



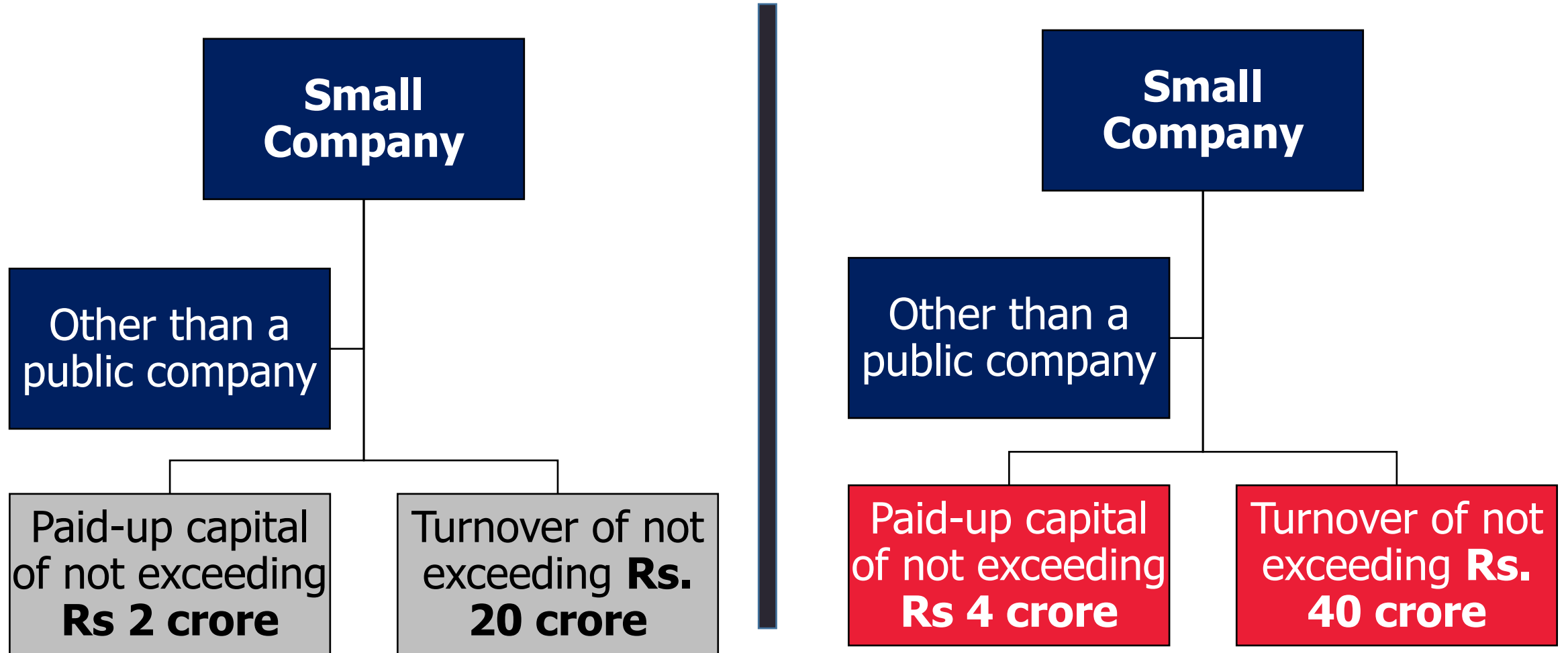
Recap of Recent Regulatory & Legal Updates



Regulatory updates: Company Law



Change in threshold limits for a small company



Important Privileges and Exemptions for Small Company

The financial statement with respect to small company, may not include the **cash flow statement**.

Abridged form of annual return in Form MGT-7A for Small Company and No requirement of signature on Annual Return by Practicing Company Secretary.

Abridged Board's report for Small Company prescribed under Rule 8A of the Companies (Accounts) Rules, 2014

The auditor of a small company shall not include **CARO report** with his report.

Fast Track Merger can be done between two or more small companies and one or more start up company with one or more small company.



