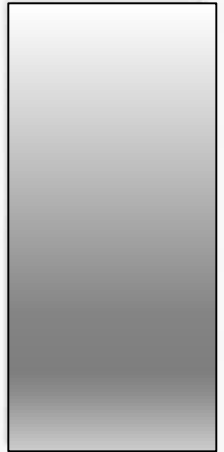


LEGALITE ADVISORS

IMPORTANT LEGAL UPDATES FOR JUNE, 2022



Companies Act

- **Reference:** G.S.R. 456(E) on National Financial Reporting Authority Amendment Rules, 2022 (“**Notification**”)
- **Notification Date & Effective Date:** June 17, 2022
- **Subject of the Notification:** Substitution of rule 13 of the National Financial Reporting Authority Rules, 2018 (“**NFRA Rules**”) which deals with punishment in case of non-compliance of NFRA Rules.
 - ✓ Vide Notification, specific provision has been made *w.r.t.* the punishment for non-compliance of the NFRA Rules, thus dropping a reference section 450 of the Companies Act, 2013 which deals with ‘*Punishment where no specific penalty or punishment is provided*’.
 - ✓ Accordingly, non-compliance of the NFRA Rules shall attract a penalty of INR 5,000 (Indian Rupees Five Thousand only), and where the contravention is a continuing one, with a further fine not exceeding INR 5000 (Indian Rupees Five Thousand only), for every day after the first during which the contravention continues.
- **Link of the Notification.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTI1NDg0NzI1&docCategory=Notifications&type=open>

Companies Act (Contd...)

- **Reference:** G.S.R. 439(E) on the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022 (**“Notification”**).
- **Notification Date & Effective Date:** June 10, 2022
- **Subject of the Notification:** insertion of sub-rule 5 in Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 (**“Principal Rules”**) which deals with compliances required by a person eligible and willing to be appointed as an independent director.
 - ✓ The Ministry of Corporate Affairs had introduced the concept of ‘Independent Director Data Bank’ to maintain a data bank of ‘Independent Directors’ who are willing and eligible to be appointed as one and Rule 6 of the Principal Rules deals with the said compliances accordingly.
 - ✓ Rule 6(5) which has been introduced *vide* the Notification introduces the procedure for restoration of names of the individuals whose name has been removed from the databank by payment of nominal fees of INR 1,000 (Indian Rupees One Thousand only), subject to the following conditions:
 - the name restored shall be shown in a separate restored category for a period of 1 (one) year from the date of restoration and within such time, an individual shall be required to pass the online proficiency self-assessment test and after such passing of the test his name shall be included in the data bank. Further, if an individual passes the test the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid;

Companies Act (Contd...)

- in case an individual fails to pass the online proficiency self-assessment test within 1 (one) year from the date of restoration, his name shall be removed from the data bank and an individual shall be required to make a fresh application in accordance with Rule 6(1) of the Principal Rules.
- **Link of the Notification.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE5MTY5MDUx&docCategory=Notifications&type=open>

Companies Act (Contd...)

- **Reference:** G.S.R. 436(E) on the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 (**“Notification”**).
- **Notification Date & Effective Date:** June 09, 2022
- **Subject of the Notification:** insertion of (i) sub-rule 4 in rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (**“Principal Rules”**); and (ii) substitution of Form STK-1 (*Notice by Registrar for removal of name of a company from the registrar of companies*), STK-5 (*Public Notice*) and STK-5A (*Public Notice*).
- ✓ Insertion of sub-rule 4 in rule 4 of the Principal Rules *w.r.t.* the maximum number of res-submissions for e-Form STK-2 (*Application by company to Registrar of Companies (“RoC”) for removing its name from register of Companies*).
- If an application made by a Company in e-Form STK-2 to the RoC for removing the name of the Company from the records of RoC has any defects or incompleteness in any respect or where further information is sought by the ROC, the said application made vide e-Form STK-2 shall be sent for re-submission by the ROC, and such application shall be resubmitted within a period of 15 (fifteen) days from the date of resubmission by making the defects good or furnishing of the necessary information, as the case may be.

Companies Act (Contd...)

- Further, upon resubmission of the application made vide e-Form STK-2, the ROC finds any further defects or incompleteness in any document or application, the ROC shall give a further time of 15 (fifteen) days to remove such defects and resubmit the Form.

Accordingly, vide this Notification, 2 (two) resubmissions are allowed to be made by a company in e-Form STK-2, while before the said amendment the companies were given only 1 (one) chance to remove the defects and re-submit the form.

