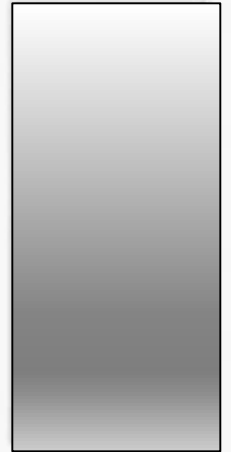


# **LEGALITE** ADVISORS

IMPORTANT LEGAL UPDATES FOR AUGUST, 2021



# Ministry of Law and Justice

- **The Ministry of Law and Justice – Promulgation of the Limited Liability Partnership (Amendment) Act, 2021 (“Amendment Act”) dated August 13, 2021.**
  - The President of India has approved the Amendment Act on August 13, 2021 pursuant to the approval of the Limited Liability Partnership (Amendment) Bill 2021 by both the houses of the Parliament of India.
  - This Amendment Act has, *inter alia*, amended certain definitions in Limited Liability Partnership Act, 2008 (“**Principal Act**”) and has also inserted certain new definitions in the Principal Act viz. small limited liability partnership (“**LLP**”), Registrar, Regional Director. Further the Amendment Act has also decriminalizing certain offences under the Principal Act.
  - The following key amendments have been made in Principal Act *vide* this Amendment Act.
    - ✓ **Introduction of small LLP**– It shall mean an LLP:
      - i. the contribution of which, does not exceed INR 25,00,000 (Indian Rupees Twenty-Five Lakhs) or such higher amount, not exceeding INR 5,00,00,000 (Indian Rupees Five Crores), as may be prescribed; and
      - ii. the turnover of which, as per the statement of accounts and solvency for the immediately preceding financial year, does not exceed INR 40,00,000 (Indian Rupees Forty Lakhs) or such higher amount, not exceeding INR 5,00,00,000 (Indian Rupees Five Crores), as may be prescribed; or

## Ministry of Law and Justice (Contd...)

iii. which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

### ✓ De-criminalization of certain offences:

The Amendment Act decriminalizes certain offenses committed under the Principal Act and imposes a monetary penalty on the violation of those provisions. The Principal Act provides a manner in which the operations of the LLPs shall be carried out and violation shall be punishable with a fine ranging between INR 2,000 (Indian Rupees Two Thousand only) and INR 5,00,000 (Indian Rupees Five Lakhs only). The compliances include:

- Changes in the partners of the LLP;
- Change in the registered office of the LLP;
- Filing of statement of account and solvency, annual return;
- Arrangement between an LLP and its creditors or partners, and reconstruction or amalgamation of an LLP.

### ✓ Change in the name of LLP:

- Under section 17 of the Principal Act, any LLP which fails to comply with the order of the Central Government to change its name within a period of 3 (three) months from the date of the direction of the Central Government shall be punishable with a fine which shall not be less than INR 10,000 (Indian Rupees Ten Thousand only) but which may extend to INR 5,00,000 (Indian Rupees Five Lakhs only) and the designated partner of such LLP such LLP shall be punishable

## Ministry of Law and Justice (Contd...)

with fine which shall not be less than INR 10,000 (Indian Rupees Ten Thousand only) but which may extend to INR 1,00,000 (Indian Rupees One Lakh only) however, *vide* the Amendment Act, the aforesaid fine has been ruled out.

- Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter instead of levying the aforesaid fine on the LLP or its designated partners.

### ✓ **Punishment for fraud by LLP or its partners:**

- As per the sub-section 2 of the Principal Act, when a business is carried out with an intent to defraud the creditors of the LLP or any person or for any fraudulent purpose then, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to 2 (two) years and with fine which shall not be less than INR 50,000 (Indian Rupees Fifty Thousand only) but which may extend to INR 5,00,000 (Indian Rupees Five Lakh only).
- The Amendment Act has increased the term of the imprisonment from a period of 2 (two) years to period of 5 (five) years.

## Ministry of Law and Justice (Contd...)

### ✓ **Non-compliance of order of Tribunal:**

Under the Principal Act non-compliance with an order of the National Company Law Tribunal (“**NCLT**”) is punishable with imprisonment up to 6 (six) months and fine up to INR 50,000 (Indian Rupees Fifty Thousand only). *Vide* the Amendment Act, the aforesaid offence has been removed.

