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RBI/FEMA

1) IMPLEMENTATION OF INDIAN ACCOUNTING STANDARDS

Non-Banking Financial Companies (NBFCs) covered by Rule 4 of the Companies (Indian Accounting Standards) Rules, 2015 are required to comply with Indian Accounting Standards (Ind AS) for the preparation of their financial statements. In order to promote a high quality and consistent implementation as well as facilitate comparison and better supervision, the RBI has framed regulatory guidance on Ind AS given in the Annex to the present Circular which will be applicable on Ind AS implementing NBFCs and Asset Reconstruction Companies (ARCs) for preparation of their financial statements from financial year 2019-20 onwards. The instructions and guidelines relate to specific prudential aspects of Ind AS implementation by NBFCs/ARCs and are not meant to provide a comprehensive commentary on the accounting standards or comprehensive technical interpretation of the standards, nor intended to cover all possible

situations. Accordingly, with respect to matters not dealt with in the present guidelines, NBFCs/ARCs are required to refer to the notified accounting standards, application guidance, educational material and other clarifications issued by the Institute of Chartered Accountants of India (ICAI). – **[DOR (NBFC).CC.PD.No.109/22.10.106/2019-20, dated 13th March, 2020]**

2) LIMITS ON EXPOSURE TO SINGLE AND GROUP BORROWERS/PARTIES AND LARGE EXPOSURES AND REVISION IN THE TARGET FOR PRIORITY SECTOR LENDING – UCBS

In terms of our Circular UBD.DS. Cir.No.44/13.05.00/2004-05 dated April 15, 2005, Primary (Urban) Co-operative Banks (UCBs) were permitted to have exposures up to 15 per cent and 40 per cent of their capital funds to a single borrower and a group of borrowers, respectively. On a review, RBI has decided that, henceforth, the prudential exposure limits for UCBs for a single borrower/party and a group of connected borrowers/parties shall be 15 per cent and 25 per cent, respectively, of their tier-I capital.

The revised exposure limits shall apply to all types of fresh exposures taken by UCBs. UCBs shall bring down their existing exposures which are in excess of the revised limits to within the aforesaid revised limits by March 31, 2023. However, where the existing exposure comprises only term loans and non-fund-based facilities, while no further exposure shall be taken on such borrowers, these facilities may be allowed to continue as per their respective repayment schedule / till maturity. – **[DOR (PCB).BPD.Cir**

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No.10/13.05.000/2019-20, dated 13th March, 2020]

3) COVID-19- OPERATIONAL AND BUSINESS CONTINUITY MEASURES

In order to prevent and control the local transmission of COVID-19, the RBI has suggested following further steps to be taken by the respective banks/financial institutions as a part of their existing operational and business continuity plans:

(a) Devising strategy and monitoring mechanism concerning the spread of the disease within the organisation, making timely interventions for preventing further spread in case of detection of infected employees including travel plans and quarantine requirements as well as avoiding spread of panic among staff and members of the public;

(b) Taking stock of critical processes and revisiting Business Continuity Plan (BCP) in the emerging situations/scenarios with the aim of continuity in critical interfaces and preventing any disruption of services, due to absenteeism either driven by the individual cases of infections or preventive measures;

(c) Taking steps of sharing important instructions/ strategy with the staff members at all levels, for soliciting better response and participation and sensitizing the staff members about preventive measures/steps to be taken in suspected cases, based on the instructions received from health authorities, from time-to-time;

(d) Encourage their customers to use digital banking facilities as far as possible. –

[DoS.CO.PPG.BC.01/11.01.005/2019-20, dated 16th March, 2020]

4) GUIDELINES ON REGULATION OF PAYMENT AGGREGATORS AND PAYMENT GATEWAYS

The RBI released guidelines for regulating payment aggregators and payment gateways. The new guidelines say that a payment aggregator (entities that facilitate e-commerce sites and merchants to accept various payment instruments) should be a company incorporated in India under the Companies Act, 1956 / 2013. It further says non-bank entities offering payment aggregator services will have to apply for authorization on or before June 30, 2021.

E-commerce marketplaces, according to the guidelines, providing payment aggregator services will have to be separated from the marketplace business and they will have to apply for authorization on or before June 30, 2021. The biggest examples of this- PhonePay, Flipkart and Paytm's payment aggregator business are already separate entities from the marketplace models.

It has also specified financial requirements for aggregators- payment aggregators existing today will have to achieve a net worth of Rs. 15 crore by March 31, 2021 and a net worth of Rs. 25 crore by the end of third financial year, which means or before March 31, 2023. The net-worth of Rs. 25 crore shall be maintained at all times thereafter. –

[DPSS.CO.PD.No.1810/02.14.008/2019-20, dated 17th March, 2020]

5) RBI CLARIFIES ON CREATION OF INVESTMENT FLUCTUATION RESERVE (IFR)

Referring to Circular DBR.No.BP.BC.102/21.04.048/2017-18 dated

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April 2, 2018 on 'Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks – Spreading of MTM losses and creation of Investment Fluctuation Reserve (IFR); some banks have enquired whether IFR, forming part of General Provisions and Loss Reserves, can be reckoned as Tier II capital only to the extent of 1.25% of total credit risk weighted assets. It is clarified that there is no such ceiling for IFR. – **[DOR.BP.BC.No.42/21.04.141/2019-20, dated 17th March, 2020]**

6) SETTLEMENT SYSTEM UNDER ASIAN CLEARING UNION (ACU) MECHANISM

The Board of Directors of ACU have decided to permit Japanese Yen for settling payments among the ACU member countries. Accordingly, clause (a) and (b) of Article IV of the General Provisions of Agreement establishing the Asian Clearing Union have been revised and the Asian Monetary Unit is now denominated as "ACU Dollar", "ACU Euro" and "ACU Yen" which shall be equivalent in value to one US Dollar, one Euro and one Japanese Yen respectively.

RBI has announced that in order to facilitate transactions / settlements, effective March 06, 2020, participants in the Asian Clearing Union will have the option to settle their transactions either in ACU Dollar or ACU Euro or in ACU Japanese Yen. Further, AD banks are allowed to open and maintain ACU Dollar, ACU Euro and ACU Japanese Yen accounts with their correspondent banks in other participating countries. All eligible payments are required to be settled by the concerned banks through these accounts. The amended Memorandum of Procedure for Channelling Transactions through Asian Clearing Union (ACU) [Memorandum

ACM] is also enclosed to the present Circular. – **[A. P. (DIR Series) Circular No. 22, dated 17th March, 2020]**

7) CLARIFICATION REGARDING LARGE EXPOSURES FRAMEWORK

The RBI has clarified that the guidelines of Large Exposure Framework published *vide* Circular No.DBR.No.BP.BC.43/21.01.003/2018-19 dated June 03, 201, shall apply to exposures to a person resident outside India. The Para 7.13 of the Circular specifies that any Credit Risk Mitigation (CRM) instrument from which CRM benefits like shifting of exposure or risk weights etc. are not derived, may not be counted as an exposure on the CRM provider. Thus, it is clarified that the above clause will also apply to non-fund based credit facilities provided to a person resident outside India that is the exposure can be reckoned on the person resident outside India instead of treating it as an exposure on Head Office or other overseas branch, provided the transaction is otherwise compliant with Foreign Exchange Management (Guarantees) Regulations, 2000. It has been decided that non-centrally cleared derivatives exposures will be outside the purview of exposure limits till April 01, 2021. – **[DOR.No.BP.BC.43 /21.01.003/2019-20, dated 23rd March, 2020]**

