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Ministry of Corporate Affairs

In view of the widespread of COVID – 19 pandemic, the Ministry of Corporate Affairs (“MCA”) vide notification issued in **June, 2020** relaxed deadlines and extended time periods of various procedures involved in the incorporation of a new company. The notification clarifies as below:

Sr. No	Issue description	Period / Days of Extension
1.	Names reserved for Twenty (20) days for new company incorporation. SPICe+ Part B needs to be filed within twenty (20) days of name reservation.	Names expiring any day between March 15, 2020 and June 30, 2020 would be extended by twenty (20) days beyond June 30, 2020.
2.	Names reserved for sixty (60) days for change of name of company. INC-24 needs to be filed within sixty (60) days of name reservation.	Names expiring any day between March 15, 2020 and June 30, 2020 would be extended by sixty (60) days beyond June 30, 2020.
3.	Extension of RSUB (re-submission) validity for companies.	Service Request Number (“ SRN ”) where last date of Resubmission (RSUB) falls between March 15, 2020 to June 30, 2020, additional fifteen (15) days beyond June 30, 2020 would be allowed. However, for SRNs already marked under NTBR, extension would be provided on case to case basis.



		<p>Note: Forms will not get marked to (Not to be taken on Record) 'NTBR' due to nonresubmission during this extended period as detailed above. It also includes IEPF Non-STP eForms (IEPF3, IEPF-5 and IEPF-7)</p>
4.	<p>Names reserved for ninety (90) days for new LLP incorporation/change of name.</p> <p>FiLLiP/Form 5 needs to be filed within ninety (90) days of name reservation.</p>	<p>Names expiring any day between March 15, 2020 and June 30, 2020 would be extended by twenty (20) days beyond June 30, 2020</p>
5.	<p>RSUB validity extension for LLPs</p>	<p>SRNs where last date of resubmission (RSUB) falls between March 15, 2020 and June 30, 2020, additional fifteen (15) days would be allowed from June 30, 2020 for resubmission. However, for SRNs already marked under NTBR, extension would be provided on case to case basis.</p> <p>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.</p>
6.	<p>Extension for marking IEPF-5 SRNs to 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)'</p>	<p>SRNs where last date of filing eVerification Report (for both Normal as well as Resubmission filing) falls between March 15, 2020 and June 30, 2020, would be allowed to file the form till September 30, 2020.</p>



		<p>However, for SRNs already marked under 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)', extension would be provided on case to case basis.</p> <p>Note: Status of IEPF-5 SRN will not change to 'Pending for Rejection u/r 7(3)' and 'Pending for rejection u/r 7(7)' till 30th Sep'20.</p>
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Companies (Share Capital and Debentures) Rules, 2014

The said *circular dated June 19, 2020* issued by the Ministry of Corporate Affairs (“MCA”) grants extension of time allowed for the creation of deposit repayment reserve of 20% under section 73(2)(C) of the Companies Act, 2013 and to invest or deposit 15% of amount of debentures under regulation 18 of Companies (Share capital and Debentures) Rules, 2014 due to the prevailing COVID-19 pandemic situation in the country.

In continuation to the General Circular dated March 24, 2020 issued by the MCA and keeping in view the requests received from various stakeholders seeking extension of time for compliance of the subject requirements on account of COVID-19, it has been decided to further extend the time in respect of matters referred to in paras V, VI of the aforesaid circular, from **June 30, 2020 to September 30, 2020**. All other requirements as mentioned in the above mentioned circular dated March 24, 2020 shall remain unchanged.



Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020

The Ministry of Corporate Affairs (“MCA”) vide *Notification dated June 23, 2020* in exercise of its powers conferred upon it under Section 149 read with Section 469 of the Companies Act, 2013, has made the following rules to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014 and shall come into force on the date of its publication in the Official Gazette.

As a consequence of the amendment of the Companies (Appointment and Qualification of Directors) Rules, 2014, the period of seven (7) months shall be substituted by ten (10) months in Rule 6 (1)(a). The relevant extract of the Rule is as under:

“In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (1), in clause (a), for the words “seven months” the words “ten months” shall be substituted”

The amended rule now provides that every individual who has been appointed 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 ten (10) months from such commencement apply online to the institute for the inclusion of his name in the data bank for a period of one (1) year or five (5) years or his life-time and from time to time take steps as specified in sub-rule (2) till he continues to hold the office of an independent director in any company. Therefore, by virtue of the aforesaid Rule, the registration of details of the independent directors in Independent Directors Data Bank who were directors on December 01, 2019 is allowed till **September 30, 2020**.



Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

The Ministry of Corporate Affairs ("**Ministry**") on **June 17, 2020** vide *General Circular* issued "Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013" ("**Scheme**")

The Ministry took into account the effects of the pandemic caused by COVID-19, wherein representations were received requesting for the relaxation of the timelines in respect of filing of certain forms. In view of the aforesaid, the Central Government in exercise of its powers under Section 460 read with Section 403 of the Act and the Companies (Registration Office and Fees) Rules, 2014 ("**Fees Rules**") decided to introduce the aforesaid Scheme, thereby relaxing the timelines for complying with Sections 77 and 78 of the Companies Act, 2013 ("**the Act**").

Details of the said Scheme are as under:

(i) Applicability:

The Scheme shall come into effect from the date of the issue of this Circular i.e. June 17, 2020. The said Scheme shall be applicable to filing of Form No. CHG-1 and Form No. CHG-9 ("**Forms**") by a company or a charge holder where the date of creation/modification of charge:

- (a) is before March 01, 2020, but the timeline for filing such form has not expired under Section 77 of the Act as on March 01, 2020 or
- (b) falls on any date between March 01, 2020 to September 30, 2020 (both the dates are inclusive)

(ii) Relaxation of time:

- (a) the period beginning from March 01, 2020 and ending on September 30, 2020 shall not be taken in consideration for the purpose of counting the number of days under Section 77 or 78. If the Form is not filed within such period (i.e. March 01, 2020 to September 30, 2020), the first day after February 29, 2020 shall be considered as October 01, 2020 for the purpose of counting the number of days within which the Form is required to be filed under Section 77 or 78.



(b) the period beginning from the date of creation/ modification of charge to September 30, 2020 shall not be considered for the purpose of counting of days under Section 77 or 78. If the Form is not filed within such period (i.e. March 01, 2020 to September 30, 2020), the first day after the date of creation / modification of charge shall be considered as October 01, 2020 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or 78.

(iii) Applicable fees:

(a) If the Form is filed on or prior to September 30, 2020, the fees payable as on February 29, 2020 under the Fees Rules for the said Form shall be charged. If the Form is filed thereafter, fees shall be charged under the Fees Rules after adding the number of days beginning from October 01, 2020 and, ending on the date of filing plus the time period lapsed from the date of the creation of charge till February 29, 2020.

(b) If the form is filed before September 30, 2020, normal fees under the Fees Rules for the said Form shall be charged. If the Form is filed thereafter, the first day after the date of creation/modification of charge shall be considered as October 01, 2020 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees under the Fees Rules.

(iv) Non-applicability of the Scheme to:

- (a) Forms CHG-1 and CHG-9 which have already been filed before the date of this Circular
- (b) Timelines for filing the Form have already expired under Section 77 or Section 78 of the Act prior to March 01, 2020
- (c) Timeline for filing the Form expires at a future date despite exclusion of time provided for under Relaxation of time
- (d) Filing of Form CHG-54 for satisfaction of charges.

These measures are being taken in a view to alleviate the stress of the companies and its people in these uncertain times.



SEBI

SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020

The Securities and Exchange Board of India (“SEBI”) under the powers conferred unto it under Section 30 of the Securities and Exchange Board of India Act, 1992 amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, vide its *Notification dated June 22, 2020*.

Under the said amendment, the following new sub-regulation shall be inserted after sub-regulation (2A) in Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely –

“(2B) Any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.”

The said amendment further provides an explanation of the sub-regulation 2(B) mentioned herein above and states that the above exemption from open offer shall also apply to the target company with infrequently traded shares which is compliant with the provisions of sub-regulations (2), (3), (4), (5),(6), (7) and (8) of Regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of Regulation 165 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.



Clarifications on 'Disclosure Standards for Alternative Investment Funds'

1. Securities and Exchange Board of India ("SEBI") has issued a Circular dated February 05, 2020 on 'Disclosure Standards for Alternative Investment Funds ("AIFs")' and has further provided clarifications vide a *Circular dated June 12, 2020*

2. In this regard, it is clarified as under:

(i) Audit of compliance with terms of Standardization of Private Placement Memorandum ("PPM") as provided in Paragraph 5 of the Circular, shall be conducted at the end of each financial year and the findings of audit along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI, within six (6) months from the end of the financial year.

(ii) The requirement of audit of compliance with terms of PPM shall not apply to AIFs which have not raised any funds from their investors. However, such AIFs shall submit a Certificate from a Chartered Accountant to the effect that no funds have been raised, within six (6) months from the end of the financial year.

