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Greetings and a warm welcome to our August, 2019 Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of August, 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI) and Insolvency and Bankruptcy Board of India (IBBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month relates to “Companies Amendment Act, 2019 certain sections notified on 14th August 2019”

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,
Amita Desai & Team



A. INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2019.

The Central Government vide its Notification dated 14th August, 2019 had amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“**Rules 2016**”), which is called as the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 (“**Rules 2019**”), the same will be effective from **20th August, 2019.**

From 20th August 2019 all sub rules of Rule 2019 except Rule 6(i), 6(iv), 6 (v) , 6 (vi), 6 (vii) and 6 (viii) which are sub rules 7 (2), 7(3), 7(7), 7(8), 7(9) and 7(10) of Rule 2016 will be effective.

From 20th September 2019 sub rules 6(i), 6(iv), 6 (v), 6 (vi), 6 (vii) and 6 (viii) of Rule 2019 which are Rule 7 (2), 7(3), 7(7), 7(8), 7(9) and 7(10) of Rule 2016 will be effective.

Following are the amendments:

1. Rule 2 : Definition

- 1.1** The definition of the term “**Company**” has been widened to include any transferee company in respect of the assets and liabilities of Transferor Company.
- 1.2** The definition of the term “**Corporate action**” has been made to be an inclusive definition.
- 1.3** The definition of the term “**Investor**” has been omitted.

2. Rule 3: Fund

- 2.1** The amount received through **disgorgement or disposal of securities** where a person has been convicted, the court may also order disgorgement of gain, if any, made by, and seizure and disposal of securities in possession of such person to be **credited to the IEPF**.
{ With Reference to section 125(2)(g) read with section 38(4) of the Companies Act, 2013. }
- 2.2** For the grants and donations given to the Fund, Central Government is also included along with the State Government, Companies or any other institution.

3. Rule 5: Statement to be furnished to the Fund

- 3.1** Any amount required to be credited to the Fund as per section 125(2) of the Act, shall be remitted online along with a Statement in **Form No. IEPF-1** within 30 days of such amounts becoming due to be credited to the Fund.
- 3.2** The following clauses are omitted, since the amount to be credited to the fund has been made online as mentioned above:

- **Sub-rule (2)**-tendering of amount along with challan in triplicate by the companies to the authorised bank under MCA 21 system and return 2 copies duly stamped to the Company as acknowledgement for the payment.
- **Sub- rule (3)**- to file 1 copy of above mentioned challan with the concerned Authority by the Company indicating the deposit of the amount.
- **Sub-rule (4)**-to furnish a statement in **Form No. IEPF-1** alongwith the copy of challan containing details of such transfer to the Authority within 30 days of submission of challan.

3.3 The Companies which have transferred any amount to IEPF or Central Government under clauses (a) to (d) of section 205C(2) of the Companies Act, 1956, but have not filed the statement or have filed the statement in any format other than in excel template, shall submit details mentioned in Rule 5(1) in **Form No. IEPF-1A** along with excel template **within 60 days** of notification of these amended rule.

3.4 The Company shall maintain records along with all the supporting documents in the same format as filed under **Form No. IEPF-1**, and the Authority shall have the powers to inspect such records.

3.5 The Company shall **within 60 days** of the AGM or the date on which it should have been held, whichever is earlier and every year thereafter till completion of the 7(seven) years period, identify the unclaimed amounts, as on the date of closure of financial year the account of which are to be adopted in the AGM, shall separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information of unclaimed and unpaid amounts separately for each of the previous 7 (seven) financial years in **Form No. IEPF-2**, containing following information, namely:-

- (a) the names and last known addresses of the persons entitled to receive the sum;
- (b) the nature of amount;
- (c) the amount to which each person is entitled;
- (d) the due date for transfer into the Investor Education and Protection Fund; and
- (e) such other information as may be considered necessary.

4. Rule 6: Manner of transfer of shares under sub-section (6) of section 124 to the Fund

4.1 In case the beneficial owner has encashed any dividend warrant or any dividend amount has been credited to bank account of the owner of such shares during the last 7 years, then such **shares shall not be required** to be transferred to the Fund even though some dividend warrants may not have been encashed.

4.2 All shares in respect of which dividend has been transferred to IEPF on or before the 7th September 2016 shall be transferred in the name of IEPF by the company.

4.3 The Company shall send a statement to the Authority details of the transfer in **Form No. IEPF-4** within 30 days of corporate action and also attach a copy of public notice in the said form.

4.4 The company shall maintain records along with all the supporting documents in the same format as filed under **Form No. IEPF-4**and the Authority shall have the powers to inspect such records.

4.5 All the benefits accruing on the shares like bonus shares, split, consolidation, fraction shares, etc. except rights issue shall be credited to the DEMAT account by the Company which shall send a statement to the Authority in Form No. IEPF-4 within 30 days of corporate action containing details of the transfer.

5. Rule 7: Refund to claimants from Fund

5.1 FormNo. IEPF-5 shall be transmitted online to the **Nodal Officer of the Company** for verification of claim. After making an application in Form No. IEPF-5, the claimant shall send to the Nodal Officer at its registered office, the original physical share certificate; original bond; deposit certificate and debenture certificate, along with Indemnity Bond; Advance Receipts and any other document duly signed as enumerated in Form No. IEPF-5, for verification of claims.

5.2 Every company required to credit amounts or shares to the fund or has deposited the amount or transferred the shares to the Fund, shall **nominate a Nodal Officer** for the purpose of verification of claims and coordination with IEPF Authority, who shall either be a Director or Chief financial Officer or Company Secretary of the company. A Company may appoint one or more officers as Deputy Nodal Officer to assist the Nodal Officer. The Nodal Officer shall be solely **liable for all actions of any officer appointed as Deputy Nodal Officer**.

In case a Company fails to appoint a Nodal Officer then, every Director shall be deemed to be a Nodal Officer and be liable for any failure to comply with requirement of these rules.

5.3 The details of the Nodal Officer and Deputy Nodal Officer indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID shall be communicated to IEPF Authority in **Form No. IEPF-2** within 15 days from the date of publication of these rules.

The Company shall display on its website the name and email id of Nodal Officer. Also, any change in the Nodal Officer or his details shall be communicated to the Authority through **Form No. IEPF-2** within **7 days** of such change along with board resolution thereof.

5.4 The Company shall send an online verification report to the Authority after verification of details in **Form No. IEPF-5**, in the format specified by the Authority along with all documents submitted by the claimant **within 30 days of receipt of claim** and also attach the scanned copy of all the original documents certified by its Nodal Officer alongwith the e-verification report and also attach a scanned copy of both sides of original physical share certificate or original bond or deposit or debenture certificate/s duly cancelled and certified.

5.5 If the online **verification report is not sent by the Company within 30 days of filing of the claim**, then the Company may do so by paying an additional fee of Rs. 50 per day subject to maximum of **Rs. 2000 and Rs.500**.

The Company shall maintain the original documents and produce such documents whenever required.

In case if the Authority does not receive the verification report along with documents after the expiry of 60 days from the date of filing of **Form No. IEPF-5**, then the Authority may reject Form No. IEPF-5 after sending a communication to the claimant and the concerned Company on the e-mail address to furnish a response within 15 days. In case the Company and its Nodal Officer fail to submit verification report of the claim in accordance with these rules, they shall be punishable as per the provisions of the Act.

