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Greetings and a warm welcome to our October, 2019 Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of October, 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI) and Insolvency and Bankruptcy Board of India (IBBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month relates to “Independent Directors”

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,
Amita Desai & Team



A. COMPANIES (MEETINGS OF BOARD AND ITS POWERS) AMENDMENT RULES, 2019:

- The MCA vide its Notification dated 11th October, 2019 had amended the Companies (Meetings of Board and its Powers) Rules, 2014 (“Rules 2014”), which may be called Companies (Meetings of Board and its Powers) Eighth Amendment Rules, 2019 (“Rules 2019”), the same will be **effective from 11th October, 2019**.

The MCA has amended Rule 11 (2) of the Companies (Meeting of Board and Its Powers) Rules 2014 read with Section 186 (1) (a) of the Companies Act, 2013 [CA, 2013].

- Following amendments were made :

The amendment is substituting the words "business of financing of companies" to the words "business of financing industrial enterprises" in Rule 11 (2)

The substitution has been made in order to make the provisions of rules consistent with the provisions of the Section 186 (1) (a) so that it does not make any ambiguity in the section and rules thereunder.

Section 186 of CA 2013 is for Loan and Investment by Company

Section 186 (2)& (3) states that the Company can invest, give loan or provide security of anybody corporate exceeding 60% its paid up share capital and free reserves including security premium or 100% of its free reserves including securities premium, whichever is more, *with the prior approval of members by way of Special Resolution*

Section 186 (1) of the CA, 2013 is *exempting certain class of Companies* from the above provisions. These Companies are Banking Company, or Insurance Company, or Housing Finance Company which does the business of investment, giving loan or providing securities in the ordinary course of its business, or a Company established with the object of and engaged in *the business of financing industrial enterprises*, or of providing infrastructural facilities;

Rule 11 of the Companies (Meeting of Board and Its Powers) Rules 2014 is for Loan and Investment by the Company

Rule 11 also prescribes certain companies which are *exempted from complying with section 186 (2) & (3) of CA 2013*

1. The Company can make investment or give loan or provide securities to its *Wholly Owned Subsidiary or a Joint Venture Company*;
2. The Rules defines *"business of financing of companies"* and states that it includes Non-Banking Financial Company registered with Reserve Bank of India with the object of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business.

3. The Company which are registered as *Stock Broker, Sub Broker or Share Transfer Agent* under section 12 of SEBI Act, 1992, should comply with the regulations under which it has got the certificate of registration from SEBI.

The Ministry clarified through this amendment and brought the company carrying on *Business of Financing of Company* mentioned in Rule 11 (2) in line with section 186 (11) which are for the companies engaged in *the business of financing industrial enterprises*, the limit is exempted.

- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/213148.pdf>

B. SCHEDULE VII (AMENDMENTS) OF COMPANIES ACT 2013:

- MCA vide its Notification dated 11th October, 2019 had amended Schedule VII of the Companies Act 2013 and the same **will be effective 11th October, 2019.**
- Following amendments were made in Schedule VII of the Companies Act 2013:

Item No-(ix) and the entries relating thereto, following items and entries are substituted namely:

Contribution to incubators funded by:-

1. Central Government or
2. State Government or any agency or
3. Public Sector Undertaking of Central Government or
4. State Government and contributions to public funded Universities,
5. Indian Institute of Technology (IITs),
6. National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR),
7. Indian Council of Medical Research (ICMR),
8. Council of Scientific and Industrial Research (CSIR),
9. Department of Atomic Energy (DAE),
10. Defence Research and Development Organisation (DRDO),
11. Department of Science and Technology (DST),
12. Ministry of Electronics and Information Technology)

Engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Notification_18102019.pdf

C. NOTIFICATION FOR DELEGATION OF POWERS TO TRIBUNAL - (SECTION 458 READ WITH SECTION 418(1)) OF COMPANIES ACT 2013

- The Central Government vide its Notification dated 14th October, 2019 hereby delegates its powers and functions under section 418(1) of the said Act to provide officers and other employees to the Tribunal and the Appellate Tribunal to the President and Chairperson of the said Tribunal and the Appellate Tribunal, as the case may be, subject to conditions as specified in the recruitment rules of the respective posts as approved and notified by the Central Government.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/DelegationPowersTribunal_14102019.pdf

D. COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE) AMENDMENT RULES, 2019:

- MCA vide its Notification dated 15th October, 2019 had amended Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015 (“Rules 2015”), which may be called Companies (Filing of Documents and forms in Extensible Business Reporting Language) Amendment Rules, 2019 (“Rules 2019”) and the same **will be effective from 16th October, 2019.**
- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/213309.pdf>

E. COMPANIES (COST RECORDS AND AUDIT) RULES 2014:

- MCA vide its Notification dated 15th October, 2019 had amended the Companies (Cost records and Audit) Rules, 2014 (“Rules 2014”), which may be called Companies (Cost records and Audit) Amendment Rules, 2019 (“Rules 2019”) and the same **will be effective 1st April, 2018.**
- Companies who have already filed their Cost Audit Report in form CRA-4 for the financial year 2018-19 with the Central Government before the publication of this notification are not required to file their Cost Audit Report for the said financial year.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Cost&AuditAmntRules_15102019.pdf

F. COMPANIES (INCORPORATION) EIGHTH AMENDMENT RULES, 2019:

- MCA vide its Notification dated 16th October, 2019 had amended the Companies (Incorporation) Rules, 2014 (“Rules 2014”), which may be called Companies (Incorporation) Eighth Amendment Rules, 2019 (“Rules 2019”) and the same **will be effective from 16th October, 2019.**
- Following amendments were made in Rules 2014 :

1. **Rule 8A (1) b- Omit** - “or applicant for registration”

2. **Rule 25A (1) (iii)** the following is **substituted** namely-

(iii) DIR-12 (Changes in Director except in case of :

(a) Cessation of any director or

(b) Appointment of directors in such a way where the total number of directors are less than the minimum number of three directors in the case of Public Company, two directors in case of a Private Limited Company , one director in case of One Person Company on account of disqualification of all or any director under section 164.

(c) Appointment of any director in such company where DINs of all or any of its directors have been deactivated.

(d) Appointment of directors for implementation of the order passed by the Court or Tribunal or Appellant Tribunal under the provisions of this Act or under the insolvency and Bankruptcy Code, 2016.

3. After Rule 28(1), following rules **inserted** namely:

Rule 28(2)- The Regional Director shall examine the application seeking its confirmation for shifting Registered office within same State from the jurisdiction of one Registrar of Companies to another Registrar of Companies and Regional Director shall pass orders either approve or reject without hearing within fifteen (15) days of the receipt of application complete in all respects.

➤ The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf

G. NOTIFICATIONS ON INDEPENDENT DIRECTORS:

1. Companies (Appointment and Qualification of Directors) Fifth Amendment Rules 2019:

➤ MCA vide its Notification dated 22nd October, 2019 had amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (“Rules 2014”), which may be called Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (“Rules 2019”) hereinafter referred to as the principle rules and the same **will be effective 1st December, 2019.**

➤ With this notification Rule 6 of the above referred Rules is substituted with the change of title of the Rules from “Creation and Maintenance of Data Bank of persons offering to become Independent Director” **to** “Compliances required by person eligible and willing to be appointed as an Independent Director”.

➤ For the detail analysis, please refer our Article of the Month segment in this Newsletter.

➤ The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf

2. Companies (Creation And Maintenance of Databank Of Independent Directors) Rules 2019:

- MCA vide its Notification dated 22nd October, 2019 have prescribed new rules for creation and maintenance of databank of Independent directors namely “The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019” which **will be effective from 1st December 2019**, except **Rule 2** for “Definition” and **Rule 5** for “Panel” of 10 members nominated by the Central Government for the purpose of approving the outline of course and study material for Proficiency Test, which **will be effective from 22nd October 2019**.
- For the detail analysis, please refer our Article of the Month segment in this Newsletter.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpInpdtDirectorsRules_22102019.pdf

3. Data Bank Notification dated 22nd October, 2019 relating to Indian Institute of Corporate Affairs (IICA) .The notification will be effective from 1st December, 2019.

- The Notification of Institute by Central Government as per section 150 (1) and Rules as per Section 150 (3).

Section 150 of CA 2013 provides for Manner of selection of Independent Director (ID) and maintenance of Data Bank of ID.

According to the powers conferred on MCA under Section 150 it has notified **“Indian Institute of Corporate Affairs” situated at Manesar (Haryana)** (“IICA”) as such Institute, which shall create and maintain Data Bank for ID.

