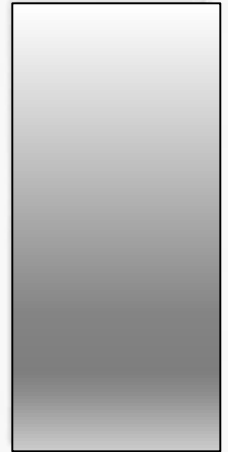


# **LEGALITE** ADVISORS

IMPORTANT LEGAL UPDATES FOR OCTOBER, 2021



# Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 17/2021-Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 (CFS), AOC-4, AOC-4 (XBRL) AOC-4 Non-XBRL and MGT-7/MGT-7A for the financial year ended on 31.03.2021 under the Companies Act, 2013 dated October 29, 2021 (“Circular”).**
  - The MCA has, *vide* the Circular, decided that no additional fees shall be levied up to December 31, 2021 for the filing of e-forms **AOC-4, AOC-4 (CFS), AOC-4 (XBRL) AOC-4 Non-XBRL and MGT-7/MGT-7A** in respect of the financial year ended on 31.03.2021 and only normal fees shall be payable for the filing of the aforementioned e-forms.
  - The aforesaid has been done keeping in view the challenges faced by the LLPs due to the unprecedented circumstances arising due to COVID-19.
  - **Link of the Circular.**  
<https://mca.gov.in/bin/ebook/dms/getdocument?doc=NDA5MDk=&docCategory=Circulars&type=open>

# Ministry of Corporate Affairs

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 16/2021- Relaxations in paying additional fees in case of delay in filing Form 8 (the Statement of Account and Solvency) by Limited Liability Partnerships (LLP) up to 30<sup>th</sup> December, 2021, dated October 26, 2021 (“Circular”).**
  - The MCA has, *vide* the Circular, allowed the LLPs to file Form 8 (the Statement of Account and Solvency) for the Financial Year 2020-2021 without paying additional fees up to December 30, 2021.
  - The aforesaid has been done keeping in view the challenges faced by the LLPs due to the unprecedented circumstances arising due to COVID-19 and to promote ease for Micro, Medium and Small Enterprises conducting their business through LLP structure.
  - **Link of the Circular.**  
<https://mca.gov.in/bin/ebook/dms/getdocument?doc=NDA4OTM=&docCategory=Circulars&type=open>

# Securities Law

- The Securities and Exchange Board of India (“SEBI”) – notification number SEBI/LAD-NRO/GN/2021/52 on Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2021 (“Amendment Regulations”) as an amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“Regulations”), dated October 26, 2021 (“Notification”).
- The Amendment Regulations, effective from October 26, 2021, proposes the following changes in regulation 6 of the Regulations:
  - ✓ In sub-regulation (3), clause (ii) and the Explanation shall be substituted with the following, namely –

“(ii) the net worth of the SR shareholder, as determined by a Registered Valuer, shall not be more than INR 1,000 Crores.

Explanation: While determining the individual networth of the SR shareholder, its investment/ shareholding in other listed companies shall be considered but not that of its shareholding in the issuer company.”

This implies that a person holding SR shares (*meaning equity shares of an issuer company having superior voting rights compared to all other equity shares issued by that issuer*) i.e. **SR shareholder** shall have net worth, as determined by a registered valuer, not exceeding INR 1,000 crores.

## Securities Law (Contd...)

- ✓ In sub-regulation (3), clause (v) shall be substituted with the following, namely,-

“(v) the SR equity shares have been issued prior to the filing of draft red herring prospectus (“**DRHP**”) and held for a period of at least three months prior to the filing of the red herring prospectus (“**RHP**”);”

Thereby implying that the SR equity shares should, both, be issued prior to filing of DRHP and should be held prior to filing of RHP.

- **Link of the Notification:**

[https://www.sebi.gov.in/legal/regulations/oct-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2021\\_53516.html](https://www.sebi.gov.in/legal/regulations/oct-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2021_53516.html)

## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular number SEBI/HO/CFD/DIL2/CIR/P/2021/633 on relaxations relating to procedural matters with reference to issuances and listing of securities, dated October 01, 2021 (“Circular”).**
- SEBI, *vide* various circulars, has granted relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to rights issue since its circular dated May 06, 2020 (“**Circular I**”), issued in this regard. To ease and facilitate investors, the relaxation mentioned in point (iv) Circular I, stands further extended and shall be applicable for rights issues opening upto March 31, 2022, provided that the issuer along with the lead manager(s) shall continue to comply with point (v) of Circular I, link of which is appended below.
- With respect to mechanism and compliance requirements in point (iv) and (v) of Circular I and para 5 of the said SEBI circular dated April 22, 2021, the issuer along with lead manager(s), registrar, and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:
  - ✓ issuer company shall conduct a vulnerability test for optional mechanism (non-cash mode only) provided to accept the applications in rights issue (facility provided by RTA), from an independent it auditor, and submit the report to stock exchange(s).