5.6 The Authority shall give intimation on the email address of the claimant and the Company for requirement of any further information or any defect found in the e-form or document or any incompleteness in the e-form or document, directing to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document **within 15 days** from the date of receipt of such

communication, failing which the Authority may **reject the claim or Form No. IEPF-5.**

If the information or incompleteness is called from the claimant, he shall file the e-form and shall send such documents duly signed by him within 15 days to the Nodal Officer of the concerned Company at its registered office for verification of the claim and company shall send a revised verification report.

If any such information or incompleteness is called from the Company, then it shall file the revised verification report and shall send such documents within 30 days.

- 5.7** In case claimant is a legal heir or successor or administrator or nominee of the registered share holder, then he shall ensure to submit self-attested scanned copy of all documents detailed in **Schedule II** of these rules online along with the **Form No. IEPF-5**

In case of loss of securities held in physical form, the claimant has to ensure to submit self-attested scanned copy of additional documents detailed in Schedule III of these rules online along with the **Form No. IEPF-5.** The claimant shall submit all the original documents duly signed by him to the Nodal Officer of the concerned company at its registered office for verification of the claim.

- 5.8** The Company shall **verify all requisite documents** required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and **furnish a copy of the same to the Authority** while verifying the claim of such claimant through its e-verification report. In case, claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority.

Provided that the authority shall **reject or dispose** such request of transfer or transmission based on the e-verification report of the company subject to verification of such request.

- 5.9** Now, with this amendment the claimant shall file only one consolidated claim in respect of a company in a financial year, **is omitted.**

- 5.10** Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of **section 447 of the Companies Act, 2013** and the claimant shall be liable accordingly.

If any person fraudulently pretends to be an owner of any security or of any share warrant or coupon and files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under **sections 57, 447 and 448 of the Companies Act, 2013.**

6. Rule 8: Power to direct payment of amount due to the Fund.

- 6.1** The followings sub-rules are omitted :

- Sub-rule (1): furnishing of the statement to the authority in **Form IEPF-6** within 30 days of end of financial year stating amount due for the transfer to the Fund in the next financial year, which is now no longer required.
- Sub-rule (2): furnishing statement to the authority within **30 days of the closure of its accounts** for the financial year stating the reasons of deviation of amounts and actual amounts transferred to the Fund.

7. The following Schedules are added after Schedule I:

- **Schedule II:** Documents to be submitted to the Authority to register transmission of securities.
 - A. Documentary requirement for securities held in physical mode.
 - B. Documentary requirement for securities held in DEMAT mode.
- **Schedule III:** Documents to be submitted to the Authority in case of loss of securities held in physical mode.
- **Schedule IV:** Procedure to be followed while disposing the claims.

Form No. IEPF-1A is inserted and Form No. IEPF-1, Form No. IEPF-2, Form No. IEPF-4 has been revised and Form No. IEPF-6 has been removed.

IEPF Second Amendment Rules, 2019 have been notified and are available on www.iepf.gov.in.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210624.pdf>

B. THE COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2019---- NOTIFIED ON AUGUST 16, 2019

On August 16, 2019, Ministry of Corporate Affairs(MCA)had issued a Notification amending the Companies (Share Capital and Debentures) Rules, 2014which will be effective from 16th August 2019 and is called as the Companies (Share Capital and Debentures) Amendment Rules, 2019 (RULES).

Following are the details of the amendments in the RULES:

1. Equity Shares with Differential Rights under Rule 4has been substituted as follow:

- 1.1 The Company can now issue shares with Differential Voting Rights (DVR) upto **74% of the total voting power** including the voting power in respect of equity shares with differential rights issued at any point of time. The same was limited earlier to 26% of total post-issue paid up equity capital of the Company. [Sub-Rule (c)]
- 1.2 The Company can issue shares with DVR even if it **does not have consistent track record** of distributable profits for the last 3 (three) years. [Sub-Rule (d)].

2. Certificate of shares under Rule 5 has been amended as follow:

- 2.1 The Share Certificate may be issued by printing of facsimile signature of **Director or Company Secretary** now and it shall be presumed that Director or Company Secretary has signed the same and shall also be personally responsible for permitting the affixation of his signature on such Share Certificate.

3. Issue of Employee Stock Options under Rule 12 has been amended as follow :

- 3.1 Startup Company are free to issue Employee Stock Option for a period of **10 (ten) years** from the date of its incorporation or registration (earlier it was 5 years) to an employee who is **promoter or a person belonging to the promoter group** or a

director who either himself or through his relatives or through any body corporate, directly or indirectly, **holds more than 10%** of the outstanding equity shares of the Company.

3.2 Startup Company is as defined in notification number **“GSR 127(E),dated 19th February, 2019** issued by the Department for Promotion of Industry and Internal Trade” (Earlier the notification number was “GSR 180 (E) dated 17th February 2016”)

4. **Debentures under Rule 18(7) has been substituted as follow :**

Every company issuing redeemable debentures is required to comply with Debenture Redemption Reserve (“DRR”) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below :

(a) DRR shall be created out of profits of the company available for payment of dividend;

(b) the limits with respect to adequacy of DRR and investment or deposits shall be as under;-

(i) **DRR is not required** for debentures issued by All India Financial Institutions (AIFI) regulated by Reserve Bank of India (RBI) and Banking Companies, both public and privately placed debenture.

(ii) For other Financial Institutions within the meaning of section 2 (72) of the Companies Act, 2013, **DRR shall be as applicable** to NBFC registered with RBI.

(iii) For listed companies (other than AIFI and Banking Companies, **DRR is not required** for following cases:

In case of public issue or privately placed issue of debenture:

(a) For NBFCs registered with RBI and for Housing Finance Companies (HFC) registered with National Housing Bank and

(b) for other listed companies

(iv) For unlisted companies (other than AIFI and Banking Companies)

DRR is not required for NBFCs registered with RBI and Housing Finance Companies (HFC) registered with National Housing Bank, in case of privately placed debentures .

(v) For **other unlisted companies**, the adequacy of DRR shall be 10% of the value of the outstanding debentures.

(vi) The companies covered in Point (iii) and (v) above, are required to invest or deposit, **a sum of at least 15%** of the amount of its debentures maturing during the year ending on 31st March of next year in any one or more methods of investments or deposits as provided below. Further, the amount remaining invested or deposited, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.

a. in deposits with any scheduled bank, free from any charge;

b. in unencumbered securities of the Central Government or any State Government;

c. in unencumbered securities / bonds mentioned in Indian Trusts Act, 1882;

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

- (c) in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (d) the amount credited to DRR shall not be utilized by the Company except for the purpose of redemption of debenture.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210631.pdf>

C. THE COMPANIES (INCORPORATION) 7TH AMENDMENT RULES, 2019

The MCA has notified the Companies (Incorporation) 7th Amendment Rules, 2019 vide Notification dated 28th August 2019 and Form RD -1 and RD-GNL-5 was substituted. **Form RD-1** is required to be filed by the Company for making Application to the Office of Regional Director for the following two purposes pursuant to Rule 40 and 41 of the Companies (Incorporation) Rules, 2014.

- (a) Application for following different financial year other than April to March for consolidation of its accounts outside India.
- (b) Application for Conversion of Public Company into Private Limited Company.

