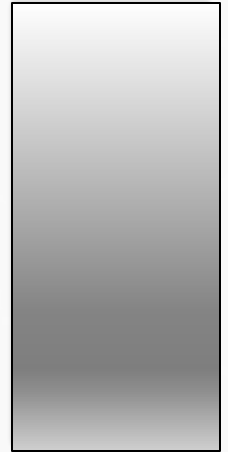


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES FOR SEPTEMBER,
2023**



Ministry of Corporate Affairs

- ❑ **Circular No:** 09/2023 (“**Circular**”).
- ❑ **Circular Date:** September 25, 2023
- ❑ **Effective Date of Circular:** September 25, 2023
- ❑ **Subject of the Circular:** (a) Clarification on mode of holding an annual general meeting (“**AGM**”) due in the year 2023 and 2024; and (b) Extension of time for holding of extra-ordinary general meeting (“**EGM**”), through video conference (VC) or other audio visual means (OAVM) and transacting the business through postal ballot, as allowed by the Ministry of Corporate Affairs (“**MCA**”).

For AGM:

- ✓ The Circular is in continuation to the following circulars issued by the MCA:
 - General Circular No. 20/2020 dated May 05, 2020; (“**Circular-A**”);
 - General Circular No. 02/2022 dated May 05, 2022, and
 - General Circular No. 10/2022 dated December 28, 2022.

Ministry of Corporate Affairs (Contd...)

✓ Advantage/ relaxation pursuant to the Circular:

The companies, whose AGMs are due in the year 2023 or 2024, are allowed to conduct their AGM via VC or OAVM on or before September 30, 2024. Accordingly, the relaxation provided in the Circular is w.r.t. the mode of conducting/holding an AGM and shall not be construed as any extension of time for conducting the AGM.

✓ Compliance to be done by the companies:

The companies who conduct their AGM in accordance with the Circular (viz. through VC/OAVM) are required to comply with the requirements as laid down under para 3 and para 4 of the Circular-A viz., compliances provided for the companies who are required to provide the e-voting facility or has opted so, under the Companies Act, 2013 and compliances provided for the companies which are not required to provide the e-voting facility, respectively.

For EGM.

✓ The Circular is in continuation to the following circulars issued by the MCA:

- General Circular No. 14/2020 dated April 08, 2020 (“**Circular-B**”);
- General Circular No. 03/2022 dated May 05, 2022 (“**Circular –C**”), and
- General Circular No. 11/2022 dated December 28, 2022 (“**Circular-D**”)

Ministry of Corporate Affairs (Contd...)

- ✓ Relaxation/ Extension of time for conducting EGM through VC/OAVM and transacting the business through postal ballot:
 - *Vide* introduction of the Circular, the MCA has allowed conducting of EGMs through VC or OAVM till September 30, 2024 viz., relaxation has been provided and timeline has been extended to September 30, 2024 vide Circular *vis-à-vis* September 30, 2023 allowed vide Circular D.
 - In addition to the above, the Circular has also allowed transacting the business through postal ballot (*except the items of ordinary business; or business where any person has a right to be heard*) till September 30, 2024 viz., relaxation has been provided and timeline has been extended to September 30, 2024 vide Circular *vis-à-vis* September 30, 2023 which was originally allowed vide Circular D.
 - The companies are required to adhere to the compliances and requirements as provided in Circular B while availing the benefit of the Circular.

Ministry of Corporate Affairs (Contd...)

- **Links.**

- ✓ **Circular**

<https://www.mca.gov.in/bin/dms/getdocument?mds=HaKq8Y72SkO5wIQe05fjLQ%253D%253D&type=open>

- ✓ **Circular-A**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MTk=&docCategory=Circulars&type=open>

- ✓ **Circular-B**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1OTI=&docCategory=Circulars&type=open>

- ✓ **Circular-C**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Nzg2Mjk4MzY=&docCategory=Circulars&type=open>

- ✓ **Circular-D**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjMxNjgzNjA2&docCategory=Circulars&type=open>

Ministry of Finance (Contd...)

