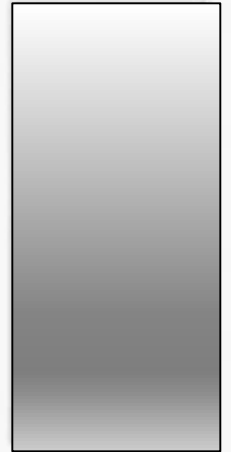


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR JULY, 2021



Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – general circular no. 13/2021 on clarification on spending of corporate social responsibility (“CSR”) funds for COVID-19 vaccination-reg, dated July 30, 2021 (“Circular”) in continuation to the general circular no. 10/20 dated March 23, 2020 (“Circular-I”).**
 - The MCA, *vide* Circular-I had clarified that spending of CSR funds for COVID-19 would qualify as a CSR activity. Now, to further encourage the companies to indulge into and promote social health during this unprecedented COVID-19 pandemic, the MCA *vide* this Circular has clarified that the spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013, which prescribes for promotion of health care including preventive health care and item no. (xii) of the said Schedule viz. relating to disaster management.
 - The aforesaid activities may be undertaken by the companies subject to the fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued from time to time by the MCA.
 - This will encourage the companies to provide vaccination programs to the society at large.
 - **Link of the Circular.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzEwMTU=&docCategory=Circulars&type=open>

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 2904 (E) on the commencement notification dated July 22, 2021 (“Notification”).**
 - The MCA, *vide* the Notification has appointed September 01, 2021 as the date on which the provisions of section 4 of the Companies (Amendment) Act, 2020 (which amends section 16 of the Companies Act, 2013 which talks about rectification of the name of the company) shall come into force.
 - **Link of the Notification.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzEwMTc=&docCategory=Notifiations&type=open>

Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 503 (E) on the Companies (Incorporation) Fifth Amendment Rules, 2021 dated July 22, 2021 (“Notification”).**
 - The MCA, *vide* the Notification has introduced the Companies (Incorporation) Fifth Amendment Rules, 2021 (“**Amendment Rules**”) to further amend the Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force from September 01, 2021.
 - After the Rule 33 of the Principal Rules, Rule 33A viz. ‘**Allotment of a new name to the existing company under section 16 (3) of the Companies Act, 2013 (“Act”)**’ has been inserted which *inter alia* states as under:
 - ✓ If a company fails to change its name whether new or old, as the case may be, as per the direction issued under section 16(1) of the Act (Rectification of name of the company), within a period of 3 (three) months thereof, the letters ‘ORDNC’ (an abbreviation of the words ‘Order of Regional Director Not Complied’), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company.
 - ✓ The Registrar shall make an entry of the new name in the registrar of companies and shall issue a fresh certificate of incorporation in Form No. INC-11C.
 - ✓ This is to encourage companies to act promptly on the directions given by the Government to rectify its name under section 16(1) of the Act.

Companies Act (Contd...)

- The proviso to the rule 33A(1) states that the provisions of the sub-rule (1) shall not apply in case e-form INC-24 (Application for approval of Central Government for change of name) filed by the company is pending for disposal at the expiry of 3 (three) months from the date of issue of direction by Government, unless the said e-form is subsequently rejected. Thus giving a leeway to such companies from following the direction for rectification of name who have already applied the same.
- Further, a company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of section 12 (Registered office of the company) of the Act and the statement, 'Order of Regional Director Not Complied' (under section 16 of the Act) shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved. Provided, that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.
- A new form i.e. Form No. INC-11C (Certificate of Incorporation pursuant to change of name due to Order of Regional Director not being complied) shall be appended in the annexure after Form No.INC-11B
- **Link of the Notification.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjgxNzA=&docCategory=Notifications&type=open>

Securities Law

- ❑ **The Securities and Exchange Board of India (“SEBI”) - circular no. SEBI/HO/CFD/CMD1/P/CIR/2021/602 on holding of annual general meeting (“AGM”) by top 100 (Hundred) listed entities by market capitalisation dated July 23, 2021 (“Circular”).**
 - SEBI, *vide* the Circular, has extended the timelines for conducting an AGM by top 100 (Hundred) listed entities by market capitalization, amid the severe COVID-19 crisis in the country i.e. from - within a period of 5 (five) months from the date of closing of the financial year as per Regulation 44(5) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 to within a period of 6 (six) months from the date of closing of the financial year. Thus SEBI has given an extension of 1 (one) month for the top 100 (Hundred) listed entities by market capitalization.
 - This Circular shall come into force with immediate effect i.e. July 23, 2021.
 - **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/jul-2021/extension-of-time-for-holding-the-annual-general-meeting-agm-by-top-100-listed-entities-by-market-capitalization_51318.html

Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. RBI/2021-2022/67 FIDD. MSME & NFS.BC.No.13/06.02.31/2021-22 on new definition of Micro, Small and Medium Enterprises - Addition of Retail and Wholesale Trade dated July 07, 2021 (“Circular”).**
 - The RBI, in the Circular, has drawn a reference to the circular FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21 dated July 2, 2020 on ‘Credit flow to Micro, Small and Medium Enterprises Sector’, and circular - FIDD.MSME & NFS.BC.No.4/06.02.31/2020-21 dated August 21, 2020, on ‘New Definition of Micro, Small and Medium Enterprises- clarifications’
 - Further, the RBI *vide* the Circular has drawn attention to the Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021 rolled out by the Ministry of Micro, Small and Medium Enterprises to include retail and wholesale trade as micro, small and medium enterprises (“**MSME**”) for the limited purpose of priority sector lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them.

45	Wholesale and retail trade and repair of motor vehicles and motorcycles
46	Wholesale trade except of motor vehicles and motorcycles
47	Retail trade except of motor vehicles and motorcycles

Reserve Bank of India (Contd...)

- The enterprises having Udyog Aadhaar Memorandum under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.
- This inclusion in criteria of MSMEs, will now help retail and wholesale trade benefit from priority sector lending under RBI guidelines.
- **Link of the Circular.**
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12126&Mode=0>

Insolvency And Bankruptcy Code

- **The Insolvency and Bankruptcy Code (Amendment) Bill, 2021 (“Bill”), introduced in the Lok Sabha on July 26, 2021 to replace the IBC Amendment Ordinance promulgated by the President on April 04, 2021. (“Ordinance”).**
 - The Bill was introduced by the Hon’ble Finance Minister in the Lok Sabha on July 26, 2021 to be called as the Insolvency and Bankruptcy Code (Amendment) Act, 2021 and to be effective from April 04, 2021.
 - The Bill seeks to replace the Ordinance which was originally promulgated by the President on April 04, 2021, primarily focusing on pre-packaged insolvency resolution process for corporate debtors under the MSME Development Act, 2006, which shall ensure quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs.
 - Since the an Ordinance needs to be moved as a bill to be adopted by both houses of the Parliament of India to be called recognized as an act, the said Bill has been moved to replace the Ordinance but the same will have a retrospective effect to safeguard the actions taken by the stakeholders under the regime of the Ordinance.
 - **Our analysis on the Ordinance can be accessed at the following link.**
https://legalite.co.in/wp-content/uploads/2021/06/LA-monthly-updates_April-2021.pdf

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2021 22/GN/REG077 on amendment to IBBI (Insolvency Professionals) Regulations, 2016 (“Regulations”) by introduction of IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2021 (“Amendment Regulations”), dated July 22, 2021 (“Notification”).**
- The Notification, effective upon publication in the official gazette i.e. July 22, 2021 alters Regulations to provide as under:
 - ✓ Amendment to regulation 5(c)(iii) of the Regulations which states that, for an individual (who is not a company secretary or chartered accountant or a cost accountant or an advocate registered with Bar Council) to be eligible for registration as an insolvency professional, experience in one of the following fields is mandatory:
 - 10 (Ten) years in the field of law, after receiving a Bachelor’s degree in law;
 - 10 (Ten) years in management, after receiving a master’s degree in management or 2 (Two) - year full time post graduate diploma in management; or
 - 15 (Fifteen) years in management, after receiving a bachelor’s degree.
 - ✓ Prior to the amendment, an individual had only one option to apply for registration as insolvency professional i.e. 15 (Fifteen) years of experience in management, after receiving a Bachelor’s degree from a university established. Thus, this will encourage more persons having experience in different streams to apply.

Insolvency And Bankruptcy Code (Contd...)