MCA amends CSR Rules: Applicability

Amendments in Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("CSR Rules")

Now, a company having **any amount in its Unspent CSR Account** shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of section 135

Provision relating to "**once section 135(1) is applicable, a company shall comply with the entire CSR provisions unless it ceases to meet the criteria during next three years**" has been done away with



MCA amends CSR Rules: Implementation Agency



- A section 8 company, or a registered public trust or a registered society, **exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 of the Income Tax Act, 1961** may also act as an implementation agency;
- In such case, such agencies do not need to get registration under **sections 12A and 80G** of the Income Tax Act, 1961.



MCA amends CSR Rules: Expenditure on Impact Assessment

Old Provision of Rule 8(3)(c) of CSR Rules

Company undertaking impact assessment may book the expenditure towards CSR for that financial year,

which shall **not exceed 5%** of the total CSR expenditure for that financial year or Rs. 50 lakh, **whichever is less**

New Provision of Rule 8(3)(c) of CSR Rules

Company undertaking impact assessment may book the expenditure towards CSR for that financial year,

which shall **not exceed 2%** of the total CSR expenditure for that financial year or Rs. 50 lakh, **whichever is Higher**



MCA amends CSR Rules: Annual Report on CSR Activities



- Web link of impact assessment report can be provided along with executive summary. Earlier report was to be attached;
- Details of activities on which CSR amount has been spent has been deleted.
- Detailed format of table has been inserted in case of creation or acquisition of capital asset.



Directors get 15 more days for DIN KYC without additional fees



Last date for filing Form DIR-3 KYC or web form DIR-3 KYC-WEB, as the case may be, has been extended up to **15th October, 2022** for the financial year ending on 31st March, 2022.