## Securities Law (Contd...)

- **Link of the Circular.**

[https://www.sebi.gov.in/legal/circulars/oct-2021/relaxations-relating-to-procedural-matters-issues-and-listing\\_53083.html](https://www.sebi.gov.in/legal/circulars/oct-2021/relaxations-relating-to-procedural-matters-issues-and-listing_53083.html)

- **Link of the Circular I.**

[https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing\\_46652.html](https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html)

# Reserve Bank of India

- **The Reserve Bank of India (“RBI”) circular no. DOR.CRE.REC.No.60/03.10.001/2021-22 on ‘Scale Based Regulation (“SBR”): A Revised Regulatory Framework for NBFCs’, dated October 22, 2021 (“Circular”).**
  - Pursuant to the announcement made in the [Statement on Developmental and Regulatory Policies dated December 04, 2020](#), a discussion paper titled ‘[Revised Regulatory Framework for NBFCs - A Scale-based Approach](#)’ was issued for public comments on January 22, 2021. Based on the inputs received, the RBI has now decided to put in place a revised regulatory framework for NBFCs (a self explanatory framework providing for scale based classification of the NBFCs is annexed to the Circular).
  - As the SBR framework encompasses different facets of regulation of NBFCs covering capital requirements, governance standards, prudential regulation, etc., the RBI has decided to first issue an integrated regulatory framework for NBFCs under SBR providing a holistic view of the SBR structure, set of fresh regulations being introduced and respective timelines and the detailed guidelines as delineated in the annexure to the Circular, is proposed to be issued subsequently.
  - These guidelines shall be effective from October 01, 2022. The instructions relating to ceiling on IPO funding given vide para 3.1(d) of the annexure to the Circular shall come into effect from April 01, 2022.
  - **Link of the Circular**  
[https://www.rbi.org.in/scripts/FS\\_Notification.aspx?Id=12179&fn=14&Mode=0#AN1](https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=12179&fn=14&Mode=0#AN1)



# Insolvency and Bankruptcy Code

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2021-22/GN/REG078 on IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021, dated September 30, 2021 (“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 on the date of its publication in the Official Gazette i.e. w.e.f. September 30, 2021.
- The amendment is brought under regulation 17 of the Principal Regulations which deals with constitution of committee in which the committee and members of the committee shall discharge functions and exercise powers under the Insolvency and Bankruptcy Code, 2016 and these regulations in respect of corporate insolvency resolution process in compliance with the guidelines as may be issued by the IBBI.
- As regulation 36A of the Principal Regulations, which deals with invitation for expression of interest the following amendment has been made:

*Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made:*

*Provided that such modification shall not be made more than once.*

# Insolvency and Bankruptcy Code (Contd...)

- Further under regulation 39(1A) and 39(1B) of the Principal Regulations:
  - ✓ the resolution professional may, if envisaged in the request for a resolution plan, allow modification of the resolution plan received under sub-regulation (1), but not more than once; or use a challenge mechanism to enable resolution applicants to improve their plans.
  - ✓ the committee shall not consider any resolution plan received after the time as specified by the committee under regulation 36B of the Principal Regulations; or received from a person who does not appear in the final list of prospective resolution applicants, or does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1).
- **Link of the Notification**  
<https://www.ibbi.gov.in/uploads/legalframwork/57c7722e3ebb1364eac924f213111814.pdf>

# Insolvency and Bankruptcy Code (Contd...)

- **Insolvency and Bankruptcy Board of India (“IBBI”) – notification no. IBBI/2021-22/GN/REG079 on IBBI (Liquidation Process) (Second Amendment) Regulations, 2021, dated September 30, 2021 (“Notification”).**
- The IBBI, *vide* the Notification, has further amended the IBBI (Liquidation Process) Regulations, 2016 (“**Principal Regulations**”) which shall come into force on the date of its publication in the Official Gazette i.e. w.e.f. September 30, 2021.
- The major highlights of the Notification are as under:
  - ✓ The liquidator has been empowered with greater autonomy during liquidation process, comparable to the resolution professional during corporate insolvency resolution process. The participation of stakeholders is not much elaborated in the Insolvency and Bankruptcy Code, 2016. The liquidation regulations provide for a consultation committee known as stakeholders’ consultation committee (“**SCC**”), which has representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder/partners to advise the liquidator on matters relating to sale. Though the advice of this committee is not binding on the liquidator, consultation process on important issues, addresses the issue related to information asymmetry and therefore ensures an effective participation of stakeholders.
  - ✓ The amendment expands the scope of consultation to cover all aspects related to sale of assets and appointment of professionals. The amendment regulations also provide for manner of selection of representatives of stakeholders in SCC.

# Insolvency and Bankruptcy Code (Contd...)

- ✓ The participation of large number of buyers in the process is key to better realization of value for the stakeholders. Keeping this in view the amendment regulations provide that Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction. It also provides that the earnest money deposit shall not exceed ten percent of the reserve price in an auction. Also, with a view to improve visibility for the liquidation assets, the IBBI has made available an electronic platform at <http://www.ibbi.gov.in> for hosting public notices of auctions of liquidation assets of ongoing liquidation processes.
- ✓ Further, to enhance the transparency and accountability, the amendment regulations provide for the Liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and report the same in the next progress report.

- **Link of the Notification**

<https://www.ibbi.gov.in/uploads/legalframework/dd230e9f5c38a981e646a3eba1354713.pdf>

## Deets / Disclaimer

### ❑ Deets.

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### ❑ Disclaimer.

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**Thank You**



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