Form RD GNL- 5 is required to be filed by the Company to resubmit the application made under Form RD-1 by providing further information or rectifying the defects or incompleteness.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/211871.pdf>

D. Appointment of Member of Competition Commission of India.

- With effect from the 17th July, 2019, appointment of Shri Bhagwant Singh Bishnoi (IFS:1983) as Member of the Competition Commission of India for a period of five years or till he attains the age of 65 years, or until further orders, whichever is earlier.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/211804.pdf>

E. Company Secretaries (Amendment) Regulations, 2019

- Company Secretaries (Amendment) Regulations, 2019 draft rules were made to amend the Company Secretaries Regulations, 1982 which the Council of the Institute of Company Secretaries of India proposes to make, in exercise of the powers conferred by sub-section (1) of section 39 of the Company Secretaries Act, 1980 (56 of 1980), and with the prior approval of the Central Government.
- Notice is hereby says that the draft will be taken into consideration after the expiry of the period of 45 days from the date on which copies of the Official Gazette containing this notification are made available to the public. If any person desiring to make any objection or suggestion in respect of the said draft regulations, may forward the same for consideration by the Council of the Institute within the period above to the Secretary, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.
- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210242.pdf>

A. DISCLOSURE OF REASONS FOR ENCUMBRANCE BY PROMOTER OF LISTED COMPANIES:

- SEBI vide Circular No. SEBI/HO/CFD/DCR1/CIR/P/2019/90 dated 7th August, 2019, mandates disclosures of reasons for encumbrance by promoter of listed companies.
- This is in modification of circular dated August 05, 2015 on “format for disclosure under Regulation 31(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011”
- In order to bring grater transparency SEBI had been decided to prescribe additional disclosure requirements under regulation 31 (1) read with regulation 28 (3) of takeover Regulation as follows;
 - (i) The promoter of every listed company shall disclose detailed reasons for encumbrance if the combined encumbrance by the promoter along with PACs with him equals or exceeds:
 - a) 50% of their shareholding in the company; or
 - b) 20% of the total share capital of the company,in the format provided at Annexure – II, within two working days from the creation of such encumbrance.

Note: Such disclosures will be warranted on every occasion, when the extent of encumbrance (having already breached the above threshold limits) increases further from the prevailing levels.
 - (ii) If the existing combined encumbrance exceeds the above mention threshold limit as on September 30, 2019, then he shall make the first disclosure on detailed reason for encumbrance in the format provided at Annexure-II by October 04, 2019
 - (iii) The disclosure on reasons for encumbrance in the format provided at Annexure- A shall be made to, -
 - a) every stock exchange where the shares of the company are listed; and
 - b) the listed company
 - (iv) The recognized stock exchanges shall maintain and separately disseminate the list of such companies along with details of encumbrance and reasons for encumbrance, on their websites promptly; and
 - (v) The listed companies shall disclose the contents of Annexure – II on their websites within two working days of receipt of such disclosure.
- The circular shall come into force with effect from the quarter ended October 01, 2019.
- Refer the formats for Disclosure of reason for encumbrance by promoter of listed companies as per Annexure II to this circular are being prescribed in the below link:

https://www.sebi.gov.in/legal/circulars/aug-2019/disclosure-of-reasons-for-encumbrance-by-promoter-of-listed-companies_43837.html

B. NON-COMPLIANCE WITH CERTAIN PROVISIONS OF SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 (“ICDR REGULATIONS”):

- SEBI vide Circular SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated 19th August, 2019 specifies the fines to be imposed by the Stock Exchanges for Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”).
- Present Circular is issued in supersession to the Circular bearing reference number CIR/CFD/DIL/57/2017 dated June 15, 2017, specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provision of SEBI (ICDR) Regulation, 2009
- Regulation 297 and 298 of SEBI (ICDR) Regulations, 2018, specifies liability of a listed entity or any other person for contravention and actions which can be taken by the respective stock exchange, the revocation of such actions and consequences for failure to pay fine in the manner specified by SEBI.
- In pursuance of the above, for non-compliance with certain provisions of ICDR Regulations, stock exchanges shall impose fines on the listed entities, as under:

Sr. No	Violation	Regulation/Schedule	Fine
1.	<p>Delay in completion of a bonus issue:</p> <p>i. Within 15 days from the date of approval of the issue by its board of directors – in cases where shareholders’ approval for capitalization of profits or reserves for making the bonus issue is not required.</p> <p>ii. Within 2 months from the date of the meeting of its board of directors wherein the decision to announce bonus issue was taken subject to shareholders’ approval – in cases where issuer is required to seek shareholders’ approval for capitalization of profits or reserves for making the bonus issue.</p>	295 (1)	Rupees 20,000/- per day of non compliance till the date of compliance.
2	Listed entities not completing the conversion of convertible securities and allotting the shares, within 18 months from the date of allotment of convertible securities.	162	Rupees 20,000/- per day of non compliance till the date of compliance.
3	As per Schedule XIX - Para (2) under heading Application for listing, it is stated that: “The issuer shall make an application for listing, from the date	Schedule XIX – Listing of Securities on Stock Exchanges.	Rupees 20,000/- per day of non compliance till the date of compliance.

	of allotment, within such period as maybe specified by the Board from time to time, to one or more recognized stock exchange(s)". In regard to above, it is specified that Issuer shall make an application to the exchange/s for listing in case of further issue of equity shares from the date of allotment within 20 days (unless otherwise specified).		
4	Listed entities shall make an application for trading approval to the stock exchange/s within 7 working days from the date of grant of listing approval by the stock exchange/s.	-	Rupees 20,000/- per day of non compliance till the date of compliance.

➤ **Credit of fines**

- The amount of fine realized as per the above structure shall continue to be credited to the "Investor Protection Fund" of the concerned stock exchange.
- The recognized stock exchange shall disseminate on their website the names of non-compliant listed entities that are liable to pay fine for non-compliance, the amount of fine imposed, details of fines received, etc.
- The recognized stock exchange shall issue notices to the non-compliant listed entities to ensure compliance and collect fine as per this circular within 15 days from the date of such notice.
- Needless to state, if any non-compliant listed entity fails to pay the fine, the recognized stock exchange may initiate appropriate enforcement action, including prosecution in furtherance of regulation 298 of ICDR, 2018.

➤ **Clarification on bonus issue delays:**

- The approvals for the listing and trading of promoters' bonus shares may be granted by the Stock Exchange, only after payment of the requisite fine by the listed entity.
- However, the approvals for the listing and trading of bonus shares allotted to persons other than the promoter(s) may be granted in the interest of the investors, subject to compliance with other requirements.

➤ This circular will be applicable from the date of issue of the circular.

➤ Refer below link of this Circular.

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

➤ **Notification- Amendments to Master Direction (MD) on KYC.**

1. Government of India, vide Gazette Notification G.S.R. 381(E) dated May 28, 2019, has notified amendment to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

The change carried out in the Master Direction in accordance with the aforementioned amendment to the PML Rules is as under:

A proviso has been added to **condition (b) of Section 23*** of the Master Direction to the effect that, where the individual is a prisoner in a jail, the signature or thumb print shall be affixed in presence of the officer in-charge of the jail and the said officer shall certify the same under his signature and the account shall remain operational on annual submission of certificate of proof of address issued by the officer in-charge of the jail.