### ✓ **Adjudicating Officer:**

*Vide* the Amendment Act, section 76A has been inserted under which the Central Government may appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers in such manner as may be prescribed. Further, the Central Government shall at the time of the appointment of the Adjudicating Officer also specify the jurisdiction. Further, the power of the Adjudicating Officer to impose penalties on the LLP or its designated partners or the partners of the LLP as well as recourse available to the LLP/designated partners/partners by way of filing an appeal before the Regional Director having jurisdiction in the matter against the order of the Adjudicating Officer has also been provided.

## Ministry of Law and Justice (Contd...)

### ✓ **Compounding of Offences:**

*Vide* the Amendment Act, section 39 of the Principal Act has been substituted. As per section 39 of the Principal Act, Central Government may compound any offence under this Principal Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence. However, as per the Amendment Act a regional director (or any officer above his rank), appointed by the Central Government, may compound such offences. The amount imposed must be within the minimum and maximum fine for the offence. If an offence by an LLP or its partners was compounded, then a similar offence cannot be compounded within a 3 (three) year period.

The Amendment Act further provides an entire procedure for making an application for compounding of offence committed under the Principal Act.

### ✓ **Special Courts:**

*Vide* the Amendment Act, 3 new sections viz., section 67A, section 67B and section 67C have been inserted after section 67 of the Principal Act. The Central Government may for the purpose of providing speedy trial of offences under this Principal Act, establish or designate as many Special Courts as may be necessary for such area or areas, as may be specified in the notification under section 67A. Section 67B specifies powers of a special court and section 67C contains provisions pertaining to appeal and revision.

## Ministry of Law and Justice (Contd...)

### ✓ Appeals to National Company Law Appellate Tribunal (“NCLAT”) :

As per section 72 of the Principal Act, any person aggrieved by the order of NCLT can challenge the order thereof by way of filing an appeal before NCLAT. The Amendment Act provides that an appeal cannot be filed before NCLAT if the order passed by NCLT has been passed with the consent of the parties. The appeals shall be filed within a period of 60 (sixty) days from the date of passing order (extendable by another 60 days) of the order.

### ✓ Accounting standards:

*Vide* this Amendment Act a new section viz., section 34A has been inserted after section 34 of the Principal Act.

As per section 34A, the Central Government may in consultation with the National Financial Reporting Authority prescribe the standards of accounting and prescribe the standards of auditing as recommended by Institute of Chartered Accountants of India, 1949, for a class or classes of LLPs.

### ▪ Link for the Amendment Act.

[https://www.mca.gov.in/content/dam/mca/pdf/llpAct2021\\_19082021.pdf](https://www.mca.gov.in/content/dam/mca/pdf/llpAct2021_19082021.pdf)

# Companies Act

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. GSR 580 (E) on the Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021 (“Amendment Rules”) dated August 19, 2021 (“Notification”).**
  - MCA has *vide* this Notification issued the Amendment Rules to further amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 (“**Principal Rules**”).
  - The Amendment Rules have come into force from the publication thereof in the official gazette, i.e. August 19, 2021.
  - New Rule 6 has been inserted after Rule 5 of the Principal Rules *vide* the Amendment Rules which speaks about the annual report on the capacity building of the independent directors. As per Rule 6, the Institute of Corporate Affairs (“**Institute**”) shall within a period of 60 (sixty) days from the end of every financial year send an annual report to every individual whose name is included in the databank (*an online databank maintained by the Institute which contains name of all the persons willing and eligible to be appointed as independent directors*) and also to every company in which such individual is appointed as an independent director in the a specific format which has been provided in the schedule to the Amendment Rules.
  - The Amendment Rules also specify a schedule which provides a format of the annual report, prescribing the details to be included therein.