- Any re-submission of the application in e-Form STK-2 made before the commencement of this Notification shall not be counted to reckon the maximum number of re-submissions of such e-Form.
- ✓ The Notification releases amendment to Form STK-1 (*Notice by Registrar for removal of name of a company from the registrar of companies*), STK-5 (*Public Notice*) and STK-5A (*Public Notice*) which is provided in the enclosed Notification.

■ **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE5MTczNTM1&docCategory=Notifications&type=open>

Companies Act (Contd...)

- **Reference:** G.S.R. 410(E) on the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 (**“Notification”**).
- **Notification Date & Effective Date:** June 01, 2022
- **Subject of the Notification:** Insertion of (i) second proviso to Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014 (**“Principal Rules”**); (ii) proviso to Rule 10(1) of the Principal Rules; and (iii) insertion of declaration(s) in Form DIR-2 (*Consent to act as a director of a company*) and e-Form DIR-3 (*Application for allotment of Director Identification Number*).
 - ✓ Insertion of second proviso to Rule 8 of the Principal Rules:
 - where a person seeking appointment in a Company as a Director is a national of a country which shares land border with India*, necessary security clearance from the Ministry of Home Affairs, Government of India is required to be obtained before the appointment and the proof of security clearance shall be attached with the consent viz. in Form DIR-2 (*Consent to act as a director of a company*).
 - ✓ Insertion of proviso to Rule 10(1) of the Principal Rules:

Companies Act (Contd...)

- In case of an application for allotment of DIN in Form DIR-3 (*Application for allotment of Director Identification Number*) is made by a person who is a national of a country **which shares land border with India***, necessary security clearance from the Ministry of Home Affairs, Government of India, shall be obtained and attached with the said e-Form DIR-3. Further, no application number shall be generated unless the necessary proof of security clearance has been attached with e-Form DIR-3, wherever applicable.
- ✓ Consequent to the aforesaid amendment, in Form DIR-2 (*Consent to act as a director of a company*) in the 'Declaration', the existing paragraph shall be numbered as (i) and the declaration *inter-alia*, as applicable shall be inserted in paragraph (ii) –
 - “I further declare that-
 - ❖ I am **not required** to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director; or
 - ❖ I am **required** to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director and **the same has been obtained and is attached**”
- ✓ Consequent to the aforesaid amendment, in e-Form DIR-3 (*Application for allotment of Director Identification Number*) under the 'Verification' heading, after serial no. 3, serial no. 3A shall be inserted as under:

Companies Act (Contd...)

○ “I also declare that –

- ❖ 3A I am **not required** to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub-rule (1) of rule 10 before applying for director identification number; or
- ❖ I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub-rule (1) of rule 10 before applying for director identification number and the same has been obtained and is attached”

**Countries which shares land border with India are China, Bangladesh, Pakistan, Bhutan, Nepal, Myanmar and Afghanistan.*

■ **Link of the Notification.**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE1OTMyNDY3&docCategory=Notifications&type=open>

Ministry of Corporate Affairs

- **Reference:** General Circular No. 07/2022 (“**Circular**”).
- **Circular Date:** June 29, 2022
- **Subject of the Circular:** Further relaxation in paying additional fees in case of delay in filing of Annual Return in Form 11 by Limited Liability Partnerships (“**LLPs**”).
- **Relaxation upto:** July 15, 2022
 - ✓ The time-line for filing e-Form 11 by the LLPs has been **further extended till July 15, 2022** from the initial relaxation provided *vide* circular no. 04/2022 dated May 27, 2022 which was till June 30, 2022 (“**Erstwhile Circular**”).
- **Links.**
 - ✓ **Circular.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1Nzc2MDQy&docCategory=Circulars&type=open>
 - ✓ **Erstwhile Circular.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1Nzc2MDQy&docCategory=Circulars&type=open>

Securities Law

- **Reference:** Circular number SEBI/HO/CFD/PoD-1/P/CIR/2022/92 (“**Circular**”).
- **Circular Date:** June 30, 2022
- **Effective Date:** Quarter ending September 30, 2022
- **Subject of the Circular:** Regulation 31 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Listing Regulations**”) in relation to format of shareholding pattern.
 - ✓ The disclosure requirements for the quarterly compliances i.e shareholding pattern has been amended vide the Circular, in the following manner:
 - i. Names of the shareholders holding 1% or more than 1% of shares of the listed entity is to be disclosed.
 - ii. Names of the shareholders who are person acting in concert (PAC), if available, shall be disclosed separately.
 - iii. All listed entities shall disclose details pertaining to foreign ownership limits as per format prescribed in ‘Annexure B’ of the enclosed Circular.
 - ✓ Consequently to give effect the above amendment following tables in the Shareholding Pattern have been modified and revised formats are prescribed in ‘Annexure A’ of the enclosed Circular:

Securities Law (Contd...)

