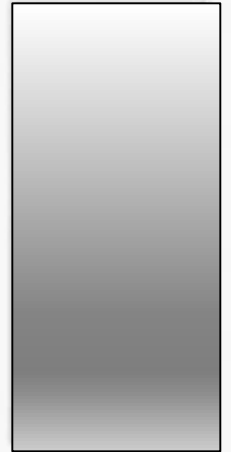


# **LEGALITE** ADVISORS

IMPORTANT LEGAL UPDATES FOR NOVEMBER, 2021



# Ministry of Corporate Affairs

- **The Ministry of Corporate Affairs (“MCA”) –G.S.R. 785 (E)-The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021 dated November 09, 2021 (“Notification”) read with MCA G.S.R 791 (Corrigendum) dated November 12, 2021 (“Corrigendum”)**
  - The MCA has issued this Notification to further amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“**Rules**”). *Vide* this Notification an attempt has been made to ease out the claim settlement processes covered under the Rules. Further, *vide* this Notification, the MCA has also introduced certain amendments in the form no. IEPF-5.
  - **Link of the Notification.**  
<https://mca.gov.in/bin/ebook/dms/getdocument?doc=NDA4OTM=&docCategory=Circulars&type=open>
  - **Link of the Corrigendum**  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDEwMDc=&docCategory=Notifications&type=open>

# Securities Law

□ The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/DIL1/P/CIR/2021/0660 on Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”), dated November 23, 2021 (“Circular”).

- SEBI *vide* the Circular has made amendment in circular no. SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated August 19, 2019, (“**Circular 1**”) specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provisions of the ICDR Regulations.
- Accordingly, the following amendment has been made:

**Paragraph 9A has been inserted after para 9, namely:**

***“9A. The Stock Exchanges may deviate from the provisions of the circular, wherever the interest of the investors are not adversely affected, if found necessary, only after recording reasons in writing.”***

- **Link of the Circular**

[https://www.sebi.gov.in/legal/circulars/nov-2021/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018\\_54130.html](https://www.sebi.gov.in/legal/circulars/nov-2021/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018_54130.html)

- **Link of the Circular 1**

<https://www.sebi.gov.in/legal/circulars/aug-2019/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-icdr-regulations-43941.html>

## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662 on Disclosure obligations of listed entities in relation to Related Party Transactions, dated November 22, 2021 (“Circular”).**
  - SEBI *vide* the Circular has prescribed the information that is required to be placed before the audit committee and the shareholders to reinforce and monitoring of Related Party Transactions (“RPTs”) for better governance practices. This Circular shall come into force with effect from April 1, 2022.
  - ✓ **The listed entity shall provide the information, for review of the audit committee for approval of a proposed RPT like –.**
    - Type, material terms and particulars of the proposed transaction;
    - Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
    - Tenure of the proposed transaction (particular tenure shall be specified);
    - Value of the proposed transaction;

## Securities Law (Contd...)

- The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);
- If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
  - details of the source of funds in connection with the proposed transaction;
  - where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments,
    - ❖ nature of indebtedness;
    - ❖ cost of funds; and
    - ❖ tenure;
  - applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and
  - the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.

## Securities Law (Contd...)

- The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis. The listed entity shall make RPT disclosures every 6 (six) months in the format prescribed by SEBI, as annexed in the enclosed Circular.
- ✓ **Related party transactions above the prescribed limits require the approval of shareholders. Notice sent to shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the information as a part of the explanatory statement like-**
  - A summary of the information provided by the management of the listed entity to the audit committee as specified in point (A) above.
  - Justification for why the proposed transaction is in the interest of the listed entity;
  - Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under point (A)(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
  - A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
  - Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
  - Any other information that may be relevant.

