CHAPTER 8

Regulatory updates

MCA issues amendments to the Companies (Appointment and Qualifications of Directors) Rules, 2014

Rule 8 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 specifies that every person who has been appointed to hold an office of a director is required to furnish to the company a consent in writing to act as such, on or before the appointment, in Form DIR-2. Rule 10 of the said Rules explains provisions with respect to the allotment of a Director Identification Number (DIN). Additionally Rule 6 mentions the compliances required by a person who is eligible and willing to be appointed as an independent director of a company.

On 1 June 2022, the Ministry of Corporate Affairs (MCA) issued the Companies (Appointment and Qualifications of Directors) Amendment Rules, 2022, inserting new provisos to Rule 8 and Rule 10(1) respectively. As per the amendments, if the person seeking appointment as a director or an independent director is a national of a country which shares land border with India, then a necessary security clearance from the Ministry of Home Affairs, Government of India would also be attached along with the consent. The Rules also clarify that no application filed by such person for allotment of DIN would be generated unless the mentioned security clearance has been attached along with the application. The consequent amendments to Form DIR-2 has also been issued.

On 10 June 2022, MCA amended Rule 6, inserting a new sub-rule Rule 6(5), which provides that any individual whose name has been removed from the databank of independent directors requirement to be maintained in accordance with the Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019 may apply for restoration of his/her name on payment of the prescribed fees, subject to the following conditions:

- The name shall be shown in a separate restored category for a period of one year from the date of restoration within which, the person shall be required to pass the online proficiency self-assessment test and thereafter his/her name shall be included in the databank, and
- In case the person fails to pass the online proficiency self-assessment test within one year from the date of restoration, his/her name shall be removed from the data bank, and he/she shall be required to apply afresh for inclusion of his/her name in the databank.

Effective date: The amendments to Rule 8, Rule 10 and DIR-2 is applicable from 1 June 2022 and amendments to Rule 6 are applicable from 10 June 2022.

(Source: MCA notification no. G.S.R 410 (E) dated 1 June 2022 and G.S.R 439 (E) dated 10 June 2022)

Companies (Removal of Name of Companies from the Register of Companies) Amendment Rules, 2022

Rule 4 of the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016, specifies that a company in order to remove its name from the register of companies, must file an application to the Registrar of Companies (RoC) in Form No. STK-2 in accordance with section 248(2)[1] of the Companies Act, 2013 (2013 Act).

On 9 June 2022, MCA issued the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022, inserting a new sub-rule Rule 4(4) which provides that:

- If the RoC on examination of the application made in Form No. STK-2, finds it necessary to call for further information or finds the application defective or incomplete in any respect, he/she shall inform the applicant to remove such defects and re-submit the application within 15 days from the date of such information.
- After the company has re-submitted the application, if the RoC finds that it is still defective or incomplete in any respect, he/she shall give further time of 15 days to remove such defects or complete the application.

The Rules have also issued the revised formats of Form No. STK-1, STK-5 and STK-5A respectively.

Effective date: The amendments are applicable from 9 June 2022.

(Source: MCA notification no. G.S.R. 436 (E) dated 9 June 2022, The Companies (Removal of Names of Companies from the Register of Companies) Amendments Rules, 2022)

1. Section 248(2) of the 2013 Act states that a company may, after extinguishing all its liabilities, by a special resolution or consent of 75 per cent members in terms of paid-up share capital, file an application in the prescribed manner to RoC for removing the name of the company from the RoC.

