nature', RBI *vide* the Circular has discontinued the classification of a contravention as 'technical' that was hitherto dealt with by way of an administrative/ cautionary advice.
 - Such contraventions will now be regularized by imposing minimal compounding amount as per the compounding matrix as contained in the updated '[Master Direction - Compounding of Contraventions under FEMA, 1999](#)' dated January 01, 2016, as amended from time to time ("**Master Direction**").
 - ✓ **Public disclosure of compounding order:**
 - In respect of compounding orders passed on or after 1 March 2020, RBI will publish only summary information of the compounding orders on its website in the format given below, instead of uploading the compounding orders:

Reserve Bank of India (Contd...)

Sr. No.	Name of the Applicant	Details of contraventions (provisions of the Act/Regulation/Rules compounded)	Date of compounding order	Amount imposed for compounding of contraventions
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- The aforesaid amendment of uploading of summary information of compounding orders on the RBI website, instead of full compounding order, would meet the twin objectives of ensuring transparency and respecting confidentiality.

Conclusion: *The Circular amends the Master Direction on compounding to replace the references to provisions of the erstwhile TISPRO with corresponding provisions of NDI Rules and MPR Regulations.*

- **Link of the Master Direction.**

https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10190

- **Link of the Circular.**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11995&Mode=0>

Reserve Bank of India (Contd...)

- ❑ **The Reserve Bank of India (“RBI”) – circular no. RBI/2020-21/66 A.P. (DIR Series) Circular No. 05 on Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999 dated November 13, 2020 (“Circular”).**
- The RBI in this Circular, has referred to [Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016](#), which, *interalia*, prescribes various reports/ forms required to be submitted under Foreign Exchange Management Act, 1999 (“FEMA”) by/ through Authorised Persons/ Authorised Dealer Category – I Banks/ Authorised Banks (“AD Banks”).
- In continuation to the aforesaid, with a view to improve the ease of doing business, the existing forms and reports prescribed under FEMA were reviewed by the RBI and it has been accordingly decided to discontinue the 17 returns/reports as listed in the Annexure (*link as given hereunder*) with immediate effect.
- Pursuant to the aforesaid discontinuation of requirement to file the existing forms and reports, the [Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016](#), is being accordingly be updated to reflect the changes.
- **Link of the Annexure.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11994&Mode=0#AN1>
- **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11994&Mode=0>

Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/DDHS/CIR/P/2020/233 on introduction of Unified Payments Interface (“UPI”) mechanism and Application through Online interface and Streamlining the process of Public issues of securities under - SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“ILDS Regulations”), SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“NCRPS Regulations”), SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (“SDI Regulations”) and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (“ILDM Regulations”), dated November 23, 2020 (“Circular”).**
 - In this Circular, SEBI, refers to circular No. CIR/DDHS/P/121/2018 dated August 16, 2018 (hereinafter to be referred as “**ASBA Circular**”), which, *inter alia*, prescribes the process for payment for applications in public issue of debt securities through the facility of ASBA:
 - **Major highlights of the Circular are as under:**
 - ✓ SEBI *vide* the Circular has provided introduction of UPI mechanism and an additional mode for application through online (app/ web) interface in public issues of securities captioned above.

The following mode of payment has been added to the already specified modes under the ASBA Circular:

Securities Law (Contd...)

- Providing an option to investors to apply in public issues of debt securities through the app/web interface of stock exchange(s) with a facility to block funds through UPI mechanism for application value upto INR 2,00,000 (Indian Rupees Two Lakhs only).
- Permitting the UPI mechanism to block funds for application value upto INR 2,00,000 (Indian Rupees Two Lakhs only) submitted through intermediaries (syndicate members, registered stock brokers, registrar and transfer agent and depository participants).
- ✓ The process flow for applying through online interface of stock exchanges or intermediaries and availing the option of blocking funds though UPI mechanism is placed at Annex I of the Circular.
- ✓ New entities/mechanisms part of the public issue process using UPI.
 - **National Payments Corporation of India (“NPCI”)**: A Reserve Bank of India (“RBI”) initiative, and an umbrella organization for all retail payments in India. It has been set up with the guidance and support of the RBI and Indian Banks Association (“IBA”).
 - **UPI**: An instant payment system developed by the NPCI. It enables merging several banking features, seamless fund routing & merchant payments into one hood. UPI allows instant transfer of money between any two persons’ bank accounts using a payment address which uniquely identifies a person’s bank account.

Securities Law (Contd...)

- **Sponsor Bank:** Sponsor Bank means a banker to the issue registered with SEBI which is appointed by the issuer to act as a conduit between the stock exchanges and NPCI in order to push the mandate collect requests and/or payment instructions of the retail investors into the UPI.

- ✓ **Validation by Stock Exchanges and Depositories:**
 - The details of investor viz. PAN, DP ID / Client ID, entered on the stock exchange platform at the time of bidding, shall be validated by the stock exchange/s with the depositories on real time basis.