***Section 23 of the Master Direction:**

In case an individual customer who does not possess any of the Officially Valid Documents (OVDs) and desires to open a bank account, banks shall open a 'Small Account', which entails the following limitations:

- (i) the aggregate of all credits in a financial year does not exceed rupees one lakh;
- (ii) the aggregate of all withdrawals and transfers in a month does not exceed rupees ten thousand; and
- (iii) the balance at any point of time does not exceed rupees fifty thousand.

Provided, that this limit on balance shall not be considered while making deposits through Government grants, welfare benefits and payment against procurements.

Further, small accounts are subject to the following conditions:

- a. The bank shall obtain a self-attested photograph from the customer.
- b. The designated officer of the bank certifies under his signature that the person opening the account has affixed his signature or thumb impression in his presence.

Provided that where the individual is a prisoner in a jail, the signature or thumb print shall be affixed in presence of the officer in-charge of the jail and the said officer shall certify the same under his signature and the account shall remain operational on annual submission of certificate of proof of address issued by the officer in-charge of the jail.

- c. Such accounts are opened only at Core Banking Solution (CBS) linked branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to the account.
- d. Banks shall ensure that the stipulated monthly and annual limits on aggregate of transactions and balance requirements in such accounts are not breached, before a transaction is allowed to take place.

- e. The account shall remain operational initially for a period of twelve months which can be extended for a further period of twelve months, provided the account holder applies and furnishes evidence of having applied for any of the OVDs during the first twelve months of the opening of the said account.
- f. The entire relaxation provisions shall be reviewed after twenty four months.
- g. The account shall be monitored and when there is suspicion of money laundering or financing of terrorism activities or other high risk scenarios, the identity of the customer shall be established through the production of an OVD and Permanent Account Number or Form No.60, as the case may be.
- h. Foreign remittance shall not be allowed to be credited into the account unless the identity of the customer is fully established through the production of an OVD and Permanent Account Number or Form No.60, as the case may be.

➤ The link of the aforesaid Notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11656&Mode=0>

IBBI UPDATES

A. APPOINTMENT OF REGISTERED VALUER.

- In exercise of the powers conferred by section 196(1) under clause (aa), (g) and (p) of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations to amend the Insolvency and Bankruptcy Board of India (Registered Valuer and Valuations) Rules, 2017 vide **Circular No. IBBI/RV/019/2018** dated 17th October, 2018.

In these regulations appointment of any person other than a registered valuer, that is valuer registered with IBBI on or after 1st February 2019 to conduct valuation under the IBBI code 2016 or any regulations made thereunder, including the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is illegal and amounts to violation of this Circular.

Payment made to such person other than the registered valuer for valuation shall not be part of the insolvency process cost or liquidation cost.

- The link for the said circular is as under
<https://ibbi.gov.in/uploads/legalframwork/148100a687e1999f77ce625ec22a82c1.pdf>

B. IBBI-LIQUIDATION PROCESS

- In exercise of the powers conferred by section 196 of IBC , 2016.The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (Amendment Regulations) on 25th July, 2019. Effective date is on or after 25th July, 2019.
That the provisions of the Amendment Regulations are not applicable to the liquidation processes, which had commenced before coming into force of the said Amendment Regulations and that they are applicable only to liquidation processes.
- The link for the said circular is as under:
<https://ibbi.gov.in/uploads/legalframework/01b8d1e3005e6a99db299685ba318bde.pdf>

C. THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (AMENDED UPTO 06-08- 2019)

An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Amendments in the IBC Code 2016 are effective from 16th August 2016 and these amendments are inserted in exercise of it powers are as follows:

- Explanation of Resolution plan under Section-2
For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.
- Insertion by Act No. 26 of 2019, Section. 3
It is provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.
- Insertion by Act No. 26 of 2019, Section. 4
It is provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.
- Insertion by Act No. 26 of 2019, Section. 5- (3A)
Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote” of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section

12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).

➤ Substitution by Act No. 26 of 2019, Section.6-

Before Substitution it stood as “provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;”

After Substitution it stood as - [(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.”

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) Where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) Where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

➤ Insertion by Act No. 26 of 2019, Section. 7-

Including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed.

➤ Insertion by Act No. 26 of 2019, Section.8-

Explanation – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

➤ Substitution by Act No. 26 of 2019, Section. 9

Before substitution, it stood as “repayment of debts of operational creditors”.

After Substitution it stood as- payment of debts.

- The link for the said act is as under:

<https://ibbi.gov.in/uploads/legalframework/17139a881bcc8a56c9f641e8e3a2f6b9.pdf>

D. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT 2019.
(No-26 of 2019).

- An Act further to amend the Insolvency and Bankruptcy Code, 2016.
- It is effective from 16th August 2019.
- In section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in clause (26), the following Explanation shall be inserted, namely:-

"Explanation.- the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.
- In section 7 of the principal Act, in sub-section (4), the following proviso shall be inserted, namely:-

"Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.
- In Section 12 of the principal Act, in sub-section (3), after the proviso, the following provisos shall be inserted, namely:-

"Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:
Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019."
- In Section 25A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-

"(3A) notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. Of the voting share of the financial creditors he represents, who have cast their vote:
Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3)."
- In section 30 of the principal Act,-

(a) in sub-section (2), for clause (b), the following shall be substituted shall be substituted, namely:

(b) Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

Whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2— For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) Where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force: or

(iii) Where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"

(b) in sub section (4), after the words "feasibility and viability," the words, brackets and figures "the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor" shall be inserted.

➤ In Section 31 of the principal Act, in sub-section (1), after the words "members, creditors," the words "including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed," shall be inserted.

➤ In Section 33 of the principal Act, in sub-section (2), the following Explanation shall be inserted, namely:-

"Explanation-the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the

confirmation of the resolution plan, including at any time before the preparation of the information memorandum.".

- In section 240 of the principal Act, in sub-section (2), in clause (w), for the words "repayment of debts of operational creditors", the words "payment of debts" shall be substituted.

- The link for the said act is as under

<https://ibbi.gov.in/uploads/legalframework/630af836c9fbbed047c42dbdfd2aca13.pdf>

E. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (CONTINUING PROFESSIONAL EDUCATION FOR INSOLVENCY PROFESSIONALS) GUIDELINES, 2019

Effective Date: 6th August, 2019

- Short title and commencement.
 - (a) These guidelines may be called the Insolvency and Bankruptcy Board of India (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019.
 - (b) These Guidelines have been prepared in consultation with all the three Insolvency Professional Agencies (IPAs).
 - (c) These Guidelines shall come into force with effect from 1st January, 2020.
 - (d) These Guidelines are issued in exercise of the powers under Section 196(1)(aa) of the Insolvency and Bankruptcy Code, 2016 read with regulation 7(2)(ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- Background.
 - (a) Insolvency Professionals (IPs) constitute a key institution of the insolvency regime and market economy. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals in distress. His work affects the lives and livelihood of all stakeholders of the person in distress. He needs an array of abilities to deliver on his statutory duties and obligations in an ever-evolving market environment.
 - (b) Section 196(1)(aa) of the Insolvency and Bankruptcy Code, 2016 mandates the Insolvency and Bankruptcy Board of India (Board) to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions. It has been endeavor of the Board to make available a cadre of competent and accountable IPs matching the dynamic market realities.
 - (c) Accordingly, regulation 7(2) (ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 mandates that the registration of an IP is Subject to the condition that he shall undergo continuing professional education (CPE) as may be required by the Board. Clause 10 under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that an IP must maintain and upgrade his professional knowledge and skills to render competent professional service.