8) EXTENSION OF THE PRIORITY SECTOR CLASSIFICATION FOR BANK LOANS TO NBFCs FOR ON-LENDING FOR FY 2020-21

After undertaking a review, RBI has decided to extend the priority sector classification for bank loans to NBFCs for on-lending for FY 2020-21. Further, existing loans disbursed under the on-

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lending model will continue to be classified under Priority Sector till the date of repayment/maturity. –

[FIDD.CO.Plan.BC.No.19/04.09.01/2019-20, dated 23rd March, 2020]

9) LEGAL ENTITY IDENTIFIER: EXTENSION OF DEADLINE

Based on the feedback and requests received from market participants, in the context of the difficulties arising from the outbreak of novel coronavirus disease (COVID-19), and with a view to enabling smoother implementation of the LEI system in non-derivative markets, the RBI has extended the timeline for implementation (Phase III - Net Worth of Entities Up to Rs. 200 crore) from March 31, 2020 to September 30, 2020. – **[FMRD.FMID.No.24/11.01.007/2019-20, dated 27th March, 2020]**

10) COVID-19 – REGULATORY PACKAGE

The RBI has announced regulatory measures to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. In this regard, detailed instructions are provided in the present Circular which *inter-alia* includes (i) Rescheduling of Payments – Term Loans and Working Capital Facilities; (ii) Easing of Working Capital Financing; (iii) Classification as Special Mention Account (SMA) and Non-Performing Asset (NPA), etc. – **[DOR.No.BP.BC.47/21.04.048/2019-20, dated 27th March, 2020]**

11) MODIFICATIONS TO GUIDELINES FOR LICENSING OF SMALL FINANCE BANKS IN PRIVATE SECTOR

Referring to the ‘Guidelines for Licensing of Small Finance Banks in Private Sector’ dated November 27, 2014 under which licenses were issued to 10 Small Finance Banks (SFBs) and the ‘Guidelines for ‘on-tap’ Licensing of Small Finance Banks in Private Sector’ released by Reserve Bank on December 5, 2019. In order to harmonise the instructions for existing SFBs with those SFBs to be licensed under ‘Guidelines for ‘on-tap’ Licensing’, RBI has decided to:

- a. Grant general permission to all existing SFBs to open banking outlets subject to adherence to Unbanked Rural Centre norms as per RBI circular on ‘Rationalisation of Branch Authorisation Policy - Revision of Guidelines’ dated May 18, 2017, as amended from time to time.
- b. Exempt all existing SFBs from seeking prior approval of Reserve Bank for undertaking such non risk sharing simple financial service activities, which do not require any commitment of own fund, after three years of commencement of business of SFB.

Further, in case of existing SFBs, it is clarified that –

- a. Whether a promoter could cease to be a promoter or could exit from the bank after completion of a period of five years, would depend on the RBI’s regulatory and supervisory comfort / discomfort and SEBI regulations in this regard at that time (Reference: Response to query number 101 of ‘Clarifications to queries on guidelines for licensing of Small Finance Banks in the Private Sector’ dated January 1, 2015).

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b. The phrase 'paid-up equity capital' in 'Guidelines for Licensing of SFBs in Private Sector - 2014' means 'paid-up voting equity capital' (Reference: Response to query number 104 of 'Clarifications to queries on guidelines for licensing of Small Finance Banks in the Private Sector' dated January 1, 2015). – **[DOR.NBD.No.44/16.13.218/2019-20, dated 28th March, 2020]**

12) ASSIGNMENT OF SLBC/ UTLBC CONVENORSHIP AND LEAD BANK RESPONSIBILITIES AFTER AMALGAMATION OF PUBLIC SECTOR BANKS

The amalgamations of Oriental Bank of Commerce and United Bank of India with Punjab National Bank; Andhra Bank and Corporation Bank with Union Bank of India; Syndicate Bank with Canara Bank and Allahabad Bank with Indian Bank have been notified *vide* the Gazette of India Notifications G.S.R. 153(E), G.S.R. 154(E), G.S.R. 155(E) and G.S.R. 156(E) dated March 4, 2020, respectively. The abovementioned notifications shall come into force on April 1, 2020.

In view of the above, RBI has decided to assign the SLBC/ UTLBC Convenorship for the following States/ UTs as under:

1. Andhra Pradesh:- From Andhra Bank to Union Bank of India
2. Karnataka:- From Syndicate Bank to Canara Bank
3. Tripura:- From United Bank of India to Punjab National Bank
4. West Bengal:- From United Bank of India to Punjab National Bank
5. Delhi:- From Oriental Bank of Commerce to Punjab National Bank

6. Lakshadweep:- From Syndicate Bank to Canara Bank

Further, the Lead Bank responsibilities of the 111 districts hitherto held by Oriental Bank of Commerce, United Bank of India, Andhra Bank, Corporation Bank, Syndicate Bank and Allahabad Bank has also been assigned and given in the Annexure to the present Circular. – **[FIDD.CO.LBS.BC.No.22/02.01.001/2019-20, dated 30th March, 2020]**

13) INCREASE IN LIMIT FOR FPI INVESTMENT IN CORPORATE BONDS

The limit for FPI investment in corporate bonds is increased to 15% of outstanding stock for FY 2020-21. Accordingly, the revised limits for FPI investment in corporate bonds, after rounding off, shall be as under:-

Current FPI limit - 3,17,000 (Crore)

Revised limit for HY Apr 2020-Sep 2020 - 4,29,244 (Crore)

Revised limit for HY Oct 2020-Mar 2021 - 5,41,488 (Crore) – **[A.P. (DIR Series) Circular No. 24, dated 30th March, 2020]**

14) FULLY ACCESSIBLE ROUTE' (FAR) FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES

The RBI, in consultation with the Government of India, introduces a separate channel, called the 'Fully Accessible Route' (FAR), to enable non-residents to invest in specified Government of India dated securities. Eligible investors can invest in specified Government securities without being subject to any investment ceilings. This scheme shall operate along with the two existing routes, viz., the Medium Term Framework (MTF) and the Voluntary Retention Route

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(VRR). – [A.P. (DIR Series) Circular No. 25, dated 30th March, 2020]

FOREIGN TRADE

1) FEM (FOREIGN EXCHANGE DERIVATIVE CONTRACTS) REGULATIONS 2000 AMENDED

The RBI has amended the FEM (Foreign Exchange Derivative Contracts) Regulations 2000, with effect from 6 March 2020. Amongst others, the definition of 'foreign exchange derivative contract' has been amended as under:

"Foreign exchange derivative contract means a financial contract which derives its value from the change in the exchange rate of two currencies at least one of which is not Indian Rupee or which derives its value from the change in the interest rate of a foreign currency and which is for settlement at a future date, i.e. any date later than the spot settlement date, provided that contracts involving currencies of Nepal and Bhutan shall not qualify under this definition."

Further, the provisions related to 'Permission to enter into a foreign exchange derivative contract' have been combined for both residents and non-residents and includes permission to enter into 'exchange traded currency derivative contracts' as well, in accordance with provisions contained in a substituted Schedule I.

The terms 'contracted exposure', 'anticipated exposure', 'currency risk', 'hedging' and 'exchange traded currency derivatives' have now been specifically defined. –[Notification No. FEMA.398/RB-2020, 18th February, 2020]

2) PRESS NOTE 2 OF 2020 AMENDS FDI POLICY ON INVESTMENT IN AIR INDIA LTD.

The Government has amended the Consolidated FDI Policy of 2017 with respect to the Civil Aviation sector to permit foreign Investment in M/s Air India Ltd by NRIs who are Indian Nationals up to 100% under the automatic route. This follows its decision to disinvest 100% ownership of Air India Ltd and bring it at par with foreign investment in other Scheduled Airline Operators.