- For the detail analysis, please refer our Article of the Month segment in this Newsletter.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/NotificationIICA_22102019.pdf

4. Company (Accounts) Amendment Rules 2019:

- MCA vide its Notification dated 22nd October, 2019 had amended the Company (Accounts) Rules, 2014 (“Rules 2014”), which may be called Company (Accounts) Amendment Rules, 2019 (“Rules 2019”), the same **will be effective 1st December, 2019**.
- Following amendments were made in Rules 2014:

Rule-8 (5) - Following clause iii (a) is inserted after clause iii

“Clause (iii) (a) to include a statement in Board report regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”

Explanation - Expression of **“Proficiency”** means the proficiency of the independent Director as ascertained from the online proficiency self assessment test conducted by the institute notified under Section 150(1).

- For the detail analysis, please refer our Article of the Month segment in this Newsletter.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules_22102019.pdf

H. EXTENSION OF LAST DATE OF FILING OF e-FORM CRA-4 (COST AUDIT REPORT) FOR THE FY 2018-19:

- The time limit for filing e-form CRA-4 (Cost Audit Report) is extended upto **31st December 2019** with relaxation of additional fee.
- The link of the aforesaid Circular is as under:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_25102019.pdf

I. EXTENSION OF LAST DATE OF FILING OF e-FORMS IEPF-1A AND IEPF-2:

- MCA vide its Circular dated 25th October 2019, extended the time limit for filing e-forms **IEPF-1A** upto **31st December 2019** and for e-Form **IEPF-2** upto **30th November 2019**, without payment of additional fee and thereafter additional fee shall be payable.
- The link of the aforesaid Circular is as under:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular1_25102019.pdf

J. EXTENSION OF TIME LIMIT OF FILING OF e-FORMS AOC-4 AND MGT-7:

- MCA vide its Circular dated 29th October 2019 extended the time limit for filing e-forms **AOC-4, AOC (CFS), AOC-4 XBRL** upto **30th November, 2019** and for e-Form **MGT-7** upto **31st December 2019**, without payment of additional fee and thereafter fee and additional fee shall be payable.
- The link of the aforesaid Circular is as under:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_29102019.pdf

K. NOTIFICATIONS OVER UT JAMMU & KASHMIR AND UT LADAKH:

1. Jurisdiction of UT of JK and UT of Ladakh:

- MCA vide its notification dated 30th October 2019 notified that ROC Jammu shall have the jurisdiction in respect of Union Territories of Jammu & Kashmir and Union Territories of Ladakh for the purpose of registration of Companies and discharging the functions under the Companies Act. This notification shall come into force **with effect from 31st October, 2019**.
- The link of the aforesaid Notification is as under:
<http://egazette.nic.in/WriteReadData/2019/213537.pdf>

2. ROC Jammu-Jurisdiction of Adjudication of Penalties- UT of JK and UT of Ladakh:

- MCA vide its notification dated 30th October 2019 had amended an entry in notification dated 24th March, 2015.
- Pursuant to the notification, in the Table, against serial number 5 for the entries, the following entries shall be substituted, namely:

5	“Registrar of Companies-cum-Official Liquidator, Jammu	Union territory of Jammu and Kashmir and Union territory of Ladakh”
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- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/J&KAdjNotification_30102019.pdf

3. Jurisdiction of RD, New Delhi - UT of J&K and UT of Ladakh:

- MCA vide its notification dated 30th October 2019 had amended an entry in notification dated November 03, 2015.
- Pursuant to the notification, against serial number (1), in column (2), the following entry shall be substituted:

“States of Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Uttarakhand and Union territories of Chandigarh, Jammu and Kashmir, Ladakh and National Capital territory of Delhi”

- This notification shall come **into force with effect from 31st October, 2019.**
- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/213536.pdf>

L. DIRECTORS IN DEFAULT OF FILING ANNUAL RETURNS OR FINANCIAL STATEMENTS:

MCA have announced on its website under news and update column that:

- Registrar of Companies are in the process of identifying and flagging defaulting Directors who have not filed Annual returns and Financial statements for continuous period of 3 years starting from the FY 2015-16 to 2017-18.
- DIN of such Directors shall not be used to file e-forms.
- MCA cautions Defaulting Directors to find and file the pending documents else statutory action will be initiated under section -164.
- The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Upload_31102019.pdf