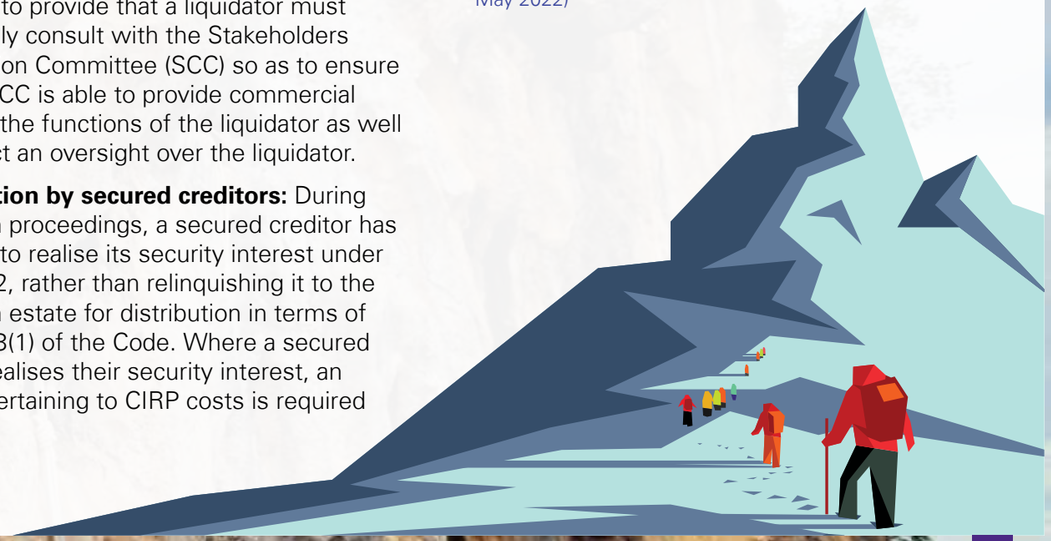
MCA issues report of the Insolvency Law Committee

The Insolvency Law Committee (the committee) was formed to make recommendations to the Government on issues arising in the implementation of the Insolvency and Bankruptcy Code, 2016 (the Code), as well as on the recommendations received from various stakeholders.

With an aim to strengthen the insolvency framework, the committee issued its fifth report to provide recommendations in respect of the Corporate Insolvency Resolution Process (CIRP) and liquidation processes. Some of the key recommendations proposed include:

- **Mandating reliance on Information Utilities (IUs) for certain Financial Creditors:** An application for initiating a CIRP under Sections 7, 9 and 10 of the Code depends largely on the evidence of default committed by a corporate debtor. In order to prove default, financial and operational creditors are allowed to rely on various kinds of documents. In order to streamline the CIRP admission process and reduce delays, the committee decided that financial creditors that are financial institutions, and such other financial creditors as may be prescribed by the Central Government, should be required to submit only IU authenticated records to establish default for the purposes of admission of a Section 7 application. In cases, where such IU authenticated records are not available, and for all other financial creditors, current options of relying on different documents for establishing default may remain available.
- **Curbing submission of unsolicited resolution plan and revision of resolution plans:** During the CIRP, the resolution professional is required to publish an invitation for Expression of Interests (EoIs) calling prospective resolution applicants to submit their EoIs. After the EoIs are submitted, the resolution professional issues a Request for Resolution Plan (RFRP) which provides the deadline for submitting the resolution plan(s). However, it was observed that on certain occasions, additional resolution plans are submitted after the deadline prescribed in the RFRP. Thus, the committee decided that the regulations should lay down a mechanism for reviewing late submissions of (or revisions to) resolution plans.
- **Timeline for approval or rejection of resolution plan:** The approval of a resolution plan by the adjudicating authority is the last step in the CIRP. However, the committee noted that there are significant delays in the approval or rejection of resolution plans by the adjudicating authority. Thus, it has been proposed that amendments should be made to Section 31 of the Code to provide that the adjudicating authority has to approve or reject a resolution plan within 30 days of receiving it. Further, where the adjudicating authority has not passed an order of either approving or rejecting a resolution plan within such 30-day time-period, it may be required to record reasons in writing for the same.
- **Mandatory stakeholder consultation by the liquidator:** Section 35(2) of the Code currently empowers a liquidator to consult stakeholders. It was brought to the committee's notice that conducting such consultation may be made mandatory to ensure a comprehensive oversight over the liquidator. Accordingly, the committee concluded that Section 35(2) may be suitably amended to provide that a liquidator must mandatorily consult with the Stakeholders Consultation Committee (SCC) so as to ensure that the SCC is able to provide commercial inputs on the functions of the liquidator as well as conduct an oversight over the liquidator.
- **Contribution by secured creditors:** During liquidation proceedings, a secured creditor has an option to realise its security interest under Section 52, rather than relinquishing it to the liquidation estate for distribution in terms of Section 53(1) of the Code. Where a secured creditor realises their security interest, an amount pertaining to CIRP costs is required to be deducted from the proceeds of the realisation. Accordingly, it was suggested to the committee that Section 52 should be amended to require secured creditors who choose to realise their security interest outside the liquidation process to contribute towards workmen's dues and repay the liquidator for any expenses incurred for preserving and protecting their security interest. Thereby, the committee has proposed that in case of such creditors, the amount payable towards the workmen's dues as well as the expenses incurred for preserving and protecting the security interest shall be deducted from the proceeds of such realisation.

