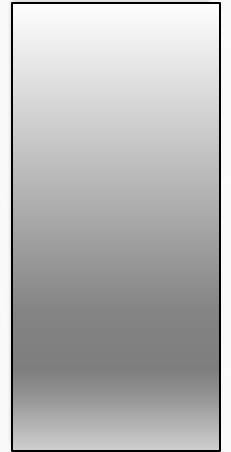


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES FOR FEBRUARY,
2024**



Ministry of Corporate Affairs

- **Circular No.:** 02/2024 (“**General Circular**”)
- **Circular Date:** February 19, 2024
- **Circular Effective Date:** February 19, 2024
- **Circular Subject:** - Deployment and usage of Change Request Form (CRF) on MCA-21
- **Introduction**
 - ✓ The Ministry of Corporate Affairs (“**MCA**”) has *vide* the General Circular introduced a facility called Change Request Form (“**CRF**”) for the convenience of the users of MCA-21. The CRF is to be used only under exceptional circumstances, for making a request to Registrar of Companies (“**RoC**”), for the purposes which cannot be catered through any existing form or services or functionality available either at Front Office level (users of MCA-21 services) or Back Office level RoC and shall not be treated as a substitute for reporting, approvals or registration.
 - ✓ CRF is specifically designed for unique situations, such as Master Data correction and compliance with directives from courts/tribunals, which may not be fulfilled using the existing forms or services within the MCA-21 system. It should not be utilized for approval-related or registration-related queries, as the existing ticketing system and help desk facilities are in place for such purposes.

Ministry of Corporate Affairs (Contd...)

- ✓ CRF is supposed to be processed by RoC within 3 days of its filing, after which it would be forwarded to Joint Director (e-governance cell), for processing within a maximum period of 7 days.
- **Link of the Circular**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE5NDU5Nzc5&docCategory=Circulars&type=open>

Ministry of Corporate Affairs (Contd...)

- **Notification No.:** G.S.R. 107 (E) (“**Notification**”)
- **Notification Date:** February 14, 2024
- **Notification Effective Date:** February 16, 2024
- **Notification Subject:** - The Companies (Registration Offices and Fees) Amendment Rules, 2024 (“**Amendment Rules**”)
- **Introduction**

The Ministry of Corporate Affairs (“**MCA**”) has *vide* the Notification further amended the Companies (Registration Offices and Fees) Rules, 2014 (“**Rules**”).

Through the introduction of the Amendment Rules, Rule 10A has been inserted after Rule 10 of the Rules. Further Rule 10 deals with the procedure on receipt of any application or form or document electronically by the registrar.

Ministry of Corporate Affairs (Contd...)

Rule 10A *inter alia* provides that:

- ✓ The Registrar of the Central Processing Center (“**CPC Registrar**”) shall examine or cause to be examined every application or e-form or document required or authorized to be filed or delivered, for approval, registration or taking on record by the CPC Registrar and the decision on the said applications shall be made within 30 days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required. Further, where multiple applications, e-forms or documents as mentioned hereunder are filed at a time then the said applications, e-forms and documents shall be decided by the CPC Registrar.
- ✓ The CPC Registrar shall exercise jurisdiction all over India in respect of the examination of following applications, e-forms or documents:
 - Form MGT-14;
 - Form SH-7;
 - Form INC-24;
 - Form INC-6;
 - Form INC-27;
 - Form INC-20;

Ministry of Corporate Affairs (Contd...)

- Form DPT-3;
 - Form MSC-1, Form MSC-4;
 - Form SH-8, Form SH-9 and Form SH-11
-
- **Link of the Notification.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE5MTIyNDU3&docCategory=Notifications&type=open>

Ministry of Corporate Affairs (Contd...)