A. FRAMEWORK FOR ISSUE OF DEPOSITORY RECEIPTS:

- SEBI vide its Circular SEBI/HO/MRD/DOP1/CIR/P/2019/106 dated 10th October, 2019 laid down the provisions applicable only to DR issuance by a Listed Company after the effective date. The provisions of **this Circular are effective from 10th October, 2019.**
- This Circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992
- In light of the aforesaid, only ‘a Company incorporated in India and listed on a Recognized Stock Exchange in India’ (‘Listed Company’) may issue Permissible Securities or their holders may transfer Permissible Securities, for the purpose of issue of Depository Receipts (‘DRs’), subject to compliance with the following requirements:
 1. Listed Company is in compliance with the requirements prescribed under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and any amendments thereof.
 2. Listed company shall be eligible to issue Permissible Securities, for the purpose of issue of DRs, if:
 - (a) any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by SEBI;
 - (b) any of the promoters or directors of the Listed Company is a promoter or director of any other company which is not debarred from accessing the capital market by SEBI;
 - (c) the listed company or any of its promoters or directors is not a wilful defaulter;
 - (d) any of its promoters or directors is not a fugitive economic offender.
 3. Existing holders shall be eligible to transfer Permissible Securities, for the purpose of issue of DRs, if:
 - (a) the Listed Company or the holder transferring Permissible Securities are not debarred from accessing the capital market by SEBI;
 - (b) the Listed Company or the holder transferring Permissible Securities is not a wilful defaulter;
 - (c) the holder transferring Permissible Securities or any of the promoters or directors of the Listed Company are not a fugitive economic offender.
 4. The issue and listing of DRs, pursuant to ‘transfer by existing shareholders’ may take place subject to the limits approved pursuant to a special resolution in terms of GDR Rules.
 5. A company proposing to make a public offer and list on a Recognized Stock Exchange, and also simultaneously proposing to issue Permissible Securities or transfer Permissible Securities of existing holders, may seek in-principle and final approval from Recognized Stock Exchange as well as International Exchange. However, such issue or transfer of Permissible Securities for the purpose of issue of DRs shall be subsequent to, the receipt of trading approval from the Recognized Stock Exchange for the public offer.

6. Listed Company shall be permitted to issue Permissible Securities or transfer Permissible Securities of existing holders, for the purpose of issue of DRs, only in Permissible Jurisdictions and said DRs shall be listed on any of the specified International Exchange(s) of the Permissible Jurisdiction.
7. Listed Company shall ensure compliance with extant laws relating to issuance of DRs.
8. Listed Company shall ensure that DRs are issued only with Permissible Securities as the underlying.
9. Listed Company shall ensure that the aggregate of Permissible Securities which may be issued or transferred for the purpose of issue of DRs, along with Permissible Securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such Permissible Securities under the applicable regulations of FEMA.
10. Listed Company shall ensure that the agreement entered with the Foreign Depository, for the purpose of issue of DRs, provides that the Permissible holder, including its Beneficial Owner(s), shall ensure compliance with holding limits prescribed under point no.16 below.
11. Listed Company shall, through an intermediary, file with SEBI and the Recognized Stock Exchange(s), a copy of the initial document, for initial issue of DRs issued on the back of Permissible Securities.
12. Any public disclosures made by the Listed Company on International Exchange(s) in compliance with the requirements of the Permissible Jurisdiction where the DRs are listed or of the International Exchange(s), are filed with the Recognized Stock Exchange not later than 24 hours from the date of filing.
13. Listed Company shall ensure that the agreement entered between the holder of DRs, the Listed Company and the Depository provides that the voting rights on Permissible Securities, if any, shall be exercised by the DR holder through the Foreign Depository pursuant to voting instruction only from such DR holder.
14. The price of issue or transfer of Permissible Securities, for the purpose of issue of DRs by Foreign Depository, shall not be less than the price for the public offer / preferential allotment / qualified institutions placement to domestic investors under the applicable laws.
15. Where Permissible Securities are issued by a Listed Company or 'transferred by the existing holders', for the purpose of issue of DRs by the Foreign Depository, the same shall be issued at a price, not less than the price applicable to a corresponding mode of issue of such Permissible Securities to domestic investors under the applicable laws.
16. Indian Depositories, in consultation with each other, shall develop a system to ensure that aggregate holding of DR holders along with their holding, if any, through offshore derivative instruments and holding as a Foreign Portfolio Investor belonging to same investor group shall not exceed the limit on foreign holding under the FEMA and applicable SEBI Regulations. For this purpose, Indian Depositories shall have necessary arrangement with the Domestic Custodian and / or Foreign Depository.