Regulatory updates: Securities Law

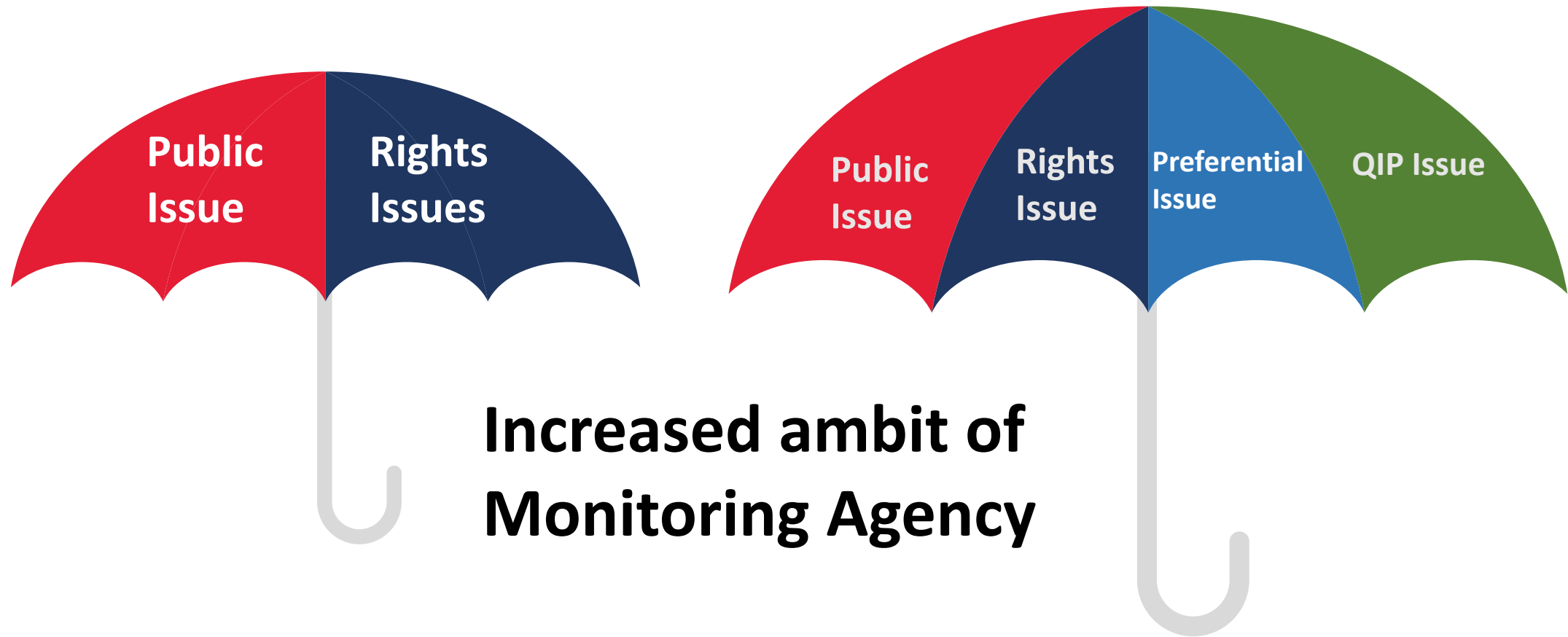




SEBI BOARD MEETING - **30th SEPTEMBER, 2022**



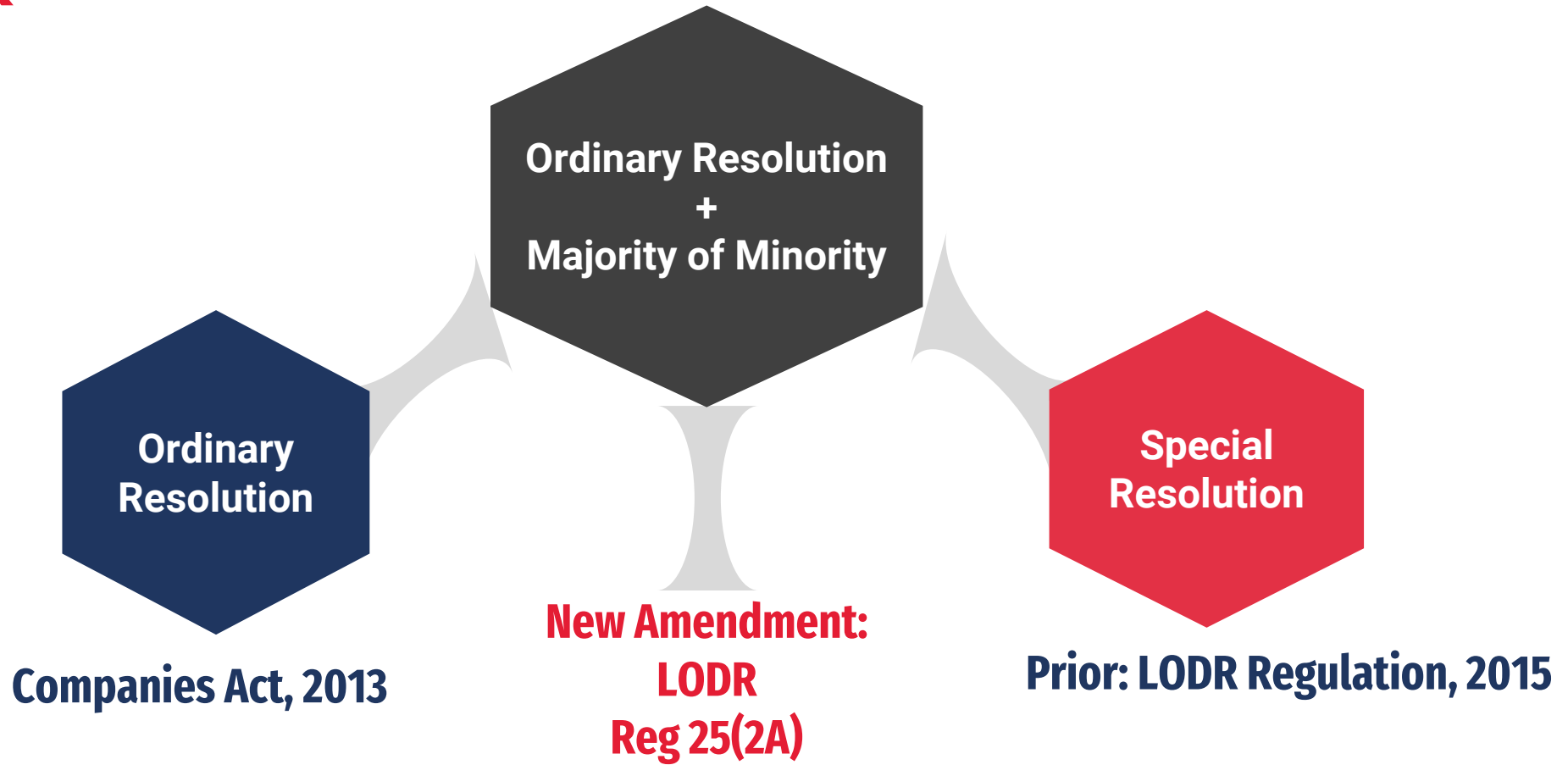
Appointment of Monitoring Agency for monitoring utilization of issue proceeds [Amendments to the SEBI (ICDR) Regulations]