- ❑ **Notification Reference No.:** G.S.R. 685(E) (“**Notification**”).
- ❑ **Notification Date:** September 25, 2023
- ❑ **Effective Date of Notification:** September 25, 2023
- ❑ **Subject:** The Income-tax (Twenty first Amendment) Rules, 2023. (“**Amendment Rules**”).
- ❑ **Key Highlights of the Amendment Rules are as follows:**
 - In addition to the two prescribed methods viz. Discounted Cash Flow method and Net Asset Value method for determining the Fair Market Value (“**FMV**”) of unquoted equity shares issued to resident investors, the Amendment Rules provides five more methods of valuation for the issue of unquoted equity shares to non-resident investors namely Comparable Company Multiple Method, Probability Weighted Expected Return Method, Option Pricing Method, Milestone Analysis Method and Replacement Cost Methods.
 - Where any consideration is received for issue of shares from any non-resident entity notified by the Central Government, the price of the equity shares corresponding to such consideration may be taken as the FMV of the equity shares for resident and non-resident investors, subject to the following:
 - (i) To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and

Ministry of Finance (Contd...)

- (ii) The consideration has been received by the company from the notified entity within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.
- The Amendment Rules also provides separate valuation mechanism for compulsorily convertible preference shares (“**CCPS**”) and also provides an option to the assessee to adopt FMV of unquoted equity shares for determining FMV of CCPS.
- In case consideration is received from a venture capital fund or a venture capital company or a specified fund, price at which shares are issued to notified entities, venture capital funds or specified funds shall be adopted as FMV, if the consideration has been received within a period of 90 days before or after the date of issuance of shares subjected to valuation.
- Lastly, the Amendment Rules introduces safe harbor limit of 10% for valuation of equity shares and CCPS for consideration received from both resident and non-resident investors.
- **Link of the Official Gazette website.**
<https://incometaxindia.gov.in/communications/notification/notification-81-2023.pdf>

Securities Law

- ❑ **Circular No:** SEBI/HO/DDHS/DDHS-POD2/P/CIR/2023/151 (“**Circular**”).
- ❑ **Circular Date:** September 04, 2023
- ❑ **Circular Effective Date:** October 01, 2023 (“**Date of Applicability**”)
- ❑ **Subject of the Circular. Mechanism for Sharing of Information by Credit Rating Agencies (CRAs) to Debenture Trustees (DTs).**
- ❑ **Analysis of the Circular is as under:**
 - In accordance with the SEBI (Credit Rating Agencies) Regulations, 1999 (“**CRA Regulations**”) and circulars issued thereunder, the CRAs are mandated to share certain information to Debenture Trustees (DTs) in a watertight timeline on a daily basis.
 - Due to the large quantum of information submitted daily by CRAs to DTs, as well as short timelines mandated for disclosure of this information by DTs, it is vitally important that the data shared by CRAs be structured and submitted in a specified format for easier accessibility and analysis of the submitted data.
 - After due deliberations between CRAs and DTs, an excel template (placed as an Annexure in the Circular) is issued, which the CRAs shall use for their daily submissions of rating revisions to DTs.

Securities Law (Contd...)

- The CRAs are mandated to submit the duly filled in excel template to the DTs on the same day as the day of rating revisions, either on the generic email ID being used for regulatory purposes or on email IDs/URL, as may be communicated for this purpose by DTs.
- The CRAs shall report on their compliance with this Circular (as ratified by their respective Board of Directors) to SEBI within one quarter from the Date of Applicability of this Circular.
- In line with Regulation 22 of the CRA Regulations and circulars issued thereunder, SEBI will mandatorily monitor the implementation of this circular through the half-yearly internal audit for CRAs.
- **Link of the Circular.**
https://www.sebi.gov.in/legal/circulars/sep-2023/mechanism-for-sharing-of-information-by-credit-rating-agencies-cras-to-debenture-trustees-dts-_76476.html

Securities Law (Contd...)