 - Stock exchanges and depositories shall put in place necessary infrastructure for this purpose.

- ✓ **Other requirements:**
 - Stock Exchanges shall update demand data on working days on their websites which shall include all the UPI (accepted/pending) and ASBA bids; 'Working day' for this purpose shall be the working day of the stock exchange on which debt securities are listed.

 - The additional text of data fields required to be included in the application-and-bidding-form relating to UPI is placed at Annex II of the Circular. The roles of the issuer, registrar and collecting banks is given at Annex III of enclosed Circular.

Securities Law (Contd...)

- The details of commission and processing fees payable to each intermediary and the timelines for payment shall be disclosed in the offer document.
- The intermediaries shall provide necessary guidance to their investors in use of UPI while making applications in public issues.
- All entities involved in the process shall co-ordinate with one another to ensure completion of listing of securities and commencement of trading by T+6 day.
- Stock exchanges shall formulate and disclose the operational procedure for applying through the app / web based interface developed by them in order to apply in public issue on their websites.
- The merchant banker shall ensure that the process of applying through the app / web interface developed by the stock exchanges as well as the additional payment mechanism through UPI is disclosed in the offer document.

Securities Law (Contd...)

- ✓ The provisions of the Circular shall be applicable to a public issue of securities under the captioned regulations which opens on or after January 01, 2021. SEBI circular no. CIR/IMD/DF-1/20/2012 dated July 27, 2012, which *interalia* prescribes the system for making application to public issue of debt securities, shall stand repealed from January 01, 2021.
- **Link of the Circular.**
<https://www.sebi.gov.in/legal/circulars/nov-2020/introduction-of-unified-payments-interface-upi-mechanism-and-application-through-online-interface-and-streamlining-the-process-of-public-issues-of-securities-under-sebi-issue-and-listing-of-debt-48235.html>

Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/DDHS/DDHS/CIR/P/2020/231 on Non-compliance with provisions related to continuous disclosures, dated November 13, 2020 (“Circular”).**
 - SEBI has prescribed continuous disclosure norms for issuers of listed non-convertible debt securities, non-convertible redeemable preference shares (“**NCRPS**”) and commercial papers, which are as follows:
 - ✓ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR Regulations**”) for issuers of listed non-convertible debt securities and/or NCRPS.
 - ✓ SEBI circular nos. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 and SEBI/HO/DDHS/DDHS/CIR/P/2019/167 dated December 24, 2019 for issuers of listed commercial papers.
 - The following provisions provide for monitoring of compliance and imposition of fines by stock exchanges:
 - ✓ **Sub-regulation (1) of Regulation 97 of SEBI LODR Regulations** - monitoring of compliance by listed entities with the provisions of the regulation by recognized stock exchanges.
 - ✓ **Sub regulation (1)(a) of Regulation 98 of SEBI LODR Regulations** - imposition of fines by stock exchanges for contravention of provisions of the regulation by listed entities.

Securities Law (Contd...)

- ✓ **SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019** - framework for imposition of fine to be put in place by stock exchanges in cases of non-compliance and/ or inappropriate disclosures by issuers of listed commercial papers.
- ✓ **SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12, dated January 22, 2020 in respect of listed specified securities (i.e. equity shares and convertible securities** - uniform structure for imposing fines for issuers not in compliance with certain provisions of SEBI LODR Regulations.
 - Accordingly, in order to ensure effective enforcement of continuous disclosure obligations by issuers of listed non-convertible debt securities or NCRPS or commercial papers, SEBI has decided to lay down a similar uniform structure for imposing fines for non-compliance with continuous disclosure requirements after discussion with market participants.
 - In view of the above, in the interests of investors and the securities market, the stock exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed non-convertible debt securities and/ or NCRPS and/ or commercial papers as specified in Annexure I and Annexure II of this Circular respectively.
 - Stock Exchanges has been advised to deviate from the above, if found necessary, only after recording reasons in writing.

Securities Law (Contd...)

- If a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this Circular in consultation with each other.
- The amount of fine realized as per the structure provided in **Annexure I** hereinbelow shall be credited to the “**Investor Protection Fund**” of the concerned recognized stock exchange.
- The fines specified in Annexure I of this Circular shall continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognized stock exchange. Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.
- The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements for continuous disclosures /moratorium on enforcement proceedings has been provided for under any act, court/tribunal orders etc.
- The above provisions are without prejudice to the power of SEBI to take action under the securities laws.

Securities Law (Contd...)

- This provisions mentioned in this Circular shall come into force for compliance period ending on or after December 31, 2020.

ANNEXURE I

PART A: Fine to be levied in case of non-compliances by issuers of listed Non-Convertible Debt Securities and/or Non-Convertible Redeemable Preference Shares.

- The recognized stock exchanges shall take action for non-compliance with the provisions of the SEBI LODR Regulations & circulars/ guidelines issued thereunder, by an entity having listed Non-Convertible Debt Securities and/or NCRPS, as under:

Securities Law (Contd...)

Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Debt Securities and/or NCRPS
(a)	Applicable Regulations for Chapter III (Common obligations of listed entities) of SEBI LODR Regulations for which penalty has been specified vide SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 as amended from time to time.	Fine payable as per SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 as amended from time to time
(b)	Regulation 50 (1)/ (3)	INR 1,000 per ISIN
	Delay in furnishing prior intimation with respect to date of payment of interest/redemption amount or intimation regarding board meeting effecting the rights or interest of holders of NCDs/NCRPS.	
(c)	Regulation 52(1)	INR 5,000 per day
	Non-submission of the financial results within the period prescribed under this regulation.	

Securities Law (Contd...)

Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Debt Securities and/or NCRPS
(d)	Regulation 52(4) / 52(6) Non-disclosure of line items prescribed under Regulation 52(4) along with the half yearly/annual financial results or non-disclosure of items pertaining to NCRPS as notes to financials prescribed under Regulation 52(6).	INR 1,000 per day
(e)	Regulation 52(5) Non-submission of a certificate signed by the debenture trustee taking note of the contents prescribed under regulation 52(4).	INR 1,000 per day
(f)	Regulation 52(7) Non-submission of deviations/ variations in utilization of issue proceeds.	INR 1,000 per day

Securities Law (Contd...)

Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Debt Securities and/or NCRPS
(g)	Regulation 54 (2) Non-disclosure of extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements.	INR 1,000 per day
(h)	Regulation 57(1) Non-disclosure of information related to payment obligations.	INR 1,000 per day per ISIN
(i)	Regulation 59 (1) Failure to obtain prior approval of stock exchange for any structural change in terms of NCDs/ NCRPS.	INR 50,000 per instance

Securities Law (Contd...)

Sl. No.	Regulation	Fine payable and/or other action to be taken for non- compliance in respect of an entity having listed its Non- Convertible Debt Securities and/or NCRPS
(j)	Regulation 60 (2) Delay in submission of the notice of record date.	INR 10,000 per ISIN
(k)	Regulation 62 Non-compliance with norms pertaining to functional website.	Advisory/warning letter per instance of non-compliance per item INR 10,000 per instance for every additional advisory/warning letter exceeding the four advisory/warning letters in a financial year.

Securities Law (Contd...)

- In case of 1(c) above, wherein the listed entity has listed both specified securities and/or Non-Convertible Debt Securities and/or NCRPS, and if the concerned recognized stock exchange(s) has already levied a penalty for non-compliance of Regulation 33 of SEBI LODR Regulations in terms of SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020, then penalty shall not be imposed again for violation of Regulation 52(1) in terms of this Circular.

PART B: Fine to be levied in case of non-compliances by issuers of listed Commercial Papers

- The recognized stock exchanges shall take action for non-compliance with continuous disclosure requirements in terms of SEBI circular nos. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 and SEBI/HO/DDHS/DDHS/CIR/P/2019/167 dated December 24, 2019, as amended from time to time, by an entity having listed commercial papers as under:

[continued in next slide]

Securities Law (Contd...)

Sl.No.	Clause	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed Commercial Paper
(a)	Non-submission of financial results within the prescribed period	INR 5,000 per day
(b)	Non-disclosure of line items prescribed under Regulation 52(4) of SEBI LODR Regulations along with the half yearly / annual financial results	INR 1,000 per day
(c)	Non-submission of certificate regarding fulfilment of payment obligations	INR 1,000 per day per ISIN

Securities Law (Contd...)

- In case of 1(a) & 1(b) above, wherein the entity has listed its specified securities and/or Non-Convertible Debt Securities and/or NCRPS, and if the concerned recognized stock exchange(s) has already levied a penalty for non-compliance of Regulation 33 or Regulation 52(1) and/or Regulation 52(4) of SEBI LODR Regulations under SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 and/or Part A of Annexure I of this Circular as applicable, then penalty shall not be imposed again for non-submission of disclosures specified at 1(a) & 1(b) above.

Annexure II Action to be taken in case of non-compliances by issuers of listed non-convertible debt securities and/or non-convertible redeemable preference shares and/or Commercial Papers

- Every recognized stock exchange to review the compliance status of the entities having listed their non-convertible debt securities and/or NCRPS and/or commercial papers and shall issue notices to the non-compliant entities within 30 (thirty) days from the due date of prescribed timeline.
- Non-compliant entity to ensure compliance with the requirement(s) and pay fines as per the circular within 15 (fifteen) days from the date of such notice.
- Upon failure by entities, the concerned recognized stock exchange(s) shall issue reminder notices to ensure compliance with the requirement(s) and pay fines within 10 (ten) days from the date of such notice.

Securities Law (Contd...)