## Companies Act (Contd...)

- **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0MTY=&docCategory=Notifications&type=open>

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R 579 (E) on the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 (“Amendment Rules”) dated August 19, 2021 (“Notification”).**
  - MCA has *vide* this Notification issued the Amendment Rules to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Rules**”). *Vide* these Amendment Rules, clause (B) in first proviso (i) in the sub-rule (4) of rule (6) of the Rules has been substituted.
  - The Amendment Rules have come into force from the publication thereof in the official gazette, i.e. August 19, 2021.
  - As per sub-rule (4) of the rule 6 of the Rules, every individual whose name is included in the databank (*an online databank maintained by the Institute of Corporate Affairs which contains name of all the persons willing and eligible to be appointed as independent directors*) shall pass an online proficiency self-assessment test conducted by Institute of Corporate Affairs (“**Institute**”) within a period of 2 (two) years from the date of inclusion of his name in the databank, failing which, his name shall stand removed from the databank of the Institute.
  - However, the first proviso to sub-rule (4) of the Rules provides an exception under which a person shall not be required to pass the online proficiency self-assessment test.

## Companies Act (Contd...)

- The substituted clause (B) in first proviso (i) in the sub-rule (4) of rule (6) of the Principal Rules provides following persons in exempted category:
  - ✓ a person has served for a total period of not less than 3 (three) years as on the date of inclusion of his name in the data bank has served in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling:
    - (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
    - (ii) the affairs related to Government companies or statutory corporations set up under a statute of Parliament or statute of any State and carrying on commercial activities shall not be required to pass the online proficiency self-assessment test within a period of 2 (two) years from the date on which his name was entered in the databank.
- Further, *vide* the Amendment Rules a proviso has been inserted after the second (ii) proviso in the sub-rule (4) of rule (6) of the Principal Rules which specifies that individuals mentioned in the proviso shall not be required to pass the online proficiency self-assessment test if they have been working for at least ten years as:
  - an advocate of a court; or
  - in practice as a chartered accountant; or
  - in practice as a cost accountant; or

## Companies Act (Contd...)

➤ in practice as a company secretary.

- **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0MTU=&docCategory=Notifications&type=open>

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) general circular no. 14/2021 on Frequently Asked Questions (FAQs) on Corporate Social Responsibility (“CSR”) – reg dated August 25.2021 (“Circular”).**
  - MCA has, in supersession of clarifications and FAQs issued *vide* General Circular no. 21/2014 (dated June 18, 2014), 36/2014 (dated September 17, 2014), 01/2016 (dated January 12, 2016), 05/2016 (dated 16th May 2016), clarification issued vide letter dated 25.01.2018 and General Circular no. 06/2018 (dated 28th May 2018) issued this Circular i.e. a list of FAQs along with the response of the Ministry for a better understanding and facilitating effective implementation of CSR.
  - The Circular *inter alia* covers the following:
    - ✓ Applicability of CSR;
    - ✓ CSR Framework;
    - ✓ CSR Expenditure;
    - ✓ CSR Activities;
    - ✓ CSR Implementation;
    - ✓ Ongoing Report;
    - ✓ Treatment of Unspent CSR amount;
    - ✓ CSR Enforcement;
    - ✓ Impact Assessment;
    - ✓ CSR Reporting and Disclosure.

## Companies Act (Contd...)

- **Link of the Circular.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0NzM=&docCategory=Circulars&type=open>

# Securities Law

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/DIL/CIR/P/2021/614 on guidelines on issuance of non-convertible debt instruments along with warrants (‘NCDs with Warrants’) in terms of chapter VI – qualified institutions placement of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, (“Regulations”), dated August 13, 2021 (“Circular”).**
  - Chapter VI of the Regulations governs issuance of NCDs with warrants (“**Issue**”), through Qualified Institutions Placement (“**QIP**”). Regulation 179 of the said Regulations, *inter alia*, provides that, in a QIP of NCDs with warrants, an investor can subscribe to the combined offering of NCDs with warrants or to the individual securities, that is, either non-convertible debt instruments or warrants.
  - The above framework under Regulations, permits the Issue where NCDs and warrants offering can be attached to each other (stapled offer) or offered separately for subscription (segregated offer).
  - SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”), governs issue and listing of non-convertible securities, on a recognized stock exchange and provides for Electronic Book Provider platform (“**EBP platform**”), offering efficient and transparent price discovery mechanism.
  - Accordingly, in order to streamline procedure of issuance and applicability of EBP platform mechanism on the ‘NCDs portion’, the following has been decided and made applicable for issues wherein the size of NCDs portion is above threshold prescribed under NCS Regulations, and circulars issued there under:

## Securities Law (Contd...)

- ✓ EBP platform mechanism shall be mandatory for 'NCDs portion' of the issue (for both stapled and segregated offer) and issuer shall be required to comply with the Listing of Non- Regulations and circulars issued thereunder.
  - ✓ 'Warrants portion' of the Issue shall be in terms of Chapter VI on Qualified Institutions Placement under Regulations.
  - ✓ Of the 'total issue size' of the issue, at least 40% size shall consist of 'Warrants portion'. It may be noted that 'total issue size' shall mean combined size of NCDs issue and the aggregate size of the warrants portion, including the conversion price of warrants.
  - ✓ The segregated offer of NCDs and stapled offer, both shall be exempted from the requirements as prescribed under the regulations 175(3), 179(2) (a), 180(1), and 180(2) of the Regulations (sections that require minimum no. of allottees, minimum % of eligible securities to be allotted to mutual funds etc.).
- 
- **Link of the Circular.**  
<https://www.sebi.gov.in/legal/circulars/aug-2021/guidelines-on-issuance-of-non-convertible-debt-instruments-along-with-warrants-ncds-with-warrants-in-terms-of-chapter-vi-qualified-institutions-placement-of-sebi-issue-of-capital-and-disclosure- 51827.html>



## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2021/40 on Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, (“Employee Benefit Regulations”) dated August 13, 2021 (“Notification”).**
  - SEBI, vide the Notification has promulgated the Employee Benefit Regulations by combining the SEBI (Share Based Employee Benefits) Regulations, 2014 (“SBEB Regulations, 2014”), and the SEBI (Issue of Sweat Equity) Regulations, 2002.
  - The Employee Benefit Regulations now govern all share based employee benefit schemes dealing in securities, including employee stock options, employee share purchase, stock appreciation rights, general employee benefits, retirement benefits and sweat equity.
  - Following are the key highlights of the changes introduced by the Employee Benefit Regulations:
    - ✓ The definition of an employee, (but for purpose relating to sweat equity), has been expanded to include an employee of the company, irrespective of job location, i.e. whether in our outside India and to include employees of group companies, including associate companies.
    - ✓ Extension of time has been provided for appropriation of shares lying with the Trust, which did not have underlying grants. Earlier they were required to be appropriated by the end of subsequent financial year, however, now such unappropriated inventory of shares can be appropriated by the second subsequent financial year, subject to the approval of the compensation committee/nomination and remuneration committee.

## Securities Law (Contd...)

- ✓ By way of a fresh approval of shareholders, companies can change the mode of implementation of the schemes, so as to enable companies implement the schemes directly that are implemented by trusts as of now and vice versa, provided that such a change is not prejudicial to the interest of the employees. However, former approval of the shareholders shall not be required when the change in implementation is to meet any regulatory requirement.
- ✓ The time period of appropriation of the shares lying with the trust, which did not have underlying grants, has been now extended. Earlier, the appropriation was to be made by the subsequent financial year, however, now such unappropriated shares can be appropriated by the second subsequent financial year, subject to the approval of the compensation committee/ nomination and remuneration committee.
- ✓ Immediate vesting of employee stock options and stock appreciation rights (“SARs”) has been provided for in the event of death or permanent incapacity of an employee who has been granted the same and the minimum cliff period of 1 (one) year as regards vesting has been done away with. Further, in case of employee stock purchase scheme, in case of death or permanent incapacity, lock in period of 1 (one) year has been done away with and companies have been advised have an appropriate policy in place with respect to the death or permanent incapacity of an employee, subject to applicable laws, in respect of the above.