- ❑ **Circular No.** SEBI/HO/DDHS/PoD1/CIR/P/2023/150 (“**Circular**”).
- ❑ **Circular Date.** September 04, 2023
- ❑ **Circular Effective Date.** October 01, 2023 (“**Date of Applicability**”)
- ❑ **Subject.** SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“**NCS Regulations**”)
- ❑ **Subject of the Circular.** New format of Abridged Prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares’
- ❑ **Relevant definition:**
 - **abridged prospectus** (*Regulation 2(1)(a) of NCS Regulations*)
 - “*abridged prospectus*” means a memorandum accompanying the application form for a public issue containing such salient features of a prospectus as specified by the Board.

Securities Law (Contd...)

- **Analysis of the Circular is as under:**

- ✓ In accordance with Section 33(1) of the Companies Act, 2013, no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.
- ✓ In accordance with Regulation 32(3) of NCS Regulations and circulars issued thereunder, abridged prospectus shall be in the format as specified in Part B of Schedule I of the NCS Regulations, which has now been revised to simplify, provide greater clarity and consistency in the disclosures and to provide additional but critical information in the abridged prospectus. The same has been annexed as Annex-I to the Circular.
- ✓ Some of the key changes in the format of abridged prospectus are as follows:
 - Basic description of the issue is to be given
 - Summary of outstanding litigation, claims and regulatory action to be provided in format given
 - Material developments in brief (*as provided in the prospectus*)
 - Declaration by the Issuer that all the applicable provisions under various laws have been complied with

Further, instructions to investors for completing the application form is specified in Annex-II to the Circular, which shall be displayed on the websites of the Issuers, Merchant Bankers Syndicate Members like brokers who are involved in the public issue during the period a public issue is kept open.

Securities Law (Contd...)

- ✓ For detailed specifications, the Circular can be accessed through the link provided below.
- ✓ The Circular shall be applicable to all public issues opening on or after October 1, 2023 and the format of abridged prospectus shall be as Annex-I to the Circular, instead of Part B of Schedule I of NCS Regulations.
- ✓ A copy of the abridged prospectus shall be made available on the website of issuer, merchant bankers, registrar to an issuer and a link for downloading abridged prospectus shall be provided in issue advertisement for the public issue.
- ✓ The Issuers/Merchant Bankers shall insert a Quick Response (“QR”) code on the last on the last page of the Abridged Prospectus, the scan of which would lead to the Prospectus. Further, the Issuers/ Merchant Bankers shall insert a QR code on the front page of the documents such as front outside cover page, advertisement, etc. as deemed fit by them. The scan of the QR code would lead to the prospectus or abridged prospectus as may be applicable.
- ✓ The Issuers/Merchant Bankers shall ensure that the disclosures in the abridged prospectus are adequate, accurate and do not contain any misleading or misstatement.
- ✓ It is important to note that, the Issuers/Merchant Bankers shall ensure that the qualitative statements in the abridged prospectus are substantiated with quantitative factors- which means that no qualitative statement shall be made which cannot be substantiated with quantitative factors.
- ✓ The stock exchanges are directed to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their website.

Securities Law (Contd...)

- **Link of the Circular.**

https://www.sebi.gov.in/legal/circulars/sep-2023/new-format-of-abridged-prospectus-for-public-issues-of-non-convertible-debt-securities-and-or-non-convertible-redeemable-preference-shares_76430.html