- **Circular No.:** 01/2024
- **Circular Date:** February 07, 2024
- **Circular Effective Date:** February 07, 2024
- **Circular Subject:** - Relaxation of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No. 4D under the Limited Liability Partnership Act, 2008.
- **Analysis**
 - ✓ Ministry of Corporate Affairs has *vide* circular dated February 07, 2024 issued relaxation of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No. 4D under the Limited Liability Partnership Act, 2008.
 - ✓ In view of transition of MCA-21 from V2 to V3 and to promote compliance on part of reporting Limited Liability Partnerships (“**LLPs**”), it is informed that such LLPs may file Form LLP BEN-2 and LLP Form No. 4D, without payment of any additional fees, up to May 15, 2024. The two forms shall be made available on MCA V3 portal for filing purposes w.e.f. April 15, 2024.
- **Link of the Circular.**
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE3OTY0MjMy&docCategory=Circulars&type=open>

Ministry of Corporate Affairs (Contd...)

- **Notification No.:** S.O. 446 (E).
- **Notification Date.:** February 02, 2024
- **Notification Effective Date.:** February 06, 2024
- **Notification Subject.:** Establishment of Central Processing Centre at the Indian Institute of Corporate Affairs, Haryana
- **Introduction**

The Central Government has established a Central Processing Centre (“**CPC**”) at the Indian Institute of Corporate Affairs, Haryana having territorial jurisdiction all over India which shall process and dispose off the e-Forms filed.

Further, CPC will process 12 e-forms filed by the companies viz. e-form MGT-14, e-form SH-7, e-form INC 24, e-form INC-6, e-form INC-27, e-form INC-20, e-form DPT-3, e-form MSC-1, e-form MSC-4, e-form SH-8, e-form SH-9, e-form SH-11 with effect from February 16, 2024 and the balance e-forms and applications shall be processed by the CPC from April 01, 2024 onward.

Ministry of Corporate Affairs (Contd...)

Further, the e-forms filed under the Limited Liability Act, 2008 are also proposed to be centralised.

- **Impact of Establishment of CPC:**

- ✓ The establishment of the CPC aims to expedite the response to businesses by centralizing the handling of various forms filed with field offices under the Companies Act, 2013 (“**Act**”). The jurisdictional Registrar, other than the Registrar of the CPC, within whose jurisdiction the registered office of the company is situated, will continue to have jurisdiction over the companies whose e-forms are processed by the Registrar of the CPC, in respect of all other provisions of the Act and the rules made thereunder.
- ✓ Further, the rationale behind setting up the CPC is to process the applications in time-bound and faceless manner which requires no physical interaction with the stakeholders.

- **Link of the Notification**

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE3MjQ3OTA4&docCategory=Notifications&type=open>

Securities Law

- **Circular No.:** SEBI/HO/CFD/PoD-1/P/CIR/2024/009 (“**Circular**”).
- **Circular Date:** February 06, 2024
- **Effective date of the Circular:** February 06, 2024
- **Subject of the Circular:** Guidelines for returning of draft offer document and its resubmission.
- **Context of the subject matter of the Circular:**
 - ✓ Basic guidelines/ requirements have been introduced to adhere to, while representation of the requisite disclosures in the draft offer document (in case of a public issue of securities) or draft letter of offer (in case of a rights issue of securities) (“**Draft Offer Document**”) prepared in compliance of Schedule VI of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”);
 - ✓ The guidance check as clarified in the Circular will be observed by the Securities and Exchange Board of India (“**Board**”) while scrutinizing the Draft Offer Document and where the Draft Offer Document is (i) not in compliance with the Schedule VI of ICDR Regulations; or (ii) is not satisfactory in terms of the guidelines provided in the Circular, it shall be returned to the issuer and the lead manager(s) for correction and resubmission thereof.

Securities Law (Contd...)