Under the extant policy, foreign investment in M/s Air India Ltd including that of foreign Airlines is capped at 49%, either directly or indirectly and is subject to the condition that substantial ownership and effective control continues to be vested in Indian Nationals. While NRIs are permitted to invest 100% under the automatic route in Scheduled Air Transport Service/Domestic Scheduled Passenger Airlines, their investments in Air India was restricted to only 49%. Now, NRIs who are Indian Nationals will be able to invest up to 100% under the automatic route in Air India, as is the case for any other Scheduled Airline Operator.

Foreign airlines are permitted to invest in the capital of Indian companies operating scheduled/non-scheduled air transport services up to 49% of their paid up capital under government approval route. It is clarified that this 49% will subsume FDI and FII/FPI investment. The amendments will become effective from the date of FEMA notification. –[Press Note 2 (2020 Series), Department for Promotion of Industry and Internal Trade, 19th March, 2020]

CORPORATE

1) MCA EXEMPTS GOVERNMENT COMPANIES U/S 188(1) COMPANIES ACT 2013

The MCA has made the following amendments to its Notification dated 5 June 2015 with respect to exemptions, modifications to certain sections of the Companies Act 2013 (the “Act”):

Government Companies have been exempted from the requirement to comply with the first and second proviso to Section 188(1) of the Act in relation to related party transactions. Specifically, the requirement to obtain prior approval of the company by a resolution in case of certain companies with a paid up share capital as prescribed and the restriction on a member who is a related party to vote on such a resolution to approve any contract or arrangement, will not apply to:

(a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;

(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

The definition of “Government company” in sub-clause (45) of Section 2 has been amended to provide an Explanation that, “For the purpose of

this clause, the “paid-up share capital” shall be construed as “total voting power” where shares with differential voting rights have been issued.

Government Company means “any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of such a Government Company”.

In Section 4, sub section(1)(a), the memorandum of a company shall state the name of the company with the last word “Limited”. The words [in the case of a public limited company or the last words “Private Limited” in the case of a private limited company] have been omitted.

–[Ministry of Corporate Affairs, 2nd March, 2020]

2) MCA CLARIFICATIONS ON LIABILITY OF INDEPENDENT, NON-EXECUTIVE DIRECTORS (NON-PROMOTERS/NON-KMPS)

The MCA has issued a Circular addressed to all RoCs, Regional Directors and Official Liquidators giving clarifications with respect to the liability of Independent Directors (IDs), non-executive directors (NEDs) (non-promoters and non-KMPS) and prosecutions filed or internal adjudication proceedings initiated against such persons. The said clarification re-inforces its earlier directions in general Circular no. 8/2011, dated 25 March 2011 under the Companies Act 1956.

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While underlining the non-obstante provisions of Section 149(12) of the Companies Act 2013, that, the liability of an ID or NED would arise only in respect of such acts of omission or commission by a company which occur with his knowledge, attributable through Board process and with his consent or connivance or where he has not acted diligently, the MCA has directed that the below mentioned SOPs be strictly followed in respect of all ongoing cases. Where prosecution has already been filed and the given criteria are not satisfied, such cases may be submitted to the MCA for examination and further direction:

An ID or a NED (non-promoter and non-KMP) should not be arrayed in any criminal or civil proceedings under the Act, unless the criteria in section 149(12) are met. NEDs would also mean (i) Directors nominated by the Government of Public Sector undertakings; (ii) Directors nominated by Public Sector Financial Institutions, Financial Institutions or Banks having participation in equity of a company or otherwise and (iii) Directors appointed in pursuance of any statutory or regulatory requirement such as directors appointed by the NCLT.

The responsibility of NEDs ordinarily arise, in cases of filing of information with the registry, maintenance of statutory registers or meetings or compliance with orders issued by statutory authorities including the NCLT under the Act, only where there are no Whole Time Directors (WTDs) and KMPs.

In case lapses are attributable to decisions taken by the Board or its Committees, due care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against IDs or NEDs, unless sufficient evidence exists to the

contrary. Necessary documents should be sought to determine their involvement before serving notices, during inquiry, investigation or adjudication proceedings.

E-forms DIR 11 or DIR-12, copies of annual returns or financial statements must be examined to ascertain whether a particular director or KMP was serving in the company on the date of default. – **[General Circular no.1/2020, 2nd March, 2020]**

3) THE BANKING REGULATION (AMENDMENT) BILL 2020

The Banking Regulation (Amendment) Bill 2020 was introduced in the Lok Sabha on 3 March 2020. The Bill seeks to strengthen the provisions of the Banking Regulation Act, 1949 (the “Act”) as applicable to co-operative banks, specifically Section 56 (Part V) thereof, with a view to better management of such banks and protection of interests of their depositors. Significantly, the Bill permits co-operative banks to access capital through public issue or private placement under RBI’s regulatory oversight, amongst other consequent amendments.

The amended Section 56 is a non-obstante provision such that the provisions of the Act shall apply to co-operative banks/ co-operative societies as they apply to banking companies subject to the specified modifications, *notwithstanding anything contained in any other law for the time being in force.*

Section 12 of the Act, pertaining to the regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders, which is presently omitted in

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respect of co-operative banks is proposed to apply with the following modifications:

(i) A co-operative bank may, with the prior approval of the RBI, issue, by way of public issue or private placement (i) equity, preference or special shares at face value or at premium; and (ii) unsecured debentures, bonds or other like securities with initial or original maturity of not less than ten years to any member of such co-operative bank or any other person residing within its area of operation, subject to such conditions, ceiling, limit or restriction on its issue or subscription or transfer as may be specified by the RBI.

(ii) Save as provided under the Act, no person shall be entitled to demand payment towards surrender of shares issued to him by a co-operative bank

(iii) A co-operative bank shall not withdraw or reduce its share capital, except to the extent and subject to conditions as may be specified by the RBI.

(iv) In the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the RBI shall consult the concerned State Government before issuing orders for supersession of its board of directors under section 36AAA of the Act;

(v) Certain other clauses of section 56 have been omitted or amended so as to apply or modify the provisions of the Act to co-operative banks.

Further, section 3 of the Act has been substituted to provide that “*Notwithstanding anything contained in the National Bank for Agriculture and Rural*

Development Act, 1981, this Act shall not apply to (a) a primary agricultural credit society; or (b) a co-operative society whose primary object and principal business is providing of long term finance for agricultural development, if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques.” - [Bill NO. 56, 2020, Introduced in Lok Sabha, 5th March, 2020]

4) LLP SETTLEMENT SCHEME 2020

The MCA has introduced a LLP Settlement Scheme 2020, which allows a ‘defaulting LLP’ to file documents which were due for filing by 31 October, 2019 under the LLP Act 2008, to be filed between the period of 16 March 2020 and 13 June 2020 and avoid prosecution. This may be done by payment of additional fee of Rs. 10 per day of delay, in addition to the prescribed fee, up to a maximum additional fee of Rs. 5000/- per document.

The documents covered under the Scheme are (i) Form 3 – Information with regard to limited liability partnership agreement and changes, if any, made therein; (ii) Form-4- Notice of appointment, cessation, change in name/ address/ designation of a designated partner or partner and consent to become a partner/ designated partner; (iii) Form-S - Statement of Account & Solvency (Annual or Interim); and (iv) Form-11- Annual Return of Limited Liability Partnership (LLP).