17. Domestic Custodian shall maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of depository receipts, for the purpose of monitoring limits.
18. In case of any difficulties in the application or interpretation or to relax strict enforcement of the requirements of this Circular, the Board may issue clarifications through guidance notes or circulars after receipt of request from the issuer.
- The link for the aforesaid Circular is as mentioned below:

https://www.sebi.gov.in/legal/circulars/oct-2019/framework-for-issue-of-depository-receipts_44609.html

B. RESIGNATION OF STATUTORY AUDITORS FROM LISTED ENTITIES AND THEIR MATERIAL SUBSIDIARIES:

- SEBI vide its Circular CIR/CFD/CMD1/114/2019 dated 18th October, 2019 provides for certain disclosures to be made by the Listed Entities to the Stock Exchanges in case of resignation of Statutory Auditors from Listed Entities and their material subsidiaries. **This Circular shall come into effect from 18th October, 2019.**
- In case the auditor is rendered disqualified due to operation of any condition mentioned in Section 141 of the Companies Act, 2013, then the provisions of this Circular shall not apply.
- In case an entity is not mandated to have an Audit Committee, then the board of directors of the entity shall ensure compliance of this circular.

(I) All listed entities/material subsidiaries shall ensure compliance with the following conditions while appointing/re-appointing an auditor:

- (i) If the auditor resigns **within 45 days** from the end of a quarter, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter.
- (ii) If the auditor resigns **after 45 days** from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.
- (iii) If the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year.

(II) Other conditions relating to resignation shall include:

- a. In case of any concern with the management of the listed entity/material subsidiary, the auditor shall approach the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.
- b. In case the auditor proposes to resign, all concerns with respect to the proposed resignation, along with relevant documents shall be brought to the notice of the Audit Committee.

In cases where the proposed resignation is due to non-receipt of information / explanation from the company, the auditor shall inform the Audit Committee of the details of information/ explanation sought and not provided by the management, as applicable.

- c. On receipt of such information from the auditor relating to the proposal to resign as mentioned above, the Audit Committee / board of directors, as the case may be, shall deliberate on the matter and communicate its views to the management and the auditor.

The practicing company secretary shall certify compliance by a listed entity with (I) and (II) above in the annual secretarial compliance report issued in terms of SEBI circular no. CIR/CFD/CMD1/27/2019 dated February 08, 2019.

(III) In case the listed entity/ its material subsidiary does not provide information required by the auditor, to that extent, the auditor shall provide an appropriate disclaimer in the audit report, which may be in accordance with the Standards of Auditing as specified by ICAI / NFRA.

(IV) Obligations of the listed entity and its material subsidiary upon resignation of the statutory auditor:

(i) The listed entity / its material subsidiary shall obtain information from the Auditor in the format as specified. The listed entity shall ensure disclosure of the same under Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations.

(ii) During the period from when the auditor proposes to resign till the auditor submits the report for such quarter / financial year, the listed entity and its material subsidiaries shall continue to provide all such documents/information as may be necessary for the audit / limited review.

(iii) The Audit Committee shall deliberate upon all the concerns raised by the auditor with respect to its resignation as soon as possible, but not later than the date of the next Audit Committee meeting and communicate its views to the management. The listed entity shall ensure the disclosure of the Audit Committee's views to the stock exchanges as soon as possible but not later than 24 hours after the date of such Audit Committee meeting.

- The link for the aforesaid Circular is as mentioned below:

https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsiaries_44703.html

C. FRAMEWORK FOR LISTING OF COMMERCIAL PAPER:

- SEBI vide its Circular SEBI/HO/DDHS/CIR/P/2019/115 dated 22nd October, 2019 provides a framework for listing of Commercial Paper for its trading on the Stock Exchanges.

- For listing of CPs, issuers and stock exchanges shall comply at the time of listing and on a continuous basis with the following:

1. An issuer who desires to list its CP shall forward an application for listing along with the disclosures specified to the concerned stock exchange(s).

