IMPERIAL LAW OFFICES

Legal Updates

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1. BANKING AND FINANCE

RBI's MASTER CIRCULAR ON BANK FINANCE TO NON-BANKING FINANCIAL COMPANIES

The Reserve Bank of India ("**RBI**")on 5th January, 2022 has issued a master circular on Bank Finance to Non-Banking Financial Companies ("**NBFCs**")[1], to replace the erstwhile 2015 master circular[2]. This circular shall be applicable to all Scheduled Commercial Banks (excluding Regional Rural Banks).

Bank Finance to NBFCs registered with RBI:

i. *Withdrawal of ceiling:* The ceiling on bank credit linked to Net Owned Fund (NOF) of NBFCs has been withdrawn in respect of all NBFCs which are statutorily registered with RBI and are engaged in principal business of asset financing, loan, factoring and investment activities. Accordingly, banks may extend need based working capital facilities as well as term loans to all NBFCs registered with RBI and engaged in infrastructure financing, equipment leasing, hire-purchase, loan, factoring and investment activities.

   Provided that, banks should not invest in Zero Coupon Bonds (ZCBs) issued by NBFCs unless the issuer NBFC builds up sinking fund for all accrued interest and keeps it invested in liquid investments / securities (Government bonds).

   Banks are permitted to also invest in Non-Convertible Debentures (NCDs) with original or initial maturity up to one year issued by NBFCs. However, while investing in such instruments banks should be guided by the extant prudential guidelines in force, ensure that the issuer has disclosed the purpose for which the NCDs are being issued in the disclosure document and such purposes are eligible for bank finance.

ii. *Financing of second-hand assets:* In the light of the experience gained by NBFCs in financing second-hand assets, banks may also extend finance to NBFCs against second-hand assets financed by them.

Bank Finance to NBFCs not requiring Registration:

For such NBFCs not needing registration with the Reserve Bank, banks may take their credit decisions on the basis of usual factors like the purpose of credit, nature and quality of underlying assets, repayment capacity of borrowers as also risk perception, etc.

Activities not eligible for Bank Credit:

The following activities undertaken by NBFCs, are not eligible for bank credit

i. Bills discounted / rediscounted by NBFCs, except for rediscounting of bills discounted by NBFCs arising from sale of commercial vehicles (including light commercial vehicles), and two wheeler and three wheeler vehicles, with certain conditions.

ii. Investments of NBFCs both of current and long-term nature, in any company / entity by way of shares, debentures, etc. However, Stock Broking Companies may be provided need-based credit against shares and debentures held by them as stock-in-trade.

iii. Unsecured loans / inter-corporate deposits by NBFCs to / in any company.

iv. All types of loans and advances by NBFCs to their subsidiaries, group companies / entities.

v. Finance to NBFCs for further lending to individuals for subscribing to Initial Public Offerings (IPOs) and for purchase of shares from secondary market.

[1] *Accessible at* https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MC149DFE979246176478A88C8E372C8BFBA0E.PDF

[2] *Accessible at* https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9843&Mode=0

Other restrictions:

i. *Restriction on guarantees:* Banks should not execute guarantees covering inter-company deposits / loans thereby guaranteeing refund of deposits / loans accepted by NBFCs / firms from other NBFCs / firms. The restriction would cover all types of deposits / loans irrespective of their source, including deposits / loans received by NBFCs from trusts and other institutions.

ii. *Restriction on collaterals:* Shares and debentures cannot be accepted as collateral securities for secured loans granted to NBFC borrowers for any purpose.

iii. *Bridge loan/Interim Finance:* Banks should not grant bridge loans of any nature, or interim finance against capital / debenture issues and / or in the form of loans of a bridging nature pending raising of long-term funds from the market by way of capital, deposits, etc. to all categories of Non-Banking Financial Companies.

