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Insolvency and Bankruptcy Code, 2016

Amendment to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (“**Board**”) has vide the Insolvency and Bankruptcy Board of India (*Insolvency Resolution Process for Corporate Persons*) (*Third Amendment*) *Regulations, 2020* published on the website of the Board on March 29, 2020 and later published in the Gazette of India on April 20, 2020 amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The amendment is by way of insertion of Regulation 40C and shall be deemed to have come into force from March 29, 2020.

The amendment provides that the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted in the time-line of any activity in relation to Corporate Insolvency Resolution Process.



Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020

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The Board vide a *Notification dated April 20, 2020* has made the following regulations to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, namely:-

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1. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 7, in sub-regulation (2), in clause (ca), the following shall be inserted, namely: —

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“Provided that for the financial year 2019-2020, an insolvency professional shall pay the fee under this clause on or before the 30th June, 2020.”.

2. In the principal regulations, in regulation 13, in sub-regulation (2), -

(i) in clause (b), the following shall be inserted, namely: -

“Provided that when an individual ceases to be its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020 and ending on the 31st December 2020, the insolvency professional entity shall inform the Board, within thirty days of such cessation;”;

(ii) in clause (c), the following shall be inserted, namely: -

“Provided that when an individual joins as its director or partner, as the case may be, on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2020 and ending on December 31, 2020, the insolvency professional entity shall inform the board, within thirty days of joining.”

Reserve Bank Of India

Investment by Foreign Portfolio Investors (FPI) in Government Securities: Medium Term Framework (MTF)

Reserve Bank of India (“RBI”) vide its *Notification dated April 15, 2020*, has issued the following Directions:

The following are issued in the Directions:-

Revision of investment limits for FY 2020-21

- a. The limits for FPI investment in Government securities (G-secs) and State Development Loans (SDLs) shall remain unchanged at 6% and 2%, respectively, of outstanding stocks of securities for FY 2020-21.
 - b. In terms of *A.P. (DIR Series) Circular No. 25 dated March 30, 2020*, all investments by eligible investors in the specified securities will be under the Fully Accessible Route (FAR) from the date on which the FAR comes into effect. Also, all existing FPI investments in the specified securities shall be reckoned under the FAR. The calculation of outstanding stock of G-secs and utilization levels of limits under the MTF has accordingly been adjusted.
 - c. The allocation of incremental changes in the G-sec limit (in absolute terms) over the two sub-categories – ‘General’ and ‘Long-term’ – shall be retained at 50:50 for FY 2020-21.
 - d. The entire increase in limits for SDLs (in absolute terms) has been added to the ‘General’ sub-category of SDLs.
- Further, the revised limits for different categories, including the limits for corporate bonds announced vide *Circular No. 24 dated March 30, 2020*, shall be as under:

Table - 1: Investment limits for FY 2020-21						
₹ Crore						
	G-Sec - General	G-Sec - Long Term	SDL - General	SDL - Long	Corporate	Total Debt
Current FPI limits	2,46,100	1,15,100	61,200	7,100	3,17,000	7,46,50
Revised limit for the HY Apr -Sept 2020	2,34,531	1,03,531	64,415	7,100	4,29,244	8,38,821
Revised limit for the HY Oct 2020-Mar 2021	2,34,531	1,03,531	67,630	7,100	5,41,488	9,54,280



- AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
 - The directions contained in this circular has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 ("**FEMA, 1999**") (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.
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Ministry of Corporate Affairs

Holding of Annual General Meetings by companies whose financial year has ended on December 31, 2019

In the wake of chaos caused by spread of the COVID-19 virus, several representations have been received from stakeholders with regard to difficulty in holding annual general meetings (“AGMs”) for companies whose financial year ended on December 31, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. These representations have been examined and it is noted that the under section 96(1) of the Companies Act, 2013 allows a company to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM.

The Ministry of Corporate Affairs vide *a notification dated April 21, 2020* has granted relief to the stake holders.

On account of the difficulties highlighted above, it is hereby clarified that if the companies whose financial year (other than first financial year) has ended on December 31, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by September 30, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly.

Vide a *Notification dated April 29, 2020*, the Central Government through the Official Gazette hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014:-

In the Companies (Appointment and Qualification of Directors) Rules, 2014, in Rule 6, in sub-rule (1), in clause (a), for the words “five months” the words “seven months” shall be substituted and the amended rule is reproduced below:

Every individual-

Who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 shall within a period of seven (7) months from such commencement.