(Source: Report of the Insolvency Law Committee, May 2022)



MCA issued amendments to NFRA Rules

Rule 13 of the National Financial Reporting Authority (NFRA) Rules, 2018 stated that if a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these Rules, the company and every officer of the company who is in default, or the auditor or such other person shall be punishable as per the provisions of section 450[2] of the 2013 Act.

On 17 June 2022, MCA issued the NFRA Amendment Rules, 2022. The amended Rules substituted Rule 13 to state that anyone who contravenes any of the provisions of these Rules, shall be punishable with a **fine not exceeding INR5,000,** and where the contravention is a continuing one, with a **further fine not exceeding INR500** for every day after the first day during which the contravention continues.

Effective date: The amendments are applicable from 17 June 2022.

(Source: MCA notification no. G.S.R. 456 (E), NFRA Amendment Rules, 2022 dated 17 June 2022)

Extension of facility for conducting Annual and other meetings of unitholders of REITs and InvITs through Video Conferencing (VC) or Other Audio-Visual means (OAVM)

Recently, MCA, vide circular dated 5 May 2022 had extended the facility of holding Annual General Meeting (AGM) and Extraordinary General Meetings (EGMs) through VC/OAVM till 31 December 2022. In line with this, the Securities and Exchange Board of India (SEBI), had also been receiving several representations from the stakeholders of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regarding the extension of aforesaid facilities.

Accordingly, SEBI, through its circular dated 3 June 2022 has extended the facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through VC/OAVM till **31 December 2022** (Earlier: 30 June 2022).

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS_Div2/P/CIR/2022/079 dated 3 June 2022)

SEBI issues a consultation paper on introducing a framework for schemes of arrangement for entities that have listed only debt securities/Non-Convertible Redeemable Preference Shares (NCRPS)

Chapter XV of the 2013 Act deals with compromises, arrangements and amalgamations by any entity, desirous of entering into a compromise or arrangement with its members or creditors. Currently, for schemes of arrangement involving merger, amalgamation, etc., certain safeguards are available in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) to protect the interest of investors of the entities with listed specified securities (equity shares and convertible securities). However, no separate framework is prescribed for entities with only listed debt securities/NCRPS under SEBI (Issue and listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations).

Considering this, SEBI issued a consultation paper to include specific provision in the Listing Regulations, with regard to the schemes of arrangement under Chapter XV of the 2013 Act for entities that have listed only debt securities/NCRPS.

Some of the key proposals provided by the consultation paper are:

- **No-Objection Letter:** Listed entity to file a draft scheme of arrangement with stock exchange(s) for obtaining a No-Objection Letter (NOL). The stock exchange(s) would in turn, forward the draft scheme received from the listed entity along with NOL to SEBI. SEBI should provide comments on the draft scheme to the stock exchange(s), pursuant to which the stock exchange(s) would issue the NOL to the listed entity, incorporating the comments received from SEBI. While processing the draft scheme, SEBI may seek clarifications on the draft scheme from the listed entity, stock exchanges and also an opinion from certain experts (including practicing company secretaries, practicing chartered accountants, etc.).
- **Time for processing filed schemes:** The proposed period for processing schemes filed by entities that have listed only debt securities NCRPS and have raised money only by way of a private placement of debt securities/NCRPS is proposed to be co-terminus with the filing period of schemes filed with any Court or Tribunal. The entities that have listed debt securities/NCRPS' by way of a public issue, however, shall comply with the stipulations as to filing and processing in a manner similar to that of schemes filed by entities with listed specified securities before any Court or Tribunal.
- **Validity of the NOL:** The validity of the NOL would be six months from the date of issuance. Upon receipt of NOL from the stock exchange(s), the listed entity must ensure that the same is submitted immediately, but not later than two working days from such receipt to the Court or Tribunal to avoid any delay.