- The recognized stock exchange to send intimation to other recognized stock exchange(s) where the non-convertible debt securities or NCRPS or commercial papers of the non-compliant entity are listed.
- Failure of the non-compliant entity to comply with the aforesaid requirement(s) and/or to pay fine levied within the stipulated period, the concerned recognized stock exchange(s) shall send intimation to other recognized stock exchange(s) and all entities allowed to act as electronic book provider, regarding failure of compliance of such entity.
- The recognized stock exchange(s) and/ or other entities allowed to act as electronic book provider, thereafter, shall not allow:
 - a) issuance of any securities, as defined under SEBI circular no. SEBI/HO/DDHS/CIR/P/2018/05 dated January 05, 2018 by such non-compliant entity on EBP Platform;
 - a) further listing of non-convertible debt securities or NCRPS or commercial papers of such non compliant entity.

Securities Law (Contd...)

- The restrictions mentioned at a) & (b) above shall continue until the non-compliant entity subsequently complies with the respective requirement(s) and pays the fine levied and if the non-compliant entity subsequently complies with the respective requirement(s) and pays the fine levied, in terms of this Circular, the concerned recognized stock exchange(s) shall display on their website compliance and status of fines paid by such entity.
- Simultaneously, the concerned recognized stock exchange(s) shall intimate other recognized stock exchange(s), other entities allowed to act as electronic book provider regarding compliance of such entity.
- The recognised stock exchange(s) to advise the non-compliant entity to ensure that the subject matter of non-compliance which has been identified and indicated by the recognised stock exchange(s) and any subsequent action taken by the recognised stock exchange(s) in this regard shall be placed before the board of directors of the entity in its next meeting.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/nov-2020/non-compliance-with-provisions-related-to-continuous-disclosures_48171.html

Securities Law (Contd...)

□ **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/MIRSD/DOC/CIR/P/2020/226 on Investor Grievance Redressal Mechanism, dated November 06, 2020 (“Circular”).**

- SEBI, *vide* this Circular, has envisaged to strengthen the Investor Grievance Redressal Mechanism by providing further clarifications as under to Circular No. CIR/MRD/DSA/24/2010 dated August 11, 2010, Circular No. CIR/MRD/DSA/2/2011 dated February 09, 2011, and Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013.

✓ **Resolution of complaints by stock exchange:**

○ **Timeline:**

Stock exchange shall ensure the following:

- investor complaints are resolved within 15 (fifteen) working days from the date of receipt of the complaint.
- additional information, if any, required from the complainant, shall be sought within 7 (seven) working days from the date of receipt of the complaint and accordingly the period of 15 (fifteen) working days shall be counted from the date of receipt of additional information sought.

Securities Law (Contd...)

- Stock exchange shall maintain a record of all the complaints addressed/redressed within 15 (fifteen) working days from the date of receipt of the complaint/additional information and also record the reason for non-redressal if complaint is not resolved within stipulated time frame.

Impact - Thus, an attempt has been made to make the process of dealing with investor complaints more water-tight in the best interests of the investors and avoid unreasonable glitches.

- **Service related complaints:**

- In case complainant is not satisfied with the resolution provided by the stock exchange, the same may be referred to the Investor Grievance Redressal Committee (“**IGRC**”), after recording the reasons in writing by the Chief Regulatory Officer of the stock exchange or any other officer of the stock exchange authorized in this behalf by the Managing Director.
- **What are service related complaints** – It shall include non-receipt/ delay of account statement, non-receipt/ delay of bills, closure of account/ branch, technological issues, shifting/closure of branch without intimation, improper service by staff, freezing of account, alleged debit in trading account, contact person not available in trading member’s office, demat account transferred without permission etc.

Securities Law (Contd...)

Impact - Thus, the aforesaid procedure highlights a mechanism to deal with situations wherein the investors are not satisfied with the redressal provided by the stock exchanges and gives them enough faith to reach up to higher authorities. The aforesaid mechanism also clarifies what shall constitute service related complaints.

- **Complaints to be referred to IGRC:**

- **When and what type of complaints shall be referred?** – Complaints related to trade, settlement and 'deficiency in services', resulting into any financial loss are to be referred to the IGRC after recording the reasons in writing by the chief regulatory officer of the stock exchange or any other officer of the stock exchange authorized in this behalf by the Managing Director, if the stock exchange is not able not resolve the same amicably.

Impact - The stock exchange has been entrusted with the responsibility of providing documents/necessary information after collecting the same from the member and/ or the complainant and provide necessary assistance to IGRC to ensure resolution of complaints in a timely manner.

- ✓ **Handling of complaints by IGRC:**

- **Time period with IGRC** - 15 (fifteen) working days to amicably resolve the investor complaint through conciliation process. If IGRC needs additional information, then IGRC may request the stock exchange to provide the same before the initiation of the conciliation process and in such case, the timeline for resolution of the complaint by IGRC shall not exceed 30 (thirty) working days.

Securities Law (Contd...)