This Scheme will not apply to LLPs which have made an application in Form 24 to the Registrar for striking off their name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009.

Post 13 June 2020, the ROCs will take necessary action under the LLP Act against LLPs who are in default and have not availed of this Scheme. – **[General Circular No. 6/2020, 4th March 2020, Ministry of Corporate Affairs]**

5) INSOLVENCY AND BANKRUPTCY (AMENDMENT) BILL 2020 PASSED BY LOK SABHA

The Insolvency and Bankruptcy (Amendment) Bill 2020 was passed by the Lok Sabha on 6 March 2020, following the report of the Standing Committee on Finance (2019-20).

The Insolvency and Bankruptcy (Second Amendment) Bill 2019 was introduced in the Lok Sabha on 12 December 2019, followed by an Ordinance on 28 December 2019. The attached comparative table of amendments provides the section wise amendments made under the 2019 Bill (now 2020 Bill) and the Act. The significant changes are as under:

Ring fencing of the Corporate Debtor post its resolution from criminal proceedings for offences committed by previous management and promoters;

Maintaining of the licenses, permits, concessions, clearances etc of the CD during the period of moratorium, to enable it to continue as a going concern.

Additional thresholds for home buyers /Financial Creditors to prevent frivolous triggering of the resolution process for small amounts. The Financial Creditors to be represented by an

authorized representative due to their large numbers.

The insolvency commencement date is the date of admission of an application for initiating CIRP under section 7, 9 or 10 as the case may be. – **[Passed by Lok Sabha, dated 6th March, 2020]**

6) BANKING COMPANY U/S 45 BANKING REGULATION ACT EXEMPTED FROM S. 5 & 6 OF COMPETITION ACT

Following the moratorium issued against Yes Bank, the Central Government, in exercise of powers under section 54(a) of the Competition Act 2002, has exempted a Banking Company in respect of which a notification has been issued under Section 45 of the Banking Regulation Act, 1949, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 in public interest for a period of five years from 11 March 2020. Under Section 45, the Reserve Bank may apply to the Central Government for suspension of business of a banking company and to prepare scheme of reconstitution or amalgamation. The Central Government, after considering the application, may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit, such that the total period of moratorium does not exceed six months. – **[Ministry of Corporate Affairs, 11th March, 2020]**

7) COMPANIES (AMENDMENT) BILL 2020 INTRODUCED IN THE LOK SABHA

The Companies Amendment Bill 2020 has been introduced in the Lok Sabha. The Bill seeks to

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make further amendments to the Companies Act 2013, based on the report of the Company Law Committee which was tasked to review, amongst others, the de-criminalisation of some more provisions of the Act based on their gravity. The Amendment Bill 2020 provides for the following:

Decriminalisation of certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;

Exclusion of certain class of companies from 'listed company' for the purposes of listing of debt securities. This will be facilitated by empowering the Central Government, in consultation with SEBI, to make such exclusion;

Provide clarification on the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;

Incorporation of a new Chapter XXIA relating to Producer Companies, which used to be a part of the Companies Act 1956;
Setting up of Benches of the National Company Law Appellate Tribunal;

Provide for allowing payment of adequate remuneration to nonexecutive directors in case of inadequacy of profits, in line with remuneration provided to executive directors, in such cases;
Relaxation of provisions charging higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;

Extension of applicability of section 446B relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;

Exemption of any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;

Reducing the timelines for applying for rights issues under section 62 in order to speed up the process;

Extension of exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;

Exemption of companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees from constituting the Corporate Social Responsibility Committee and allowing eligible companies under section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;

Provision of a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;

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Provide for specified classes of unlisted companies to prepare and file their periodical financial results;

Allowing direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed. – *[Introduced in Lok Sabha, 18th March, 2020]*

8) MCA PERMITS BOARD MEETINGS THROUGH AUDIO VISUAL MEANS UP TO 30 JUNE

In view of the coronavirus (COVID-19) outbreak, as a precautionary step, the MCA has decided to relax the requirement of physical presence of directors for Board Meetings u/s 173(2) r/w Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, for approval of financial statement, Board's report, etc., Accordingly, these meetings may be held through video conferencing/audio visual means in compliance with Rule 3, up to 30th June 2020. – *[Ministry of Corporate Affairs, 19th March, 2020]*

9) COMPANY AFFIRMATION OF READINESS TOWARDS COVID-19" WEB-FORM

The MCA has uploaded a "Company Affirmation of Readiness towards COVID-19" web-form which is required to be filed by all Indian companies/ Foreign companies/ LLPs/ Foreign LLPs. The web form has minimum fields, there is no requirement of DSC, does not involve payment of any fee and can be filed from anywhere. Applicable companies are advised to use the service w.e.f 23rd March 2020 in a staggered manner to avoid the load on the

system. – *[Ministry of Corporate Affairs, 23rd March, 2020]*

10) IMPORTANT COVID-19 RELATED EXEMPTION/ADVISORY/CLARIFICATION

The following Covid-19 related exemption/advisory/clarification has been issued by the Government:

Non-termination of employees of public/private establishments: The Ministry of Labour and Employment has advised employers of public/private establishments to not terminate their employees, especially contract/casual workers, or reduce their wages. If any worker takes leave he shall be deemed to be on duty without any consequent deduction in wages. If the workers' place of employment has been rendered non-operational due to COVID-19, these employees shall be deemed to be on duty.

Clarification on spending of CSR Funds: The MCA has informed that spending of CSR Funds for COVID-19 is eligible CSR activity. Funds may be spent for COVID-19 under items (i) and (xii) of Schedule VII of the Companies Act 2013 relating to promotion of healthcare, including preventive health care and sanitation and disaster management.

Exemption of E-commerce operations from prohibitory orders: In view of imposition of Section 144 and other prohibitory orders in various States, the Department of Consumer Affairs has advised all State Governments/Local Administrative Bodies to exempt e-commerce operations (warehousing and logistics facilities and services), wholesaler, their vendors and third

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party partners forming part of the logistics chain ecosystem from such orders. However, they are required to maintain proper sanitation and hygiene in their facilities and vehicle, to be disinfected and inspected regularly. *–[Ministry of Labour & Employment Order dated 20th March, 2020; Ministry of Corporate Affairs, General Circular No. 10/2020, 23rd March, 2020; Department of Consumer Affairs, 20th March, 2020]*

11) MINIMUM DEFAULT AMOUNT FOR CIRP UNDER IB CODE INCREASED TO ONE CRORE RUPEES

The MCA has issued a notification specifying that the minimum amount of default for the purpose of insolvency and liquidation of corporate debtors under section 4 of the Insolvency and Bankruptcy Code 2016 is one crore rupees (instead of one lakh rupees). The notification is in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016. *–[Ministry of Corporate Affairs, 24th March, 2020]*

12) SC SUO MOTO EXTENDS LIMITATION PERIOD IN ALL PROCEEDINGS W.E.F 15 MARCH 2020

In a suo moto writ petition, the Supreme Court has taken cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

In an order directed to all High Courts, subordinate courts and Tribunals across the country, it held that *“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country, including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities”*. *–[Sou Motu Writ Petition (Civil) No (s). 3/2020]*

13) THE SPECIAL MEASURES TAKEN UNDER THE COMPANIES ACT 2013 AND RULES/ LLP ACT

No additional fees shall be charged for late filing during a moratorium period from 1st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date. This which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing non-compliant companies/ LLPs to make a ‘fresh start’;

The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the Companies Act (120 days), 2013, shall be extended by a period of 60 days till next two quarters i.e., till 30th September;

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Applicability of Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the year 2019-20.