- Table III - Statement showing shareholding pattern of the public shareholder.
- Table IV - Statement showing shareholding pattern of the non-promoter / non-public shareholder.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/jun-2022/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form_60459.html

Reserve Bank of India

- **Reference:** Notification number RBI/2022-23/69. A.P. (DIR Series) Circular No. 05 (“**Notification**”).
- **Notification Date:** June 09, 2022
- **Effective Date:** Quarter ending June 2022.
- **Subject of the Notification:** Discontinuation of return ‘*Details of guarantee availed and invoked from non-resident entities*’ under Foreign Exchange Management Act, 1999.
 - ✓ The Reserve Bank of India, in its endeavour to reduce compliance burden on regulated entities, notified that authorised dealer category I banks (AD Banks) will not be required to file returns for ***guarantees availed and invoked from non-resident entities***, with effect from the quarter ending June 2022. The aforesaid return was required to be filed for all the guarantees issued and invoked which were given by the non-resident Indian for the fund based and non-fund based facilities (such as letters of credit/guarantees/letter of undertaking (LoU) /letter of comfort (LoC) entered into between two persons resident in India.
 - ✓ Accordingly, the Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, have been updated to reflect the aforesaid discontinuance of filing of return.

Reserve Bank of India (Contd...)

- **Link of the Notification.**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12337&Mode=0>

INSOLVENCY AND BANKRUPTCY CODE

- **Reference:** Circular number **IBBI/IU/51/2022** (“Circular”).
- **Notification Date:** June 15, 2022.
- **Effective Date:** June 15, 2022
- **Subject of the Notification:** Application under Rule 4, 6 or 7 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016
- The IBBI *vide* circular dated June 15, 2022 has decided that henceforth, the Board will forward the application for initiating insolvency received by it in terms of rule 4, 6 or 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, to the Information Utility (“IU”) and on receipt of the said application, the IU shall:
 - ✓ inform other creditors of the corporate debtor by sharing the application;
 - ✓ issue notice to the applicant, requiring it to file ‘information of default’ in the specified format under Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2017 (“**IU Regulations**”); and
 - ✓ process the ‘information of default’ for the purpose of issuing record of default as per the IU Regulations.
- **Link of the Circular.**
<https://www.ibbi.gov.in/uploads/legalframework/e68fabd655bf154809322de86c0cf204.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Reference:** Notification number IBBI/2022-23/GN/REG084 (“**Notification**”).
- **Notification Date:** June 14, 2022.
- **Effective Date:** June 14, 2022
- **Subject of the Notification.** Amendment to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Regulations**”) by introduction of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 (“**Amendment Regulations**”).
- The Notification, effective immediately, alters the following, in the Regulations:
 - ✓ The amendment is introduced by inserting regulation 2B and 2C after regulation 2A which envisages that:
 - The operational creditor who requires registration under the Goods and Service Tax (“**GST**”) shall, alongwith application under section 9, shall furnish copies of relevant extract of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to GST and the copy of e-way bill wherever applicable.
 - The financial creditor or operational creditor shall, while filing application under section 7 (financial creditor application) or 9 (operational creditor application) under the Insolvency and Bankruptcy Code, 2016 (“**Code**”) as the case may be, also furnish details of his/its PAN and id.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- The amendment is introduced under regulation 4 of the Principal Regulations which deals with 'Access to books' by inserting sub-regulation (2) and (3) which envisages that the personnel of the corporate debtor, its promoters or any other persons of the corporate debtor shall provide the necessary information in a timely manner within to the interim resolution professional or the resolution professional, as the case may be. Following information is expected to be provided to the interim resolution professional or resolution professional, as the case may be:
 - ❖ the information in respect of assets and liabilities of the corporate debtor from the last valuation report,
 - ❖ stock statement,
 - ❖ receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement; and
 - ❖ such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.
- The amendment is introduced under regulation 7 of the Principal Regulations which deals with 'Claims by operational creditors' by inserting sub-clause (v) in clause (b) of sub-regulation (2), which envisages that the existence of debt due to the operational creditor (who requires registration under the GST) under this Regulation may be proved on the basis of copies of relevant extract of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to GST and the copy of e-way bill wherever applicable.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ The amendment is introduced under regulation 35 of the Principal Regulations which deals with 'Fair value and Liquidation value' by substituting clause (b) in sub-regulation (1) as under:
 - If the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed as per internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor. ***Thus, after the amendment the third registered valuer may be appointed upon recommendation of committee of creditors and may not be necessarily only appointed in case of difference in estimates of a value in an asset class.***