## Securities Law (Contd...)

- ✓ In the event of retirement or superannuation, the stock options, SARs, or any other benefits granted to an employee, which have not vested, shall continue to vest in accordance with their respective vesting schedules as per company's policies.
- ✓ In the event that an employee who has been granted benefits under a scheme, is transferred pursuant to a scheme of arrangement, or continues in the existing company, prior to the vesting or exercise, the treatment of options in such case is required to be specified in such scheme of arrangement, provided that such treatment should not be prejudicial to the interest of the employee.
- **Link of the Notification.**  
[https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021\\_51889.html](https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021_51889.html)

## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/CMD/CIR/P/2021/616 on disclosure of shareholding pattern of promoter(s) and promoter group entities under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”), dated August 13, 2021 (“Circular”).**
  - Regulation 31(4) of LODR mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format(s) specified by SEBI, which is currently provided by companies in the manner as has been prescribed under various SEBI circulars in this regard, i.e. circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015 and circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/149 dated December 07, 2018,
  - Currently, the shareholdings of promoter(s) and promoter group entities are collectively disclosed under ‘table II -Statement showing shareholding pattern of the Promoter and Promoter Group’ of the aforementioned circulars. However, in the interest of transparency to the investors, all listed entities shall henceforth provide such **shareholding, segregated into promoter(s) and promoter group.**
  - The revised format of the shareholding pattern is provided in Annexure A to the Circular, link of which is provided below:
  - **Link of the Circular.**  
[https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities\\_51847.html](https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html)

## Securities Law (Contd...)

- ❑ **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/DCR-III/CIR/P/2021/615 on tendering of shares in open offers, buy-back offers and delisting offers by marking lien in the demat account of the shareholders – qualified institutions placement of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, (“Regulations”), dated August 13, 2021 (“Circular”).**
  - Under the existing mechanism, the shares tendered by the shareholders are required to be directly transferred to the account maintained by the clearing corporation and different tendering processes are being adopted by depositories. Such transfer involves systematic risk, substantial time and cost.
  - For the purpose of streamlining the process said process, and after consultation with depositories, clearing corporations and stock exchanges, it has been decided that a lien shall be marked against the shares of the shareholders participating in the tender offers. Upon finalization of the entitlement, only accepted quantity of shares shall be debited from the shareholders’ demat account. The lien marked against unaccepted shares shall be released.
  - The aforesaid measures reduce the systematic risk and risks associated with the movement of securities from demat account of shareholders to clearing corporation account, vice-versa and make the process more investor friendly.

## Securities Law (Contd...)

- Stock exchanges and depositories shall take necessary steps and put in place necessary infrastructure and systems for implementation of the mechanism and ensure compliance with the provisions of this Circular. The said revised mechanism shall be applicable to all the tender offers for which public announcement is made on or after October 15,2021.
- The detailed procedure for tendering and settlement of shares under the revised mechanism is specified in the Annexure to the Circular as provided in the link below. All other procedures shall remain unchanged.
- **Link of the Circular.**  
[https://www.sebi.gov.in/legal/circulars/aug-2021/tendering-of-shares-in-open-offers-buybacks-and-delisting-offers-by-marking-lien-in-the-demat-account-of-the-shareholders\\_51849.html](https://www.sebi.gov.in/legal/circulars/aug-2021/tendering-of-shares-in-open-offers-buybacks-and-delisting-offers-by-marking-lien-in-the-demat-account-of-the-shareholders_51849.html)

## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/DDHS/P/CIR/2021/613 on operational circular for issue and listing of non-convertible securities (“NCS”), securitised debt instruments (“SDI”), security receipts (“SR”), municipal debt securities (“MDS”) and commercial paper (“CP”), dated August 10, 2021 (“Circular”).**
  - SEBI, *vide* notification no. SEBI/LAD-NRO/GN/2021/39 dated August 09, 2021, notified SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”). SEBI, had issued multiple circulars covering procedural and operational aspects thereof *wrt* to regulations pertinent to issue and listing of debt securities and issue and listing of non-convertible redeemable preference shares.
  - The process of merging these regulations into the NCS Regulations also entails consolidation of related existing circulars (“**Annex-1 to the Circular**”) into a single operational circular, with consequent changes. Since this Circular includes detailed chapter-wise stipulations, the circulars listed at Annex-1 to the Circular, link of which is provided below, stand superseded by this Circular.
  - This Circular provides a chapter-wise framework for the issuance, listing and trading of NCS, SDI, SR, MDS and CP.
  - While this Circular covers instruments under the NCS Regulations, certain chapters contain provisions applicable to issue of securities under the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015. This has been accordingly indicated in the chapters.