*Credit Rating Agency registered with SEBI can act as Monitoring Agency



Flexibility in Process of APPOINTMENT/ REMOVAL OF INDEPENDENT DIRECTOR



*Effective Date is yet to be notified.



Introduction of Regulatory Framework to facilitate Online Bond Platform Providers & Reduction in the face value of listed privately placed debt securities



To register Online Bond Platform Providers with SEBI as Stock Brokers under the debt segment of the Stock Exchanges



To reduce the face value of listed privately placed debt securities



Introduction of pre-filing of offer document as an optional alternative mechanism for the purpose of IPO on the main Board of Stock Exchanges:

- ☐ Issuers to carry out limited interaction without having to make any sensitive information public.
- ☐ Document which incorporates SEBI's initial observations would be available to investors for a period of at least 21 days.



Framework for "Offer for Sale" (OFS) of Shares through Stock Exchange Mechanism

01 Selling Shareholders

- ☐ Non-promoter

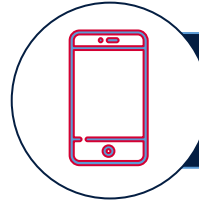
02 Holdings + Offer size

- ☐ Min 25 Cr. +
- ☐ Min 10% of share capital

03 Cooling Period

Shall not Buy/Sell in
±12 weeks from offer

Existing Framework



New Amendment

01 Selling Shareholders

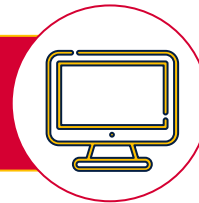
- ☐ Non-promoter

02 Holdings + Offer size

- ☐ Min 25 Cr.
- ☒ ~~Min 10% of share capital~~

03 Cooling Period

Shall not Buy/Sell in ±2
to ±12 weeks from offer



Retail investors are now allowed to bid for the unsubscribed portion of non-retail segment, which were not allowed earlier



Amendment in LODR w.r.t. Debt Listed Entities

Provision pertaining to Approval of Scheme of Arrangement by Debt Listed entities

Transfer to IPEF, amount lying unclaimed in the escrow account > 7 years

Easing of the requirements/ timelines w.r.t., financial results, clarity in provisions pertaining to disclosure of line items/ ratios





Framework on Social Stock Exchange



Minimum Criteria for Registration of NPO with Social Stock Exchange

ELIGIBILITY CONDITIONS:

Parameter	Requirement
Entity is registered as an NPO [Charitable Trust under Relevant Statute]	Registration certificate valid at least for next 12 months at the time of seeking registration with SSE
Ownership and control	Owned and/or Controlled by government or private
Registration Certificate under section 12A/12AA/12AB of Income Tax Act	to be valid for at least the next 12 months
Registration with Income Tax as an NPO	IT PAN
Age of NPO	Minimum 3 years
Deduction under Income Tax Act, 1960 [80G Registration]	Entity to ensure whether tax deduction is available or not to investors.