➤ **Objective.**

(a) Continuing professional education is a planned and systematic attempt to introduce, review, or alter the competencies and thereby improve the performance of professionals. It meets post-registration professional development needs of IP.

(b) An IP needs to continuously upgrade himself through CPE to remain relevant and provide value added services. He needs to attend today's work with today's technology.

An anecdote from an unknown source illustrates the objective.

There was a woodcutter who had been cutting wood for years. But he never got a raise. Others who joined later to him were getting raises every year even though some of them took rest in between, and some others took off for weeks. He met his boss with resentment. The boss replied: "You are cutting the same number of trees today you were cutting five years ago. How can we give a raise?"

The woodcutter went back, worked harder, put in longer hours, but not much improvement. He consulted his colleagues and learnt that they took five minutes break each time after cutting a tree. Still they cut more trees. How? They use those five minutes to sharpen the axe. Some of them use tools sharper than axe. The woodcutter realized his folly that he had never sharpened his axe for years, nor tried to use sharper tools. He sharpened the axe and the productivity improved; he got a raise. He learnt to use mechanized tools and productivity improved further. He got further raise.

➤ **Application.**

(a) An IP shall undertake CPE in compliance with these Guidelines to keep his registration valid.

(b) Authorization for assignment shall not be issued or renewed to an IP who fails to comply with these Guidelines.

(c) These Guidelines shall not apply to IPs who have completed the age of 65 years.

Illustration

An IP attains the age of 65 years on 24th November, 2026. He may not undertake CPE for the calendar year 2026.

➤ **CPE Requirements.**

(a) An IP shall undertake a minimum of 10 credit hours of CPE each calendar year and a minimum of 60 credit hours of CPE in each rolling block of three calendar years:

Provided that an IP is not required to undertake any CPE in the calendar year in which he is registered.

Illustration

An IP registered on 30th June, 2019 shall undertake CPE for at least-

(i) 10 credit hours in each calendar year, namely, 2020, 2021, 2022, 2023 and so on; and

(ii) 60 credit hours in each rolling block of three calendar years, namely, 2020-2022, 2021-2023, 2022-2024 and so on.

Clarification 1

An IP shall undertake CPE even when his registration is suspended, or he has ceased to

have an authorization for assignment.

Clarification 2

The minimum CPE of 10 hours may be exempted by the IPA for a year on application by the IP, provided that the IP undertakes a minimum of 60 hours in every rolling block Of three years.

(b) An IP, whose registration is suspended or who ceased to have an authorization for assignment, shall undertake the backlog of CPE hours before he seeks revival of registration or authorization for assignment, as the case may be, if he has not undertaken CPE in accordance with (a) above.

Illustration

An IP ceased to have an authorization for assignment on 15th January, 2020. He seeks authorisation for assignment on 16th November, 2027. He has not undertaken any CPE during 2020-2027. He shall undertake CPE for such hours as he would have done had he continued to have authorization for assignment.

(c) Within seven days of completion of a learning activity, an IP shall submit such details of learning activity and credit hours earned by him, as may be required by his IPA.

(d) The IPA shall take note of the credit hours earned by an IP, on being satisfied that the IP has earned credit hours in accordance with the Guidelines.

➤ Learning activities.

(a) An IP may earn credit hours from the learning activities in two ways:

(i) By participation in learning activities offered by the Board, an IPA, a Registered Valuer Organisation, a statutory professional institute, a university or any other entity, as may be approved by the Board from time to time; or

(ii) By publishing articles / delivering lectures, in the areas relevant for IPs, an indicative list of which is at Schedule to these Guidelines.

(c) The following is an indicative format of learning activities in areas relevant for IPs and credit hours thereof:

SI No.	Learning Activity in the areas relevant for IPs	Credit Hours
1	Workshops, Conferences, Seminars, Training Programmes, Refresher Programmes, Certificate Courses, Conventions and Symposia and the like	Half day: Two hours Full day: Four hours
2	Acting as faculty in any of the activities in Sl. No. 1	Equivalent to the duration of the activity
3	Publication of article in any national newspaper	Four hours
4	Publication of article in a journal of the Board, an IPA, a RVO, a Professional Institute, or a referred national or international journal.	Eight hours
5	Publication of a Book	Thirty hours in the year of publication

6	Completing a two-year Post- Graduation Course	Twenty hours in the year of completion
7	Completing Ph. D	Forty hours in the year of conferment of Ph.D.
8	Pass in Limited Insolvency Examination	Forty hours in the year of passing
9	Pass in Valuation Examination of an asset Class	Twenty hours in the year of passing

➤ **Monitoring.**

(a) The IPA shall monitor and maintain records of CPE in respect of its professional members in a manner accessible to IPs and the Board.

(b) The record of CPE shall include the details of learning activity undertaken by an IP, year wise and rolling block wise, including dates of each learning activity, the area of such activity, the credit hours earned for such activity, etc.

(c) The IPA shall submit an exception report every quarter to the Board and make available detailed records to the Board when called upon to do so.

(d) The Board shall make random check to verify the quality of learning activity and records of the IPAs in respect of CPE of their professional members.

➤ **Non-compliance.**

An IP, who fails to earn the credit hours in accordance with these Guidelines, shall be deemed to have contravened provisions of regulation 7(2)(ba) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with clause 10 of the Code of Conduct under the First Schedule thereof.

➤ **Review.**

The Board may review these Guidelines from time to time, in consultation with the IPAs.

➤ **Abbreviations**

Board: Insolvency and bankruptcy Board of India

CPE: Continuing Professional Education

IP: Insolvency Professional

IPAs: Insolvency Professional Agency.

Schedule

Areas Relevant for Insolvency Professionals for the Purpose of Continuing Professional Education

S. No	Particulars
1	General
	Laws of Insolvency and Bankruptcy
	Emerging Jurisprudence
	UNCITRAL Legislative Guide (Part I, II, III and IV)
	Interface with Company Law
	Corporate Affairs and Corporate Governance

	Interface with Tax Laws
	Interface with Foreign Exchange Laws
	Interface with Securities Laws
	Interface with Property Laws
	Interface with Labour Law
	Economics of Insolvency and Bankruptcy
	UNCITRAL Legislative Guide
	Financial Markets
	Indian Constitution
2	Insolvency Professionals
	Appearance before Adjudicating Authority
	Agreements and Contracts
	Companies Act, 2013
	Finance for Insolvency Professionals
	Statistics for Insolvency Professionals
	Data Management for Insolvency Professionals
	Using Services of Information Utilities
	Record Keeping and Maintenance
	Management and Leadership for Insolvency Professionals
	Mediation, Conciliation, and Negotiation for Insolvency Professionals
	Artificial Intelligence for Insolvency Professionals
	Valuation for Insolvency Professionals
	Forensic Audit for Insolvency Professionals
	Avoidance Transactions for Insolvency Professionals
	Hiring and Supervising other Professionals
	Conflict of Interests
	Remuneration for Insolvency Professionals
	Code of Conduct for Insolvency Professionals
	Transparency and disclosures to IBBI, IPA, and Stakeholders
	Risk Management by Insolvency Professionals
	Inspection and Investigation by IBBI and IPA
	Disciplinary Proceeding by IBBI and IPA
	Grievance Redressal
	Best Practices
3	Corporate Insolvency Resolution Process
	CIRP Regulations
	Taking over the Corporate Debtor
	Moratorium
	Dealing Committee of Creditors and CoC Meetings, Voting
	Interim Finance
	Running the CD as a Going Concern
	Hostile Situations: Handling Crowds, Unlawful Assemblies, Law and Order Problems,
	Dealing with Non-cooperation
	Information Memorandum
	Administering Section 29A
	Compliance with Applicable Laws under Section 30(2)(2) of the Code
	Form H Certificate
	Fast Track CIRP
	Group Insolvency
	Cross Border Insolvency
	Pre-packs
	Balancing Interests of Stakeholders