## Securities Law (Contd...)

- This Circular has come into force with effect from August 16, 2021.
- **Link of the Circular.**  
<https://www.sebi.gov.in/legal/circulars/aug-2021/operational-circular-for-issue-and-listing-of-non-convertible-securities-ncs-secritised-debt-instruments-sdi-security-receipts-sr-municipal-debt-securities-and-commercial-paper-cp-51761.html>



## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/ HO/ FPI&C/ P/CIR/2021/609 on modification in operational guidelines for foreign portfolio investors (“FPIs”) and designated depository participant (“DDPs”) pursuant to amendment in SEBI (FPI) Regulations, 2019, (“Regulations”), dated August 04, 2021 (“Circular”).**
  - Section 9A of the Income Tax Act, 1961 (“**IT Act**”) was introduced by the Finance Act 2015 and subsequently amended *vide* Finance Act 2020 to facilitate setting up of fund management activity in India with respect to offshore funds.
  - In order to enable resident Indian fund managers to benefit from the provisions of Section 9A, regulation 4(c) of the Regulations (eligibility criteria of foreign portfolio investor) was amended *vide* gazette notification no. SEBI.LAD-NRO/GN/2021/32., the explanation provided under Para 2 (ii) (b) of Part A of the operational guidelines for FPIs and DDPs, issued *vide* circular dated November 05, 2019, stands modified as below:
    - *“Explanation: The contribution of resident Indian individuals shall be made through the Liberalised Remittance Scheme (LRS) notified by Reserve Bank of India and shall be in global funds whose Indian exposure is less than 50%.”*

thereby operationalizing the aforementioned amendment to regulation 4(c) to the Regulations.

- **Link of the Circular.**

[https://www.sebi.gov.in/legal/circulars/aug-2021/modification-in-operational-guidelines-for-fpis-and-ddps-pursuant-to-amendment-in-sebi-foreign-portfolio-investors-regulations-2019\\_51628.html](https://www.sebi.gov.in/legal/circulars/aug-2021/modification-in-operational-guidelines-for-fpis-and-ddps-pursuant-to-amendment-in-sebi-foreign-portfolio-investors-regulations-2019_51628.html)

# Reserve Bank of India

- **The Reserve Bank of India (“RBI”) – circular no. DOR.STR.REC.38/21.04.048/2021-22 on Resolution Framework for COVID-19-related Stress – Financial Parameters – Revised timelines for compliance dated August 06, 2021 (“Circular”).**
  - RBI *vide* the Circular, extends timeline for targeted parameters of Resolution Framework for COVID-19 related Stress.
  - Accordingly, the RBI, in the Circular, has referred to [circular DOR.No.BP.BC/13/21.04.048/2020-21 dated September 7, 2020](#) (“**Circular-1**”), *interalia*, advising the key ratios and their sector-specific thresholds to be considered by lending institutions while finalising the resolution plans in respect of eligible borrowers under Part B of the Annex to the Resolution Framework for Covid-19 related stress issued on 6 August 2020.
  - The key ratios consisted of 4 (four) operational ratios, viz., Total Debt / EBITDA, Current Ratio, Debt Service Coverage Ratio (“**DSCR**”) and Average Debt Service Coverage Ratio (“**ADSCR**”), along with the ratio Total Outside Liabilities / Adjusted Tangible Net Worth (“**TOL**”/“**ATNW**”) representing the debt-equity mix of the borrower post implementation of the resolution plan.
  - In view of the resurgence of the Covid-19 pandemic in 2021 and recognising the difficulties it may pose for the borrowers in meeting the operational parameters, it has been decided to defer the target date for meeting the specified thresholds in respect of the four operational parameters, viz. Total Debt / EBIDTA, Current Ratio, DSCR and ADSCR, to October 1, 2022.