2. INCOME TAX

E-ADVANCE RULINGS SCHEME, 2022 NOTIFIED BY THE CENTRAL BOARD OF DIRECT TAXES[3]

The Central Board of Direct Taxes (CBDT) has notified e-advance rulings Scheme, 2022 (Scheme) recently. This is in continuation to the provisions brought in by the Finance Act, 2021 under the Income Tax Act, 1961 (IT Act) in this regard. The board for advance rulings is envisaged under section 245 -OB of the IT Act. The notified scheme will be applicable with effect from 18-01-2022. This Scheme shall be applicable to applications of advance rulings -(a) made to the Board for Advance Rulings under sub-section (1) of section 245Q of the Act; or (b) transferred to Board for Advance Rulings under sub-section (4) of section 245Q of the Act.

The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall, with the approval of the CBDT, will devise a process to randomly allocate or transfer the applications for advance ruling to the Board for Advance Rulings.

The unique feature of the scheme, as the name suggest is that applicant shall not be required to appear either personally or through an authorised representative before the Board for Advance Rulings or before the Secretary, ministerial staff, executive or consultant posted with the Board for Advance Rulings.

The procedure for filing and processing the application has been laid down under the Scheme.

An appeal against an order for advance ruling passed by the Board for Advance Rulings under this Scheme shall lie before the High Court. It is also pertinent to note that the Income Tax department has also been given a discretion to file an appeal to the High Court against an order of Board for Advance Rulings.

Our Comments: This is a welcome step by the government, it is especially beneficial for non-resident assessee as they don't have to appear before the Board for Advance Ruling physically. However, the implementation of the scheme will be key to the success of the scheme. The scheme has to be implemented in such a way that it does not violate the principle of natural justice.

FACELESS ASSESSMENT SCHEME DOES NOT MEAN NO HEARING[4]

Hon'ble Delhi High Court in a recent judgement has yet again clarified the law that faceless assessment scheme does not mean no personal hearing. The Hon'ble court was dealing with the matter where 'Nil' or 'Null' variation was proposed in the show cause notice, additions were made to the assessed income in the draft Assessment Order and the final Assessment Order. Further, no Show Cause Notice, as mandatorily required by Section 144B(1)(xvi) of the Act, had been served upon the petitioner with respect to the variations made. The draft Assessment Order had also been issued without considering the reply which was submitted by the petitioner well in time in response to notice issued under Section 142(1) of the Act through email, given the technical glitch in the online facility. Further no opportunity of personal hearing was given despite a specific request made by the petitioner.

The Court held that a faceless assessment scheme does not mean no personal hearing. The court further disagreed with the argument of the income tax department that grant of personal hearing would either frustrate the concept or defeat the very purpose of Faceless Assessment Scheme. It was held that where an action entails civil consequences, like in the present matter, observance of natural justice would be warranted and unless the law specifically excludes the application of natural justice, it should be taken as

[3] Notification No. 7 of 2022 dated 18th January, 2022 issued by the CBDT.
[4] Bharat Aluminium Company Ltd. Vs UOI – W.P. (C) No. 14528/2021 order dated 14.01.2022

implanted into the scheme. In fact, the opportunity to provide hearing before making any decision is considered to be a basic requirement in Court proceedings.

The Income Tax Department had argued that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing placing reliance on circular dated 23rd November, 2020 issued by CBDT. The Court held that the said argument is legally not sustainable on the ground that the classification between fact and law in the said circular is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the IT Act. It was further held that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case.

Our Comments: This is a welcome order bringing further clarity of law on Faceless assessment scheme. It is a beneficial judgement for assessee and will be relied upon for seeking opportunity of hearing under faceless assessment scheme.

3. CORPORATE (SEBI / RBI / MCA)

SEBI ISSUES NEW COMPREHENSIVE UNIFORM STRUCTURE FOR IMPOSING FINES ON NON-COMPLIANCE WITH PROVISIONS RELATED TO CONTINUOUS DISCLOSURES IN SUPERSESSION OF THE EXISTING ONE

The Securities and Exchange Board of India ("**SEBI**") had on, December 29, 2021, issued a circular[5] ("**SEBI Circular 2021**") in supersession to the circular[6] dated November 13, 2020 ("**SEBI Circular 2020**") specifying the fines and/or further actions to be imposed by the stock exchanges on issuers of listed Non-Convertible Securities and/ or Commercial Papers for non-compliance with continuous disclosure requirements specified under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR Regulations**").