Framework on Social Stock Exchange

DISCLOSURES

Initial disclosure In fund raising document

- Vision
- Governance
- Credibility
- Social Impact
- Risks

Quarterly disclosure

- Statement of Utilization of funds within 45 days

Annual disclosure

- Disclosures on **(GGF)** General, Governance & Financial aspects
- Annual Impact Report (AIR) to SSE within 90 days from the end of Financial Year





ISSUED BY NSE & BSE w.r.t **SCHEME OF ARRANGEMENT**



Revised SOPs w.r.t draft Scheme of Arrangement- Reg 37 of SEBI (LODR) Regulation, 2015

1

PROCEDURE

Valuation Report

Financials shall not be more than **3/6 months** old

Board Approval

Board approving the draft scheme of arrangement

Exchange's

Board shall file application to **seek NOC** from exchange's

Query reply

Company shall resolve the query of exchange's

Action by Exchange's

- ☐ Application fees forfeited
- ☐ Fresh filing after fresh approval by Board, Valuation

Within 7 W.D

Within 15 W.D

Within 7 W.D

After 7 W.D



Revised SOPs w.r.t draft Scheme of Arrangement- Reg 37 of SEBI (LODR) Regulation, 2015

2

VALUATION METHODS

Income approach

vs

Other than income approach

Financials shall
not be more
than **6 months**
old

Financials shall
not be more
than **3 months**
old



Revised SOPs w.r.t draft Scheme of Arrangement- Reg 37 of SEBI (LODR) Regulation, 2015

3

FINANCIALS OF UNLISTED COMPANIES



At the time of submission of the application

Audited Financials shall not be more than **6 months** old
[Undertaking to be furnished at the time of NOC regarding NCLT Filing]

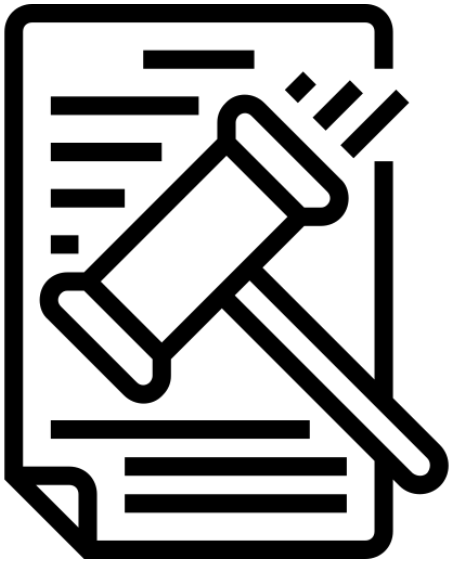




Regulatory updates: Insolvency Law



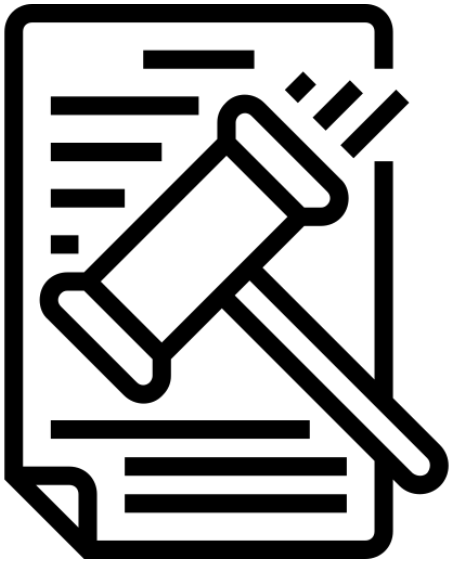
MCA amends the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process in line with the current DPIIT start-up definition



- DPIIT had notified new start-up definition vide Notification No. G.S.R. 127(E) dated 19th February, 2019 in which the period of start-up was extended upto **10 years** from **5 years**.
- MCA has now amended the notification pertaining to application for **Fast Track Corporate Insolvency Resolution Process** in line with the current start up definition.