- ✓ Apart from the disclosures provided in the Circular (as referred below) to be followed while preparing the Draft Offer Document, the guidelines in the Circular also provides the instances wherein the Draft Offer Document substantiates for resubmission which includes:
 - any substantial revision or additions on key disclosures in accordance with the clarifications/ explanations sought on the Draft Offer Document per the ICDR Regulations;
 - where any corrective measures are required in the Draft Offer Document on account of regulatory interpretation;
 - the appropriate disclosure(s) of the relevant provisions are not quoted which requires compliance/ meeting the conditions for making the offer and if not met the offer being made under other provision;
 - on account of material concern raised with regard to the issue/ Draft Offer Document by any regulatory authority/ enforcement agencies; and
 - in case of any pending litigations in any court or tribunal which may have an impact on the issue with regard to the eligibility criteria as provided under the ICDR Regulations.
- ✓ It has been clarified that where the Draft Offer Document is returned in terms of the guidelines provided in the Circular, there shall be no requirement of payment of any fees while resubmission thereof. However, the provisions of the ICDR Regulations w.r.t. the payment of fees shall continue to apply where the Draft Offer Document is being resubmitted with the changes in the matters as provided in Schedule XVI of the ICDR Regulations.

Securities Law (Contd...)

✓ Further, it has been also clarified that, in case the Draft Offer Document is not resubmitted, then there shall be no refund of the filing fees.

▪ **Check points per the Circular for preparation of the Draft Offer Document:**

The detailed guidelines/ check points for drafting the Draft Offer Document are provided in 'Annexure A' of the Circular which *inter-alia* includes:

- ✓ It shall be in simple language with visual representation of data with short sentences; use of definite, unambiguous and conventional words; use of active voice; tabular representation wherever required; and avoidance of multiple negatives;
- ✓ The information therein shall be represented in clear and concise manner with heading and sub-headings wherever necessary; avoidance of legal and technical terminology and where ever used clarifications thereof;
- ✓ The risk factors should be presented and included in simple, clear and unambiguous language.

Securities Law (Contd...)

- **Compliance by the Issuer:**

- ✓ The issuer shall within 2 days of resubmission of the Draft Offer Document make a public announcement in terms of the ICDR Regulations along with a disclosure that it is a case of resubmission.
- ✓ The issuer shall also intimate the sectoral regulator (where applicable) about the return and resubmission of the Draft Offer Document.

- **Link of the Circular:**

[SEBI | Guidelines for returning of draft offer document and its resubmission](#)

Insolvency & Bankruptcy Code

- **Circular No.:** IBBI/LIQ/69/2024 (“**Circular**”)
- **Circular Date:** February 22, 2024.
- **Circular Effective Date:** February 22, 2024.
- **Circular Subject:** Deposit and withdrawal of unclaimed dividends and / or undistributed proceeds in accordance with regulation 46 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”).
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - Pursuant to Regulation 46 of the Liquidation Regulations, the liquidators are mandated to deposit unclaimed / undistributed amounts into the Corporate Liquidation Account and inform the Insolvency and Bankruptcy Board of India (“**IBBI**”) in Form-I of the Liquidation Regulations.

Insolvency & Bankruptcy Code (Contd...)

- In order to facilitate the request received from a stakeholder under Regulation 46(7) who claims to be entitled to any amount deposited into the Corporate Liquidation Account for withdrawal before the dissolution of the corporate debtor, the liquidator, after due verification, shall apply to the IBBI in the format as provided in the annexure to this Circular.
- **Link of the Circular.**
<https://ibbi.gov.in/uploads/legalframework/d578543c7d3d9447faf0089802820ec2.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/LIQ/70/2024 (“Circular”)
- **Circular Date:** February 22, 2024.
- **Circular Effective Date:** February 22, 2024.
- **Circular Subject:** Enhancing Transparency and Stakeholder Engagement in Liquidation Process.
- **Key takeaways of the Circular:**
 - ✓ **Key Points:**
 - Regulation 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Regulations**”) provides that the liquidator shall submit progress reports, to the adjudicating authority (“**AA**”) and the Insolvency and Bankruptcy Board of India (“**IBBI**”) within 15 days of the end of every quarter. Since, the progress report is only submitted to AA and IBBI, it does not reach the key stakeholders, i.e., the creditors, thereby creating information asymmetry.

Insolvency & Bankruptcy Code (Contd...)