SEBI Circular 2021 comprises of Annexure I providing fine to be levied in case of non-compliances issuers of listed Non-Convertible Securities and/ or Commercial Papers and Annexure II providing actions to be taken care of in case of non-compliances by such issuers. New fines are levied on non-compliances of obligations prescribed under Regulations 52(2)(a), 52(2)(d), 52(2)(f), 53(2), 54(3), 57(4), and 57(5) of SEBI LODR Regulations.

However, the said circular also provides flexibility to the stock exchanges to deviate from the fines/actions provided under Annexures after recording reasons in writing. Furthermore, the recognized stock exchanges shall operate in uniformity in case the non-complaint entity is registered with more than one recognized stock exchanges.

While directing to the recognized stock exchanges, SEBI Circular 2021 states that the fine collected in accordance with the scheme set forth in Annexure I of this circular will be credited to the "Investor Protection Fund" of the relevant recognized stock exchange along with publishing the action(s) taken against business entity for non-compliance(s) on their websites. Further, regardless of any other disciplinary/enforcement action(s) taken by recognized stock exchange(s)/SEBI, the fines indicated in Annexure I of this circular will continue to accrue until the non-compliance has been corrected and the concerned recognized stock exchange has been satisfied.

Every recognized stock exchange shall review the compliance status of the entities having listed their Non-Convertible Securities and/or Commercial Paper. If an entity fails to comply with the prescribed timeline, then the concerned recognized stock exchange shall issue notice to such non-compliant entity within 30 days from the due date of prescribed timeline. Non-compliant entity shall make sure to meet the compliance requirements and pay fine as per the SEBI Circular 2021 within 15 days of such notice.

The said circular of December 29, 2021 shall be effective for due dates of compliances on or after February 01, 2022

Our Comments: SEBI, vide this circular, has put in place an eminent framework for imposing fines on the business entity who impedes in adhering with the continuous disclosure norms put forth under SEBI LODR Regulations. SEBI vide SEBI Circular 2021 has prescribed the mode and manner of action, in addition to imposition of fine, to be taken by the stock exchanges against the issuers who does not comply with the continuous disclosure obligations of Non-Convertible Securities and/or Commercial papers.

The SEBI Circular 2021 provide a systematic approach to the recognized stock exchanges in taking cognizance against the wrongdoers.

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[5] SEBI/HO/DDHS_Div2/P/CIR/2021/699, *accessible at* SEBI | Non-compliance with provisions related to continuous disclosures

[6] SEBI/HO/DDHS/DDHS/CIR/P/2020/231, *accessible at* SEBI | Non-compliance with provisions related to continuous disclosures

SEBI MANDATED HIGH VALUE DEBT LISTED ENTITIES TO COMPLY WITH DISCLOSURE OBLIGATIONS IN RELATION TO THE RELATED PARTY TRANSACTIONS

It may be noted that with notification dated November 09, 2021 ("**RPTs Notification**"), Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("**LODR Regulations**") was revised, mandating listed companies that have listed specified securities to submit to the stock exchanges disclosure of Related Party Transactions (**RPTs**) in the format specified by SEBI from time to time. Pursuant to the aforesaid revision, the circular[7] dated November 22, 2021, ("**RPTs Disclosure Circular**") provides for list of information to be placed before the audit committee for approval and the shareholders for consideration of RPTs.

Now, SEBI with this circular[8] dated January 07, 2022 has mandated the applicability of provisions of RPTs Disclosure Circular to high-value debt-listed entities as well since the terms of Regulation 23 of the LODR Regulations will apply to high-value debt-listed firms also.

This Circular shall come in force with immediate effect. Moreover, it is recommended to the respective stock exchanges to notify the same on their websites and to the listed companies

Our Comments: SEBI issued the RPTs Notification, in November 2021, which enhanced the corporate governance and disclosure norms for RPTs. Further, RPTs Disclosure Circular has been issued, which will be effective from April 1, 2022, for prescribing the form and manner of RPT disclosure obligations and the roles and responsibilities of the audit committee with respect to RPT approval.