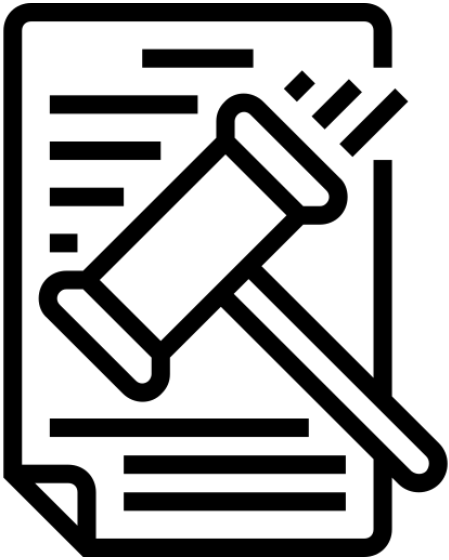
Details of matters pending with Supreme Court of India and various High Courts



- Insolvency Professionals (IPs) have to inform IBBI without any delay about any important issues relating to vires, interpretation and applicability of the provisions of the Code, Rules and Regulations made thereunder are being contested before the High Courts and the Supreme Court of India, in respect of any assignment handled by them as on date.
- Further, the information as above shall be submitted by IPs as and when any such case is filed before Supreme Court and High Courts.



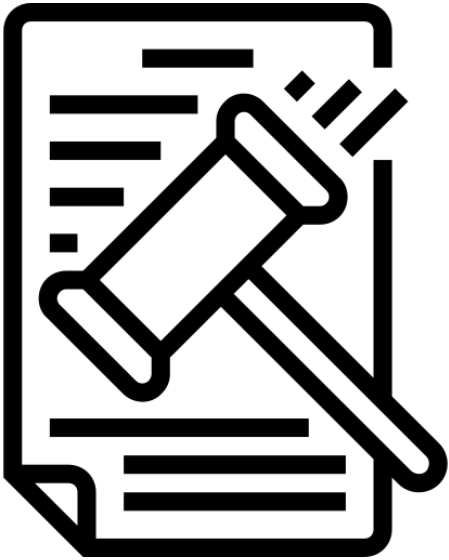
IBBI to fix minimum fee slabs from 01st October for IPs



- Fee of IRP or RP, appointed **on or after 01st October 2022** shall be decided by the applicant or committee in accordance with the amended regulations.
- An IP shall be paid minimum fixed fee in the range of **Rs. 1 lakh** to **Rs. 5 lakh**, per month, depending on the quantum of claims admitted. However, the applicant or committee may decide to fix higher amount of fees than the said minimum fixed fee, after taking into consideration market factors like size and scale of business operations, business sector, level of operating economic activity and complexity related to process.



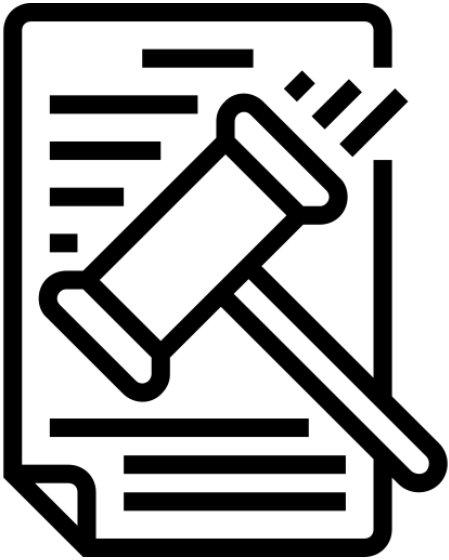
IBBI to fix minimum fee slabs from 01st October for IPs



- The committee may decide to pay, after approval of resolution plan by the Adjudicating Authority on commencement of payment to creditors by the resolution applicant, performance-linked incentive fee, not exceeding a total of **Rs. 5 crores**:
 - a) for timely submission of resolution plan to the Adjudicating Authority, and/or
 - b) for value maximisation, @ 1% of the amount by which the realisable value is higher than the liquidation value, or
 - c) other than a. or b. above, as the committee may deem necessary.



IBBI to fix minimum fee slabs from 01st October for IPs



- The fee may be paid from the funds available with the CD, contributed by the Applicant or members of the committee and/or raised by way of interim finance and the same shall be included in the insolvency resolution process cost.
- IP not to accept/share any fees or charges from any professional and/or support service provider who are appointed under the processes.