(Source: SEBI consultation paper on introducing framework for schemes of arrangement for entities that have listed only debt securities / NCRPS dated 3 June 2022)

2. Section 450 of the 2013 Act states that if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the Rules made thereunder, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

SEBI issues revised format of security cover certificate, monitoring and revision in timelines

In terms of Regulation 54, read with regulation 56(1)(d) of the Listing Regulations, listed entities are required to disclose security cover to stock exchange(s) and debenture trustee(s), in a prescribed format. Thus, in line with the above specified amendments, SEBI, vide a circular dated 19 May 2022 has introduced the revised format of security cover certificate, monitoring, and revision in timelines. The circular would be applicable to issuers who have listed and/or propose to list non-convertible securities, securitised debt instruments, security receipts, municipal debt securities, or commercial paper to all recognised stock exchange(s) and debenture trustee(s) registered with SEBI.

The revised format has been prepared to provide a holistic picture of all the borrowings and the status of encumbrance on the assets of the listed entity.

Effective date: The provisions mentioned in Part A and B of the circular with respect to 'revised format of the security cover' and 'monitoring of covenants' would be applicable with effect from 1 October 2022. Other provisions of the circular would come into effect with an immediate effect.

(Source: SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2022/67 dated 19 May 2022)

ICAI issues Technical Guide on financial statements of Non-Corporate entities

On 9 June 2022, The Institute of the Chartered Accountants of India (ICAI) through its Accounting Standards Board (ASB) has issued a Technical Guide on financial statements for Non-Corporate entities. The objective of this Technical Guide is to deal with applicability of Accounting Standards (AS) to the non-corporate entities and to prescribe format of the financial statements for the non-corporate entities. It has been clarified that Limited Liability Partnerships (LLPs) form of entities are scoped out of this Technical Guide.

Meaning of Non-Corporate entities

All business or professional entities, other than the companies incorporated under the 2013 Act and Limited Liability Partnerships incorporated under Limited Liability Partnership Act are considered to be non-corporate entities. Entities for business, commercial or other economic and social activities can be established under variety of structures and the most common structures are as follows:

a. Sole proprietorship firms

b. Hindu Undivided Family

c. Partnership Firms

   i. Registered Partnership Firms

   ii. Unregistered Partnership Firms

d. Association of Persons

   i. Partnership firms not covered above

   ii. Body of Individuals

   iii. Resident Welfare Association

e. Society registered under any law for the time being in force

f. Trust (private or public) registered or unregistered under any law for the time being in force

g. Statutory Corporations, autonomous bodies and authorities

h. Any form of organisation that is engaged fully or partially in any business or professional activities unless their activities are fully charitable in nature.

Applicability of the technical guide

This Technical Guide is relevant for the purpose of preparation of the financial statements of the above mentioned non-corporate entities unless any formats/principles are specifically prescribed by the relevant Statute or Regulator or any Authority.

Key considerations

- **Applicability of AS:** The AS issued by ICAI as on 1 April 2020 are applicable to non-corporate entities. However, for the purpose of their applicability, entities have been classified into four levels, viz., Level I, Level II, Level III and Level IV. The criteria for entities to be classified as Level I, II, III and IV have been provided in the Annexure 1 of the Technical Guide and applicability of AS and exemptions/relaxations to such entities are given in Annexure 2.
- **Format:** The Technical Guide highlights that in the absence of specific formats for the preparation of financial statements for non-corporate entities (such as Schedule III of the 2013 Act which is applicable for corporate entities), there is currently a diversity in presentation of financial statements by non-corporate entities. Accordingly, the format for preparation of financial statements for non-corporate entities has been prescribed in the Technical Guide. The format is largely based on format provided by Schedule III- Division I (financial statements for a company required to comply with the Companies (Accounting Standards) Rules, 2006) with certain modifications and excludes items which are not relevant for non-corporate entities such as:
  - i. Share capital details
  - ii. Details of ageing schedule of trade receivables and payables
  - iii. Details of cost of goods sold required instead of details of cost of material consumed, purchase of stock in trade, etc.
  - iv. Disclosure of ratios
  - v. Additional regulatory information not applicable, etc.