The aforesaid RPTs disclosure obligations and other requirements has been made applicable to high-value debt-listed entities as well vide aforesaid circular dated January 07, 2022. Such entities would also be required to now redefine their approach to RPTs related aspects including list of related parties, identification of RPTs and material RPTs which requires audit committee and shareholder approval etc.

SEBI EXTENDS TIMELINE FOR MODIFIED REPORTING REQUIREMENTS FOR ALTERNATIVE INVESTMENT FUNDS

SEBI, vide Circular[9] dated April 07, 2021 is superseded by Circular[10] dated December 30, 2021 by extending the timeline for modified reporting requirement of alternative investment funds ("**AIF**") to be applicable for the quarter ending September 30, 2022 onwards instead of the quarter ending December 31, 2021 onwards.

Our Comment: Since **t**he said extension is introduced by SEBI upon considering such requests from AIF industry, SEBI's decision to extend the deadlines for modified reporting requirements will be well-received by the AIF industry allowing the AIFs with a leverage to adapt to the reporting requirements by the third quarter of this financial year.

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[7] SEBI/HO/CFD/CMD1/CIR/P/2021/662, *accessible at* https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html

[8] SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000006, *accessible at* SEBI | Disclosure obligations of high value debt listed entities in relation to Related Party Transactions

[9] SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549, *accessible at* SEBI | Circular on Regulatory Reporting by AIFs

[10] SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/700, *accessible at* SEBI | Extension of timeline for modified reporting requirements for AIFs

RBI ISSUES NEW FRAMEWORK FOR FACILITATING SMALL VALUE DIGITAL PAYMEMNTS IN OFFLINE MODE

The Reserve Bank of India ("**RBI**") issued a circular[11] dated August 6, 2020 that permitted a pilot scheme to encourage technological innovations to enable small value digital payments offline. After receiving positive feedback from the pilots, RBI vide circular[12] (**RBI Circular 2022**) dated January 3, 2022, introduced the framework to enable small value digital payments in offline mode using cards, wallets, mobile devices, etc.

Payment System Participants and Authorized Payment System Operators who intend to enable payment platforms that allow small value digital payments without the need of internet or telecom connectivity shall comply with guidelines mentioned below:

i. Offline payments can be made using any medium- cards, wallets, mobile devices, etc. and shall be carried out in face-to-face mode only;
ii. Such payment transactions may be offered without the Additional Factor Authorization;
iii. Such offline payment instruments shall only be enabled upon the explicit consent of the customer. Such transactions shall be allowed without switch on the contactless transaction channel, the DPSS norms of which are specified in previous circular[13];
iv. The upper limit of any such transaction shall be INR 200 at any given time, with a total limit of INR 2000;
v. The issuer is mandated to send transaction alerts to the user as soon as the transaction details are received. However, the issuer is not compelled to send an alert for each transaction if the details of the transactions are adequately conveyed;
vi. All liabilities arising from technical and transaction security issues shall lie with the acquirer:
vii. The customers shall have recourse to RBI- Integrated Ombudsman Scheme for grievance redressal;
viii. Such offline payments shall come under the provisions of limited customer liability of RBI (as amended from time to time).

The said circular of January 3, 2022 issued under Section 10(2) read with Section 18 of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007), shall be effective immediately.

Our Comment: The Reserve Bank of India has laid down the foundation of a payment mechanism that allows small value payment without the intervention of telecom connectivity or internet. To further the intention, RBI has published a circular stating the guidelines for payment aggregators willing to incorporate such payment mechanism in their business model.

The circular also serves to ensure consumer safety with grievance redressal mechanism and to this end regulates transaction volume and alter intensity to facilitate transparency in the payment medium.

RBI ISSUES MARKET MAKING SCHEME FOR FACILITATING INVESTMENT IN GOVERNMENT SECURITIES BY RETAIL INVESTORS.