- ✓ Explanations and illustrations have been added after regulation 5(iv) of the Regulations to give clarity around the reckoning of experience under various fields as stated above.
- ✓ Regulation 9 (Registration of an individual as insolvency professional for a limited period) has been omitted.
- ✓ Amendments have been made to regulation 12 of the Regulations (Recognition of Insolvency Professional Entities (“IPE”)) to specify that:
 - For recognition of IPE, majority of the equity shares should be held by insolvency professionals, who are its directors, in case it is a company. Earlier, the requirement was to merely hold “shares” and not “equity shares.”
 - IPE registered before commencement of the Amendment Regulations shall adhere to the networth and shareholding requirements as stated in clause (ii) and (iii) of regulation 12 of the Regulations shall be met by December 31, 2021.
 - Networth for an IPE who is a company has been linked to the definition under Companies Act, 2013 and for the IPE being a registered partnership firm or limited liability partnership – networth shall refer to - sum of partners’ contribution in the capital account and their undistributed profits net of accumulated losses, if any.

Insolvency And Bankruptcy Code (Contd...)

- Sub-regulations 3 and 4 have been added to prescribe duties of the IBBI while dealing with the application made by the IPE for recognition and time period within which the same is to be disposed off, i.e. within 7 (Seven) days, unless there are further details required.
- ✓ Regulation 13(1) of the Regulations specify that the IBBI needs to either grant the certificate to the IPE within 60 (Sixty) days of the (excluding the time taken to receive additional information/documents) or intimate the IPE that the recognition ought not be granted, along with reasons thereof and provide the applicant an opportunity to submit its explanation within 15 (Fifteen) days of the receipt of the communication from the IBBI, to enable it to form a final opinion. **Earlier, the said provision only specified regarding giving of certificate in form D in the second schedule to the Regulations to the IPE.**
- ✓ Regulation 13(2)(b) and 13(2)(c) have been amended to extend timeline of intimating the IBBI regarding cessation or joining of director of partner in the IPE as the case may be, from 7 (Seven) days to 30 (Thirty) days.
- ✓ Following clarification has been inserted in regulation 22 of the Regulations:

“Clarification: *An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.”*

Insolvency And Bankruptcy Code (Contd...)

The aforesaid clarification was much needed as the original regulation was vague which merely stated that an insolvency professional shall not accept 'too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.'

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/5c2976ceb203ec0ba390380f747563f6.pdf>

Insolvency And Bankruptcy Code (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2021-22/GN/REG075 on amendment to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (“Regulations”) by introduction of IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021 (“Amendment Regulations”), dated July 14, 2021 (“Notification”).**
- The Notification, effective upon publication in the official gazette i.e. July 14, 2021 alters Regulations to provide as under:
 - ✓ The Amendment Regulations have added the term ‘interim resolution professional’ in various provisions of the Regulations to make an appropriate reference under the said provisions where the corporate debtor has not reached the stage of appointment of a resolution professional.
 - ✓ Regulation 4B has been inserted after Regulation 4A of the Regulations to ensure enhanced transparency:

“Where a corporate debtor has changed its name or registered office address during the period of two years preceding the insolvency commencement date, the interim resolution professional or resolution professional, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed along with the current name and registered office address in every communication, record, proceeding or any other document.”

Insolvency And Bankruptcy Code (Contd...)

- ✓ Regulation 27 of the Regulations (Appointment of Professionals) has been substituted with the following insertion therein:
 - The interim resolution professional or the resolution professional, as the case may be, may appoint any professional (on an arm's length basis following an objective and transparent process), in addition to registered valuers, to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor.
- ✓ Regulation 1B has been added in regulation 40B (Filing of Forms) to prescribe that the resolution professional shall file form CIRP 8, intimating details of his opinion and determination under regulation 35A (Preferential and other transactions), on or before the one 140th day of the insolvency commencement date, provided that the filing of the said form CIRP 8 shall not become due unless a period of 30 days has elapsed from the date of commencement of this Amendment Regulations.
- ✓ Form H (Compliance Certificate by Resolution Professional for fitness of resolution plan approved by committee of creditors) has undergone changes as prescribed in the Amendment Regulations. The said changes relating to reference of entry of regulation 35A of the Regulations, application by the resolution professional with the adjudicating authority within 135th day of the insolvency commencement date and filing of form CIRP 8 with the IBBI within 140th day of the insolvency commencement date.

Insolvency And Bankruptcy Code (Contd...)

- **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/48e2aa83bdcfb902ffb5852fccaac8c1.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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