(iii) For the financial year 2019-20, the above requirements shall be fulfilled on or before December 31, 2020.

3. Paragraph 12 (i) of the Circular is amended as under:

"Any association of AIFs ("**Association**"), which in terms of membership, represents at least 33% of the number of AIFs, may notify one or more Benchmarking Agencies, with whom each AIF shall enter into an agreement for carrying out the benchmarking process."

4. In light of market events due to the COVID-19 pandemic, the timeline for making available the first industry benchmark and AIF level performance versus Benchmark Reports, stands extended till October 01, 2020.

5. This circular is issued in exercise of its powers conferred unto it under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Relaxation from compliance with certain circulars of the SEBI

Securities and Exchange Board of India (“SEBI”) vide *Circular dated June 08, 2020* has introduced certain relaxations in respect of compliances with certain provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“SEBI (ILDS), Regulations, 2008”), SEBI (Non- Convertible Redeemable Preference Shares) Regulations, 2013 (“SEBI (NCRPS), Regulations, 2013”) and other SEBI Circulars due to the COVID-19 virus pandemic which are as follows :

1. SEBI vide circular dated March 23, 2020 specified guidelines for relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and other SEBI Circulars due to the COVID -19 virus pandemic.
2. In partial amendment to the aforesaid circular, it has been decided to extend the relaxation provided in the circular for issuers who intend/propose to list their Non-Convertible Debentures (“NCDs”) /Non-Convertible Redeemable Preference Share (“NCRPS”) /Commercial Papers (“CPs”) for disclosure of financial results by another one (1) month.
3. Accordingly, Clause 5 of the circular is modified as under:

“In order to enable listed issuers who intend/propose to list their NCD/NCRPS/CPs, it has been decided to grant the following relaxations in timelines:

Particulars	Available Financials	Date for issuance	Extended date for issuance	Period of relaxation
Cut- off date for issuance of NCDs/ NCRPS/CPS	As on September 30, 2019	On or before March 31, 2020	On or before June 30, 2020	91 days



4. This circular shall come into force with immediate effect

 5. The circular is issued by SEBI in exercise of its powers conferred unto it under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 31 and 32 of the SEBI (ILDS), Regulations, 2008, Regulations 26 and 27 of SEBI (NCRPS), Regulations, 2013. The relaxations contained herein are subject to the provisions of the Companies Act, 2013 and rules made thereunder.
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Investment by the sponsor or asset management company

Regulation 28(4) of SEBI (Mutual Funds) (Amendment) Regulations, 2020 provides that the sponsor or asset management company (“**AMC**”) is required to invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less in such option of the scheme as may be specified by the Securities and Exchange Board of India (“**SEBI**”).

Hence *SEBI vide Circular dated June 12, 2020* (which came into force with immediate effect) has specified that the investment as required under Regulation 28(4) of SEBI (Mutual Funds) (Amendment) Regulations, 2020 shall be made in growth option of the scheme. It is further provided that in schemes where growth option is not available the investment shall be made in the dividend reinvestment option of the scheme. Further, the Circular provides that with respect to schemes where both growth option as well as dividend reinvestment option are not available the investment shall be made in the dividend option of the scheme.



Temporary relaxation in processing of documents pertaining to FPIs due to COVID-19

Due to the prevailing COVID-19 pandemic and pursuant to receiving representations from various stakeholders, the Securities and Exchange Board of India (“SEBI”) issued a circular dated **June 23, 2020** under the powers conferred upon it under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and sub-rule 14(i) of Rule 9 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.

The Circular states that the temporary relaxation in processing of documents pertaining to FPIs shall be extended to August 31, 2020



Ministry of Micro, Small and Medium Enterprises

The Central Government, after obtaining the recommendations of the Advisory Committee, hereby issued a *Notification in the Official Gazette dated June 26, 2020* which will come into effect from July 01, 2020.

By the powers conferred unto to it by sub-section (1) read with sub-section (9) of section 7 and sub-section (2) read with sub-section (3) of section 8, of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (“Act”) and suppression of the notifications issued by the Government of India dated June 01, 2020, June 30, 2017, November 01, 2013 and October 05, 2006, the Government mentions in the aforesaid notification the new method of classifying enterprises as follows:

A. Classification of Enterprises:

(i) A micro enterprise, shall be classified as an enterprise where the investment in Plant and Machinery or Equipment does not exceed **one crore rupees** and turnover does not exceed **five crore rupees**;

(ii) A small enterprise, shall be classified as an enterprise where the investment in Plant and Machinery or Equipment does not exceed **ten crore rupees** and turnover does not exceed **fifty crore rupees**;

(iii) A medium enterprise, shall be classified to be an enterprise where the investment in Plant and Machinery or Equipment does not exceed **fifty crore rupees** and turnover does not exceed **two hundred and fifty crore rupees**.