- **Do's and don'ts for IGRC** - IGRC shall not dispose the complaint citing "Lack of Information and complexity of the case". The IGRC shall give its recommendation to stock exchange.
 - IGRC shall decide claim value admissible to the complainant, upon conclusion of the proceedings of IGRC. In case claim is admissible to the complainant, stock exchanges shall block the admissible claim value from the deposit of the member as specified in this regard.
 - Expenses of IGRC shall be borne by the respective stock exchange and no fees shall be charged to the complainant/member.
 - The stock exchange shall organize regular training program for IGRC members in consultation with National Institute of Securities Markets. The cost of such program shall be borne by Investor Service Fund of the stock exchange.
- ✓ **Arbitration: First referral by the aggrieved person** - For any dispute between the member and the client relating to or arising out of the transactions in stock exchange, which is of civil nature, the complainant/ member shall first refer the complaint to the IGRC and/ or to arbitration mechanism provided by the stock exchange before resorting to other remedies available under any other law. The sole arbitrator or the panel of arbitrators, as the case may be, appointed under the stock exchange arbitration mechanism shall always be deemed to have the competence to rule on its jurisdiction.

Securities Law (Contd...)

- ✓ **In case IGRC recommendation is not satisfactory** - A complainant/member, who is not satisfied with the recommendation of the IGRC, shall avail the arbitration mechanism of the stock exchange for settlement of complaints within 6 (six) months from the date of IGRC recommendation.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/nov-2020/investor-grievance-redressal-mechanism_48105.html

Securities Law (Contd...)

□ **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DIL1/CIR/P/2020/215 modifying circular dated March 10, 2017 on ‘Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957’, dated November 03, 2020 (“Circular”).**

▪ SEBI, *vide* the Circular, has modified certain provisions of the SEBI circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017 (“**Circular 1**”) which laid down detailed guidelines and procedures for listed entities undertaking schemes of arrangements and relaxation under rule 19 (7) of the Securities Contracts (Regulation) Rules, 1957.

▪ **Major highlights of the Circular are as under:**

✓ **Objective of the amendment:**

These amendments are aimed at ensuring that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, rules, regulations and circulars issued thereunder.

✓ **Applicability of the Circular:**

This Circular shall be applicable for all the schemes filed with the stock exchanges after November 17, 2020. However, the amendments related to seeking listing / trading approval from stock exchange (as explained under s.no. III A (5) below) shall be applicable to all listed entities with effect from November 3, 2020.

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
I A (2)(c)	Report from the audit committee recommending the draft scheme, taking into consideration, <i>interalia</i> , the valuation report. The valuation report is required to be placed before the audit committee of the listed entity.	Report from the audit committee recommending the draft scheme, taking into consideration, <i>interalia</i> , the valuation report. The valuation report is required to be placed before the audit committee of the listed entity. The audit committee report shall also comment on the following: <ul style="list-style-type: none"> • Need for the merger/demerger/amalgamation /arrangement. • Rationale of the scheme. • Synergies of business of the entities involved in the scheme. • Impact of the scheme on the shareholders. • Cost benefit analysis of the scheme. 	The purpose of this amendment is to widen the scope of the audit committee and cast a greater responsibility on the audit committee. Pursuant to the amendment, the audit committee does not have to be a mere nodal authority but needs to critically review the commercial aspects and overall of rationale of the draft scheme.

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
Insertion of new Para I A(2)(i)	N.A	Report from the committee of independent directors recommending the draft scheme, taking into consideration, <i>inter alia</i> , that the scheme is not detrimental to the shareholders of the listed entity.	Pursuant to the said insertion, the committee of independent directors, have been cast a responsibility to ascertain if the draft scheme is detrimental to the shareholders of the listed entity.
I A(4)(a)	All listed entities are required to submit a valuation report from an independent chartered accountant.	All listed entities are required to submit a valuation report from a registered valuer. For the purpose of this clause, the registered valuer shall be a person, registered as a valuer, having such qualifications and experience and being a member of an organization recognized, as specified in Section 247 of the Companies Act, 2013 read with the applicable rules issued thereunder.	The said amendment is made to align with the provisions of section 247 of Companies Act, 2013 read with the applicable rules issued thereunder.

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
Explanation to I A (9)(b)(v)	For the purpose of this clause, the expression “ substantially the whole of the undertaking ” in any financial year shall mean twenty per cent or more of value of the company in terms of consolidated net worth or consolidated total income during previous financial year as specified in Section 180(1)(a)(i) of the Companies Act, 2013.	For the purpose of this clause, the expression “ substantially the whole of the undertaking ” in any financial year shall mean twenty percent or more of value of the company in terms of consolidated net worth or consolidated total income during previous financial year as specified in Section 180(1)(a)(ii) of the Companies Act, 2013.	The said amendment, has rectified the clause reference of the Companies Act, 2013, wherein the definition of “substantially the whole of the undertaking” is mentioned in Section 180(1)(a)(ii) of the Companies Act, 2013 and not in Section 180(1)(a)(i) of the Companies Act, 2013.

