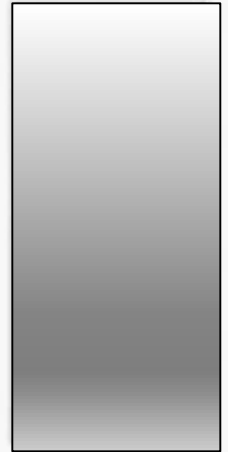


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES FOR SEPTEMBER,
2022**



Ministry of Corporate Affairs

- ❑ **Reference:** General circular no.09/2022 (“**Circular**”).
- ❑ **Circular Date:** September 28, 2022
- ❑ **Effective Date:** September 28, 2022.
- ❑ **Subject:** Extension of timeline in filing e-form DIR-3KYC and e-form DIR-KYC WEB without payment of fees till October 15, 2022
 - The due date for completing the annual filing of KYC of the DIN holders was September, 30 2022.
 - However, considering the various difficulties and challenges faced by the stakeholders in operating newly launched version of MCA V3 portal, the Ministry of Corporate Affairs has decided to grant an extension in timeline by 15 days.
 - Accordingly, the revised due dates for complying annual KYC is October 15, 2022 without any payment of fees.
 - **Link of the Circular.**
<https://www.mca.gov.in/bin/dms/getdocument?mds=7QUIB%252FsKoFbd2uXZjD3YXg%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Reference:** Notification no. G.S.R. 715(E). (“**Notification**”).
- ❑ **Notification Date:** September 20, 2022
- ❑ **Effective Date:** September 20, 2022.
- ❑ **Subject:** The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022, amending the Companies (Corporate Social Responsibility) Policy, 2014 (“**Principal Rules**”) as under:

Sr No.	Areas	Revised Amendments
1	Constitution of CSR Committee	i. Earlier, companies whose CSR expenditures did not exceed INR 50 lakhs were not required to constitute CSR committee as per section 135(9) of the Companies Act, 2013 (“ Act ”).

Ministry of Corporate Affairs (Contd...)

Sr No.	Areas	Revised Amendments
1	Constitution of CSR Committee	<p>ii. However, now the constitution of CSR Committee is mandatory for all the companies where any amount is lying in its “Unspent CSR Account” in terms of any ongoing project as per Section 135(6) of the Act irrespective whether section 135(9) of the Act is applicable or not to that company, i.e. even if the CSR expenditures do not exceed INR 50 lakhs.</p> <p>iii. Consequently, sub-rule 2 of Rules 3 of the Principal Rules has also been omitted which provided relaxation to companies to not form a CSR committee if they no longer satisfy the required criteria under section 135(1), (applicability of the CSR provisions) for 3 consecutive financial years.</p>

Ministry of Corporate Affairs (Contd...)

Sr No.	Areas	Revised Amendments
2.	CSR Implementing agencies	<p>i. Earlier only those agencies registered under Section 12A and 80G of the Income Tax Act,1961 were allowed to undertake CSR activity.</p> <p>ii. However, the amendment now allows the entities established by the Company itself or along with any other company or other companies are allowed to undertake CSR activities through registered public trust/society exempted u/s 10(23C)(iv),(v) & (via) or registered u/s 12A and 80G of the Income Tax Act,1961.</p>
3.	New thresholds for claiming expenditure incurred towards Impact Assessments	The amendment to the Principal Rules provides that the expenditure incurred on impact assessment can be included in the CSR spending which shall not exceed higher of the following:

Ministry of Corporate Affairs (Contd...)

Sr No.	Areas	Revised Amendments
3.	New thresholds for claiming expenditure incurred towards Impact Assessments	<p>i. 2% of total CSR spending of the relevant financial year OR</p> <p>ii. INR 50 Lakhs</p> <p>The earlier limit was lower of the following:</p> <p>i. 5% of the total CSR expenditure for that financial year OR</p> <p>ii. INR 50 Lakhs</p>

Ministry of Corporate Affairs (Contd...)