IBBI amends the CIRP Regulations with the objective to maximize value in insolvency resolution



- RP and CoC to issue request for resolution plan a 2nd time for **sale of one or more of assets** of the corporate debtor (CD) in cases where no resolution plan has been received for the corporate debtor as a whole.
- A resolution plan may include **sale of one or more assets of CD** and provide for appropriate treatment of the remaining assets.
- CoC to formulate strategy for disseminate information about the asset to a wider and targeted audience of potential resolution applicants.
- Longer period provided for inviting Expression of Interest.



IBBI amends the CIRP Regulations with the objective to maximize value in insolvency resolution



- Application for preferential and other transactions must be filed on or before 130th day of ICD.
- A copy of application made regarding preferential and other transactions be shared with the prospective resolution applicants to enable them to account.
- Changes the timeline for submission of IM to on or before 95th day from the ICD from 54th day.
- IM should also include - operations of CD, financial statements, contingent liabilities, geographical coordinates of fixed assets, company overview. It also includes details of business evolution for CDs with asset size of more than Rs. 100 crore.



IBBI amends the CIRP Regulations with the objective to maximize value in insolvency resolution



- CoC to examine whether it wants to explore option of compromise or arrangement and file such recommendation with AA while applying to AA for liquidation order.
- In cases CoC decides to explore, it should explore the option during the period, order for liquidation is awaited from the AA.
- A list guiding factors has been provided that may be considered by CoC while making an early decision to liquidate the CD. It also provides that the reasons be recorded based on these factors and presented to AA as part of the application for liquidation.



IBBI amends the CIRP Regulations with the objective to maximize value in insolvency resolution



- The amendment also provides the following to make the resolution process more transparent and robust:
 - A common email address be used throughout the CIRP, and Liquidation of a CD and this email needs to be handed over to the succeeding IP conducting the process.
 - The IRP/RP to communicate to the creditors of corporate debtor (CD), as per the last available books of accounts, the public announcement and invite claims through post or electronic means.
 - It has been clarified that a meeting of CoC can be convened till resolution plan is approved or an order for liquidation is passed and matters which do not affect the resolution plan can be decided upon.



IBBI amends the liquidation/ voluntary liquidation process regulations to enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value



- The Committee of Creditors (CoC) constituted during Corporate Insolvency Resolution Process (CIRP) shall function as Stakeholders Consultation Committee (SCC) in the first 60 days.
- After adjudication of claims and within 60 days of initiation of process, the SCC shall be reconstituted based upon admitted claims.
- The liquidator has been mandated to conduct the meetings of SCC in a structured and time bound manner with better participation of stakeholders.



IBBI amends the liquidation/ voluntary liquidation process regulations to enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value



- The scope of mandatory consultation by liquidator, with SCC has been enlarged. Now, SCC may even propose replacement of liquidator to the Adjudicating Authority (AA) and fix the fees of liquidator, if the CoC did not fix the same during CIRP.
- If any claim is not filed during liquidation process, then the amount of claim collated during CIRP shall be verified by the liquidator.



IBBI amends the liquidation/ voluntary liquidation process regulations to enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value



- Wherever the CoC decides that the process of compromise or arrangement may be explored during liquidation process, the liquidator shall file application only in such cases before Adjudicating Authority for considering the proposal of compromise or arrangement, if any, within 30 days of the order of liquidation.
- Specific event-based timelines have been stipulated for auction process.