B. Becoming a micro, small or medium enterprise.--

(i) Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online on the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof.



(ii) On registration, an enterprise (referred to as —Udya in the Udyam Registration portal) will be assigned a permanent identity number known as —Udyam Registration Number.

(iii) An e-certificate, namely, —Udyam Registration Certificate shall be issued on completion of the registration process.

The Notification explains the procedure of registration of various enterprises as well as the classification.



Case Laws

1. CASE: C.S. No. 231 OF 2013 - *ITC Limited vs Nestle India Limited* before the Hon'ble Madras High Court ("**Hon'ble Court**")

FACTS OF THE CASE:

Present suit arises on account of adoption of the expression of "Magical Masala" by the Defendant for marketing its instant noodles viz; "Maggixtra – delicious Magical Masala" in 2013. The Plaintiff had introduced Sunfeast Yippee! Noodles namely "Magic Masala" in 2010. In view thereof the present case has been filed under Order IV Rule I of the Original Side Rules and Order VIII Rule I of the Civil Procedure Code, 1908 read with Sections 27, 134 and 137 of the Trade Marks Act, 1999.

WHAT WAS HELD

The Hon'ble Court held as under:

1. Though there was a phonetic similarity between the words "Magic" used by the Plaintiff and "Magical" used by the Defendant, they are incapable of being monopolized as they are not only laudatory but also common to the trade
2. Since there was no visual or ocular similarity between the two wrappers, there is no scope to infer passing off from an ocular and visual comparison of the two labels
3. The expressions "Magic Masala", "Classic Masala" and "Chinese Masala" were conceived with respect to being descriptive and not as sub brands by the Plaintiff
4. Both the words "Magic" and "Magical" are common to the trade and therefore, neither parties can claim monopoly over the expression, as they are common words used in the Indian culinary and food industry



In view of the aforesaid and other observations, the Hon'ble Court proceeded to dismiss ITC's suit, whilst concluding as under :

"In my view, neither the plaintiff nor the defendant can claim the monopoly over the respective laudatory words 'Magic' or 'Magical' along with common word 'Masala' to the exclusion of one another. Therefore, neither the plaintiff nor the defendant can dissect a portion of a label and claim monopoly over it. As such the plaintiff cannot claim monopoly over the expression 'Magic Masala'"

2. Order dated June 29, 2020 passed by the Hon’ble Appellate Tribunal for Electricity (“**Tribunal**”) in Appeal No. 307 of 2018: **Adani Green Energy (Uttar Pradesh) Limited Vs Uttar Pradesh Electricity Regulatory Commission & Ors.**

Facts:

Appellant filed an Appeal against the impugned order dated February 12, 2018 (“**Impugned Order**”) passed by the Learned Uttar Pradesh Electricity Regulatory Commission (“**Commission**”) (i.e. Respondent No.1 in the aforementioned Appeal) in Petition No. 1110 of 2016.

According to the Appellant, tariff was discovered through the competitive bidding process for setting up of the grid connected solar power project in Uttar Pradesh. The Appellant and Respondent No. 2 i.e. Uttar Pradesh Power Corporation Limited (“**UPPCL**”) executed a Power Purchase Agreement (“**PPA**”) on December 01, 2015 for supply of 50MW solar power for a period of twelve (12) years. In view thereof, a Petition was filed for adoption of tariff discovered through competitive bidding process. Whilst the Appellant contended that there was a delay in commissioning of the project due to the delay in completion of the infrastructure by UPPL, the Respondent No. 2 contended that the delay in construction of dedicated transmission line was not due to its folly but was on account of the default of the Appellant.

Furthermore, the Appellant also contended that the Commission in the Petition No. 1194 of 2017 filed by the Appellant allowed for the extension of Scheduled Commissioning Date (“**SCOD**”) and waived off penalty. However, the Commission erroneously prescribed tariff of Rs. 5.07/- per kWh whilst the discovered tariff of Rs. 8.44/- per kWh ought to have been approved by the Commission and in doing so exceeded its jurisdiction under Section 63 of the Electricity Act, 2003 (“**the Act**”) by artificially modifying the tariff discovered through competitive bidding.