Sr No.	Areas	Revised Amendments
4	Amendment in the format of CSR Annexure	<p>i. Revised format for CSR reporting has been introduced in Annexure II as appended to the Notification.</p> <p>ii. Companies preparing their annual report for the financial year, commencing on or after April,01 2020 have to adopt the new format.</p>

- **Link of the Circular.**

<https://www.mca.gov.in/bin/dms/getdocument?mids=mJSgtVf5sUlxI4nsS4QvyQ%253D%253D&type=open>

Ministry of Corporate Affairs (Contd...)

- ❑ **Reference:** Notification no. G.S.R. 700(E) (“**Notification**”).
- ❑ **Notification Date:** September 15, 2022
- ❑ **Effective Date:** September 15, 2022.
- ❑ **Subject:** The Companies (Specification of definition details) Amendment Rules, 2022 amending the Companies (Specification of definition details) Rules, 2014 as under:
 - With the rest of the provisions of the definition of a ‘small company’ remaining the same, the amendment has enhanced the following limits to widen the scope of categorization of small companies and provide them benefits of a small company under the Companies Act, 2013.
 - ✓ Limit of paid up share capital has been increased to **INR 4 Crores** (Earlier 2 Crores)
 - ✓ Limit of Turnover has been increased to **INR 40 Crores** (Earlier 20 Crores).
 - **Link of the Notification.**
<https://www.mca.gov.in/bin/dms/getdocument?mcs=tiMs9IFJ8xuPm%252B%252F0xc6fUw%253D%253D&type=open>

□ Press Release No. 29/2022

Decisions to be introduced vide amendment(s), as decided by the Board of SEBI in its meeting dated September 30, 2022 which *inter-alia* includes-

- **Flexibility in approval process for appointment and / or removal of Independent Directors vide amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**
 - ✓ It has been decided to introduce a new optional provision in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”) w.r.t. the appointment and removal of Independent Directors in listed entities.
 - ✓ In the existing framework the appointment, re-appointment and removal of Independent Directors is required to be approved by members by way of a special resolution.
 - ✓ In the alternative mechanism the following threshold would be tested for appointment and removal of Independent Directors, where the requisite special resolution is not received:
 - threshold for Ordinary Resolution; and
 - threshold for Majority of minority shareholders
 - ✓ Where special resolution is not received, however, if the approval is sought in the above two thresholds in the **same voting process**, then the resolution shall be deemed to be approved by the shareholders.

Securities Law (Contd...)

- **Inclusion of units of Mutual Funds under the SEBI (Prohibition of Insider Trading) Regulations, 2015**
 - ✓ Inclusion of trading in units of Mutual Funds through introduction of a separate chapter in SEBI (Prohibition of Insider Trading) Regulations, 2015 which shall cover:
 - definitions of Unpublished Price Sensitive Information, Generally Available Information and other related terms for mutual funds;
 - a separate code of conduct for designated persons in respect of Mutual Funds;
 - reporting and monitoring requirement w.r.t. transactions in mutual funds by designated persons
 - ✓ Amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) in the context of strategic disinvestment of PSUs and consideration payable under open offer.
- **Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in the context of schemes of arrangement.**
 - ✓ Introduction of provisions w.r.t. scheme of arrangement for entities which have listed Non-convertible Debt Securities/ Non-convertible Redeemable Preference Shares:
 - filing of draft scheme or arrangement / scheme of arrangement for obtaining No-Objection Letter;

Securities Law (Contd...)

- process to be followed by Stock Exchange(s); and
- forwarding of draft scheme of arrangement to SEBI and consequential fee payment.
- ✓ Transfer of an unclaimed amount lying in the escrow account for more than 7 years w.r.t. the non-convertible securities issued by listed entities which is not classified as a “**Company**” under the Companies Act, 2013, and is governed by a separate statute.
 - the said amounts shall be transferred to the Investor Protection and Education Fund created by SEBI in terms of section 11 of the SEBI Act, 1992
- ✓ Uniformity in the disclosure requirements pertaining to submission of financial results, clarity in provisions pertaining to disclosure of line items/ ratios, publication of results in newspapers, etc. for entities having its non-convertible securities listed
- **Monitoring of utilization of issue proceeds raised through Preferential Issue and Qualified Institutions Placement (QIP) issue, in terms of SEBI (ICDR) Regulations, 2018**
 - ✓ Introduction of provision w.r.t. monitoring of utilization of proceeds raised through Preferential Issue and Qualified Institutions Placement through “Credit Rating Agency(ies)” as a monitoring agency(ies) where issue size is more than INR 100 crore
 - ✓ The objective is to keep the shareholders informed about the utilization of funds by the Company for the same object as disclosed in the offer document
 - ✓ The said provision shall be governed in the same manner as provided for monitoring of utilization of funds for public issue and rights issue.