- Accordingly, the liquidator has been directed to also share the progress reports with the members of the Stakeholders' Consultation Committee (“**SCC**”) after receiving a confidential undertaking and shall continue to do the same till the filing of the final report under Regulation 45 of the Liquidation Regulations.
 - As per Regulation 13, the liquidator shall submit a preliminary report to the AA thereby detailing various aspects of the corporate debtor and an intended plan of action for carrying out the liquidation process. The Circular directs the liquidator to seek suggestions / observations of the members of the SCC while preparing the preliminary report and finalise the same after considering such suggestions / observations. Thereafter, it is required to be submitted to the AA, IBBI and members of the SCC.
 - The liquidator shall submit a copy of Form H (*which consists of an application, final report under Regulation 45 filed before the AA and a compliance certificate*) and the order for process closure/dissolution to the IBBI to the email ID: liq.cirp@ibbi.gov.in.
- **Link of the Circular.**
<https://ibbi.gov.in/uploads/legalframework/ebdbf10dbd0e11662bd6dbf2b02ca7fe.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Notification No.:** IBBI/2023-24/GN/REG113
- **Notification Date:** February 15, 2024.
- **Notification Effective Date:** February 15, 2024.
- **Notification Subject:** Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 (“**Amendment Regulations**”)
- **Key highlights of the Notification:**

Note: *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 herein have been referred to as “**Principal Regulations**”*

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
<p>NA</p>	<p>In the Principal Regulations after Regulation 4C the following regulation shall be inserted:</p> <p>Regulation 4D: Operating separate bank account for each real estate project:</p> <p>Where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project which shall ensure better transparency in the the process of settling the dues of the creditors.</p>
<p>Regulation 18(1):</p> <p>A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights.</p>	<p>In the Principal Regulations, the Regulation 18(1) shall be substitute as:</p> <p>A resolution professional shall convene a meeting of the committee before lapse of thirty days from the last meeting and the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter. This provision provides definitive timeline for the meetings of the committee and also empowering it to extend the said timeline.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
<p>Regulation 25(5)(b):</p> <p>seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.</p>	<p>In the Principal Regulations, the Regulation 25(5)(b) shall be substituted as:</p> <p>seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days.</p> <p>On a request for extension made by a creditor, the voting window shall be extended in increments of twenty-four hours period:</p> <p>The resolution professional shall not extend the voting window where the matters listed for voting have already received the requisite majority vote and one extension has been given after the receipt of requisite majority vote.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
Regulation 25(5)(b)	The said insertions provide for better participation of the members who could not vote and rationalized the process of voting with more inclusivity.
NA	<p>In the Principal Regulations, after Regulation 31A the following regulation shall be inserted:</p> <p><u>Regulation 31B. Approval of committee for insolvency resolution process costs.</u></p> <p>The insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs. This facilitates timely approval of costs and better governance of the insolvency process.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
NA	<p>In the Principal Regulations, the following proviso shall be added after clause (a) Regulation 35(1):</p> <p>Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations

Regulation 35(2):

After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

Amendment Regulations

In the Principal Regulations, the Regulation 35(2) shall be substitute as:

After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value, the liquidation value and valuation reports to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value, the liquidation value and valuation reports and shall not use the information contained in the valuation reports to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

The resolution professional also has to give the valuation report to the members in addition to the fair value and liquidation value.

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
NA	<p>In the Principal Regulations, in Regulation 36(2)(k), the following clause (ka) shall be inserted:</p> <p><u>Fair Value:</u> Provided that the committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution process.</p>
NA	<p>In the Principal Regulations, after Regulation 36A(1) the following clarification shall be inserted:</p> <p><u>Clarification:</u> The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
NA	<p>In the Principal Regulations, after regulation 38(3) the following sub-regulations shall be inserted:</p> <p>Sub-Regulation (4): The committee may consider the requirement of a monitoring committee for the implementation of the resolution plan;</p> <p>Sub-Regulation (5): Where the committee considers that a monitoring committee for the implementation of the resolution plan is required, it may, while approving the resolution plan, decide to constitute the same with the resolution professional or propose another insolvency professional, or any other person as its members and where the resolution professional is proposed to be part of the monitoring committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process.</p>

Insolvency & Bankruptcy Code (Contd...)