	Treatment of MSME
	Post Resolution Plan Management
	Ethics, Integrity, Fairness and Equity
	Best Practices
4	Liquidation Process
	Liquidation Process Regulations
	Voluntary Liquidation Regulations
	Liquidation Estate
	Sale under Regulation 32 of Liquidation Regulations
	Sale as a Going Concern
	Moratorium
	Managing Stakeholders
	Best Practices
5	Individual Insolvency
	Fresh Start Process
	Individual Insolvency Resolution Process
	Bankruptcy Process
	Insolvency and Bankruptcy of Personal Guarantors
	Micro-finance and Indebtedness
	Best Practices
6	Any other topic to be added or removed from the list depending on the evolving environment.

- The link for the said guidelines is as under

<https://ibbi.gov.in/uploads/legalframework/cb449573a584beebacb4b4ce3c33fcae.pdf>

F. FILING OF FORMS FOR THE PURPOSE OF MONITORING CORPORATE INSOLVENCY RESOLUTION PROCESSES AND PERFORMANCE OF INSOLVENCY PROFESSIONALS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AND THE REGULATIONS MADE THEREUNDER

- The objective of the Insolvency and Bankruptcy Code, 2016 (Code) is time bound reorganization and insolvency resolution of firms for maximization of value of assets of the firm in distress to promote entrepreneurship and availability of credit and balance the interests of all its stakeholders.
- The first order objective of the Code is resolution.
- The second order objective is maximization of value of assets of the firm and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests of stakeholders. This order of objectives is sacrosanct (*Judgement dated 14th November, 2018 of the NCLAT in the matter of Binani Industries Limited Vs. Bank of Baroda & Anr.*)
- The Code bifurcates and separates the interests of the firm from that of its promoters / management with primary focus to ensure revival and continuation of the firm by protecting it from its own management and from a death by liquidation (*Judgement dated 25th January, 2019 of the Supreme Court of India in the matter of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*).
- The Code is a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts (*Judgement dated 31st August, 2017 of the Supreme Court in the matter of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*). The Code prevails over every other law in case of any inconsistency between the two

(Judgement dated 9th August, 2019 of the Supreme Court in the matter of Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India & Ors.). The Code is the mandate of the nation (Order dated 10th April, 2017 of the NCLT in the matter of DF Deutsche Forfait AG and Anr. Vs. Uttam Galva Steel Ltd.).

- The Code provides a complete mechanism for its implementation. It assigns specific responsibilities to an insolvency professional (IP) for its implementation and realization of its objectives. An IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms, proprietorship firms and individuals. He exercises the powers of the Board of Directors of the corporate debtor (CD) undergoing corporate insolvency resolution process (CIRP) and complies with applicable laws on its behalf. Section 20 of the Code requires him to make every endeavor to protect and preserve the value of the property of the CD and manage its operations as a going concern. Section 23 requires him to conduct the entire CIRP and manage the operations of the CD. A whole array of statutory and legal duties and powers is vested in him. He is the fulcrum of an insolvency proceeding and the link between the Adjudicating Authority (AA) and the stakeholders.
- The Code facilitates and empowers the IP to discharge his responsibilities effectively. It obliges every officer of the CD to report to him. It also obliges the promoter of the CD to extend all assistance and cooperation to him. There is an assurance of supply of essential goods and services to, and a moratorium on proceedings against, the CD. The Code empowers the IP to appoint professionals to assist him. He can seek orders from the AA if he comes across any preferential, undervalued, extortionate, or fraudulent transaction. In order to ensure that an IP performs his role, the Code empowers the Insolvency and Bankruptcy Board of India (IBBI) and the Insolvency Professional Agency (IPA) to monitor his performance. It provides for appropriate sanctions for any kind of wrongdoing. Though a client proposes the name of an IP for appointment, he is appointed by the AA. He may be removed from a process by the AA if it is not satisfied with his performance. The appointment and removal by the AA secure and sanctify the position of the IP. He has protection of actions taken in good faith under the Code and the Regulations made thereunder. His conduct can only be inspected / investigated by the IBBI / IPA which has to follow due process for the purpose. There is a bar under the Code on trial of offences against an IP except on a complaint filed by the IBBI / Central Government, before the special court.
- Keeping in view the responsibilities of the IPs, the Code provides for monitoring of their performances. It casts a duty on the IBBI and the IPA to monitor performance of IPs, and collect, maintain and disseminate information and records relating to insolvency and bankruptcy processes. It requires the IBBI to perform the following functions, among others,
 - (a) Monitor the performance of IPs and pass any direction as may be required for compliance of the provisions of the Code and the regulations issued thereunder [section 196(1)(g)];
 - (b) Call for any information and records from the IPs [section 196(1)(h)];
 - (c) Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases [section 196(1)(k)];
 - (d) Maintain websites and such other universally accessible repositories of electronic information [section 196(1)(n)];
 - (e) Issue necessary guidelines to the IPs [section 196(1)(p)]; and

(f) Conduct periodic study, research and audit of the functioning and performance of the IPs [section 196(1)(r)].

- The Code casts obligations on IPs to forward/submit the following information and records relating to CIRP to the IBBI:
 - (a) all records relating to the conduct of the CIRP and the resolution plan [section 31(3)(b)]; and
 - (b) a copy of the records of every proceeding before the AA [section 208(2)(d)].
- In order to facilitate submission of records and information by IPs to the IBBI as well as for monitoring of the processes and performance of IPs, a set of Forms were devised in consultation with stakeholders and the IPAs, in pursuance of the mandate and in synchronization with the provisions in the Code. These Forms were put out in public domain on 27th April, 2018 and the comments received have been considered. These Forms have since been finalized in consultation with the IPAs. An overview of these Forms, as annexed to this Circular, is as per the Table below:

Form No.	Period Covered and Scope	To be Filed by	Timeline
(1)	(2)	(3)	(4)
IP 1	Pre-Assignment: This includes consent to accept assignment of an IP as IRP / RP / Liquidator / Bankruptcy Trustee, the details of IP and the Applicant, the details of the person which will undergo the process, terms of consent, terms of engagement, filing of application before AA and withdrawal before admission, etc.	IP	Within three days of the relevant date
CIRP 1	From Commencement of CIRP till Issue of Public Announcement: This includes details of IRP, CD, and the Applicant, admission of application by AA, public announcement, details of suggested Authorised Representatives, non-compliances with the provisions of the Code and other laws applicable to the CD, etc.	IRP	Within seven days of making Public Announcement under section 13.
CIRP 2	From Public Announcement till replacement of IRP: This includes details of Authorised Representative selected by IRPs for a class of creditors, taking over management of the CD, receipt and verification of claims, constitution of Committee of Creditors (CoC), first meeting of CoC, confirmation / replacement of IRP, applications seeking co-operation of management (if any), expenses incurred on or by IRP, relationship of IRP with the CD, financial creditors and Professionals, support services sought from IPE, non-	IRP	Within seven days of replacement of IRP.