2. On approval of the listing application by the concerned stock exchange(s), the disclosures so provided along with the application for listing, shall be made available on the website of the concerned stock exchange(s).
3. Post listing, the issuer shall make disclosures, as specified, during the tenure of the CP(s) to the concerned stock exchange(s), which in turn shall disseminate the same on its website.
4. The Stock exchange(s) are advised to put in place:
 - a. Necessary systems and procedures for monitoring of disclosures;
 - b. A framework for imposition of fine, in case of non-compliance and/ or inappropriate disclosures by issuers.
5. Any non-compliance with the conditions of listing issued under this circular may also attract action under Securities and Exchange Board of India Act, 1992.

Disclosures to be provided along with the application for listing and Continuous obligations and disclosure requirements for listed CPs are provided as Annexure I and II respectively in the Circular.

- The link for the aforesaid notification is as mentioned below:

https://www.sebi.gov.in/legal/circulars/oct-2019/framework-for-listing-of-commercial-paper_44715.html

IBBI UPDATES

A. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) (SECOND AMENDMENT) REGULATIONS, 2019:

- The Insolvency and Bankruptcy Board of India vide its Notification dated 25th October, 2019 had amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 which may be called Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2019.
- The regulations shall come into effect on the date of its publication in the Official Gazette i.e. **25th October, 2019**.

1. In regulation 13(2), after clause (ca), the clause (cb) shall be inserted which provides as follows:

All Professional entities to submit compliance certificate by 15th day of October every year to the Board in Form H for the financial year 2018-19.

Provided that an professional entity recognized as on 31st March, 2019 shall submit compliance certificate by 31st December 2019 to the Board in Form H financial year 2018-19.

2. In the principal regulations, in the Second Schedule, for Form A, new Form is substituted.

- The link for the aforesaid notification is as under:

<https://www.ibbi.gov.in/uploads/legalframework/a533c43c0d999cc0970b06c4322370a1.pdf>

ARTICLE OF THE MONTH

INDEPENDENT DIRECTORS

On October 22, 2019 MCA has notified following four notifications amending certain requirements related to Independent Directors which shall be effective from December 01, 2019:

- A. The Notification of Institute by Central Government as per section 150 (1) and Rules as per Section 150 (3) of the Companies Act, 2013 (“CA 2013”),
- B. The Companies (Appointment and Qualification of Director) Fifth Amendment Rules, 2019,
- C. The Companies (Creation and Maintenance of databank of Independent Directors Rules, 2019, and
- D. The Companies (Accounts) Amendment Rules, 2019.

A. The Notification of Institute by Central Government as per section 150 (1) and Rules as per Section 150 (3):

Section 150 of CA 2013 provides for Manner of selection of Independent Director (ID) and maintenance of Data Bank of ID.

Section 150 (1) gives power to Central Government to notify any body, institute or association having expertise in creation and maintenance of Data Bank containing name, address and qualification of persons who are eligible and willing to act as ID and put on their website for the use by the Company making appointment of ID.

Section 150 (3) gives power to MCA to prescribe Rules to follow by such body, Institute or association for creating and maintaining Data Bank for ID

According to the powers conferred on MCA under Section 150 it has notified **“Indian Institute of Corporate Affairs” situated at Manesar (Hararyana) (“IICA”)** as such Institute, which shall create and maintain Data Bank for ID.

The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/NotificationIICA_22102019.pdf

B. The Companies (Appointment and Qualification of Director) Fifth Amendment Rules, 2019:

With this notification Rule 6 of the above referred Rules is substituted with the change of title of the Rules from “Creation and Maintenance of Data Bank of persons offering to become Independent Director” to “Compliances required by person eligible and willing to be appointed as an Independent Director”. The Rules are as follow :

1. Application to Indian Institute of Corporate Affairs, Manesar, Haryana("IICA")

- a. **Existing Independent Director** of a Company is required to apply to IICA **before 1st March 2020** for inclusion of his name in Data Bank for a period of one year or five years or for his life-time or from time to time renew the same; and
- b. **Any individual** who intends to get appointed as an Independent Director in a company (even if he has no DIN) is required to apply to IICA **after 1st December, 2019 and before his appointment as ID** for inclusion of his name in Data Bank for a period of one year or five years or for his life-time or from time to time renew the same.

2. Renewal with IICA

Every individual whose name has been included in the data bank with IICA, shall file an application for renewal for a further period of 1 year or 5 years or for his life-time, within a period of 30 days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank of IICA, failing which, the name of such individual shall stand removed from the data bank of IICA. However individual who had made application to IICA and paid life time fees for inclusion of his name in the data bank of IICA is not required to renew the application.