Principal Regulations	Amendment Regulations
NA	<p>In the Principal Regulations, after Regulation 40(2) the following clarification shall be inserted:</p> <p><u>Clarification:</u> It is clarified that the resolution professional shall continue to discharge his responsibilities under the corporate insolvency resolution process, till the application for extension is decided by the Adjudicating Authority.</p>

- **Link of the Notification.**
[88458173f47fbda03d775370a420f307.pdf \(ibbi.gov.in\)](https://ibbi.gov.in/88458173f47fbda03d775370a420f307.pdf)

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/LIQ/67/2024 (“**Circular**”)
- **Circular Date:** February 13, 2024.
- **Circular Effective Date:** February 13, 2024.
- **Circular Subject:** Reporting / sharing of information in the voluntary liquidation process.
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - The Insolvency and Bankruptcy Code, 2016 (“**Code**”) provides for voluntary liquidation process of corporate persons but the definition of corporate persons as provided in Section 3(7) of the Code excludes financial service provider (“**FSP**”).
 - Section 227 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 allows FSPs notified by the Central Government (after consulting financial regulators), to undergo a voluntary liquidation process after obtaining prior permission of the appropriate regulator.

Insolvency & Bankruptcy Code (Contd...)

- However, it has been observed that, some FSPs have commenced the voluntary liquidation process without notification and / or prior permission of the appropriate financial regulator.
- The Circular provides for a responsibility of the liquidator in case the entity involved in the liquidation process is an FSP.

✓ Key Points:

- To curb the aforesaid practice, the liquidators shall ensure that the corporate person falling under the category of FSP shall declare that:
 - the category of FSPs has been notified by the Central Government under Section 227 of the Code, and
 - the corporate person has obtained prior permission from the appropriate regulator.
- The liquidator shall submit the final copy of Form H (*which consists of final report under Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 filed before the Adjudicating Authority and a compliance certificate*) and the order for dissolution to the Insolvency and Bankruptcy Board of India to the email ID: liqvol@ibbi.gov.in.

Insolvency & Bankruptcy Code (Contd...)

- **Link of the Circular.**

<https://ibbi.gov.in/uploads/legalframwork/10b40f99875af3eceda569e977c2d1a6.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/LIQ/68/2024 (“**Circular**”)
- **Circular Date:** February 13, 2024.
- **Circular Effective Date:** February 13, 2024.
- **Circular Subject:** Deposit and withdrawal of unclaimed dividends and / or undistributed proceeds in accordance with regulation 39 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (“**Voluntary Liquidation Regulations**”).
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - Pursuant to Regulation 39 of the Voluntary Liquidation Regulations, the liquidators are mandated to deposit unclaimed / undistributed proceeds during the voluntary liquidation process into the corporate voluntary liquidation account (“**Account**”) and inform Insolvency and Bankruptcy Board of India (“**IBBI**”) in Form-G containing the details regarding the stakeholder(s) entitled to such deposited amount.

Insolvency & Bankruptcy Code (Contd...)

- Further, according to Regulation 39(7) of the Voluntary Liquidation Regulations, to facilitate the request received to the liquidator from a stakeholder (*in Form I*), who claims to be entitled to any amount deposited into the Account for withdrawal before the dissolution of the corporate person, the liquidator shall apply to the IBBI in the format provided as an annexure to this Circular for releasing the amount for onward distribution to the stakeholder(s).
- **Link of the Circular.**
<https://ibbi.gov.in/uploads/legalframework/e0eb050c966002846267b7ef7e9fd5de.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/II/66/2024 (“**Circular**”)
- **Circular Date:** February 12, 2024.
- **Circular Effective Date:** February 12, 2024.
- **Circular Subject:** Sharing of the Report prepared by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) to both debtor and creditor.
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - As per Section 99 of the Code, the resolution professional (“**RP**”) is required to submit a report to the adjudicating authority within 10 (ten) days of his appointment, recommending the approval/ rejection of the application by debtor or creditor made under Section 94 or Section 95 respectively, to initiate the insolvency resolution process. A change in relation to the circulation of the said report has been brought into effect.