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
I B (4)	<p>Stock exchanges shall provide the 'observation letter' or 'no-objection' letter to SEBI on the draft scheme. In case of companies listed exclusively on regional stock exchanges, SEBI shall issue comment letter upon receipt of 'observation letter' or 'no-objection' letter from the designated stock exchange. in other cases, SEBI shall issue comment letter upon receipt of 'observation letter' or 'no-objection' letter from stock exchanges having nationwide trading terminals.</p>	<p>Stock exchanges shall provide the 'no-objection' letter to SEBI on the draft scheme; in co-ordination with each other. SEBI shall issue comment letter upon receipt of 'no-objection' letter from stock exchanges having nationwide trading terminals. in other cases, SEBI shall issue Comment letter upon receipt of 'No-Objection' letter from the designated stock exchange.</p>	<p>Pursuant to the amendment, the stock exchanges are required to issue the no-objection letters on the draft schemes after coordinating with SEBI and the erstwhile option to issue 'observation letter' has been done away with.</p> <p>These amendments are aimed at ensuring that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, Rules, Regulations and circulars issued thereunder.</p> <p>thus, the aforesaid omission of issuing "observation letter" is aligned with the objective of the amendment mentioned hereinabove.</p>

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
I C (1) and C (2c)	<p>C (1) –</p> <p>Upon receipt of ‘observation letter’ or ‘no-objection’ letter from the stock exchanges, SEBI shall provide its comments on the draft scheme of arrangement to the stock exchanges. while processing the draft scheme, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the stock exchanges and may also seek an opinion from an independent chartered accountant.</p>	<p>The words ‘observation letter or’ in para c (1) and para c (2c) stand deleted.</p>	<p>The Circular has omitted the word ‘observation letter’ as now the stock exchanges are required to issue the ‘no-objection letter’ on the draft schemes.</p> <p>The said omission is aligned with the objective of the amendment mentioned hereinabove.</p>

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
I C (1) and C (2c)	<p>C (2) –</p> <p>SEBI shall endeavour to provide its comments on the draft scheme to the stock exchanges within 30 days from the later of the following:</p> <p>(c) date of receipt of ‘observation letter’ or ‘no-objection’ letter from the stock exchanges.</p>		The observation has been captured in the previous slide.

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)	<p>It shall be ensured that trading in securities commences within forty five days of the order of the Hon'ble High Court/ NCLT. Before commencement of trading, the transferee entity shall give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity (is situated, giving following details:</p>	<p>It shall be ensured that steps for listing of specified securities are completed and trading in securities commences within sixty days of receipt of the order of the Hon'ble High Court/NCLT, simultaneously on all the stock exchanges where the equity shares of the listed entity (or transfer entity) are/were listed.</p>	<p>Pursuant to this amendment, the number of days within which the trading of securities shall commence is extended from erstwhile 45 (forty-five) days to 60 (sixty) days of receipt of the order of the Hon'ble High Court/NCLT.</p> <p>Further, SEBI has widened and enhanced the list of requisite information/disclosures that are required to be disclosed in the form of information document on the website of the stock exchange and an advertisement in the prescribed newspaper.</p>

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)	<ul style="list-style-type: none"> a) Name and address of its registered office; b) Details of change of name and/or object clause; c) Capital structure – pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value); d) Shareholding pattern giving details of its promoter group shareholding, group companies; e) Names of its ten largest shareholders – number and percentage of shares held by each of them, their interest, if any; 	<p>Before commencement of trading, the transferee entity in addition to disclosing the information in the form of an information document on the website of the stock exchange/s shall also give an advertisement in one English and one Hindi newspaper with nationwide circulation and one regional newspaper with wide circulation at the place where the registered office of the transferee entity is situated, giving following details:”</p>	<p>These comprehensive disclosures would provide better clarity about the company seeking listing pursuant to scheme of arrangement.</p>

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)	<p>f) Details of its promoters – educational qualifications, experience, address;</p> <p>g) Business and its management;</p> <p>h) Reason for the amalgamation;</p> <p>i) Financial statements for the previous three years prior to the date of listing;</p> <p>j) Latest audited financial statements along with notes to accounts and any audit qualifications. Change in accounting policies in the last three years and their effect on profits and reserves (Financial statements should not be later than six months prior to the date of listing);</p>	<p>a) Name of the Company;</p> <p>b) Address of Registered Office and Corporate Office of Company;</p> <p>c) Details of change of name and/or object clause;</p> <p>d) Capital structure – pre and post scheme of amalgamation. This shall provide details of the authorized, issued, subscribed and paid up capital (Number of instruments, description, and aggregate nominal value);</p>	