3. Declaration by ID

Every ID along with his declaration of meeting the criteria of independence as per Section 149 (7) of CA 2013 also now required to submit a declaration that his name is included in the Data Bank of IICA .

4. Proficiency Test & exemptions

Every individual whose name is included in Data Bank of IICA shall pass an online proficiency self-assessment test (**Proficiency test**) with score of not less than 60% in aggregate **within a period of one year from the date of inclusion of name in data Bank**, failing which his name shall stand removed from the databank of IICA.

However, Individual who has served (a) Listed Public Company or (b) Unlisted Public Company having a paid-up share capital of Rs. 10 Crore or more, as a Director or Key Managerial Personnel(KMP) for a period of not less than *10 years are not required to give Proficiency Test.

*Note: Period during which an individual was acting as Director or KMP in two or more companies at the same time shall be counted only once for calculation of the period of 10 years .

A person can give as many attempts as he wish to, for passing the Proficiency Test as there is no limit of number of attempt.

The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf

C. The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019

Section 150 (3) of CA 2013 gives power to MCA to prescribe Rules to follow for creating and maintaining Data Bank for ID, by any body, Institute or association which may be notified by Central Government under Section 150 (1).

Accordingly, MCA has prescribed the new Rules namely “The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019” which will be effective from **1st December 2019**, except **Rule 2** for “Definition” and **Rule 5** for “Panel” of 10 members nominated by the Central Government for the purpose of approving the outline of course and study material for Proficiency Test, which will be effective from **October 22, 2019**.

Rule 3 is Creation and Maintenance of Data Bank by IICA

- (a) IICA shall create and maintain an **OnlineData Bank** of persons, willing and eligible to be appointed as ID including individuals already serving as ID on the Board of companies, **which shall be placed on its websites.**
- (b) The Online Data Bank shall contain **the following details of each person** whose name included in such data bank to be eligible and willing to be appointed as ID including individuals already serving as ID on the Board of companies,:
- a) DIN , if applicable ;
 - b) Income Tax PAN ;
 - c) the name and surname in full;
 - d) the father’s name ;
 - e) the date of Birth ;
 - f) gender ;
 - g) the nationality ;
 - h) the occupation ;
 - i) Full Address with PIN code (present and permanent) ;
 - j) Phone number ;
 - k) E-mail ID;
 - l) the educational and professional qualification;
 - m) experience or expertise, if any
 - n) any preceding criminal proceedings as specified under section 164(1)(d) that is conviction by a court for offence , involving moral turpitude or otherwise and sentenced to imprisonment thereof for a period not less than 6 months and a period of 5 years has not yet elapsed from the date of expiry of the sentence. However if a person is convicted by the Court for an offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, is not eligible to be appointed as a Director in any company ;
 - o) the list of LLP in which he is or was a Designated Partner along with the name of LLP, nature of industry and duration with dates ; and
 - p) the list of companies in which he is or was director, along with the name of the company, the nature of industry , the nature of directorship like Executive or non- executive or Managing Director or ID or Nominee Director and the duration with dates.
- (c) IICA shall provide the information of online data bank **only to Companies** which requires to appoint ID.

- (d) A person whose name has been included in the online data bank of IICA **may restrict his personal information to IICA to be disclosed** in the data bank.
- (e) Any individual, whose name appears in the data bank of IICA, shall make **changes in his particulars within 30 days of such change** through web based framework which is made available by IICA for this purpose so that all the information of such person is updated.
- (f) IICA will display on its Online Data Bank its **Disclaimer conspicuously** that the a company must carry out its own due diligence before appointment of any person as an ID.
- (g) IICA shall with prior approval of the Central Government **fix a reasonable fees to be charged from :**
- (i) Individuals for inclusion of his/ her names in the data bank of ID and
 - (ii) Companies for providing information of ID available on data bank

Rule 4 Duties of IICA:

- (a) IICA shall provide the **following facilities without charging any fees** with respect to every individual who is either already appointed as an ID on the Board of company or who intends to be an ID :
- (i) conduct an online **proficiency self-assessment test** (Proficiency test) covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual as ID ;
 - (ii) prepare a **basic study material, online lessons**, including audiovisuals for easy reference of individuals taking the online Proficiency Test.
- (b) IICA shall daily share with the Central Government, a cumulative list of all individuals:
- (i) whose names have been **included** in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director;
 - (ii) whose applications for inclusion in the data bank have been **rejected** along with grounds and the dates of such rejection; and
 - (iii) whose names have been **removed** from the data bank along with grounds and the dates of such removal.