Insolvency & Bankruptcy Code (Contd...)

✓ Analysis:

- The present Section 99(10) of the Code mandates the RP to share a copy of the aforesaid report to the debtor or the creditor, by whom the application to initiate the resolution process has been made. It was observed that since the report was not shared with both the parties (i.e. the debtor and the creditor), it led to the lack of equal information access amongst them.
- Accordingly, to promote transparency and informed decision making, it has been **advised** that the RP shall provide a copy of the report to **both** debtor and creditor in all cases. This shall ensure that the debtor and the creditor are well-informed about the evaluation and recommendations made by the RP.

▪ Link of the Circular.

<https://ibbi.gov.in/uploads/legalframework/0ed6df8b1d8f1ef6bb762a375645a02b.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Notification No.:** IBBI/2023-24/GN/REG112 (“**Notification**”)
- **Notification Date:** February 12, 2024.
- **Notification Effective Date:** February 12, 2024.
- **Notification Subject:** Insolvency and Bankruptcy Board of India (“**IBBI**”) (Liquidation Process) (Amendment) Regulations, 2024 (“**Amendment Regulations**”)
- **Key highlights of the Notification:**

The key highlights in the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as the “**Principal Regulations**”) are as follows:

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
2B (1)	The second proviso to the said regulation stated that the liquidator is obligated to file the proposal of compromise or arrangement which has been recommended by the committee of creditors (“ CoC ”) under Regulation 39BA of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“ CIRP Regulations ”), within a period of 30 (thirty) days from the date of order of liquidation.	The said second proviso to the said regulation has been substituted and a third proviso has been inserted to the effect that, the proposal of compromise or arrangement shall only be filed on the recommendation of the CoC made under Regulation 39BA of CIRP Regulations, not later than 30 (thirty) days from the date of commencement of liquidation.
14	The said Regulation provided for an application made by the liquidator directly to the Adjudicating Authority (“AA”) for early dissolution on the satisfaction of the 2 (two) conditions specified thereunder.	It has been amended to the effect that, the liquidator shall consult the consultation committee and shall apply to AA for early dissolution only if it advises to do so <i>(along with the detailed report encompassing the views of the consultation committee).</i> <i>The same would now ensure informed decision by the Liquidator before submitting the said application.</i>

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
31A (1)	The liquidator was required to constitute a consultation committee under this regulation (" consultation committee ") comprising of all the creditors of the corporate debtor for advising him on certain matters during the process.	There scope of the matters for the consultation has been widened to some extent by insertion of some additional matters as provided in the Amendment Regulations.
31A (6)	There was no specific provision for holding meetings of the consultation committee on a periodic basis.	Second and third proviso have been inserted mandating to hold subsequent meeting(s) within 30 (thirty) days of the previous meeting unless the said timeline has been extended by the consultation committee. However, in all cases, at least 1 (one) meeting shall be held in every quarter.

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
31A (6A) and 31A (6B)	NA	<p>Additional sub-regulations have been inserted specifying that:</p> <ul style="list-style-type: none"> ○ In cases where the liquidator proposes to continue/ initiate any legal proceeding(s), he shall do so by seeking advice of the consultation committee. ○ In every meeting the liquidator shall present to the consultation committee the disclosure w.r.t. liquidation cost, current status of the legal proceedings and progress made in the process. ○ This provisions have been inserted to promote better decision making in the process of liquidation.
32A (4)	This regulation specifies that the liquidator can sell the assets of the corporate debtor <u>exclusively only at the first auction.</u>	Explanation to this regulation has been inserted specifying that the option for only the sale of the corporate debtor shall NOT be given to the bidders after the first auction.