As per Schedule 4 to the Companies Act, 2013, Independent Directors (IDs) are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.

Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.

Requirement to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020, may be done so before 30th June 2020.

Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. An additional time of 6 more months shall be allowed.

Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the Companies Act, shall not be treated as a violation. *–[General Circular No. 11/2020, 24th March, 2020, Ministry of Corporate Affairs]*

14) CIRP REGULATIONS AMENDED TO EXCLUDE LOCKDOWN PERIOD FROM

TIMELINES FOR COMPLETION OF ACTIVITIES

The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been amended to provide for a new Regulation 40C that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process. This would, however, be subject to the overall time-limit provided in the IB Code. *–[No. IBBI/2019-20/GN/REG059, 29th March, 2020 (Insolvency and bankruptcy Board of India)]*

15) NCLAT: SARFAESI & DRT PROCEEDINGS WILL NOT EXTEND LIMITATION PERIOD UNDER IB CODE

The NCLAT, while considering the applicability of the Limitation Act on CIRP proceedings under the IB Code, has clarified that SARFAESI and DRT proceedings will not extend the period of limitation under the IB Code since these proceedings are independent. The IB Code is a complete Code having overriding effect on other laws as per section 238. Therefore, proceedings initiated or pending in the Debt Recovery Tribunal under the SARFAESI or RDDB Act cannot be taken into account for the purposes of limitation. The fact that the borrower/CD filed an Application under Section 17 of the SARFAESI Act wherein it admits the fact of taking a loan and failing to repay the same cannot act as an acknowledgment for the purposes of limitation. *–[Bimalkumar Manubhai Savalia Vs Bank of India & Ors., Company*

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Appeal(AT) (Insolvency) No. 1166 of 2019, 5 March 2020, National Company Law Appellate Tribunal]

SECURITIES

1) REITS AND INVITS REGS AMENDED RE: FAST TRACK RIGHTS ISSUE & ELIGIBILITY CRITERIA FOR INVESTMENT MANAGERS

SEBI has amended the Real Estate Investment Trust Regulations 2014 and the Infrastructure Investment Regulations 2014 to provide for the following amendments:

In case of a fast track rights issue under both Regulations, a ReIT/ InvIT will not be required to file the draft offer document subject to the fulfilment of specified conditions.

With respect to the eligibility criteria for investment managers under the InvIT regulations, a combined experience of not less than 30 years of the directors, partners and employees of the investment manager, in fund management /advisory services /development in the infrastructure sector, may also be considered in addition to the experience of not less than five years of the investment manager alone. However, for computing such combined experience, the experience of directors, partners, employees having more than 5 years of experience would be considered.

The amendments are effective from 3rd March 2020. *–[Notification: SEBI/LAD-NRO/GN/2020/05, 2nd March, 2020;*

Notification: SEBI/LAD-NRO/GN/2020/06, 2nd March, 2020]

2) SEBI CONSULTATIVE PAPER PROPOSES CHANGES RELATED TO GUARANTEES BY LISTED COMPANIES

With a view to protect the interests of minority shareholders, SEBI, in a consultative paper, has proposed that, in addition to the extant provisions of the Companies Act 2013 and SEBI (LODR) Regulations 2015, a guarantee/security can be given by a listed entity on two conditions :

The extension of the guarantee or security to any person/entity, such as promoter(s), promoter group, director, director's relative, KMP etc., is in the 'economic interest' of the listed company; and

The listed entity shall obtain prior approval from the shareholders on a 'majority of minority' basis before extending any such loan or any guarantee /security.

It suggests that 'economic interest' is to be construed not in its general sense, but through the Doctrine of Economic Substance, such that:

(i)The guarantee/security must have a direct/indirect financial implication on the business activity of the listed entity, which, apart from monetary transactions, may also include competitive position, employment, awarding of contracts, purchases, leases, sales or any other matter, and / or (ii) have a reasonable possibility of generating direct or indirect benefits for the listed company, and; (iii) the benefits of such transactions shall necessarily accrue to the shareholders of the listed entity.

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SEBI has noted that the extant provisions of the Companies Act 2013 (Sections 185 and 186) and SEBI (LODR) Regulations (Regulation 30, Part B of Schedule III) do not prohibit issuance of loan or guarantee or security in connection with a loan by companies to any person or body corporate, including a promoter, where the listed company has no economic interest, nor is there any safeguards for extending loans to promoter/promoter related entities. Rather, such loan/guarantee have created obligations on the listed company without any benefit or return. Consequently, it is possible that the listed company gives a loan or provides a guarantee to promoters or promoter entities within the threshold limits provided under the Companies Act 2013, without obtaining shareholders' approval. This is prone to being misused at the expense of minority shareholders/investors of the listed companies. Hence this policy proposal.

–[SEBI Consultative Paper, 6th March, 2020]

3) SEBI SPECIFIES CONDITIONS FOR FAST TRACK RIGHTS ISSUE, PREF ISSUE/INSTITUTIONAL PLACEMENT OF UNITS OF LISTED REITS/INVITS

Following the provision for fast track rights issue of units of listed REITs and InvITs, which do not require filing of the draft offer document subject to specified conditions, SEBI has now specified these conditions that would have to be complied with by amending the guidelines for rights issue dated 17th January 2020. The conditions, amongst others are that the units of the REIT/InvIT have been listed on a stock exchange for a period of at least three years immediately preceding the record date; All the units of the REIT/InvIT are held in demat form

on the record date; the average market capitalisation of public unitholding of the REIT/InvIT is at least two hundred and fifty crore rupees.

With respect to preferential issue and institutional placement of units by listed REITs and InvITs, SEBI has modified its circulars dated 27 November 2019 for listed REITs and listed InvITs respectively, to provide, among others, that the units allotted to the sponsor and its associate will be locked-in for three years from the date of trading approval granted for the units, subject to the condition that not more than 25 % of the total unit capital of the REIT/InvIT is required to be locked-in for three years and units allotted in excess of 25% of the total unit capital shall be locked in for one year.

If the REIT/InvIT has undertaken any acquisition or disposal of any material assets after the latest period for which the financial information is disclosed in the placement document but before the date of placement document, the pro forma financial statements shall be prepared and certified by statutory auditors for the last completed financial year and the stub period, if any. Additionally, it is required to disclose a summary of the audited standalone financial statements of the assets proposed to be acquired for the previous three years and the stub period, if any. –

[SEBI/HO/DDHS/DDHS/CIR/P/2020/35 ;SEBI/HO/DDHS/DDHS/CIR/P/2020/36 , 13th March, 2020 (SEBI)]

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4) SEBI RELAXES TIMELINES FOR COMPLIANCES UNDER LODR REGULATIONS, 2015

In view of the coronavirus (COVID-19) pandemic, SEBI has temporarily relaxed the timelines for certain compliance requirements under the SEBI (LODR) Regulations 2015, with immediate effect. Specifically, filing dates have been extended/relaxed for the quarter/financial year ending 31st March 2020 under Regulations 7(3) (compliance certificate on share transfer facility), 13(3) (statement of investor complaints), 24A (secretarial compliance report), 27(2) (corporate governance report), 31 (shareholding pattern) and 33 (financial results).