The Reserve Bank of India ("**RBI**") had on November 12, 2021 issued a circular[14] that introduced the Retail Direct Scheme (**RBI-RD Scheme**) which facilitates investment in government securities by retail investors. With the aim to enable participation of Retail Direct Gilt ("**RDG**") Account Holders under the Retail direct

[11] General Circular DPSS.CO.PD.No.115/02.14.003/2020-21, dated 6th August, 2020, *accessible at* Reserve Bank of India - Notifications (rbi.org.in)
[12] General Circular RBI/2021-22/146 CO.DPSS.POLC.No.S1264/02-14-003/2021-2022, 3rdJanuary, 2022 *accessible at* Reserve Bank of India - Index To RBI Circulars
[13] General Circular DPSS.CO.PD no.1343/02.14.003/2019-20 dated 15th January, 2020, *accessible at* Reserve Bank of India - Notifications (rbi.org.in)
[14] Press Release: 2021-2022/1183, *accessible at* Reserve Bank of India - Press Releases (rbi.org.in)

scheme, RBI, vide a notification[15] dated January 04, 2022 issued Market Making Scheme ("**MMS**") which shall be applicable for all Primary Dealers ("**PDs**").

A. Obligations for Primary dealers shall be divided into:

i. Odd lot segment - PDs are to provide buy/sell quotes for liquid securities throughout market hours. Primary Dealer Association may decide time segments for allocation and same shall be notified to IDMD, RBI.
ii. Request for Quotes (RFQ) segment - PDs may be present on the RFQ platform throughout the market hours. Any buy/sell requests made by Retail Direct Gilt Account Holders shall be answered by the PDs with market-relevant quote.

B. KYC: Simplified KYC procedure shall be followed for the verification of identity of RDG account holders as per Rule 9(14) (i) of The Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

C. Incentives for fulfilling obligations:

i. A special switch window shall be made available to PDs every month where PDs may switch illiquid/semi-liquid securities acquired through RFQ segment with liquid securities from RBI at FBIL/market prices.
ii. All successful trades made Retail Direct scheme shall be fulfilled towards turnover target with mid-segment and retail investors prescribed to each PD respectively.

D. PDs performance monitoring:

i. PDs shall submit a report to IDMD, RBI on monthly basis or before 10th of the following month on successful trades executed in the RFQ segment in the manner prescribed thereunder Annex-I.
ii. PDs shall submit a report to IDMD, RBI on annual basis and 15 days prior to the end of Financial Year on total turnover achieved on the secondary market and turnover achieved via the odd lot segment in the manner prescribed thereunder Annex-II.

These reports shall be submitted via email

Our Comment: RBI introduces new framework to attract retail investors in government securities. While handing over the market platform to the PDs for systemic handling of the NDS-OM platform, RBI has ensured smooth and prompt service to the RDG account holders. Moreover, the Market Making Scheme is balanced in its approach in attracting PDs for their participation by the introduction of a turnover based reward system whilst monitoring their performances on monthly and annual basis.

RBI ISSUES NOTIFICATION FOR REGULATED ENTITIES OVER RESTRICTION OF ACCOUNT OPERATIONS FOR NON-COMPLIANCE OF PERIODIC UPDATION OF KYC.

The Reserve Bank of India ("**RBI**") had previously notified[16] all Regulated Entities that periodic updation of KYCs have to be carried out by them. However, due to the restrictions imposed in various parts of the country due to COVID-19, no customer shall be restricted from using their accounts due to non-updation till 31st December, 2021. Restrictions would only be imposed if such action is warranted by any regulator

[15] Notification No. IDMD.PDRD.No.S1617/03.64.023/2021-22, *accessible at* Reserve Bank of India - Index To RBI Circulars
[16] RBI/2021-22/29 DOR. AML.REC 13/14.01.001/2021-22, dated 5th May, 2021, *accessible at* (https://rbidocs.rbi.org.in/rdocs/notification/PDFs/KYCRAONCB4D781C6093B43CAAA2AC737DA9EF6A4.PDF)

or enforcement agency or court of law.