	compliances with the provisions of the Code and other laws applicable to the CD, etc.		
CIRP 3	Appointment of RP till issue of Information Memorandum (IM) to Members of CoC: This includes details of RP, details of registered valuers, handing over of records of CD by IRP to RP, taking over management of the CD, applications seeking co-operation of management (if any), details in IM, non-compliances with the provisions of the Code and other laws applicable to the CD, etc.	RP	Within seven days of issue of IM to members of CoC
CIRP 4	From Issue of IM till issue of Request for Resolution Plans (RFRP): This includes expression of interest, request for resolution plans (RFRP) and modification thereof, evaluation matrix, non-compliances with the provisions of the Code and other laws applicable to the CD, if any, etc.	RP	Within seven days of the issue of RFRP.
CIRP 5	From Issue of RFRP till completion of CIRP: This includes updated list of claimants, updated CoC, details of the resolution applicants, details of resolution plans received, details of approval or rejection of resolution plans by CoC, application filed with AA for approval of resolution plan; details of resolution plan approved by the AA, initiation of liquidation, if applicable, expenses incurred on or by RP, appointment of professionals and the terms of appointment, relationship of the RP with the CD, financial creditors, and professionals, support services sought from IPE, non-compliances with the provisions of the Code and other laws applicable to the CD, if any, etc.	RP	Within seven days of the approval or rejection of the resolution plan or issue of order for liquidation, as the case may be, by the AA.
CIRP 6	Event Specific: This includes: <ul style="list-style-type: none"> a. Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; b. Raising interim finance; c. Insolvency resolution process of guarantors; d. Extension of period of CIRP and exclusion of time; 	IRP or RP, as the case may be.	Within seven days of the occurrence of event.

	<p>e. Premature closure of CIRP (appeal, settlement, withdrawal, etc.);</p> <p>f. Request for liquidation before completion of CIRP; and</p> <p>g. Non implementation of resolution plan as approved by the AA.</p>		
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- The IBBI has developed, in consultation with the IPAs, an electronic platform for filing of the Forms above said. The said platform is hosted on the website of the IBBI at <https://www.ibbi.gov.in>. It is open for filings from 16th September, 2019. An IP shall access the said platform with the help of a unique **username** and **password** provided to him by the IBBI and upload / submit the Forms, along with relevant information and records, after affixing DSC or after e-signing.
- It is directed that an IP shall file electronically -
 - a. the Forms along with relevant information and records, which have become due on or before 15th September, 2019 in respect of all CIRPs, both closed and ongoing, conducted by him, by 30th September, 2019; and
 - b. the Forms along with relevant information and records, which will become due on or after 16th September, 2019 in respect of CIRPs conducted by him, by the timelines as specified in the Table under Para 7 above.
- It is clarified that -
 - (a) an IP shall be liable to action permissible under this Circular read with the applicable provisions of the Code and the Regulations made thereunder for:
 - (i) failure to file a Form along with relevant information and records,
 - (ii) Inaccurate and incomplete information and/or records filed in or along with a Form, and
 - (iii) Delay in filing;
 - (b) The action under (a) includes refusal to issue or renew authorization for assignment; and
 - (c) Timely filing of complete and accurate information along with information and records is the sole responsibility of the IP.
- It is further directed that an IPA shall-
 - (a) Monitor filings by its members and, based on the same, take action against the member who fails to file a Form along with relevant information and records when it is due;
 - (b) Scrutinize at least 10% of Forms, filed by its members in a month, selected on random basis and, based on the same, take action against the member for any-
 - (i) Inaccurate or incomplete information and records filed along with a Form, and
 - (ii) Non-compliances with the Code and the Regulations made thereunder, as observed from the information and records filed along with a Form; and
 - (c) Submit a quarterly summary report in respect of (a) and (b) to the IBBI within 15 days of the close of quarter.

This is without prejudice to monitoring and scrutiny of filings and actions, as may be taken by the IBBI.

This is issued in exercise of the powers under clauses (aa), (g), (h), (k), (n), (p) and (r) of sub-section (1) of section 196 read with sections 31(2)(b) and 208(2)(d) of the Insolvency and Bankruptcy Code, 2016, and in consultation with the Insolvency Professional Agencies.
- The link for the said circular is as under
<https://ibbi.gov.in/uploads/legalframework/8c1242899c43155eddda4bda46f3ef4d.pdf>

ARTICLE OF THE MONTH

Companies Amendment Act 2019 certain sections notified on 14th August 2019

List of Sections of CAA 2019 and its related Sections in CA 2013 are listed as below

Serial No.	Section under CAA 2019	Section under CA 2013	Particulars
1	Section 6	Section 26	Relating to Prospectus
2	Section 7	Section 29	Relating to Demat of shares
3	Section 8	Section 35	Relating to delivery of Prospectus
4	Section 14 (i) ,(iii) & (iv)	Section 90	Relating to SBO
5	Section 20	Section 132	Relating to NFRA
6	Section 31	Section 212	Relating to SFIO
7	Section 33	Section 241	Relating to Oppression & MisMagt
8	Section 34	Section 242	Relating to Powers of Tribunal
9	Section 35	Section 243	Relating to consequences of termination of agreements
10	Section 37	Section 272	Relating to Petition of Winding up
11	Section 38	Section 398	Relating to filing of documents in electronic form

The Companies (Amendment) Act, 2019 (“CAA 2019”) which was notified on 31st July, 2019 by which the Companies Act, 2013 (“CA 2013”) was further amended. The Amendment Acts incorporates provisions introduced by the Ordinance dated 2nd November 2018 along with certain new provisions. The effective date of provisions which were there in Ordinance dated 2nd Nov 2018 remains as 2nd November 2018 and for other provisions the effective dates are notified by Central Government vide Notifications.

Following few Sections which are not notified so far under CAA 2019 are now notified with effect from 15th August 2019, vide Notification dated 14th August 2019.

The amendments made vide the Notification dated 14th August 2019 is detailed as below:

1. The Company was required to file the prospectus with Registrar (RoC) and RoC was required to register it and after registration only the Company can offer shares to public.
Now the change is that the Company is required to file the prospectus with RoC and RoC is not required to register the same.
(Section 26 and 35 of CA 2013 is amended)
2. All public companies (listed or unlisted) were required to issue/ allot or transfer their shares or securities only in Demat Form and not in physical form.
Now the changes is that Ministry has power to prescribe any class of company (public or private) to issue / allot or transfer their shares only in Demat Form. However the Ministry has so far not prescribed any class of private limited companies.
(Section 29 of CA 2013 is amended)
3. Under the provisions of Section 90 of the CA 2013 for Register of Significant Beneficial Owner (SBO) in a company, four changes are made
 - 3.1 One is insertion of new sub-section 4A which reads as follow:
“(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.”;
 - 3.2 Section 90 (9) is substituted with following:
*“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), **within a period of one year from the date of such order**:*

*Provided that if **no such application has been filed within a period of one year** from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.”*
 - 3.3 Section 90 (9A) is inserted as follow :
(9A) The Central Government may make rules for the purposes of this section.”;
 - 3.4 Section 90 (11) for penalty any non-compliance of provisions of Section 90 (4A) newly inserted sub-section is also included.