The maximum stipulated time gap of 120 days between any two meetings of the Board of Directors and Audit Committee has been relaxed for the period 1 December 2019 and 30 June 2020. However, the requirement for Board of Directors and Audit Committee to meet at least four times a year as required under Regulations 17(2) and 18(2)(a), respectively, stands unaffected. –

[SEBI/HO/CFD/CMD1/CIR/P/2020/38, 19th March, 2020 (SEBI)]

5) SCRR AMENDED TO MANDATE LISTING OF SVR SHARES ALONG WITH ORDINARY SHARES IN AN IPO

The MoF has amended Rule 19 of the Securities Contracts (Regulations) Rules, 1957, which prescribes the requirements for listing of securities. A proviso has been added in sub-rule (2)(b) to the effect that a company that has issued equity shares having superior voting rights (SVR Shares) to its promoters or founders, and is

seeking to list its ordinary shares for public offering shall mandatorily list its SVR shares at the same recognized stock exchange along with the ordinary shares being offered to the public. However, the minimum offer and allotment requirements under sub-rule(2)(b) of Rule 19 will not apply to the listing of such SVR shares. –

[Ministry of Finance, 19th March, 2020]

6) FURTHER RELAXATION OF COMPLIANCE TIMELINES UNDER SEBI LODR, REIT AND INVIT REGULATIONS

In continuation of the relaxation of timelines for certain compliances under the SEBI (LODR) Regulations dated 19 March 2020 on account of the COVID 19 virus (refer KM Legal update below), SEBI has extended the timelines for issuance and filings for issuers who have listed or propose to list their Non-Convertible Debentures (NCDs), Non-Convertible Redeemable Preference Shares (NCRPS), Municipal Debt Securities (MDS) and Commercial Papers (CPs).

Temporary relaxations in compliance requirements for REITs and InvITs have also been made by extending the due date for regulatory filings and compliances for the period ending March 31, 2020 by one month, over and above the timelines prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real estate Investment Trusts) Regulations, 2014 (REIT Regulations) and circulars issued thereunder. –
[SEBI/HO/DDHS/DDHS/CIR/P/2020/44 ; SEBI/HO/DDHS/DDHS/CIR/P/2020/44, 23rd March, 2020 (SEBI)]

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7) SEBI PERMITS ENCUMBRANCE OF UNITS HELD BY SPONSORS OF REITS AND INVITS

Regulation 11(3) of the REIT Regulations, 2014 and Regulation 12(3) of the InvIT Regulations, 2014, respectively, provide for mandatory holding of 25% of the total units of the REIT and 15% of the total units of the InvIT by sponsor/sponsor groups, after initial offer of units, on a post issue basis, for a period of not less than three years from the date of listing of such units.

SEBI has now permitted such entities to create encumbrance on such units during the mandatory holding period, by way of pledge, lien, negative lien, non-disposal undertaking etc. or any other covenant, transaction, condition or arrangement in the nature of encumbrance, subject to the following conditions:

Details of the encumbrance shall be provided by the sponsor(s) to the investment manager of the REIT/InvIT within two working days from the date of creation of such encumbrance in the format specified.

Any change in the aforesaid information, pursuant to release or invocation of encumbrance, or in any other manner, shall also be informed to the investment manager of the REIT/InvIT within two working days from the date of such event.

The REIT/InvIT shall, within two working days from the receipt of details, disclose such information to every stock exchange where units of the REIT/InvIT are listed.

The encumbrance cannot be invoked during the holding period.

The abovementioned conditions for creation and invocation of encumbrance shall be included in the agreement executed for the purpose of creation of such encumbrance. Accordingly, the format for disclosure of unit holding pattern as provided under Annexure B of SEBI circular No. IMD/DF/127/2016 dated November 29, 2016 stands modified. –

[SEBI/HO/DDHS/DDHS/CIR/P/2020/44 ; SEBI/HO/DDHS/DDHS/CIR/P/2020/43, 23rd March, 2020]

8) SEBI EXEMPTS CAPITAL AND DEBT MARKET SERVICES FROM CLOSURE OF ESTABLISHMENTS

Separately, SEBI has exempted the following entities providing capital and debt market services from closure of their establishments : Recognised Stock Exchanges; Recognised Clearing Corporations; Depositories; Custodians; Mutual Funds; Asset Management Companies; Stock Brokers; Trading Members; Clearing Members; Depositories Participants; Registrar and Share Transfer Agents; Credit Rating Agencies; Debenture Trustees; Foreign Portfolio Investors; Portfolio Managers; Alternative Investment Funds; Investment Advisers. –*[SEBI/covid-19/2020/01, 24th March, 2020, (SEBI)]*

9) FURTHER RELAXATION OF COMPLIANCES UNDER SEBI (LODR) REGULATIONS, 2015 & SOP ON FINES

In continuation of the relaxation of timelines for certain compliances under the SEBI (LODR)

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Regulations under SEBI Circular dated 19 March 2020 (refer KM Legal update below), SEBI has extended the timelines for (i) filing certificate from Company Secretary on timely issue of share certificates to 31 May 2020; (ii) holding of AGM by top 100 listed entities by market capitalization for FY 19-20 to 30 September 2020; (iii) meetings of Stakeholders Relationship Committee, Risk Committee and Remuneration Committee to 30 June 2020.

The requirement of publishing advertisements in newspapers under regulation 47 (notice of board meetings, financial results etc.) for all events scheduled till 15 May 2020 has also been exempted.

Further, SEBI circular dated 22 January 2020 on the Standard Operating Procedure (SOP) for imposition of fines and other enforcement actions for non-compliances of provisions of the LODR, which was to become operational for compliance periods ending on or after 31 March 2020, will now come into force for compliance periods ending on or after 30 June 2020. The SOP circular dated 3 May 2018 will apply till such date. *–[SEBI Notification dated 26th March, 2020]*

10) SEBI ALLOWS E-FILING OF REPORTS/APPLICATIONS/PAS ETC. UNDER TAKEOVER, BUYBACK & DELISTING REGULATIONS

SEBI has eased the operation procedure for submitting documents under the Takeover Regulations 2011, Buyback Regulations 2018 and Delisting Regulations 2009. Pdf copies of reports to be submitted by Merchant Bankers and other market intermediaries under Regulation 10(7)

of the Takeover Regulations, 2011, exemption applications, Public Announcements, Detailed Public Statements, Draft Letter of Offer and other relevant documents under these Regulations may be submitted online at cfddcr@sebi.gov.in. The requisite fee may be transferred through RTGS/NEFT as per the given bank account details. Upon making the payment, the date, amount and purpose of such payment is required to be intimated to SEBI at the same email, along with a pdf copy of the payment confirmation slip. *–[Notification 26th march, 2020, SEBI]*

11) SEBI EXTENDS TIMELINE FOR SHAREHOLDER DISCLOSURES UNDER TAKEOVER REGULATIONS

SEBI has extended the due date of filing disclosures in terms of Regulations 30(1), 30(2) and 31(4) of the SAST Regulations for the financial year ending March 31, 2020, to June 01, 2020, in view of the developments arising due to the spread of the COVID-19 pandemic. The aforesaid regulations require the shareholders to compile, collate, and disseminate information of their consolidated shareholding as on March 31, 2020, to the company and the stock exchanges within seven working days from the end of the financial year. *– [SEBI/HO/CFD/DCR1/CIR/P/2020/49, 27th March, 2020]*

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COMPETITION

1) ANTI-COMPETITIVE ACTIVITIES FOUND AMONGST BENGAL CHEMISTS AND DRUGGISTS ASSOCIATION AND CERTAIN PHARMACEUTICAL COMPANIES