The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpInpdtDirectorsRules_22102019.pdf

D. The Companies (Accounts) Amendment Rules, 2019

In the Companies (Accounts) Rules, 2014, in Rule 8 regarding “Matters to be included in Board Report“ in sub-rule (5)a new clause (iiia) is inserted and accordingly in the **Directors Report , the Board has to give a statement** regarding its opinion with regard to integrity, expertise and experience (including “proficiency”) of the Independent Directors appointed during the year. “proficiency” means the proficiency of the Independent Director as ascertained from the online proficiency self-assessment test (Proficiency Test) conducted by the **Indian Institute of Corporate Affairs at Manesar (Haryana) (IICA)** as notified under section 150(1) of the Companies Act , 2013

The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules_22102019.pdf

***Provisions in other countries**

Directors in the **UK** can also obtain a Chartered Director qualification from the Institute of Directors (IoD). This experience-based assessment requires directors to show how they work within the context of their boards, use their knowledge and skills and discharge their duties.

Canada's Institute of Corporate Directors (ICD) offers the ICD.D designation. To apply, directors need to be an ICD member of good standing, have completed the ICD-Rotman Directors Education Program, have signed the ICD's Member Code of Conduct and have passed the ICD.D online examination. They also must pass an ICD.D oral peer examination and commit to a minimum of 14 hours ongoing governance education annually.

The Institute of Directors in **Southern Africa** (IoDSA) confers the Chartered Director (SA) professional designation. To receive the CD(SA) an applicant must comply with the entrance requirements, have been a practising director (or held equivalent office of an organisation of substance) for at least 3 years during the 5 years prior to application, and be sponsored by two individuals, preferably IoDSA members. Chartered directors must maintain their professional development through the IoDSA Continuing Professional Development (CPD) scheme.

Australian Institute of Company Directors (AICD) started in 1975 its course for being a company director. Since then about 40,000 have completed the course, which is widely seen as a base level of knowledge for a role as a board director. The course, following the facilitator-led and scenario-centric Harvard teaching model, focuses on two key capabilities — judgement and decision making. It takes five full days to complete, on top of 40 to 50 hours of preparation, mostly reading. Then there's a 3000 word assignment, an online quiz and a written exam, to pass the whole thing. The course can be taken part-time, full-time or residential, and via correspondence.

Conclusion: These new rules in India will serve two purposes,

(A) **more accountability by Independent Director** (ID), the recent debacles of large corporates and banks have raised questions on the role of (ID) as why ID have failed to detect the signs of trouble in time. The ID should know their fiduciary capacity, duties, roles and responsibilities. ID are decision makers and help a company to choose the correct path when approaching major forks in the road. The decision maker should be well versed to prevent any fiascos in the working of the Company where large stakes are involved. In order to improvise corporate governance system in India, Government thought it prudent to mandate measures to strengthen the competency, capacity and composition of boards. The Proficiency Test will cover Companies Law, Securities Law, basic Accountancy and such other relevant areas require for acting as ID. The entry standard is created by such proficiency test, and

(B) **The Data Bank of ID will be a repository** available online from Indian Institute of Corporate Affairs (IICA) as one stop platform for the companies to find ID, which is a mandatory requirement. Many companies were appointing ID, who are ID only on paper and at times not having adequate skills of corporate laws. Currently, there is no requirement of minimum educational qualification for a person to be appointed as ID. However, the test will be simple and designed for ID to have the basic knowledge of corporate laws and those who are having basic knowledge of corporate working should have no wrath for this Proficiency Test. It's a welcome move by MCA though the Companies Act 2013 provides number of other measures like capping the number of directorship, meeting with quorum of disinterested directors, audit committee, Code of Conduct for ID and risk management principles. However, we also need ongoing

development and training for ID on regular basis and there must be a strong disciplinary and complaints procedure if there is misconduct by ID.

*[https://aicd.companydirectors.com.au/membership/company-director-magazine/2019-back-
editions/march/director-qualifications](https://aicd.companydirectors.com.au/membership/company-director-magazine/2019-back-
editions/march/director-qualifications)
<https://www.businessinsider.com.au/review-the-aicd-company-director-course-2017-10>



INSPIRATIONAL QUOTE



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