## Securities Law (Contd...)

- **Link of the Circular**

[https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions\\_54113.html](https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html)

## Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000659 on Schemes of Arrangement by Listed Entities, dated November 18, 2021 (“Circular”).
  - SEBI *vide* the Circular, has amended the circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000657 dated November 16, 2021 (“**Circular-1**”), by insertion of an addendum, which is provided in Annexure of the enclosed Circular.
  - The addendum provides that no objection certificate from the lending scheduled commercial banks/financial institutions/debenture trustees shall also be submitted in respect of the scheme of arrangement by the listed entities.
  - **Link of the Circular.**  
[https://www.sebi.gov.in/legal/circulars/nov-2021/addendum-to-sebi-circular-dated-november-16-2021-relating-to-schemes-of-arrangement-by-listed-entities\\_54056.html](https://www.sebi.gov.in/legal/circulars/nov-2021/addendum-to-sebi-circular-dated-november-16-2021-relating-to-schemes-of-arrangement-by-listed-entities_54056.html)
  - **Link of the Circular-1.**  
[https://www.sebi.gov.in/legal/circulars/nov-2021/scheme-of-arrangement-by-listed-entities\\_53967.html](https://www.sebi.gov.in/legal/circulars/nov-2021/scheme-of-arrangement-by-listed-entities_53967.html)



## Securities Law (Contd...)

- The Securities and Exchange Board of India (“SEBI”) – circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000657 on Schemes of Arrangement by Listed Entities, dated November 16, 2021 (“Circular”).
  - SEBI *vide* the Circular has introduced additional framework for schemes of arrangement by Listed Entities and provided further clarifications on the processing of draft schemes filed with the stock exchanges and made certain amendments to the SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated December 22, 2020 (“**Master Circular**”), as provided in the Annexure of enclosed Circular on the framework for schemes of arrangement by listed entities.
  - The following provisions will apply to all schemes filed with the stock exchanges from the date of this Circular.
    - ✓ **Additional documents to be submitted with the stock exchanges.**
      - Undertaking from the listed entity stating that no material event impacting the valuation has occurred during the intervening period of filing the scheme documents with stock exchanges and period under consideration for valuation along with Valuation Report as required by the Master Circular;
      - Declaration from the listed entity on any past defaults of listed debt obligations of the entities forming part of the scheme; and

## Securities Law (Contd...)

- No Objection Certificate (“**NOC**”) from the lending scheduled commercial banks or financial institutions.
- ✓ **Provisions in relation to fractional entitlements.**
  - The fractional entitlements, if any, shall be aggregated and held by the trust, nominated by the board of the companies in that behalf, who shall sell such shares in the market, within a period of 90 (Ninety) days from the date of allotment of shares, as per the draft scheme submitted to SEBI.
  - The listed company shall submit to the designated stock exchange a report from its Audit Committee and the Independent Directors certifying that the listed entity has compensated the eligible shareholders within 7 (Seven) days of such compensation.
  - The listed entity shall be liable for punitive action as per the provisions of applicable laws and regulations for any misstatement or furnishing of false information in relation to fractional entitlements and related compliances or disclosures.
  - The stock exchanges shall ensure compliance of the above, and non-compliance, if any, shall be submitted with the SEBI on a quarterly basis.

## Securities Law (Contd...)

- These amendments are aimed to ensure that recognised stock exchanges refer draft schemes to the SEBI only upon being fully convinced that the listed entity has complied with the SEBI Act, 1992 and the Rules, Regulations and circulars issued thereunder.
- **Link of the Circular.**  
[https://www.sebi.gov.in/legal/circulars/nov-2021/scheme-of-arrangement-by-listed-entities\\_53967.html](https://www.sebi.gov.in/legal/circulars/nov-2021/scheme-of-arrangement-by-listed-entities_53967.html)

## Securities Law (Contd...)

□ **The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2021/55 on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 (“Amended Regulations”), dated November 09, 2021 (“Notification”).**

- SEBI *vide* the Notification has further amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Principal Regulations**”), which shall come into force w.e.f April 01, 2022, unless otherwise specified in the respective provision of the Amended Regulations.
- The major highlights of the Notification are as under:

✓ **Deemed to be a Related Party**’:

As per the Principal Regulations, if any person or entity belonging to the promoter or promoter group of a listed entity holds 20% or more in such listed entity, the same are considered as ‘deemed related party’.

SEBI, has now widened this definition by adding the following entities/ persons as ‘deemed to be a related party’ in place of existing category:

- All persons or entities forming part of promoter or promoter group irrespective of their shareholding; and

## Securities Law (Contd...)

- Any person/entity holding equity shares in the listed entity, either directly or on a beneficial interest basis at any time during the immediately preceding financial year:
  - To the extent of 20% or more;
  - To the extent of 10% or more (applicable w.e.f. April 01, 2023).