New Changes is that now the Company need to show its bonafide efforts to find SBO, otherwise the Company will be liable for default under section 90 (11) of the CA 2013. Further the Ministry has power to make rules required to be made for this section which is regarding SBO.

One major change is that section 90 (9) is substituted. Earlier provision was that, the company or the person aggrieved by the order of the Tribunal may make an application in the Tribunal for relaxation of filing of the restrictions placed under sub-section 8. However with the amendment in this sub-section, the time limit is fixed as one year to make application to Tribunal and if the same is not made, such shares will be transferred to Investors Education and Protection Fund (IEPF).

(Section 90 of CA 2013 is amended)

4. On 1st October 2018, Section 132 (1) on National Financial Reporting Authority (NFRA) was enforced. NFRA was constituted to provide for matters relating to accounts and auditing standards under the Act.

Now the changes is that NFRA shall perform its functions through such divisions as may be prescribed and each division of NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson. There shall be an executive body of NFRA consisting of the Chairperson and full-time Members of NFRA for efficient discharge of its functions under this section except to make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors, as the case may be.

Earlier NFRA had power to debar the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949.

Now the changes is that NFRA can debar the member or the firm, for a minimum period of six (6) months or such higher period not exceeding ten (10) years from, being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or performing any valuation as provided under section 247.

(Section 132 of CA 2013 is amended)

5. Earlier powers were given to the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office (SFIO), if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

Now the change is that the powers are given to any officer not below the rank of Assistant Director of SFIO, if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

Earlier such arrested person was required to be taken in 24 hours to a “Judicial Magistrate” or **Metropolitan Magistrate**.

Now the change is that such arrested person was required to be taken in 24 hours to a “Special Court or “Judicial Magistrate” or **Metropolitan Magistrate**.

Following new sub section 14A is added under section 212 which reads as follow :

(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”

With this insertion Central Government is empowered to make an application before the Tribunal for disgorgement of asset, property or cash from any Director, KMP or other officer of the Company or **any other person or entity** who has taken undue advantage or benefit by fraud.

(Section 212 of CA 2013 is amended)

6. Under Section 241 with respect to application to Tribunal for relief in case of Oppression, following four changes are being made:

6.1 Section 241 (2) with respect to application to Tribunal for relief in case of Oppression, the Central Government may make an application to the Tribunal, if it is of the opinion that the affairs of the company are being conducted in prejudicial manner affecting public interest.

Now the change is that such application is required to be made to Principle Bench of the Tribunal.

6.2 Sub Section (3) is inserted, which empowers Central Government to make application to Tribunal with a request to inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(a) any person concerned is guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed with business principles or prudent commercial practices;

(c) a company is or has been conducted and managed in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

6.3 Sub Section (4) is inserted, by which the person against whom a case is referred to the Tribunal under sub-section (3), shall be a respondent to the application.

6.4 Sub Section (5) is inserted, by which every application under sub-section (3) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry and the same shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908.

(Section 241 of CA 2013 is amended)

7. Under Section 242 with respect to Powers of Tribunal the following sub-section (4A) has been inserted:

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Now the change is that Tribunal shall record its decision in the matter where Central Government had made an application before Tribunal for enquiry, stating therein specifically as to whether respondent, is fit and proper person to hold office of director or any other office connected with the conduct and management of any company.

(Section 242 of CA 2013 is amended)

8. Under Section 243 relating to consequences of termination or modification of certain agreements following two alterations were made.

8.1 sub-sections (1A) and (1B) are inserted:

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

- 8.2 In section 243 (2) alteration is made where earlier it was mentioned that no Managing Director or other Directors or Manager whose agreement is terminated or set aside shall act as such in the Company without the leave of the Tribunal, for the periods of 5 years from the date of such termination or setting aside. If they act as such they shall be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

Now the change is that apart from Managing Director or other Directors or Manager whose agreement is terminated or set aside, the person who is declared by the Tribunal as not fit and proper person shall not act as Managing Director or Manager of a Company shall also be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

With the amendments in section 241 to 243 read with Section 212 (14A) now the Central Government is empowered to initiate actions against not only the Directors, KMPs or other officers of a company on various grounds but also against any person or entity for fraud in a company by which they have taken undue advantage or benefit.

Further under Section 241 (3) the circumstances basis which the Central Government will form the opinion to initiate the case before the Tribunal requesting for inquiry and deciding whether the respondents are fit and proper person for management of the Company are very subjective and not defined anywhere like persistent negligence, breach of trust, sound business principles, prudent commercial practices, damage to interest of trade, industry or business and intent to defraud to its creditors, members or any other persons. These all circumstances are open for interpretation till the judicial pronouncement by Tribunal. These changes are suggested to give more powers to CG to oust fraudulent person to be in the management which is outcome of recent cases of corporate frauds.

(Section 243 of CA 2013 is amended)

9. Under Section 272 (3) relating to Petition for winding up, earlier the Registrar of Companies was entitled to present the Petition for winding up on any grounds mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal or where the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Now the change is that the Registrar of Companies can present the Petition for winding up of any company on all conditions mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal.

(Section 272 of CA 2013 is amended)

10. Under Section 398 (1) (f) relating to filing of applications, documents, inspection, etc., in the electronic form, earlier any change in the prospectus was required to be registered with the Registrar.

Now the change is that no registration is required for change in Prospectus of the Company. This amendment is pursuant to amendment in Section 26 and 35 of CA 2013 where registration of prospectus is no more required and only filing is to be done
(Section 398 of CA 2013 is amended)

Conclusion:

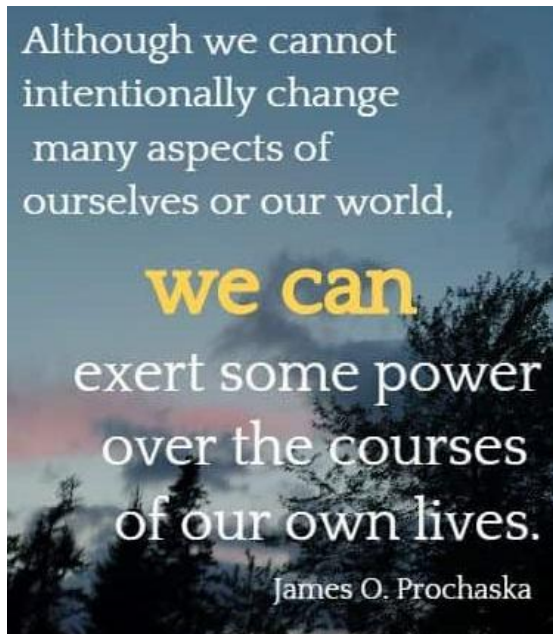
These amendment are in line with the objective of government to bring transparency, good governance practice, remove defrauder from the management of the Company, oust and expel the Auditors for professional misconduct, Demat of shares of companies as Government may prescribe, which will be easy for Government to order transfer of the same to IEPF if the SBO is not identified where SBO exist.

However the apprehension remains for the wide powers given to the regulators under section 241 to 243 where apart from MD, KMP or Director even any person or entity can be made Respondents by the Central Government in case of matters related to fraud.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210608.pdf>

INSPIRATIONAL QUOTES



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