Securities Law (Contd...)

- **Review of the existing framework for Offer for Sale (OFS) of Shares through Stock Exchange Mechanism to facilitate greater flexibility in the process**
 - ✓ Modifications in the existing framework in respect of the Offer for Sale (“OFS”) through Stock Exchange Mechanism
 - the minimum shareholding requirement for non-promoter shareholders who are willing to offer shares through OFS mechanism **is to be done away** in the proposed amendment (*minimum requirement to offer shares in OFS mechanism – non-promoter shareholders holding at least 10% of the share capital of eligible company and willing to offer shares of atleast INR 25 crore*);
 - the existing cooling off period of +12 weeks for OFS has been reduced to a range of **+2 weeks to +12 weeks** based on the liquidity of securities of such eligible companies;
 - retail investors have been **allowed** to bid for the unsubscribed portion of non-retail segment
- **Link of the Press Release**
[SEBI | SEBI Board Meeting](#)

Reserve Bank of India

- **Reference:** RBI/2022-23/122 A.P.(DIR Series) Circular No.16 (“**Circular**”)
- **Circular Date:** September 30, 2022
- **Effective Date:** September 30, 2022.
- **Subject of the Circular:** Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999 (FEMA).
 - **Analysis:** The Reserve Bank of India (“**RBI**”) had introduced Late Submission fee (LSF) for reporting delays in Foreign Investment (FI), External Commercial Borrowings (ECBs) and Overseas Investment related transactions with effect from November 07, 2017, January 16, 2019 and August 22, 2022 respectively. RBI has now decided to bring uniformity in the imposition of LSF across functions. A uniformed fees is to be paid for various delays in reporting as per the matrix stated as under:

Reserve Bank of India (Contd...)

Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7,500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$ Where: "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points. "A" is the amount involved in the delayed reporting

- LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN will be treated as one instance for the fixed component. Further, "A" for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.
- Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.

Reserve Bank of India (Contd...)

- Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of “n”.
- The facility for opting for LSF shall be available up to three years from the due date of reporting/submission.
- The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of Foreign Exchange Management (Overseas Investment) Regulations, 2022.
- In case a person responsible for any submission or filing under the provisions of FEMA, neither makes such submission/filing within the specified time nor makes such submission/filing along with LSF, such person shall be liable for penal action under the provisions of FEMA, 1999.

▪ **Link of the Circular.**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12393&Mode=0>

INSOLVENCY AND BANKRUPTCY CODE

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) Notification No.:** IBBI/2022-23/GN/REG/098 (“Notification”).
- ❑ **Notification Date:** September 20, 2022.
- ❑ **Effective Date:** October 01, 2022
- ❑ **Subject of the Notification:** IBBI (Liquidation Process) (Second Amendment) Regulations, 2022 (“Amendment Regulations”) to amend the IBBI (Liquidation Process) Regulations, 2016 (“Principal Regulations”).
 - **Analysis:** The Principal Regulations have been amended to introduce transparency and better communication with the stakeholders, maximization of value enhancement out of the resolution process, improvement in availability of information and provide for expeditious disposal of the resolution process by minimizing the delays:
 - The Amendment Regulations provide for filing of recommendation of the committee of creditors to explore proposal of compromise or arrangement by the liquidator within 30 days of the order of liquidation.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ To ensure that the no stakeholder's right is prejudiced in respect of submission of claims during liquidation, it has been provided that where a stakeholder does not submit its claims during the liquidation process, the claims submitted by such a stakeholder, and duly collated by the interim resolution professional or resolution professional, as the case may be, during the corporate insolvency resolution process under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be deemed to be submitted during liquidation. The liquidator has also been mandated to verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within 30 days from the last date for receipt of claims during liquidation process and may either admit or reject the claim, in whole or in part.
- ✓ To facilitate effective communication with the stakeholders it has been prescribed that the liquidator shall operate the process email account handed over to him by the resolution professional and in the event of his replacement, the credentials of such email ID shall be handed over to the new liquidator so that all the communications to the stakeholders can be channelized through a centralized email id and there is seamlessness in the liquidation process.
- ✓ **Consultation Committee ("CC"):** The Amendment Regulations have brought about changes to the provisions relating to constitution of the CC, voting and introduced meeting related provisions of the CC, the summary thereof is hereunder:
 - The liquidator shall constitute a CC, comprising of all creditors of the corporate debtor, within 60 days from the liquidation commencement date, based on the list of stakeholders prepared to advise him on matters relating to:

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- remuneration of professionals appointed under the process;
- sale, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process;
- fees of the liquidator;
- valuation under the liquidation process;
- the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed.
- The committee of creditors shall function as the CC with same voting rights till constitution of the CC.
- The liquidator has been given a right to facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the CC, who shall vote in proportion to the voting share of the stakeholders it represents;
- The liquidator shall convene the first meeting of the CC within 7 days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee. However, when a request is received by the liquidator from members, individually or collectively, having at least 33% of the total voting rights, the liquidator shall mandatorily convene the meeting.
- where a CC has been constituted before the commencement of the Amendment Regulations, the liquidator within 30 days of the commencement of the Amendment Regulations, shall re-constitute the CC as required under the said Amendment Regulations and provisions

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

provided under amended Regulation 31A of the Principal Regulations shall come into effect only after such re-constitution.

- ✓ Voting Rights of the members of CC:
 - The voting share of a member of the CC shall be in proportion to his admitted claim in the total admitted claim;
 - A secured creditor who has not relinquished his security interest shall not be part of the CC;
 - The promoters, directors, partners of the corporate debtor or their representatives may attend the meeting of the CC, but shall not have any right to vote;
 - A financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.
 - The voting rights have been extended to those members who have not attended the particular CC so as to bring in more inclusivity.

- ✓ The Amendment Regulations have introduced the provisions relating to meetings of the CC which prescribes that Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) and the Regulations (Liquidation Process), the provisions of regulations 18 to 26 of Chapter VI and Chapter VII of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Meeting of and voting at the committee of creditors) shall apply mutatis mutandis to meetings of the CC under liquidation proceedings.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ The CC shall advise the liquidator to provide in the application along with the final report for liquidation, 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 dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.
- ✓ The Amendment Regulations have introduced the concept of preservation of records in the Principal Regulations which provides clarity for preservations of records by the liquidator, the manner in which it has to be preserved the period for which the same shall be preserved, provisions relating to handover by an outgoing liquidator to the incoming liquidator, the place of preservation etc.
- **Following provisions have been introduced in relation to auction under the Principal Regulations:**
 - ✓ The liquidator shall issue a public notice of an auction for sale under regulation 32 (Sale of Assets, etc.) within 45 days from the liquidation commencement date unless the CC advises to extend the timeline.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- The liquidator shall issue public notice for the next auction, in case of failure of the auction, within 15 days from the last failed auction unless the CC advises to deviate from the specified time period.
 - The liquidator shall complete an auction process within 35 days from the issue of public notice for auction.
 - The liquidator shall provide at least 14 days from issue of public notice for submission of eligibility documents by prospective bidder.
 - The liquidator shall provide to qualified bidder at least 7 days, for inspection or due diligence of assets under auction, from the date of declaration of qualified bidder.
 - A prospective bidder in an auction process shall deposit earnest money deposit at least up to 2 days before the date of auction.
 - The liquidator shall sell the assets only through an electronic auction platform empanelled by the IBBI Board from such date as may be separately notified through a circular.
- The Amendment Regulations have modified the form AA (written consent to act as liquidator) and the modified form is appended to the Notification.
 - **Link of the Notification.**
<https://ibbi.gov.in/uploads/legalframework/f4b9ec30ad9f68f89b29639786cb62ef.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) Notification No.:** IBBI/2022-23/GN/REG095 (“Notification”).
- ❑ **Notification Date:** September 16, 2022.
- ❑ **Effective Date:** September 16, 2022
- ❑ **Subject of the Notification:** IBBI (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 to amend the IBBI (Voluntary Liquidation Process) Regulations, 2017 (“**Principal Regulations**”).
 - **Analysis:** The Principal Regulations have been amended to introduce the provisions to preservation of records by a corporate person after dissolution pursuant to the voluntary liquidation process:
 - ✓ Sub-regulation 5 has been introduced under regulation 3 of the Principal Regulations to mandate that the Directors of the corporate person under voluntary liquidation have to provide a declaration that the corporate person has made provision for preservation of its records after its dissolution.
 - ✓ Regulation 41 of the Principal Regulations has been substituted to provide better clarity for preservations of records by the liquidator, the manner in which it has to be preserved the period for which the same shall be preserved, provisions relating to handover by an outgoing liquidator to the incoming liquidator, the place of preservation etc.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Link of the Notification**