### ✓ **Transaction to be considered as Related Party Transactions (“RPTs”):**

Transaction entered between the following parties will now be covered within the ambit of RPTs:

- A listed entity or its subsidiary → Related party of such listed entity or its subsidiary;
- A listed entity or its subsidiary → Any other person or entity with the purpose and effect to benefit the listed entity or its subsidiary w.e.f., April 01, 2023.

Such transactions shall be considered as RPTs regardless of whether a price is charged or whether the transaction is a single transaction or a group of transactions.

### ✓ **Transactions not considered as Related Party Transactions:**

- Removing some major ambiguities, SEBI has excluded the following transactions from the definition of RPT:

## Securities Law (Contd...)

- Issue of specified securities on preferential basis under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- Corporate actions which are uniformly applicable/offered to all the shareholders in proportion to their shareholding:
  - ❖ Payment of dividend;
  - ❖ Subdivision/ consolidation of securities;
  - ❖ Rights issue/ bonus issue;
  - ❖ Buy-back of securities
- Acceptance of fixed deposits by banks/ NBFCs at the terms uniformly applicable/ offered to all shareholders, subject to disclosure of such acceptance, and disclosure of RPT in every 6 months to the stock exchange.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

## Securities Law (Contd...)

### ✓ Material Related Party Transactions:

Amending the current threshold of 10% of the annual consolidated turnover, any RPT, either individually or taken together with the previous transactions during a financial year, shall be considered 'material' if it exceeds INR 1,000 crores or 10% of the annual consolidated turnover of the entity, whichever is lower.

### ✓ Audit Committee approvals for RPTs.

- All RPTs and subsequent material modifications. Further, the audit committee shall define such material modifications and disclose it as a part of policy on materiality of RPT;
- RPTs where subsidiary is a party but listed entity is not a party and where transaction whether entered into individually or taken together with previous transactions during a financial year exceeds 10% of the consolidated turnover of the listed entity, or 10% of standalone turnover of the subsidiary w.e.f. April 01, 2023.
- Audit Committee approval shall not be required for:

## Securities Law (Contd...)

- Transaction(s) entered into between the listed subsidiary and a related party, provided provisions of Regulation 23 and 15(2) are applicable to the listed subsidiary.
- Transaction(s) entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Now, the requirement to review statement of significant related party transactions (as defined by the audit committee), submitted by management has been dispensed with.

### ✓ Shareholders approvals for RPTs.

All materials RPTs and subsequent material modifications basis threshold as defined by the audit committee, will now require prior approval of shareholders except where the transaction(s) is being entered into between a listed subsidiary and a related party and provisions of Regulation 23 and 15(2) are applicable on the listed subsidiary.

### ✓ Enhanced disclosure of information related to RPTs:

- Listed entity which has listed their non-convertible securities shall make disclosures in compliance with the accounting standard on “Related Party Disclosures”.
- **Squeezing the Timelines:** Listed entities to make disclosures of RPTs to stock exchanges every 6 months:



## Securities Law (Contd...)

- Within 15 days (earlier 30 days) from the date of publication of financial results; and
- Simultaneously with the financials results w.e.f. April 01, 2023.
- All listed entities except listed banks shall disclose details of loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount, by the listed entity and its subsidiaries, in their corporate governance report forming part of annual report.
- **Link of the Notification.**  
[https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021\\_53851.html](https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021_53851.html)

# Insolvency and Bankruptcy Code

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) – circular no. IBBI/LIQ/45/2021 on requirement of seeking no objection certificate or no dues certificate from the Income Tax Department during Voluntary Liquidation Process under the Insolvency and Bankruptcy Code, 2016 (“Code”) (“Circular”).**
  - The IBBI, *vide* the Circular, has clarified that as per the provisions of the Code and the regulations made thereunder, read with Section 178 of the Income-tax Act, 1961 (which obligates the liquidator to fulfil certain income tax related requirements) an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process.
  - The aforesaid clarification is keeping in mind the expeditious disposal to be given to the liquidation proceedings which is one of most important characteristics of the Code.
  - **Link of the Circular**  
<https://www.ibbi.gov.in/uploads/legalframework/cc881169aad7ee239aea7954505a76ab.pdf>

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



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