Following terms have been defined by way of an explanation:

- (i) "asset class" means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017;
- (i) "significantly different" means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$, where,

L1= higher valuation of liquidation value

L2= lower valuation of liquidation value.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ The amendment is introduced under regulation 35A of the Principal Regulations which deals with 'Preferential and other transactions' by inserting sub-regulation (4) as under, which requires the creditors to provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.
- ✓ The amendment is introduced under regulation 36 of the Principal Regulations which deals with 'Information memorandum' by inserting sub-regulation (3A) which requires the creditors to provide to the resolution professional the latest financial statements and other relevant financial information of the corporate debtor available with them.
- ✓ The amendment is introduced under regulation 38 of the Principal Regulations which deals with 'Mandatory contents of the resolution plan' by inserting clause (d) in sub-regulation (2) which envisages that a resolution plan which provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed and the said amendment is applicable to all prospective resolution plans.

Thus, this amendment gives much needed clarity on how the an effect will be given to the aforesaid transactions, especially in cases where the action by the committee of creditors before the Adjudicating Authority, survives disposal of the resolution plan and restructuring/liquidation of a corporate debtor.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/legalframework/464f7748bbedc207be3a0cfd254e3138.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Reference:** Notification number **IBBI/2022-23/GN/REG085** (“Notification”).
- **Notification Date:** June 14, 2022.
- **Effective Date:** June 14, 2022
- **Subject of the Notification:** Amendment to Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (“**Regulations**”) by introduction of Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022 (“**Amendment Regulations**”).
- The Notification, effective immediately, alters the following, in the Regulations:
 - ✓ The amendment is brought under regulation 2 of the Principal Regulations which deals with ‘Definitions’ by inserting clause (1a) in sub-regulation (1) which reads as:
 - “record of default” means the status of authentication of default issued in Form D (Record of Default) of the Schedule to the Regulations.
 - The amendment is brought under regulation 20 of the Principal Regulations which deals with ‘Acceptance and receipt of information’ by inserting sub-regulation 1A which envisages that, before filing an application to initiate corporate insolvency resolution process under section 7 (financial creditor application) or 9 (operational creditor application), as the case may be, the creditor shall file the information of default, with the information utility (“**IU**”) and the IU shall process the information for the purpose of issuing default record in accordance with regulation 21.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

(Authentication of Default). This makes it mandatory for the creditors to file the information of default, with the information utility which would ensure creation of a repository of defaults and help Adjudicating Authority appraise the defaults made by the corporate debtors.

- ✓ The amendment is brought under regulation 21 of the Principal Regulations by substituting the short title from 'Information of default' to 'Authentication of default' and, *interalia*, as under:
 - by substituting sub-regulation (4) which envisages that after recording the status of information of default, the information utility shall communicate the status of authentication, by issuing a record of default in Form D of the Schedule to the Regulations, to the registered users who are-
 - (a) creditors of the debtor who has defaulted in payment of a debt;
 - (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.
 - The amendment is brought under regulation 41 of the Principal Regulations which deals with 'Disciplinary proceedings' by substituting sub-regulation (8) which clarifies that disciplinary proceedings on the information utilities shall be conducted in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.
- ✓ The amendment is brought in the Schedule of the Principal Regulations by inserting Form D which deals with 'Record of Default'.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Link of the Notification.**

<https://www.ibbi.gov.in/uploads/legalframework/d4151ccebfbae55e8f7c0f68f6d18e4d.pdf>

Deets / Disclaimer

❑ Deets.

Legalite Advisors LLP | LLPIN : AAJ 8514 | E-mail : la.mumbai@legalite.co.in | Corporate office: 705, Simran Plaza, 7th Floor, Near 3rd & 4th Road Junction, Khar (West), Mumbai 400052, Maharashtra, India | 📞: +91 9769022955/ +91 8454846257.

❑ Disclaimer.

This article is for informational purposes only, and is not intended to provide, and should not be relied on for legal advice. Readers are advised to seek independent legal advice in accordance with their peculiar facts and circumstances.

Legalite
Advisors

Thank You



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