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
32A (5)	NA	If the liquidator is of the opinion that it is viable to run the affairs of the corporate debtor, he can do so only on such advice of the consultation committee.
33 (2)	The liquidator could sell the assets of the corporate debtor by way of private sale in the manner provided in Schedule I	<p>However, now, the liquidator is required to consult the consultation committee before initiating a private sale.</p> <p>Additionally, there has been a change in the instances when the sale of assets can be initiated.</p>
35 (2)	In some cases, the liquidator could suo-motu initiate a fresh valuation of the assets, if in his opinion it is required to do so.	However, now he can do so only after consulting the consultation committee.

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
35(5)	NA	In cases where valuation report has been obtained under regulation 35(2), the liquidator shall arrange for a meeting of the consultation committee wherein the registered valuers shall explain the methodology of arriving at the valuation of assets.
35(6)	NA	The liquidator shall share the valuation reports with the consultation committee after obtaining an undertaking that they shall maintain the confidentiality of such reports and shall not use it for any undue purpose.
35(7)	NA	The registered valuers shall explain the reasons for difference in valuation, if any, of 25 (twenty-five) percent or more for any class of assets <i>at the meeting of the consultation committee arranged by the liquidator.</i>

Insolvency & Bankruptcy Code (Contd...)

Regulation no.	Principal Regulations	Amendment Regulations
46(7)	Covered in the update for the circular no “IBBI/LIQ/69/2024” above.	
46A	NA	Where, the corporate debtor has given possession of a real estate project to an allottee, such asset shall not form part of the liquidation estate of the corporate debtor.

In addition to the aforesaid amendments, there are certain changes:

- in para (1) and (2) of Schedule I of the Principal Regulations; and
- in Schedule II of the Principal Regulations– format of Form A has been substituted;

which can be referred to from the link to this Notification attached below.

▪ **Link of the Notification.**

<https://ibbi.gov.in/uploads/legalframework/790016d91e25c04925c7b57c179c9e7a.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/IPE/64/2024 (“Circular”)
- **Circular Date:** February 1, 2024.
- **Circular Effective Date:** February 1, 2024.
- **Circular Subject:** Measures for rationalisation of the regulatory framework of Insolvency Professional Entities
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - Prior to September 2022, Insolvency Professional Entities (“**IPEs**”) (being a company, limited liability partnership, registered partnership firm) were allowed to provide only support services to an Insolvency Professional (“**IP**”). However, after September 2022 IPEs were allowed to carry on the activities of an IP.
 - Insolvency and Bankruptcy Board of India (“**IBBI**”), after due consideration, has now considered imperative to provide clarity on few areas to facilitate IPEs to undertake their expanded role.

Insolvency & Bankruptcy Code (Contd...)

✓ Clarification(s) issued:

- In relation to disciplinary proceedings in case of an IP which is an IPE
 - Sections 217 to 220 of Chapter VI of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with the relevant rules/ regulations framed thereunder, provides the processes of grievance, complaints handling and disciplinary proceedings, continued eligibility requirements for recognition as an IPE, its liability and derecognition, etc.
 - Clarity was required as to under whose name to initiate the disciplinary proceeding(s) in case of any contravention in relation to an assignment undertaken by an IP which is an IPE since an IPE shall have multiple individuals as its partners and directors. And accordingly, it has been clarified that, in case the assignment is undertaken by the IP, which is an IPE, the show-cause notice under Regulation 11 of the IBBI (Inspection and Investigation) Regulations, 2017 shall be issued to:
 - a) its partner or director, as the case may be, who is an IP and was authorised to sign and act on behalf of it for the respective assignment; and/or
 - b) the IPE if in the opinion of the IBBI, there are either repeated instances of contravention against one or more partners or directors of the IPE or instance of systemic failure on the part of such IPE.

Insolvency & Bankruptcy Code (Contd...)

- On applicability of limit on number of assignments to an IP which is an IPE
 - Clause 22 of Code of Conduct specified in First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (“**IP Regulations**”) imposes a restriction on the number of assignments that can be undertaken by an IP. However, this restriction has been envisaged for IPs who are individuals.
 - Since the provisions have been introduced allowing IPE to act as IP, it is not considered prudent to apply any limit on the number of assignments that may be undertaken by such IPE at the nascent stage. Accordingly, clause 22 of Code of Conduct specified in First Schedule to the IP Regulations does not apply to an IP which is an IPE.
- On applicability of fee structure to an IP which is an IPE
 - Regulation 34B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) stipulates the minimum fixed fee structure and a performance-linked incentive fee for the IPs in a Corporate Insolvency Resolution Process (“**CIRP**”) for IPs who are individuals.