<https://ibbi.gov.in/uploads/legalframework/812b4ba287f5ee0bc9d43bbf5bbe87fb.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) Notification No.:** IBBI/2022-23/GN/REG093 (“Notification”).
- ❑ **Notification Date:** September 16, 2022.
- ❑ **Effective Date:** September 16, 2022
- ❑ **Subject of the Notification:** IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 (“Amendment Regulations”) to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”).
 - **Analysis:** The Principal Regulations have been amended to introduce transparency and better communication with the stakeholders, maximization of value enhancement out of the resolution process, improvement in availability of information and provide for expeditious disposal of the resolution process by minimizing the delays:
 - ✓ **Communication through a common e-mail id with the stakeholders:**
 - Provisions have been inserted in the Principal Regulations to provide for usage of a common email address be used throughout the corporate insolvency process (“CIRP”), and liquidation of a corporate debtor (“CD”) and the said email needs to be handed over to the succeeding insolvency professional or liquidator conducting the process.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- The interim resolution professional or the resolution professional (“**RP**”) needs to communicate to the creditors of CD as per the last available books of accounts, the public announcement and invite claims through post or electronic means.
- It has been clarified that a meeting of the committee of creditors (“**CoC**”) can be convened till resolution plan is approved or an order for liquidation is passed and matters which do not affect the resolution plan can be decided upon.
- ✓ **Maximization of value in the resolution plan:**
 - The Amendment Regulations now enable the RP and the CoC to issue request for a resolution plan for a second time for sale of one or more of assets of the CD in cases where no resolution plan has been received for the CD as a whole. The said resolution plan can include sale of one or more assets of CD to one or more successful resolution applicants submitting resolution plans for such assets and providing for appropriate treatment of the remaining assets.
 - The Amendment Regulations also enable marketing of assets of the CD and provides for formulating a strategy for marketing of assets of CD in consultation with the CoC to disseminate information about the asset to a wider and targeted audience of potential resolution applicants.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- The Amendment Regulations also enable a longer time for the asset in the market as the invitation for expression of interest has been advanced to 60th day from insolvency commencement date as against the earlier timeline of 75th day from the insolvency commencement date. Changes have also been made to Form G of the Principal Regulations (particulars of expression of interest) to provide more relevant information to persons for expressing interest.
- ✓ **Improvement in availability of information to stakeholders:**
 - The Amendment Regulations have brought about changes in timeline for filing application for preferential and other transactions on or before 130th day of insolvency commencement date as against the earlier timeline of 135th day of the insolvency commencement date.
 - The Amendment Regulations also provide that a copy of application made regarding preferential and other transactions shall be shared with the prospective resolution applicants so as to enable them to account for such information while proposing the resolution plan.
 - The Amendment Regulations have brought about changes in the timeline for submission of information memorandum on or before 95th day from the insolvency commencement date from 54th day.
 - Now, information memorandum should also include further relevant information such as operations of the CD, financial statements, contingent liabilities, geographical coordinates of fixed assets, company overview.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

It also includes details of business evolution for CDs with asset size of more than INR 100 crores.

