

# CLIENT UPDATE

March 2020

## EXECUTIVE SUMMARY

### INSOLVENCY AND LIQUIDATION PROCEEDINGS OF FINANCIAL SERVICE PROVIDERS

The Ministry of Corporate Affairs (“MCA”) has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“Rules”) on 15<sup>th</sup> November, 2019 to provide a generic framework for insolvency and liquidation proceedings of systemically important Financial Service Providers (“FSPs”) other than banks. The Rules shall apply to such FSPs or categories of FSPs, as will be notified by the Central Government under section 227 of the Insolvency and Bankruptcy Code, 2016 (“Code”) from time to time in consultation with appropriate regulators, for the purpose of their insolvency and liquidation proceedings.

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The Rules provide that the provisions of the Code relating to the Corporate Insolvency Resolution Process (“CIRP”), Liquidation Process and Voluntary Liquidation Process for a corporate debtor shall, mutatis mutandis, apply to a process for an FSP, subject to modifications, as under:

- **Application:** CIRP of an FSP initiated only on application by the appropriate regulator.
- **Administrator:** An Administrator (proposed by the regulator) to be appointed on admission of the application. The Administrator shall have the same duties, functions, obligations, responsibilities, rights and powers of an insolvency professional, interim resolution professional, resolution professional, or liquidator as the case may be. He may be replaced by the Adjudicating Authority on application made by the regulator. The Administrator shall take control and custody of third-party assets or properties in custody of the FSP and deal with them in a manner to be notified under Section 227 of the Code.
- **Advisory Committee:** The regulator may constitute an Advisory Committee of three or more experts to advise the Administrator in the operations of the FSP during CIRP.
- **Interim Moratorium:** Interim moratorium shall commence from the date of filing of application for initiation of CIRP and shall continue till its admission or rejection. The provisions of interim moratorium or moratorium shall not apply to any third-party assets or properties in the custody, or possession of the FSP.
- **License or Registration:** The license or registration which authorises the FSP to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the CIRP.
- **No Objection:** Upon approval of the resolution plan by the Committee of Creditors, the Administrator shall seek ‘no objection’ from the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of FSP after approval of the resolution plan. The appropriate regulator shall issue ‘no objection’ on the basis of the ‘fit and proper’ criteria applicable to the business of the FSP without prejudice to the provision of Section 29A of the Code.
- **Voluntary Liquidation:** Prior permission of the regulator is required by the FSP for initiating voluntary liquidation proceedings

*For any assistance in complying with the requirements under the Companies Act or the Insolvency and Bankruptcy Code, you may email us at [delhi@jurislegal.org](mailto:delhi@jurislegal.org) or call us on +91 11 4359 3370.*