Period/days of extension for names reserved and resubmission of forms

In view of the widespread of the COVID – 19 pandemic, the Ministry of Corporate Affairs has issued a notification extending the period / days for which the name of a new company which is to be incorporated shall be reserved and also clarified the period for resubmitting the forms. The notification clarifies as below:

Sr. No	Form description and period of reservation before the said notification	Period / Days of Extension
1.	Names reserved for 20 days for new company incorporation. SPICE+ Part B needs to be filed within 20 days of name reservation.	Names expiring any day between March 15, 2020 to May 03, 2020 would be extended by 20 days beyond May 03, 2020.
2.	Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation.	Names expiring any day between March 15, 2020 to May 03, 2020 would be extended by 20 days beyond May 03, 2020.
3.	Extension of RSUB (re-submission) validity for companies.	SRNs where last date of Resubmission (RSUB) falls between March 15, 2020 to May 03, 2020, additional 15 days beyond May 03, 2020 would be allowed. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non- re-submission during this extended period as detailed above.
4.	Names reserved for 90 days for new LLP incorporation/change of name. FILLiP/Form 5 needs to be filed within 90 days of name reservation.	Names expiring any day between March 15, 2020 to May 03, 2020 would be extended by 20 days beyond May 03, 2020.
5.	RSUB validity extension for LLPs	SRNs where last date of resubmission (RSUB) falls between March 15, 2020 to May 03, 2020, additional 15 days would be allowed from May 03, 2020 for resubmission. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non-resubmission during this extended period as detailed above.



Extension of the last date of filing of Form NFRA-2-Reg

In view of the ongoing situation due to Covid-19, vide a *Notification dated April 30, 2020*, it has been decided that the time limit for filing of Form NFRA-2, for the reporting period Financial year 2018-19, will be 210 days from the date of deployment of this form on the website of National Financial Reporting Authority. This issues with the approval of the competent authority.

Filing under Section 124 and Section 125 of Companies Act, 2013

In view of the Covid-19 social distancing and lockdown situation, the Ministry of Corporate Affairs, vide a *circular dated April 13, 2020*, has already allowed filing in MCA-21 registry without any additional fees till September 30, 2020 and the same has already been provided for filing of various others forms IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4, IEPF-7).



Ministry of New and Renewable Energy

“Must-Run” for Renewable Energy Stations

Vide a memorandum dated April 4, 2020, the Ministry of New and Renewable Energy (“MNRE”) clarified that ‘Must Run’ status of Renewable Energy (RE) remains unchanged during Covid-19 lockdown period and that RE should not be curtailed but for grid security reasons. Any curtailment with the exception of grid security reasons would amount to deemed generation.

MNRE vide a circular dated April 17, 2020, clarified the time-extension in scheduled commissioning date of RE projects during Covid-19 lockdown

MNRE, vide its memorandum dated March 20, 2020, had issued directions to treat delay on account of disruption of the supply chains due to spread of Covid-19 in China or any other country as Force Majeure and that they may grant suitable extension of time for projects, on account of coronavirus based on evidences.

The RE developers have asked the ministry to grant additional time for normalization after lockdown, and in view of that, the MNRE has decided that

1. All RE implementing agencies of the MNRE will treat lockdown due to COVID-19 as Force Majeure
2. All RE implementing agencies may grant extension for RE projects, on account of lockdown due to Covid-19, equivalent to the period of lockdown and additional 30 days for normalization after such lockdown ends. This shall be a blanket extension and no evidence for such extension shall be asked.
3. The State Renewable Energy Departments (including agencies under such State Departments) may also treat Covid-19 as Force Majeure and may consider getting an extension on account of such lockdown.
4. The extension on account of disruption of supply of RE equipment prior to lockdown shall be dealt separately for additional extension of time.



Rollover of Banked Electricity

MNRE vide its Office Memorandum dated April 16, 2020 (“**OM**”) has provided for rollover of banked electricity generated from solar rooftop PV projects and open access renewable energy generating stations under captive and third party sale (“**RE Projects**”) for Financial Year (“**FY**”) 2019-20 and FY 2020-21 to FY 2021-22.

MNRE vide its OM has stated that in view of the COVID-19 pandemic, the establishments using electricity generated directly and through banking from the RE Projects is at the lowest and further stated that the same is supposed to continue over the next few months. This would result into losses due to lapse of banked energy or their purchase at APPCC rate.

Therefore in view of representations received from the states of Andhra Pradesh, Karnataka and Tamil Nadu, MNRE has given its assent and requested the power companies and DISCOMS of the aforesaid states to consider such roll over of banked energy.