✓ Expeditious disposal of the resolution process

- The Amendment Regulations, with a view to reduce delays in the process and enhance the efficiency of available time, now enable the CoC to explore option of compromise or arrangement and file such recommendation with adjudicating authority (“AA”) while applying to AA for liquidation order.
- In cases where it decides to explore the above options, the CoC should explore the option during such period when an order for liquidation is awaited from the AA.
- The Amendment Regulations also introduce probable factors that may be considered by CoC while making an expeditious decision to liquidate the CD and also provides that the reasons be recorded based on the said factors and presented to AA as part of the application for liquidation.

✓ Changes in timelines

- The table prescribing timelines for various activities under the Principal Regulations has been replaced by a new table under regulation 40A and the same has been appended with the Notification.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) Notification No.:** IBBI/2022-23/GN/REG091 (“Notification”).
- ❑ **Notification Date:** September 13, 2022.
- ❑ **Effective Date:** September 13, 2022
- ❑ **Subject of the Notification:** IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”).
 - **Analysis:** The Principal Regulations have been amended to introduce the provisions to regulate the minimum fee payable to interim resolution professional (“**IRP**”) and resolution professional (“**RP**”) by way of introduction of regulation 34B and Schedule II and the following is the summary of the Amendment Regulations:
 - ✓ The committee of creditors (“**CoC**”) or the applicant of the insolvency application against the corporate debtor has been vested with the right to decide the fees of the IRP or the RP as the case may be.
 - ✓ In case of any determination of fee of the IRP or the RP, appointed on or after October 01 2022, it shall not be less than the minimum fee as under:

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

Quantum of Claims Admitted	Minimum Fee Per Month (INR in Lakhs)
Less than or equal to INR 50 crore	1
More than INR 50 crore but less than or equal to INR 500 crore	2
More than INR 500 crore but less than or equal to INR 2,500 crore	3
More than INR 2,500 crore but less than or equal to INR 10,000 crore	4
More than INR 10,000 crore	5

- ✓ The aforesaid minimum fee shall be applicable for the period from appointment as interim resolution professional or resolution professional, till the earlier of the following timelines and thereafter the applicant or the CoC may decide the fee of the IRP or RP as per their discretion:
 - submission of application for approval of resolution plan under section 30;
 - submission of application to liquidate the corporate debtor under section 33;
 - submission of application for withdrawal under section 12A; or
 - order for closure of corporate insolvency resolution process.

- ✓ The applicant or the CoC have been empowered to fix higher amount of fee by according reasonable reasons, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ For the resolution plan approved by the CoC on or after October 01, 2022, the CoC has been empowered to decide, in its discretion, to pay performance-linked incentive fee, not exceeding INR 5 crore rupees, in accordance with provisions of the newly introduced Schedule-II in the Principal Regulations or may extend any other performance-linked incentive structure as it deems necessary.
- The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the CoC and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.
- **Link of the Notification**
<https://ibbi.gov.in/uploads/legalframework/7c96f51884d5ad840f4a7af0d6bba604.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ❑ **Insolvency and Bankruptcy Board of India (“IBBI”) Notification No.:** IBBI/2022-23/GN/REG092 (“Notification”).
- ❑ **Notification Date:** September 13, 2022.
- ❑ **Effective Date:** September 13, 2022
- ❑ **Subject of the Notification:** IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2022”) to amend the IBBI (Insolvency Professionals), 2016 (“**Principal Regulations**”).
 - **Analysis:** Regulation 26A has been introduced in the Principal Regulations to disallow any acceptance or sharing of fees by the insolvency professional from/to any professional and/or support service provider who are appointed under the processes. The same is to allow transparency in selection of professionals and rule out any bias which could be prejudicial to the interest of the stakeholders under the insolvency process.
 - **Link of the Notification**
<https://ibbi.gov.in/uploads/legalframework/8a614479d5c2b8eachb205e226f5e841a.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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