Since a new variant of COVID-19 has gripped the country, RBI has further extended the aforementioned deadline till 31st March, 2022.[17]

Our Comment: RBI puts focus on the periodic updation of KYC. However, due to unforeseen circumstances, RBI ensures that the customers do not have to stake their wellbeing to prevent restriction of account usage due to no-compliance (for this sole reason). Restrictions mandated by other regulatory authorities supersede the extension granted by the notification.

MCA PROLONGED RELAXATION ON LEVYING OF ADDITIONAL FEES IN FILING FORMS FOR FINANCIAL YEAR ENDED ON 31.03.2021.

The Ministry of Corporate Affairs (**MCA**) with circular[18] dated December 29, 2021 ("**MCA Circular 2021**") notified that it shall levy no additional fees for filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 non-XBRL up to 15.02.2022, and MGT 7/MGT 7-A up to 28.02.2022.

This circular has been issued in continuation of MCA's previous circular[19] on aforesaid subject, after various stakeholders had requested the MCA to extend the timelines for filing of annual forms without levying additional fees. The MCA has thus decided that during the said period, only normal applicable fees shall be levied.

Our Comment: The aforesaid circular is quite a relaxation for the stakeholders as the MCA has empathized with the companies reeling from the effects of the global pandemic.

[17] RBI/2021-22/144 DOR.AML.REC.74/14.01.001/2021-22, dated on 30th December, 2021 *accessible at* (NOT144ED8CD10E7A134B159C395D06B02D8DB0.PDF (rbi.org.in))
[18] General Circular No. 22/2021, published on 29th December, 2021, *accessible at* (getdocument (mca.gov.in))
[19] General Circular No. 17/2021 dated 29.10.2021, *accessible at* (getdocument (mca.gov.in))

4. INSOLVENCY AND BANKRUPTCY

MINISTRY OF CORPORATE AFFAIRS INVITES COMMENTS ON PROPOSED CHANGES TO INSOLVENCY AND BANKRUPTCY CODE.

The Ministry of Corporate Affairs vide notification[20] dated 23rd December 2021 has invited comments from the public on the proposed changes to the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The following changes are proposed to the IBC to further its objectives of time bound resolution of stressed assets while maximizing its value and balancing the interests of all its stakeholders.

Reforms to build greater reliance on Information Utilities ("IUs") by certain categories of financial creditors, to enable quicker disposal of corporate insolvency resolution process ("CIRP") applications:

Even though IBC requires the Adjudicating Authority to decide on an application for the beginning of a CIRP within 14 (fourteen) days of receipt of application, admission or rejection of such petitions takes longer. To avoid such delays, it has been also considered to increase financial creditors' dependence on Information Utilities. Considering this, it has been proposed that the financial creditors, as prescribed by the Central Government, may be required to present only IU authenticated records to establish default for the purposes of admission of a Section 7 CIRP application. As a result, for Section 7 petitions submitted by financial creditors, the Adjudicating Authority will only be obligated to consider such documents as proof of default

Reforms to streamline avoidable transactions and wrongful trading:

Avoidable transactions and wrongful trading are prescribed under Section 43-51, 66, and 67 of IBC. Transactions that may be avoided by the resolution professional or liquidator collectively referred to as "avoidable transactions", and the actions that can be taken against erstwhile management for fraudulently or wrongfully trading during the CIRP or liquidation process referred to as "wrongful trading". The amendments suggested to refine these laws are:

i. Section 19 to be amended to enable the interim resolution professional or the resolution professional to have access to the necessary assistance in gathering information for the CIRP and filing applications to prevent avoidable transactions and wrongful trading. Any other person deemed necessary by the interim resolution professional may be included in the categories of people who are obligated to cooperate under Section 19;
ii. Section 25 to be amended to make the resolution expert accountable for looking into the corporate debtors' operations to see whether there are any avoidable transactions or wrongful trading. Section 35 of IBC may also be amended to grant the liquidator similar powers;
iii. If the resolution professional or liquidator fails to apply to the Adjudicating Authority to prevent such transactions or trading, then the clause relating to avoidable transactions and wrongful trading may be altered to allow creditors (individually or in groups) or the committee of creditors to do so;
iv. Section 47 to be amended to make it illegal for members or partners of a corporate debtor to file petitions in order to avoid a transaction that is undervalued;
v. Section 66 to be amended to make it clear that the liquidator can file applications under this section as well;
vi. It is also suggested that clarification by way of explanation be included in Section 26 of IBC to explain that proceedings for transaction avoidance and wrongful trading can continue after the Adjudicating Authority during CIRP approves a resolution plan;
vii. Additionally, it is recommended that the IBC be revised to require that the resolution plan explain the method in which proceedings for avoidance of transactions and wrongful trading would be conducted if such proceedings are to be continued after the plan's approval. The plan may also be

[20] *Accessible at* https://www.ibbi.gov.in/uploads/whatsnew/1b7f16f9aa0f22faacfbdcd0211c6bd8.pdf

needed to state if the resolution professional would pursue such transactions/trading following the plan's approval or if any other individual would. Furthermore, the resolution plan may be needed to specify the method in which potential recoveries from cases involving transaction avoidance and wrongful trading would be distributed; and

viii. The provisions on avoidable transactions in IBC provide certain look-back periods. The threshold for such look-back periods is the date of commencement of the CIRP, i.e., the date of admission of a CIRP application. In practice, the admission or rejection of an application takes longer than the 14-day (fourteen) time limit provided in the Code. Given this, the look-back period for avoidable transactions may not be able to capture a significant portion of transactions that occurred before the filing of a CIRP application.

The proposed amendment include the amendment to the look-back period under Sections 43(4), 46(1), and 50(1) so that the threshold for the look-back period is changed from the date of CIRP commencement to the date of filing of the application for initiation of CIRP in respect of the corporate debtor that has been admitted; and the period between the date of filing and the date of approval or rejection of resolution plans is changed from the date of filing to the date of approval or rejection of the resolution plan

Reforms to time period for approval of resolution plans

To mitigate the delays which are observed at the stage of approval of resolution plans by the Adjudicating Authority, it is recommended that the IBC shall provide the Adjudicating Authority with a definite time frame of 30 days for accepting or rejecting a resolution plan under Section 31, and that in the event of any delay, the Adjudicating Authority offer written reasons for the same.

Reforms on Closure of the Voluntary Liquidation Process

Section 59 provides for a voluntary liquidation process for solvent corporate persons who have not committed a default. While the provisions of Section 59 of the IBC provide for the initiation and conduct of a voluntary liquidation process and the dissolution of the corporate person, they are silent on the midway closure of the process.

It is proposed that the closing of the process be carried out by the corporate person subject to the same requirements as the initiation of the process, namely, approval of creditors representing two-thirds of the debt value where the corporate person owes a debt to any person by way of a special resolution or members; resolution and approval of creditors representing two-thirds of the debt value. If such approvals are granted, the liquidator may be required to make a public declaration about the process's conclusion and notify relevant agencies such as the IBBI and the registrar.

Reforms to IBC Fund

Section 224 of the Code provides for the formation of the Insolvency and Bankruptcy Fund ("**IBC Fund**") "for the purposes of insolvency resolution, liquidation and bankruptcy of persons under the Code". It is felt that the current design of the IBC Fund does not incentivize contributions to it and provides very limited ways of utilizing the amounts contributed. Consequently, it is proposed that suitable amendments may be made to Section 224 to allow the Central Government to prescribe a detailed framework for contribution to and utilization of the IBC Fund.

For any queries please contact:

amit.prakash@imperiallaw.in

amit.shrivastava@imperiallaw.in

v.vasudev@imperiallaw.in

IMPERIAL LAW OFFICES

Office No. 304, Tower A-1, Ansal Corporate Park, Sector 142, Noida (U.P.) - 201305, INDIA

Board: +91 120 4520293; www.imperiallaw.in