Ministry of Power

Clarification regarding Letters of Credit

Vide letter dated March 27, 2020, the requirement of either making pre-payment or giving Letter of Credit for the entire cost of power was relaxed but there were some misconceptions about the same. Therefore, vide a letter dated April 6, 2020, the Ministry of Power issued clarifications regarding Letters of Credit as given below in brief:

- A. The obligation to pay for power within 45 days of the presentation of the bill or as provided in the PPA remains unchanged
- B. Late payment surcharge shall apply at reduced rate only for the period between March 24, 2020 to June 30, 2020 (on those payments that become overdue during the period March 24, 2020 to June 30, 2020 and not on those payments which were already overdue before March 24, 2020) and after June 30, 2020 the delayed payment surcharge shall be payable at the rates given in the PPA/regulations.
- C. Obligation to pay for capacity charges as per the PPA shall continue, as does the obligation to pay for transmission charges.



Ministry of Commerce and Industry

The Ministry of Commerce and Industry issued a *Press Note No.3 on April 17, 2020*, which stated that the Government made its prior approval mandatory for foreign investments from countries that share land borders with India to curb “opportunistic takeovers/acquisitions” of Indian companies due to the Covid-19 pandemic and in view thereof amended the Consolidated FDI Policy, 2017. The Press Note will take effect from the date of its Notification and holds true to existing and planned investments by foreign entities/individuals

The former Para 3.1.1 of the Consolidated FDI Policy, 2017 stated that a citizen of Bangladesh or an entity incorporated in Bangladesh could invest in India under the Government route. The former policy also made it mandatory for a Pakistani citizen and an entity incorporated in Pakistan to invest via the Government route. Further it stated that a Pakistani entity or citizen could invest in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

The revised Para 3.1.1. of the Consolidated FDI Policy, 2017 now states as under:

- A. A non-resident entity can invest in India subject to the FDI Policies in sectors/activities which are not prohibited;
- B. Entities belonging to countries which share land borders with India or where the beneficial owner of the investment (to be made in India) is situated or is a citizen of the aforesaid country can invest only under the Government route
- C. Pakistani entity or citizen can invest in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment via the Government route only.
- D. The transfer of ownership of an existing or future FDI in an entity in India, resulting (directly or indirectly) in the beneficial owner within these restricted areas will also require Government approval.

This Press Note was issued to give the Government to review takeovers and investments from specific jurisdictions aka countries which share land borders with India such as China, Pakistan, Bangladesh etc.



Supreme Court of India

Writ Petition for free of cost Covid-19 testing facilities

Shashank Deo

...Petitioner

Vs

Union of India

...Respondent

Facts of the case:

- A Writ petition was filed under Article 32 seeking direction to provide free of cost testing facilities of COVID – 19 by all testing Labs whether private or government. The Advisory issued by the Indian Council of Medical Research Department SH Health Research dated 17.03.2020 which advised that the test shall be conducted for Rs. 4500.
- In its order dated 08.04.2020 the Hon'ble Supreme Court held that :
 1. The test relating to COVID -19 whether in Government Laboratories or Approved private laboratories shall be free of cost
 2. These tests shall be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR.
- Further on an interim application bearing application No. 48266/2020 containing prayer for modification of the abovementioned order the following was held:
- Free test for COVID -19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana and any other category of economically weaker section of society as notified by the Government for this purpose.
- The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.
- The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.



Central Electricity Regulatory Commission

In the matter of extension of validity of Renewable Energy Certificates (RECs) expired or due to expire between April 1, 2020 and September 30, 2020.

The commission vide Order dated December 30, 2019 extended the validity of RECs which had expired/likely to expire between November 1, 2019 and March 31, 2020 upto March 31, 2020.

The question of validity of RECs between the period of April 1, 2020 and September 30, 2020 led to representation by the commission of the inventory of RECs which are likely to expire within the aforementioned period.

From the inventory presented by the Commission, it is evident that 1,30,500 (One lakh thirty thousand and five hundred) RECs have expired on April 1, 2020.

The commission reviewed the performance of REC market in terms of participation of buyers and sellers, volume cleared and the prices discovered, and is of the view that there is a need to extend the validity of these RECs, so as to avoid demand supply imbalance in the REC market.

Regulation 15 of the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 provided below for ready reference:

15. Power to relax

“The commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by any interested person.”

Accordingly, RECs which have expired/due to expire between April 1, 2020 to September 30, 2020 shall be valid upto October 31, 2020.

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Warm Regards,

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