INSOLVENCY AND BANKRUPTCY CODE

- ❑ **Circular No.** : IBBI/CIRP/60/2023 (“**Circular**”).
- ❑ **Circular Date.** : September 01, 2023
- ❑ **Circular Effective Date.** **September 01, 2023** (“**Date of Applicability**”)
- ❑ **Subject of the Circular.** Filing of CIRP Forms for the purpose of monitoring corporate insolvency resolution processes and performance of insolvency professional entities under the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder.
- ❑ **Analysis of the Circular is as under:**
 - In accordance with the Regulation 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) read with Circular no. IBBI/CIRP/023/2019 dated 14th August 2019, Circular no. IBBI/CIRP/41/2021 dated 18th March 2021 and Circular no. IBBI/CIRP/42/2021 dated 20th July, 2021, the insolvency professionals (“**IP**”) can submit the records and information to the Insolvency and Bankruptcy Board of India (“**IBBI**”) for monitoring of the processes and performance of IPs on the electronic platform hosted on the website of the IBBI at www.ibbi.gov.in.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ✓ IBBI had in its IBBI (Insolvency Professionals) (Fourth Amendment) Regulations, 2022 notified on September 28, 2022, allowed the Insolvency Professional Entities (“**IPE**”) to get enrolled, registered and act as IP for conducting the insolvency processes under the Insolvency and Bankruptcy Code, 2016 (“**Code**”). However, the filing of CIRP forms (“**facility**”) was not available to IPE acting as IP, as a result of which, they were unable to file and submit the forms. Now, the said facility has been extended to IPE acting as IP.
- ✓ They can access the said platform with the help of a unique username and password provided by IBBI and authorise an IP handling the process to upload/ submit the CIRP Forms, subsequent to which he will be able to submit the CIRP Forms.
- ✓ This facility being introduced now, it wouldn’t attract a penalty under regulation 40B of the CIRP Regulations, if the forms are filed on or before September 30, 2023 by these IPEs. Thereafter, penalty shall be levied as is applicable under the said regulations.
- **Link of the Circular.**
<https://ibbi.gov.in/uploads/legalframework/7fa9e4a4ee918732b6287d43dd064fe6.pdf>

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- ❑ **Circular No.** IBBI/2023-24/GN/REG106 (“**Circular**”).
- ❑ **Circular Date.** September 18, 2023
- ❑ **Circular Effective Date.** September 18, 2023
- ❑ **Subject of the Circular.** Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023. (“**Amendment Regulations**”)
 - **Analysis of the Circular is as under:**
 - ✓ The Insolvency and Bankruptcy Board of India (“**IBBI**”) has *vide* the Circular further modified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations**”) and following are *interalia* the significant changes introduced *vide* the Amendment Regulations:
 - **Details of the debt due, part payments, date of default to be provided along with the submission of the evidence of the debt.**
 - ✓ After Regulation 2C of the Principal Regulations, Regulation 2D has been inserted viz. ‘Details of debt, default and limitation in respect of applications under section 7 or section 9’ which requires the financial creditor or the operational creditor filing any application under Section 7 i.e. Initiation of corporate insolvency resolution process by financial creditor or Section 9 i.e. Application for initiation of corporate insolvency resolution process by operational creditor under the Insolvency

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Submission of the proof of claims by a creditor.**
 - ✓ Sub-regulation (2) of the Regulation 12 of the Principal Regulations which deals with the submission of proof of claims by a creditor has been omitted *vide* the Amendment Regulations.
 - ✓ Further, after sub-regulation (1) of Regulation 13 of the Principal Regulations which deals with verification of the claims by the interim resolution professional or the resolution professional, submitted by the creditors, the sub-regulation 1A has been inserted which *interalia* provides that in the event the claims are received from the creditors after the period specified in Regulation 12 of the Principal Regulations and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation. Further, if the interim resolution professional or the resolution professional does not collate the claim after verification then he should provide the reasons for the same and intimate the creditor as well.
- **Replacement of the authorised representative by the Financial Creditors.**
 - ✓ Further, sub-regulation (3A) has been inserted under the Regulation 16A *interalia* deals with replacement of the authorised representative by the financial creditors the with an insolvency professional of their choice, the detailed process whereas has been provided in the Amendment Regulations which can be accessed using the link given below.

INSOLVENCY AND BANKRUPTCY CODE (Contd...)

- **Audit of the Corporate Debtor.**

- ✓ Regulation 30B has been inserted after Regulation 30A of the Principal Regulations which interalia provides that any member of the committee of the creditor can propose an audit of the corporate debtor along with the objectives, scope, estimate of the costs, timeframe and name(s) of the proposed auditor and such audit shall be conducted by insolvency professional the having qualifications required for such audit, the report whereof shall be presented before the committee along with the detailed findings and comments.
- ✓ Further, the format of Form 'G' i.e. Invitation For Expression of Interest for the Corporate Debtor has been substituted and the updated format of the form can be accessed through the link provided below.

- **Link of the Circular.**

<https://ibbi.gov.in/uploads/legalframework/82a0d8c13a4ad67aac73623ca3b22c2f.pdf>

Deets / Disclaimer

❑ Deets.

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Thank You



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