## Reserve Bank of India (Contd...)

- The target date for achieving the ratio TOL/ATNW, as crystallised in terms of the resolution plan, shall remain unchanged as March 31, 2022.
- **Link of the Circular.**  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12140&Mode=0>
- **Link of the Circular 1.**  
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11961&Mode=0>

## Reserve Bank of India (Contd...)

- ❑ **The Reserve Bank of India (“RBI”) – notification no. DOR.FIN.REC.No. 41/03.10.136/2021-22 for notification of ‘Financial Institution’ under Section 2(1)(m)(iv) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) dated August 25, 2021 (“Notification”).**
  - The RBI *vide* the Notification of Government of India, has revised the criteria for notification of Housing Finance Companies (“HFCs”) as ‘Financial Institution’.
  - In view of the aforesaid revision, the criteria prescribed under Para 105 of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 for notification of Housing Finance Companies (“HFCs”) as ‘Financial Institution’ under Section 2(1)(m)(iv) of the SARFAESI Act (“**Master Direction**”) are withdrawn with immediate effect.
  - The Master Direction is being modified accordingly.
  - **Link of the Master Direction.**  
[https://rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=12030](https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12030)
  - **Link of the Notification.**  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12151&Mode=0>

# Insolvency And Bankruptcy Code

- ❑ **The Ministry of Law and Justice - The Insolvency And Bankruptcy Code (Amendment) Act, 2021 to further amend the Insolvency and Bankruptcy Code, 2016 (“Principal Code”) dated August 11, 2021 (“Amendment Act”).**
  - The Insolvency and Bankruptcy Code (Amendment) Bill, 2021 (“**Bill**”) has been passed by both the Houses of the Parliament and received the assent of the Hon’ble President of India – Mr. Ram Nath Kovind on August 11, 2021.
  - The Bill has been now published in the Official Gazette on August 11, 2021, as the Amendment Act, having retrospective effect i.e. effective from April 04, 2021.
  - In view of the above, The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (“**Ordinance**”) is repealed with all actions done thereunder being considered to be taken under the provisions of Amendment Act.
  - **Our analysis on the Ordinance which is now called Amendment Act can be accessed at the following link.**

[https://legalite.co.in/wp-content/uploads/2021/06/LA-monthly-updates\\_April-2021.pdf](https://legalite.co.in/wp-content/uploads/2021/06/LA-monthly-updates_April-2021.pdf)

- **Link of the Amendment Act.**

<https://www.ibbi.gov.in/uploads/legalframework/0150ec26cf05f06e66bd82b2ec4f6296.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 IBBI *vide* the Notification has effectuated an amendment in the Income-tax Rules, 1962 (“**Principal Rules**”).
  - In the Principal Rules, after rule 12A, the following rule 12AA (Prescribed person for the purposes of clause (c) and clause (cd) of section 140) has been inserted:
    - *“For the purpose of clause (c) or clause (cd), as the case may be, of section 140, any other person shall be the person, appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the rules and regulations made thereunder.*
    - *Explanation.- For the purposes of Rule 12AA, “Adjudicating Authority” shall have the same meaning as assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”*
  - In the Principal Rules, after rule 51A, the following rule 51B (Appearance by Authorised Representative in certain cases) has been inserted:

## Insolvency And Bankruptcy Code (Contd...)

*“For the purposes of clause (viii) of sub-section (2) of section 288, any other person, in respect of a company or a limited liability partnership, as the case may be, shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the rules and regulations made thereunder.*

- Explanation.-For the purposes of rule 51B “Adjudicating Authority” shall have the same meaning as assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”
- The aforesaid amendment to the Principal Rules, allows resolution professionals appointed by the National Company Law Tribunal (“**NCLT**”) to verify the tax returns of companies undergoing bankruptcy.
- This amendment in the Principal Rules has obligated resolution professional to follow the rules meant for tax return preparers of certain assesses. Authorised representatives who prepare tax returns for assesses are required to furnish details of the documents given by the assessee for preparation of the return as well as details of the scope and findings of any examination the representative has done on such documents. However, pursuant to Amendment Rules, in the case of a company undergoing bankruptcy proceedings, it allows the resolution professional to furnish such information.
- The amendment is expected to help the insolvency resolution process by clarifying the role of the resolution professional under the Income Tax Act, 1961.

# Insolvency And Bankruptcy Code (Contd...)

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/legalframework/6b5b7a955a8478b086453692772de95d.pdf>



## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



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