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)	<p>k) Details of its other group companies including their capital structure and financial statements;</p> <p>l) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies;</p> <p>m) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years;</p> <p>n) Any material development after the date of the balance sheet; and</p> <p>o) Such other information as may be specified by the Board from time to time.</p>	<p>e) Shareholding pattern giving details of its promoter group shareholding, group companies – pre and post scheme of amalgamation;</p> <p>f) Names of its ten largest shareholders – number and percentage of shares held by each of them, their interest, if any;</p> <p>g) Name and details of Promoters – educational qualifications, experience, address;</p> <p>h) Name and details of board of directors (experience including current / past position held in other firms); business model / business overview and strategy;</p>	

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)		<ul style="list-style-type: none"> i) Business model / business overview and strategy; j) Reason for the amalgamation; k) Restated audited financials for the previous three financial years prior to the date of listing; l) Latest restated audited financials along with notes to accounts and any audit qualifications. (Financial statements should not be later than six months prior to the date of listing); m) Change in accounting policies in the last three years and their effect on profits and reserves; n) Summary table of contingent liabilities as disclosed in the restated financial statements; o) Summary table of related party transactions in last 3 years as disclosed in the restated financial statements; p) Details of its other group companies including their capital structure and financial statements; 	

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III A (5)		<ul style="list-style-type: none"> q) Internal risk factors (Minimum 5 and Maximum 10); Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies; r) Outstanding litigations and defaults of the transferee entity, promoters, directors or any of the group companies; s) Regulatory action, if any – disciplinary action taken by SEBI or stock exchanges against the Promoters in last 5 financial years; t) Brief details of outstanding criminal proceedings against the promoters; u) Particulars of high, low and average prices of the shares of the listed transferor entity during the preceding three years; v) Any material development after the date of the balance sheet; and w) Such other information as may be specified by SEBI from time to time. 	

Securities Law (Contd...)

Para No.	Old Provisions of Circular 1 dated March 10, 2017.	New Provisions of Circular dated November 03, 2020	Observations
III (B)	Application by a listed entity for listing of equity shares with differential rights as to dividend, voting or otherwise:	Para III B of Annexure I to the circular shall stand repealed.	<p>Circular 1 provided that a listed entity desirous of listing of its equity shares with differential rights as to dividend, voting or otherwise, without making an initial public offer of such equity shares, may make an application to SEBI under sub-rule (7) of rule 19 of the SCRR seeking relaxation from strict enforcement of clause (b) to sub-rule (2) of rule 19 thereof, subject to complying of certain conditions stated therein.</p> <p>This Circular has repealed the relevant provisions dealing with such relaxation requirements.</p>

Securities Law (Contd...)

- **Link of the Circular - 1.**

https://www.sebi.gov.in/legal/circulars/mar-2017/circular-on-schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_34352.html

- **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48064.html

Insolvency And Bankruptcy Code

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – guidelines on Insolvency Professionals (“IP”) to act as Interim Resolution Professionals (“IRP”), Liquidators, Resolution Professionals (“RP”) sand Bankruptcy Trustees (“BT”) (Recommendation) (Second) Guidelines, 2020, dated November 23, 2020 (“Guidelines”).**
 - These Guidelines have been issued in supersession of the earlier guidelines viz. Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendation) Guidelines, 2020, issued on June 2, 2020. These Guidelines shall come into effect for appointments as IRP, Liquidator, RP and BT with effect from January 1, 2021.
 - The IBBI *vide* the Guidelines provides for the following:
 - ✓ Zone wise panel of IPs will be formed and shall be valid for 6(six) months, after which a new panel will be formed;
 - ✓ Inclusion of IPs in the panel per the eligibility criteria provided therein;
 - ✓ Expression of interest to be received from the IPs by IBBI;
 - ✓ Scoring of IPs basis their on-going assignments; and
 - ✓ Obligations of the IPs in the panel.

Insolvency And Bankruptcy Code (Contd...)

- Link of the Guidelines.

<https://ibbi.gov.in/uploads/legalframework/18c79bb7deb50c0ab7d0a195f155ff82.pdf>

Insolvency And Bankruptcy Code (Contd...)

❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG065 on Insolvency and Bankruptcy Board of India (“IBBI”) (Information Utilities) (Amendment) Regulations, 2020, dated November 13, 2020 (“Notification”).**

▪ The IBBI *vide* the Notification has further amended the IBBI (Information Utilities) Regulations, 2017 (“**Principal Regulations**”), which shall come into force from date of its publication on the official gazette, i.e. November 13, 2020.

▪ In Principal Regulations,

✓ after regulation 2(1)(d), the following regulation shall be inserted viz.-

(da) “financial information” means any public announcement made under the Code, for the purposes of sub-clause (f) of clause (13) of section 3;

Impact - Accordingly, “public announcement” has been brought under the ambit of the definition of “financial information”.

✓ after regulation 21, the following regulation shall be inserted viz.-

21A. Dissemination of public announcement.

Insolvency And Bankruptcy Code (Contd...)

“An information utility shall disseminate every public announcement it receives or has access to, on the date of its receipt or access, as the case may be, to its registered users, who are creditors of the corporate debtor undergoing insolvency proceeding under the Code.”