The Competition Commission of India ('Commission') has passed an order finding Bengal Chemists and Druggists Association ('BCDA'), its two District Committees i.e. Murshidabad District Committee and Burdwan District Committee and their office-bearers, to be indulging into anti-competitive practices in contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Competition Act, 2002 (the 'Act'). Such anticompetitive practices being found to be indulged into by BCDA are: (i) it used to require pharmaceutical companies in at least some Districts of the State of West Bengal have their new stockists obtain a prior Stock Availability Information ('SAI')/ No Objection Certificate ('NOC') from BCDA before supply of drugs can be commenced to them; (ii) it used to collect monetary considerations from the prospective stockists against issuance of SAI to them, through its District Committees; and (iii) Promotion cum Distributor ('PCD') agents of pharma companies had to obtain Product Availability Information ('PAI') from BCDA after payment of monetary considerations to it in the form of donations, to start marketing drugs of their respective pharma companies in the State of West Bengal. Further, the Commission has found that pharmaceutical companies Alkem Laboratories Limited ('Alkem') and Macleods Pharmaceuticals Limited ('Macleods') had an anticompetitive agreement with BCDA whereby these companies, after issuing the offer letter of stockistship ('OLS') to

prospective stockists, demanded from them SAI/ NOC/ Approval Letter/ Circulation Letter from BCDA, before supplies of drugs can be commenced to them. For their such conduct, the Commission has found Alkem and Macleods liable for contravention of the provisions of Section 3 (1) of the Act and their various officials have also been found liable by the Commission for such conduct in terms of Section 48 of the Act. *—[Press Release No. 46/2019-20, 13th March, 2020 (Competition Commission of India)]*

2) COMPETITION COMMISSION OF INDIA FINDS THE CONDUCT AND PRACTICE OF GRASIM INDUSTRIES LIMITED TO BE IN CONTRAVENTION OF COMPETITION LAW

The Competition Commission of India (CCI) has found Grasim Industries Limited (GIL) to be in contravention of the provisions of Section 4 of the Competition Act, 2002 (Act) for abuse of dominant position in the 'market for supply of Viscose Staple Fibre (VSF) to spinners in India'. GIL was found to be charging discriminatory prices to its customers besides it was also found to be imposing supplementary obligations upon them. These are found to be in violation of the provisions of Sections 4(2)(a)(ii) and 4(2)(d) read with 4(1) of the Act. Based on the investigation, the Commission found that GIL had imposed unfair and discriminatory prices in the sale of VSF upon the spinners who are similarly placed. The reasons offered by GIL in explaining the price differentiation were found to be unsatisfactory. After carefully analysing the data furnished by GIL, the Commission observed that the data establishes that GIL was charging discriminatory prices on its spinners. Such

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discrimination by a dominant upstream firm may result not only in distortion in the downstream market but can also have an adverse effect on the production efficiency of the downstream firms. Thus, competing downstream spinners suffer from information asymmetry which adversely affects their ability to supply yarn at a competitive price. Accordingly, the Commission directed GIL to refrain from adopting unfair/ discriminatory pricing practices and also refrain from seeking the consumption details of VSF from the buyers of VSF. Further, the Commission also directed GIL to put in place a discount policy which is transparent and non-discriminatory to all the market participants, and make it easily and publically accessible/ available. GIL shall not place any end-use restriction on the buyers of VSF and it would be open for them to use the same for spinning or trading or any other purpose, as permissible under law. The Commission also imposed a penalty of Rs. 301.61 crore (Rupees Three Hundred One Crore and Sixty One Lakh) on GIL. The penalty was calculated @ 5% of the average revenue of GIL from sale of Viscose Staple Fibre (VSF) in the relevant market. – *[Press Release No. 46/2019-20, 13th March, 2020 (Competition Commission of India)]*

INDIRECT TAXES

a. CUSTOMS

1) INCREASE OF EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS (RIC) COLLECTED AS ADDITIONAL DUTY OF CUSTOMS ON PETROL AND DIESEL

Notification No. 18/2019-Customs dated 6th July, 2019 amended so as to increase effective rate of Road and Infrastructure Cess (RIC) collected as additional duty of customs on petrol and diesel by Re. 1 per litre. – *[Notification No. 15/2020-Customs, dated 13th March, 2020]*

2) TARIFF CONCESSIONS DEEPEN UNDER THE INDIA-JAPAN CEPA

Notification No. 69/2011-Customs amended to deepen the tariff concessions under the India-Japan CEPA. – *[Notification No. 17/2020 – Customs, dated 25th March, 2020]*

3) ADD ON CHLORINATED POLYVINYL CHLORIDE (CPVC) RESIN

Anti-dumping duty imposed on imports of 'Chlorinated Polyvinyl Chloride (CPVC) Resin-whether or not further processed into compound' originating in or exported from China PR and Korea RP for a period of 5 years. – *[Notification No. 05/2020-Customs (ADD), dated 07th March, 2020]*

4) EXTENSION OF ADD ON "SHEET GLASS"

Notification No. 07/2015-Customs (ADD) dated 13th March 2015 amended so as to extend anti-dumping duty on "Sheet Glass" originating in or exported from China PR till 12th March, 2025. – *[Notification No. 06/2020-Customs (ADD), dated 12th March, 2020]*

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5) ELECTRONIC SEALING-DEPOSIT IN AND REMOVAL OF GOODS FROM CUSTOMS BONDED WAREHOUSES

On receipt of representations from e-seal vendors to defer the implementation of Circular-10/2020-Customs dated 07th February, 2020, the CBIC has extended the date of implementation of said circular to 01st May, 2020. – *[Circular 16/ 2020 – Customs, dated 16th March, 2020]*

b. CENTRAL EXCISE

1) INCREASE OF EFFECTIVE RATE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROL AND DIESEL

Notification No. 05/2019-Central Excise dated 6th July, 2019 amended so as to increase effective rate of Special Additional Excise Duty (SAED) on petrol and diesel by Rs. 2 per litre. – *[Notification No. 3/2020-Central Excise, dated 13th March, 2020]*

2) INCREASE OF EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS (RIC) COLLECTED AS ADDITIONAL DUTY OF EXCISE ON PETROL AND DIESEL

Notification No. 04/2019-Central Excise dated 6th July, 2019 amended so as to increase effective rate of Road and Infrastructure Cess (RIC) collected as additional duty of excise on petrol and diesel by Rs. 1 per litre. – *[Notification No. 4/2020-Central Excise, dated 13th March, 2020]*

c. GST

1) CENTRAL GOODS AND SERVICES TAX (SECOND AMENDMENT) RULES, 2020

CGST Rules, 2017 amended so as to prescribe the value of Lottery. – *[Notification No. 08/2020 – Central Tax, dated 2nd March, 2020]*

2) FOREIGN AIRLINES EXEMPTED FROM FURNISHING RECONCILIATION STATEMENT IN FORM GSTR-9C

The CBIC *vide* present Notification exempted the foreign airlines from furnishing reconciliation Statement in FORM GSTR-9C. – *[Notification No.09/2020– Central Tax, dated 16th March, 2020]*

3) SPECIAL PROCEDURE FOR CORPORATE DEBTORS UNDERGOING THE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The CBIC has notified that the corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process:

i. Registration.- The corporate debtors shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was

registered earlier, within thirty days of the appointment of the IRP/RP.

ii. Return.- The corporate debtors shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

iii. Input tax credit.-(1)The corporate debtors shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the CGST Rules, 2017. (2)Registered persons who are receiving supplies from the corporate debtors shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

iv. Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration. – **[Notification No. 11/2020 – Central Tax, dated 21st March, 2020]**

4) WAIVER OF THE REQUIREMENT FOR FURNISHING FORM GSTR-1 FOR 2019-20 FOR CERTAIN TAXPAYERS

The CBIC has waived off the requirement for furnishing FORM GSTR-1 for 2019-20 for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate). – **[Notification No. 12/2020 – Central Tax, dated 21st March, 2020]**