Insolvency & Bankruptcy Code (Contd...)

- Since the provisions have been introduced allowing IPE to act as IP it is considered prudent that IPEs have an expanded role, and their fee should be market-determined. Also, IPEs are better placed to negotiate their fees as compared to an individual IP. Hence, Regulation 34B of CIRP Regulations does not apply to an IP, which is an IPE.
- **Link of the Circular.**
<https://ibbi.gov.in/uploads/legalframework/7b341d61f32e0710d0d022484f156ca2.pdf>

Insolvency & Bankruptcy Code (Contd...)

- **Circular No.:** IBBI/IP/65/2024 (“**Circular**”)
- **Circular Date:** February 1, 2024.
- **Circular Effective Date:** February 1, 2024.
- **Circular Subject:** Measures for facilitating efficient conduct of the processes by the Insolvency Professionals (“**IP**”).
- **Key takeaways of the Circular:**
 - ✓ **Background:**
 - The Insolvency and Bankruptcy Code, 2016 (“**Code**”) empowers an IP to appoint accountants, legal or professionals, avail support services from an Insolvency Professional Entity (“**IPE**”) to effectively discharge its functions. The fees payable to the said professionals, fees to IPE and other expenses incurred by the IP form part of the respective process costs.
 - Section 208 of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“**IP Regulations**”) mandates an IP to abide by the Code of Conduct specified in the First Schedule to the IP Regulations.

Insolvency & Bankruptcy Code (Contd...)

- The Insolvency and Bankruptcy Board of India has now deemed it expedient to provide clarity on few areas to facilitate smooth and efficient conduct of the processes.

✓ Clarification(s) issued

- In relation to rendering professional service by an IP in implementation of the resolution plan approved by the Adjudicating Authority
 - Clause 23A of the code of conduct specified in first schedule to IP Regulations, provides a cooling off period of 1 (one) year for the IP for seeking employment or rendering professional services to related stakeholders like Corporate Debtor (“CD”), certain creditors, successful resolution applicant and their relatives, after closure of the assignment (*as defined under Regulation 2(1)(a) of the IP Regulations*).
 - Regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) provides for mandatory contents of the resolution plan inter alia including its implementation schedule, management, and control of the business of the CD during its term and adequate means for supervising its implementation.

Insolvency & Bankruptcy Code (Contd...)

- It has been observed that, the adjudicating authority (“**AA**”) approves the resolution plan with provisions for constitution of implementation or monitoring committees, subject to meeting other requirements. These mechanisms are proposed to ensure effective implementation of the approved resolution plan and effective management of the CD during the transitional phase. Since, IP is already familiar with the nuances of the business of CD, IP is normally given a role in the implementation or monitoring committee.
- In order to facilitate smooth implementation of the resolution plan, the Circular clarifies that an IP may render professional service in relation to implementation of resolution plan approved by the AA, provided details of such service are mentioned in the resolution plan approved by the AA.
- **On compliance regarding billing / invoicing for services availed by IP from professionals**
 - Clause 25C of code of conduct specified in first schedule to IP Regulations stipulates that an IP shall ensure that the IPE or the professional engaged by it raises bills or invoices in their own name towards their fees, and such fees shall be paid to them through banking channel.

Insolvency & Bankruptcy Code (Contd...)

- A clarification has been provided that, for the purposes of the said clause, the bill or invoice may be raised in the name of the IPE or the professional or the firm in which such professional is a partner.

- **Link of the Circular.**

<https://ibbi.gov.in/uploads/legalframework/49a23d68b3069be4f084e622d89a3915.pdf>

Deets / Disclaimer

❑ Deets.

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❑ Disclaimer.

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Thank You



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