Impact - Accordingly, the information utility is entrusted the responsibility of disseminating the public announcement as aforesaid for greater appraisal of the creditors in respect of a particular corporate debtor under the insolvency process.

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/8191e81d94683a4f39467229de560ec8.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG 066 on Insolvency and Bankruptcy Board of India (“IBBI”) (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020 (“Amendment Regulations”), dated November 13, 2020 (“Notification”).**
- The IBBI *vide* the Notification has further amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“Principal Regulations”), which shall come into force from date of its publication on the official gazette, i.e. November 13, 2020.
- In Principal Regulations,
 - ✓ after regulation 2, the following regulation shall be inserted viz.-

2A. Record or evidence of default by financial creditor.

“For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-

- (a) certified copy of entries in the relevant account in the bankers’ book as defined in clause (3) of section 2 of the Bankers’ Books Evidence Act, 1891 (18 of 1891);***
- (b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.”***

Insolvency And Bankruptcy Code (Contd...)

Impact – The insertion provides that for the purpose of regulation 7(3)(a) (which lays down procedure *wrt* initiation of corporate insolvency resolution process by financial creditor), the financial creditor can submit any of the aforesaid documents to establish the default in addition what has already been prescribed in the Principal Regulations. This will provide larger means for the creditors to press their claims against the corporate debtors.

- ✓ after regulation 13(2)(c) (regulation 13 – verification of claims), the following regulation shall be inserted viz.-

“(ca) filed on the electronic platform of the Board for dissemination on its website

Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.”

Impact – The Notification specifies that the list of creditors of a particular corporate debtor shall be filed on the electronic platform of the IBBI for dissemination on its website and this shall be applicable to every corporate insolvency resolution process ongoing and commencing on or after the Amendment Regulations.

Insolvency And Bankruptcy Code (Contd...)

- ✓ after regulation 39(5) (regulation 39 – approval of resolution plan), the following regulation shall be inserted viz.-

“(5A) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020.”

Impact – The aforesaid disclosure of the methodology of arriving at calculation for paying off debts by the corporate debtor, will help each stakeholder understand how their dues have been arrived at under the resolution plan approved by the adjudicating authority and this development shall be applicable to every corporate insolvency resolution process ongoing and commencing on or after the Amendment Regulations.

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/202c20a1bf2d6bd49de67265b1436e3e.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2020-21/GN/REG067 on Insolvency and Bankruptcy Board of India (“IBBI”) (Liquidation Process) (Fourth Amendment) Regulations, 2020, dated November 13, 2020 (“Notification”).
- The IBBI *vide* the Notification has further amended the IBBI (Liquidation Process) Regulations, 2016 (“**Principal Regulations**”), which shall come into force from its publication in the official gazette, i.e. November 13, 2020.
- In Principal Regulations,
 - ✓ after regulation 30 (verification of claims), the following regulation shall be inserted viz.-

“30A. Transfer of debt due to creditors.

(1) A creditor may assign or transfer the debt due to him or it to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer.

(2) Where any creditor assigns or transfers the debt due to him or it to any other person under sub-regulation (1), both parties shall provide to the liquidator the terms of such assignment or transfer and the identity of the assignee or transferee.

(3) The liquidator shall modify the list of stakeholders in accordance with the provisions of regulation 31.”

Insolvency And Bankruptcy Code (Contd...)

Impact - The insertion of regulation 30A aims to allow creditors to assign or transfer the debt due to them to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer and the liquidator shall modify the list of stakeholders per regulation 31 (list of stakeholders). This allows greater amount of flexibility to creditors to liquidate their interests in the corporate debtors.

- ✓ after regulation 37 (realization of security interest by secured creditor), the following regulation shall be inserted viz.-

37A. Assignment of not readily realisable assets.

“A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation — For the purposes of this sub-regulation, —not readily realisable asset means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.”

Insolvency And Bankruptcy Code (Contd...)

Impact - The said insertion allows the resolution professional to maximize value of the assets of the corporate debtor to ensure maximum recovery of dues by the creditors of such corporate debtor.

- ✓ In regulation 38(1) (regulation 38 - distribution of unsold assets) for the words —cannot be readily or advantageously sold, the words — "could not be sold, assigned or transferred shall be substituted."

The substitution provides that the liquidator may, with the permission of the adjudicating authority, distribute to the shareholder, such an asset that could not be sold, assigned or transferred due to its peculiar nature or other special circumstances. The amendment is inserted to sync the provisions of the same with regulation 37A as provided above.

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/fef690303fb44f8a748f0a10852dbda6.pdf>

Deets / Disclaimer

❑ Deets.

Legalite Advisors LLP | LLPIN : AAJ 8514 | E-mail : la.mumbai@legalite.co.in | Corporate office: 503, 5th Floor, Shree Prasad House, opposite Makani Centre, Khar West 400050 | 📞: +91 9769022955/ +91 8454846257.

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Thank You



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