5) E-INVOICES

The CBIC vide present Notification exempted certain class of registered persons from issuing e-invoices and the date for implementation of e-invoicing extended to 01.10.2020. – **[Notification No. 13/2020– Central Tax, dated 21st March, 2020]**

6) QR CODE

The CBIC vide present notification exempted certain class of registered persons capturing dynamic QR code and the date for implementation of QR Code to be extended to 01.10.2020. – **[Notification No. 14/2020– Central Tax, dated 21st March, 2020]**

7) EXTENSION OF TIME FOR FILING RETURNS

Time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 read with rule 80 of the CGST rules for the financial year 2018-2019 extended till 30.06.2020. – **[Notification No. 15/2020 – Central Tax, dated 23rd March, 2020]**

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8) CENTRAL GOODS AND SERVICES TAX (THIRD AMENDMENT) RULES, 2020

The CBIC has notified the Central Goods and Services Tax (Third Amendment) Rules, 2020. This amendment seeks to insert the provision where it will be compulsory for the applicant to submit an application under Sub-rule (1) from April 1, 2020, and the applicant is ought to undergo the authentication of Aadhar Number for the grant of application. Under Rule 25 'physical verification of the business' wherein it is compulsory for the applicant to undergo Aadhar Authentication and in the case of failure, after the grant of registration the applicant must get his place of business verified. After this, the verification documents along with a photograph needs to be uploaded in FORM GST REG-30 within 15 working days from the verification, was substituted.

Under Rule 80(3) the person whose turnover is more than Rupees 5 crores is supposed to get his accounts audited and hereinafter furnish the copy of Audited accounts and a reconciliation statement, which needs to be duly certified in FORM GSTR-9C for the financial year 2018-2019. The details can be submitted electronically on the common portal either directly or through a Facilitation Centre notified by the commissioner.

Under Rule 141(2) in the place of "Commissioner", the word "Proper Authority" was inserted.

Under Rule 96A the recovery of refunds of utilized Input Tax Credit (ITC) or integrated tax paid on export of goods where export proceeds are not realised, was inserted.

In FORM GST RFD-01 the declaration was inserted namely: "I hereby undertake to deposit to the Government the amount of refund

sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017." – **[Notification No. 16/2020 – Central Tax, dated 23rd March, 2020]**

9) CLASS OF PERSONS WHO SHALL BE EXEMPTED FROM AADHAR AUTHENTICATION

The CBIC *vide* present Notification has specified that aadhar authentication is not required for a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:

(a) Individual; (b) authorised signatory of all types; (c) Managing and Authorised partner; and (d) Karta of an Hindu undivided family. – **[Notification No. 17/2020 – Central Tax, dated 23rd March, 2020]**

10) DUE DATES FOR FURNISHING RETURNS

- The due date for furnishing FORM GSTR-1 for the quarters April, 2020 to June, 2020 is 31st July, 2020; and July, 2020 to September, 2020 is 31st October, 2020 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year. - **[Notification No. 27/2020 – Central Tax, dated 23rd March, 2020]**

- The due date for furnishing FORM GSTR-1 by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from April, 2020 to September, 2020 is prescribed

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to be till the eleventh day of the month succeeding such month. – **[Notification No. 28/2020 – Central Tax, dated 23rd March, 2020]**

11) REDUCTION OF CGST RATE ON MAINTENANCE, REPAIR AND OVERHAUL (MRO) SERVICES IN RESPECT OF AIRCRAFT

Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017 amended reducing CGST rate on Maintenance, Repair and Overhaul (MRO) services in respect of aircraft from 18% to 5% with full ITC. – **[Notification No. 02/2020- Central Tax (Rate), dated 26th March, 2020]**

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). **[Notification No. 02/2020- Integrated Tax (Rate), dated 26th March, 2020 & Notification No. 02/2020- Union Territory Tax (Rate), dated 26th March, 2020]**

12) CLARIFICATION IN RESPECT OF APPEAL IN REGARD TO NON-CONSTITUTION OF APPELLATE TRIBUNAL

The CBIC has issued following clarifications and guidelines:-

i. If the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.

ii. The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal.

iii. The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

iv. Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal. – **[Circular No. 132/2/2020 – GST, dated 18th March, 2020]**

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13) CLARIFICATION IN RESPECT OF APPORTIONMENT OF INPUT TAX CREDIT (ITC) IN CASES OF BUSINESS REORGANIZATION

On receipt of representations seeking clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts have been raised regarding the interpretation of subsection (3) of section 18 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules in the context of business reorganization. The CBIC has issued the present circular clarifying the things. – *[Circular No.133 03/2020-GST, dated 23rd March, 2020]*

14) CLARIFICATION IN RESPECT OF ISSUES UNDER GST LAW FOR COMPANIES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

The CBIC has provided clarifications on following issues:-

- i. How are dues under GST for pre-CIRP period be dealt?
- ii. Should the GST registration of corporate debtor be cancelled?
- iii. Is IRP/RP liable to file returns of pre-CIRP period?
- iv. Should a new registration be taken by the corporate debtor during the CIRP period?
- v. How to file First Return after obtaining new registration?
- vi. How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated

21.03.2020 and no return has been filed by the IRP during the CIRP?

vii. How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, date 21.03.2020?

viii. Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP? – *[Circular No.134/04/2020-GST, dated 23rd March, 2020]*

INTELLECTUAL PROPERTY RIGHTS

1) DELHI HC REMINDS THE THREE INGREDIENTS OF PASSING OFF ARE GOODWILL, MISREPRESENTATION AND DAMAGE

It was reiterated that traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [Reckitt & Colman Products Ltd. v. Borden Inc., (1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as "Jif Lemon" case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townsend

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& Sons (Hull) Ltd. [Erven Warnink Besloten Vennootschap v. J. Townsend & Sons (Hull) Ltd., 1979 AC 731 at p. 742 : (1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] ("the Advocaat case") to three elements: (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. – *[Peps Industries Private Limited vs Kurlon Limited, dated 16th March, 2020 (Delhi HC)]*

CONSUMER

1) THE BOMBAY HIGH COURT HAS ISSUED NOTICES TO UNION OF INDIA ON A PETITION CHALLENGING THE NEW TRIBUNAL RULES, 2020

The New Tribunal Rules, 2020 issued earlier this year by the Union Government, prescribes the procedure for appointments, qualifications, eligibility etc., of members to the National Consumer Disputes Redressal Commission (NCDRC).

The Petitioner argued that the impugned rules are derogatory to the constitutional principles laid down by the Supreme Court of India regarding separation of powers and independent of judiciary, inasmuch as it creates search cum selection committee comprising of two executives of the union government amounting to excessive interference of executive in the appointment of judges in these tribunals. The petitioner also challenged vacancy circular dated

March 11, 2020, inviting application for appointment of members in National Consumer Redressal Commission based on impugned Rules.

While issuing notices hence, the High Court bench ordered that any appointments made pursuant to abovementioned circular, will be subject to outcome of the petition. – *[Madhukar Ganpat Kukde & Anr. v. Union of India & Ors., WP NO. 1573/2020, Bombay High Court (Nagpur Bench)]*

ENVIRONMENT

1) AMID CORONAVIRUS NGT ADJOURNS ALL PENDING CASES DUE TO LOCKDOWN IN DELHI

The NGT adjourned all pending cases in view of the lockdown in the national capital to contain the spread of coronavirus. The green panel issued a circular in this regard. – *[The Times of India, dated 23rd March, 2020]*

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