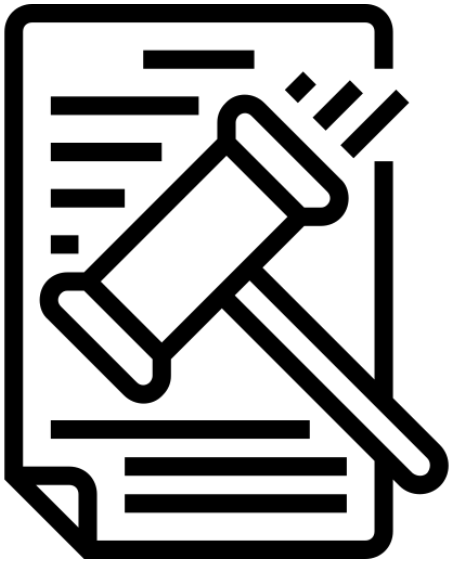
IBBI amends the liquidation/ voluntary liquidation process regulations to enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value



- Before filing of an application for dissolution or closure of the process, SCC shall advise the liquidator, the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, shall be pursued after closure of liquidation proceedings.
- The Amendments further lay down the manner and period of retention of records relating to liquidation and voluntary liquidation of a corporate debtor or corporate person, respectively.



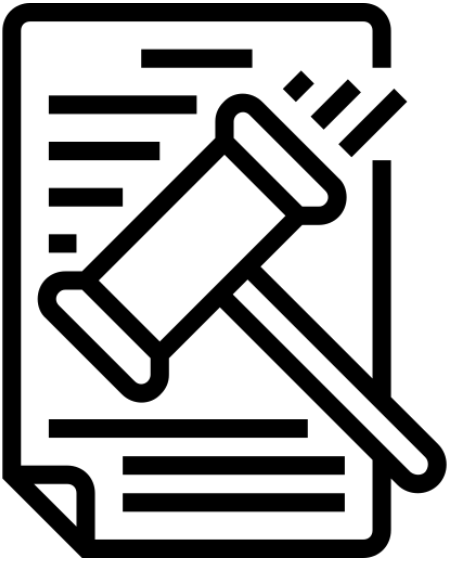
IBBI amends the CIRP Regulations to specify the regulatory fee



- A regulatory fee calculated **@0.25% of the realisable value** to creditors under the resolution plan approved on or after **01st October 2022**, shall be payable to the IBBI, where such realisable value is more than the liquidation value.
- Apart from this, a regulatory fee calculated **@1%** of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the IRP or RP, as the case may be, for assistance in a CIRP process, shall also be payable to the IBBI.



IBBI allows Insolvency Professional Entities (IPEs) to be appointed as Resolution Professional for resolution of insolvency



An IPE, can seek registration as an IP with the IBBI, by making an application in the specified form along with a non-refundable application fee of **Rs. 2 lakh** and an IPE which is registered as an IP shall allow only its partner or director, as the case may be, who is an IP and holds a valid Authorisation for Assignment, to sign and act on behalf of it.





Case Law/ Studies: Insolvency Law



The provisions of the IBC would prevail over the Customs Act



- The Supreme Court inter-alia observed that the IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC, as the case may be, the Customs authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies.
- The Customs authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.



[Sundaresh Bhatt, Liquidator of ABG Shipyard (Appellant) vs. Central Board of Indirect Taxes and Customs (Respondent), SC, Civil Appeal No. 7667 of 2021 order dated 26.08.2022]

CIRP can be initiated against the Co-borrower for the same set of debt obligations arising out of the same loan agreements.



- If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings u/s 7 of the Code cannot be initiated against both the corporate debtors. If the dues are realized in part from one corporate debtor, the balance may be realized from the other corporate debtor being the co-borrower.
- The apex court also observed that approval of a resolution in respect of one borrower cannot "certainly discharge" a co-borrower.



[Maitreya Doshi vs. Anand Rath Global Finance Ltd. and ANR, SC order 22.09.2022]

Whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the Gujrat VAT Act?



In view of the statutory charge in terms of Section 48 of the Gujrat VAT Act, the claim of the Tax Department of the State, squarely falls within the definition of "Security Interest" u/s 3(31) of the IBC and the State becomes a secured creditor u/s 3(30) of the Code. Such security interest could be created by operation of law. Secured Creditor to mean a creditor in favour of whom security interest is credited.



[State Tax Officer vs. Rainbow Papers Ltd., SC]

THANK YOU

Pavan Kumar Vijay

Founder, Corporate Professionals &
Past President, ICSI