(Source: ICAI Technical Guide on Financial Statements of Non-Corporate Entities, June 2022)

ICAI issued an Exposure Draft of Guidance Note on CARO 2020 (Revised 2022 Edition)

The Auditing and Assurance Standards Board (AASB) of the ICAI had issued the Guidance Note on the Companies (Auditor's Report) Order, 2020 (CARO 2020) in July 2020 to provide detailed guidance to auditors on the reporting requirementsof CARO 2020.

In view of the recent amendments made in the 2013 Act (including amendments to the Schedule III), ICAI, in June 2022 has released an Exposure Draft (ED) of the Guidance Note on CARO 2020 (Revised 2022 Edition). Some of the key changes suggested include:

- **Applicability:** For evaluating applicability of the CARO 2020 to companies following IGAAP (both AS and Ind AS entities), total income would now be considered as a criteria instead of total revenue
- **Clause (iii) - Reporting on loans, investments, guarantees, securities and advances in nature of loan:** Changes in reporting format have been introduced in the disclosures relating to granting of loans and advances, regularity of repayment of the principal and interests for loans granted, etc.
- **Clause (ix) - Reporting on repayment and usage of borrowings:** With respect to loans raised by the company against pledge of securities held in its subsidiaries, associates and joint ventures, companies would now be required to disclose the carrying amount of the securities pledged in the financial statements (including cross reference to the relevant note in the financial statements)
- **Clause (xix) - Reporting on financial position:** As per the existing set of requirements, auditors, based on review of liquidity ratios of the company, were required to report on whether material uncertainty exists as on the date of the audit report. However, now instead of review of liquidity ratios, auditors would need to form an opinion based on the financial ratios disclosed by the company.

(Source: ICAI Exposure Draft of Guidance Note on CARO 2020 (Revised 2022 Edition)

IRDAI prescribes the accounting of premium, claims and related expenses on estimation basis

At present, the Insurance Regulatory and Development Authority of India (IRDAI) (Preparation of Financial Statements and Auditors Report of Insurance Companies) Regulations, 2002 provides the following guidelines for recognition of premium:

i. Premium shall be recognised as an income over the contract period or the period of risk, whichever is appropriate

ii. Premium received in advance is the premium where the period of inception of the risk is outside the accounting period and is to be shown under current liabilities

iii. 'Unallocated premium' includes premium deposit and premium which has been received but for which risk has not commenced. It is to be shown under current liabilities.

IRDAI observed that while some of the reinsurers are accounting for the premium on an 'actual' basis, some others are doing so on an 'estimation' basis. The premium is accounted on estimation basis by the reinsurers due to the following reasons:

i. Lag or delay in receiving the statement of accounts from the insurer(s),

ii. Alignment of accounting practices with parent organisation.

Given that a significant part of the premium is being accounted on an estimation basis, IRDAI, vide circular dated 15 June 2022, has prescribed the guidelines with respect to accounting and disclosures of premium recognised on an estimation basis in the annual report. As per the prescribed guidelines, the Foreign Reinsurers Branch (FRBs)/reinsurers shall ensure that in the annual financial statements no premium is accrued/accounted on an estimate basis at least upto third quarter of each financial year. However, for the fourth quarter ending on 31 March, where the statement of accounts has not been received in time, the premium, losses and related expenses may be accounted on an estimation basis, subject to the conditions as specified by the IRDAI.

(Source: IRDAI circular no. IRDA/F&A/CIR/ MISC/123/6/2022 dated 15 June 2022)