Ruling:

The Hon'ble Tribunal was of the view that the present Appeal is a fit case for Alternate Dispute Resolution (“ADR”). It observed that though the Tribunal is not bound by the principles of Civil Procedure Code, 1908 (“CPC”), it can nevertheless take cues from the provisions of CPC whilst adopting its own procedure under the powers vested in it under the Act.

The Hon'ble Tribunal also observed that the time invested in litigation is not only long but the party in whose favour the judgement has been decreed also faces a tough journey to enjoy the benefits accrued unto it. In view of the aforesaid stark reality, the Hon'ble Tribunal decided to resort to the provisions of Section 89 of the CPC, which lays down alternate modes of dispute resolutions without resorting to normal procedure.

The Tribunal also quoted the Hon'ble Supreme Court's in depth observations of Section 89 of CPC held in ***Afcons Infrastructure Ltd & Anr. Vs Cherian Varkey Construction Co. (P) Ltd & Ors. (SLP(C) No. 760 of 2007)*** (“Judgement”). In the aforesaid Judgement, the Hon'ble Supreme Court laid down principles in respect of categories of cases which are and are not suitable for the ADR process. The Hon'ble Supreme Court further opined that Section 89 of CPC vests the choice of reference with the Courts. In addition to the above the Hon'ble Supreme Court also opined in detail in respect of making sure that the ADR process does not fizzle out a case if settlement is not reached.

Furthermore, the Hon'ble Supreme Court in the aforesaid Judgement summarized the procedure to be adopted by Courts under Section 89 of CPC and cautioned Courts to keep in mind the consequential aspects while giving effect to Section 89 of CPC. The Hon'ble Supreme Court further opined that the aforesaid observations were general guidelines which were subject to change as the Courts may deem fit, keeping in mind the facts and circumstances of the case.

The Hon'ble Tribunal in view of the Hon'ble Supreme Court's Judgement held that having regard to the nature of the contested issue in the present matter there is a possibility of settlement and hence adjudicated that the present Appeal was a fit case for mediation and in view thereof directed the parties to suggest names of two mediators.



Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (“**Ordinance**”) came into force on **June 05, 2020**. The Ordinance takes into account the impact of the COVID-19 pandemic on businesses, financial markets and the economy all over the world including India and the uncertainty and stress which has been caused as a result thereof on businesses, which are beyond their control. The Ordinance also takes into consideration the nationwide lockdown which was enforced since March 25, 2020 with a view to combat the spread of COVID-19.

In view of these unprecedented situations, Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) stand suspended to prevent corporate persons who are experiencing distress owing to the pandemic from being dragged into insolvency proceedings under the said Code for some time.

The Ordinance inserts a ‘**non-obstante provision**’ to Section 7, 9 and 10, by way of Section 10A of the IBC, which states that any creditors/corporate applicants shall not have the right to file applications to initiate the corporate insolvency resolution process for any default occurring during the period from March 25, 2020 till expiry of six (6) months or such further period as may be notified, not exceeding one (1) year (“**Exemption Period**”).

The proviso to Section 10A further clarifies that there shall be no filing of applications for any default which may occur during the Exemption Period. That means that the rights available to the creditors/corporate applicants under Section 7, 9 and 10 of the IBC have been taken away, so far as any default occurring during the Exemption Period.

The Ordinance has also clarified that Section 10A shall not apply to any default that has occurred before March 25, 2020. In view thereof, creditors/corporate applicants are still entitled to initiate the corporate insolvency resolution process, for any default which may have occurred prior to March 25, 2020. It is implied that the Section 10A will also not have any application with respect to defaults occurring after the expiry of the Exemption Period.

The Ordinance also deals with the insertion of ‘**non-obstante provision**’ to Section 66 of the IBC and provides that the Resolution Professionals are barred from filing any application under sub-section 2 of Section 66, if that application relates to a default, which has occurred during the Exemption Period.



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

The Insolvency and Bankruptcy Board of India (“**IBBI**”), in exercise of its powers conferred by sections 196, 207 and 208 read with section 240 of the Insolvency and Bankruptcy Code, vide a *Gazette Notification dated June 30, 2020*, hereby makes the following amendments to the IBBI (Insolvency Professionals) Regulations, 2016:

In the IBBI (Insolvency Professionals), 2016, the following clause shall be substituted namely:

Regulation 12

(1)(a) The sole objective is to provide support services to insolvency professionals.

The amendment will come into effect on the date of the publication of the notification

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Warm Regards,

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